

**Submission  
No 108**

## **HISTORICAL DEVELOPMENT CONSENTS IN NSW**

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Partially  
Confidential

## SUBMISSION TO NSW LEGISLATIVE ASSEMBLY HISTORICAL CONSENTS INQUIRY.

Please accept my submission on Historical Consents, more commonly known as Zombie DAs.

The common term 'Zombie DA' is telling, as just as mythical zombies rise from the dead to wreck havoc and destruction on modern folk, so 'Zombie DAs', long forgotten and presumed deceased, are able because of incongruous legislative loopholes, to re-emerge and destroy critically important threatened species habitat, including species listed on the NSW Save Our Species register. As historical consents, these Zombie DAs are exempt from current Planning and Biodiversity Protection Legislation and communities including Local Councils have little say on their progression.

361 Blackhead Rd, Hallidays Point is a case in point. Identified as important koala habitat in the Hallidays Point Habitat Study in 1999, with recent sightings of koalas in the nearby roadside, this 27 acre/10.63 hectare plot also is an important remnant corridor between Khappinghat National Park and Darawank Nature Reserve allowing migration as well as residency of a number of threatened species. As well as Koalas it is also home to Glossy Black Cockatoos, Brush-tailed Phascogales, Squirrel Gliders, microbats and a vast number of smaller birds and amphibian species. Spotted-tail Quolls have been sighted within a 4 kilometre distance and Grey-headed Flying Foxes are also known to frequent it.

A Developmental Application for the site was first submitted in 2004 for a retirement /nursing home. [REDACTED]

[REDACTED] As a result the approval of the DA specified that "significant tracts of vegetation must be kept on site" although it was also acknowledged that this may not be enough to sustain threatened species.

The DA was due to lapse in October, 2009 however was 'preserved' in the last 48 hours, on the report of the consultant, Anthony Fish, by the removal of some small saplings (number unspecified) to establish 'physical commencement'. These actions would not be considered sufficient grounds to justify physical commencement by today's standards.

More problematic still is that documents accessed, via freedom of information from Council records, demonstrate that the invoice for the alleged work was dated a number of weeks post the due lapse date. It was only on the word of the consultant that the supposed work was achieved within the time-frame and it should be noted that this same consultant has two convictions in the Land and Environment Court for illegally clearing koala habitat.

In May 2020 the DA was again before Council for a modification from bricks and mortar to dwellings manufactured off-site and with the promised nursing home a stage 5 development. It had now also morphed into an luxury over 55s dense residential community. As a modification of an existing DA, no community consultation was required or advertised for.

What was not clearly identified in the requested DA modification was that the site was now subject to an upgraded Bush-fire Risk Assessment.

It is worth noting at this point that Hallidays Point is one of the many coastal villages currently subjected to Zombie DAs, that are not only in a high bush-fire risk environment, as well as flooding risk, and have only one viable road in and out of the community. As was so much of the NSW coastal areas, the area was hit hard by the 2019-2020 'Black Summer' Bush-fires with houses and the local RFS station lost in the neighbouring village of Rainbow Flat and urgent local evacuations to Taree, some 25 kilometres away on a highway that was also closed due to the fires. Some locals had no alternative but to evacuate to the beach.

Although there is no argument about the need to protect communities from the increasing risk of Bush-fire and flooding, there is a significant irony in the inconsistency that 361 Blackhead Rd must comply with upgraded Bush-Fire Risk Assessment legislation but not be subject to upgraded Planning and Biodiversity Assessment Legislation.

Regardless, the updated Bush-fire Risk Assessment that was applied to the block of some 2000 plus trees and dense under-story vegetation, home to many threatened species, required that the entire block be managed as an internal Asset Protection Zone 'in perpetuity' necessitating the clearing of nearly all vegetation and the installation instead of non-flammable surfaces of concrete and short mown grass.

The clearing of this remnant corridor between two important nature reserves will impact all of Hallidays Point biodiversity and accelerate the local extinction of several threatened species. It will also, despite the 'internal asset protection zone' put elderly and infirm people within the danger of bushfire and local flooding because of the limited access to the area and the remoteness from essential services such as ambulance and hospital.

I am aware that 361 Blackhead Rd is a relatively small block compared to the many, many other larger Zombie DAs threatening so much of coastal NSW that not only contain threatened ecologies and species, some of which are found nowhere else but on these remaining coastal strips of vegetation. However 361 Blackhead's Rd history highlights everything that is so currently very wrong with these historical consents.

An easy come-back from politicians approached about these 'Zombie DAs' is that local councils have the final say. However Local Councils claim that they are totally powerless to change the nature of an approved DA, and the strategy of requesting amendments mean that local communities, who have invested their finances, businesses and lives in terms of volunteer services to protect and preserve their communities and natural environment, have no say.

A proposed solution to the 'Zombie DA' dilemma was put forward in 2008 by then Minister for Planning, Frank Sartor, that preservation of a DA would require substantial commencement within a 2 year period, thus preventing the practice of 'land banking' that undermines much of these historical consents. However this was not supported by his fellow politicians, and given the deep pockets of developers and their supposed charities and propensity to give large donations to political parties, it is perhaps no wonder that the communities impacted feel betrayed, unheard and unsupported by our elected members.

These small coastal communities and their still rich biodiversity, belong to more than just the holders of these Zombie DAs. The biodiversity they hold is part of Australia's national treasure and needs to be protected by current legislation, including the NSW Save Our Species stated objectives.

Additionally, these small coastal communities have always served a critically important psycho-therapeutic and cultural role for the Australian nation in providing beach holiday experiences of getting back to nature.

At the very least, similar to having to comply with upgraded Bush-fire Risk Assessment Legislation, these Zombie DAs or Historical Consents should have to comply with upgraded Biodiversity Protection and Planning Legislations.

With thanks for your consideration,

Kym Kilpatrick

Resident of Hallidays Point, Volunteer Bush-fire Fighter (Diamond Beach, Deputy Captain) and volunteer with Wildlife Rescue and Rehabilitation Service, FAWNA (For Australian Wildlife Needing Aid).