

**Submission  
No 155**

## **HISTORICAL DEVELOPMENT CONSENTS IN NSW**

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## INQUIRY INTO PLANNING SYSTEM AND THE IMPACTS OF CLIMATE CHANGE ON THE ENVIRONMENT AND COMMUNITIES

To the Committee Chair and Panel Members

Thank you for allowing the community to make submissions to you regarding concerns over Age Old Developments (Zombie Developments) being able to proceed without complying with today's legislative requirements. The Development of Stage 13 Mirador Estate in Merimbula NSW is alarming to many in the community due to the fact it does not comply with current environmental laws pertaining to bushland, and endangered flora and fauna.

However, of further concern is the existing infrastructure in the Bega Valley Shire relating to sewerage management and storage. The sewerage works are in Pambula close to the Pambula Golf Club. When the plant was first developed the treated wastewater was to be used by the golf club and some surrounding farmlands for irrigation purposes. I believe this has worked well in the past.

Today is a different story. The plant is at capacity and the vagaries of weather regarding rain fall volumes has created a situation whereby the golf club and surrounding farmlands cannot absorb the amount of water produced. The Treatment works are also ageing and are struggling to adequately treat the wastewater to the environmental standards expected today. The BVSC (Bega Valley Shire Council) has sought permission from the State Government to increase the length of the wastewater pipeline, situated at the beautiful Pambula Beach, to get rid of the excess treated water. The Council sought this option because they could not afford a more environmentally acceptable solution to the problem. This is an example of poor forward planning on their behalf. I believe it shows what consequences come from a failure to adequately plan for future growth in an area. Allowing "Zombie Developments" is also an example of poor planning.

As of writing this submission there are several housing developments awaiting approval from Local and State Government to proceed. One is a 70-lot subdivision in South Pambula. This development has been touted as an area for affordable housing. The lots will vary from 850 square metres to 650 square metres and is situated off the Princes Highway and Furner street.in South Pambula. The area was once cleared farmland.

In Wolumla, a town between Merimbula and Bega, there is another subdivision awaiting final approval. This will be for a further 850 house lots.

Bega too has land being cleared for housing and retirement living. All these areas were once farmland. The area is growing and people (anecdotal evidence only) are coming to the Shire for a wholesome safe lifestyle, including open space and a clean healthy environment.

Mirador Stage 13 will destroy a beautiful natural environment with a unique and diverse number of plants and animals that are precious to the community. The animals, from yellow belly gliders to owls and a variety of bird life do not have a voice of their own. Surely it is up to us, the supposed custodians of our land to not just talk the talk but also take the hard walk towards a more intelligent and sensitive country where we can all humans, animals and plants alike can have a piece of paradise to call our own.

Information for your consideration from a Government website.

"From 15 May 2020, however, the new s96 of the *Environmental Planning and Assessment Regulation 2021* provides that survey work, vegetation removal and other specified minor preparatory works **will not** be sufficient to constitute 'physical commencement' and prevent a development consent from lapsing."

### **Circumstances in which a 'zombie development' may not be able to proceed**

Whether a development can proceed to completion long after it has received development consent will need to be determined on a case by case basis.

In this section we discuss some reasons why such a development may not be able to proceed.

#### Can the development still comply with the consent?

Development consents are almost always issued subject to conditions.

It is an offence to carry out development which requires development consent otherwise than in accordance with the development consent issued, including its conditions (EPA Act, s4.2).

It is possible that due to the passing of time, a development will no longer be able to comply with the conditions of the development consent.

A consent may require compliance with various standards, such as the Building Code of Australia or applicable Planning for Bushfire Protection Guideline. As those standards change over time, or as site circumstances change, it may be increasingly difficult for the development as approved to be carried out in accordance with those requirements.

Also, the conditions of consent may require additional approvals to be obtained from various other authorities prior to the development proceeding. If such approvals were not granted initially, and the development cannot comply with current legal requirements relating to those approvals, or are otherwise

unacceptable to the relevant authority, then the development may not be able to proceed.

Affordable Housing Criteria: attached.

Susan Jesson

[REDACTED]

[REDACTED]

[REDACTED]

When it comes to the priority of legislation in the context of housing developments, several factors come into play. Let's explore them:

1. **Federal vs. State Laws:**
  - Federal laws generally take precedence over state laws. However, there are exceptions, and the Supremacy Clause of the U.S. [Constitution ensures that federal law prevails when there is a direct conflict between federal and state laws](#)<sup>1</sup>.
  - State laws can still play a significant role in housing development, especially when there is no direct conflict with federal laws.
2. **Local vs. State Laws:**
  - State laws often delegate authority to local governments (cities, counties, etc.) to regulate land use and zoning.
  - Local laws related to housing development (such as zoning ordinances, building codes, and land use regulations) take priority over state laws within their jurisdiction.
3. **Land Use and Zoning Regulations:**
  - Land use and zoning laws dictate how land can be used (e.g., residential, commercial, industrial) and where certain types of development are allowed.
  - These regulations are typically set at the local level and can significantly impact housing development.
4. **Environmental and Conservation Laws:**
  - Federal and state environmental laws (e.g., the Clean Water Act, Endangered Species Act) may affect housing development.
  - These laws prioritize environmental protection, and developers must comply with them.
5. **Historic Preservation Laws:**
  - Historic preservation laws protect historically significant buildings and areas.
  - These laws may limit certain development activities in designated historic districts.
6. **Fair Housing Laws:**
  - Federal and state fair housing laws prohibit discrimination in housing based on factors such as race, religion, disability, and family status.
  - Compliance with fair housing laws is essential for any housing development project.
7. **Other Specific Laws:**
  - Depending on the location and context, other laws may apply, such as those related to affordable housing, accessibility (e.g., the Americans with Disabilities Act), and property rights.

Remember that the priority of legislation can vary based on the specific circumstances, jurisdiction, and the nature of the housing development. [Always consult legal professionals and local authorities to ensure compliance with relevant laws and regulations](#)<sup>23</sup>. 🏠 📄

Learn more

1     [law.cornell.edu](http://law.cornell.edu)2     [rutherford.org](http://rutherford.org)3     [quizlet.com](http://quizlet.com)

- What are the key considerations for housing developers?
- How do I find out about local zoning regulations?
- Tell me more about fair housing laws.

Let's chat