

**Submission  
No 145**

## **HISTORICAL DEVELOPMENT CONSENTS IN NSW**

**Name:** Ms Elisabeth Larsen

**Date Received:** 1 June 2024

To: Parliament NSW, c/o Clayton Barr MP

Tura Beach, 1 June 2024

## Re. Inquiry into historical development consents in NSW - Submission

Dear Committee,

I live and work as a professional ecologist on the south coast of NSW. I have lived in this area for more than 25 years. I am also an accredited Biodiversity Assessor in NSW and I know the planning system and the current environmental laws of NSW well. Thank you for the opportunity to write a submission to this inquiry.

As an ecologist, the phenomenon of historical development consents (Zombie DAs), has shocked me to the core. I have come to understand that these old DAs are technically legal based on the fact that development consents have already been granted. In some cases the DAs were approved more than 30 years' ago, under the environmental legislation of the 1980's. It is outrageous and shameful that these old and inappropriate DAs are still valid.

Had these projects been assessed according to current environmental standards, consent *would not have been granted* without stringent conditions applied to the DA to protect endangered flora and fauna, wildlife habitat and to prevent degradation of the environment.

In our own community, we are deeply concerned about one approved development in particular, DA 1989/1180, Lot 1087/-/1240676 in Mirador (between Tura Beach and Merimbula, Bega Valley, NSW South Coast).

The development will cause the clear felling of 10 ha of sensitive coastal bushland, based on an environmental assessment which was conducted *in 1989*, more than thirty years ago. As you would be aware, a large number of biota, flora and fauna, has been added to the list of threatened and endangered species since 1989.

If this development goes ahead, our community will witness, in real time, the methodical destruction of threatened species, included federally listed species, and their habitat. This will be done with full knowledge of their presence.

For your information, it is likely that the Mirador development will cause harm on the following biodiversity values:

1. **Threatened species:** this is an area of remnant mature coastal forest with hollow bearing trees and quality ground cover habitat that support threatened flora and fauna species including - but not limited to – the Merimbula Starhair plant, Long-nosed Potoroo, the hollow-dependent Yellow-bellied Glider, Eastern Pygmy Possum, Glossy Black-cockatoo, and the Gang-gang Cockatoo. The Powerful Owl and Barking Owl are frequently heard calling and very likely breed here. It provides foraging habitat for critically endangered Swift Parrot. Five of the above species are also listed as threatened under federal legislation. Countless other creatures live there to form a thriving, functional ecosystem. Functional ecosystems are our buffer against the impacts of climate change.
2. **Merimbula Starhair:** There is a significant number of the endangered plant Merimbula Starhair on the development site. This plant has special protection under the NSW

Biodiversity Conservation Act (as a species at risk of 'Serious and Irreversible Impact' of development). It only occurs in this locality. Following the NSW BC Act, the consent authority *must not grant development approval* if it is determined that a proposal is likely to impact on this plant (Clause 6.7 of the Biodiversity Regulation 2017).

3. **Loss of connectivity:** The land is a critical east-west corridor for animals to move between the Aboriginal Land Council land adjoining to the north and west, and the coastal forest with fresh water sources to the east. By allowing all this land to be developed you are not only removing critical habitat but isolating native fauna in a coastal zone bordered by urbanisation and no movement corridors and access to fresh water.
4. **Sedimentation, runoff and pollution:** DA 1989/1180 will cause clear felling of 10 ha of sloping land in a gully on sandy soils in a protected riparian and watercourse zone which is part of the Merimbula Back Lake catchment. The developer has already been investigated by Council and subsequently fined for allowing pollution from earlier stages of the Mirador development to run into the Back Lake at Merimbula.

Under the current environmental legislation of NSW, the Biodiversity Conservation Act 2016 (BC Act), the motto and guiding principle is to seek to "avoid, minimize, and mitigate impacts on biodiversity values". This precautionary approach must be applied to environmental assessments by ecologists and environmental practitioners across the state. It is drummed into us by the NSW Department of Planning, Industry and the Environment in our training as Accredited Biodiversity Assessors in NSW.

The protection of biodiversity values is a fundamental principle of the BC Act. Please let me also remind you that the protection of environmental health is, intrinsically, an investment in human health and safety.

Recommendations:

**Environmental legislation must be changed immediately to ensure that appropriate assessment standards are applied to historical development consents, in alignment with the BC Act:**

- **All Historical Development Consents (Zombie DAs) must be reassessed under current environmental legislation.**
- **All DAs should have a set time span of 5 years, and if the developer has not taken any agreed and *significant* action in that period, the application must be reassessed before any work is started.**

Thank you for the opportunity to voice my opinion on this matter.

Kind regards and with respect,

Elisabeth Larsen, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]