

**Submission
No 186**

HISTORICAL DEVELOPMENT CONSENTS IN NSW

Name: Mr David Rowe
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Inquiring into Historical Development consents In NSW!

A) The current legal framework for development, consents, including the physical commencement test.

I am Dave Rowe a resident of Ballina State Electorate in the Northern Rivers. I've been heavily involved in saving Wallum Brunswick Heads since we found out that the matter had gone before Byron Shire Council.

The concept of "consultation" is of serious concern. Just putting an add in a newspaper, on a web site isn't proper consultation. The proposed zombie development (historical) will have direct impact on so many.

The tired system of planning is not fit for purpose.

NSW Government have imposed state significant development panels on communities. These panels have undermined community involvement and processed developments like Wallum and others without exercising due diligence or ensuring community involvement, adequate infrastructure or ensuring such developments meet the needs of communities like our State electorate has a high level of people sleeping rough, people living in temporary pods adjoining Wallum, railway infrastructure being destroyed despite the evidence of a viable solar train for transport (and bike path along side) and the change in housing types due to proposed high market developments like Wallum at Brunswick Heads. Many developments in our region have put upward pressure on rates, rentals, traffic movements and infrastructure. The insurance industry has already flagged that many will not get flood insurance or are not able to afford it. The developers walk away without any consequences.

Sadly, only Lip service is given to indigenous heritage, wildlife, rivers, flooding or neighbourhoods impacted by these massive developments. Appin Manyana Maters and Yamba are other concerns.

We have Local Councils, in theory accountable to the local community and supposedly representing their views and concerns. The following amendment to the motion of Lyon/Hunter proposed by Councilor Dey and Deputy Mayor Ndiaye was voted down on 18th April 2024 despite it reflecting concerns by many in the community.

"Lyon/ Hunter Motion

The council notes the report Wallum subdivision DA 10.2021.575.1 – response to council resolution, 23–545 – stormwater and cultural heritage site inspection plan.

Amendment.

Dey/Ndiaye

The counsel:

1. notes the inappropriateness of the Wallum site for urban subdivision for housing as reflected in.

(i) having to fill the site up to 2 m deep.

(ii) the difficulty of providing services such as stormwater drainage.

(iii) the tragic loss of habitat for flora and fauna, including several threatened species

This site, will effectively cover 24 football fields, up to 2 meters deep of infill. This fill will foreseeable be contaminated with introduced weeds and pests. The adjoining existing residents will be subjected to high-risk flooding. Massive motor vehicle traffic, heavy machinery and pollutants will invariably run into the crystal clear waters of Simpson's Creek.

Local council are fearful of representing their constituents against well funded developers like Clarence Property who are able to threaten legal action and have the resources to navigate the regulations to their advantage.

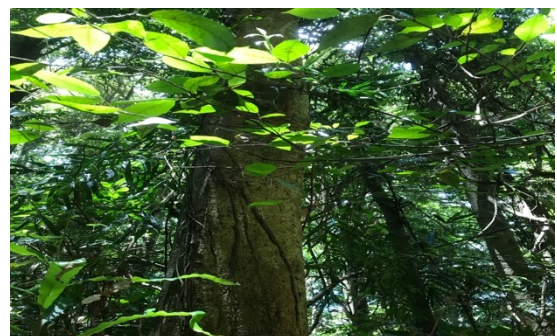
I believe there is much that the State Government must do to ensure that our planning laws are fit for purpose, that our parliament exercises due diligence to ensure peace (tranquility, quiet, government condoned civil disturbance, freedom from oppressive regimes; harmony) , welfare and good government as required under section 5 of our NSW Constitution.

The following documents addressed concerns re Zombie DA's.concreting the coast :
<https://acrobat.adobe.com/link/review?uri=urn:aaid:scds:US:7eb7d97b-798b-381d-a01d-9dbc7a36bce7>

B) impact to the planning system, development, industry, and property ownership as a result of the uncertain status of lawful commenced development consents.

Planning, especially zombie DA's in flood and fire prone areas or areas that have become more exposed to natural disasters as a result of climate change,

- a) Of great serious concern is that we are suffering the consequences of governments at all levels in Australia (and abroad) to transition from fossil fuels to renewables, prioritising circular economy renewables, stopping floodplain developments zombie or not like Wallum Brunswick Head, Manyana Matters.
- b) We need urgent action now to avoid the climate change tipping point, addressing planning laws, preserve old growth forest in NSW that contributed to the apocalyptic fires of 2019. Old growth forest that determine the quality of our waterways, contribute to our rainfall, impact on the level of flooding and increase our biodiversity
- c) Many zombie DA' impact on environmentally significant lands and are being exploited under old regulatory systems.:
 - “ The science shows that protecting native forests is one of the most important ways we can try to limit the effects of climate change.” Page 173 The Forest Wars by Professor David Lindenmayer. It is important to note after agri business, logging has done the most to reduce the amount of carbon that is stored in our atmosphere.
 - Braemar State Forest 2024 vs Old Growth original Big Scrub Booyong down the road.2024



- d) Logging and land clearing for developments have a direct correlation to river and estuary water quality and flooding. The Tweed, Wilson/Richmond River and their tributaries have terrible water quality as NSW Government is aware and is prone to extreme flooding as pictured below in 2022. This area, like so many coastal regions of NSW are approved developments. This is the RSL club and surrounds Ballina. If Da's including zombie DA'a like Wallum, Manyana, Yamba and Appin (to name a few, see concreting the coast above) are condoned the water quill deteriorate in the Brunswick River too. This should be a serious concern for your committee.



- e) Ballina, Byron and Lismore have been earmarked by NSW Government for further development. Mostly luxury developments.
- *"The insurance industry's message on improving disaster resilience is finally getting through – millions of dollars are being put aside for mitigation measures and ambitious buy-back and build-back programs have been launched.*
 - *But an equally important demand is still outstanding – the need for radical reforms to land use planning.*
 - *Even after a year like no other in terms of flood catastrophes, developments on flood-prone land are still getting the nod."*
 - 14 November 2022 <https://www.insurancenews.com.au/analysis/building-on-floodplains-why-is-it-still-happening>
- f) Our region has a number of appointed bodies, too far removed from community. This needs to be addressed:
- This organization talks of sustainable and resilience as we move toward our tipping point.
https://www.nsw.gov.au/sites/default/files/2023-06/NRRC_Resilient_Lands_Strategy_Summary_Report.pdf
 - North Coast Regional Plan for Developers: <https://www.echo.net.au/2023/02/the-north-coast-regional-plan-2041-a-blueprint-for-developers/>
 - Planning Panels imposed on us: <https://www.planningportal.nsw.gov.au/development-and-assessment/planning-panels/planning-panel-boundaries-and-members>
 - <https://www.environment.nsw.gov.au/topics/water/coasts/coastal-management/nsw-coastal-council>
 - There are many more.
- g) It is important that developments and land use include up-to-date assessment around risk management for bushfire and flood. They must be independent assessment by local Council on today's standards. Today's standards must meet the SMART principles/ best practices.
- h) I am pleased to see at last acknowledgment from State Government that:
"The impacts of climate change in NSW. The climate of NSW is changing due to global warming. The effects of climate change on the people and environment of NSW are expected to become more pronounced as the climate continues to change over this century. Without substantial, concerted action, climate change poses a major threat to humanity and most living systems on earth. Extreme events such as floods, droughts, dangerous fire weather and heatwaves are projected to increase in duration, magnitude and frequency with greater impacts on communities and infrastructure." Page 4 of Submission 189 to this committee by NSW Government.
<https://www.parliament.nsw.gov.au/lcdocs/submissions/82817/0189%20NSW%20Government.pdf>
- i) I seek this committee to inquire if Byron, Ballina and Lismore Councils and other councils with historical DA's have undertaken comprehensive, up-to-date (2024) flood and bushfire risk studies. If so were these Referred to by the appropriate approval bodies?
- Funding could be moved away from subsidies for Forestry Corp, fossil fuels and Sydney and Regional panels (closed down) to assist local Councils with costs.
- j) The New South Wales Bushfires Inquiry and Federal Royal Commission into Disaster preparedness noted the need to incorporate bushfire risk management and prevention measures into land use planning and building standards. Has this been implemented?
- <https://www.abc.net.au/news/2020-02-03/scientists-sign-letter-demanding-climate-action-in-australia/11922808>
- k) I see minimal development in our region into circular economy, little attention to solar passive housing or sustainable fire-resistant products to build with such as Industrial Hemp? Just one example:

- <https://hempblockaustralia.com/> I am not linked to this organization, it's an Australian example
 - An overseas version . <https://san.com/cc/eco-friendly-hemp-based-concrete-blocks-provide-sustainable-alternative/>
- l) NSW should give serious consideration to a moratorium on any new greenfields development, zombie (historical developments) or upzoning on land which is considered as bushfire or flood prone hazard risk.
 - m) **The psychological and physiological impact on your residents, visitors, wildlife, pets and livestock in NSW is horrendous. People are still homeless and the developments like those proposed at Wallum Brunswick Heads, Yamba and Manyana will do little to nothing for the housing crisis . The insurance industry will not insure these type of high risk, state approved developments. See Submission 123 to this Committee by Allianz .**
 - n) <https://www.parliament.nsw.gov.au/lcdocs/submissions/82719/0123%20Allianz%20Australia.pdf>
 - o) <https://www.inqld.com.au/news/2022/10/28/ban-these-planning-disasters-pm-wants-building-on-floodplains-to-stop>

The above is vital in areas that are vulnerable to rising sea levels, coastal erosion or drought conditions as a result of climate change.

- 1) From the photo above and this photo from Ballina Community Notice Board of the devastation:



- 2) Our region is extremely susceptible to Sea Rise and coastal erosion. With climate changes the potential for cyclones to come further south is foreseeable, even inevitable such as the 1954 Cyclone and others like David that impacted on Tweed. Such a foreseeable occurrence would devastate our region further. The intensity of heavy rain cells like 2017, 2022 x 2 then again in October 2022 are still being felt. We had another even recently but were lucky it didn't continue like 2017 or parts of Ballina Electorate and co would have gone under again. Photo October 2022.



- 3) Here's a video of Wallum Brunswick Heads recently ago flooding. The subject of the zombie DA and outdated approvals.
<https://www.facebook.com/groups/128325390355435/permalink/319651434556162/>
- 4) I haven't an in-depth knowledge of coastal management legislation and planning legislation and the state of our terrible biodiversity legislation.
 - Whose responsibility for compliance with coastal management legislation, is it local councils, the State Government or the Planning Panels?

5) What skills do local councils have to deal with these issues, what resources given the foreseeable acts of



“Intergenerational negligence (as Chris Bowen MP calls it) being imposed on us at State and Federal Levels?

c) any barriers to addressing historical development, consents using current legal provisions, and the benefits and costs to tax payers of taking action on historical development concerns.

a. The personal let alone financial toll is horrendous for those protecting country, wildlife and even their



fellow citizens from the impact of unconscionable developments

Community has to take a stand for Country and their neighbors due to the failures of planning and biodiversity protections.

- b. Just days ago, Bundjalung Nation Traditional Owners submitted a Section 10 for the Commonwealth protection of Wallum site
- c. Following positive meetings with the NSW State Government in Sydney earlier this month, an application under Section 10 of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (ATSIHP Act) was submitted to Tanya Plibersek's office last night by lawyers on behalf of a group of Bundjalung Traditional Owners.
- d. The group are requesting permanent protection of the Wallum site in Brunswick Heads NSW due to its cultural significance:

Representatives from 7 clans of the Bundjalung Nation including Minyungbal, Widjabal Wiabul, Bandjalang, Githabul, Arakwal, Yaegl, and West Bundjalung and regional clans with associations into the site including Yugambeh and Mulanjali are included in the detailed application.

The Section 10 application details the significance of the Wallum site including Aboriginal cultural pathways, significant pre-colonial trees, significant ceremonial and cultural associations and specifically to protect totemic associations with threatened species that rely on the site including the grey-headed flying fox, koala, black cockatoo, and wallum frog, which hold significant spiritual meaning for many clans and nations.

Letitia Kelly shares, “the Wallum site is important because it is part of the three brother's story. Many mobs have pathways across the lands. It is important we stand for comprehensive cultural heritage information to be undertaken by all mobs affected by areas which are under threat. This site is particularly important because of pathways and cultural totemic associations within the site. It is crucial for the region and for many Aboriginal communities and societies, who are entitled to protect their totemic habitats for the practice of their culture”

The cultural heritage report submitted in 2009 for the Wallum site by the controversial Everick Heritage Consultants lacked detail due to inadequate consultation. The report stated, 'The Subject Lands are within the territory of the Minjungbal people, with the Kalibal/Widjabal to the west and the Arakwal to the south', however no Minjungbal or Widjabal people were consulted; and the only Arakwal representative consulted indicated the presence of a ‘significant pathway’ that ‘required further investigation’.

These actions, and protectors being exposed to court hearings despite the NSW Government received this report, The Henry Review requested.

<https://www.parliament.nsw.gov.au/tp/files/186428/Independent%20Review%20of%20the%20Biodiversity%20Conservation%20Act%202016-Final.pdf>

- “What the Review Panel would like to see
- The future wellbeing of the people of NSW rests upon beginning the repair of nature. The Review Panel considers that: •
- In order to meet its objects, the Act should have primacy over competing pieces of legislation.
- Aboriginal people should be fully involved in the design and implementation of policy and programs designed to conserve and restore biodiversity.
- The Act should proactively address climate change impacts on biodiversity and ecosystems and the cumulative impact of biodiversity loss and loss of ecosystem connectivity.
- The Act should guide and promote investment in conservation and restoration activities and should position NSW to take advantage of an emerging large-scale global investment in nature repair.

Wallum Brunswick Heads is a perfect example where some 12 + threatened species and 9 Federally listed species are threatened by a zombie DA. https://omny.fm/shows/earth-matters-3cr/earth-matters-28-april-2024?fbclid=IwZXh0bgNhZW0CMTEAAAR0AeOZiBKCDdBOsvoI38b1t_GqOgusaqxf7x5fdbnyu2Aaxvu4YkLFkXWs_aem_Aac4Nk1Zfc8gAr1AKwdhv-cisiID8NTKICrTs5iELhaaSta0sydQbBEM1Wm7FaJ6GitBLiWPXTNnf4JMQcTUXs-8

D) any other matters.

- a. Frontiers in psychology point out the consequences on all threatened species including ourselves:
 - <https://www.frontiersin.org/journals/psychology/articles/10.3389/fpsyg.2023.1087078/pdf?isPublishedV2=false>
 - “Anthropogenic climate change is increasing risk and frequency of natural disasters, with rising global temperatures leading to more devastating droughts, wildfires, and floods, as well as loss of life and agricultural capacity. The climate crisis is a systemic problem contributing to a multitude of socioeconomic, demographic, and political consequences (Kalwak and Weihgold, 2022) moving us toward what has been described as “Hothouse Earth” (McGuire, 2022), a phenomenon that cannot be reversed through human intervention once the tipping point is passed (Ste en et al., 2018). The Power Threat Meaning Framework (Johnstone et al., 2018) provides a lens through which different responses to climate breakdown including eco-distress, climate trauma and feelings of institutional betrayal may be understood.....”
- 2) These problems are also exacerbated by weak planning and development, biodiversity law’s, carbon offset legislation which effectively is greenwashing and counterproductive.
 - <https://www.frontiersin.org/journals/psychology/articles/10.3389/fpsyg.2023.1087078/pdf?isPublishedV2=false>
 - And <https://books.apple.com/au/book/the-great-housing-hijack/id6473138451>