

**Submission
No 220**

HISTORICAL DEVELOPMENT CONSENTS IN NSW

Name: Miss Maria Lloyd

Date Received: 3 June 2024

To the Committee,

Inquiry into historical development consents in NSW

I'm contacting the committee today as a concerned bush regenerator of the Byron Shire working with the local not-for-profit Organic Landcare Inc. and a supporter of the Save Wallum campaign. My colleagues and I are extremely concerned at the ongoing destruction of the last of our remaining Wallum Heathlands in Brunswick Heads, known locally as "Wallum" at 15 Torakina Rd. as a result of the application of "zombie" development application regulations. This development will not meet the needs of the housing crisis we are facing in this shire and indeed will only provide more luxury homes that will increase the likelihood of more severe flooding in Bayside and throughout the Simpsons Creek catchment as a result of the destruction of the local coffee rock soil and heathland ecosystem holding, filtering and managing water flow in the area. Wallum also constitutes a significant part of the mere only 1% of Wallum heathland left in the Byron Shire and is home to an astounding number of threatened species that cannot be found elsewhere. It carries significant cultural heritage values for seven tribes of our traditional owners. The environmental legislation that is being applied to Wallum, Brunswick Heads simply does not reflect the modern reality of our understanding of the value of this natural and cultural heritage nor the changes in legislation that support this.

It is the antithesis of everything that I dedicate my working life to as a bush regenerator and will significantly affect other ecosystem fragments where I might work within the shire by permanently destroying biodiversity here that can never be recreated. As an experienced bush regenerator, I can safely say I could never regenerate Wallum once destroyed, as even many of its plants will not propagate well outside of their environmental context. The paltry number of sapling replacement trees suggested in place of full-grown and in some cases 400+ year old trees with many hollows is an absolute sham and a disgrace to the whole concept of bush regeneration. It is our living library proposed to be buried and torn apart. It is the kidneys of our Brunswick River proposed to be butchered for profit. Our community has been put in a position where we must take action to save Wallum Brunswick Heads from inappropriate planning decisions. I urge every member of this inquiry to look into themselves and consider the ways that they can contribute to a habitable future for future generations. Please, do not take Wallum away from our grandchildren.

I will address the Terms of reference

That the committee on Environment and Planning inquire into and report on historical development consents in New South Wales, including:

- (a) The current legal framework for development consents, including physical commencement test.*
- (b) Impacts to the planning system, development industry and property ownership as a result of the uncertain status of lawfully commenced development consents.*
- (c) Any barriers to addressing historical development consents using current legal provisions, and the benefits and costs to taxpayers of taking action on historical development concerns.*
- (d) Possible policy and legal options to address concerns regarding historical development consents, particularly the non-completion of consents that cannot lapse, and options for further regulatory support, including from other jurisdictions.*
- (e) Any other matters.*

(a) I am unsure as to exactly how the current legal framework for development consents is applied. I assume the Planning Department is responsible for Environmental and Planning Consents. I do not know what the physical commencement test is. The Northern Regional Planning Panel approved this DA and bypassed local decision-making based on paltry community. This has cost us taxpayers thousands of dollars in our own time and money to protect the sensitive environment where our taxes should have paid for these protections to be put in place. This includes the cost of the transportation and hire of police from across the state present to attempt to enter machinery on site as of

(b) Impacts to:

1. Planning system – Planning is based on old erroneous data and does not include new mapping of flood and fire risks. This takes local planning systems further from the goal of increasing community resilience to the increasingly frequent natural disasters caused by climate change. This also increases the cost of the

implementing planning systems that are not in any case relevant to modern reality as they are based on previous and now false information.

2. Development industry – Developers that flaunt laws and ecological values are provided with incentives to continue their bad behaviour and actually rewarded, where we could instead reward developers who propose ecologically sound housing that will make real steps towards resolving the housing crisis.

3. Property ownership – Investment in property that is at risk from flooding and climate change is wasted because that modern analysis has not been taken into account, uninsurability of property purchased, increased flooding and water contamination due to destruction of the water holding and filtration capacity of the Brunswick River, the drop in property value to surrounding property owners as a result of irreparable damage to local ecosystems. The disappearance from local communities of species that were a fundamental part of that community such as the Glossy Black cockatoos and acid frogs. Housing schemes of dubious viability that may prove legally unsound and be challenged in court swallow savings from members of the community who unwittingly purchase houses that may never be constructed.

(c) Any barriers to addressing historical development consents using current legal provisions, and the benefits and costs to taxpayers of taking action on historical development concerns

1. There does not appear to be a system within the planning department to recall or reassess historical development applications.

2. Legal costs are prohibitive to communities taking action on Zombie Development Applications and the time required for the process is prohibitive for adequate protection. Essentially there is almost no support for communities undertaking this process.

3. Taxpayers lose time and money physically defending the natural heritage within their own communities which is essential to proper functioning and to the liveability of their communities. With the application of modern legislation, there would only be a gain for taxpayers who would not be spending thousands of dollars and days of unpaid work protecting their own communities from predatory developers with no interest in appropriate housing or being a part of the places where they build.

5. Knowing and understanding the system to be able to engage to protect critical natural heritage within the community is a barrier experienced by many taxpaying community members. It is simply inaccessible.

(d) Possible policy and legal options to address concerns regarding historical development consents, particularly the non-completion of consents that cannot lapse, and options for further regulatory support, including from other jurisdictions.

The NSW government should place an immediate moratorium on any developments in or near critical habitat or proven culturally sacred land such as Wallum, Brunswick Heads. I would also recommend that the government investigate the extent of zombie DAs around the state and analyse the costs and policies required to resolve outstanding zombie DAs that are not in line with current state and national legislation. A buy-back scheme should be a part of this budget, and would include having conversations about the real repurchase value of land to be acquired for national parks. This would actually reduce long-term costs due to land degradation, loss of ecosystem services, and an increase in impacts from extreme weather events as a result of unhealthy and unstable ecosystems. We can already see this in such examples as the recent extreme flooding in parts of the Hawkesbury-Nepean and the reaction of NSW premier Chris Minns to flag a potential ban for new developments on that flood plain. Such changes are possible.

Land could be valued and assessed for purchase by the government at a value based on current regulations rather than previous that inflate the value of the land by viewing it as viable for development when it would not be considered as such under current legislation. If we choose not to buy back ecologically sensitive land, we, our children and our grandchildren will pay the very real economic price of devaluing the life support systems that allow us to have habitable homes.

(e) Any other matters.

Our communities have been let down by existing planning systems as the consultation process for Wallum was entirely insufficient both with traditional owners and with the community at large. Alongside a small newspaper advert, only 200 people were notified via a letterbox drop. Our communities were not informed of the depth of ecological significance of Wallum, which reaches far beyond Brunswick Heads itself.

Clarence Property say that the development would improve the ecological values of the site. This position is entirely invalid, a point that has been clarified by a number of respected local ecologists in our region.

Clarence Property's 'Habitat Management' measures have negated the Wallum Sedge Frog entirely, whilst focusing only on the Wallum Froglet. Clarence Property has proposed to replace the destruction of Wallum's acid frog habitat with artificial 'Breeding Ponds' - the viability of which has been contested by leading ecologists. Both species of frog are highly sensitive to habitat modification, hydrology changes and

pH levels – requiring the acidic, tannin-rich water that Wallum ecology uniquely provides. Clarence Property has failed to establish any precedent of breeding success in artificial conditions, the least of which should be a minimum of five years of proven breeding success, considering the Vulnerable status of these frogs.

Thriving communities of Wallum Sedge Frog and Wallum Froglet are found on-site at Wallum. These two unique species are both Vulnerable to Extinction - primarily due to habitat loss from coastal development - with the Wallum Sedge frog being listed as a Species of National Environmental Significance.

Alongside habitat destruction, the proximity of roads and houses will pose additional threats to Wallum's acid frogs, with noise and light pollution associated with stress and potential breeding behaviour disturbances.

“Wallum” Brunswick Heads is the only representation of Wallum Heathland in that area. Heathland wildflowers crown the surface of its sandy soil, under which lies thousands of years of organic deposition of unique plant matter and bushfire ash. This process culminates into what we know as coffee rock - a peat substrate that hardens around sand, forming a water-dense layer that encourages permeation and retention of water for wildflower swamps. This unique soil matrix is what sustains the extremely specific Wallum Wildflower Heathland ecology.

Due to the specialised ecology of Wallum, it is host to an astounding number of threatened species of flora and fauna. Some of which are of State and National conservation significance. Including:

Koala, Wallum Sedge Frog, Wallum Froglet, Glossy Black Cockatoo, Eastern Grass Owl, Grey-Headed Flying Fox, White-Throated Needletail, White-bellied Sea Eagle, Collard Kingfisher, Common Planigale, Pale-Vented Bush-Hen, Little Bent-Wing Bat, Large Bent-Wing Bat, Greater Broad-Nosed Bat and Southern Myotis, Pink Nodding Orchid and the Endangered Ecological Community of Swamp Sclerophyll Forest (on Coastal Floodplain).

Leading ecologists who have put forth concerns about this development proposal, have also remarked that with adequate surveying more threatened species are likely to be verified as present. Including: Mitchells Rainforest Snail, Regent Honeyeater, and Swift Parrot.

Bushfires and Habitat loss have ravaged our Nation's Koala population, rendering them officially an Endangered Species. 70% of NSW's Koala population were estimated to have been killed in the Black Summer Bushfires. Without intervention focusing on conserving Koala habitat, Koalas are predicted to become extinct before 2050. There are koala scratch-marks apparent upon Wallum's Scribbly Gums. 76 old-growth Scribbly Gums will be destroyed if this development goes ahead. Some of these Scribbly Gums are 300-400 years old, bearing large hollows that provide irreplaceable habitat for wildlife. Scribbly Gum leaves are an important part of the koala nutrition matrix, as are Swamp Mahogany Trees - 27 of which are also earmarked for destruction.

Clarence Property plans to replace these mature trees with 54 saplings. Saplings would take up to 30 years to reach a point of providing sufficient habitat and food source for Wallum's Koalas. Even upon reaching sufficient maturity, these saplings may not be suitable due to the variable nutritional quality of individual trees. Additionally, improper landscape positioning will not provide adequate corridors for koalas to travel within. Perhaps most importantly, the developer has made no considerations towards climate-driven increases in temperature, which will mean a koala's survival will increasingly depend upon denser foliage under which to shelter.

Drought and climate changes have wrought extreme stress upon our Glossy Black Cockatoo populations. Wallum's She-oaks are a vital food source for these Vulnerable to Extinction Glossy Black Cockatoos. Clarence Property's development has marked 38 mature She-oak trees for destruction. A non-breeding Glossy Black Cockatoo can process up to 580 She-oak cones per day. While a pair can process a total of 420,000 She-oak cones per year. Glossy Black Cockatoos are infamously picky eaters. They have preferred feeding trees, which they will return to year after year.

Clarence Property proposes to plant new saplings in place of the old trees they're destroying. However, She-oaks take many years to produce cones, and form strength enough to support the weight of a Glossy Black She-oak trees are dioecious - only the female tree will produce cones. This determination can't be made until a tree has fully matured, so Clarence Property cannot ensure these trees will become a viable food source. Clarence Property also proposes to install 50 nest boxes to offset the habitat loss for Glossy Black Cockatoos and other tree-dwellers. As food and habitat 'specialists', Glossy Black Cockatoos are known to be extremely selective against artificially-constructed replacement hollows - which will often degrade within 5-10 years. In fact, there are no recordings of successful artificial nest use across South-East Queensland or Far North-East NSW.

For the Glossy Black Cockatoos that frequent Wallum, Clarence Property's proposed destruction of the 76 Scribbly Gums would prove devastating, as their horizontal branches are known roosting sites; their deeply-set hollows ideal for nesting. It takes 200 years for a Scribbly Gum to even begin to form a hollow, and more than 300 years for that hollow to become large enough to be suitable for a breeding pair of Glossy Black Cockatoos. These trees are simply irreplaceable.

The greatest cost to our community would occur if this development goes ahead. The decimation of remnant coastal sclerophyll forest and wet heathland, traditional trackways, culturally modified trees and habitat for totemic species as well as endangered threatened and vulnerable species would be devastating for us. Actual financial costs could be measured in the tens of millions when you consider all the ramifications. And what about the things which can be recreated by no amount of money? These things without price cannot adequately be represented by a price. An urgent moratorium on all "zombie" Development Applications is called for now.

Yours sincerely,
Maria Lloyd
Organic Landcare Inc.
Byron Shire.