

**Submission
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HISTORICAL DEVELOPMENT CONSENTS IN NSW

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Historical Development Consents in NSW Inquiry Committee
NSW Legislative Assembly
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Macquarie St, SYDNEY 2000

Inquiry into the impact of historical development consents on the NSW planning system, development industry and property ownership

The planning and development processes and legislation are broken in Australia and the consequences of this are going to be dire for our Nation in coming generations. An urgent review and tightening of processes is needed that gets applied immediately to all developments in the planning pipeline to avert the large-scale destruction that will be the result of the cumulative impact of all the out-of-date development proposals currently in process.

The government has an acknowledged duty of care to protect young people from the climate crisis and can expect to be held to account for current processes that enable and abet developments that prove to be inappropriate in light of society's current values and scientific knowledge.

In my experience of developments in the Shoalhaven, the source of the issue of historical or 'zombie' developments, ie developments that have been in the planning system for decades, appears to be two-fold:

- 1) the government lacks the ability to reassess (and revoke where necessary) out-of-date development plans that were started decades ago and no longer meet society's current and future needs; and,
- 2) there is too much wriggle-room in the processes which are split between multiple levels of government. While the overall big-picture planning for the region appears

well researched, considered and planned ... what is actually being executed at ground level is not always in line with these regional guiding principles.

Reassessment of historical developments should be done on the following criteria:

- Assess if the zombie development plans are in line with current regional strategy for the area,
- Assess if the zombie development plans meet current scientific knowledge and future expectations concerning flora and fauna of the area,
- Assess if the historical plans make sense in light of current understanding and future expectations of climate change,
- Assess if the historical plans adequately respect and protect Australia's cultural heritage – both indigenous and the renowned beach village culture of the East Coast.

Culburra Beach is facing three zombie developments that have each been in the planning system for decades. The result of this long lead-time is that these developments fail to meet current regional planning guidelines, goals and recommendations laid out in regional planning documents like the 'South Coast Regional Strategy 2006-31' and the 'Illawarra-Shoalhaven Regional Plan 2041'.

Flaunting these planning documents, the proposed West Culburra subdivision will:

- tack housing estates onto a small village that doesn't have the infrastructure or employment opportunities to support such a growth in population (against the directives of the South Coast Regional Strategy)
- break the village's urban boundary (against the directives of the Shoalhaven-Illawarra Regional Plan 2041)
- destroy an initial 47 hectares of the environmentally sensitive natural beauty that gives this village its unique character (and in years to come many hundreds more hectares of forest whose zoning will be 'informed' by the initial 47-hectare housing estate).

In 2011 local government planners tried to zone all the land adjoining Culburra rural/environmental as part of the first draft SLEP2014 to implement the planning strategy of the South Coast Regional Strategy, but were overruled when the developer stepped over their heads and went to the State Planning Minister for support, resulting in a 'deferred matter' zoning that is still in place today. In 2018 DPIE rejected the development on environmental grounds. Yet the subdivision then received conditional approval by the LEC in 2021. It is now seeking EPBC Act approval.

EPBC Act approval is a process that only takes place in instances where vulnerable and endangered species occur. In West Culburra ONE of these vulnerable species is the endangered Greater Glider. In 2022 DCCEEW asserted that Greater Glider

habitat, and even potential habitat, must be preserved to ensure the survival of this species. In Culburra the developer in their EPBC Act application asserts that 38 hectares of Greater Glider habitat will be destroyed by this subdivision. Greater Gliders have been confirmed to be living in the local area just 10km away on a similar development site. Other vulnerable and endangered flora and fauna at risk from this subdivision include: the Glossy Black Cockatoo, Yellow-Bellied Glider, Gang Gang Cockatoos, Green and Golden Bell Frog, the Grey-Headed Flying Fox, Eastern Brown Bandicoot, Coastal Swamp Oak.

And, because decisions for West Culburra will 'inform' land zonings for the adjoining 'deferred matter' land to the West of West Culburra, this will impact hundreds more hectares in the future.

So the question is, why is this development still even on the table? It is not in line with regional development strategy and it has been established it is going to be environmentally destructive.

By a process of jumping between levels of jurisdiction, the developer manages to continue to push forward. This needs to be tightened up so it cannot be manipulated and so that the outcome of the planning process is in the best interest of the Australian population, not just the few who will profit.

Additionally, disregarding cultural heritage was a hallmark of 19th-century developments that does not align with 21st-century values and should not be allowed to continue in the form of out-of-date development plans. Given modern society's respect for First Nation's culture and acknowledgment that land was never ceded, further destruction of places of significant cultural heritage needs to be halted.

In Culburra the East Crescent development has revealed over 19,000 aboriginal artefacts during recent archaeological investigation, confirming what the local Jerrinja community already knew - a direct and long-term connection with the location through genealogy. And yet still the development pushes ahead to put a 24-lot housing subdivision on this culturally important place. A location that is also extremely low-lying land, literally on the banks of Lake Wollumboola – a lake that periodically opens to the ocean and in itself is environmentally important.

It becomes clear that the system needs to be fixed when you consider that the examples I give are the situation in just one village on the NSW coast. This issue of out-of-date, or 'zombie' developments is happening up and down the entire coast. The cumulative impact will be enormous. Other locations facing similar problems include Callala, Manyanna, Dalmeny, Tuross Head, Tura Beach, Yamba, South West Rocks, Broulee ... a more complete list can be found in the Concreting our Coast report produced by Greens MP Cate Faermann.

An urgent moratorium must be imposed on all developments in the pipeline and each must be reassessed in light of current planning, environmental and cultural concerns. If the historical developments don't measure up to current standards the government needs the power to revoke without legal risk. Housing development is an investment like any other – and in no other type of business investment is there compensation to the business owner if business conditions change. If a trader invests in the stock market and the stock price crashes, the trader loses the money without compensation. If an entrepreneur launches a new product and the market doesn't buy it, then the business fails. Why should housing developers expect compensation if conditions change?

Preservation = 21st century progress!

Yours sincerely
Rebecca Sleath