

**Submission
No 209**

HISTORICAL DEVELOPMENT CONSENTS IN NSW

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SUBMISSION TO THE PARLIAMENTARY INQUIRY INTO HISTORICAL DEVELOPMENT CONSENTS IN NSW 2024

(1) Historical developments consents (Zombie DAs) negatively impact communities, their towns and shires, native wildlife and their habitats.

In most cases, whole swathes of wildlife and their habitats are annihilated contrary to current NSW State and Federal Environment legislation, contrary to current State Planning legislation, contrary to community wishes and contrary to 21st Century standards. As a result, our communities, towns and shires are left with the mass destruction and havoc caused by developers, communities left with housing estates and/or infrastructure that we did not want, leaving communities in mourning for what once was, with our towns now unrecognisable and largely devoid of our wildlife and environment.

Communities have no recourse, legal or otherwise, to challenge these Zombie DA approvals, resulting in community action on the site grounds to stop the bulldozers from destroying wildlife and their habitats, and from destroying their towns and shires.

Regional Planning Panels making decisions without wider community knowledge, based on inadequate community consultations and in some cases without community consultations. Any community written objections are immediately dismissed by these panels as being groundless !

Regional Planning Panels making decisions which will not affect those panel members but which will negatively affect and negatively impact the towns/shires, communities, the wildlife and their habitats none of which will ever recover. Once they are gone, they are gone forever.

Regional Planning Panel members having no tertiary level ecological qualifications nor ecological understanding to be making decisions which will negatively affect and negatively impact the wildlife and their habitats in those towns/shires.

Regional Planning Panel members making decisions with a mere one hour or less site inspections without local community representation nor with local ecologists nor with local stakeholders nor with community knowledge.

Zombie Development Applications lodged and approvals granted without wider community knowledge.

Community consultations poorly advertised, inadequate or non-existent consultations, with biased information from the developers with no local ecologists' input.

(2) The NSW Planning Minister and his department in approving these Zombie DAs:

Create community mistrust of the NSW Government particularly the NSW Planning and the NSW Environment Departments and the Ministers.

Create communities having no confidence in the NSW Government as a whole.

Zombie DAs being approved utilising outdated Planning and Environment legislation sends a clear message to the community that the NSW Government does not hold itself accountable to the people of NSW nor accountable to current legislation which overrides outdated legislation.

Sends a clear message to the community that developers have all the power, influence and control, and that communities have no power or say over what happens in their towns/shires, especially in regional and rural communities where communities are very protective of their wildlife and their habitats and their towns and communities in general.

Sends a clear message to communities that the Minister for Planning and his department condone the dysfunctional planning processes which more resemble third world country antics and tactics.

Almost all developers do not live in the towns they are about to destroy. They come into our communities uninvited, get their Zombie DAs approved, destroy our wildlife and their habitats, and wreak havoc on our communities. They leave a trail of destruction behind them in our towns/shires as they embark on the next town, wildlife and wildlife habitats to destroy. The sole motivation for developers is to make a whole lot of money for themselves at the expense of, and detriment to, our towns/shires, wildlife and wildlife habitats. This developer behaviour is condoned by the NSW Government and it has to stop.

(3) Local Example – Wallum Ecosystem/Wetland, Brunswick Heads, Byron Shire, NSW

The Zombie DA approval by the Northern Rivers Regional Planning Panel (NRPP) on behalf of the NSW Planning Minister which will destroy this Wallum ecosystem/wetland is unconscionable. Only 1% of Wallum habitats remain in the Byron Shire. It is critical that we lose no more Wallum habitats.

It started in 1988 when the then Byron Shire Council rezoned this intact and fully functioning ecosystem/wetland in 1988 as residential.

A concept plan was submitted in 2011 and approved in 2013. The previous owner/developer lodged at least one DA in 2016 but it was rejected.

The previous owner/developer sold the ecosystem/wetland to the new owner/developer in February 2021. The new developer lodged a DA in September 2021 and it was inappropriately approved in May 2023 by the NRPP as a Zombie approval without wider community knowledge and no fact-checking of the developer's claims. No current environment legislation was enacted in this approval despite numerous NSW and Federally listed Threatened Species, including Matters of National Environmental Significance, Protected Marine Species, Protected International Migratory Birds and listed Threatened Ecological Communities.

No work has ever commenced on site except for illegal slashing of the native wildflower heathland component of the ecosystem/wetland by the previous and current developers and a substantial wire fence erected by the current developer earlier this year which has illegally stopped wildlife movements throughout the habitat.

Community consultation prior to approval was held during the Covid lockdown and social distancing requirements in 2021. This community consultation was poorly advertised, only 200 people out of the shire of 36,000 were letter-box notified from which came 13 objections which were dismissed by the NRPP as being of no consequence. There were no local ecologists given the rights to address the community consultation resulting in the developer misleading the 40 people who attended, and omitting all the ecological damage and destruction that will be done by the developer. It was only after the Zombie DA was approved that the whole community in the Shire found out about it. The NRPP spent a mere ¾ hour as a site inspection with only 3 of the 5 panel members bothering to turn up.

This community is now fighting back against this Zombie DA by whichever way we can including blockading bulldozer entrance to the site, and upholding current NSW and Federal Environment Acts in their respective absence at the site. The Council, State Government and Federal Government have failed to prevent this pending destruction when they could have. No current environment legislation has been enacted, which had it been this DA would not have been approved either now nor in the future.

The NSW State and Federal Governments are now buck-passing this issue which is disgraceful behaviour by our elected representatives and their non-elected bureaucrats giving the community no confidence or trust in either of these governments nor any confidence or trust in the local Byron Shire Council staff or Councillors.

(4) Historical and Current NSW Government Zombie DA policy and dysfunctional planning department processes:



The cumulative impacts on our wildlife and their habitats are never given consideration in these Zombie, or even non-Zombie, DA approvals.

(5) What needs to change

(a) Everything.

(b) While this Zombie DA inquiry is proceeding, there must be a moratorium on all previous and current Zombie approvals.

(c) The legal framework to prevent these Zombie DAs being approved is obviously absent. The fact that these types of approvals have been allowed to continuously occur adds to the **cumulative effects on our natural environment including the rapid decline, decimation and death of wildlife and native vegetation and negative impacts on our towns and communities** across the State which NSW Planning and NSW Environment Ministers and their departments **have ignored** for way too many decades.

(d) The twenty-eight-day time period for community members to research, understand, compile and type submissions is way too short. This includes extensive research of ALL the State planning and State & Federal environment legislations. Depending on the complexity of development applications and developer supporting documentation (Zombie or ordinary) and the significant impacts that those developments will have on towns/shires, wildlife and their habitats and the wider community the time period for submissions needs to be realistically from six months to 12 months and possibly beyond that for very complex issues such as the Wallum Ecosystem/Wetland Zombie approval in Brunswick Heads.

In terms of the Wallum Ecosystem/Wetland Zombie approval in Brunswick Heads, it has taken even the ecologists in this community almost ten months to research, understand, compile and type submissions to all three tiers of Australian governments objecting to this approval. Instead of the 13 objections from the original inadequate consultation period and submission time frame, there are now at least 7,000 objections with many community members unable to write submissions for various reasons.

Many community members do not know how to write submissions nor even know where to begin, and they give up submitting one due to the daunting process even though they object. These community members do not even know how to access all the various legislations which they need in support of their submissions. The various Council and State Government online DA

Trackers are a nightmare to find and a further nightmare to navigate, meaning many community members can't access them further exacerbating their efforts to write a submission objecting to the development applications. In this regard, Councils and State Governments would be encouraged to multiply by at least 100 all submissions received in order to catch those community members unable to submit objections, and make DA tracking more accessible and easier to follow.

(e) Development Applications (Zombie or ordinary) in the Byron Shire are no longer being advertised by the Byron Shire Council in the local newspaper, nor even on their Facebook page. **This now creates another level of hostility towards our towns/shires and communities by concealing development applications from the public. This leaves it up to the community to seek out DA Tracker on Council's webpage which is a nightmare to access and navigate (see (d) above).**

All reforms to the NSW Planning processes whether they are reforms to Zombie or ordinary development applications must legislate that all development applications are to be made available to the public via local newspapers, Council webpages, Council Facebook pages, and public meetings.

(f) There are obviously many problems now being recognised by the NSW Government that have and are continuing to plague the NSW Planning Department for two inquiries into two different aspects of planning processes to be underway at the same time – one inquiring into Zombie DAs and the other inquiring into NSW Planning Processes both requiring major overhauls in the NSW Planning Department.

Both these inquiries need to consult with each other regarding mutual problems and inconsistencies in the whole planning processes whether they be Zombie DAs or ordinary DAs. Many ordinary DAs are also gaining approvals when they should never be approved. Both committees can then work on legal frameworks which will stop the planning processes which have and continue to decimate our towns, our wildlife and wild places. The most important aspect of this is of course ensuring that current State and Federal Environment Legislation is enacted in ALL development applications.

The Chair and Committee members of the Planning Inquiry into the Planning System visited the Wallum Ecosystem/Wetland in Brunswick Heads on Friday afternoon, 31st May 2024. **The Chair and Committee members of this inquiry into Zombie DAs would be wise to do the same where you will gain more information from our community than you would otherwise receive. You will also be able to see a pristine ecosystem before it is destroyed. This, by the way, is the short version of what is wrong with NSW Planning Department Zombie and ordinary development approvals. Visit our communities and we will fill you in some more.**

(g) **Come and see our places before the NSW Planning department's approvals do away with it all:**

Some photos of the Wallum Ecosystem/Wetland, Brunswick Heads, NSW



(Crimson honeyeater)



Some of the “younger” Scribbly Gums, Eucalyptus racemosa, above, destined for removal – approximately 76 Scribbly Gum trees destined for removal including pre-colonial 300-400 year old Scribbly Gum trees, part of one of the enormous ones below, many with tree hollows critical for numerous species continued survival)





Significant impacts to the EPBC Act listed White-bellied Sea-eagle (juvenile pictured above) will occur to their roosting and breeding sites where they eat the fish they have caught in the adjoining Simpsons Creek (also a Sanctuary Zone) which is the southern arm of the Brunswick River all connecting to the Cape Byron Marine Park and all of which will be negatively impacted by this Zombie DA approval.



Owlet nightjar, above, in one of the 200+ year old Scribbly gum tree hollows destined for removal, significantly impacting the other tree hollow dependent species such as the Threatened Species Glossy Black Cockatoos, all the other cockatoo, parrot and rosella species, various glider and possum species, to name just a few. The State and Federally listed Threatened species of Glossy Black Cockatoos below – male and female breeding pair on either side of last year's fledgling.





Glossy Black Cockatoo eating from the Casuarina Black She-oak tree seed pods, their ONLY food source.

36 of their only food source trees, which are also their roosting and shelter trees, plus the tree hollows in the eucalyptus trees needed for breeding are destined to be removed thanks to the NSW Planning Department which will ensure these State & Federally listed Threatened birds will become locally extinct.



These areas are described as “paddocks” by the developer Clarence Property Group in an attempt to minimise the ecological significance of this Wallum Ecosystem/Wetland, which the NRPP and State Planning Department & Minister believed because NONE OF THEM FACT-CHECKED the developer’s claims and no local ecologists were given the opportunity to counter the developer’s claims. These “paddocks” consist of native wildflower heathland, reed beds, native grasses and native trees which provides the only habitat for two wetland-dependent Threatened Species of Wallum frogs – the Wallum Froglet and the Wallum Sedge Frog. Many other species, including more Threatened species, utilise these “paddocks” for food, shelter and breeding. These “paddocks” are about to have a massive housing estate built on top of this wetland Critical Habitat making all the species dependent on this habitat locally extinct. THEY ARE NOT PADDOCKS.

One hundred and thirty-two, at least, Koala trees used for feed, shelter, roosting and breeding will be destroyed by this developer courtesy of the NSW Planning Department. This number of trees does not include the non-eucalyptus feed trees that Koalas also depend on which will also be destroyed.

The developer Clarence Property Group made claims and continues to do so that the Wallum ecosystem/wetland in Brunswick Heads does not flood. This would make it the only wetland in the world not to flood. As you can see from the photo below of a **recent *mild* flooding event in January 2024** where the **massive housing development Zombie approval will be dumped right on top of Critical Habitat, Threatened Species habitat and an obvious wetland which floods even in mild rainfall events. None of these false claims nor omissions by the developer were fact-checked by the NSW Planning Department.**



This is merely a brief submission on the significant negative impacts that Zombie approvals have on our towns/shires, communities, wildlife and wild habitats. Another 12 months would be required to specifically list everything that is wrong with Zombie approvals and the NSW Planning Department. A more detailed account of this Zombie approval for the Wallum Ecosystem/Wetland in Brunswick Heads can be found in my submission No.25 dated 26th October 2023 to the Inquiry into the Planning System chaired by Sue Higginson.

I have proof-read this submission twice, however I am suffering from “submission burnout” after numerous submissions to Council, State Government and Federal Environment Minister since October 2023, and apologies if I have missed something which needed correction. I am sure more submitters to this inquiry are also suffering from “submission burnout” from their endeavours to also stop Zombie and inappropriate development approvals from proceeding.

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