

**Submission
No 213**

HISTORICAL DEVELOPMENT CONSENTS IN NSW

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Submission in response to the Inquiry into Historical Development Consents in NSW

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Executive Summary

The revival of historical development consents, known as "zombie DAs," poses a significant threat to ecosystems, cultural heritage, and community resilience across NSW, as well as the public purse as inappropriate development causes long term costs in loss of ecological services, tourism, and disaster recovery. This submission highlights the severe impacts of these outdated approvals and calls for urgent legislative reforms to prevent further environmental and social harm.

Introduction

Zombie DAs are historical development consents that remain active due to minor initial works. These approvals often overlook current environmental, cultural, and social considerations, posing a serious risk to the integrity of local ecosystems and communities.

Our community, along with many others across NSW, has faced significant challenges due to these outdated consents. The proposed Wallum development in Brunswick Heads is a prime example of the detrimental impacts of zombie DAs. This development threatens rare coastal heathland, critical habitats for endangered species, and important cultural sites.

Local Context and Impact

In 2022, our family experienced the devastating floods in Lismore, which led us to seek refuge in the Byron Shire. Two years later, we are again confronted with the threat of the Wallum development, which plans to destroy a rare Wallum heathland, mapped flood-prone

land barely above sea level, abutting a marine sanctuary, and home to endangered species like the Wallum froglet, Wallum sedge frog, Mitchell's rainforest snail, glossy black cockatoo, and koala.

The approval process for this development was deeply flawed, with reports that were inaccurate, incomplete, or authored by unqualified individuals. These old approvals do not consider the impacts of recent bushfires, floods, sea level rise, coastal erosion, species extinction, or climate change. They fail to engage meaningfully with current community needs and housing trends.

The personal and communal toll has been immense. Our community has had to shoulder the burden of regulatory work, spending thousands of hours and significant financial resources to oppose this development. This effort has caused untold stress and disruption, as we essentially perform the government's regulatory duties.

Attachment: Letter to Minister Scully dated 05/03/2024

Flood victim asks – Please, Minister, keep people out of harm's way at Wallum 'estate'.

Dear Minister Scully,

On 1 March 2022, my children called me to ask if they were going to die. At the time I was punching a hole in plasterboard in a home across the Wilson's River, to get my 70-year-old mother into the ceiling. We were rescued by kind strangers in boats, but we lost all our belongings and our home - and our lives were upended. We moved from Lismore to emergency accommodation in the Byron shire, where we hoped being close to nature would help our children and ourselves begin to heal from the trauma.

Minister, 2 years later in 2024 I have put my life on hold again, to stand with my community against a Zombie DA housing development that will destroy a much-loved area of rare beauty – an intact Wallum heathland the likes of which we will not see again, should it be bulldozed. The kicker? It's mapped flood-prone, barely above sea level, abutting a marine sanctuary, and will subsume a natural wetland that's home to endangered species. I do not want to see other humans go through what I did, by moving into a home that has been built in harm's way at such a high cost to our cultural and environmental heritage. I do not want to lose places and species that connect and heal us when we have been through the unthinkable. There are other

threatened and endangered species on the site, misidentified 300-400 year old habitat trees, fire risk, and acid sulphate soils. Minister, it's a mess. The reports that led to the approval of this DA by the NRPP were inaccurate, incomplete, and/or deeply flawed, and the situation requires the immediate intervention of your department to rectify.

Minister, I worry about the future residents of this development. Will they too sort through their memories, their lives piled up and covered in mud? Or will they have slower-burn disasters, as the rising water table causes damp and foundations to fail? In the future, will they be unable to sell, as buyers cannot secure a mortgage on such risky properties? Will they be unable to get insurance? I know there are movements at higher levels to address these issues in a lasting way, such as the current state inquiry into planning laws led by Sue Higginson MP, and the recommendations of the State Disaster Mitigation Plan to deliver strategic planning controls (page 16, released Feb 2024). These may come too late for us. However, you can act today and have a big impact in a small community - by using your unique and express powers under the EPBC, or some other mechanism of ministerial intervention, to address the mistakes made in the approval of this DA. This can be a win for the community and yourself and a reminder of why we have ministerial oversight— for rectification of gross errors.

Controlled Action – Wallum Estate - DA No 10.2021.575.1 at 15 Torakina Rd, Brunswick Heads. 16 May 2023 the NSW Northern Regional Planning Panel approved DA No 10.2021.575.1, being a subdivision to create 131 Lots comprising of 124 Residential Lots, 3 Medium Density Lots, 1 Residual Lot and 3 Public Reserves, together with associated Removal of 233 trees, Earthworks and Construction of Infrastructure.

Regards, Phoebe Torzillo

Further Recommendations

1. **End Zombie DA Loopholes:** The Government of NSW must conclusively end all loopholes that allow for historical development consents to proceed on outdated DA's. Developments built today must meet today's standards.
2. **Strengthen Planning Legislation:** It is vital that planning legislation and controls are strengthened to conserve remnant native vegetation, recognising their high biodiversity value as wildlife refuges post-bushfires and floods.

3. **Require Contemporary Assessments:** At a minimum, communities expect contemporary, thorough, and professional assessments of development proposals. These assessments must account for recent environmental impacts and current community needs.
4. **Reform Developer Self-Referral:** Developer self-referral under acts such as the EPBC act is not fit for purpose. The onus is falling on communities to do the regulatory work of government when developers choose not to self-refer. The burden of proof is too great for the community to bear, and the avenues for review are costly and burdensome.
5. **Implement Strategic Land Conservation:** Establish a framework for the strategic conservation of high-value cultural and ecological lands. This should include partnerships with government, NGOs, and philanthropic groups to map and protect these lands in consultation with Traditional Owners, First Nations groups, and ecologists.
6. **Utilize Nature Repair Market:** The state can use the emerging nature repair market to recoup costs by properly attributing value to the biodiversity and natural services of wetlands, habitats, and forests.
7. **End 34A Certification:** The 34A certification process should be abolished to ensure that ecological assessments are accurate and conducted by qualified professionals.
8. **Consultant Lottery System:** Implement a lottery system for the employment of consultants on developments to prevent developers from shopping for favorable outcomes. This system would ensure that consultants are assigned randomly, enhancing the integrity and objectivity of assessments.

Conclusion

Zombie DAs represent a significant failure of the planning system in NSW. The case of the Wallum development illustrates the urgent need for reform to prevent historical consents from wreaking havoc on our environment and communities, at high costs to community and government as these improperly assessed and approved Projects ultimately require either acquisition, developer compensation if legal challenges or community opposition prevent completing projects, or cost to government of disaster rebuilding if projects are built in inappropriate locations. We urge the Committee to adopt the recommendations outlined in this submission to ensure a sustainable and just future for all NSW communities.