

Proforma A – Current NSW Planning legislation – 49 responses

Dear Committee,

Current NSW planning legislation is failing both human & biodiversity needs. In particular, the process of review and amendments of DAs, including 'Zombie' DAs, fails to incorporate up-to-date data & modelling regarding climate change risk, biodiversity, and cumulative impact assessments. 361 Blackhead Rd Hallidays Point is a case in point. Heavily vegetated, this 10.63 hectare coastal site is identified koala habitat and part of a critical remnant corridor linking Darawank & Khappinghat Nature Reserves.

It is remote from all essential services, highly bushfire prone and subject to local flooding with a single road egress that is frequently impassable during significant weather events and bushfires.

Despite this, a DA was approved in 2004 for an aged care nursing home, but with recognition that: "the proposal has the potential to impact on threatened species recorded throughout the area" and a requirement that "significant tracts of vegetation will be retained on site". Acknowledged, however, was that this might not be enough to sustain threatened species.

Due to lapse in October 2009, the DA was 'preserved' in the last 48 hours by the removal of some small saplings to establish 'physical commencement'. Notably, the receipt for the work was dated a month post the lapse date. Council relied on a statement of a twice convicted koala habitat destroyer that 'physical commencement' occurred before the lapse date. This type of developer 'loophole' has since been eliminated in current Legislation.

In May 2020 the DA was again before Council with an amendment from bricks & mortar to manufactured off-site dwellings and now slated as a dense over 55's life-style community with a 4th stage development of an aged care nursing home. As an amendment, no up-to-date biodiversity impact or community consultation was enacted. However, the DA was now subject to upgraded Bushfire Risk Assessment Legislation requiring the whole site be managed 'in perpetuity' as an internal Asset Protection Zone necessitating the clearing of nearly all vegetation and the installation instead of non-flammable surfaces of concrete and short mown grass.

The clearing of this corridor will impact all of Hallidays Point biodiversity and accelerate the local extinction of several threatened species including koala, brush-tailed phascogales, glossy black cockatoos, squirrel gliders & spotted tail quolls.

This example highlights the need for changes to the NSW Planning Legislation Framework to:

1. Develop a new process in the NSW Environment Planning and Assessment act to define priorities for consideration with transparency for any review and amendment of existing DA consents, particularly 'zombie' DAs;
2. Develop a process to review significant amendments to existent DAs to incorporate up-to-date climate change risk modelling, impacts on biodiversity and community consultation;
3. Require all DAs and any review of Development Consents to demonstrate assessment of up-to-date biodiversity data, climate modelling, risk assessments for coastal hazards & flood hazard;
4. Make legal changes to the nature & time frame of property rights attributed to Developmental Consents under the EPA Act to allow significant changes including revocation based on up-to-date science, climate risk modelling and biodiversity cumulative impact;

5. Strengthen legislation to address environmental risks for the issue of medium and high-density developments intended for vulnerable peoples (e.g. aged care facilities).