

Submission  
No 65

**INQUIRY INTO PLANNING SYSTEM AND THE IMPACTS  
OF CLIMATE CHANGE ON THE ENVIRONMENT AND  
COMMUNITIES**

**Organisation:** Pacific Palms Community Association

**Date Received:** 3 November 2023

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# PACIFIC PALMS COMMUNITY ASSOCIATION

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The Lakes Way, PACIFIC PALMS, NSW, 2428

**NSW Parliament Legislative Council  
Portfolio Committee No. 7 Planning and Environment  
Attention: The Committee Chair**

**3 November 2023**

## **SUBMISSION TO THE NSW LEGISLATIVE COUNCIL INQUIRY INTO THE PLANNING SYSTEM AND THE IMPACTS OF CLIMATE CHANGE ON THE ENVIRONMENT AND COMMUNITIES**

Dear Committee Chair,

Please find attached the submission from the Pacific Palms Community Association (PPCA) for the NSW Legislative Council inquiry into the planning system and the impacts of climate change on the environment and communities. The Pacific Palms locality includes Blueys Beach, Boomerang Beach and Smiths Lake, and is located south of Forster on the Mid-north Coast of NSW.

The submission which follows is endorsed by the PPCA. Our association is an Incorporated Not-For-Profit organisation that informs and advocates on issues relevant to the diverse community of villages it represents. The PPCA has approximately 70 active members who attend face to face meetings held each month and the active involvement of more than 400 ratepayers through our online and Gmail groups. Our community association represents the involvement of over 60% of the Pacific Palms community. For over forty years our association has been committed to preserving our unique village and coastal environments while maintaining a dynamic evolving, viable community.

Our community association welcomes this opportunity to provide a submission to this significant legislative inquiry.

Yours Faithfully

Gavin Scott  
President  
For and on behalf of the PPCA

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## **PACIFIC PALMS COMMUNITY ASSOCIATION**

Gavin Scott  
*President*

Hugh Bullock  
*Secretary*

Dave Whiting  
*Treasurer*

Chris Tremain  
*Public Officer/Comms*

## PPCA SUBMISSION

### Terms of Reference:

#### a. developments proposed or approved:

- i. *In flood and fire prone areas that have become more exposed to natural disasters as a result of climate change*

The PPCA submits that an Environmental Impact Assessment for any proposed residential development should provide a clear and transparent assessment of the most recent flood hazard or bushfire risk data, especially if climate change has caused increased storm frequency and intensity, and changes in vegetation cover over the past decade. It is crucial that development applications approved many years, or decades ago, prior to the commencement of work (often referred to as "Zombie DAs") be required to include a current Environmental Impact Assessment given that there may be a considerable lapse in time since the original environmental assessment was done. These "Zombie DAs" ought to be assessed under contemporary planning rules and regulations with consideration for further changes in the climate (as modelled and projected by the BOM and CSIRO).

- ii. *In areas that are threatened ecological communities or habitat for threatened species*

As at 2020–21 1,043 species and 115 ecological communities are listed as threatened under NSW legislation including 78 species declared extinct. These statistics clearly demonstrate we are not effectively protecting biodiversity in NSW.

As result, an Independent Review of the Biodiversity Conservation Act 2016 was undertaken by a committee led by Dr Ken Henry and supported by a secretariat from the Department of Planning and Environment. This review concluded in August 2023 and found the Biodiversity and Conservation Act 2016 was not meeting its fundamental objectives and changes were required.

On page 66 of the Review the report refers to 'Zombie DAs' stating that "Some legacy development consents were granted before the Biodiversity and Conservation Act commenced and are able to proceed with no up to date biodiversity assessment or offsetting because these requirements did not exist when they were approved. There are no legal options to stop these developments proceeding if the proponent had physically commenced work within five years of approval being granted. To ensure development proceeds in line with current social, cultural and environmental standards, the Review Panel suggests the government should consider whether a periodic refresh of approvals or expiry on new development applications should be required."

A current example in our community which illustrates this problem is a development in Boomerang Beach which was given development approval in 2013. The development encompasses a subdivision of 11 lots performed over 3 stages. Some minor initial actions such as survey set-out and boundary markings were taken shortly after approval of the DA to activate the DA. These early actions did not consist of any physical work which would create a material impact on the land. Work has now recommenced on the site, some 10 years *after* approval of the development application was given. The recommencement includes the cutting down of a significant portion of old growth forest. Had the developer been required to submit a new DA, considering the age of the original one, more stringent requirements to reduce environmental impacts and potentially preserving an old growth forest home to numerous bird and fauna sanctuaries would have been included.

**b. The adequacy of planning powers and planning bodies, particularly for local councils, to review, amend or revoke development approvals, and consider the costs, that are identified as placing people or the environment at risk, as a consequence of:**

- i. the cumulative impact of development;*
- ii. climate change and natural disasters;*
- iii. biodiversity loss; and*
- iv. rapidly changing social, economic, and environmental circumstances.*

Capacity for local Councils to review, amend or revoke development approvals:

Currently Local Councils claim they are totally hamstrung when it comes to doing anything which may change the nature of an approved DA, and this becomes increasingly evident when a “Zombie DA” comes forward for activation or amendment. The PPCA recommends that when a DA is given consent it ought to be conditional that there will be a process of review if the DA is not substantially actioned within 7 years.

Our community has had numerous examples of Development Applications approved more than ten years prior to the commencement of work. The following example illustrates all of the listed impacts to the environment and people of our community as a result of a “Zombie DA”.

A development at Elizabeth Beach was rejected by Council but approved on appeal by the Land and Environment Court. The development was approved in 2004, but work at the site (clearing and stripping the site) did not commence until 2018. The outdated approval conditions allowed for the removal of all trees and vegetation from the site, leaving the site entirely denuded and exposed to erosion. Further work did not recommence for another 2 years. During this period, the denuded and sloped site was exposed to several intense rainfall events which caused dramatic erosion of topsoil and rubble and caused blockages of a major stormwater retention dam and associated large drainage system/pipes. The drainage pipes discharge directly into Wallis Lake within 300m from the actual site. The blockages caused significant flooding and resulted in 5 houses being severely damaged. A significant amount of silt entered the protected Wallis Lake. Wallis Lake has a rare endemic species of sponge only found at this part of the lake, and this species was adversely affected by the introduced silt loads. Under current Development Control Plans this site would not have been allowed to be developed in this manner.

**c. short, medium and long term planning reforms that may be necessary to ensure that communities are able to mitigate and adapt to conditions caused by changing environmental conditions and climate conditions, as well as the community’s expectation and need for homes, schools, hospitals and infrastructure**

The key issue for communities to be able to mitigate and adapt to conditions caused by changing environmental conditions is to have ready access to simple English information that enables people to understand what the science and new information means.

The PPCA recommends that the NSW Government provide this information in a readily accessible form for developers, community members, planning consultants and local Councils to be able to easily access up to date information to understand, analyse and present the risks associated with climate change.

**d. Alternative regulatory options to increase residential dwelling capacity where anticipated growth areas are no longer deemed suitable, or where existing capacity has been diminished due to the effects of climate change.**

The NSW State Government needs to legislate a ban on residential development being approved within flood prone land as defined by the 1:100 year flood return period. Given the occurrence of extreme flood events exceeding these historic levels in the past 10 years, the Bureau of Meteorology or the NSW Office of Water should oversee preparation of new flood return maps in areas of recent catastrophic flooding. This policy has been recommended time and time again over the past 30 years and never adopted due to resistance from the vested interests. It is now clearer than ever that this should have been adopted a long time ago.

For residential properties already located on flood prone land, the NSW Government ought to consider imposing a levy on residential developers within that LGA to contribute to a fund for the purchase of land for the purposes of relocating flood prone houses and assisting resettlement of individuals who have suffered repeated catastrophic flood loss.

We have reached critical levels of climate change, species extinction and resource shortages because of the pursuit of profit over communities and the environment. When will we as a society start to take responsibility for our actions?

#### **SUMMARY OF RECOMMENDATIONS:**

1. Development applications need to address how the development can demonstrate adaptation to further changes in the climate as modelled and projected by BOM and CSIRO and the strategies to be employed to manage human risk such as infrastructure required, evacuation management strategies, emergency services access needs and nearby refuges.
2. All current DAs need to meet the special consultation requirements outlined in S.3.25 of the EP&A Act 1979. However, in the case of Zombie DAs, current surveys and information needs to be assessed before any granting of amendments to a DA.
3. When a DA is given consent, it should be clearly stated that it will have conditions and terms attached to it, and that there will be a process of review if the DA is not substantially actioned within 7 years.
4. The NSW Government needs to provide up to date information on climate change trends in a readily accessible form for developers, community, planning consultants and local Councils to be able to easily access up to date information to understand, analyse and present the risks associated with climate change.
5. The NSW State Government needs to legislate a ban on residential development being approved within flood prone land as defined by the 1:100 year flood return period and provide up-dated flood maps resulting.
6. The NSW Government should impose a levy on residential developers within that LGA to contribute to a fund for the purchase of land for the purposes of relocating flood prone houses.