

Submission
No 132

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

Name: Name suppressed
Date Received: 2 November 2023

Partially
Confidential

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

This submission is from the Hallidays Point Community Action Group on the Mid-north Coast of NSW. Our group has some 400 local residents as members and our core focus is seeking/ensuring development in our area is appropriate and sustainable with minimum impact on biodiversity values.

The Petition from this group raised nearly 800 signatures supporting action on Zombie DAs such as 361 Blackhead Rd, at Hallidays Point.

The full Terms of Reference are available at Attachment 1.

The development proposal needs 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.

Perhaps for residential development in floodprone lands adjacent to currently mapped 1:100 year flood return frequency homes should only be demountables able to be moved should flood intensity and return frequencies increase in the future as forecast.

(i) In areas that are vulnerable to rising sea levels, coastal erosion or drought conditions as a result of climate change,

The Environmental Impact Assessment for any development potentially vulnerable to coastal hazards requires assessment based on requirements under the Coastal Management Act 2016. The most recent IPCC report in 2023 outlines that sea level rise, coastal erosion and coastal storm events may well be significantly under estimated. Clearly the benchmarks and guidelines for assessment of coastal hazards will need to continually reviewed in the light of emerging new science eg. melting of ice caps and thermal expansion of oceans is reportedly occurring much faster than previously projected.

Any Zombie DAs when activated should be required to reassess risks based on the most up to date recognised science. Strategies for managing the risks arising from coastal erosion need to be detailed in the assessment process by Councils.

(ii) In areas that are threatened ecological communities or habitat for threatened species

The information base and classification system for threatened species and ecologically endangered communities continues to be modified with increasing loss of habitat, bushfire loss, and ecological surveys. Therefore 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. This has not happened at 361 Blackhead Rd, Hallidays Point and much has changed since the original DA was assessed such as vegetation cover, threatened species recorded at this site and significance of this particular wildlife corridor.

(a) 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:

Local Councils claim are totally hamstrung when it comes to doing anything that might change the nature of an approved DA and this becomes increasingly evident when a Zombie DA comes forward for activation or amendment. Local Council staff have indicated that this is equivalent to a "property right" which can never be altered. However all sorts of "property rights" have terms and conditions attached that can influence the nature of the property right eg. in NSW property rights have been introduced in water management and fisheries management.

When a DA is given consent it should be clearly stated that it will have conditions and terms attached to it.

A solution to the Zombie DA issue was proposed to be addressed in 2008 by Minister for Planning Frank Sartor amending the EP&A Act Section 95 referring to lapsing consents.

This particular amendment proposed an applicant had 5 years to "physically" commence. However, two years after that the work must be "substantially" commenced. This would require clear definition of substantial commencement. This amendment did not get supported in the House.

This Amendment Bill proposed the following amendment to S.95 (now numbered S.4.53) as follows:

Section 4.53 currently says

“(4) Development consent for:

(a) the erection of a building, or

Often the argument is given that there is “not sufficient data available”. There is scope for Environmental Impact Statements and other Assessment documents to have to demonstrate what data and information has been sourced and used to make a cumulative impact assessment. This will help drive further development of relevant information to enable better assessments.

The Wentworth Group of Concerned Scientists presented a Submission to the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999 in April 2020. This Submission addresses legislative amendment to turn back the decline in biodiversity across Australia while simplifying and streamlining assessment and approval processes for business. The focus is on establishing a clear legal framework for consideration of cumulative impact and enhancing the role of Regional Environment Plans. This Report finds Regional Planning can assist Cumulative Impact Assessment. This Submission is published on the website for The Wentworth Group of Concerned Scientists under Publications – Submissions.

(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. Your everyday person is not going to seek out the IPCC Assessment Reports and be able to translate what that means for their local area or site.

The NSW Government needs to provide this information 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.

(b) 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 floodprone 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 economic sector. It is now clearer than ever that this should have been adopted a long time ago.

For residential properties already existing on floodprone land, 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 floodprone houses and assisting resettlement of individuals who have suffered repeated catastrophic flood loss.

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.

Residential development in floodprone lands adjacent to currently mapped 1:100 year flood return frequency homes should only be demountables able to be moved should flood intensity and return frequencies increase in the future as forecast.

(2.) The benchmarks and guidelines for assessment of coastal hazards under the Coastal Management Act 2008 will need to be continually reviewed in the light of emerging new science recognised by the IPCC.

(3.) 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.

(4.) Amendment to be made to S.4.53 of the EP&A Act 1979 as was proposed in 2008 to require "substantial" commencement within 7 years of consent being granted or consent lapses.

(5.) The definitions of "minimal environmental impact" and "substantially the same development" need to be strengthened in the definition applying to Section 4.55 of the EP&A Act.

(6.) The EP&A Act needs to require cumulative assessment in the environmental assessment prescribed through applying a methodology described in the Regulations to the EP&A Act.

(7.) 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.

(8.) The NSW State Government needs to legislate a ban on residential development being approved within floodprone land as defined by the 1:100 year flood return period and provide up-dated flood maps resulting

(9.) 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 floodprone houses.

On behalf of the Hallidays Point Community Action Group