

**Submission  
No 180**

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

**Name:** Rosie Toth  
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**To: Office of Sue Higginson**

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Portfolio Committee 7 – Planning and Environment  
NSW Legislative Council  
Parliament House  
Macquarie Street  
Sydney

**Inquiry into the planning system and the impacts of climate change  
on the environment and communities**

My name is Rosie Toth. I am a member of the Friends of Coila, part of the Coastal Residents United group, which is requesting that an Environmental Impact Assessment (EIA) be applied to a ‘zombie’ development approved by Eurobodalla Shire Council (ESC) in 1984 when EIAs were not required.

I will be addressing parts a), b) and c) of the **Terms of Reference**.

- a) As a result of hotter, dryer summers, our community is increasingly vulnerable to the risk of fire. Over 500 homes were lost in the 2019-2020 fires in Eurobodalla Shire, the most of any shire in NSW. There is only one road, 6 kms long, linking Tuross Head to the Princes Hwy. Approximately half of this is bordered by dense shrubs and trees. Our designated assembly points are a car park and an oval. The development site is shown as bushfire prone on the RFS NSW website’s bushfire mapping guide.

With forecast wetter winters and rising sea levels, many of the lower blocks of the development at **41 Anderson Ave** will be prone to flooding. As a result those blocks could be uninsurable. Coila Lake is an intermittently closing and opening lake (ICOLL). As sea levels rise, more frequent openings will be required, which will damage the lake foreshore.

The wetlands adjacent to Coila Lake and fed by it, which the development will encroach on, are rated as Wetlands of National Significance. The proposed development site borders three Endangered Ecological Communities (EECs): Coastal Saltbush, Swamp Oak forest and Swamp Sclerophyll Forest. A 2023 desktop environmental assessment, conducted on behalf of Friends of Coila, found that the development would require the removal of approximately 5.46 hectares of native vegetation and indirect disturbance to approximately 16.49 hectares of native vegetation.

The development is adjacent to Migratory Shorebird habitat as identified by Important Area Mapping (IAM). The critically endangered Eastern Curlew and the Bar-tailed

Godwit are two of the Migratory Shorebirds that feed on the foreshore of Coila Lake during our summer.

Three to four metres of fill will be required for the lower blocks. This raises the question: how might run-off during heavy rains impact the lake and wetlands?

The area is prized by locals and visitors alike. As the head of the Bingie Dreaming Track, it is of significance to the local indigenous population. In 2006, heritage consultant Alistair Grinbergs established 11 test pits in the area, and from the number of artefacts he uncovered he extrapolated that there could be more than 100,000 artefacts across the development site. An Aboriginal Heritage assessment by Access Archaeology and Heritage in 2017 found (p.22) that there were areas of high archaeological potential within the development site and the Coila Lake area has been designated as part of a culturally sensitive landscape in the Eurobodalla Aboriginal Heritage Study Stage 4 December 2008.

- b) All levels of government face major challenges in balancing the needs of our environment with population growth and the need for housing and other development. The challenges are obviously increasing due to climate change and the associated increase in natural disasters, with rapidly escalating biodiversity loss.

Friends of Coila's experience to date with local and state governments has not been encouraging. They have shown reluctance to engage with us. ESC refers us to state legislation and state government ministers refer us back to our local council.

We do not believe that local councils generally have the expertise or the financial resources to manage this complex balancing act. It is understandable that, with limited financial and other resources, they are not keen to engage in disputes with property development companies.

Unfortunately, Eurobodalla Shire Council (ESC) has thus far shown itself to be inadequate to the task of appropriately managing the Coila development. For instance,

In 2020, an amendment to the original DA was lodged, increasing the number of dwellings by 20%, from 60 to 72. ESC did not request an environmental impact assessment, despite this being a significant change to the original DA. ESC also refused to hear community members' objections.

In February 2023, Friends of Coila received a letter from ESC advising us that Council had issued a modified development consent in March 2022 and 'therefore there is no legal means of requiring a further environmental assessment.' This contradicts s.4.57 of the EP&A Act 1979 NSW, which states that council *can* revoke or modify the consent. The error was raised at a meeting with Council staff in February 2023 but no explanation or response was received.

The ESC website displays information from the South Coast Regional Sea Level Rise Planning and Policy Response and adopts predictions from 2014 of a 23 cm sea level rise by 2050 and 72 cm by 2100. At the same February 2023 meeting, Council staff acknowledged that these predictions were out of date. But at the time of writing this submission, the ESC website displays the 2014 predictions.

Friends of Coila lodged an application under the Government Information (Public Access) Act 2009 (NSW) (GIPA Act) with ESC, requesting all documents relevant to this DA. Despite having several months to complete the searches, ESC failed to comply with the request by the deadline that it had set for itself, and refused the application.

The proposed development has been identified as impacting Matters of National Environmental Significance (MNES) and therefore requires the developer to make a referral to the (federal) Department of Climate Change, Energy, The Environment and Water (DCCEEW) under the Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act). ESC has advised us that they are under 'no obligation' to ensure that the developer has made the required referral.

Unfortunately, our communication with NSW government has likewise given our members no confidence in the current planning system. Neither the previous Liberal government nor the current Labor government has shown any interest in providing a solution to the issue of 'zombie' developments such as the Coila one.

c) I'm advocating for:

1. A moratorium on 'zombie' developments, including the one proposed for Coila, which have not been subject to a current environmental impact assessment;
2. An amendment to the legislation to ensure that all developments approved 10 or more years ago be subject to a current environmental impact assessment.

Yours sincerely,

Rosie Toth