



Environmental Defenders Office

Submissions Guide

Historical Development Consents NSW

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Making a submission to the Inquiry on Historical development consents

The NSW Legislative Assembly Committee on Environment and Planning (**the Committee**) is holding an Inquiry into historical development consents in NSW (**Inquiry**). The Inquiry will examine the “*impact of historical development consents on the NSW planning system, development industry and property ownership*”.

Members of the public are invited to make a submission to the Committee. It is important that your submission is lodged by the closing date of **3 June 2024**.

Submissions can be made to the Inquiry using the portal accessed via this [link](#).

Read: EDO Factsheets on [How to have your Say in developments across NSW](#) for further information on various types of development and the assessment pathways in NSW, and [Zombie Developments in NSW](#).

Terms of Reference for the Inquiry:

It is important to consider the terms of reference when preparing your submission. You can access the terms of reference [here](#).

The Committee will inquire into and report on:

- (a) The current legal framework for development consents, including the physical commencement test.

- (b) Impacts to the planning system, development industry and property ownership as a result of the uncertain status of lawfully commenced development consents.
- (c) Any barriers to addressing historical development consents using current legal provisions, and the benefits and costs to taxpayers of taking action on historical development concerns.
- (d) Possible policy and legal options to address concerns regarding historical development consents, particularly the non-completion of consents that cannot lapse, and options for further regulatory support, including from other jurisdictions.
- (e) Any other matters.

What should I put in my submission?

There is no one formula for writing an effective submission. The aim is to express your point of view as convincingly and persuasively as possible. Remember, the decision-maker may receive many submissions, so you want yours to be easy to read and clearly expressed.

A good submission should:

- Introduce yourself or your group, acknowledge the opportunity to make a submission and note any relevant work you or your group has done.
- Outline your key concerns and focus your discussion on these. It is not necessary to address all of the terms of reference - choose the parts that are most relevant to you.
- If possible, make recommendations using strong clear statements, e.g., ‘planning laws should be amended to include a requirement that...’
- Use evidence or case studies or stories to support your arguments and recommendations. Give specific examples where possible, that draw on your knowledge and experience.
- If you can, collect stories that support your argument from others in the community. You can also draw on the work of others, for example scientific publications, government documents, or the work of other organisations.

If you are a member of a group, you should write a submission on behalf of that group, but each member should also write their own submission as well. You may also choose to endorse another group’s submission. This counts as a separate submission.

EDO has identified some key issues of concern and suggestions for reform – see below. You can use these in your submission and/or come up with your own ideas for supporting and strengthening the legal framework relating to historical development consents.

EDO’s key points:

- Proponents are reviving projects that were approved a number of years ago, but not substantively commenced, often in circumstances where environmental and regulatory conditions have significantly changed (“Zombie developments”).

- Although the *Environmental Planning & Assessment Act 1979* (NSW) (**EP&A Act**) has provisions that relate to the lapsing of development consents in certain circumstances, these circumstances are very narrowly interpreted and so many old development consents, which have not been significantly progressed, are still valid.
- Under the current planning and environmental laws, there is very limited ability for a consent authority to require an updated environmental impact assessment or to impose better consent conditions which more accurately reflect the current environmental impacts, or to otherwise address Zombie developments.
- Changes could be made to the law to address these problems, including through:
 - clarifying (and expanding) the circumstances in which development consents are considered to have lapsed;
 - providing consent authorities with the ability to revoke or modify development consents in circumstances where there has been a material change to the environmental circumstances of the development, or to relevant environment and planning controls relating to that type of development;
 - provisions to modify or revoke development consent conditions issued under repealed Acts and instruments to ensure that development consents comply with the environmental assessment requirements under current Acts & Regulations;
 - triggering reassessment where activities would have a substantially greater impact than those identified at the time of the action's approval; and
 - requiring developments to be substantially completed within a certain period of the granting of a development consent.
- Improve environment and planning law requirements in NSW to ensure that environmental protection is given primacy and ensure environmental assessment addresses the cumulative impacts of biodiversity loss associated with all development

Structuring your submission:

Make sure you collect as much relevant information as possible before writing your submission. The terms of reference should frame the structure of your submission. If you do not wish to address or comment on one or more of the terms of reference, you do not have to. If you do not have any comments about a particular point, say so and move on to the next one.

Framing a submission in accordance with the terms of reference increases its relevance, by addressing the issues in the same way that the Committee has to. It does not mean you have to disregard other issues. Feel free to raise these upfront where they are crucial to the construction of an issue or, for example, at the end under the heading 'other issues.'

Some last tips for an effective submission

When writing your submission, keep in mind that you are aiming to convince the person reading it of the main points you want to get across. You want to make it easy for the Committee to read your submission, to know who is writing it, and to be able to quickly understand your main points.

The following points may improve the effectiveness of your submission:

- make your submission as clear and concise as possible
- avoid using emotive language
- ensure the tone of the submission is polite
- if your submission is a longer one, include headings and page numbers
- include your name and contact details and date the submission

Finally, remember that a submission can be any length, even a couple of lines.

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