

**Submission
No 246**

HISTORICAL DEVELOPMENT CONSENTS IN NSW

Organisation: Evans Head Residents for Sustainable Development

Date Received: 5 September 2024

Evans Head Residents for Sustainable Development Inc. (EHRSD)

53 Cherry St., Evans Head NSW 2473

3 September 2024

Legislative Assembly

Committee on Environment & Planning

Terms of Reference

That the committee on Environment & Planning inquire into and report on historical development consents in New South Wales including:

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

Introduction: Democracy and Legitimacy

From the media in our first world, western states, we are hearing about a ‘crisis of democracy’ as major political parties lose support. At the same time fringe parties, sometimes with extreme agendas, are experiencing an increase in membership.

One reason for this phenomenon is that our current system appears to be losing its legitimacy. We, the people, are not being listened too. In this instance the focus is our precious environment and the lack of protection that existing laws provide. The present Federal Government was elected on a platform of reform of outdated environmental legislation and increased action on climate change. It appears that under the pressure of ‘big business’ and the Federal Coalition the Labor Party is backing away from these changes with a preference for ‘business as usual’, although we do note that the Federal Government has put a ‘Nature Positive’ agenda for consultation with the States.

Evans Head Residents for Sustainable Development Inc (ERSD) are hoping that at a NSW State level our Labor State government can be more responsive to the pleas of the people of NSW to protect our environment from rapacious developers. We will use the example of the proposed long running Iron Gates development in Evans Head to illustrate our position. Both Respondents in the recent Land & Environment decision approving the development have

notified the court of their intentions to appeal that decision. This will take this latest iteration of the DA into its eleventh year.

Our plea is that the government listens to the people who elected them. If we continue to feel ignored then our support for both major parties will continue to slide. Governments have to earn their legitimacy by acting on their promises. A major one made in 2022 by the Perrottet Government was ‘No more development on Flood Plains’. Yet here we are a mere two years later and old DA’s on flood prone land are proceeding, with some exceptions, but those exceptions have come about as a result of substantial effort on the part of the community working together to defeat inappropriate proposals. We often find we cannot believe in the commitment and promises of politicians from the major parties and various levels of government. This leads to a feeling of disconnect between the people and those with power and a questioning the legitimacy of governments. A crisis in legitimacy is a crisis in democracy.

1. Local Knowledge

Local knowledge is time and again ignored in favour of ‘experts’ who either have no local experience or who are relying on inadequate or out of date planning material. Informed local knowledge should be recognised in planning decisions.

The usual 4-week advertising process is not fit for purpose when attached documents are many and complex. It is also noted that the processes at a council level are not necessarily transparent. More and more council decisions are made ‘in camera’ with no scrutiny with the public being ignored on rezoning issues which occurred when the current Local Environment Plan (2012 LEP) for Evans Head and Richmond Valley was prepared.

Recommendation 01: *There should be a better mechanism for informed local knowledge to be included in planning decisions that affect local people and their communities and there should be longer exhibition periods to reflect the extra time needed to examine the complex materials which are a part of modern development processes. All decision-making processes should be open to public scrutiny and be fully transparent.*

2. Ancient DAs

Development Applications (DA) have the ability to sit for many years, even decades in the approval process and this is problematic. DAs should not be permitted to proceed when they are decades old, outdated and out of step with current law and community expectation, to then suddenly emerge when the ‘market’ is deemed favourable to the developer like a ‘zombie’ from the ashes.

All DAs need to have sunset clauses, for commencement, milestones and completion. If project milestones are not fulfilled then a new bridging DA **based on current planning protocols** must be lodged and approved before further work can be carried out. If current planning law nullifies a development in train, then restitution and return of the property to its original condition is mandated. At the time of DA lodgement, a bond in the form of a stipulated \$ value security or an uncharged assets or insurance must be agreed. This is akin to Bills of Lading in Mercantile Law where once a set of conditions are met or breached the bond is either returned or forfeited. This would mean there would be less need to resort to expensive legal proceedings as simple commercial sets of conditions are expressly laid down.

Recommendation 02: *DAs must have a fixed use by date for commencement and completion. Once either of those dates lapse then the project should be updated to current planning requirements and a new DA lodged and reviewed with public input.*

Recommendation 03: *Planning processes should provide for a bond or surety sufficient to cover restitution costs of failed developments.*

3. Threatened ecological communities or habitat

Current planning laws give lip service to protecting the environment and native species but give very little actual protection. Developers, under current planning laws, can ignore regrowth that is valuable habitat for resident and migratory species. In some areas regrowth is all that is left and its removal can be the death knell to a species. The Courts have started to recognize the value of regrowth for example in ***White v Ballina Shire Council* [2021] NSWLEC 1468**. This ground-breaking case¹ is a lengthy Judgement creating new precedents for bodies considering development applications. It involved an appeal by White against a DA refusal by Ballina Shire Council. Adam AC, as well as finding that illegal clearing had occurred, also made findings concerning habitat regrowth. He stated that regrowth and weed species were to be considered as valuable habitat particularly in the absence of the original vegetation. In the recent Iron Gates matter in the Land & Environment Court this relevant case was ignored in the list of cases examined as precedents in spite of it having been brought to the attention of the parties through our community submissions.

There is a huge difference between a brown field site with a few noxious weeds, and a site with a plethora of pioneer species 5-7 years rich, through to a site with 25 years of regrowth rich in habitat such as the Iron Gates site. This should be recognized in planning laws.

Planning decisions appear to give little importance to ‘wildlife corridors’. Native species need safe access from one area of food and shelter to another. Lots of little pockets lead to lack of DNA diversity and accelerate extinction. Species need to move around to find mates and food.

Particular attention must be applied where there are threatened ecological communities and known koala habitat. The Iron Gates biological assessment did not include birds within 10 km radius, many of them known to be threatened and migrating. Its environmental surveys were mostly done on computers many kilometers from site. Site inspections were very limited. There was no Environmental Impact Statement (EIS).

To make sure that developers provide adequate environmental reports and do not simply play lip-service to the requirement, an independent peer review of environmental assessment is required when there is significant community objection based on inadequate or inaccurate environmental reports. If the developer bears the cost of the review it will encourage better initial environmental investigations by the developer.

Recommendation 04: *Native regrowth, even when weedy, should be examined as possible habitat.*

Recommendation 05: *The importance of wildlife corridors needs to be stressed in planning laws especially as development overtakes so many rich biodiversities.*

¹ Reported in the *Echo Online* Newspaper on the 16th November 2021.

Recommendation 06: *Where communities raise a significant issue, reports need to be independently peer reviewed at cost to the developer.*

4. Cumulative Impacts

Our planning laws do not allow for an overall view of the environmental damage being done because planning laws focus on one development at a time largely in isolation from other social and long-term environmental impacts.

Ecological communities are being destroyed. One small development here another bigger one there. Death by a thousand cuts. If the Iron Gates site is developed in the density proposed, the pressure to develop adjacent blocks will be huge. Developers will have the argument that the damage has already been done so what reason is there to stop? The current mantra that ‘people need homes’ will be used to great effect to push through inappropriate zonings and developments. However, our native species need homes too and we ignore that at our peril. Australia’s extinction rates are among the highest in the world.

Recommendation 07: *There needs to be an effective body to oversee the cumulative effects of development on local environments, community and social infrastructure.*

5. Orders of the Court

Developers are avoiding court orders to ‘stop work’. Developers are avoiding court orders to rehabilitate land. Residents of Evans Head are consistently asking how the court order to rehabilitate the Iron Gates site was ignored in spite of the court requiring the developer to use all of his resources including borrowing to do the rehabilitation². Once one developer gets away with such contempt of court orders others follow. It brings the whole planning system along with developers and the judiciary into disrepute.

It is a huge oversight that there is no body responsible for making sure that these court orders are followed up and enforced. ‘But for’ the avoidance of the court orders on the Iron Gates site the ecological communities would be much richer and the site may well have been rezoned for protection prior to the current DA.

Recommendation 08: *A body be set up to ensure that court orders are respected and enforced with heavy penalties for those who ignore them such as losing the ability to bring further DAs in relation to that area of land or any other project.*

6. Proposed Iron Gates Development in Evans Head

Protest against residential development at the Iron Gates site has been ongoing over the last 40 years. The most recent DA, Richmond Valley Council (RVC) DA 2015/0096, has ‘enjoyed’ various changes in status over the nearly 10 years it has been on council’s desk. Each shift has extended the deliberation process and arguably favoured the DA. However, the DA has not

² Pearlman J in the text of AL OSHLACK v. IRON GATES PTY LIMITED No. 40152 of 1996 [1997] NSWLEC 89 (4 July 1997)

been brought into compliance with updated state planning & environmental instruments (SEPPs).

The proponents of this iteration of the long running Iron Gates DA (first lodged in 2014) were happy to accept the provisions of a 'Concept Development' which became available in 2017 to avoid having to prepare a Master Plan as required by the previous 2014 planning laws, as it seemed to make meeting their objectives to avoid planning constraints easier and cheaper. The change to a Concept Development was approved on 31st August 2021 by the Northern Regional Planning Panel (NRPP) contrary to advice (Government Architect). However, other planning instruments were not updated and remained as per 2014.

It would appear that the developers are 'cherry picking' their planning instruments to suit their purposes when they prefer the older SEPP 14 to more recent planning instruments. It would be reasonable to argue that the appellant lost the right to use earlier legislation when they chose to use the 2017 legislation to avoid the Master Plan required when the 2014 DA was originally lodged.

This DA reflects the general mix and mess of nearly 10 years of tinkering around the edges of the DA with continuous amendments. With so many amendments all we are left with is a confusing mass of pages choosing different eras of planning laws to suit the developers' objectives which is to avoid environmental scrutiny. If they wanted to use the earlier SEPP14 they should have upgraded their DA earlier and prepared an appropriate Master Plan.

This Evans Head development should be entitled to the highest environmental protection reflecting its value as having one of the few relatively untouched coastal river wetland systems left in NSW.

Currently, NSW Coastal Management State Environment Planning Policy 2018 Fact Sheet number 4 at page 5 defines coastal environment areas to include: "Estuaries Mapped upstream to one kilometre beyond the Highest Astronomical Tide recorded in the estuary plus a 500 metre landward component."

It seems clear that the Iron Gates site would meet this definition.

The same 2018 planning policy in the Overview statement at page 3 includes the following:

"until coastal management programs are developed by councils and/or the coastal vulnerability area is mapped, **coastal hazards are to be considered throughout the coastal zone.**" (emphasis added)

"In addition, as the clearing of native vegetation on land mapped as a coastal wetland or littoral rainforest is '**designated development**' under the EP&A Act, it will require an **environmental impact statement and public consultation** before the relevant consent authority, usually a local council, can determine the development application"³. (emphasis added)

There are no official current wetland/coastal maps for the Evans Head River or coastal area so EHRSD Inc. believed the above savings provision applied to this DA **now granted approval**

³ Accessed 28/01/2024 4:30 pm: www.planning.nsw.gov.au/sites/default/files/2023-03/coastal-management-sepp-fact-sheet-1-overview.pdf

on appeal in the Land and Environment Court (LEC). The decision of the LEC is now under appeal. Although the amended DA specifies a little less clearing and fill there is still a significant amount of both and this work will have serious negative impacts on the Iron Gates site and adjoining lots including the river system. If the date of this DA is considered from the moment it became a concept development in 2021 then the above-cited provisions appear to apply and the first respondent to the LEC appeal was correct to rely on the more recent legislation. We still maintain the belief that the Iron Gates DA, as currently formulated, cannot be passed by any consent authority as it needs an EIS and to be properly advertised as a Designated Development.

EHRSD believes that abandoning the Master Plan in favour of the Concept Development attracts the more recent SEPPs and respectfully asks this Parliamentary Committee on Environment and Planning to consider this proposition. This issue was not fully addressed in the recent LEC decision which upheld the developers appeal against the refusal of the DA by the Northern Regional Planning Panel.

Recommendation 09: *If a developer chooses to amend a Development Application, then all the planning conditions current at the time of the amendment should apply throughout the DA.*

7. Small regional councils and constrained resources

We would also note Richmond Valley Council is a small regional council with a limited rate base and consequently limited resources. They are in the invidious position like many small rural councils of having attractive coastal locations which attract big developers with big money. This creates a very real ‘David and Goliath’ situation. The appellant in this case had deep pockets and can afford to employ top city lawyers, planners and experts. We understand that the developer spent in excess of \$3m to bring their appeal. These lawyers and planners are experienced at tactics to make the protests of local people and local councils disappear.

As well as few resources RVC also lacks the diverse planning skills available to large urban municipalities. We need planning laws to aid cash-strapped councils and also make developers prepare better, well thought out, comprehensive DAs which do not shirk environmental responsibilities.

Recently RVC has been involved in at least three cases before the NSW Land and Environment Court. This is indicative of a failing planning system. It also is extremely costly for the community.

Recommendation 10: *If a planning decision is contentious independent expertise can be called in by regional and rural councils with the costs to be borne by the developer or proponent.*

8. LEP Zonings

Current LEP zonings do not necessarily reflect the needs of existing residents, the environment or native species. The current RVC LEP was finalised in 2012 **without the input from the public** in Evans Head. The Iron Gates zoning was at issue but no local input was allowed with RVC actively avoiding a public meeting in Evans Head. A lot has changed in the last 12 years including the broad recognition of climate change and its particular impacts on coastal zones

with sea level rises, the impacts on protected wetlands and flood plains, the frequency and intensity of bushfires and in the Northern Rivers the impacts of the 2022 floods. Current zonings are not only out of date but actually put communities at risk by retaining residential zonings on flood plains. A forward planning document for Richmond Valley Council detailed the Iron Gates site as a residential site until 2041. It is questionable whether the public input into this document was given suitable consideration. It was this aspect which was stressed by the Hon Chief Justice when making comments during the LEC hearing and so must have been relevant to his following decision.

So many people want to live as close to the coast as possible. This puts pressure on sensitive coastal environments with developers wanting to build on as much of the coastal fringe as possible. There are obvious tensions between what developers want and what is in the best interests of our fragile coastal environments. The wetlands are nurseries for many fish species, coastal heath protects low lying coast from erosion and more broadly provides very beneficial recreational areas and protection of first nations cultural heritage. Coastal areas also play host to the main holidaying spots on the east coast of NSW and are part of an important industry that does need protecting. People come to Evans Head because it is largely unspoilt.

Full and proper zoning reviews are necessary, that include resident input and have local support, rather than the current exclusionary process with unclear objectives. Regular reviews should reflect changes in the approach to environmental sustainability and risks such as flood, fire, climate change and the protection of our dwindling native species.

When new scientific information becomes recognised and available it should be incorporated in our planning laws to keep them relevant in an ever-changing world. This would not only protect our environment but discourage developers from sitting on land waiting for their 'economic moment'. It would avoid the current issue with 'zombie' developments in the future. Where information is not available, as when mapping is outdated or incomplete, the 'precautionary principle' should prevail to refuse a DA to prevent environmental damage and risks to human populations and infrastructure now and into the future.

Recommendation 11: *LEP zonings should be regularly updated to reflect changes in scientific knowledge. Local input should be mandatory.*

9. We need an independent, well-funded, transparent planning system

There is a litany of instances where the planning processes are not working for the benefit of the people who will eventually have to live with the mess. There is no body at a State or local level which looks at the cumulative impacts of development. There are conflicts between State imperatives and local government planning. Local government often does not have the capacity or expertise to make proper assessments. In the case of Iron Gates, RVC admitted to calling in outside planning assistance presumably at the cost to local ratepayers. Subsequently, the independent assessors and other reports said 'no' to development at the Iron Gates site followed by a refusal by the NRPP. It is noted that the chair of the NRPP panel gave gratuitous advice to the packed auditorium that the land was zoned residential and suggested a new way that some of the developer's problems could be overcome to which the public had no right of reply. Those

'new ways' then appeared in the subsequently revised DA that was provided to the LEC. Members of EHRSD are left wondering is the tail wagging the dog!

At the hearing the developer was heard to say that the General Manager of RVC, at that time, had invited the developer to put in the 2014 DA raising serious questions about the independence of council as the initial approval body. How widespread would such practice be? It appears that RVC has a 'poacher-game keeper' problem, being asked by the state to approve more development, in fact initiating development proposals, whilst at the same time being part of the assessment process.

The development process needs to be seen to be independent otherwise all levels of government are brought into disrepute. Developers need to be arms-length from the approval process. Although there will always be room for negotiation and modification this should be done in a way that is open and transparent and not to avoid environmental assessment and infrastructure criteria. Making the developer responsible for any extra fees associated with outside independent expertise would mean they would put more effort into preparing appropriate development proposals in the first place.

Recommendation 12: *Where a council perceives that it may be conflicted it can call in independent planning support. Fees associated with such independent assessment to be borne by the developer.*

10. Climate Change and Natural Disasters

Existing local human and animal populations are at increased risk through more extreme weather events caused by climate change. Planning decisions should not make this worse by approving inappropriate developments on flood plains, areas at risk of inundation, from rising sea levels or areas with high bush fire risk.

There were promises made at the time of the 2022 flood disaster by politicians. No more development in flood prone areas. There seems to have been a move back to 'business as usual' with a push to develop more land at risk of flooding under the guise of providing much-needed housing.

It takes a very long time to recover from a major disaster. Our communities are still in recovery after more than 2 years. People are still displaced. It is of great concern that building on flood prone land is still being considered at the Iron Gates. Fortunately, in Broadwater on Rileys Hill Road, in an area which flooded to a depth of 3 metres during the 2022 flood, the developer withdrew its DA under sustained community objection.

We are well passed the second anniversary of the catastrophic floods of 28 Feb/1st Mar 2022 but people are still struggling to get insurance payouts, government grants and housing. The emergency pods in Evans Head are still full of those displaced from Woodburn and Broadwater. Houses and properties that have never flooded in living memory went under. Many houses will never be habitable again and many others will be uninsurable. There is arial footage showing significant flooding at the Iron Gates site. This can be made available.

What has been made patently obvious during these floods is the lack of support from any level of government in the early days of the unfolding disaster. It was 'local blokes in their tinnies' who risked their lives to rescue people. Without them many more people would have died. The

volunteers of the SES and the RFS were amazing but arrived later and later until the army arrived to help but not until two weeks after the flood event.

The suffering of the evacuees, many who have harrowing stories to tell, is still not over because every time there is heavy rain, they revisit the horror. Post Traumatic Stress Disorder (PTSD) is a real issue in the Northern Rivers. Many more locals spent days without power and telecommunications and were cut off without access to food. There are also significant physical health risks from contaminated flood waters and during the clean-up, psychological trauma and also the risk of infection in any evacuation centre.

Evans Head town has played host to the evacuees from Woodburn, Broadwater, Coraki and Bungawalbin but there is a limit to the number of rescues and the number of evacuees that can be managed by our small town. Can our volunteers, whether just ordinary locals, the SES or RFS, handle the prospect of another (circa) 500 - 650 people potentially at risk with the Iron Gates development proceeding? This is too much to ask!

Food was in very short supply and our 2 small supermarkets had actually run out of food by the time those on the south side of the river could access the shops. There were food drops for evacuees but not to the town as a whole. The Pacific Highway was cut and there were no deliveries for days and people relied on what they had in their cupboards.

Insurance in these flood prone areas is already beyond the reach of many existing residents and a high burden on any future residents of an Iron Gates development is also inevitable. See Deloitte Report 2023⁴. It is worth noting that Australian legislation requires that homeowners with a mortgage have to have house insurance. Home insurance is becoming unaffordable and there is speculation that insurance companies are starting to refuse to insure certain locations. These are obviously places that large insurance companies have decided are not places where houses should be built. The Iron Gates sites could be one of these. There is not much to be done with existing housing, although expensive relocations are occurring, but to put new developments in land which is flood prone, to put more people at risk is unconscionable. The NSW Premier at the time of the 2022 flood, Dominic Perrottet, announced there would be no new developments on flood plains. The Chris Minns government seems to have walked away from this commitment. History will be judge of the wisdom of that move.

The mapping in this amended Iron Gates DA does not include data from the 2022 floods. The flood maps are old and do not reflect the reality of the catchment. Any mapping done is only as good as the input data. If that data is old or excludes certain features then it is at best unreliable or at worst could be catastrophic for people who build homes on the land in the future. The 'precautionary principle' should be called on. How can maps that do not include data from the most catastrophic floods this region has known be relied upon?

⁴ Deloitte Touche Tohmatsu (2023), The new benchmark for catastrophe preparedness in Australia. A review of the insurance industry's response to the 2022 floods in South East Queensland and NSW (CAT221) Prepared for the Insurance Council of Australia.

“The Climate Council’s: *Climate Whiplash: Wild Swings Between Weather Extremes* report found that erratic summer weather – originally predicted to be consistently hot and dry – is consistent with the symptoms of a warming planet.”⁵

The author, McKenzie, refers to comments by Professor Lesley Hughes, climate councillor and professor of biology at Macquarie University, who said, “the world is experiencing an increase in unpredictable weather. Warmer air can hold more water so that when we do get rain, it tends to come down in more intense bursts.” McKenzie went on to further quote Hughes who stated that, “increased disasters, like bushfires and flooding, will make specific preparations more difficult”.

Given the nature of climate change these weather events can no longer be considered ‘extreme’. They are going to be our new normal and our future. The scientific information is available and should be considered in any current and future planning decisions. Decision makers cannot remain wilfully blind to the effects of climate change. The expression ‘one in 500 hundred years’ has been bandied about in the media by politicians to describe the 2022 flood event but this is misleading. It won’t be in 500 years’ time, it could be next week or next month or next year. It is risk marker not a timeline.

Another concept in the news a lot is ‘resilience’. The first step to resilience on the Far North Coast of NSW is to stop building homes on flood plains, marshes and wetlands. We can and should stop putting more people’s lives at risk by halting any development involving the risk of inundation. The Iron Gates site is on a flood plain, it contains wetlands and it floods. It should not be built on. The large drainage canals, for which a court order for restitution has been avoided on the property, are a dead giveaway that there is a flooding problem.

Any authority that approves or recommends for approval the Iron Gates DA is knowingly putting people’s lives at risk. Decision-making bodies are made up of individual persons and individuals should not hide behind their organisational titles as incorporated bodies. Can the persons who make up RVC or the NRPP or state government departments or even the Courts live with that? We would consider a person who contributes to the approval of such a development, which then is struck by an extreme weather event, culpable because ‘they should have known’.

Bush fire risk has always been a problem at Evans Head and is increasing. Iron Gates is in the prevailing wind direction for ember attack from Bundjalung National Park. The adequacy of current fire protection is a problem with only one Fire and Rescue truck at Evans Head. The local brigade is having trouble getting recruits as are the brigades in many other smaller communities in the Northern Rivers. It is unlikely to attend a fire in an isolated location such as Iron Gates particularly with only one narrow road in and out, meaning residents are likely to be left to their own devices. Escape if you can! The models proposed for managing this such as ‘shelter in place’ are wholly inadequate, they lack testing and fail to take account of the human condition *in extremis*.

⁵ From article by Parker McKenzie. Cited in the New Daily
www.thenewdaily.com.au/life/science/environment/2024/02/08/

The 2019/2020 NSW bushfire season was one of the most catastrophic on record. It was unprecedented in scale and intensity”.⁶ Below is a quote from the coroner’s report:

“The sheer scale and ferocity of the fires burning simultaneously meant that resources were stretched across the State. This impacted the ability to deploy resources where required within the State and/or also share interstate resources where fires were overlapping or burning simultaneously in the ACT, Queensland, Victoria, South Australia and Western Australia.”

An isolated, gated, satellite community surrounded by protected state forest and National Park accessed by a single narrow road is not a site to ‘safely’ place 500 – 600 residents.

The limits to population growth and the real capacity of the environment to provide adequate services to look after the population need to be considered in any effective planning model and it is not being addressed. The Richmond River status should be seen as an indicator that we have a carrying capacity problem in the northern rivers area. Two university reports show it is one of the dirtiest and polluted rivers in NSW⁷.

There is a need to review and challenge the NSW governments push for further growth on the Far North Coast. It is always the environment on which we depend which is sacrificed in the development compromise.

Recommendation 13: *Until adequate mapping is available for coastal regions that reflect the real possible impacts of climate change, sea level rise, floods and fire risk that a precautionary principle be adopted and a moratorium be placed on coastal development.*

11. Aboriginal Voices

Planning Laws need to recognise the importance of valuing oral histories and different ways of communicating knowledge & decision making. Historically, First Nations Peoples knowledge is held only by those entitled to it. It is different from the European centric idea of knowledge where anyone can access knowledge and history simply by having the ability to read, the time and access to a library of some sort. Today, in western culture, we are used to knowledge being available to all but this is not true for First Nations cultures. So, to get a full picture and a real idea of the attachment to country you need to listen to many knowledge holders for an area. Not doing so perpetuates a continuation of colonial attitudes.

Unscrupulous developers still exploit this scattering of knowledge within first nations communities to bypass existing planning constraints by only consulting one or two persons

⁶ **Coroner: NSW Magistrate Teresa O’Sullivan**

Gramenz, J. (2024). *Coroner heeds lessons from deadly Black Summer infernos*. The Canberra Times, 27 March.

⁷Ryder, D., Mika, S., Richardson, M., Schmidt, J. and Fitzgibbon, B. (2015). Richmond Ecohealth Project 2014: Assessment of River and Estuarine Condition. Final Technical Report. University of New England, Armidale.

Ryder, D., Mika, S., Richardson, M., Schmidt, J. & Fitzgibbon, B. (2015). *UNE Final Richmond Ecohealth Report 2015*, Aquatic Ecology and Restoration Group, University of New England.

who possess only part of the knowledge. In this way they hope to show there are no constraints to their proposals.

The original topography of the Iron Gates site included a natural rock bridge across the Evans River linking it to a traditional camping and wedding site, which then became the 19th century massacre site, now in the National Park. This land bridge, blown up in 1894-5 as part of the 'Evans Head Drain Project' pushed by farmers in the Woodburn/Coraki area to assist flood waters to escape via Evans Head rather than Ballina, is central to understanding how important the Iron Gates site is to the local Bandjalang. This land bridge made the Iron Gates one with the site on the other side of the river. It was an access pathway for other groups to join celebrations. It was probably an exit route for those fleeing the massacre. Both areas are part of an important cultural landscape for the Bandjalang custodians of Evans Head.

It is also crucial to recognise how important Evans Head is for the whole Bundjalung nation – one of the largest Indigenous nations on the east coast of Australia stretching from Grafton to Tenterfield to Tweed Heads and into South West Queensland.

The work done by Inga Reibe⁸ shows the importance of whole environmental cultural landscapes for the traditional owners, how they relate to traditional stories and how important it is to keep what is left intact.

To ignore cultural landscapes is like protecting the altar in one of our western churches or cathedrals but ignoring the surrounding spaces. The environment around a sacred site or artifact should be viewed as nature's building – the transepts, the choir stalls, the processional, the pews where the congregation sit to show homage. All part of the same structural or cultural landscape.

Recommendation 14: *Where First Nations cultural heritage is at issue recognition must be given to different ownership of cultural knowledge styles.*

Recommendation 15: *Where First Nations cultural heritage is at issue recognition must be given to cultural landscapes.*

12. Public Confidence and Transparency

There is a lack of transparency in the planning process partly because of cumbersome procedural issues but also due to a myriad of devices employed by developers to conceal ownership and their intentions both short and long term. This erodes public confidence not only in the planning processes but also the various arms and mechanisms of the decision-making process.

Corporations avoid disclosing assets, ownership and conflicts of interests, through a myriad of devices including claims of:

- 'commercial-in-confidence', or
- sheltering behind the corporate veil,

⁸ Inge Riebe, Anthropologist, Independent Expert Review Aboriginal Cultural Heritage Assessment Draft Master Plan for the Iron Gates Residential Release, Evans Head, March 2016

- application of blind trusts through public and/or private trustees,
- applying the use of ‘straw companies’,
- riding the ins and outs of ‘Phoenix’ style companies to move assets out of the reach of judicial rulings,
- avoiding stamp duties and capital gains tax.

To restore confidence in the planning processes, the processes must be transparent. The identity of ultimate beneficial owners, both corporate and individual, must be publicly available information. Openness reduces the opportunity for bribery and corruption of elected representatives and officials in the planning process and restores public confidence as to the bona fides of those involved.

Australia is recognised as having one of the biggest opportunities for money laundering in the developed world. Hidden ownership is the conduit that provides organised gangs and criminal groups opportunities to legitimise the proceeds of crime.

Recommendation 16: *Strategies to enforce greater transparency in step with anti-terrorist and criminal money laundering legislation must be applied in the NSW Planning processes.*

Recommendation 17: *The identity of ultimate beneficial owners, both corporate and individual, of development land and assets, must be publicly available information.*

In conclusion

Over the last 10 years of the most recent Iron Gates DA, EHRSD Inc has encountered every single one of the problems detailed above. In fact, the proposed development has a history of around 40 years. It has been and continues to be a nightmare for the residents of our small community and for the local Bandjalong custodians. We hope that you will consider the recommendations that we have detailed above and trust that your inquiry could herald a new dawn for the residents of Evans Head and planning and development more generally. We would like to draw the committees’ attention to an Evans Head success story – The Dirawong Reserve. This is a bottom-up organisation established in the mid-1980s after sustained community lobbying against governments at both a local and State level. This Reserve is now famous locally and further afield for the success of its programs to restore habitat and biodiversity on over 300 hectares of coastal heath. It is still managed by a committee of local people as a Crown Land Reserve.

Yours sincerely

Evans Head Residents for Sustainable Development (EHRSD Inc)

NB: A list of Recommendations is attached for your convenience

Evans Head Residents for Sustainable Development Inc.

For the Legislative Assembly - Committee on Environment & Planning

Attachment - List of recommendations

1. Local Knowledge: Page 2

Recommendation 01: *There should be a better mechanism for informed local knowledge to be included in planning decisions that affect local people and their communities and there should be longer exhibition periods to reflect the extra time needed to examine the complex materials which are a part of modern development processes. All decision-making processes should be open to the public scrutiny and transparent.*

2. Ancient DAs: Page 2-3

Recommendation 02: *DAs must have a fixed use by date for commencement and completion. Once either of those dates lapse then the project should be updated to current planning requirements and a new DA lodged and reviewed with public input.*

Recommendation 03: *Planning processes should provide for a bond or surety sufficient to cover restitution costs of failed developments.*

3. Threatened Ecological Communities or Habitat: Page 3

Recommendation 04: *Native regrowth, even when weedy, should be examined as possible habitat.*

Recommendation 05: *The importance of wildlife corridors needs to be stressed in planning laws especially as development overtakes so many rich biodiversities.*

Recommendation 06: *Where communities raise a significant issue, reports need to be independently peer reviewed at cost to the developer.*

4. Cumulative Impacts: Page 4

Recommendation 07: *There needs to be an effective body to oversee the cumulative effects of development on local environments, community and social infrastructure.*

5. Orders of the Court: Page 4

Recommendation 08: *A body be set up to ensure that court orders are respected and enforced with heavy penalties for those who ignore them such as losing the ability to bring further DAs in relation to that area of land or any other project.*

6. Iron Gates Development: Page 4-6

Recommendation 09: *If a developer chooses to amend a Development Application, then all the planning conditions current at the time of the amendment should apply throughout the DA.*

7. Small Regional Councils: Page 6

Recommendation 10: *If a planning decision is contentious independent expertise can be called in by regional and rural councils with the costs to be borne by the developer or proponent.*

8. LEP Zonings: Page 6

Recommendation 11: *LEP zonings should be regularly updated to reflect changes in scientific knowledge. Local input should be mandatory.*

9. We need an independent, well-funded, transparent planning system: Page 7-8

Recommendation 12: *Where a council perceives that it may be conflicted it can call in independent planning support. Fees associated with such independent assessment to be borne by the developer.*

10. Climate Change and Natural Disasters: Page 8-11

Recommendation 13: *Until adequate mapping is available for coastal regions that reflect the real possible impacts of climate change, sea level rise, floods and fire risk that a precautionary principle be adopted and a moratorium be placed on coastal development.*

11. Aboriginal Voices: Page 11-12

Recommendation 14: *Where First Nations cultural heritage is at issue recognition must be given to different ownership of cultural knowledge styles.*

Recommendation 15: *Where First Nations cultural heritage is at issue recognition must be given to cultural landscapes.*

12. Public Confidence and Transparency: Page 12-13

Recommendation 16: *Strategies to enforce greater transparency in step with anti-terrorist and criminal money laundering legislation must be applied in the NSW Planning processes.*

Recommendation 17: *The identity of ultimate beneficial owners, both corporate and individual, of development land and assets, must be publicly available information.*