

REPORT ON PROCEEDINGS BEFORE

**LEGISLATIVE ASSEMBLY COMMITTEE ON
ENVIRONMENT AND PLANNING**

HISTORICAL DEVELOPMENT CONSENTS IN NSW

Virtual hearing via videoconference on Wednesday 5 November 2025

The Committee met at 15:00.

PRESENT

Mr Clayton Barr (Chair)

Mrs Judy Hannan
Mrs Sally Quinnell (Deputy Chair)
Ms Maryanne Stuart

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[audio malfunction] is used when words are lost due to a technical malfunction
[disorder] is used when members or witnesses speak over one another

The CHAIR: Good afternoon, everyone. Before we start the public hearing, I acknowledge the traditional custodians of the various lands on which we, as a Committee, are meeting and. Our virtual witnesses are appearing at this virtual hearing. I pay my respects to Elders past and present, and extend that respect to any Aboriginal or Torres Strait Islander people who are present or who are viewing the proceedings through the public broadcast today. I am personally sitting on Wonnarua lands up in the beautiful Hunter Valley. Today is the fourth and final hearing for the inquiry into historical development consents in New South Wales. The Legislative Assembly Committee on Environment and Planning inquiry commenced last year after it was referred to us by the Minister for Planning and Public Spaces. I note that the inquiry was temporarily paused to allow the Committee to complete an urgent referral.

Notwithstanding the time that has passed, historical development consent continues to raise issues for communities across New South Wales. The issues raised in this inquiry are complex, and the Committee will consider a range of perspectives. Today the Committee will be hearing from our final witnesses, from the Law Society of New South Wales. We would like to thank everybody who has engaged with this inquiry, including by making submissions, meeting with the Committee and appearing to give evidence. My name is Clayton Barr. I am the member for Cessnock and the Committee Chair. With me today online are Committee members Ms Sally Quinnell, the member for Camden and Deputy Chair; Ms Maryanne Stuart, the member for Heathcote; and Ms Judy Hannan, the member for Wollondilly. Unfortunately, Mr James Wallace, the member for Hornsby, was unable to attend today's hearing.

Mr ALISTAIR KNOX, Chair, Environmental Planning and Development Committee, The Law Society of New South Wales, affirmed and examined

Ms ROSLYN McCULLOCH, Deputy Chair, Environmental Planning and Development Committee, The Law Society of New South Wales, affirmed and examined

The CHAIR: I welcome our panel from the Law Society of New South Wales Environmental Planning and Development Committee. Before we start, do you have any questions about the hearing process?

ALISTAIR KNOX: Not from me, thank you, Chair.

ROSLYN McCULLOCH: No, I don't.

The CHAIR: Time has passed since your original submission and, indeed, Parliament is currently dealing with some proposed changes to planning laws. With that in mind, would one of you like to make a short opening statement before we begin questions?

ALISTAIR KNOX: I do have a short opening statement, thank you, Chair. Thank you for inviting the Law Society to give evidence at today's hearing. My name is Alistair Knox, and I'm here in my capacity as chair of the Law Society's Environmental Planning and Development Committee. I'm joined by Roslyn McCulloch, deputy chair of the committee. Our committee members who contributed to the Law Society submission to the inquiry comprise a cross-section of specialist planning lawyers, some of whom act for councils or are in-house council lawyers, while other members act for developers and landowners. We therefore have a strong interest in historical development consents in New South Wales, from multiple perspectives. In our own practices, Ms McCulloch predominantly acts for local councils and I predominantly act for landowners and developers.

I refer the Legislative Assembly Committee to the Law Society's submission dated 14 June 2024. In that submission, we noted that the Environmental Planning and Assessment Act currently permits extensive delays in the appropriate completion of developments. Once there has been physical commencement of work, the time frame for completion of the development under the original development consent is, effectively, extended indefinitely. Extensive delay can adversely impact the appropriateness of development. The reactivation of historical development consents, in some cases, where they have been dormant for decades, may allow development that is inconsistent with contemporary laws and incompatible with community expectations. We acknowledge that development consents are valuable property rights as, unlike other approvals, a development consent runs with the land and is not granted in a personal capacity.

Regulatory certainty is also needed for landowners to support investment in the development sector. The challenge for policymakers is to balance these interests, while ensuring that the planning regime guides appropriate land development responses. In our submission, we proposed guiding principles to model a legislative framework that addresses the issue of excessive delays in commencement and completion of development consents, which could include a notification regime to alert any potential historical consent holders that a fresh lapsing period is to commence from a nominated date, together with a public awareness campaign. The notice could invite consent holders interested in progressing their development to contact their consent authority to inform the consent authority that they wish to proceed on the basis outlined in the notice, or provide a mechanism seeking a variation. The notice could stipulate that the consent holder has a one-off opportunity to apply to have the original development consent proposal reassessed under current planning laws, or accept the development consent lapsing.

Secondly, a new regime for determining the development consent period for such historical consents and for new consents could consider the size, scope and complexity of the development in determining the development completion period under carefully calibrated and prescribed criteria developed after industry and community consultation. Thirdly, a mechanism for determining where a specific development consent should lapse or not, taking into account work already undertaken—the mechanism will need to consider how to deal with projects that have been substantially or partially completed during the consent period and what factors may be relevant in determining whether to provide a right to apply for an extension of the development completion period in such cases. Such a framework would need to be aligned with other relevant planning controls and must promote certainty and transparency in relation to lapsing periods.

It would be remiss not to acknowledge the reforms for historical consents contained in the bill currently before the Legislative Assembly, the Environmental Planning and Assessment Amendment (Planning System Reforms) Bill 2025. The bill would amend section 4.57 (1) (a) of the Environmental Planning and Assessment Act, and insert a new section 116A into the Environmental Planning and Assessment Regulation 2021, prescribing a period of 25 years. Together, these amendments mean that the planning secretary's powers to revoke or modify a historical development consent have been expanded to allow the planning secretary to have regard to both the

proposed or the existing environmental planning instruments. These powers are limited to historical development consents granted more than 25 years ago.

We support these reforms as an initial response to the issue of historical development consents, and further note that the Government has indicated it will also consider the recommendations of this inquiry when it reports back to Parliament. We would welcome the opportunity to provide feedback on any further proposal that may be considered following the recommendations of the inquiry. Thank you again for the opportunity to appear before the Committee today, and particularly thank you for accommodating our availability.

The CHAIR: No, thank you. We're very lucky to have you, particularly as you described yourselves at the start as representing both sides of the equation. I think that your summary just a moment ago probably reflected what's going through all of our minds right now. It's a nice way to summarise that. I'm going to start with the first question. I think, Ms McCulloch, this is a question for you. We already have section 4.57. Why do you think councils—primarily councils—as the consent authority haven't leant into this and utilised this more often? I acknowledge that there's a compensation element, but why hasn't it been used? Certainly the planning department originally identified for us that that was the intention of that particular section—for it to be used.

ROSLYN McCULLOCH: My experience of that section is that it has only been used where a consent has been substantially exercised and needs to be completed. I can't answer for the councils, but I suspect that one of the elements might be compensation and the inability for a council to understand what compensation might be payable. For example, if a site has been land banked, they have no way of knowing what the finance costs over a long period of time might be, because they might be claimable as part of the compensation that would be payable. But I suspect there's also a bit of ignorance on the part of councils because it's not a well used section of the Act anyway.

The CHAIR: Did you want to add anything to that, Mr Knox?

ALISTAIR KNOX: I suppose the only thing I would say on top of that is it's one of these things which only arises if you're aware of it, in a sense. It would only be in very limited circumstances, where somebody is coming along and seeking to act on a consent that's quite old, very old, that it would then arise. Perhaps the reason it isn't taken up too often is both the compensation and uncertainty about the compensation payable, and also consideration of other remedies that council might have providing greater certainty and therefore councils deciding to go down those paths instead.

The CHAIR: Just to come back to a comment that you made there, Ms McCulloch—please help me out if I'm misinterpreting this—what you're saying is that, for a council or a consent authority, the development may have the original consent and it would be impossible for a council to understand how much work they've put in in the background. It might be architectural or it might be survey work and all that sort of stuff. The developer may have actually spent many millions of dollars in the background, although it's not visible on the ground, at the grass—

ROSLYN McCULLOCH: That's a fair summary.

The CHAIR: You refer to compensation at the very end of your submission. Did you want to extend or further the suggestion around how compensation might be better and more fairly dealt with? If you don't, I get it. That's okay. But I just want to ask the question because you do go to it in your submission.

ROSLYN McCULLOCH: I can say that one of the members of our committee also sits on the Property Law Committee, and he was the one who made the reference to the Agricultural Tenancies Act. He said that Act—and I confess that I haven't been to it to see the definition—has a comprehensive mechanism for assessing compensation. He thought, when he looked at the EP&A Act, that it was really quite nebulous, what compensation might be payable. To the council who might be preparing to take such an action, they really wouldn't know what they were getting themselves into.

The CHAIR: Can I just clarify—was that called the Agricultural Tenancies Act?

ROSLYN McCULLOCH: That's right, 1990. It's a footnote to our letter. It's footnote 22.

The CHAIR: Yes, it is. My apologies.

ROSLYN McCULLOCH: That's okay.

The CHAIR: I think that you have cited—there was a case of Kempsey Shire Council versus someone. I don't want to go specifically to that one alone. But, typically in the Land and Environment Court, are councils sometimes challenging the developer as to whether or not there has been substantial commencement? Is that typically the question that is put to the Land and Environment Court?

ALISTAIR KNOX: Perhaps I can take this one. From an applicant's perspective, which is where I'm seeing it from, it's when a landowner has the benefit of a development consent and is seeking to substantially go ahead with the development or sell the property—is where I've seen it occur most often. To convince either an incoming purchaser or a certifier who's trying to be appointed as a principal certifier that the development consent has not lapsed, then the only real certainty that you can achieve is by seeking a declaration from the Land and Environment Court that it has been commenced based on the evidence.

Oftentimes when that's the case, you're seeking a declaration from the court and the council is named as the respondent, even though, strictly speaking, they don't have an assessment function when it comes to whether or not the development has been commenced. That's part of the problem. You go and ask the local council whether, in their view, the development has or has not been commenced, and the council either says, "That's not our responsibility," or, "Even if we did say yes or no, it wouldn't give you the certainty that you need, and we're not going to fetter our discretion." The cases that I've seen have been an applicant seeking a declaration from the court that a consent has been commenced.

The CHAIR: That's very helpful. It's actually the complete opposite direction from which I thought it would end up in court. Thank you so much for that.

Mrs SALLY QUINNELL: I'm really interested in unintended consequences and trying to stop them as best we can. I'm very aware that a DA on a piece of land, even when written on the back of an envelope, is a legal document and comes with a certain value. Do you foresee any hidden claim of compensation if we were to say, "We're going to have a moratorium on DAs. Have it open. You need to show us what you've got. If you don't show us what you've got, then it's null and void." Does that work legally, or is there a capacity for someone to come back and go, "No, this is a legal document whether you think this now retrospectively or not. It is what it is."

ALISTAIR KNOX: That's a good question.

ROSLYN McCULLOCH: I am not aware of a law that would prevent the Government from legislating to revoke development consents. It's not an equivalent to the resumption of land. Even though it may add value to that land, it's not actually land. It doesn't fall within the just terms Act. It's probably why the current definition of compensation doesn't include any increase in value of land, because that would open a can of worms.

Mrs SALLY QUINNELL: That's quite reassuring. The other question I have is that we seem to have a disconnect between what the law says councils can do and what councils feel like they can do. Is that due to a lack of understanding of the law or is it that the reality is more complex and messier than the law acknowledges? It seems to me that this law has been around to revoke or moderate DAs for a while, but it's not happening. I am wondering if it's because the law is not acknowledging the complexities involved in that, or is it simply just that no-one really understands it?

ROSLYN McCULLOCH: I think councils are generally quite risk averse. I still think a lot of it comes down to the potential financial impact that they might—

Mrs SALLY QUINNELL: And being untested, is that a little bit—

ROSLYN McCULLOCH: Yes. There is no case law to guide you, so you don't really know what might happen.

The CHAIR: It was remiss of me at the start to not advise our witnesses that you may wish to take a question on notice rather than answering it. Of course you can do that. We would send you a copy of that question for follow-up. I am sorry I forgot to tell you that.

Ms MARYANNE STUART: Thank you both for your time this afternoon. Last week, on 29 October, we heard from the Environment and Planning Law Association's Ms Janet McKelvey and also Mr Andrew Pickles, SC. I hope I'm representing them properly, because I am paraphrasing. They said that the compensation that any council would need to pay would be on the basis of what a developer had already commenced with on the development of that land—for example, if foundations were laid. That's what the compensation would be. Is that your understanding of the law?

ROSLYN McCULLOCH: I'd have to have a look at the actual provision again.

ALISTAIR KNOX: I can read it out. It's section 4.57, subsection (7):

- (7) If a development consent is revoked or modified under this section, a person aggrieved by the revocation or modification is entitled to recover from—
- (a) the Government of New South Wales—if the Planning Secretary is responsible for the issue of the instrument of revocation or modification, or

(b) the council—if the council is responsible for the issue of that instrument,

compensation for expenditure incurred pursuant to the consent during the period between the date on which the consent becomes effective and the date of service of the notice under subsection (3) which expenditure is rendered abortive by the revocation or modification of that consent.

Ms MARYANNE STUART: Is that your understanding of what expenses had been paid?

ALISTAIR KNOX: This is a question which we haven't directly addressed in the written submission on behalf of the Law Society, so our answers on this one are particularly on our own personal interpretation. I think the tail of that extract which I just read, where it said "which expenditure is rendered abortive by the revocation or modification of that consent", really means that it's everything—every cost incurred between the grant of the consent and the notice of revocation. I'm not sure, Ms Stuart, how that ties into your question.

ROSLYN McCULLOCH: I don't think it's limited to physical works, if that's what your question is.

ALISTAIR KNOX: No.

Ms MARYANNE STUART: I'm just trying to ascertain why councils may not have used this in the past when they could have. What we're hearing all the time is that it's because of compensation, and I'm trying to see whether compensation could actually be quite minimal so there still is time for councils to adhere to that section of the Act.

ROSLYN McCULLOCH: Just the fact that there is a difference of opinion between the lawyers indicates that there's not certainty about what those words mean, and that's probably going to affect any decision a council will make. Because it's not an obligation of the council—it's a power—they are going to be less likely to exercise it where there would be risk to the council, particularly financial risk.

Ms MARYANNE STUART: What about in regard to what has been your experience about councils negotiating for change or a modification to a DA? For example, there's a heritage-listed tree and, yes, the developer agrees to build around the tree rather than to knock the tree down. We also heard last week that there is this tension—and yet I don't believe there needs to be—between housing and biodiversity. How can we do housing and still be respectful of biodiversity going forward? Do you see a world in which councils would be brave enough to negotiate with developers after they've heard community concerns?

ROSLYN McCULLOCH: I believe that happens. I think the Phillip Rise case, if you read down it, eventually that developer did surrender their old consent. That does happen, whether it's by force of the council negotiating or the public pressure or—I don't know.

Ms MARYANNE STUART: Sorry, what was the name of that case?

ROSLYN McCULLOCH: It's not the case that's referred to there, because that was the case that dealt with the declaration for—the consent had commenced. Ultimately, the developer didn't proceed with that particular what we would call zombie development consent. They surrendered it and obtained a new consent from the council. It's *Phillip Rise v Kempsey*, and it's on page 3 of our letter.

Ms MARYANNE STUART: And that was because council interceded?

ROSLYN McCULLOCH: I'm not exactly sure what the circumstances were there. There was a lot of press about this one, so it could have been public pressure rather than directly from the council.

Ms MARYANNE STUART: Okay. That's good to know. Were your views in your submission that you explained right at the beginning forwarded to the department of planning when the Minister was looking at reviewing this legislation?

ALISTAIR KNOX: I think we'll need to take that question on notice. I just don't know the answer to that.

Ms MARYANNE STUART: That's okay. So your understanding of the planning secretary now having the right to override DA consents is for a period of up to and including 25 years?

ALISTAIR KNOX: You may correct me on this, but I had understood that it was for consents that were more than 25 years old.

Ms MARYANNE STUART: More than 25 years.

ALISTAIR KNOX: That's right. The new change which comes under the planning systems reform bill gives additional powers to the planning secretary, but the consent must be more than 25 years old. I could be corrected on that, but that's my understanding.

Ms MARYANNE STUART: That's open-ended then?

ALISTAIR KNOX: In what sense do you mean that, Ms Stuart?

Ms MARYANNE STUART: If a DA consent was given for something back in 1986, the planning secretary could override that?

ROSLYN McCULLOCH: Yes.

ALISTAIR KNOX: That's the effect of the proposed reform.

Mrs JUDY HANNAN: Going back to that expenditure issue, I was on a council that looked at this and everybody just simply runs from it and they say, "Oh, no, we don't know what compensation would be." But there was discussion about expenditure which they may have had with interest if they'd borrowed money on things like that or what they'd in fact gone without by having this particular investment along the way. There was a lot of discussion and there was no clarity. It seemed like it was open-ended, so I think that is a really huge problem. I know that we're talking about the planning secretary for up to 25 years, but, Mr Knox, you were talking about having a thing where people have a certain period of time to write in and declare what developments they have up their sleeve or literally disappear. What do you think is a time frame that would be reasonable to go back? I know the department of planning says 25 years. How far back do you think it should go and how much time do you think we should give people to actually respond?

ALISTAIR KNOX: It's a good question. It was a suggestion made by the Law Society, but I'll try my best to answer your question on the specifics in my personal capacity. The most common complaint that I've experienced is the interrelationship of an old development consent and particularly new biodiversity conservation laws. I suppose the Biodiversity Conservation Act and the assessment regime under that commenced in 2016. A policy decision would need to be made as to the date that you would declare or seek to declare all development consents prior to that date to have lapsed. But in informing that policy decision, perhaps looking at the dates on which relevant pieces of legislation came into effect might help to inform that decision. As far as the second part of your question about what would be a reasonable time frame, again, it's very much a policy decision—12 months. It's a difficult one to put a number on. It needs to be long enough to recognise that people need to get legal advice, or may not receive the notice or become aware of it as soon as it comes down, so it does need to be quite a significant period of time that they have the opportunity to make the application that we've talked about.

Mrs JUDY HANNAN: Say it had been on sold with a DA in place, would that notification—it gets complicated where somebody might have sold it with the DA approval. Would that open up something where the person who bought it with a DA approval can go back on the person who sold it to them?

ALISTAIR KNOX: My understanding of the suggestion was that you pick a date in time, call it 2000, and say that every development consent granted prior to that date lapses unless you come to us with your application.

ROSLYN McCULLOCH: That hasn't been completed.

ALISTAIR KNOX: Sorry, that hasn't been completed—unless you come to us with an application to re-enliven it within the fixed time period.

Mrs JUDY HANNAN: I suppose it could be staggered, couldn't it? If you think about the Biodiversity Act coming in in 2016, or if there was a flood act or a fire act or whatever, I guess it could be staggered according to what changes have occurred along the way. Would it have to be one date for all DAs?

ALISTAIR KNOX: I suppose it could be dealt with on a local government area by local government area basis, depending on issues which—

Mrs JUDY HANNAN: It complicates it, doesn't it?

ALISTAIR KNOX: Yes, that's right. I'm particularly aware of—one that I've come across a few times is subdivisions on the South Coast. For example, that could be a particular point of focus to try it out and see how it works for that local government area with those subdivisions that were never completed.

ROSLYN McCULLOCH: The paper ones.

ALISTAIR KNOX: The paper subdivisions, that's right.

Mrs JUDY HANNAN: I have no further questions. It's very complicated.

ROSLYN McCULLOCH: It is.

The CHAIR: Agreed. I want to go to 4.57 again, just for clarification that the compensation that would be payable does not include compensation to the on-paper land right or the loss of development right. In my mind, the person still owns the land. The old consent may have lapsed or been revoked—whatever the word we want to use is—but they still own the land. They could still go back to council and make a new application et cetera. But when they purchased that land, because it had a consent on it, the value was much higher than if it didn't. For clarity, would the compensation question include that loss of value or the loss of the development right?

ROSLYN McCULLOCH: I think that's one to take on notice, because the question is, where there's an intervening purchaser, is that an expenditure that would fall within subsection (7)?

ALISTAIR KNOX: If you've paid a higher purchase price on the basis that the site has the benefit of the development and that development consent then goes away, can you recover the additional amount which you've paid for the property?

The CHAIR: Yes. I also want to ask about a suggestion made to us by a local council in its submission. They would like to have a point in time at which they could potentially start charging rates on land that hasn't been completed in terms of development. If someone said, "We want a DA consent for 100 lots of housing land," the council can't charge rates on that, obviously, until it's completed and people have moved in. But the council is saying, "Well, what if after five years we could actually start charging rates at 50 per cent on those 100 lots, and then at six years we can charge 75 per cent, and at seven years we can charge 100 per cent?" Could you imagine a legal framework where that would be an option to incentivise bringing completion forward?

ROSLYN McCULLOCH: It could be done under the Local Government Act; it's simply a matter of setting up the rating regime appropriately. It can be done by definition. It's not impossible. I haven't really thought that one through, and that's not one that we'd contemplated as a stick, if you like.

The CHAIR: It was a bit outside the box for us as well. For context, what the council was saying was to give the DA consent, they'd have to invest in their water treatment and supply works, so they'd spent money up-front, and then the development hadn't come to fruition. They were now carrying that debt and passing it on to their current ratepayers. They were saying, "It's not really fair for the current ratepayers. The developer said they wanted an extra 100 lots. We built that into our water system and now we can't get the money back." That's the context. It was certainly from left field. At the other end, is it your view that there could be or it might make sense to impose a time limit to bring something to completion as opposed to how, at the moment, we're trying to satisfy ourselves of commencement? What if we went to the other end and said, "You should have completion by this date," as happens in Victoria and South Australia?

ROSLYN McCULLOCH: There already is a power to require completion under the Environmental Planning and Assessment Act. A development control order can be given to require the completion of the development consent. It's not used very often, that particular order.

ALISTAIR KNOX: If I understood the question, I suppose the premise is that we abandon physical commencement and we instead go with a system that requires completion by a certain date. It's not something we addressed on behalf of the Law Society in the submission. It is something which I've personally thought about quite often, and I seriously do think that perhaps it would work better, as long as there's some flexibility built into it and also an acknowledgement that the time frame of five years would be inappropriate for that, I think, personally.

The CHAIR: My understanding of the Victorian model is that it's a five-year completion but you can apply for a plus two—under certain circumstances you can also apply for a plus two as well. But the starting point is, if you're going to get a DA, have it done within five years unless you want to come back to us and argue the case.

ALISTAIR KNOX: With the complexity of development consents having 50 pages and hundreds of conditions, I find that the five years is very difficult and would be an unrealistic date for completion of the development. As you've said, perhaps there are periods of extension for flexibility in that process. But, if you do that, you avoid people seeking loopholes with respect to achieving physical commencement, as we've seen. Really, in effect, so many of these cases are about finding the least work which can be carried out to achieve physical commencement.

The CHAIR: Am I interpreting your submission correctly, particularly in the opening page and the opening paragraphs? Am I interpreting your submission correctly to say that the Law Society believes that, for a development consent, once there's commencement, having an indefinite life is not a good model?

ALISTAIR KNOX: I think there are two paragraphs on that opening page particularly that you need to read side by side. There's an acknowledgement of policy that we need to have—there's a policy decision which

has been made that development consents should lapse, for good reason. The ability to achieve physical commencement and preserve the consent in perpetuity with minor works runs contrary to that policy intention. On the flip side, it's a delicate balancing exercise between achieving that policy intention of not allowing development consents to be preserved in perpetuity and also protecting people's property rights. I think it's in that subsequent paragraph. Is it a bad outcome? It's just a delicate balancing exercise and acknowledging that there has been a policy decision made that we shouldn't allow development consents to be preserved in perpetuity.

The CHAIR: If we were to establish a register where we put the call out and a mass advertising campaign to say to people, "If you believe you've got a consent that predates a certain year"—you use the example of 2000—"bring it forward and get it on the register." Would you think an important element to that register would be to clarify that just because it's on the list doesn't mean you have consent; it simply means you think you have consent, and we would need to then explore and clarify whether that consent is valid or not? My concern would be if we created a register, then everyone who got their name on the register would just automatically think, "I've got the tick of approval. I'm all good to go because I'm on the list."

ALISTAIR KNOX: I understand the question, thank you. I think there would certainly have to be careful thought about that. At the final page of our submission there is a subsequent paragraph, which says:

The notice could stipulate that the consent holder has a one-off opportunity to apply to have the original development proposal reassessed under current planning laws, or accept the development consent lapsing, in accordance with the notice.

That was the proposal which the Law Society came up with. It's not that you put your development consent on the register and it's preserved; you come forward and have an opportunity to have it restarted, reignited.

ROSLYN McCULLOCH: Reassessed.

ALISTAIR KNOX: Reassessed—that's right.

The CHAIR: I think the theme of your submission is also that the State has the greater ability—the finance, funding and resource—to do this type of work, as opposed to lumping it onto local councils. Is that true?

ROSLYN McCULLOCH: Certainly that was a common theme from the representatives on the committee who act for councils. But others wouldn't have the same experience, so they might not know.

The CHAIR: Mr Knox, I have one more. You used the example earlier of going to the Land and Environment Court so the consent holder can clarify beyond doubt that they do have an existing consent. Should councils have the ability to sign off their recognition and authorisation of the consent, instead of it going to a court environment like that? If the developer and the council agree that a consent exists and it's valid, is it a good idea to give council the power to sign some sort of document or piece of paper or statement to say, "Yes, the consent is agreed. We don't need to go to court"?

ALISTAIR KNOX: Again, in my personal capacity, I think yes. But I acknowledge that it's an additional function placed on councils which may take up quite a lot of resource and, I suspect, quite a lot of time. But I do think that the court is rightfully frustrated by having to determine what we call bare declarations—make a declaration when there's not actually an active dispute between two parties. The court really doesn't like to do that, and shouldn't, because that's not the purpose of the court. It's just that that is the only absolute certainty that you can have on those matters.

The CHAIR: So why does it happen? Is there a concern that the community at large might challenge both the developer and the council as to the validity of that consent?

ALISTAIR KNOX: I'll give an example that I was involved in where a developer had carried out a subdivision. They'd got a development consent for a hotel premises—a pub—in that new subdivision and were selling that lot with the consent on to a purchaser. The price that they were selling it for was such that the purchaser just didn't have—their solicitor or their advisers had obviously told them that a legal advice from my firm wasn't enough of a guarantee to justify paying the increased price that the consent for the pub added. I'll give the full example here. In that case, what ended up happening was my firm wrote to council to ask for the confirmation. Council came back and said, "It's not our job."

That went on for quite a while. It was getting to the point where it was jeopardising the sale of land to this incoming purchaser, who did want to go ahead with that development, which was very valuable. My firm did commence what are called class 4 proceedings to seek the declaration from the court that it had been physically commenced. Council was named as the respondent in those proceedings and, shortly after we commenced the proceedings, council came to us and said, "If we just give you a letter to say that in our view it has been commenced, is that going to be enough to give your purchaser the certainty that they need?" In that case it was, and the proceedings ended up being discontinued. But sometimes that's not the case, and that's why those proceedings run through.

The CHAIR: We've been so lucky to have your wisdom and experience in our hearing this afternoon. Thank you for appearing before us. You will be provided with a copy of the transcript of your evidence for correction. The Committee staff will also email any questions taken on notice today. The way that will work is we will give you the snippet of *Hansard* and the question you've taken notice so that there's context around the question, to help when you're responding. We as a Committee may also develop some supplementary questions that we'd like to send over to you. We typically ask for these to be turned around within seven days, but I'm wondering, do you have to go back to a subcommittee format to get the set of words approved et cetera?

ALISTAIR KNOX: I suspect we do, Chair.

ROSLYN McCULLOCH: We actually go back through the executive of the Law Society.

ALISTAIR KNOX: Two weeks would certainly help.

ROSLYN McCULLOCH: It would be hard.

ALISTAIR KNOX: Two weeks is tight, but more than one week would help us.

The CHAIR: I would normally say to people that if seven days is difficult, just talk to us about it. I'm just trying to pre-empt for all of us—the Committee members and the Committee secretariat. In the instance of the Law Society, their voice will be speaking on behalf of a community of lawyers, not just their own agencies. Formally, we've adopted seven days, so I'm going to have to say seven days, but we accept that there may be a need to extend that. That concludes our public hearing for today and for this inquiry in totality. I place on record my thanks to all of the witnesses who have appeared, both today and previously. I thank the Committee staff, *Hansard* and the staff of the Department of Parliamentary Services who are taking care of audiovisual for their assistance in the conduct of the hearing. I'd especially thank my Committee members, who have been diligent and engaged in this entire process. Mr Knox and Ms McCulloch, you are our final witnesses but very important witnesses. We thank you so much for your time.

(The witnesses withdrew.)

The Committee adjourned at 15:50.