



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: EPDC:JBgl251125

25 November 2025

Mr Clayton Barr MP
Chair, Legislative Assembly Committee on Environment and Planning
Parliament House
SYDNEY NSW 2000

By email: environmentplanning@parliament.nsw.gov.au

Dear Chair,

INQUIRY INTO HISTORICAL DEVELOPMENT CONSENTS IN NSW – QUESTIONS ON NOTICE AND SUPPLEMENTARY QUESTIONS

Thank you for the opportunity to respond to the questions taken on notice by the Law Society of New South Wales during the hearing on 5 November 2025 as part of the Inquiry into historical development consents in NSW, and the supplementary questions provided after the hearing.

The Chair and Deputy Chair of the Law Society's Environmental Planning and Development Committee, Mr Alistair Knox, and Ms Roslyn McCulloch respectively, appeared on behalf of the Law Society before the Legislative Assembly Committee on Environment and Planning.

Question on Notice:

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.

Answer:

The Law Society's submission to the Inquiry dated 14 June 2024¹ was not forwarded by the Law Society to the Department of Planning, Housing and Infrastructure prior to the introduction of the Environmental Planning and Assessment Amendment (Planning System Reforms) Bill 2025.

¹ The Law Society's submission to the Legislative Assembly Committee on Environment and Planning Inquiry into historical development consents in NSW, dated 14 June 2024 is available [here](#).



Question on Notice:

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 The old consent may have lapsed or been revoked—whatever the word we want to use is—but they still own the land.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)?

Answer:

The scope of compensation that may be payable under section 4.57(7) of the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**) is uncertain and untested. We are therefore unable to comment further in relation to the scope of potential compensation payable under section 4.57(7) in the circumstances described.

Supplementary Question 1:

During the hearing, witnesses for the Law Society discussed a new regime for determining the development consent period.

- a. Can you explain why consent authorities in NSW are not exercising existing powers under the Environmental Planning and Assessment Act 1979 ('the Act') to impose completion deadlines as conditions of development consent?
- b. How could this power be amended to support consent authorities to impose completion deadlines as a consent condition where appropriate?
- c. What factors should consent authorities have regard to when considering whether to impose development completion deadlines under the Act?

Answer:

- a. In our members' experience, we have only seen limited use of section 4.17(1)(d) of the Act, for certain uses or types of industrial works. Often such conditions are more in the nature of limiting the duration of the use rather than imposing a completion deadline as a condition of development consent. We are unable to comment as to why consent authorities are not exercising the power under this section to impose completion deadlines as conditions of development consent.
- b. In our view, amending section 4.17(d) of the Act is not required. We suggest that it is a matter of raising awareness of the existing powers under the section through appropriate education.



- c. The factors consent authorities may have regard to when considering whether to impose development completion deadlines under the Act (in addition to the usual planning considerations) could include the potential for non-completion of the development and the consequences of non-completion of the development.

Supplementary Question 2:

During the hearing you referred to the uncertainty around compensation that could be payable under section 4.57(7) of the Act. What amendments to the regulations or legislation could clarify the potential quantum of compensation that a consent holder would be entitled to under this subsection?

Answer:

It may assist to alleviate some of the uncertainty in relation to compensation payable under section 4.57(7) if the legislation clarified *who* makes the determination and *when* that determination is made. For example, if there was an estimate of compensation made prior to the revocation, that may be of assistance to the parties in negotiations.

As referenced in footnote 22 of the Law Society's submission to the Inquiry, the compensation regime under Part 3 of the *Agricultural Tenancies Act 1990* (NSW) sets out a well-established framework for assessing compensation with reference to improvements to or deterioration of land arising from a change in circumstances over time, impacting the value of land.

Supplementary Question 3:

During the hearing, witnesses noted that it is not the role of Councils to advise a consent holder whether a consent has been validly commenced and that consent holders may bring proceedings in the Land and Environment Court to confirm commencement.

- a. How could the law regarding physical commencement be amended to clarify that Councils can certify when a consent has commenced?
- b. What changes could be considered to improve Council's confidence in their ability to certify physical commencement?

Answer:

In response to both questions, we suggest that the legislation could be amended to provide Councils with a specific determination power, coupled with a right of appeal from that determination. Councils would also need to be appropriately resourced to support the exercise of such a power.

Supplementary Question 4:

What data would consent holders need to provide to the State government for it to develop and maintain a register of development consents which indicates whether consents have lapsed or have been validly commenced?



Answer:

The key information consent holders would need to provide for the development of such a register would be the notice of determination. However, we do not support the creation of a register, but rather the introduction of a notification regime, coupled with a public awareness campaign, to alert any potential historical consent holders that a fresh lapsing period is to commence from a nominated date. Further details of a suggested notification regime are set out on page seven of our submission.

Supplementary Question 5:

During the hearing, witnesses mentioned that development control orders compelling the completion of consents are not used very often.

- a. Can you please expand on why this power is not widely used?
- b. How could it be amended to allow consent authorities to compel a consent holder to complete a develop [sic] in appropriate circumstances?

Answer:

- a. We suggest that the relevant power, in Schedule 5 Development control orders, Part 1 General orders, order number 13 of the Act, may not be widely known or understood.
- b. In our view no amendments are required, the existing power is sufficient.

We note, however, that the completion of approved developments is quite a different issue to that of the existence of physically commenced historical development consents which might no longer meet current assessment standards.

Thank you for the opportunity to contribute. Any questions in relation to this letter should be directed to Gabrielle Lea, Senior Policy Lawyer, at gabrielle.lea@lawsociety.com.au or on (02) 9926 0375.

Yours sincerely,

Jennifer Ball
President