REPORT ON PROCEEDINGS BEFORE

LEGISLATIVE ASSEMBLY COMMITTEE ON ENVIRONMENT AND PLANNING

HISTORICAL DEVELOPMENT CONSENTS IN NSW

At Macquarie Room, Parliament House, Sydney, on Wednesday 30 October 2024

The Committee met at 9:20.

PRESENT

Mr Clayton Barr (Chair)

Ms Kellie Sloane
Ms Maryanne Stuart

PRESENT VIA VIDEOCONFERENCE

Mrs Judy Hannan
Ms Sally Quinnell (Deputy Chair)

The CHAIR: Before we start the public hearing today, I acknowledge the Gadigal people, who are the traditional custodians of the land on which we meet here at Parliament House. I also acknowledge the traditional custodians of the various lands on which our virtual witnesses are appearing at this hearing. I pay my respects to Elders, past and present, and I 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. This is the first public hearing for the inquiry into historical development consents in New South Wales.

In March this year the Legislative Assembly Committee on Environment and Planning commenced this inquiry, which was referred to us by the Minister for Planning and Public Spaces. Since then the Committee has received almost 250 submissions. It has met with community groups, developers, Aboriginal organisations and local councils across the far North Coast, far South Coast and Shoalhaven regions. It has visited development sites brought to its attention and met with community members and local councils to hear their concerns about historical development consents.

Today we hope to hear from some of the stakeholders me met with on our recent site visits. We thank the witnesses appearing before us today and the stakeholders who have made written submissions. We sincerely appreciate their input into this inquiry. It is important to note that the Committee is not able to review individual development consents. It is tasked with considering possible recommendations to Government for policy or legal changes to address concerns regarding historical development consents generally. The issues raised in this inquiry are complex, and the Committee will consider a range of perspectives, including at further hearings that the Committee intends to hold in the New Year.

My name is Clayton Barr. I am the member for Cessnock and the Committee Chair. With me today are committee members Ms Kellie Sloane, the shadow Minister for Health and member for Vaucluse; Ms Maryanne Stuart, the member for Heathcote; and joining us online is Mrs Judy Hannan, the member for Wollondilly. Ms Sally Quinnell, the member for Camden and Deputy Chair, is not able to join us this morning. However, she will join the inquiry later this afternoon.

Mr PETER NEWTON, President, Kingscliff Ratepayers and Progress Association, before the Committee via videoconference, affirmed and examined

Mr COLIN LIDIARD, Committee Member, Kingscliff Ratepayers and Progress Association before the Committee via videoconference, affirmed and examined

Ms JAN BARHAM, Former Member of the Legislative Council, before the Committee via videoconference, affirmed and examined

The CHAIR: Thank you for appearing before the Committee today to give evidence. Before we start, do you have any questions about the hearing process?

PETER NEWTON: No.

COLIN LIDIARD: No.

JAN BARHAM: No.

The CHAIR: Mr Newton or Mr Lidiard, would you like to make a very brief, less than two-minute opening statement?

PETER NEWTON: Yes, we would, Mr Chair. On behalf of the Kingscliff Ratepayers and Progress Association I would like to thank the Committee for the opportunity for Mr Lidiard and myself to appear at this hearing. Our association has advocated on behalf of Kingscliff and neighbouring communities continuously since 1933. We have worked closely with other local community associations and our local, State and Federal representatives and authorities. I can assure the inquiry that we are as one in recognising the repercussions of historical development consents and in seeking ways to alleviate their damaging impact. The concept of historical development consents needs to be removed from the New South Wales planning system.

We spoke at length in our written submission about the risk these developments pose in the Northern Rivers in terms of climate change, cumulative flooding and environmental damage. In addition, the existence of these consents in the Tweed shire makes it next to impossible to develop sound housing strategies. Land is not being brought to market in a timely fashion. Future planning is constrained by the unpredictability caused by these consents. Actually, such consents provide a "two bob each way" scenario for a developer, create an ongoing—over decades—arduous workload for council staff and the associated cost to ratepayers. They represent little in the way of good faith engagement or protection for communities.

Right now in our area we have an example of a zombie development coming to life in the community. Refused by council in 2005 but approved by the Land and Environment Court in 2008 were conditions aimed at best protecting the community and environment. Now as we speak, subject to another Land and Environment Court hearing, based on council's refusal of developers' proposed significant—and, in the view of our community, untenable amendments—the ball has been for decades in the developer's court. In moving forward, we need to take a look at policy and the legal implications that continue to raise the physical commencement path requiring substantial commencement; reduce the commencement deadline from five years to two years, as exists in other jurisdictions; enforce a completion date for all development approvals, as is done in other States and Territories. Change the narrative. Recognise the impact that zombie developments have on the provision of reliable housing supply.

In closing, I'd like to mention a recent ABC NEWS article headlined "'Zombie' development approvals could cost the NSW Government millions". I'd suggest that, based on the significant cost and personal impact of the Northern Rivers 2022 flood event, doing nothing will in fact cost the New South Wales and Federal governments billions. As also referenced in the same article, please be assured that "fighting the undead" is not only tiring work for communities but absolutely exhausting, demoralising and all-consuming. We desperately need our governments to step up, listen and support our communities, and put an end to this scourge.

The CHAIR: Thank you so much. Ms Barham, do you have an opening comment?

JAN BARHAM: Yes. I would like to acknowledge that I'm on Bundjalung country and pay respect to all Elders. I'm also in a biodiversity hotspot, and thank you for conducting this inquiry and providing me the opportunity to present. It's timely in light of the recent international nature positive summit and the State and Federal governments' plans for nature positive outcomes, which focus on halting biodiversity decline. The New South Wales and Commonwealth environment Ministers both acknowledge we're in a biodiversity crisis. Focus on the foreseeable biodiversity destruction and the flood risks associated with these historical DAs has been revealed. It's clear that the zombie developments are nature negative.

My submission outlines my concerns, but since writing I've reviewed more documents. I believe there's a stated commitment and a moral obligation to avoid the foreseeable destruction, and I believe there's an opportunity for the protection of biodiversity. Like others, I've raised the issue of State acquisition of sites, but that's unlikely; but what's possible is preserving these sites as biodiversity offset areas. The Auditor General's offset report in 2022 identified that the State has an offset liability of approximately $6 billion for planned infrastructure works, and there are deficits in credits, particularly for vulnerable and endangered species. One of the deficits is glossy black cockatoos, which is a key species for my case study, the Wallum site at Brunswick Heads.

A contemporary review of the ecological values and the risks associated with these developments is essential to understand the impacts and determine possible risk avoidance. I also raise concerns based on my case study at the implementation complexity and confusion, and that requires clarification, particularly for staged developments and the application of the Threatened Species Act and the trigger for species impact statements. I appeal to the Committee to consider these foreseeable risks and how they can be avoided. We are in a biodiversity crisis and these historical approvals will definitely be nature negative.

The CHAIR: Thank you so much. Just for clarity, the terms "historical development consent" and "zombie DA" are used, colloquially through media and even by the Committee members ourselves, interchangeably. I might ask the first question. Something that we heard on our various tours up and down the coast of New South Wales was around new knowledge and information that we have about flood levels. Peter, you touched on this in your opening statement as well. Can you please give me a bit of a description about what we might know about flood levels in 2024 that we didn't know back in 2004 or 2010?

PETER NEWTON: Certainly. Thank you, Mr Chair. We certainly got harsh lessons in 2022 with respect to flood levels. If we were taking development applications and considering those prior to 2022, then basically 2022 changed the game. We had water in our area and across the Tweed, as did the Northern Rivers, in areas never seen before. That changed the thinking, as is evidenced through both flood inquiries in relation to floods and flood impacts, particularly cumulative flood impacts. As a result of that—floodplain management and flood management is a moving feast—our shire particularly is now engaged in a fairly extensive Tweed Valley flood study, bringing into the mix the impacts of 2022 but considering flood mitigation on the basis of the damage that was done.

Just quickly in terms of what we now know, we know that we can't be building on flood plains. In our area in Kingscliff itself we have what's termed as a high-risk flood plain slated for development, and these are historical developments. In 2022 each part of this flood plain, acting as a detention basin—that's their normal function—overflowed and took out the shopping centre, took out neighbouring residences and took out a fair portion of north Kingscliff, where that flood actually joined with the riverine water from the Tweed. So we had that and then what we also understand with the flood impacts now is the impact on the ecology and the environment. We've got significant wetlands dotted across the flood plain here. We have remnant littoral rainforest. Prior to 2022, the ecology was still a big deal. It's more of a big deal now.

The CHAIR: To interrupt, just in simple terms are there historical development consents that you're concerned about that would've once been thought to not be flood-prone that we now have seen very clearly are on flood-prone land?

PETER NEWTON: They would've been considered flood prone. The answer is yes. The thinking then, pre-2022, was that we can manage this: We can fill the flood plain with sand, we can do this, we can build, we can put more concrete on and we can engineer a result that will not—the term at the moment is "cumulative flooding", as it should be—increase flooding into other areas. So the focus of flood-prone land wasn't as high in the community's mind as it is now, and also in our authorities' minds as it is now. Again, 2022 changed all that. From our association's perspective, the day after 2022 we got together—our meeting was filled with people that had been affected by floods—and we determined then and there, and have held fast that position, that there should be no more development on flood plains. We need to do something different to what we're doing in terms of development. We can't be putting people in harm's way and then exacerbating that.

The CHAIR: That's fine. I'm very mindful of time. We've had a really disrupted start to our day today and I wanted to make sure that other people got a chance to ask questions. I'm going to throw across to Ms Sloane to ask a question, if you don't mind.

Ms KELLIE SLOANE: Jan, thank you very much for your submission. I was interested in the solutions you posed. You live in such a beautiful part of the world, where so much of it should be protected. How do you balance out the need for new housing in that area? Are there areas that are more appropriate, with the considerations around the zombie DAs?

JAN BARHAM: Yes, I think there are. There are other mechanisms. It has been done before. We look at an old DA or a proposal and consider the risk. With these old DAs, many of them are on large lots where higher density development could be possible on some of them, which would protect biodiversity and some of the risks, and present a different model of development to deliver the much-needed housing.

Ms KELLIE SLOANE: What are some of the mechanisms? I'm keen to hear a bit more about what you outlined in your proposal about some of the ways that we could perhaps compensate or provide a solution. You have developers that clearly have a financial interest. It sits on their books. What are the solutions to overcome those obstacles from a State Government point of view?

JAN BARHAM: The interesting factor is, as I mentioned, the Auditor-General's report outlines that the State Government itself has a liability for offsets. Many of these sites, as we have seen in submissions, contain incredible biodiversity values. Even though I'm not supportive of offsets, the State does have a market mechanism commitment, and it will need to look at how it meets those commitments. These sites may provide that, which also provides the landowners with a financial return. It could be a win-win. We've done a similar thing in Byron shire previously, with developers coming forward with a proposal that was reassessed and delivered their outcomes as well as better outcomes for the environment and the risks that were posed. I think it's doable, particularly in light of where we're at with a biodiversity market mechanism.

Ms MARYANNE STUART: It's nice to see you again.

JAN BARHAM: I've just lost my sound.

The CHAIR: We might throw to the AV team to try to resolve that. Mr Newton and Mr Lidiard, can you still hear us okay?

PETER NEWTON: Yes.

COLIN LIDIARD: Yes.

Ms MARYANNE STUART: Thank you both for being here again today and for your time when we visited you. It's nice to see you. Keeping in mind our terms of reference, we can't go back to when some of these DAs were approved. Keeping in mind that it's our job to hear about solutions and recommendations to put in our report, how can the planning system better balance appropriate environmental protections with the need for everyone to have certainty going forward?

COLIN LIDIARD: I'll take that one, if you don't mind. It's interesting. I'll use the local example here of the one we've got with the developments that Peter referred to in the opening statement. If that was developed, they have got to comply with the current building regulations, which causes us problems, because that means that land will be built higher than the existing surrounding neighbours. Obviously we're concerned about the flooding impact in that. At the same time, they can still build to the environmental regulations as at 2008. I don't see why, when you're at the date of commencement, if the environmental regulation keeps pace with the building regulations and impact the one that's currently in place. Also, I think what we need to do—in our shire here, apparently, there are existing approvals on the books to meet all our future housing requirements. Like, Kings Forest is only being built now. Those have been in place for—how long, Peter? In the 2000s, '90s.

PETER NEWTON: Yes.

COLIN LIDIARD: If those had been built, there wouldn't be the problem that we've got now. I think I would like to see some sort of disincentive for speculative land banking and inactivity by maybe applying higher levies as time goes on, if you haven't brought it to market. And, as I said before, to meet current legislation, because at the moment people are just holding onto land. They will get a DA approved. They will onsell it. The next person starts again, and this is where it keeps going. Then the councils get accused of red tape and slowing development, and the locals get accused of nimbyism. But if developers just stayed within the planning framework rather than always pushing the envelope, rather than trying to get changes and variations, I think a lot of the pushback would be reduced.

Ms MARYANNE STUART: That leads me to another question, which will be open to all of you. How do you think council and the community can work better with the State Government?

COLIN LIDIARD: One of the things I was surprised by when I started to look into this was how nobody knows the true quantum of the problem. Prior to digitisation, there are a lot of old manual records. From that point of view, I'd like to see maybe the councils contacting all landowners and rate payers to say, "If you think you've got a DA in place prior to digital records, then please re-register it." The other thing I'd like is the State having a statewide register audit, because the cumulative effect—because all these little pockets, if you looked at the

cumulative effect if all these DAs went ahead, I think you could see the true impact over the whole State. But also it would help you in the planning of bringing housing online, or whatever building.

PETER NEWTON: I'll just quickly answer the question in terms of council and the community with the State Government. Councils are hamstrung and powerless under the current legislation in relation to historical development consents. Yet they do all the heavy lifting at the local level in terms of if there's an historical consent in place, if the developer is seeking a variation or anything to do with that development, they cannot enforce—or the enforcement that they have is pretty toothless. It is the overarching legislation that needs to give power back to councils, from the environment perspective as well, to allow them to actually manage historical developments consents at the local level.

We have examples in our shire at the moment—and, in fact, in Kingscliff as well—where the developer will come in on an historical consent and will make amendments. Our view would be that as soon as there's an amendment, then that needs to be viewed, and there needs to be a mechanism in the legislation which will basically say, "All bets are off. We're starting again and viewing this development under the current understanding of how we go about things." At the moment, councils don't have that power, and there's a big need for State reform. Our council, I know, is to be commended for its ongoing and unfailing dialogue at State and local government authority levels in relation to seeking change in this area.

The CHAIR: Ms Barham, do we have you back online?

JAN BARHAM: I'm not sure.

The CHAIR: I've got you loud and clear, and I can see you loud and clear.

JAN BARHAM: Perfect. Great. Thank you. Can I just add a point to that question? I think there's a misunderstanding as to how staged developments, particularly, work in terms of application of the Threatened Species Act. I put it in my submission that there's confusion about whether or not those historical assessments apply or, when a staged development in a new DA comes in, whether or not there's a trigger for a species impact statement under the Threatened Species Act and also clause 34 certification. That is a process that is confidential. I think it's untenable that the community don't get to see the information that's provided to the State to receive certification. As I said in my submission, I tried to GIPA the information but it was lodged under legal privilege. We don't know what information was provided in terms of that process, and I think it's a flawed process.

The CHAIR: Ms Hannan, I was going to throw across to you to finalise our questioning today.

Mrs JUDY HANNAN: I actually have pretty much the information from the questions that have been asked. This is a comment. With the amendment statement, if an amendment comes in, then we're back to stage one. There has to be some give. If an amendment was going to be a positive outcome for community, then you don't want to take that whole thing off. So there has to be a little bit of scope there somehow.

PETER NEWTON: Definitely.

Mrs JUDY HANNAN: But I appreciate the information from you both. Unfortunately we're in this situation, but we can only make it better for going forward.

The CHAIR: We could have spent a lot longer. It has been fascinating. We're starting to form a view now. The purpose of our public hearings is to start building on the record, in addition and complementary to the submissions that have been made. We thank you for taking the time to meet with us when we were on our North Coast tour, and we thank you for taking the time to participate today. In closing, you will be provided with a copy of the transcript of your evidence given here today for correction. The Committee staff will also email any questions taken on notice today. You didn't take any on notice, but the Committee may develop some supplementary questions that we would like to send to you. We would ask that you return these answers within 14 days if that's at all possible. If it's not, please talk to us about that. I thank you again for appearing before us today.

(The witnesses withdrew.)

Mr ROB BARREL, President, Callala Matters, before the Committee via videoconference, affirmed examined

Ms CAT HOLLOWAY, Member, Callala Matters, before the Committee via videoconference, affirmed examined

Mr BILL EGER, President, Manyana Matters Environmental Association, affirmed and examined

Mr PETER WINKLER, Vice-President, Manyana Matters Environmental Association, affirmed and examined

The CHAIR: I welcome our second panel of witnesses. Thank you for appearing before the Committee today to give evidence. Before we start, do any of you have any questions about the hearing process we are about to enter into?

BILL EGER: No.

PETER WINKLER: No.

ROB BARREL: No.

CAT HOLLOWAY: No.

The CHAIR: It is good to see you all again. We, of course, met with you as we were travelling around the State meeting with different community groups on some of these issues. Would a representative from each organisation like to make a short opening statement of up to two minutes before we begin our questions?

PETER WINKLER: Yes, I'll make the opening statement. Thank you for the opportunity to represent Manyana Matters Environmental Association at this public hearing. Manyana Matters is campaigning to prevent the destruction of a precious forest that remained unburnt after the catastrophic Black Summer fires. Because of a zombie DA, this forest, which includes a critically endangered littoral rainforest, could be destroyed. Of the numerous recommendations in our submission, we would like to highlight the following. These are actions we believe this inquiry must consider: firstly, conduct an audit of historical development consents being held by developers in New South Wales. Only an audit will reveal the full extent and nature of the threats to our environment and it is the only way the Government can make informed decisions about them. Developers who hold these consents would have to declare them within a given time frame or have them revoked. We need to know how many there are. We believe that there's at least 100 of them up and down the coast, but we're not sure how many more.

Secondly, place a moratorium on these consents while they are reassessed under current environmental planning and cultural heritage standards. If not, we can only conclude that our threatened species and habitats, community safety and Indigenous heritage do not matter or are subservient to private interests. In recent correspondence, the department of planning advised Manyana Matters that local councils have the power to revoke these zombie DAs. There are several problems with this. In regard to the Manyana forest, which was approved by the New South Wales Government 16 years ago, our professional legal advice is that there is no mechanism for it to be revoked by council. For DAs that have been approved by council, we understand that there is no legal precedent of any council in New South Wales ever having revoked an historical DA. Also, individual councils are not able to assess the statewide cumulative damaging impact of these historical consents. Historical consents are a State Government problem and the State of New South Wales must fix it.

In July this year, the New South Wales Minister for the Environment Penny Sharpe declared that biodiversity in New South Wales is in crisis. We agree. Many of these historical consents are in sites of mature forests; wildlife corridors; habitat for threatened species, including koalas and greater gliders; and endangered ecological communities. This inquiry has a powerful opportunity to address this biodiversity crisis. If, as has been stated, the New South Wales Government has no appetite for addressing historical consents, we must ask: What is the appetite for extinction? According to the *NSW biodiversity outlook report 2024*, only 50 per cent of our listed threatened species and 55 per cent of our threatened ecological communities in New South Wales are expected to survive this century. Circumstances have changed and so must policy and legislation.

The CHAIR: Callala Matters, did you want to make an opening statement?

CAT HOLLOWAY: Yes. Thank you for this chance to highlight issues facing Callala bay and beach due to unsustainable development based on outdated planning. There is much questioning of what is a historical or legacy or zombie DA. At the heart of this matter is why these zombies have risen from the dead. The problem is driven by the housing shortage and high real estate prices that present an irresistible business opportunity to landowners. But most zombie DAs won't solve a housing supply crisis, especially not with affordable, accessible and sustainable housing identified, by this Government, as needed. The Government's planning systems are being

abused, and it is the next generation that will pay the even higher price for this crime against Australia's nature and culture.

Most so-called zombie DAs in New South Wales are on sensitive, valuable, diverse and, in some cases, high-risk coastal land. Many are in locations that are expensive and distant from existing infrastructure and workplaces. Coastal Residents United has identified over 90 environmentally destructive DAs, and their cumulative impact spells death by a thousand cuts. We don't even know how many more are out there. Manyana is a particularly tragic example, likewise are our neighbours in Culburra. The Shoalhaven is the most visited region outside Sydney because of its pristine coastal habitats and villages. Current and past legislation—often upheld in the Land and Environment Court—protects landowner profits, selling out our communities and future generations.

In Callala, despite 97 per cent opposition in over a thousand submissions, the previous Government approved residential rezoning of 40 hectares of healthy forest, home to three endangered species, including the greater glider, and four others that are threatened. The decision relied on the 21-year-old Jervis Bay Settlement Strategy 2003 that had already been superseded twice. But even the old strategy required development to be contingent on safeguards for endangered species and solutions for bushfire and flooding threats. None of these were addressed before zoning approval. Councils must regularly update local environmental plans and local strategic planning statements, yet developers gain approval for plans in conflict with these modern standards. It makes no sense. If the Government won't take responsibility for regulating historic DAs, will it own the resulting environmental legacy? How does this align with Labor's promise to avoid new extinctions? Tough choices now could prevent worse outcomes later.

At the Nowra round table we were disappointed to hear Mr Barr state that this Government won't be able to regulate historical development consents. If that's the case, what purpose does this inquiry serve? Fixing this broken planning system requires legislative courage in the following ways: a moratorium until DAs are evaluated under current standards; limited powers for the Minister to revoke DAs; mandatory DA registration in a central database; genuine progress required to qualify as development commencement; and reassessment for significantly changed circumstances, such as catastrophic bushfires. If historical development consents cannot be reined in, at least the State should ensure that more environmentally destructive DAs are not created by irresponsible planning actions. Historical developments will not leave a legacy of affordable housing. But they will destroy biodiversity, they will defy modern infrastructure needs, they will disregard Indigenous heritage and they will permanently take from the Australian people, and all who visit our shores, the gift of our unique New South Wales coastline.

The CHAIR: I want to acknowledge that Manyana Matters have submitted a document that they would like to be tabled. Is that correct?

PETER WINKLER: Yes, correct. It's a copy of our opening address and some supplementary points.

The CHAIR: We will deal with that, as a Committee, later today. I might open the questioning. I will go to Callala Matters. I want to touch on something that you mentioned in your opening address, which was that under an old development plan or an LEP—local environmental plan—the area in question for one of your concerns had historically been identified by council as a place for future development. Is that what you were saying and alluding to?

ROB BARREL: Yes. As far back as 1996 the Jervis Bay Regional Environment Plan included 330 hectares adjacent to Callala Bay as potential new urban release. Fast-forward to 2003 and the Jervis Bay Settlement Strategy acknowledged that a large part of that 330 hectares is actually significant native vegetation and drains into Lake Wollumboola, so that number was pared back to 35 hectares. Those 35 hectares, the development was contingent on resolution of threatened species, localised habitat corridors, significance of vegetation within the subject land, buffers to wetland and local water courses, and flooding and bushfire measures. So even back in 2003 these constraints were put on the possible—and they said "possible"—expansion of the settlement. Instead of 35 hectares, the developer applied for 40, did not resolve any of the things I just listed and was given permission to go ahead, despite the fact the Jervis Bay Settlement Strategy 2003 has been superseded by the Shoalhaven Local Environment Plan 2014, the Shoalhaven Development Control Plan 2014 and, more recently, the Illawarra Shoalhaven Regional Plan 2041.

The CHAIR: In that development case, when was the consent given, roughly?

ROB BARREL: In 2014 the State took it off of the local council. I don't remember what the terminology is for that, but the State deemed it a "significant development" or something like that and took away the planning from the local council. That was in 2014. In 2019 the developer finally managed to lodge the first of their requests to have the zoning changed. There were two. The zoning had to be changed and a biodiversity certification had to be achieved. Those were both applied for in 2019. Those two are supposed to run side by side. The biodiversity certification is supposed to identify what land should be developed and what land shouldn't. Nevertheless, the

previous State Government approved the rezoning even though the biodiversity certification had not yet been approved—and still has not been approved. The rezoning happened in 2022, to answer your question.

The CHAIR: The time lines, the interplay between a consent versus council plans and then the involvement of the State—they're all important time lines to try and bring together. I wanted to try and do a little bit of that. For Manyana, in both your submission and your opening statement you referred to that bushland that was protected from fire, essentially. Can I put it to you that obviously there are the roads that go around that particular block of land and that, for the firefighting team, that would have made a sensible place to try and put in a block because if it got into the land that's proposed for development, it could have got across to existing houses that back onto that land. That road would have been a sensible place to try and fight the fire and stop it from progressing, wouldn't it?

PETER WINKLER: Yes. Do you want to take that one, Bill?

BILL EGER: The fires that occurred during that period we know were right off the books. I was actually part of a command team for division east on New Year's Eve. I'd been working on the Currowan fire with the RFS for a couple of months trying to stop it. Time and time again, not one of those barriers held. The Currowan fire jumped over everything. I don't believe that putting any development in these bushfire-prone areas is a sensible idea anymore. Certainly prior I think to 2020—these things had been around, as in the case of zombie DAs—I guess we didn't know any better.

The information regarding those Black Summer fires has yet to be released in full. I believe its probably due to be released around 2024 or 2025. I think hopefully there are going to be some really strong recommendations in that toward building developments in these bushfire-prone areas. At Manyana, we only have one road in and one road out, and that was blocked for over a week. We had 3,000 tourists in there, and we had to try and get them out as well. That was pretty horrendous. They had families. They were trapped in their cars. They had no water, no food, no medication. It was a big issue.

Mr CLAYTON BARR: Thanks for your service, Bill, in terms of fighting fires. Is it fair to say that we thought that we had the strength and the muscle in firefighting terms to take on anything that came our way?

BILL EGER: No.

Mr CLAYTON BARR: Well, the lesson that we have learnt now is that clearly we don't.

PETER WINKLER: We don't, yes.

BILL EGER: Correct, and in that village of ours we have one small RFS unit. Currently we have another DA that is—I guess you can't necessarily call it a zombie DA.

PETER WINKLER: It's a planning proposal.

BILL EGER: It's a planning proposal and the council are fighting that in the Land and Environment Court at the moment, and that planning proposal was made around the early '80s, if I get my facts—around that period.

PETER WINKLER: I should correct that. There is a DA lodged and the council has refused the DA and it's now in the Land and Environment Court.

BILL EGER: That one exists on a historical fire corridor and it's also flood-prone land as well. On that site are SAII entities. I'm not sure whether you're familiar with that term—serious and irreversible impact entities. That's a State-listed entity that's sort of another criteria above critically endangered. In that area, those SAII entities, in one particular case, don't exist anywhere else on earth. The developer wants to take part of those SAII entities, and other endangered ecological communities, on there in a fire corridor. I'm no expert on fire, but we have a number of members in the community there, and myself as well, who recognise that if that development was to proceed then how to fight a fire that would get into that development would prove almost impossible just because of the terrain and the safety risk to firefighters trying to put out those fires that may occur in there. Because that development may catch alight, it could then blow all the way through the rest of the village in Manyana. It's a very serious issue there that we see from a firefighting perspective.

Mrs JUDY HANNAN: To both parties I guess, we have these zombie DAs there, and, as you know, our Committee is not able to go backwards; it's looking forwards. What sort of price will it be for people who purchase these block of lands to bring their houses up to the current regulations for fire? To Manyana Matters—because we were just talking about fires—I presume when people put their house application in, they're going to be under an incredible amount of extra cost to make their houses fit fire regulations. Would that be something you could comment on?

PETER WINKLER: Yes. The BAL ratings for houses will be high, and that is an additional impost in terms of the cost of housing. I'd like to go back to your opening comment. We don't believe that there is a limitation on this Committee to consider retrospective—looking at the legislation with that in mind. We've read the terms of reference. We believe that may be an opinion, but we don't accept that nothing can be done about these historical consents or zombie DAs. If we have time, we could suggest a few of them. We think that the situation is so bad, both from the view of the environment and also in terms of public safety, that it's actually essential that the State Government plucks up the political will to deal with these in a reasonable way.

We're not saying that the Government should just walk in and send the owners packing. Of course it needs to be a just outcome, but we really don't think it's right to put a limit on this to say, "We're going to fix zombie DAs in the future." To come back to your main question, yes, there will be additional impost being in a fire zone, or being in a flood zone, for that matter. The other thing that we are aware of is, before the houses are built and at the point where a subdivision is being created, the RFS is not in a position to impose or even recommend new and current conditions for that work to be done. They are also constrained by the approvals of a zombie DA. If a DA was approved in 1975, the RFS is constrained by the conditions of that approval. That puts public safety at great risk.

Mrs JUDY HANNAN: You're saying they can't increase the BAL rating?

PETER WINKLER: No. We're talking about the work being done on the subdivision. When the DA goes in for the house itself, it will be considered in terms of contemporary BAL rating. But there's a lot of things that the RFS makes recommendations about, including turning circles, access, how their fire engines will get into places and all sorts of other things that they make recommendations and requirements about that they're not able to do with zombie DAs. These are a public risk to both human life and property. This is a really serious matter that should be taken into account. I would imagine, but I don't know, we are mostly dealing with fire-prone areas in this particular DA that we're talking about. It would be worth finding out if the SES is similarly constrained by a zombie DA in flood-prone areas.

Mrs JUDY HANNAN: That's really good information. Who knows what the legislation will do in the future, but our Committee has to look at what we've been given. That's really good information.

The CHAIR: Callala Matters, do you want to comment on Ms Hannan's question?

CAT HOLLOWAY: Do you want to go ahead?

ROB BARREL: Yes, we both will. I'll just reiterate what Manyana Matters has said. The head of the local fire department here has gone on record saying that they would not be able to protect these 40 hectares of forest were a fire to [audio malfunction]. Some major changes would have to happen in order for a fire to be successfully battled in this development which is surrounded on three sides by forest. It was fortunate, as we've said, not to burn in the fires four years ago, although the fires got very close to it. I'll turn it over to Cat.

CAT HOLLOWAY: There's another point I wanted to raise. When you first started this question, you mentioned the extra costs of these kinds of fire requirements. The same applies for a lot of infrastructure. In a lot of these places—for example, in Callala, Culburra and Manyana—the developments require a huge amount of extra infrastructure to be created. Those costs are passed on by developers to the consumers. One estimate has every single lot including another $85,000 cost to the consumer from these infrastructure requirements. In many cases, the developers are making money from that extra $85,000 saved, but they are not, in fact, paying for the infrastructure. That comes back to councils and government.

Mrs JUDY HANNAN: Do you think there is a possible way to alert people that housing built on these subdivisions that they buy is going to be more complicated and more expensive or have more restrictions on them?

CAT HOLLOWAY: Yes, I think that's a really crucial point. It's a very good point because mainly the developers are marketing the idea of providing affordable housing when that is so, so far from the truth in most of these coastal villages where they're extremely distant and extremely expensive places. So your point is very important.

Mrs JUDY HANNAN: I know that doesn't help because if they do the subdivision, they'd have stripped the land back anyway.

Ms MARYANNE STUART: In the interest of time, I won't ask any questions but I will make a comment. I thank you again for the time that you have given this Committee today. I also thank you for your advocacy, not only on behalf of your communities but also for nature.

ROB BARREL: You're welcome.

Ms KELLIE SLOANE: Yes, a big ditto to Ms Stuart's comments as well. I'll only touch on a very brief aspect here and that is the definition of commencement in the current legislation. Would anyone like to expand on that for me briefly and any potential changes the commencement definition could support?

PETER WINKLER: That is a really important issue. The original definition of commencement way back was just stick a shovel in the ground, one peg and off you go. Thankfully, that was revised in the legislation in 2021 and is somewhat improved. But we now understand that the courts have interpreted this very loosely, and so it's still pretty easy to demonstrate commencement with very little input. This provision should be tightened to require more substantive work to have been undertaken in a certain amount of time to avoid the consent lapsing. This amendment should apply to all development consents, regardless of when consent was granted. This is a really important thing.

It wouldn't be a case of coming to someone who's holding a zombie DA, or a historical consent, and saying, "You haven't commenced—out you go," but you would give them time to comply with the new regulations. This is just one of many things that could be done that would address this. It would stop people just sitting on these lands indefinitely. Regardless of when consent was granted, it should apply. Further, development should be required to be completed. There should be a completed thing as well, again—not too onerous. We're not saying it has to be completed the day after tomorrow, but there shouldn't be an opportunity for someone to start something and wait 20 years or 40 years to continue it. This is just one example—and we'd really love to have time to go into many others—where some kind of impact on zombies that exist could be brought into legislation that would help a lot. We're aware of several others as well.

Ms KELLIE SLOANE: Does anyone else have any comments?

ROB BARREL: I'd like to defer the remaining time to Peter, who has a lot of information in front of him that you folks should hear.

PETER WINKLER: Do you have any other questions before we launch into a bit of freewheeling?

The CHAIR: Why don't you freewheel for five minutes and then we'll figure out if there are questions at the end of that?

PETER WINKLER: Do you want to take that one?

BILL EGER: Let me take the first one. The current law has bad social, environmental and financial outcomes. With regard to social, it's placing communities in danger from fire and flood risk, as we've spoken about. Environmentally, it threatens animals, plant species and ecological communities. Financially, under climate change, the cost to government will only increase—I think this is a really important point—where communities are affected by these inappropriate developments in fire and flood zones. Going to your point earlier about the cost of housing in there as well, in one of the developments that has been approved recently—and we're still fighting it—they have to plant, I think, 378 trees, or something like that, and there are covenants on each block to look after those trees until 2042 or 2044. That's quite a thing for someone to take on if they're going to buy one of those blocks as well. I guess there are a lot of costs involved all around infrastructure costs.

Another thing too is we've got grey-headed flying foxes there. Those trees that are going to be planted are for the grey-headed flying fox. There are a lot of communities that don't want those flying foxes around. We love to see them, obviously, but to put a community right in the middle of a flying fox habitat is just nuts as well. I know it's illegal and everything, but people may end up poisoning them or whatever because of all the mess they make on the cars et cetera.

PETER WINKLER: The 388 trees that are planted, whether they're tubestock or trees, will take so long before they become feed trees and habitat trees for the endangered grey-headed flying fox. That population will be functionally extinct well before those trees grow up, so it's a fairly ludicrous proposal in a residential subdivision. There are a couple of other things I might address. We often hear the term "sovereign risk", which is some sort of catchall. It used to be to do with national security and spies and things, and now that particular term is pulled out as a, "Wow! This is a sovereign risk." For us, we think it's a fairly ludicrous thing to use that term.

But what we'd like to say about that is that there is no greater sovereign risk than the biodiversity crisis and the extinction crisis, which is only going to get worse with climate change. Whatever sovereign risk is being touted, the number one risk to our nation, to our State and to our world is climate change. I know there's another inquiry dealing specifically with climate change, but these two inquiries must work together because it's climate change that's creating the additional fire risk and it's climate change that's creating the additional flood risk. At some point the State Government needs to step up and deal with these things and not make the situation worse by allowing umpteen zombie DAs to pour in at a time when the landowner or the developer thinks it's financially advantageous to them.

We alluded to the issue of whether this all goes back to councils. We've been dealing with Shoalhaven council through this entire campaign. Our case and so many other cases were part of 3A approvals, or State-significant approvals. In those cases, our legal advice—and this is not from some sort of local solicitor who doesn't know what they're talking about; our legal advice is top end—is that there is no mechanism for council to deal with those particular DAs that were State Government-approved. So definitely in that case. Then, of course, we have the situation where you can glibly say a council should just go and withdraw the DA and rezone the area. Can you imagine what would go on in the Land and Environment Court as a result of that? But the State Government, of course, has powers and can do things and should do them.

Ms KELLIE SLOANE: Let's say that the State Government decided to intervene, if you have a landowner that has an asset there that has got the value of the DA, what would your solution be? Hypothetically, how would you solve that issue?

PETER WINKLER: Let me talk about our specific one and I think we'll be able to generalise from that. The 20 hectares that we're trying to save from the subdivision was bought by the developer for approximately $3.8 million. If the DA was refused, then we would be in a position to purchase that land. Even Rob Stokes, the previous planning Minister found $3 million amongst the coastal rehabilitation plan or something like that. We have a fundraising thing, Foundation for National Parks and Wildlife. There is approximately $60,000 in that and we know that if we had a figure that we could aim for, we would raise that money, buy it and create the Manyana Special Conservation Reserve. That is our vision for the future. We think it could be done.

The issue there is, is that developer allowed to put future profit into what they're asking for? For example, they could sit around and say, "Well, if we went ahead with this development, we would make"—I'll pick a figure out of thin air—"$30 million." We don't believe it's right and we believe that the State Government already has the ability, because it's in the legislation—I think I could quote it for you—to say only actual costs that the developer or the owner has incurred since the DA was approved. So we're not saying there are no costs and we're not saying that they should be sent packing with nothing, but we think it should be reasonable and that it's not right for them to be profiteering in this situation.

Ms KELLIE SLOANE: If I had a house in Sydney, where people often get a DA and do that work of putting the DA through to add improvement to the value of their home and that becomes—so you'll most certainly have a fight on our hands with that.

BILL EGER: The legislation apparently, from our advice, says no.

Ms KELLIE SLOANE: Bill, you mount a very compelling argument around the risk to citizens if they end up building and living in that area. Where would you suggest that housing is built? I know you said you wouldn't suggest it anywhere in that fire-risk area. Where could it be built locally?

BILL EGER: When you say "locally", are you talking about it specifically in the Manyana area or in the Shoalhaven generally?

Ms KELLIE SLOANE: In the Shoalhaven generally.

BILL EGER: Liza Butler, and I think every member there, whether Federal, State, shadow or whatever, seem to agree that the local town centres have to go up. That's where the services are. It's not only keeping them pristine. You want to have a place for your tourists to go that's beautiful, of course—everybody loves going to these places, for a reason. Therefore, keep those places and keep people safe. We've no schools there. We've got one shop basically at Manyana. To bring in another 3,000 people or something like that into that place, we'd need medical services, we'd need schools, and there's no land for any of that anyhow.

PETER WINKLER: Shoalhaven council has taken this matter really seriously. There are large areas that are already designated for new housing and also for taking the main two town centres—that's Nowra and Ulladulla—up for higher rise, affordable housing. This can all be done without having to sacrifice the pristine environment along the coast at a time of climate change, when it doesn't make any sense to be clear-felling forests.

BILL EGER: An important point there is that, right now, at Manyana there are approximately 20 homes for sale. At the last census, 60 per cent of the homes were unoccupied. Why would you destroy critically endangered forests for super-expensive holiday homes in that environment?

CAT HOLLOWAY: Is it okay if I jump in here at this point?

The CHAIR: Yes. That will wrap us up.

CAT HOLLOWAY: To back that up, we have a similar or even worse number, potentially, in Callala. At Callala Beach, we have more than 60 per cent of properties unoccupied and over 30 per cent in Callala unoccupied. It goes back to this idea that we're providing this much-needed housing, which isn't true. In fact, in

our case, the developers owned this land for a long, long time and didn't spend anything close to $3.8 million. The land has, until now, until the rezoning, been established as not able to be developed because of its sensitivity. The idea that there's an entitlement built into every single development plan is flawed. That's not the case. In our case, it's very much not entitled. They have created the belief of entitlement that isn't there.

The CHAIR: We will wrap it up there. Thank you for appearing before us today.

PETER WINKLER: I would just like to say one last thing for the State Government. Pluck up the courage and the political will to deal with these zombie DAs. We'd really appreciate some courage here.

The CHAIR: Thank you. You will be provided with a copy of the transcript of your evidence for correction. We also flagged with you that the Committee may develop some supplementary questions to send out to you. We ask that you respond to those within 14 days, if that's possible. If it's not, please talk to us about that. The Committee will now take a short break and return at 10.45 a.m.

(The witnesses withdrew.)

(Short adjournment)

Mr ROBERT APPO, Member, Board of Directors, Tweed Byron Local Aboriginal Land Council, before the Committee via videoconference, affirmed and examined

The CHAIR: Thanks, Mr Appo, for taking the time to be with us again today, and thanks for previously hosting us up at Fingal Head's surf lifesaving club and talking to us there as well. It's great to see you again. I know for sure we're not going to see any whales today. You might; I'm not sure where your office is. I welcome you. Before we start, do you have any questions about the hearing process?

ROBERT APPO: No.

The CHAIR: Would you like to make a short opening statement of up to two minutes?

ROBERT APPO: Yes. Thank you so much for the opportunity today. Having met with you guys before to talk about some of the issues that we face with the subject of the inquiry, I thought it would be a great opportunity for us to discuss some of those matters further. It's probably more the cultural heritage outcomes that we'll focus our attention on. I am really happy to be able to give further evidence.

The CHAIR: Perfect. That's a great place to start. Let's start with cultural and heritage assessments. Mr Appo, you can probably give us a better understanding of timelines and things like that. In my mind, I can only imagine that going back to 1980s, 1990s and the noughties, we weren't doing that much—possibly nothing or certainly not enough—around considering cultural and heritage issues. I'm not saying we've got it perfect in 2024. In terms of a timeline, when did we start actually paying attention to this and making it a part of a development consent process? Could you spell out a bit of a timeline for us at all? Is that something you can do?

ROBERT APPO: Yes. The legislation was changed in 2010, I believe, which included the provision for due diligence assessments for most building activity. Previous to that, we would generally be engaged for larger development applications, and they were quite large greenfield developments as well. It gave us an opportunity to discuss with the developer how to protect our cultural sites. It's a great opportunity to discuss all of that up-front before any plans are actually made or laid out so that we have an opportunity to discuss the sites that may be across that landscape and how the developer could avoid harm, which is how the legislation is worded anyway—avoidance of harm rather than destruction of cultural material.

The CHAIR: Even today, if a developer was seeking a consent on a site that had significant cultural concern, you wouldn't be able to stop it? You would just be able to advise on how to minimise harm?

ROBERT APPO: Our preference would be that, yes, the development wouldn't impact on our cultural sites. But we also understand that that may not be able to happen as well. The process through New South Wales legislation does ask for avoidance of harm up-front. If harm can't be avoided, then a negotiated outcome with the Aboriginal stakeholders is also a pathway forward for the development, which would be through an Aboriginal heritage impact permit and the report that goes with that as well. That's the opportunity for Aboriginal stakeholders also to have an up-front discussion with the developer around some of the outcomes of what that harm might look like and what that further investigation may actually uncover as well.

The CHAIR: Mr Appo, I can't remember the phrase or the term that was used when we met previously, but there was a distinction between a hard site that could be seen and touched versus the intangible link and journey and connection, which was more spiritual and traditional. Can you talk to us a little bit about that and the distinction between those two things?

ROBERT APPO: Yes, sure. I guess the tangible sites are the ones that are physically present. Under the legislation, any Aboriginal object is protected under the National Parks and Wildlife Act. Things like middens, stone axes or scarred trees are all protected under that legislation. The one thing that isn't protected is the intangible heritage, and that could be for things like sitelines, for example. Up here in Tweed, we've got Wollumbin-Mount Warning, which is a very important cultural site but also a very important siteline. Where we met at Fingal is one of those locations. You can see Wollumbin from the coast. I guess anything that impacts on those sitelines as well would also be an impact to cultural heritage. However, the legislation doesn't currently cover intangible heritage, under that legislation.

The CHAIR: That is all really important stuff that I appreciate, and you touched on that when we met with you previously. Kellie Sloane was unable to join us on our trip up your way, Robert, so this is the first time you will hear from her.

Ms KELLIE SLOANE: Forgive me then if I am overlapping with stuff that the Committee has already heard. I'm interested in the stories and the concerns you hear from local Elders about new developments in the area and a sense of loss of power over their cultural heritage.

ROBERT APPO: Like I was saying, our preference would be to have a lot of those discussions up-front with developers. We have a lot of development in our area up here in Tweed and Byron shires. We are losing our tangible Aboriginal heritage sites across the landscape as development progresses, so we are trying to do the best we can to, one, protect those sites and keep them as intact as possible but also aware that development is happening. We're also, as a community, in need of affordable housing opportunities as well. The land council is a large landholder itself. We probably are one of the biggest landholders in the Tweed Shire. We also at some stage will probably have to look at dealing at some point with our land. What we do with that will be a decision for our members further down the track. But we also are a participant in this space as well.

Ms KELLIE SLOANE: This might be a little bit off topic. You're a landholder yourself and potentially developers for the benefit of your communities. Are there particular considerations that you would bring into development sites? Have you discussed that before? Has that come before the land council?

ROBERT APPO: Opportunities with developers, are you talking about?

Ms KELLIE SLOANE: Yes, just in terms of how you would make sure that cultural sensitivities are front and centre of any development opportunities that you carry out yourself.

ROBERT APPO: As a land council we always have encouraged developers, if they are going to develop and they are developing on land that has cultural sites associated with that land, probably to embrace that instead of fearing. There's an awful amount of fear in the non-Aboriginal community about Aboriginal heritage: everything from "Don't identify a site, otherwise Aboriginal people might take it"—there might be a native title claim under the Aboriginal Land Rights Act, and we as a community have always been open to working with developers.

We certainly don't want to be perceived as being paid to get outcomes for developers, because that is not what we are a part of. Our main goal is to protect our cultural heritage sites. If that is by negotiating with a developer to turn that site or those sites into parks that are exempt from that development, then that is what we do as well. As much as we can, we try to influence the developer to not impact on those sites, which also saves going down the pathway of a pretty expensive Aboriginal heritage impact permit as well. On the other hand, we are also advocating for our community from an affordable housing opportunity as well, knowing full well that a lot of developers don't or can't or won't provide affordable housing. It is something that we always are very open about discussing as well.

Ms MARYANNE STUART: Nice to see you again, Mr Appo. Thanks for your time. Could you kindly explain to us the cultural heritage assessment process? With that, it would be helpful if you could state how the process actually gets kicked off. Is it the department of planning that contacts the local Aboriginal land council? Is it the local council?

ROBERT APPO: We have a bit of a unique situation in Tweed, because Tweed Shire Council has undertaken an Aboriginal heritage mapping project, back in 2018, which they managed to embed into their LEP. It effectively means that there is a mapping layer of confirmed and predicted sites within the Tweed shire. Even before a development application comes in, anyone can access that mapping to understand better whether or not cultural heritage may be a consideration for that development site.

Tweed Shire Council is the only council in New South Wales that has this mapping. I understand that part of the Aboriginal heritage reforms in New South Wales will have a mapping layer or a mapping component that goes with that legislation, but it's still being discussed. Once a site has been identified, or there could be a potential site identified there, the developer is encouraged to make contact with the local Aboriginal land council at Tweed Byron, who then engage with the developer to better understand that landscape approach of where the development is as best we can—if we can identify where that site is or what that site potentially contains—and then there are provisions under the National Parks and Wildlife Act that kick off from there, depending on what is found out on that site visit.

If there is cultural heritage and likely impacts, a cultural heritage assessment is required under the legislation. Basically, it means a cultural heritage consultant and, usually, an archaeologist is engaged with Aboriginal stakeholders to do that assessment. However, if harm isn't proposed for those sites then the development can proceed, but under some guidelines that, if anything is discovered as part of that work, then all that work would stop and these other provisions would kick in as well. That's why our land council works in that way, because the legislation is actually worded very much around avoidance of harm. If harm can't be avoided then there is a lengthy process for the developer to follow.

Ms MARYANNE STUART: Is the land council happy with the way the cultural heritage is assessed, or would you be seeking improvements? If so, what would they look like?

ROBERT APPO: Like I said, we lose a lot of our cultural sites each year to development; there's no getting away from that. We also save a lot of sites from being destroyed or disturbed as part of development. As we've walked through this process, we've also become a lot more savvy about how we work with developers as well. There is an obligation on the developer to not disturb a site if they can, but we also understand that there may be times when disturbing a site is the only option. There could be a block of land that, for instance, has a site that half covers the entire development site. We always try to get the best outcome for our community as well. If that means getting some dates and some further information about those sites then we do that as well. Our preference would be that no more sites are harmed and we can work around those sites rather than destroy them. But the legislation also does provide for harm as well.

Mrs JUDY HANNAN: Thank you very much for your time today. I'm worried about any unintended impact that we might have when we put our recommendations forward. Are there any Indigenous groups or titles with DAs that are very old that we could impact? Are there any unintended consequences that could occur?

ROBERT APPO: For Tweed Byron in particular, we have one DA that is outstanding, which is a tourism development. We inherited that DA as part of our land claim, which was quite unusual at the time. So at the moment, we have one DA that still needs to be realised. But, again, we're probably more open to changing the original DA because it's not in keeping with our community or cultural values. We'll probably look at getting planning advice to amend that DA in the future.

The CHAIR: Mr Appo, without going into too much detail, there was a piece of land with a DA consent for a tourism development?

ROBERT APPO: Yes.

The CHAIR: And the land council then became the owners of that DA with the tourism consent on it?

ROBERT APPO: Correct, yes.

The CHAIR: I really appreciate your time again today, and thank you for taking the time to be with us and help us out. This is now on the formal public record, whereas, when we came and visited previously, we were just trying to expand our understanding. We thank you for both occasions. You will be provided with a copy of the transcript of your evidence today for correction. The Committee may also develop some additional questions in the coming days that we want to send over to you. If we do that, could you please return those within 14 days. If that's not possible, please talk to us and we'll figure it out.

ROBERT APPO: Yes, sure.

(The witness withdrew.)

Ms DENISE GALLE, Director, Tweed Shire Council, Planning and Regulation, before the Committee via videoconference, affirmed and examined

Ms CHRIS CHERRY, Mayor, Tweed Shire Council, before the Committee via videoconference, affirmed and examined

Mr TROY GREEN, General Manager, Tweed Shire Council, before the Committee via videoconference, sworn and examined

The CHAIR: I welcome our next witnesses from Tweed Shire Council. Thank you for appearing before the Committee today to give evidence. Before we start, do any of you have question about the hearing process?

TROY GREEN: No.

DENISE GALLE: No, not at all.

The CHAIR: Would somebody like to make a short opening statement of up to two minutes before we start questions?

DENISE GALLE: Certainly. We had hoped that we might get a quick two-minute introduction each, if the Committee would allow that.

The CHAIR: Yes.

DENISE GALLE: I'm a planner, qualified, of 25 years, having worked solely in New South Wales under the New South Wales Environmental Planning and Assessment Act 1979. What I would like to say and make the Committee aware of is that a DA that's issued today almost becomes a legacy DA tomorrow because the application is awarded the protection of any legislative changes that are made tomorrow. The consents remain valid for five years, or in the case of major projects, 10 years.

The Tweed Shire Council has numerous examples of legacy applications. We have a Wooyung development resort that was approved in 1988 and gained lawful commencement by virtue of the re-pegging of the site after the development consent was enacted. It involves some 400 units, multiple lakes, all within one kilometre of the ocean. It's a development that would be very difficult to get approval for today and one that still sits dormant, and the community are fearful that that consent can be enacted. We have major project development sites in greenfield areas that were approved in 2010—some 14 years ago—and they have not been enacted. We have industrial subdivisions that were approved in 1996 that were not approved in accordance with today's legislation around new endangered ecological communities. We have four-wheel-drive tracks that were approved as recreational facilities in our rural areas that were approved in 1996. Those developments commenced, and then ceased to commence for many years, and have been dormant for 20 years, and a new owner comes along and wants to enact that four-wheel-drive park to the surprise and distress of those local residents.

I guess I'd like to say to the Committee that I respect the New South Wales planning system. I understand that commercial decisions are made on property valuations every day based on our planning system. I respect and understand that, having worked with it for over 25 years. What I think that this Committee has the power to do is really undertake a review of that legislation, not so much looking back but certainly looking forward and acknowledging that the system can change. You could change the system so that a DA approved today doesn't become a legacy DA tomorrow by virtue of this policy of "use it or lose it". That's certainly what I'd be recommending to the Committee.

TROY GREEN: Thanks, Denise. I just [audio malfunction] to the Committee—

The CHAIR: Troy, I'm going to interrupt you because you're glitching in and out.

DENISE GALLE: Troy, we can't hear you. You're going to have to run in here as well. Sorry for the technical difficulties. He's in the next room. He can run in and sit in the hot seat.

TROY GREEN: Apologies. I want to put to the Committee that the current planning legislation makes it really difficult for councils to undertake their fit-for-the-future infrastructure planning, as well as then plan for council finances in a sustainable way. By way of example, Tweed Shire Council is its own water and wastewater authority. Two of the major projects submitted in our submission, and mentioned by Denise, are greenfield developments at Kings Forest and Cobaki. Each are planned to accommodate between 20,000 and 25,000 people, so they each roughly have around 5,000 lots each.

In 2010, when these were approved by the State, they were old part 3A developments. Our council chose to help facilitate these greenfield development sites by prioritising and borrowing money to commence the upgrades of our water and wastewater facilities. That required council to borrow roughly $130 million and, under

the current planning system, councils need to fund the interest on those repayments with only the capital being refunded by the development proponents. We've completed those upgrades. We completed those about 12 years ago, so we've had a $130 million loan for 12 years. To this day, not a single lot has been released in either of those greenfield development sites.

The impact that that has had on our existing ratepayers is that their water usage has had to increase to the point that 40 per cent of their bill now goes towards infrastructure costs to facilitate greenfield development as opposed to their current water usage. We believe that system needs to change because the New South Wales planning system facilitates the ability to start and commence, but there's no stick to bring land to market. We don't expect the first lots to appear in Kings Forest until 2025 and we're expecting only between 150 and 300 lots in the first precinct. That's some 15 years after approval was first granted. Land banking is real, and the current legislation facilitates it. We would like to see the State Government introduce "use it or lose it" provisions going forward, or to introduce some type of mechanism to encourage developers to bring land to the market, once it's rezoned for that public purpose.

The CHAIR: Thank you, Mr Green. That's a stunning example of a challenge ahead of us all. Mayor Cherry, do I congratulate you on your re-election recently?

CHRIS CHERRY: Thank you very much, yes. We just did go through all of that, so I'm very happy to be here. I speak from the community perspective in that legacy developments create a lot of mistrust in the community. That lack of transparency really reduces the trust that people have in council and the legislation to protect them. When they see EECs being cleared or development in known acid sulphate soil areas, they know it's wrong. To know that we can't stop it because of an approval that was given around 40 years ago—there's a real expectation in the community that council should be able to do something. At this point, we really feel like we can't. Legacy developments don't show up on our DA tracker website at all either, so people don't have any ability to know that a legacy DA may exist right next to a block of land that they buy. That creates a lot of distrust as well because there's no transparency on that front as well.

With our experience in 2017 and 2022 with the flooding, we've obviously made some changes to our flood risk planning, and there are obviously the changes that have come in with the biodiversity conservation legislation. None of that can be taken any notice of by these legacy DAs. We continue to see people being put back in positions that they shouldn't be. I think we've got the experience of the Wooyung one-peg development that Denise mentioned earlier. I'd love to give you some more details on that, but right now that case would have been absolutely perfect for the use of the clause in the EP&A Act that allows revocation of DAs.

It used to be, I think, section 124 and now it's 4.57, but because that clause requires compensation, I don't think that clause has ever been used in its history. I'd like to see the Government create a central fund for compensation payable under section 4.57 when revoking a DA where it can be shown that a DA will result in either serious environmental harm or place future residents at risk of serious harm. With climate change, with increasing biodiversity, we need to see that kind of a central fund as an investment in resilience because it's obviously going to save a lot more money in the future that would otherwise be spent on recovery and future mitigation.

The CHAIR: Thank you all so much. Mr Green, I'd like to come to you about that incredible amount of debt that council's taken on to upgrade the water treatment services, specifically that development. Has the developer brought to council changes to that original consent, or have they gradually been moving through their approvals and paperwork et cetera, or is it that literally it was approved, and then it's just been asleep for all that time?

TROY GREEN: It's been a slow burn. That is probably the best way to put it. There have been minor modifications and there's more talk than there is action in reality. We've got a really good relationship with the proponent, Leda developments, but often it will be that they will look for a problem or cause not to do something rather than just try to move ahead. There have been some delays with changes to the way the State Government—provision for essential services like electricity, for example, where the proponent now needs to fund and pay for that, as, in my view, they rightly should. That has added some delay. But, in reality, there is just no stick there to bring it to the market. Often what I see is proponents sitting back and waiting for the right market conditions to then drip feed land onto the market to sustain the best profit that they can.

The way I look at things is that government rezones land for a public purpose, and then it goes and invests in infrastructure for a public purpose. The reason that land was originally rezoned in the 1980s was to facilitate a need for residential housing. When the State provided approval for the part 3A in 2010-12, it was because there was a need to meet housing targets and housing requirements. I dare say that if that land had started to be brought to the market in 2010, where there was a 20-year development, and if we were halfway through that development today and we were having 500 to 1,000 lots released across both of those sites each year, we would not have the

housing crisis that we have in the Northern Rivers to the extent that we have today. And there wouldn't be the high variable prices in land in Tweed and the Northern Rivers as there is in a 100-kilometre vicinity to us in areas like Logan, Ipswich and even on the north side of Brisbane, where we are talking about land that is double or triple the price.

The CHAIR: Ms Galle, my understanding is that minor amendments can be made to an existing consent, but there is a threshold where if it is significant change—I cannot remember the term or phrase—then, and only then, can that development consent be called back into a full review process. Could you clarify that for me?

DENISE GALLE: Certainly. The provision you are talking to is section 4.55 of the environmental planning Act, where people can undertake a modification, and the test or threshold for the modification is substantially the same development. That "substantially the same development" test is what we call both qualitative and quantitative. It is not just a numbers game where you are changing it from a 500-lot subdivision to 501, but if that additional one lot was to clear an EEC, an endangered ecological community, then that might be such a significant change that it wouldn't get through as a modification. The difficulty with the Leda development applications that the general manager was just discussing is that, particularly the Kings Forest development that is undertaken by Leda Holdings, is that it was actually approved as a concept plan first. There is a hierarchical concept plan approved over the top, and they can come back in with modifications to the concept plan that don't necessarily have to meet that "substantially the same" test. It is a different legislation suite when dealing with State Government legislation.

The CHAIR: So a concept plan might be for a 10-stage development where there are 500 blocks in each stage, and it is like a big macro.

DENISE GALLE: That's correct. That is what we have in the Tweed. We have some of the old part 3 applications and, even under the old SEPP 71 coastal SEPP at the time, we have these legacy applications where the concept plan sits over the top and then they come in with project applications. So the concept plan approves the entire subdivision area which is, in our instance, 960 hectares at both Kings and Cobaki—thereabouts—about half of which has residential land and half of which ends up being environmental conservation. Then there is typically what we call a project application that the State Government has assessed in the first instance. The State Government often approves the first application for, say, bulk earthworks across the entire site and the first stage of development. That is what has happened at Kings Forest. The subsequent applications then come to council. At Kings Forest we haven't really had those subsequent applications come to council yet because we are still dealing with modifications to the concept plan and modifications to the first project application to which the State Government was the consent authority.

The CHAIR: If Committee members will bear with me, I have one more question. In your incredible experience, have you seen a substantial modification ever bring a development consent back to a council, or are you aware of one somewhere in New South Wales?

DENISE GALLE: Sorry, just repeat that. Have I seen a substantial DA or a—

The CHAIR: A consent exists and the developer wants to make a substantial modification, which then requires it to come back in for a full reconsideration.

DENISE GALLE: Yes, absolutely. We see it regularly. We have people try that all the time: They come in via the modification route, and we often have to get them to withdraw the application because we don't think it meets the "substantially the same" test. Typically, the motivation from the applicant to do so under a modification is that they know that lodging a new application brings into account all of the new legislation that is required to be considered under today's laws. So if they can get through via a modification, that is definitely their preference. The mayor and I have a case at the moment in west Kingscliff. It's known as the Gales Holdings precinct of west Kingscliff. It was an application lodged in 2005 and approved by the Land and Environment Court in 2008.

We have a new DA on foot at the moment where the applicant is trying to do a change of use via, for want of a better term, an amending DA. But, instead of the fill being sourced from a quarry—which would be sand material—they want to bring it in via truck. And, instead of it being brought in by partial hydraulic means, they want to use the local road network and bring it in whenever fill becomes available. The argument before the Land and Environment Court of New South Wales at the moment is how much of the new application has to be reassessed against today's legislation, or is there a base case of the original consent prevailing. That will be a really interesting case for this Committee to keep an eye on—to see where the Land and Environment Court sits on that—because it's where the two worlds of legacy applications and new standards collide.

The CHAIR: Fascinating. Thank you. Mr Green, did you want to add to that?

TROY GREEN: Adding to that, one of the things that I see as the GM is the resources that are consumed in our organisation doing new DAs over land that already had multiple consents. Kings Forest and Cobaki is a perfect example: There are multiple consents over that. They never wish to surrender any of those as their plans change. That adds complexity as we move forward. We've got a parcel of land in Kingscliff where we've got three consents for development over it and we've got a new DA that changes it all over again. Each time, the proponents come to us and say, "There's a housing crisis. We really need council's support to get this DA through." The last time we did, it was around 28 townhouses. As soon as they got the approval, it was on the market and it was sold. The new owners bought it, and they want to do a subdivision of just 12 residential lots.

What that does is bog down the councils in assessing DAs that actually never translate into houses on the ground. There's a fundamental problem, I think, at the moment with the State's KPIs in assessing a council's performance. A council's performance is assessed on how quickly they assess a DA. There is no KPI that assesses and monitors which DAs translate into a construction certificate and a development on the ground. That should be the focus. If that's not the focus, we're not going to achieve what the State's trying to do in meeting the housing targets.

The CHAIR: Wow. Thank you. There is so much to unpack there.

Mrs JUDY HANNAN: I just have a question for the general manager. You talked about the amount of money that you've got wrapped up in the development with the water—being your water authority. You were just talking about housing issues. Does the fact that you've got all that infrastructure for water wrapped up in a development application that was approved some time ago limit you in looking at other places where you could have housing and supply water to?

TROY GREEN: That is a fantastic question. It most definitely does. That's a really perverse outcome of these legacy developments. We've got an instance at the moment where there's a proponent in Pottsville—a really reputable developer that has developed most of the Casuarina town centre—that would like to move forward with the development. The reality is that the council simply can't afford to go and invest perhaps $80 million in a new wastewater treatment plant without any guarantee that that land is then going to be developed, because that proponent could simply turn around to sell it to somebody else and we've got a piece of infrastructure that sits there as a white elephant.

Just to give an example of how perverse this can be, we're already replacing the filtration system in the water treatment plants that we built to facilitate these new developments, and yet we haven't had the houses to do it yet. The system is broken. The planning system needs to change and to recognise that it's not just about a council's performance to get the DA out of the system that will translate to a home. The only way that you're going to translate to homes on the ground is to have some type of performance measure, a taxation lever, some type of financial penalty such as land tax or rating that will entice proponents to develop land for the purpose it was rezoned for. It will have a bigger impact, in my opinion, than any reform to negative gearing or capital gains.

Mrs JUDY HANNAN: I know we've got this beginning—you've got to substantially start something—but do you think that the thing needs to be completed by a reasonable time? Would you hesitate a guess at five years, 10 years?

TROY GREEN: My view is—and Denise and Ann may have a view as well—dependent on the size of the development, you've usually got a good idea of how long the lifespan of that development is. For Kings Forest and Cobaki, for example, a 20-year lifespan. Realistically, they probably need, by the time it's approved, 10 years to get the construction certificates and start bringing the land to the market, but then [audio malfunction] after year 10 [audio malfunction].

Mrs JUDY HANNAN: You have frozen in time.

The CHAIR: Mr Green, you've frozen. I might get you to pause that thought for a second. We might go across to the mayor and Ms Galle.

DENISE GALLE: It's a very difficult question because the 10-year time frame that Troy is talking about already exists for Kings and Cobaki. There is an argument that a development of that nature takes a long time to get going. However, there was an opportunity for them to start. It was intended as a 20- to 30-year time frame, but it has been sitting for 15 years dormant and that slow burn that Troy is talking about. You have to shorten up that period of the 10 years and break it down into segments more so. You have to threaten to pull back the rezoning, or pull back future stages, if there's not a commitment to bring, say, 50 lots to market every year. You want to see that progress going along.

The 10 years starts at the moment and then, once you've started the 10 years, it's valid forever. The mayor might like to talk about that with Wooyung. It's not the time period that you've got to talk about; it's about bringing

in a new control that talks about, okay, you at least have to have a construction certificate then within five years of that 10-year period, and within 12 months or 24 months of getting the construction certificate you must then bring to market 50 per cent of the development—putting in more parameters like that. If that had happened with the Wooyung example, then it would never have got built and anybody who wanted to do something on that land today would be governed by today's standards.

CHRIS CHERRY: Absolutely. We have been putting forward the proposal that councils be allowed to rate residential subdivisions in accordance with what they have the approval for. After a period of five years, perhaps, every year from then on we can then charge them a percentage of the rates that they should have been producing by that time. We really think that would give an incentive for the landowner to move forward.

Mrs JUDY HANNAN: That would keep your finances looking much better than what they will when you've got no rates coming in to pay for the infrastructure you've had to provide. I have one last question. What about when developers release land and they drip-feed it to keep the prices high? Do you think that stages should have a certain amount of release made at once so they can't manipulate that situation with supply and demand?

CHRIS CHERRY: Absolutely. In our shire, we have got most of our residentially zoned land in the ownership of one landholder. He's doing exactly what you're saying. It's a very hard thing for a council then to do any strategic planning in terms of planning for our population growth. Any levers that you can put in place to say a certain amount needs to be released by a certain time would be definitely beneficial for all councils and communities.

The CHAIR: Thank you very much. This is just fascinating. Ms Stuart, over to you.

Ms MARYANNE STUART: I agree, Chair. Can I start off by thanking you all for your time—we have had discussions previously—and for coming back and being involved in this hearing. As the Chair has indicated, your experience is invaluable for us at this time, looking at these issues, so I wanted to thank you very much. Ms Galle, you mentioned that on the current DA tracker there is no history. There's no indication for anybody buying a property today that there is a historical DA next to them on the land next door. That's a really important point, I have to say, for folks to consider, because we often hear the expression "buyer beware". How can we look at that particular issue? What would you recommend as a solution to that going forward?

DENISE GALLE: I think you need to tighten up the conveyancing checks and balances that are undertaken through conveyancing companies. We often get technical officers that were previously working in legal firms as conveyancers. When they come into the system and they actually start to understand the planning system and the GIPA system—which is the government information property access legislation that enables the public to review councils' records—they really start to understand that what they did as a conveyancer barely touched the surface of what you would really want to do if you were buying a property. If I was buying a property and I wanted to know what was previously approved on any land that adjoined that property, I would actually lodge my own GIPA application with the council and ask for any and all historical approvals on the adjoining blocks of land.

I don't think conveyancers are doing that at the moment, and I don't think they're aware that they have to. The problem with that, as well, is you might get a copy of the development consent and the development consent might say it was approved as a rural industry, but you don't really understand what that rural industry was. Was it for a high-intensity rural industry or was it for a lower key rural industry that you might be buying in next door to? The development consents actually have a condition 1, typically, that says the developments have to be approved and developed in accordance with the original statement of environmental effects and the original plans. If people don't know to ask for that statement of environmental effects and ask to see the original plans—and also ask to see any modifications that might have occurred to those applications over the years—you won't get access to those documents.

You'll only get access to the documents that you ask for. It requires a level of knowledge to know what to ask for. Sometimes when you get that first bit of material back, there might be something in there that refers to an acoustic report, and you go, "Oh, great, I want to see that acoustic report." Then you need to lodge another GIPA application to get access to that acoustic report. It's a little bit like unravelling a piece of string. If you don't know how to unravel that string, you won't get all the information that you need to make an informed decision as a resident.

CHRIS CHERRY: Could I just add to that quickly? I've got the experience of being a landowner right next to the Wooyung one-peg development. As a landowner, you would see a development application come through and get approval but then lapse. That DA lapsed. They applied for an extension to extend the time for commencement, but it was refused by council. For all intents and purposes, the public sees that it has collapsed and there's not going to be anything happening. But then the court came in and changed the definition of physical

commencement, or set the bar very low for what physical commencement is. Now nobody really has any way of knowing that a DA that has previously been approved won't come back to bite them.

DENISE GALLE: I'd just like to add that one of the big things in the Tweed is that we were subject to significant flooding. We had severe flooding in 2017 and again in 2022. So we learn from those and we redo our flood modelling, but any development application that was approved prior to those events and had the benefit of a legacy application could get developed tomorrow under that legacy development application and have no regard for the lessons learned from the 2017 and the 2022 floods, which were deemed of national significance and were emergency situations for this area. I think we really have to turn the focus back to the need to undertake ecologically sustainable development that has taken into account new biodiversity legislation, new flooding information and new information on the impact of acid sulphate soils. I think it's almost negligent of the New South Wales planning system to allow these legacy applications to sit in the system that don't then end up representing our community's understanding of current best practice planning.

Ms KELLIE SLOANE: I was interested to know—maybe, Ms Galle, this might be in your area—how far back does the record keeping go at your council for developments that have commenced? I appreciate that some councils have difficulty here because they might be surprised by DAs that come forward that have commenced before record keeping went digital, as an example.

DENISE GALLE: Tweed Shire Council was one of the early adopters of the digital system. We went in 2015 to a digital file. Our record keeping on our DA tracker does go back quite a way because our different systems from what we had pre-2002 and then post-2002 comes onto our DA tracker. I want to say that our DA tracker goes back to about 2009. If it's linked nicely in our system—it's a little bit hit and miss, unfortunately, depending on how the data was entered into the database—sometimes our DA tracker can even have information back into the '90s.

As I said to you, it won't necessarily have the current statement of environmental effects or even the development consent, but it will at least have the descriptor of the development. We have legacy applications dating back to the '70s and '80s that we're still having to enact. Pretty much any approval that was issued in the past—some of them don't even have DA numbers; they're called an old town planning permit number, or a TP number, under the old interim development orders that existed in 1960—can still be enacted today. We have to try to navigate that and apply a 2024 legal and legislative knowledge to how on earth we could enact a consent that was approved in the '70s or '80s.

TROY GREEN: It's a good question, though, because we have dealt with two legacy applications this year where our records and the standard of the record keeping is a little bit grey, and they both relate to the plans—the interpretation of the plans and the way they were stamped. It is a good question because the standards that people did in the '60s, '70s, '80s and '90s, and the type of letters of consent that councils gave, and the assessments, were at a much simpler level than the complexity that we see in the modern New South Wales planning system. Often we're being asked to interpret what consent was given based on information that may be grey.

Ms KELLIE SLOANE: Does that also relate to verifying commencement for some of those legacy DAs?

DENISE GALLE: Yes, absolutely. Typically, those commencement questions end up in the court of law. What happens is, if it's grey and we can't determine commencement easily—in which case the evidence was potentially out of date or not specifically clear—we actually don't make a decision on whether a proponent has lawful physical commencement until they force our hand. How they can force our hand is by lodging a modification today, because you can't determine a modification on a development that's lapsed. People will test the waters with us and lodge a modification for a simple change, noting now that the New South Wales Land and Environment Court requires that change to be of a physical nature. Before the legislation was changed, we used to get people saying, "I want to change one word in the development consent," and that's the modification that's going to test whether the development is alive or not. Often that modification will then end up in the Land and Environment Court for determination.

Ms KELLIE SLOANE: My final question is: We are referencing big developments here, big parcels of land. If any changes are made or recommended by this Committee, could there be unintended consequences on homeowners who want to have a DA for their own property? Should there be different rules for that?

DENISE GALLE: We get just as many inquiries on house applications. We're probably just talking to you about the bigger applications. A house approved today is not going to comply with the rules of tomorrow. A house approved today becomes a legacy application tomorrow as well. I don't think they should be held to different standards. If you think about the changes that have come out of the New South Wales planning system over the years around the BASIX requirements for energy efficiency and safety around bushfire protection provisions, I

think we have to be really careful that whilst we're in a housing crisis, now is not the time to reduce our standards, which could put our communities at risk from a safety perspective. I think the legislation is well founded in terms of providing good standards from a health and safety perspective to put our community first. That's what our priority should be. I think we need to work on making our DA lodgement systems easier so it's not so daunting for people to have to lodge a new DA for a house, but making sure that it gets built to those higher bushfire standards and safety standards

TROY GREEN: One of the ways I would suggest the Committee deal with that is that for any changes you make going forward, I would have a line in the sand from today. "This is a new rule for developers from today." The Committee might give mind to the fact that, okay, you're going to end up with a backlash from some proponents or some industry bodies if you just do it retrospectively. A way to do that would be to phase it in. You say that there is a line in the sand for any new developers today and any legacy developments have 10 years to bring that and develop it or it is lost. You're not foregoing what has been in the past, but you're giving them a time frame to really think about it, and if they haven't done it within that time frame, well, they weren't serious about it in the first place. It might also be a way to bring forward some development and much-needed housing in a housing crisis.

CHRIS CHERRY: Having said that, the community is really looking to this inquiry to help us to address those legacy ones, not only the new ones, and 10 years is a very long time to allow those legacy proponents to bring something forward. I think when it's very clear that there's environmental harm that might be occurring or physical harm for new residents, we really need some stronger action.

The CHAIR: If I can touch on one little thing about what I believe to be an inherent unfairness with your current rate base picking up the tab for an expansion of your water sewage treatment—$130 million, I think you said. My assumption would be that your residential base would include a significant number of pensioners on fixed incomes?

TROY GREEN: Correct, some 22 per cent.

The CHAIR: When you impose those interest costs and expenses, that must be difficult for 22 per cent of your residents to factor into their budget?

TROY GREEN: Correct. I think the scary thing for myself is that if you read some of the rhetoric coming from the likes of Alan Kohler—and I actually quite like some of his commentary—but some of his commentary is that government should abandon developer infrastructure charges and not fund any of them, and that it should be funded by government itself. What that actually means is that it needs to be funded by ratepayers themselves or taxpayers themselves, which is just obscene. It's bad enough that we can't charge the interest on the money that we borrow. At the moment, it's really jointly funded. But when you think that when we've borrowed that money for the period that we've borrowed it for, in effect, it's been a free kick to the proponent because the infrastructure is in the ground and the existing rate base are paying for the interest on it, and we haven't been able to pay down any of the capital. It's just perverse.

The CHAIR: Thank you. I could probably spend another couple of hours.

Ms KELLIE SLOANE: Yes, it's so interesting.

The CHAIR: We really appreciate your time. You will be provided with a copy of the transcript of your evidence today for any corrections. The Committee staff will also potentially email you some additional questions that we, as a Committee, might develop in the coming days. If we do that, we would ask that you return these within 14 days if that's possible. If it's not possible, please talk to us. I thank you again, sincerely, for the contribution you have made in today's inquiry.

(The witnesses withdrew.)

Ms CORALIE McCARTHY, Director, City Futures, Shoalhaven City Council, before the Committee via videoconference, affirmed and examined

Mr JAMES RUPRAI, Director, City Development, Shoalhaven City Council, before the Committee via videoconference, affirmed and examined

Mr GORDON CLARK, Manager, Strategic Planning, Shoalhaven City Council, before the Committee via videoconference, sworn and examined

The CHAIR: We apologise for the delays in today's proceedings, due to things outside of our control, with a fire alarm going off this morning. We welcome our fifth panel of witnesses, joining us online from the Shoalhaven City Council. We thank you for the time that you provided us when we were down your way a few weeks ago. Before we start, do you have any questions about the hearing process?

CORALIE McCARTHY: No.

JAMES RUPRAI: No.

GORDON CLARK: No.

The CHAIR: Would anybody like to make a short opening statement of up to two minutes before we begin questions?

CORALIE McCARTHY: We wanted to start by acknowledging the Committee and the group. Thank you for the time to make a submission but also to speak to you today. For us, community awareness and advocacy is really high in the Shoalhaven for zombie DAs. There have been long-running representations from our elected council as well. We've got particular examples that go back to 2008, so this isn't a new issue. In the Shoalhaven, demographic and values have changed over the last 30 and 40 years. Shoalhaven has experienced a high turnover of population. Its amenity and proximity to Sydney and Canberra has brought a whole lot of new populations and, with that, different expectations and values.

What we're seeing is strong values on local character, biodiversity and, of course, with the natural disasters, awareness of natural hazards and risks. We've got environmental diversity and significant risk that surrounds that. We've got diverse environmental resources from the coast to the marine, the aquatic and also the forests. The resources and natural hazards are high. Recent natural disasters over the last few years have put a lot of pressure on development but also retention of natural areas. The built environment and community values are really strong. We've got 50 towns and villages. Each has a unique local character. That's very much valued by our communities. Historical consents are not necessarily reflective of those cultural values or, in fact, current legislation.

Our submission covered three key points and I'll only touch on them briefly, acknowledging it's only two minutes. First is the difficulty in managing the existing consents. That includes not only the difficulty in identifying and understanding them but also the ability to revoke or to manage in time with current legislation. There is also the challenges in managing future consents, including simplified measures and ways in which we can make sure legislation and community values are upheld. We cover a lot in our submission around that. Third is the inability for public information, awareness and education. There is a real black hole here in the Shoalhaven around the community being able to not only understand what consents are in their neighbourhood but for them to understand their role in that.

The CHAIR: We heard from one of the community groups down there this morning that, in their village, the empty-home factor could be as high as 60 per cent. You just mentioned you've got 50 villages across your area. Do you have any sense of what percentage of houses in some of those villages might actually be empty because they are investment properties and holiday places?

GORDON CLARK: It's something that council has obviously tracked and kept an eye on through time because of, basically, the role that short-term rental accommodation plays in the Shoalhaven. Council over the years has made submissions to different inquiries. There was a government inquiry into short-term rental accommodation probably a decade or so ago. But we, obviously, through the different demographic tools that we've got, keep an eye on, essentially, the number of unoccupied dwellings as a representation—not necessarily a hard number—of the prevalence or otherwise of short-term rental accommodation. What we tend to see is that the coastal area, the places like Currarong, Culburra, Manyana, Bawley Point and Bendalong, tend to have higher absentee owners. And then, obviously, as a result of that, you would expect a higher percentage of short-term rentals. The bigger towns and villages, like Nowra, Bomaderry and Milton-Ulladulla, whilst they have short-term rental accommodation, it's not as significant a percentage in terms of their housing supply.

JAMES RUPRAI: Mr Chair, if I may add to that, the short-term rental accommodation component, particularly the allowances through the SEPP, are certainly creating some burden on overall housing supply in the rental market. Just as a measure directly of rental rates, tracking the vacancy rates over the past couple of years within the Shoalhaven, we got down as low as a 0.5 per cent vacancy rate. That's a hard number, based on the number of properties that were available directly for rent to our local community. That has risen over the past 18 months as the market has restabilised, but we are still well below the 3 per cent metric that we would be looking at as a stable number for vacancy rates across the LGA.

GORDON CLARK: Probably one of the figures I should have mentioned when I spoke was that, historically—and it's pretty consistent at this point in time—Shoalhaven has had a number somewhere between 4,000 and 5,000 dwellings at any point that potentially were on the short-term rental market. We did some analysis a couple of years ago of different platforms, where you can find out numbers. We drew numbers from the Government's own register and some of the other demographic tools that we use. At any point in time it's between that 4,000 to 5,000 mark across the whole of the city.

JAMES RUPRAI: Not to labour the point too much, given the time, but we did discuss this through the financial sustainability of local government inquiry recently. The Shoalhaven, I think, by and large, is very much not opposed to tourism and tourism-related industries, given that that is one of the largest economic injections for the local area. However, the ability for council in particular to structure any additional revenue mechanisms, or the infrastructure required, and offset the impacts of short-term rental accommodation on the broader housing market is something that we have not quite come to terms grappling with across the State at a local level. It's a slightly separate issue, but it does tie into the overall housing availability.

The CHAIR: The infrastructure question is exactly where I wanted to go to as well. How does a council like the Shoalhaven, with multiple development consents that are sitting out there and existing—and you are the provider of water and sewer services as well. Where are you guys at in terms of having already invested into some infrastructure for development consents that you thought would come online and haven't, versus who is carrying the responsibility and the cost of that?

GORDON CLARK: I'll take that one to start with. Essentially, council's existing two key infrastructure plans, being a development servicing plan for water and sewerage, and council's contributions plan for all the other pieces of hard infrastructure—essentially, they factor in and include an anticipation or an expectation that zones of developable land will be developed. For example, take the case in point of the subdivision down at Manyana. That is already provided for and allowed for in council's development servicing plan for water and sewerage, and council to a certain degree has made investment decisions in water and sewerage based on the future development of that land. There's an allowance, for example, in the sewerage treatment system for that subdivision already.

JAMES RUPRAI: But in saying that, Mr Chair, effectively, while there may be developer contributions that are written into the planning framework, where developments that were intended to be serviced by that linear infrastructure have not come online, council has not collected ongoing rate or other revenue, so that cost in maintenance and the ongoing burden of that infrastructure is spread further across the remaining rate base.

The CHAIR: Yes, got it. Just to be clear, my understanding is that for some of these developments that the community is quite concerned about across the Shoalhaven, historically the planning controls of council—the LEPs or whatever the case is—there are some of those villages that you had planned for expansion and identified them as suitable for expansion. Is that true and is that still the case that you did think that some of these small communities would grow and that you had, in your planning instruments, planned and given a sort of a signal to that effect?

GORDON CLARK: Without prolonging the discussion, the short answer is yes. Previous councils or councils of the past have prepared land use plans. There are some key marker dates in Shoalhaven: 1964 is the first one, 1985 is the next one and then 2014 is the next one. At different points along that way, council has made a conscious decision to zone land for future development. I wasn't here obviously in 1964 and 1985, but I would make the assumption that at that point the council had a future growth strategy for those areas, and that's why those areas were zoned the way they are now.

The CHAIR: And just to be clear, every council across New South Wales would be doing this. They would be identifying areas for future growth.

GORDON CLARK: Correct. Every council in the State has to have a local strategic planning statement. That is legislated, and then dropping out underneath that are different strategic plans like local settlement strategies or local housing strategies, and then those then go on to inform local environmental plans. The thing I would note, though, is that the strategy process can be quite long-winded and quite truncated. The LEP process itself can be

quite truncated and long-winded. Our latest LEP took six to seven years to go through the process. Essentially, some of these sites, whilst they are emerging now in terms of concerns, they have taken a long time to get to where they are now. I acknowledge the community's concern in that space, but I also acknowledge that strategic planning in New South Wales is not something that happens very quickly and that's not just in this council area.

The CHAIR: Yes, agreed.

CORALIE McCARTHY: I guess further to that we have targets now to meet as a local government area around housing and growth, so it's not so much that council has issue with the growth. I think the concerns that we would echo from the community is the lack of support to contemporary studies, the lack of support for making sure that contemporary legislation has some consideration rather than the 20 years or 30 years or 40 years old of the previous assessments.

Ms KELLIE SLOANE: We've been hearing this morning from other local groups who are very concerned about proposed developments at Manyana. I'd like to talk about the 20-hectare parcel at Manyana that's been recently given environmental approval by Tanya Plibersek. What concerns do you have about that zombie DA being developed into housing in the context of the recent bushfires?

JAMES RUPRAI: It is a very relevant question for the Shoalhaven. It's one of a number of growth fronts that have laid latent, if you will, for a number of years. The EPBC approvals that have recently come through have obviously sparked a range of community concern given that that was one of the last triggers that the developers will now need to see some development come out of the ground, effectively. It speaks to a larger issue—which is the issue that my colleague, Ms McCarthy, has just touched on—which is historic consents not necessarily having had to meet contemporary studies and contemporary objectives. If that DA were to come in today—if that proposal, the subdivision and associated studies came in today, they would be markedly different. They would be held to a much higher standard.

I think that is one of the key issues in looking at historical consents, whether they are existing or from here moving forward. What does the system potentially look like in New South Wales to mitigate and prevent this issue from occurring. There's very little that council, either as a body politic or an operational arm, can do around the specific applications and developments that have been approved and now effectively have the impetus to commence. It goes largely to the issue of the contemporary nature of those developments and this system not, in effect, supporting councils to drive a more modern set of studies, outcomes and requirements for those particular developments.

Ms KELLIE SLOANE: In the modern context of the recent trauma for that community, do you believe that development should go ahead? I'm hearing you saying it's quite fraught.

JAMES RUPRAI: I'll let Mr Clark comment on that in some detail, but I wouldn't mind giving a final comment on it.

GORDON CLARK: I guess at the start, what we can comment on is the resolved position of council. I note that this is the resolved position of the former council, not the current council. This was considered by the previous council, not the new council that's been in for a month or so. The previous council's position, quite clearly, was that it favoured the acquisition of this land by the State Government to essentially resolve the issue. We made a number of representations ongoing over probably, I don't know, maybe a three- to four-year period. Essentially, we made a number of direct approaches to Government requesting that the Government step in and acquire the subject land. That was the council's resolved position at that point. The current council does not have a resolved position, as such, on that site. The desire previously was for it to be brought into public ownership.

JAMES RUPRAI: Indeed. Thank you, Gordon. My comment would be that I don't think it's explicitly a staff position to either support or oppose the particular applications in at the moment. What I would note is that we would be of the opinion, from a development point of view, that if we were to re-interrogate that development now under the modern legislative requirements, and the background studies that would be required and the current constraints, it is likely it would look markedly different.

Ms KELLIE SLOANE: That's helpful. These are the prime examples of what we're trying to unpack in this hearing and in this Committee: The potential problems that are faced in modern contexts—whether it's flood, bushfires or developments—right across the State. I think this is another example of that. Your community has clearly expressed its concerns.

GORDON CLARK: The other issue with that particular consent, which you may have heard about this morning, is that it was actually issued by the Minister for Planning. There's a lot of expectation on council, for example, that the council can step in and revoke or modify that consent. That is not the case. Council has no legal power to actually step into that consent because it was issued by the then Minister for Planning.

The CHAIR: Good point.

JAMES RUPRAI: It speaks to section 4.57 issues, which I had thought we may get to as part of the questioning here. There are other examples. Manyana is a very fresh example and it is certainly a very complex set of circumstances for which our community is very interested in at this point. There are other examples that we're dealing with currently around the LGA. Woollamia is one such example of a subdivision where the previous approvals did not account for flooding and bushfire constraints. We have no immediate power to look at revoking that consent without due compensation, under the legislation. But the lodgement of further DAs for houses may mean that some of those lots are in effect, potentially, sterilised. So the bringing to life of a historic development consent and subdivision may not actually yield the intended impact on housing and other development by virtue of the now current requirements and restrictions on land.

GORDON CLARK: I think that's something we are seeing more and more of with some of these older consents, particularly ones that were issued by the Minister for Planning under the old part 3A. We have another site in a similar setting where, potentially, it's relying upon a consent issued by the Minister for Planning some years ago, but then the future DAs that flow out down the line from it will have to be considered by the council. So essentially we have a bit of a disconnect, potentially, between the consent that was issued many years ago and the future consents that the council may, because of the mechanics of that consent, have to consider.

Ms MARYANNE STUART: I don't have any questions but I want to thank you for your time both for when we met down there and for today. Your experience and the cases that you are referring to are extremely valuable to this Committee. So I just wanted to say thank you very much for your time.

Mrs JUDY HANNAN: Following on from the questions, you talked about the disconnect and having to deal with the applications that now come in for houses. What about the width of streets for fire trucks to get in and turn around, that sort of thing? Is that something that you'll have control over or is that also stuck in the previous recommendations from years ago?

JAMES RUPRAI: These are very real issues for us. I've not dealt with a specific case around emergency service access here; I have on my previous council. That is a very important and critical aspect for any subdivision design. So, yes, the infrastructure standards do change. Our contemporary infrastructure standards would differ from those that were implemented, say, 15 or 20 years ago. They may be very real issues that we and the emergency services deal with. Again, the previous council that I worked for had an issue where Fire and Rescue could not perform an exercise in a new subdivision without dragging parked cars out of the way. That's not a suitable situation for any resident to be living in.

Effectively, what it might mean is the council is in a position where, in the future, if those issues are apparent through tree removal or critical surface infrastructure installation, or even something as simple as blacktop road width, those standards are shifted to meet the needs of, say, larger firefighting trucks or emergency service vehicles, that's a cost that would effectively come back for local government and the broader rate base to bear. So it's an issue that we haven't quite come to terms with. We haven't grappled with it in its totality at this point in time.

The CHAIR: Mr Ruprai, I'm going to take you up on your offer to talk about section 4.57. There is potential for council to revoke. Is that right?

JAMES RUPRAI: Yes. The legislation is very specific, Mr Chair. The authority or the body who has issued the consent, be it the planning secretary or council, depending on the delegation, that consent authority does have the ability under 4.57 to revoke or modify development consent. That doesn't come without its caveats, and it's very clear in the Environmental Planning and Assessment Act that the revocation or the modification of a consent does entitle the affected party to due compensation. So there are cases, which are backed up by case law in New South Wales in some instances, where the revocation or the modification of a consent is a very valid option. That may be for a range of reasons. There are now pollution standards or noise standards or different infrastructure standards.

As it relates to this issue, I think it becomes an overly burdensome solution to a growing problem across New South Wales. We don't know the total number of what we may class as zombie developments across the LGA at this point in time. If all of those were to come with a directive to potentially modify or revoke, and council was the issuing consent authority, the total compensatory amount could be in the order of tens or hundreds of millions, which council and the greater rate base just does not have to entertain as part of a solution to that process. There certainly is the ability under the legislation, but it's not without the burden that would come to different levels of government. The same would be said for the State, where the department, in effect, is the consent authority and would be responsible for that compensation arrangement. That's something that I think requires a bit more discussion and analysis before arriving as the solution, potentially, for dealing with historical consents.

GORDON CLARK: If I could add to that too, there are a couple of nuanced points in that clause. One which I've already touched on is that that cause doesn't apply where the Minister was the consent authority. A number of the historic development applications in Shoalhaven that the community are concerned about were issued by the Minister under the former part 3A. The clause, the way it's written now, potentially couldn't play a role in those.

The other thing which is important to note is that clause also requires the council or the State Government to be in the middle of a planning process—so, in other words, have made a decision, for example, to change the zoning on a block of land but not necessarily have finished that yet. We're in the process of changing the zoning. That's one of the reasons now why we're looking at revoking the consent, because it's inconsistent with where we're heading. In a lot of the cases in the Shoalhaven, I don't believe that the council has formed an opinion on any alternate zoning for some of these sites that would then trigger the use of that clause.

The CHAIR: In simple terms for me, that's because if you went down a path of potentially rezoning something that had been residential and you now wanted to make it environmental or something like that, you would essentially be putting yourself and the council on hook for the use of section 4.57 and exposing the council to compensation right from the start.

GORDON CLARK: That, plus there's established case law in the plan-making process whereby if a council effectively de-zones or rezones a parcel, it effectively sterilises it. Let's say, for hypothetical's sake, if it takes it completely from residential, which allows a potential development outcome, to a zoning that allows what I'll call a zero development outcome, that is tantamount to essentially reserving the land. Through that process as well, a proponent can seek compensation. What you would potentially see in a scenario like that is that if it's rezoned from residential to environment protection, there is at least a latent development use that can still occur. So, for example, it might be a single dwelling or it might be some other form of development so that it cannot be suggested that you are completely sterilising the block of land and, as a result, effectively reserving it for some future conservation purpose.

The CHAIR: Ms McCarthy, I have a question for you. I think the National Housing Accord has given your council a target of 4,900 homes over a five-year period.

CORALIE McCARTHY: Yes.

The CHAIR: Many of the objections that we've received, or concerns that have been raised with us, are around the flood and fire environment—flora and fauna. Given that, where do you see the future of the LGA? How do you think the LGA could acknowledge the sensitivities of the flora and fauna and flood and fire but still meet the target housing of the National Housing Accord?

CORALIE McCARTHY: That's a really great question, and I think it's not a simple answer. For us, the growth strategies matter and having ability for our communities to grow in the right way and in a sustainable way is important. We can't just see development come in Nowra and Ulladulla, for example. We need to consider that and that's a part of a body of work that's being undertaken by the strategic planning team over the next 12 months. Council hasn't resolved that. But, at the end of the day, what I think personally is that whatever happens, it needs to consider contemporary studies and modern values and councils need a way to help manage that process. Regardless of whether it's in Huskisson, Culburra, Manyana or Nowra CBD, consideration of environmental values—access, parking and natural disasters and bushfires need to be considered. At the moment the inability for us to manage that, particularly with the lack of clarity around the substantial commencement definitions and the demonstrated commencement—it's just impossible to manage.

The CHAIR: On commencement, who clarifies that commencement has taken place? Is that a role that council goes out and does—a site inspection to clarify? Or is it the developers themselves bringing forward some evidence of commencement?

JAMES RUPRAI: In years gone by councils played a role in confirming substantial commencement. Case law over the past seven or so years—and there is a very salient case, which is *Buyozo v Ku-ring-gai Council*—set a different threshold, if you will, for substantial commencement. We don't explicitly inspect or confirm substantial commencement for any development at this point. The onus is really on the developer to prove that they have or have not substantially commenced. If a construction certificate is applied for or if there is any real commencement, then I think it is taken now, through the case law, to have been substantially commenced and operationalised as a consent; whereas, in years gone by, commencement could have been something as simple as a survey or survey pegs having been sunk into the ground. That is no longer the case so many of the development applications that may be deemed zombie developments will not have met the level of what we would deem—or the industry more broadly would now deem—to be substantial commencement.

GORDON CLARK: Further, if I can go back to the previous question, I have some detail about the dwelling targets we've been given. So of 4,900 dwellings over the next five years, from our very quick analysis, there's a gap of 2,500 homes. Essentially, what our current strategies allow for versus the targets, there's a gap of 2,500 homes, so potentially we need to find space or additional zoned land or different zoning settings for 2,500 more homes than we had previously expected. Why is that so? Essentially, it's basically because of how those numbers were worked out. To be brutally honest, they are not very nuanced. There was a big number taken at a national level. That was divided down to a State level and that was divided down to a local government area, and we got 4,900. It's not actually based on what zoned land we have, what capacity we have and what's the best community outcome for the Shoalhaven; it was just a top-down number that was given to us.

The CHAIR: Very fair comment. Thank you so much for giving us your precious time. You will be provided with a copy of the transcript of your evidence for corrections. The Committee may develop some additional questions that it would like to send you. If we do that, we kindly ask that you return those answers within 14 days, if that's possible. If it's not possible, please get back in touch with us. I sincerely thank you for your precious time and wisdom, and helping us on this journey.

(The witnesses withdrew.)

(Luncheon adjournment)

Councillor RUSSELL FITZPATRICK, Mayor, Bega Valley Shire Council, before the Committee via videoconference, sworn and examined

Mr ANTHONY McMAHON, Chief Executive Officer, Bega Valley Shire Council, before the Committee via videoconference, affirmed and examined

Mrs EMILY HARRISON, Director, Community, Environment and Planning, Bega Valley Shire Council, before the Committee via videoconference, affirmed and examined

Mrs SALLY QUINNELL: I am the Deputy Chair of this Committee. I note the absence of the Chair. He has had to leave, and I apologise for that on his behalf. I welcome our penultimate panel of witnesses who are appearing via Webex this afternoon. Thank you for appearing before the Committee today to give evidence. Before we start, do you have any questions about the hearing process?

RUSSELL FITZPATRICK: No.

Mrs SALLY QUINNELL: Before we begin the questions, can somebody please make a short opening statement of no more than two minutes?

ANTHONY McMAHON: We did discuss this. We made a written submission to this inquiry. We're more than happy just to answer questions and spend the time answering questions to stay focused.

Mrs SALLY QUINNELL: Thank you for that. Before we begin the questions, I inform witnesses they may wish to take a question on notice and provide the Committee with an answer in writing within 14 days after receiving the questions. We will now move to questions.

Ms KELLIE SLOANE: Thank you for your submission and for appearing at this inquiry. I have a broad question to start with. What difficulties do councils face trying to ensure residential developments progress while also minimising the environmental impacts of development?

EMILY HARRISON: I think we have had a number of challenges over time, particularly because legislation and also the environment change as time progresses. One of the examples that we gave in our submission is around a development that was approved over 30 years ago but has been actively developed in stages. It's a staged development, and it has been progressively worked on. However, from a resident's perspective, this later stage is, at best, seen as what's been called a zombie development. I think one of the key things is around the definition of what are historical development consents versus what are zombie developments, which is a phrase that is used quite colloquially. From our perspective, a historical consent is one that's been issued some time ago but has been acted on over time. The example we gave of the Mirador development is one of those.

Ms KELLIE SLOANE: Which one, sorry?

EMILY HARRISON: Mirador—whereas there are potentially other DAs that haven't been acted on other than an initial, small bit of work that used to qualify as commencement has been undertaken. That is, I guess, more what people refer to when they talk about zombie developments. But, from our perspective, they're two separate things.

RUSSELL FITZPATRICK: From the original approval date to what has happened now is a lot of regrowth in the council environment. We get rapid regrowth. We always have biodiversity offsets in, and we've set up the biodiversity legislation, which substantially changed, which makes it even harder for us to actually assess and judge what is right and to move forward under the legislation.

ANTHONY McMAHON: One last piece I was going to add to that and which was part of your initial question is that what we have tended to do in trying to assess our future available residential land for housing development is look at what development consents are in place. And while we include some of these historical consents in those numbers, it might inflate what's actually achievable or realistically feasible. A challenge we've had in recent years too, when reassessing our residential land strategies, is being realistic about what actually can be turned into housing.

Ms KELLIE SLOANE: On that front, could you estimate how big the issue of land banking is? How many of these developers are banking that land and then you have no certainty as a council about what the potential is for the building of housing in the area and your planning?

RUSSELL FITZPATRICK: I would say, across land bank—we have had reports, but a lot of our land banking is actually smaller holdings. They're not major developments like this one. The one we are talking about has been a staged development over 13 stages and now is our major residential area in the whole shire.

EMILY HARRISON: I think one of the challenges we have is that we don't necessarily have a register that we can rely on that gives a list of all of the development consents historically that have been approved, haven't necessarily been acted on and that might fit within this category. We have done some manual work to look at what we think that might be. It's not that there is a register that we can have full confidence in and that we know exactly what's there.

ANTHONY McMAHON: One of the other things—if we're talking more broadly about historical development consents, we have also got some cases where those consents have actually been activated on to commence, but then what has happened is that particular developers might have gone into liquidation, for example, and then the properties have changed hands. In some cases that's happened multiple times, and it does build expectation that there is going to be new housing supply available, but then it gets stifled time and time again. Often that's because either things like legislative change have occurred that mean new things are required to actually finalise the development or, in some cases, it might be new servicing requirements that have come in place too. So it's a range of issues around different types of historical consents.

Ms KELLIE SLOANE: In terms of the register that you mentioned, would it help you if there was a State register that compelled people with historic development consents to proclaim that?

EMILY HARRISON: I guess if that register existed, it would give us a much better understanding of what's out there, not just from our perspective but also from a community perspective, because that is a lot of the concern with historical developments in a sense—that the current community, the current residents are not aware of those. That creates a lot of conflict.

Ms KELLIE SLOANE: Do you see any problems with bringing about a system like that—unearthing some of these and letting people know about it—as a practical consideration in your community?

ANTHONY McMAHON: From my perspective, if it became something like, let's say, a requirement that property owners had a reasonable window of time to have to register and then, outside of that, if they don't, there is a mechanism for the State to say, "Your consent now does lapse," I think that would be quite a positive outcome for everybody from a transparency perspective. If we're not necessarily saying that consent is taken away if they register, but if they don't register part of the consent lapses, I think that could be beneficial for all parties.

Mrs JUDY HANNAN: I note you talk about the staged development that you've got there. With these staged developments, do the new stages coming on comply with things like where fire trucks need to be able to turn around in the street plans and things like that, or is that an issue for you? Do all those stages come up to today's standard or are they all judged on the standards when the DA was processed?

ANTHONY McMAHON: From my perspective, not all of those developments are necessarily going to be the same. It depends on what the conditions of consent were at the time the consent was created. The older the consent is, the less likely it will make any kind of reference to a standard that is current. It could be that, for example—and I don't know this—there's a consent issued 10 years ago that did make reference to some sort of bushfire planning requirements. But, if it was 30 years ago, there may be nothing. So these historical consents aren't all homogenous, because they mainly took into consideration what the framework was at the time they were granted.

EMILY HARRISON: My understanding is that, yes, those consents, unless they're modified, are valid according to the legislation at the time. So if there is a modification application that comes in, that then gives us an opportunity to assess it against current legislation and current rules. But, if it's relying on the original consent, then it's the standards that were in place at the time.

Mrs JUDY HANNAN: So no matter how many stages there are, they all go back to the original consent. You've got 13 stages, but they all go back to the original?

EMILY HARRISON: Yes. There were some modifications along the way. So unless there was an approved modification that applies to a particular stage—again, it comes back to the original wording of that consent and then any modifications since then.

Mrs JUDY HANNAN: So how current is your housing strategy?

ANTHONY McMAHON: For clarity, which housing strategy are you referring to?

Mrs JUDY HANNAN: Council's housing strategy for any growth or where houses are to go.

ANTHONY McMAHON: I assume you're referring to our residential land strategy now?

Mrs JUDY HANNAN: If that's what you want to call it, yes. Some call it a housing strategy.

ANTHONY McMAHON: To clarify, we have an affordable housing strategy, a residential land strategy and a rural residential land strategy. There are multiple that have an impact on housing supply.

Mrs JUDY HANNAN: Where are they all up to? Where some of these residential areas may go—whether they're affordable or just straight residential—how current are they?

EMILY HARRISON: From a strategic planning perspective, they are still current strategies. They are a few years old. I can't remember when we had them adopted, but it was only a few years ago.

RUSSELL FITZPATRICK: About two to three years ago we did a residential strategy and a [inaudible] strategy.

ANTHONY McMAHON: Just as a knock on from that, that led us to develop new structure plans for Bega and Wolumla, which are two of our more prominent identified urban growth areas where we have capacity to rezone land. We are just currently going through the process now of a potential rezoning in Bega to put out more residential housing there.

EMILY HARRISON: Those areas have been identified because we think they are the most appropriate for future housing when we look at biodiversity or bushfire or flood or Aboriginal heritage. We haven't done a detailed assessment yet to fully understand what land within those areas is appropriate, but it has been selected on purpose. The majority of our shire, based on our topography and just the environment of our shire—we have a lot of biodiversity. Eighty per cent of our shire is national park or State forest. It's a coastal environment. Bushfire risk is huge; biodiversity is huge. And just our topography—it being quite hilly, there is very little easily developable land left.

RUSSELL FITZPATRICK: When the director of planning talked previously about modifications to their existing DAs, it's actually more of a—we've changed the lot sizes in areas to get more landfill available. Mirador is one of those areas where the lot size has been reduced. So any change to the old DA would actually be beneficial to the developer because now the lot sizes have reduced, to what was done before, apart from certain aspects of it that are large lots on residential blocks.

Mrs JUDY HANNAN: All the older DAs that were done years ago, have they been picked up in those residential housing strategies or are some of them outside of that? Are they counted as part of your strategy?

ANTHONY McMAHON: Are you talking about any of the undeveloped stages that may still be developed?

Mrs JUDY HANNAN: Correct, yes.

ANTHONY McMAHON: Yes. They will have been considered in our existing potential available yield calculations. What we do is we look at the land that hasn't necessarily been developed yet, but out of that what's the potential yield of new housing lots in there.

Mrs JUDY HANNAN: We don't really know—I think that was asked by Kellie before—how many old DAs are out there, but it would be beneficial to be able to get some kind of State register of those things. Is that correct?

ANTHONY McMAHON: If there was a mechanism to be able to achieve that that didn't create any future legal liability on local government, then I think that would be a good outcome. Just before we move on from this, I do want to clarify something that the mayor said. This Mirador development has new land zoning over it and minimum lot sizes. But if the owners wanted to lodge a new development to increase the density of the lots there, it would trigger them to then have to meet all of today's legislation, which would mean that New South Wales biodiversity legislation would then kick in, which is currently one of the issues that's a hot topic in the community—that they don't actually have to meet New South Wales biodiversity legislation but they do need to meet Federal biodiversity requirements.

Mrs SALLY QUINNELL: You just mentioned legal repercussions if we did get a register. Do you foresee any legal or other negatives in getting a State registry? That could include capacity to maintain it or collect it.

ANTHONY McMAHON: From my perspective, I think going forward registers are easy to keep because we've now got much better digital records and there are also changes that came into the EP&A Regulation in 2021 that meant people actually had to demonstrate substantial physical commencement. Going forward, I don't think we have the same issue of capturing that information, and it's more retrospectively looking backwards. From my perspective, if we had a system in place that said people have to register their historical consents with the State or else their consent lapsed, unless there was a legal mechanism to say that was the case, then there could be a liability exposure.

Mrs SALLY QUINNELL: I totally understand what you're saying. I wonder if a moratorium would be better—a protection time—rather than a stick. So do the carrot rather than the stick.

ANTHONY McMAHON: Yes, if we're saying the intent is not to revoke a consent from people if they register but that it's actually just knowing what's out there, then I think people are more likely to self-register. If they know they can keep their consent if they register, that will be a positive; and then if they know that they will lose their consent at the point in time if they don't register, then I think that's enough of a carrot for them to then say, "We will positively do this." Otherwise, if there's no mechanism like that, I think we will still run the risk of people not coming forward one way or another.

Mrs SALLY QUINNELL: Councils tend to have a bit of an idea—I realise you're not going to say, "There are 272," but are we talking tens, hundreds or thousands of these types of DAs out there, in your opinion?

EMILY HARRISON: That's what I was thinking. I'm just trying to think. We had that rough list that we had a look at internally. There were about 20 or 25 on the list that we put together just from a desktop search. It's not thorough. But within those, some of them may be a two- or five-lot subdivision, and some are bigger than that. It depends if you're looking for just quantity or scale, really. I'm not sure how relevant it is to this conversation, but that doesn't include concessional lots.

Mrs SALLY QUINNELL: Considering that we're all massively aware of a housing shortage, what do you think is the impact of historic DAs on developing the housing that we need yesterday?

EMILY HARRISON: I think there are potentially two different ways of looking at that. One is that we have some historical consents that the developers are trying to activate, but because of biodiversity or other constraints or concerns now—because they are old consents—there's conflict with the community or potentially with the Federal Government's biodiversity process that means those developments can't happen. The other way of looking at it is which of those developments that we want housing on are sitting there but haven't been activated—even if they have met the commencement provisions.

ANTHONY McMAHON: Yes, I think that's the challenge, from our perspective. There are some developments where there is the interest in moving forward to create housing land supply, but they are more constrained, like this example we have given. Then we see other land on the fringes of our urban areas that is very suitable for residential development, but there is no desire whatsoever from the property owners to develop because of how they currently use the land—in some cases, for farming.

Ms KELLIE SLOANE: How much community concern and feedback do you get about zombie DAs?

RUSSELL FITZPATRICK: It gets back to what's classified as a zombie DA in our eyes, in council's eyes and in some of the community's eyes. The one we are referring to that people are calling a zombie DA in our area had been advertised four years ago as land for sale, and young couples have bought those blocks off the plan, waiting for it to happen. Now it's classified as a zombie DA. There has been advertising around it, so it comes back to what is a zombie DA, in our eyes. Then the community's pitted against each other. Obviously we have living in the area—as we've said, we're 80 per cent national parks and State forest, so we have huge biodiversity issues everywhere. Obviously we have an element that wants to see that protected at all costs.

On the other hand, we have the element of young people who want to build houses on very little available land but who still want a decent-size block. We have those sorts of issues. We have our own infrastructure issues with sewer and water. Our topography doesn't lend for an easy operation there. We control 11 sewer stations, as well as all our water, through a stack of different outlets. For us, as developers, it needs to be in the right place. When we can get it in the right place—and Mirador is the right place for us—it's the perfect opportunity. Unfortunately, we've got the biodiversity offsets that need to be addressed.

ANTHONY McMAHON: Just to add, again, the definition of a historical consent becomes highly valid to me when we're talking in this context. We've just had an approved DA in Eden—one of our main townships—that involved demolition of a club in the centre of the CBD. It was going to be redeveloped, with a number of apartment blocks included in it. The owners and developers of that have now gone into administration and are likely not to progress. What happens next on that development consent is just as impactful in our community as this one we are talking about in Mirador. That consent was granted within the past five years. If we're calling that a historical consent that's going to have a big impact on community perception around housing supply, then I'd say, yes, it's just as impactful as something like Mirador.

RUSSELL FITZPATRICK: It's how we get that change now to make that land, with whoever purchases it now.

Mrs SALLY QUINNELL: Great. Thank you for appearing before us today. You will be provided with a copy of the transcript of your evidence for any corrections. I don't believe you took any questions on notice, but

if you did then the secretariat will email you any questions taken on notice and any supplementary questions from the Committee. We kindly ask that you return any answers within 14 days.

(The witnesses withdrew.)

By resolution of the Committee, pages 34 – 36 have been redacted.

The Committee adjourned at 14:05.