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**TRANSCRIPT OF PROCEEDINGS**

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TRANSCRIPT IN CONFIDENCE

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O/N H-1062947

**INDEPENDENT PLANNING COMMISSION**

**NSW**

**RECORD OF MEETING**

**CHAIR: CHRIS WILSON**

**PRESTONS INDUSTRIAL ESTATE MOD 5**

**SSD 7155**

**APPLICANTS: CRAIG THOMAS**

**JEFF LORD**

**TROY BRYANT**

**SYDNEY**

**10.06 AM, FRIDAY, 23 AUGUST 2019**

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MR C. WILSON: Shall we start. Before we begin I would like to acknowledge the traditional owners of the land on which we meet, the Gadigal people. I would also like to pay my respects to their elders, past and present, and to the elders from other committees who may be here today. Welcome to the meeting today. Logos  
5 Properties Holding Proprietary Limited, the applicant, is seeking approval to remove and modify existing conditions of consent relating to development contributions for drainage works required for the Prestons Industrial Estate Development located at 5 to 35 Yarrunga Street, Prestons in the Liverpool Local Government area. My name is Chris Wilson. I'm the chair of this IPC panel. The other attendees of the meeting  
10 – the other attendee of the meeting – is Brad James from the Commission Secretariat. In the interests of openness and transparency and to ensure the full capture of information, today's meeting is being recorded and a full transcript will be produced and made available on the Commission's website.

15 This meeting is one part of the Commission's decision-making process. It is taking place at the preliminary stage of this process and will form one – one of several sources of information upon which the Commission will base its decision. It is important for the Commissioner to ask questions of attendees and to clarify issues whenever we consider it appropriate. If you're asked a question and not in a position  
20 to answer it please feel free to take it on notice and provide any additional information in writing which we will then put on our website. I request that all members here today introduce themselves before speaking for the first time and for all members to ensure that they do not speak over the top of each other to ensure accuracy of the transcript. We will now begin. Now, thank you for coming. Ah, I  
25 understand you've requested the meeting so we'll let you go through the process today, why we're here, and, ah, in – in relation to the recommendation – the Department's – your application and the Department's recommendations.

MR C. THOMAS: Well, my name's Craig Thomas from Logos Properties. Um,  
30 I've just had a – got a – an agenda here. I can distribute that.

MR WILSON: This will be put on - - -

MR THOMAS: .....

35 MR WILSON: - - - our website to as part of the meeting.

MR THOMAS: So it's just an outline summary - - -

40 MR WILSON: Yep.

MR THOMAS: - - - of our application.

45 MR WILSON: Yep.

MR THOMAS: Um, I'll just run through that initially. So the development consent, um, for Prestons Industrial Estate was received from the Department of Planning in June 2016 and the development contribution was required to be paid by Logos. Part of the contribution was to be paid by Logos providing drainage works as a works in kind offset. All relevant conditions relating to the changed requirements were agreed with council prior to the issuance of the consent. Logos provided these drainage works and had them valued by an independent quantity surveyor, as per our DA conditions, at 1.54 million as of March 2017. However, council only offered to provide a contribution offset of 900,000. Logos started the works to meet contractual obligations and safety requirements due to high hazard water flows through the site and maintained ongoing contact with both council and the Department on a continuous basis trying to resolve and compromise all outstanding issues.

Council also considers that the development contribution should be indexed to the current quarter in 2019 despite the works being provided in March 2017. The process has been frustrated as a result of the protracted delays caused by council's unwillingness to comply with the conditions of consent. Logos is seeking to compromise on this by agreeing to a DA contribution rate plus indexation to March 2017, some eight to nine months from the original date of consent, and splitting the differences between council – council's proposed offset contribution. This is a significant compromise by Logos. Um, the – the condition amendment proposed to B23 would achieve this. The Department of Planning has considered this issue and agrees with this compromise. Further to above, Logos has undertaken \$5 million of additional public infrastructure works over and above the contributions required by the conditions of consent. So that – that's an overall summary of our application, um  
- - -

MR WILSON: If you might – what would be good for us – well, for myself and – and, ah, the secretariat to understand is, ah, just the basis in terms of the difference of what was required for the works. I mean, we have the contributions plan. You have – ah, I understand it as an – an interim drainage – stormwater drainage outcome which was implemented for the site in part or your – the works that were approved by council were consistent with. What – what's – what – is there any fundamental difference between what the contribution plan required and what was achieved on your site or implemented on your site?

MR THOMAS: Yes. So we – we, um, implemented a drainage channel through  
- - -

MR WILSON: Yep.

MR THOMAS: - - - the site that was different to the contributions plan. It was different so that it suited our development. However, that was Logos' costs, and that was not – what was costed by – under the section 94 plan in accordance with the section 94 was the path that was shown on the section 94 plan and that was – so that costed amounted, um, was agreed with council at the time, um, as the value of the

section 94, um, credit available. So we – we did construct something different but at – at Logos' cost.

MR WILSON: Yeah, so - - -

5

MR THOMAS: Yeah.

MR WILSON: - - - that additional cost aside, the works that you undertook to meet – to – to effect the – the objective of the contributions plan, how much did that cost?

10

MR THOMAS: Ah, two point - - -

MR T. BRYANT: 2.65, sorry.

15

MR THOMAS: Two, yeah.

MR BRYANT: Troy Bryant from Logos Property, 2.65 million.

MR THOMAS: Yep. That's right. Yep, 2.5 million there.

20

MR BRYANT: Sorry.

MR THOMAS: Yep. That's right.

25

MR WILSON: Right. Okay. Right. I'm just trying to understand that the works undertaken in, ah, finalising your development, um, did they reflect the contribution's plan or – sorry, the public component of the contribution's plan that needed to be implemented on site, did it reflect the interim strategy or did it reflect the contributions plan, what was done on site?

30

MR THOMAS: Um, I didn't – well, sorry can you ask that question - - -

MR WILSON: So - - -

35

MR THOMAS: - - - again, sorry.

MR WILSON: Okay. The works identified in the contribution's plan, were they accurate?

40

MR THOMAS: Yes.

MR WILSON: So in other words the work you did on site was consistent with the contribution's plan?

45

MR THOMAS: The – um, it – it – it was consistent with it, yes. Ah, it was – the – the outcome was consistent. Like, we – we provided an outcome of a drainage channel - - -

MR WILSON: Yeah, yeah, okay.

MR THOMAS: - - - throughout the - - -

5 MR WILSON: But you - - -

MR THOMAS: - - - site but - - -

10 MR WILSON: But you keep saying that the – you said - - -

MR THOMAS: Yep.

MR WILSON: - - - in your submission that it's not – the contribution's plan was outdated. The contribution's plan wasn't fit for purpose.

15 MR THOMAS: Yep.

MR J. LORD: Jeff Lord from DBL Property - - -

20 MR WILSON: Yep.

MR LORD: - - - advising Logos. So, Chris, if you – if you look at the contribution's plan it shows a string of pipes in a straight line.

25 MR WILSON: Yep.

MR LORD: That straight line carries water from a - - -

30 MR WILSON: Yep. Yep.

MR LORD: - - - residential area - - -

MR WILSON: Yep.

35 MR LORD: - - - out to Bernera Road.

MR WILSON: Yep.

40 MR LORD: In the finality of our design we had to do a curved layout.

MR WILSON: Yep.

45 MR LORD: But – so we delivered that curved layout at \$2.5 million. What was costed for the purposes of the section 94 plan and for the WIKA agreement was the straight line.

MR WILSON: Right.

MR LORD: So we achieved the same outcome - - -

MR WILSON: Okay.

5 MR LORD: - - - but we didn't - - -

MR WILSON: That's right.

10 MR LORD: - - - we didn't - - -

MR WILSON: No, thank you.

MR LORD: We didn't necessarily try to claim for the costs of the actual works.

15 MR WILSON: But that was 1.5 million.

MR LORD: That - - -

20 MR THOMAS: Correct. That's right.

MR LORD: Of the straight line.

MR WILSON: Yeah.

25 MR THOMAS: The straight - - -

MR LORD: Fully compliant with council's section 94 plan came at 1.5.

30 MR WILSON: Right. So then did - - -

MR LORD: By the QS.

MR WILSON: - - - did - - -

35 MR LORD: Council agreed to that, too.

MR WILSON: So the assertion was that – that the works in the – the contribution plan were not accurately costed?

40 MR LORD: Probably not accurately costed.

MR WILSON: Okay.

45 MR LORD: Some time – it was – it was probably prepared some time ago. Um, I don't think there was necessarily, um, a disagreement from council that it was, "Yes. That's the appropriate cost." The response was, "Sorry, that's all we've allowed in our plan, therefore we can't give you any more money."

MR WILSON: Right.

MR LORD: But they didn't dispute the – the selection of the independent QS and they didn't dispute the costings provided by the independent QS. They just simply  
5 said, "We - - -"

MR WILSON: So and I'll ask - - -

MR LORD: "- - - can't afford that."  
10

MR WILSON: - - - ask council the question, so if the works were to be undertaken in 2017 by council how much would it cost them to put that pipe in?

MR LORD: That – that straight one?  
15

MR WILSON: Yeah.

MR LORD: I assume it'd be in accordance with the - - -

MR WILSON: No, no. If – if - - -  
20

MR LORD: - - - independent - - -

MR WILSON: Why wouldn't it cost you – wouldn't it cost the same as it cost you?  
25

MR LORD: Yes, correct. It would.

MR WILSON: Yeah.

MR LORD: Yes.  
30

MR WILSON: Yeah, so 1.5 million.

MR LORD: Yes.  
35

MR WILSON: Okay. All right. Sorry. Right. Back to you guys.

MR THOMAS: Um, well, is there any other – I mean, that – that's basically our – um, I guess our summary of events. Um, I'm not sure there's anything else we'd –  
40 we'd like - - -

MR WILSON: Ah - - -

MR THOMAS: - - - we can address in regards to any other - - -  
45

MR JAMES: So is there a question about dispute .....

MR WILSON: Ah, dispute resolution. Yeah. So you triggered the dispute – I guess, it’s condition B – ah, B10 I think it is of the consent – in two thousand – early 2017, yeah, then lodged and that.

5 MR LORD: Correct.

MR WILSON: So when the dispute wasn’t resolved - - -

MR LORD: Correct.

10

MR WILSON: - - - you lodged an application.

MR LORD: Yeah. So it – to give a – a short – a short outline of the history, prior to the issuance of the consent there were negotiations between the Department and council and Logos to develop the relevant conditions of consent to deal with the section 94 contributions. Council agreed that they didn’t have accurate – or, you know, weren’t in an accurate position to determine WIKA agreements, or indeed the upgrade of the intersection of Bernera Road. So both of those things were put on a six monthly timeframe with a – an independent QS to be put in place to be appointed one month after. Six months later we’re supposed to have the costs. We did those works and we found out the costs were much higher than council was anticipating and, ah, essentially council found itself in a position where it didn’t have moneys in their section 94 plan to compensate for it, and that’s where the dispute started.

25 We kept the department up to – up to speed. We went back to council on numerous occasions at the Department’s request and had meetings with them and then, um, ultimately, you know, provided letters to the Department asking them to, you know, intervene or do whatever. Um, and they – and they consistently asked us to go back and try and resolve it with council. But I think council is effectively hamstrung because it’s saying, “Well, I can’t give you any more money. It doesn’t matter - - -”

30

MR WILSON: Yeah, so - - -

MR LORD: “- - - about these conditions.”

35

MR WILSON: So the – all the works were complete in early 2017, so that’s – that’s basically where you think indexation should cease.

MR THOMAS: That’s correct. So, um - - -

40

MR WILSON: And that’s for all works.

MR THOMAS: For all drainage works and what’s to – yeah.

45 MR WILSON: All drainage works but not – what about all the other contributions, have they been paid? There’s contributions towards roadworks and so forth. Where – where are they up to?

MR LORD: So the – the roadworks – the – the initial thought was that the works would cost, you know, several hundred thousand dollars. In the end the costs were getting to \$2.1 million. Council agreed that they should've had a section 94 plan in place but unfortunately they don't. So they've agreed in the end to formulate a VPA  
5 to cover the full intersection works and to pull in land owners from the surrounding area.

MR WILSON: Okay. Yep.

10 MR LORD: So whilst they're not apportioning it based on land area, they're apportioning it on traffic generation for some reason. So we're taking the lion's share of it. But we just said, "Okay. That's a way to resolve it." So the intersection works have been resolved. Um, the drainage is still the outstanding issues. We've done two modifications because we've – we've extended the site and we've paid  
15 those contributions. The only one - - -

MR WILSON: So what's left outstanding?

MR LORD: The only – is the - - -  
20

MR WILSON: Drainage.

MR LORD: - - - primary section 94 contribution for the initial proportion of the site.  
25

MR WILSON: Okay. Which is drainage plus - - -

MR LORD: Whatever it's made up of.

30 MR WILSON: Yeah, yeah. Yeah. Okay.

MR LORD: Roads and whatever, so – yep.

MR WILSON: All right. Okay. But you're saying, basically, since that was  
35 complete in 2017, or thereabouts, the beginning, that that – that's – that's where it – that's where it should be indexed to?

MR LORD: We – we've been attempting to resolve this with - - -

40 MR WILSON: Yep.

MR LORD: - - - council and the Department, and there's a chronology I think we provided to council and the Department.

45 MR WILSON: Yeah. No, I've got the chronology. Yep, thanks.

MR LORD: We've been attempting to – to resolve this for years and, um, we've been told deal with council, asking the Department to resolve it, um, going back numerous meetings, keeping the Department fully up to date as we went ahead, and, um, ultimately the Department's agreed with our position because they've seen that we've effectively been frustrated in we haven't even been able to pay the contributions.

MR WILSON: That's – that's another question. I mean, you – I guess you've asserted that you've been unable to pay those contributions regardless of the dispute over the – the stormwater drainage, ah, works. Is that correct?

MR LORD: Yep.

MR THOMAS: Mmm.

MR WILSON: Why is that?

MR THOMAS: Oh, we were unable to agree to terms of the credit.

MR WILSON: Oh, no, you – there was something about some sort of computer - - -

MR THOMAS: Oh - - -

MR WILSON: - - - computer - - -

MR THOMAS: Oh, that was – so as Jeff mentioned before, we bought additional land to the site so - - -

MR WILSON: Yep.

MR THOMAS: - - - which was amalgamated into one estate. So initially we had issues in regard to paying contributions for those parcels of land, ah, because they wanted to amalgamate the whole contribution together in one. So it was an administration with council, but we eventually overcome that - - -

MR WILSON: Yep.

MR THOMAS: - - - and we have paid the contributions on those - - -

MR WILSON: Okay.

MR THOMAS: - - - on those separate parcels of land.

MR WILSON: All right.

MR THOMAS: Yeah.

MR WILSON: Okay.

MR THOMAS: So that – they’ve all been paid.

5 MR WILSON: Okay.

MR THOMAS: Yep.

10 MR WILSON: You might want to just talk to the material public benefit for – for – just for the record.

MR THOMAS: Yep.

15 MR LORD: It’s all those additional items, Craig, works we’ve done to upgrade the road.

MR THOMAS: Yeah, that’s right. So – so the, ah, material public benefit we’ve provided, we’ve provided, um, the – ah, well, the drainage culverts we’ve – we’ve been speaking about. Um, the Bernera Road, the intersection, which Jeff alluded to before, which we’re paying – which is under a VPA at the moment and, ah, we’re contributing \$1.2 million towards that. Um, we had to upgrade, ah, Yarrunga Street road, a half road construction, um, two lanes which was about 1.7 million, um, as part of a condition of consent. Um, we also, because of the poor quality of the – it was a rural road almost that we had to – so the road could be used we had to construct an additional lane on the north side of the road, so we ended up building three quarters of the road. That was an extra 400,000.

Um, we had additional Yarrunga Street roadworks again, um, going down to Kookaburra Road which was about 700,000. A lot – all the services in the street, including gas and Telstra, were not at correct levels or in so we had to upgrade or put them in, which was another 400,000, um, and there’s additional works for Bernera Road widening as well with regard to, um – they’re making that – it was a condition of consent with council to make that a four lane - - -

35 MR WILSON: Okay. So the - - -

MR THOMAS: - - - road.

40 MR WILSON: - - - development’s had - - -

MR THOMAS: So - - -

45 MR WILSON: - - - had consequential material public benefit. The drainage works themselves have had material public benefit? The – the Department’s - - -

MR THOMAS: Correct.

MR WILSON: - - - recommendation because it – it conveys - - -

MR LORD: Residential water effectively - - -

5 MR WILSON: Yeah.

MR THOMAS: Residential water.

MR LORD: - - - through our site.

10 MR THOMAS: Yeah, from - - -

MR WILSON: Through the site and - - -

15 MR LORD: Yep.

MR WILSON: And it – and conveys it - - -

MR LORD: Correct, yeah.

20 MR WILSON: Yeah. Okay.

MR THOMAS: Yeah. Conveys it out. That's correct, yeah.

25 MR LORD: The other thing worth pointing out is that there's a portion of, um, um, Bernera Road going down to Kookaburra Road, isn't it?

MR THOMAS: Yeah, from – yeah, there's a portion of the road – road, um, that runs down Yarrunga Street and down Kookaburra Road.

30 MR WILSON: Okay.

MR LORD: Which we've agreed to upgrade even though it's nothing to do with our site. So it's past our site. We've agree to upgrade that section.

35 MR THOMAS: It's not a condition of consent.

MR WILSON: Yeah.

40 MR THOMAS: But council has requested us to upgrade that at a cost of 1.6 million.

MR WILSON: Okay. Well, that's – I – I don't think – do you have any questions, Brad?

45 MR B. JAMES: Ah, no. No questions from me.

MR WILSON: Um, I don't think we have anything more to add. As you're aware the council's asked for a meeting. So we've met with the Department prior to you and – and obviously you're part of the process so we felt obliged we meet with all of you. Um, so we'll meet with council and then we'll go from there. If we have any  
5 further questions we'll – we'll put them through formal channels and so forth, but I think that's all we have for today.

MR THOMAS: Thank you.

10 MR LORD: Thank you very much.

MR WILSON: Thank you for coming in.

MR THOMAS: And we appreciate the opportunity to meet.  
15

MR WILSON: That's okay.

MR THOMAS: Yep.

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**MATTER ADJOURNED at 10.23 am ACCORDINGLY**