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TRANSCRIPT OF PROCEEDINGS

TRANSCRIPT IN CONFIDENCE

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INDEPENDENT PLANNING COMMISSION

MEETING WITH THE DEPARTMENT OF PLANNING AND ENVIRONMENT

**RE: REQUEST FOR GATEWAY DETERMINATION REVIEW - VARIOUS
SITES WITHIN THE KENSINGTON AND KINGSFORD TOWN CENTRES**

**PANEL: MR JOHN HANN
MR STEVE O'CONNOR**

**PARTICIPANTS: MATTHEW TODD-JONES
DAN KEARY
BRENT DEVINE
STEVE MURRAY
AMANDA HARVEY**

**LOCATION: IPC OFFICE
LEVEL 3, 201 ELIZABETH STREET,
SYDNEY, NEW SOUTH WALES**

DATE: 9.08 AM, TUESDAY, 2 OCTOBER 2018

MR J. HANN: Okay. So good morning and welcome. Before we begin, I would like to acknowledge the traditional owners of the land on which meet and pay my respects to the elders past and present. Welcome to the meeting today on the gateway determination review request to increase the building height and floor space ratio controls and introduce new local provisions for the Kensington and Kingsford town centres under the Randwick Local Environmental Plan 2012.

My name is John Hann. I'm the Chair of the IPC panel. Joining me on the panel is Steve O'Connor and the other attendees of this meeting are Dan Keary and Brent Devine from Keylan Consulting who are assisting the Commission on this project, and Matthew Todd-Jones from the IPC Secretariat. And we're joined today at this meeting with Steve Murray and Amanda Harvey from the Department of Planning and Environment.

So 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 to be made available on the Commission's website. This meeting is part of the Commission's decision-making process. It's taking place at the preliminary stage of the process and a little bit further into it now that we've previously met with yourselves and also had a briefing from the Council and done a site visit. Nevertheless, it just forms one part of the several sources of information upon which we will base our decisions and advice. It's important for the Commission to ask questions of attendees and clarify issues whenever we consider it appropriate and if you're asked a question and you're not in a position to answer, then feel free to give us that in writing and we will upload that to our website in due course.

So let's kick off. Steve, look, we thought it was pretty important for you to meet with us because you've had a long history, as we understand it, with this particular proposal and also, look, just a bit of background. We met with Marcus and Amanda a couple of weeks ago and we had a quite a thorough briefing there. And at that point, there were – the six issues that are under review, as we understood it then, were maintained. We then on the same day went out to – we took a walk along the site from end to end just so we could be familiar with the area and then we met the Council and Council at that meeting when they briefed us said, "Look, of the six matters, only one remains," and that as far as they're concerned, the other five really have fallen away and they don't believe they have issue with – as had been raised in the department And that matter, of course, is the CIC, of course, as in, it's obviously a critical aspect of what's being proposed and the Department's report has made quite substantial commentary on that and justification in terms of how you've come to your final conclusions.

So what we wanted to do, Steve, is by all means if there's anything else that you want to cover, we're very happy to hear that, but importantly, what we want to do is try and understand how you've arrived at your position on the – with the CIC that's proposed and also particularly, the comparison that's given by the Council to Green Square and your view on that. Now, I know there's – legal advice the Department is relying on, and we

haven't seen it, legal advice on that and we may or may not get to view that advice, but we would be really – it would be very helpful for us if we could understand how you reach your position because frankly, it's poles apart in terms of the Council and your position. So take it away.

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MR S. MURRAY: Okay. Thank you. I may defer at times to Amanda. But I draw the Commission to page 6 of the department's submission titled Gateway Review Justification Assessment. So in here, other than providing the summary of the key things Council proposes in the clause, here we give an overview of what Council says and the first thing is the proposal by Council. I'm going to the salient points.

10

MR HANN: Sure. Yes.

MR MURRAY: The proposal by Council states that the proposed CIC provisions requires a VPA to be entered into by the developer and Council. Well, I draw your attention to the Act and the first thing is the Environmental Planning and Assessment Act, and I don't have the current new sections, but I think it's in the sevens for the record - - -

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20 MR HANN: Yes.

MR MURRAY: - - - I think is that it says that a planning agreement can only voluntarily be entered into by both parties and in my reading, we will look it up for you right now.

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MS A. HARVEY: You want the Act – the provision of the Act?

MR MURRAY: Yes, please.

30 MS HARVEY: I knew it was section 93 of the former Act. I will find it for you. I think it's 7.7, but I will find it for you.

MR MURRAY: Thank you.

35 MS HARVEY: Yes.

MR MURRAY: So we will come back to that, but the Act is very clear on how you deal with voluntary planning agreements. So when we went through it, we actually required the deletion of the condition as written and obviously, there's an opportunity for that condition to be rewritten in a different way to achieve the outcome of the Act, not necessarily delete it.

40

MR HANN: Right.

45 MR MURRAY: We're just looking it up for you now, but - - -

MR HANN: Okay.

MR MURRAY: So we – our advice that we got was that the clause is inconsistent with the Act and the supporting policy is for development contributions.

MR HANN: When you say advice you mean your legal advice.

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MR MURRAY: Yes. Well, initial advice and then – yes.

MR HANN: Yes.

10 MR MURRAY: Yes. Further advice when we got to this point. So I'm just – sorry, just going through our arguments. So more detail on that – on our community infrastructure clause sits around page 15 of our report.

MR HANN: Yes.

15

MR MURRAY: So as we understood the clause, it sought to impose a square metre rate for contributions and would have a range of types of infrastructural uses that would be proposed such as cycle ways, you know, community type facilities. I think there was one for poles for wireless Wi-Fi. There was a pneumatic waste disposal system - - -

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MR HANN: Yes.

MR MURRAY: - - - and potentially open space. So it had a range of matters.

25

Now, most of those – there's a clear schedule that the department provides normally with what you would collect infrastructure contributions for and that normally sits with, I'm going to say, section 94 or 94A - - -

MR HANN: Yes.

30

MR MURRAY: - - - instead of the sevens which in the new Act.

MS HARVEY: 7.4.

35

MR MURRAY: Because I haven't got across the new numbers.

MR HANN: Okay.

MR MURRAY: So it sits in there and, therefore, we gave advice to Council that it would be an appropriate thing to look it that way. So when we look at the CIC scheme as proposed by Council, if section 7.7 of the Act states that:

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It's a provision of an EPI that expressly requires a planning agreement to be entered into before a DA can be considered or determined has no effect.

45

So that's outlined in the Act and I think the key thing we try to do obviously is we don't try to stop councils achieving good outcomes and providing the appropriate

infrastructure, but the department is very firm that it should be within the legislative framework - - -

MR HANN: Yes.

5

MR MURRAY: - - - as set up by the Act. So one of the issues Council kept raising with us is that their scheme was similar to what was in Green Square.

MR HANN: Yes.

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MR MURRAY: And I think the important thing to note that in Green Square is the clause that sits there identifies the development types and says that there has to be some form of arrangement or agreement for these to be put in. It doesn't specify what they are and more importantly, it clearly says that it has to relate to the site the development is on. Now, there's other LEPs in Sydney that actually have a clause like this and we've allowed it to go through and the one that comes to mind is Burwood and if you like, we can get the relevant clause and send you that information instead of me making it up - - -

15

20 MR HANN: Yes. No, that would be good.

MR MURRAY: Making the number up.

MR HANN: No. Thanks for that.

25

MR MURRAY: And the Burwood clause basically says you can have X additional floor space provided these types of facilities are provided to the satisfaction of Council.

30 MR HANN: And that would be on that specific development site.

MR MURRAY: On that specific site. So when we talk about site, it can include, you know, the roadway - - -

35 MR HANN: Yes.

MR MURRAY: - - - upgrades of the road in front.

MR HANN: Sure.

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MR MURRAY: You know, if it backed onto a laneway that had cycle ways going through it. It could be – so I've seen applications where they've looked at a site and they've argued this and they're putting in a community facility for Council as part of the building.

45

MR HANN: All right.

MR MURRAY: So Council says, "Because you've provided it onsite, now the mechanism may be of VPA, but the LEP does not require the VPA. It's very clear. So it could be done another way.

5 MR HANN: Okay.

MR MURRAY: It could be through a deed of agreement. It could be through bank guarantees. A whole range of things. So when Council has said in their report that well, these clauses exist and we're doing the same, we've looked at their clause and
10 from the information that was provided in the package, it was quite clear that the infrastructure, in some instances, was onsite. They did talk about a community arts space, so you could argue that could be part of the site.

MR HANN: Yes.
15

MR MURRAY: But the other infrastructure was not related to the site. And while obviously would have benefits to the community, wasn't in accordance with the requirements of the Act and the clauses that we've allowed through. So it's not a point of view of us saying it's not an appropriate thing to do. It just must be done in
20 an appropriate way that meets the statutory framework that we have in sight. And I mean – so that in a nutshell does it. Now, we've obviously also put out our draft guidelines for planning agreements and you – have you got a copy of that?

MR DEVINE: We didn't.
25

MR MURRAY: So, just checking. If not, we'll provide you with a copy.

MR HANN: Okay.

MR MURRAY: And that sets out how planning agreements should be used and the proposed clause doesn't fall in line with that philosophy. Now, I understand their draft guidelines; they're not final - - -
30

MR HANN: Yes.
35

MR MURRAY: - - - but that's what we have to work on now.

MR HANN: Just on the point of Green Square and the development – the CIC infrastructure on the site, I think there is a provision in there though for infrastructure
40 that could be funded through that CIC agreement where to be – not on necessarily on that specific site.

MR MURRAY: Correct. Correct.

45 MR MURRAY: Yes, understanding.

MR HANN: There is a – some flexibility in it but I take your point. I mean, it is clear that it's designed to be for a specific development site - - -

MR MURRAY: Yes.

5

MR HANN: - - - but there is a provision in the K2K draft clause that allows off site contributions to fund infrastructure

MR MURRAY: Yes, our clear advice is that it has to be on site

10

MR HANN: Yes.

MR MURRAY: - - - going forward – and that's what we've done in other LEPs that relates to the site.

15

MR HANN: Okay.

MR MURRAY: And I can't answer the question but when I think of Green Square I think of a very bespoke planned area - - -

20

MR HANN: Yes.

MR MURRAY: Not a corridor. It's a very clear land area.

25

MR HANN: Is that – would you say that was the primary difference?

MR MURRAY: It's the - - -

30

MR HANN: - - - Is the operative difference from your point of view in terms of why it doesn't apply - - -

MS HARVEY: I think the other difference is they are not in the essential works list

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MR HANN: - - - or are there are other aspects of it?

MS HARVEY: I think the other distinction between the Green Square and proposed Randwick Council's proposal is that the work or the public benefits that are attached to the Green Square are within the essential works list and are – are different to those that are Randwick

40

MR MURRAY: So if you look at the Green Square list - - -

MS HARVEY: Yes. It was only three or so infrastructure items

45

MR MURRAY: - - - it's for the purpose of recreation areas, recreational facilities indoor, recreational facilities outdoors.

MS HARVEY: And community facilities. Yes.

MR HANN: All right. So such things as pneumatic waste systems would not fit into those obviously.

MR MURRAY: Yes.

5

MR HANN: Okay.

MR MURRAY: Or Wi-Fi poles or a whole range of things.

10 MR HANN: Yes. Okay. And where is that essential services list, Amanda?

MS HARVEY: We can provide you a copy of it, if you like.

MR HANN: Is it in the draft guidelines or is it in section 94?

15

MS HARVEY: It's not in the Act – no, but we do have it as part of our suite of guidelines.

MR HANN: Okay. Thanks.

20

MR HANN: Yes. That would be useful. Okay.

MR HANN: What's it formally called? Essential - - -

25 MS HARVEY: Essential works list.

MR HANN: Essential works list.

MS HARVEY: Yes.

30

MR: Okay. Thanks.

MR MURRAY: Well, when we forward it we will use those words and that's used in the document

35

MS HARVEY: Yes.

MR HANN: Thanks. Yes.

40 MR MURRAY: - - - a formal title.

MS HARVEY: Yes.

MR HANN: That would be good.

45

MR O'CONNOR: Is there any – in terms of the council's proposed CIC and tying it to a height and then the floorspace and how that relates to floor space ratio, have you looked at

that in relation to what's proposed – what's in operation now at Green Square versus what's being proposed here?

5 MR MURRAY: My understanding is they want a square metre rate.

MS HARVEY: Correct.

MR MURRAY: But you could probably ask Council

10 MR O'CONNOR: As in the dollar rate? \$475 per square - - -

MR MURRAY: A dollar rate but the way we read it and understand it – and Amanda can correct me here – is that you could achieve the square metre rate without having to pay anything by not exceeding the height.

15 MR O'CONNOR: I think you make that point in your report.

MS HARVEY: Correct.

20 MR O'CONNOR: You can circumvent it, I think, might have been your answer yes.

MR MURRAY: Yes. Where most planning controls say, “You get a bonus of, whether it's floor space or height, by providing these facilities” so it's very clear.

25 MR O'CONNOR: Yes.

MR MURRAY: So even the draft Parramatta – not the clause in that but the draft Parramatta City Centre LEP says if you do this, you can do that. And the idea of that is to create very clear certainty - - -

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MR O'CONNOR: Yes.

MR MURRAY: - - - around what it is. So you can make a – anyone can make a clear decision and understand that I could be – you know, if you based it on height it could be 10 storeys or 12 if you met this requirement of a clause that says you provide some form of facility on site that justifies that as a bonus. So – is that how I understood it?

35

40 MS HARVEY: Correct. I think the other consideration is that the floor space ratio would ordinarily be the way in which we would utilise the per square metre rate.

MR O'CONNOR: Yes. Yes.

45 MS HARVEY: So for a developer or a landowner to say, “Well, if I don't choose or elect to go by the CIC opportunity, then I would get so – I would only, you know, get

so much floor space. There's actually – it's hard to distinguish what floor space I would achieve under a certain height.”

MR O'CONNOR: Well, yes. Yes.

5

MS HARVEY: “This is what I would achieve penultimately if I went to the full maximum height as well.” So I think there could be some blurring, I suppose, of what – what it would be – what council would establish as the base versus what the additional – where the – this CIC would be attracted.

10

MR O'CONNOR: You make that point in your report which I think is a good point. So please correct me if I'm not understanding this correctly but the gist I'm getting from this is you have no problem in principle with council pursuing a CIC; it's the way in which they have constructed their CIC as opposed to maybe Burwood or other places where you have been comfortable with the way they've done it so it's not a question of being fundamentally flawed, this whole concept of following a CIC; it's just the way in which council has done it. You believe – well, it's unlawful for a start and isn't appropriate under guidelines, etcetera, and it needs to be reworked and probably resubmitted back to you. Is that fair comment?

15

MR MURRAY: Yes. I mean, we're happy where it meets the current planning practice. One of the things we do ask councils to show us, though, is the feasibility that sits with it.

20

MR O'CONNOR: Yes.

MR MURRAY: Because you can create any form of, you know, provision of infrastructure on site for an uplift but if it actually isn't feasible you've created a false expectation in terms of delivery. So there is a feasibility issue that you have to look at and obviously - - -

25

MR HANN: Which they have looked at specifically.

MR O'CONNOR: Just presented.

30

MR MURRAY: Yes.

MS HARVEY: Yes.

35

MR HANN: All right. Form the two – two documents.

MR O'CONNOR: They have, but I wonder – we might give some thought – we have the benefit next week of council and their consultants coming along to talk about the studies they've done, etcetera. I don't know if there's any benefit in inviting department representatives just to sit in and hear that to get a better understanding as well.

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45

MR HANN: Yes, I'm – we're open to that if that's – you find that it is of any benefit.

5 MR MURRAY: Well, if council is happy quite obviously if council was – I know you could direct but at the same time - - -

MR O'CONNOR: No, no. No, it's only if everyone is mutually agreeable.

10 MR MURRAY: Yes, I think if everyone is agreeable we see if we've got someone available to come in.

15 MR HANN: I don't recall any particular comment – correct me if I'm wrong – or any major concern with the feasibility work that was done and we're talking more as to articulate that it's more how the CIC as proposed is structured and worded and how that would be done is the difficulty. Is that right?

20 MR MURRAY: I'm just trying to recollect – reflect and – because it has been a long process. I think the only thing we did was our feasibility work that we presented showed that there was potential for some more somewhere.

MR HANN: Yes.

25 MR MURRAY: So that's probably not a difference with their work. But I think the thing is - - -

MR HANN: This is the AJC.

MR MURRAY: The AJC review plus the work.

30 MR HANN: And the identification of the additional 596

MR MURRAY: Yes; whatever.

35 MR HANN: Yes, yes.

MR MURRAY: But we're actually very clear in this – in our submission on how it can be dealt with.

40 MR HANN: Yes.

MR MURRAY: So I think the thing with any feasibility work, it would have to be subject to the findings of the Commission. If the Commission felt that they would have to be – to be more in line with something else, you would want that work

redone because of the – I think the market has probably made some differences over the last couple of years.

MR HANN: Well, they were, I think, done in 2016.

5

MR MURRAY: Yes.

MR HANN: Already a couple of years old.

10 MR MURRAY: So – yes, so. But that’s fine, because you would expect that if the market has changed the feasibility may be different.

MR HANN: Yes.

15 MR MURRAY: - - - when it comes in, most councils update it.

MR HANN: Yes.

20 MR MURRAY: And most councils have a policy that has a regular review mechanism that sits in there, because prices fluctuate and prices may move up or down.

MR HANN: Sure.

25 MR MURRAY: And I understand it was – I think it was Hill PDA did their review.

MR HANN: Correct.

30 MR O’CONNOR: The only question I have does relate to the VPAs because, as we understand it, the Green Square CIC provisions work in a similar way, that is, the potential additional floor space you can achieve is spelt out in the planning instrument, but the mechanism to bring that to fruition is to enter your planning agreement with council. What Randwick Council is proposing doesn’t seem dissimilar in that respect to what the City of Sydney Council does.

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MR MURRAY: I think the difference is my understanding – I would have to read it, but I don’t think the Green Square clause says “a planning agreement”.

MS HARVEY: No.

40

MR MURRAY: Is that correct? And that’s the key thing. The clause can’t say “a planning agreement”. And so, in the other clauses like – such as Burwood, it just says “to the satisfaction of council”.

45 MS HARVEY: Correct.

MR O'CONNOR: This is the Green Square. You're talking about the LEP?

MR MURRAY: Yes.

5 MR O'CONNOR: Yes. Okay.

MR MURRAY: So I think the key for us is that the clause needs to be upfront and the option for how it's delivered shouldn't be specified in an LEP. Really, it should just be to the satisfaction of council, because it could be through bank guarantee.

10

MR HANN: Yes.

MR MURRAY: - - - most people will use – we acknowledge planning agreements are used for this purpose, but there is other mechanisms to deliver.

15

MR KEARY: Which clauses are you looking at? I mean, we're going off attachment C to the original planning proposal, which was the draft clause 6.14 which, based on our review, did appear to replicate the clauses in the Sydney LEP, other than reference to height rather than FSR. But I don't think they actually made specific reference to the VPA. It just said the mechanism was in the guidelines.

20

MR MURRAY: Yes.

MR KEARY: Which were also replicated on the Green Square guidelines.

25

MR MURRAY: We will just take that on notice.

MS HARVEY: Yes. We will come back on that one.

30 MR O'CONNOR: Okay. And the visit to council last – whenever we met with them, they were good enough to provide us with some notes, which we've since forwarded to the department. Are we still expecting the department to respond - - -

MR HANN: Tomorrow, I think.

35

MR O'CONNOR: - - - to those updated notes?

MR HANN: Yes.

40 MR O'CONNOR: We are? Okay.

MS HARVEY: Thursday.

MR O'CONNOR: So this is not your response. That's all I wanted to be clear on.

45

MR HANN: Are you familiar with those? I know you've been away and you've only just returned, but - - -

MR MURRAY: Yes. We're – Amanda's team is preparing the responses.

5

MR O'CONNOR: Okay. All right. Okay. Thank you. That was all my questions.

MR HANN: Do you have anything else - - -

10 MR O'CONNOR: No.

MR HANN: Okay. Do you have anything?

MR KEARY: No. I mean, I think the question we asked was about the difference
15 between the two draft clauses, because that was one issue we had reviewed for the
commissioners. And, as I said, our reading was that the clauses were quite similar in
that they – Steve explained it well. They set up the mechanism, but then the
mechanism that relates specifically to the VPA is within the guidelines. So I think
20 that is important we get some clarity on that. But, I mean, you've raised some other
issues in terms of whether – whether the contributions must be site-specific or within
the town centre. I mean, council is quite strong on the fact that there's still a sort of a
spatial nexus, I guess, between the development and where the facilities would be
provided, because they were still within the town centres rather than on the sites, and
25 their position to the Commission was that that – you know, it was still a valid reason
for the contributions to be levied. So I think just that first point, if we could have
some clarity on that.

MR HANN: Okay.

30 MR KEARY: Yes.

MR HANN: Well, I think, unless there's anything else that you feel would help us,
Steve and Amanda, then - - -

35 MS HARVEY: Not really.

MR HANN: We appreciate you coming in and clarifying, anyway, a couple of the
key things that we needed to understand better.

40 MR MURRAY: Okay.

MR HANN: So I think on that basis we will close the meeting.

MR MURRAY: Okay.

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MR HANN: Thank you.

MR MURRAY: Thank you.

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[9.34 am]