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O/N H-945334

**INDEPENDENT PLANNING COMMISSION MEETING WITH RANDWICK CITY COUNCIL**

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

**PANEL:**

**JOHN HANN  
STEVEN O'CONNOR**

**ASSISTING PANEL:**

**MATTHEW TODD-JONES  
DAN KEARY**

**RANDWICK CITY COUNCIL:**

**STELLA AGAGIOTIS  
ALAN BRIGHT  
ASANTHIKA KAPPAGODA  
MARTIN HILL  
SAM HADDAD  
DAVID APPLEBY**

**LOCATION:**

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

**DATE:**

**2.37 PM, MONDAY, 8 OCTOBER 2018**

MR J. HANN: All right. Well, welcome. Look, we've got a new protocol and some of you have already been through this ..... might – you might have, as well, but I just need to read a – I guess some of the details that need to go before these meetings because ..... we're now recording these and transcripts get uploaded on our website. So good afternoon and welcome. Before we begin, I would like to acknowledge the traditional owners of the land on which we 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 Environment Plan 2012.

My name is John Hann. I'm the chair of the Independent Planning Commission Panel. Joining me on the panel is Steve O'Connor. And the other attendees of the meeting are Dan Keary and Brent – well, Brent is not joining us today, so Dan from Keylan Consulting and they're assisting the Commission Secretariat at the moment and then Matthew Todd-Jones from the Secretariat. And, of course, we've got Randwick City Council and their consultants assisting them – Sam Haddad and Martin Hill. In the interests of openness and transparency and to ensure the full capture of the information today, today's meeting is being recorded and a full transcript of that will be produced and made available on the Commission's website.

This meeting is one part of the Commission's decision-making process. It is taking place at the preliminary stage of this process – well, in actual fact, we're a fair way down the track on that – and it will form one of the several sources of information upon which the Commission will base its decision – and in this case, our advice. It is important for the Commissioners to ask questions of attendees and to clarify issues when we consider it appropriate. If you're asked a question and not in a position to answer today, then please feel free to provide us with that in writing. That would be appreciated. And, of course, that will get uploaded onto our website. So now we can begin.

Martin and Sam, look, we actually – when we met with the council, we had asked whether it would be possible to meet with yourselves really just to help us clarify some of the key things that we've been working on in terms of this – the Gateway Determination. Probably the best way to – from our point of view would be if you could both give us an overview of the advice you've provided but really focusing on the infrastructure where – that's the area that, if you like, in terms of the Department's report and their position and the council, it's really the area that is – would appear to be where there are differences. So it would be good for us to understand how you've tackled that ..... the assumptions you made and so on. So rather than us, sort of, probe you with questions straight off, it would be better if you just – if you could give us an overview of that.

MR S. HADDAD: So maybe – I don't know. You want me to start the – sort of – or maybe the - - -

MR HANN: .....

MR HADDAD: - - - sort of – the overall picture - - -

5 MR HANN: Yes.

MR HADDAD: - - - which is – I’ve been advising, I suppose, the council in terms of just the scheme itself. And the scheme itself is an integrated one whereby you’re looking at simply putting more density ..... in the context of providing appropriate  
10 infrastructure to support these additional densities. So ..... been an urban design competition and the urban design competition outcome recommended certain additional densities but in the context of providing additional infrastructure. The type of infrastructure that we’re talking about are not, sort of, necessarily the hard infrastructure – transport, hospitals, school – but community infrastructure to be able  
15 to deliver an integrated outcome, community outcome. And I think that’s proper planning. So you’re putting more densities and you’re saying, “I need more, sort of, parks, I need more facilities for urban support” which – it’s an approach that’s increasingly being used by many councils.

20 I’m also advising Parramatta Council independently on a similar scheme. Now, the provision of these infrastructures, I think, in my submission, is essential to support proper outcomes, to support these densities. And local councils, in my view, appropriately are tackling this in this ..... I think the exercise, from my observation, was done in a very evidence based way working in urban design settings in a  
25 wholistic manner from the corridor. Now, the infrastructure were itemised by council officers and, again, in my submission, they are best placed to identify what’s needed in that context and in liaison with their urban designers. I think that’s – they will know best what’s needed there. They were also costed.

30 And when I say “costed”, they were not costed by way of going to tenders and all the rest of it, but costed, from my observation, to, you know, the best possible way of looking at similar ..... internally ..... been ..... witnessed that’s, you know ..... of asking the relevant officers – at looking at similar capital cost expenditures for – to achieve those outcomes. And Martin will come later on and talk about all the  
35 extensive work that has been done in terms of testing what – sorry. Before going there, this ..... you know, the ..... sort of ..... estimate of how many – of what is the contribution per square metre of GFA is needed to meet that cost. Now, Martin, your comment talk more about the, sort of – whether that’s reasonable, what’s the feasibility and all the rest of it. And a number was derived – this number, I think,  
40 was four hundred and - - -

MR M. HILL: Seventy-five.

45 MR HADDAD: - - - seventy-five per square metre.

MR HANN: Right.

MR HADDAD: Okay. That was the number that's needed to support this infrastructure. Martin will talk about all the – the, sort of, the feasibility work that has been done for different sites to do that. Now, the approach that was done then is this number – and I just want to emphasise there .....

5

MR HANN: ..... square metre rate .....

MR HADDAD: The square metre rate .....

10 MR HANN: ..... yes.

MR HADDAD: Irrespective of, you know, just – let's set this ..... right, which – just looking at this number. This number has to be looked at in the context of a voluntary planning agreement policy by the council. And councils are entitled to have their own policies in that regard. So irrespective of whatever, a council can decide this is my VPA and it is ..... VPA. So developers, proponents will negotiate this VPA or, alternatively, they will put the council alternative proposals, be it open book or whatever, to justify that this – I cannot ..... that. But, again, from my experience, if you look at recent experience in the Parramatta CBD, work that is a VPA of \$120 per square metre, it has made the process of implementing planning agreements much more efficient, much, much more efficient because developers are aware that this is what we have to pay and therefore it's much easier.

And it is, in my submission, not a bad way provided that it is supported by evidence, which is in this case. Is that clear? So this number and this infrastructure scheme that has been proposed essentially, at the end of the day, is a voluntary planning agreement. Now, when we looked at how can you translate it into a clause, the clause, in essence, followed at the time a clause that was put for the – in the Sydney CBD for Green Square, which basically says something – and I was involved in that personally in discussions. And it says something that a consent authority may consent to developments, right, where there are – they also offer – or part of the development is community infrastructure.

So the clause – I can give you a copy of that clause. It says this is part of it. It does not really say that this number must be followed. It doesn't say that it – the agreement has to be followed. I mean, it is recognised that you cannot – it's – a planning instrument cannot require a particular agreement, so there is no point in doing that. But it does – you know, it tackles it that way. Now, this particular approach was used by the City at the time, and it has been adopted since then. Now, whether there have been changes in policy and approach or whatever, I haven't seen any evidence to that effect, but maybe there are - - -

MR HANN: Are you talking about Green Square now or - - -

45 MR HADDAD: The Green Square.

MR HANN: Okay. Right.

MR HADDAD: The Green Square - - -

MR HANN: So that's the clause 6.14?

5 MR HADDAD: That's right

MR HANN: Right.

10 MR HADDAD: So that is a very similar approach that has been used here.

MR HANN: Right.

MR HADDAD: Is that correct?

15 MR S. O'CONNOR: Yes. And can I just ask – sorry to butt in – to ask a question there. The number 475 – you've mentioned that's the figure that's needed to make this whole scheme - - -

20 MR HADDAD: Yes.

MR O'CONNOR: - - - operate.

MR HADDAD: Yes.

25 MR O'CONNOR: We're very keen to know how that was derived. Can you or someone else please clarify?

MR HADDAD: Yes.

30 MR O'CONNOR: I hope it becomes clearer .....

MR HADDAD: ..... come clear that what I'm trying to explain is that this is – this number is in the context of a voluntary planning agreement ...

35 MR O'CONNOR: We're very keen to know how that was derived. Can you or someone else please explain?

MR HADDAD: ..that this is this number, is in the ..... voluntary planning agreement

40 MR O'CONNOR: Yes. We understand.

MR HANN: Whatever the number might be.

45 MR HADDAD: Whatever the number might be. And it is a problem for any council to have their own VPA.

MR HANN: Right .....

MR HADDAD: And then for them, then, to justify how they operate within this VPA and all the rest of it. Now, then moving into the statutory instruments – into the planning instrument that you’re talking about, I’m trying to explain how this ..... is being put in. And I suppose the planning ..... for legal thinking behind that ..... that it  
5 says I can – you know ..... authority you will be able to do it. But, you know, if one ..... community infrastructure, well, it would deal with a stairway – you know, little garden, whatever. That’s the start. And then the developer one day go to the council. It’s up, then, to the council to say this is our policy, and it’s up to them to negotiate. And the developer can say no, I’m not going to do that, and council  
10 should not – could not, in fact, legally say no to the development and force them to do that. That’s – you know, that’s .....

So this is how – that’s why I’m not aware what is exactly wrong with that scheme. This is basically – I’m trying to explain that. There may be other reasons, but I  
15 haven’t had the chance to discuss that with the department and I don’t know exactly what’s behind that. But that’s the context of it. What else? I think in deriving this number, by the way, I have made sure that the departmental guidelines were followed. I can tell you that. They have been – you know, an identification of those items. Now, whether that 100 per cent needed, 90 per cent, but they seem logical  
20 and they’ve been derived by the officers.

Now, those items were costed right, so that’s the guidelines process – reasonably costed, and then there is the process of feasibility, which Martin was talking about, how we derived them. And there have been public consultations, transparency and  
25 comments on it, developers and all the rest of it. So these are the – sort of the ingredients in the guidelines that has been followed. That’s basically what I can say. That – now that’s the judgment that – that’s how we arrived to this. That’s the explanation. Martin, would you like to .....

MR HILL: Thank you, Sam ..... all right. So we were given four sites – these were test sites in different locations. One was called a Gateway, the other transit, infill and opportunity. So they were supposed to be representative of the various  
30 development opportunities in the area. A similar process we did recently for Woollahra or Double Bay Council, where we looked at a number of different sites and looked at different planning outcomes, and that was adopted by council and development is occurring there. We’ve also done a similar study where we were  
35 given some preferred schemes just recently for Willoughby, for their local centres, covering Northbridge and Penshurst Street and High Street – there’s about seven different town centres.

40 That – where something was not viable, we have another approach, which is called tipping point analysis. So we move from the preferred scheme to what scheme would be viable. The trouble is that we often get criticised that we’re recommending that, where’s a – it’s a mathematical process for saying what would you need to  
45 make something viable. And only one of the sites was where we found it wasn’t viable, and then you needed a high FSR in that case. We tested a – it’s an iterative process, because in the study, which went over a period of time, we weren’t aware of

the full costings of infrastructure. So we tested 1 per cent in section 94A then, 7.11 – 7.12 now.

MR HANN: Yes.

5

MR HILL: 3 and 5, we also included affordable housing in there as well, so we looked at different scenarios there. So it's a bit of an iterative process. I guess, just in the context of the figure, we have been involved with a number of VPAs in the Lane Cove Council along Pacific Highway. We negotiated with council the – it was then the Leighton site, which is now the Mirvac site. The Charter Hall site. And Loftex – there was another site down near the station, and when we were doing it was going ..... site but that has been sold on – and other large sites. So we're quite familiar with the VPA process. In those process – in the Lane Cove process, it was a 50 per cent of the value uplift in the late residual land, and in that location, at that time, that was estimated to be 2600 square metre of GFA, which equates to \$1300.

We've more recently been involved with a VPA in council, this time acting for the developer – we came in at 2600 – and council flatly refused us and said the minimum rate should be 3000 a square meter, which we agreed to. So that's \$1500 for the increase in GFA that we paid there. In Lane Cove there's no affordable housing, but there is a section – the old section 94 applies to as well. Similarly, in Willoughby, we've been acting for council there, and been a case where the council put – the developer put forward a rate of value uplift, and we had to interrogate their open book feasibility, and surprise, surprise, there was a number of errors which were found that we have come forward to rate – which came out of that \$1250 a square metre GFA. That's still subject to negotiation, that particular one. But I should point out Willoughby has a 4 per cent affordable housing contribution, and in the CBD it has a 3 per cent section 94. So that's just putting in the context that these particular rates – I remember when we first did it for Leighton, and the figure was, like, \$20 million.

30

MR HANN: Yes.

MR HILL: They said this is abhorrent, and this has never been done before, and it was quite upsetting they would never do work with us, but they took the deal and then sold it to Mirvac and made double that amount of money, so it was – just in the context. Also, the other example – and in that process, Willaura Council is looking at a VPA process which is 50 per cent of the value uplift in land value, and that would be significantly greater than the \$4000 a square metre. Willoughby – well, I said – should have said Willaura. Willoughby Council is reviewing it – the current one is 45, but they're going to move it to 50 per cent, and Land Cove, as I said, has a policy of 50 per cent of the value uplift in land value.

Put it in context here that the land values here in Randwick would range from \$250,000 a unit site – that's land value – to \$400,000. So it would be substantially higher, as well. So if we went to a negotiation process at 50 per cent of the value uplift, it could be quite high. I should say, however, you would take into account the

45

existing value of the property, which may not be – its highest and best use may be its existing use as a rental investment property, not as land value, and in some cases it's not just purely there's a step up in one value to the other land value; it should be the market value to the higher value. So there's a misunderstanding there quite often.

5

Now, another point, too, is that you would be familiar – and I can ..... the Georges River Council has a VPA. And in their VPA approach they have identified some rates, which I table there. Those rates at \$2500, quite substantial rates, and they're seeking as an indication that that should be 50 per cent of that amount. I can say that every example we were involved with, there's a clause in there where the developer can dispute those rates, and every case they have. So in that particular council they have achieved – well, it has been very protracted negotiations backwards and forwards.

10

15 MR HANN: Yes.

MR HILL: So they had tried to table a rate. I'm not saying this rate will be successful too, but – that is significantly higher, and obviously there – it probably wouldn't be prudent to tell what some of those rates – but they would be higher than the \$475 and not as high as that. So that's something just to put in context.

20

MR HANN: Taking these rates that you've tabled that relate to St George's Council, are you saying that it would be 50 per cent of these?

25 MR HILL: Yes.

MR HANN: Is that right?

MR HILL: Yes. Correct.

30

MR HANN: Just ..... - - -

MR HILL: Yeah.

35 MR HANN: Thank you.

MR HILL: That's what they're – but I'm saying they're not achieving that, because they've got a clause in their VPA which says that if you dispute those rates - - -

40 MR HANN: Yes.

MR HILL: - - - you can do – and a developer disputes every rate.

MR HANN: Yes.

45

MR HILL: That's just a process. But it's supposed to be 50 per cent of the value uplift. Now, in the context here, the \$475 will constitute a rate somewhere – it varies

from property to property – between 12 to 17 per cent of the value uplift. So the \$475, in the context, what I'm trying to say to the Commission is, it is a low rate; it's a low starting point. Now, why do we use it? Why \$475? So that's a good question. So, again, I mentioned it was an iterative process. We're looking at the one per cent,  
5 the three per cent, and we had these various different costings, I think it's 40 million or something, in infrastructure.

MR HANN: This is for the community infrastructure - - -

10 MR HILL: So we looked at community infrastructure

MR HANN: - - - as opposed to section 94 charges?

MR HILL: Yes. We looked at what was the likely take-up, and myself, I was the  
15 person responsible for the original – for \$200 at Green Square rate for the industrial area there. But we know from experience every developer took it up because it represented good value for money. It was based on the industrial land value at \$400 a square metre at that time.

20 The \$475, I suspect, is a figure that relates to, at the time many years ago, when your unit value was \$90,000 a square metre – no – \$90,000 per unit. So that's – they've – you work that out it works back to \$475 if you used the old rates of 100 square metres per unit GFA. Unit sizes are smaller now. Those rates in Green Square have gone from 90,000 to over 200,000 dollars. So there has been a – in the passage of  
25 time there's been quite an increase in values that have occurred.

MR HANN: What sort of timeframe are you talking .....

MR HILL: When it was introduced.  
30

MR HANN: When would that have been derived, that – what you – because you're saying that the \$475 probably had its origins back in – some time ago - - -

MR HILL: Yes.  
35

MR HANN: - - - in terms of - - -

MR HILL: I can't – it's many years, but I can't give you a precise - - -

40 MR HANN: Right. It wasn't last year.

MR HILL: No. No, no. Again, if I – you know - - -

MR HANN: All right. No, that's okay.  
45

MR HILL: Well, it's tabled somewhere anyhow, what that rate is - - - .

MR HANN: Right.

MR HILL: - - - when it was arrived at. But knowing, from my experience, it would have been post-2008. It was around about \$90,000 somewhere between 2008 and  
5 2012.

MR HANN: Okay. Thank you.

MR HILL: We were involved with Sydney City Council doing valuations of land  
10 values at that time, so that's why I recall.

MR HANN: All right.

MR HILL: It's not a later period of time when the property prices doubled. So we  
15 found that over that period of – from about 2014 – '15 unit land values have dramatically changed.

MR HANN: Okay.

MR HILL: And in that period of time so has the unit sale values, which we describe  
20 as a rate per square metre. So the \$475, generally when I do this analysis – and we've done this for commercial infrastructure charges – you generally look at the area; what's being charged in the area. So there's no examples of rates being charged, but the closest area that I found was Green Square and it was \$475.

25 So it's a little bit like the case when we did the four per cent for Willoughby. You'd type in a figure and see what it results with. Likewise with – in Pymont when we came up with 600 dwelling units for the affordable housing, you'd test a figure in modelling. So we tested this figure of \$475, and one per cent and three per cent,  
30 knowing that it's a low figure, and the view was that it's attractive for developers. One of the things that you want in any infrastructure program is certainty that it takes up. It's no use having a theoretical take-up to fund infrastructure that you require and it's not taken up.

35 So it was – so I guess, in my mind, when we ran these numbers, and the take-up at three per cent and \$475, it coincidentally arrived at your figure, a bit over, and councils were very critical. “Why have you raised more money than it's necessary?” Well, from our experience, development never occurs 100 per cent to its potential, it's use – we use a figure of 85 per cent, whether a person has an existing lease that's  
40 going to last, or for some reason there's a – and so we all - - -

MR O'CONNOR: So can you just expand on where that 85 per cent comes from  
- - -

45 MR HILL: 85 per cent is just an - - -

MR O'CONNOR: - - - or is just experience?

MR HILL: Experience. Essentially, you – well, I can tell you it's never 100 per cent, and the figure is – and this is quite often in greenfield development you assume a certain amount of lots are developed - - -

5 MR O'CONNOR: Yes.

MR HILL: - - - and, in reality, they don't happen. Probably a more recent experience is Warriewood, which we were involved with, and they were short on their section 94 charges at that time and they had to go back, and the only way they  
10 could do it is increasing the density. So that's inexperience. But that was - - -

MR O'CONNOR: That's fine.

MR HILL: It was only at - - -  
15

MR O'CONNOR: All right.

MR HILL: - - - 65 per cent of development capacity.

20 MR O'CONNOR: Yeah.

MR HILL: So it's an arbitrary figure, but I know Randwick Council gave us a hard time that we were raising more than necessary, but I think it would be prudent to have an allowance, knowing that not every developer will take up the opportunity  
25 and, again, in the context that it's voluntary you can't be sure that they're going to take it up.

MR O'CONNOR: All right. So - - -

30 MR HILL: So the 470 was a model rate.

MR HADDAD: I think, from memory, the difference was 41 million against 39, or something like that.

35 MR HILL: Yeah. It was fairly close. Well, not - - -

MR HADDAD: Yeah.

MR HANN: That sounds familiar.  
40

MR HADDAD: Yeah.

MR HILL: Yeah.

45 MR HANN: From the table we've seen - - -

MR HILL: Yeah.

MR HADDAD: Yeah. ....

MR HANN: - - - .....

5 MR HILL: Yeah. It's not a – so that's the history of it.

MR HANN: Yeah.

10 MR HILL: So I guess if you ask me to do it now I would just simply say 50 per cent of residual land value uplift, and that would be your starting point. The only thing is that it is a lot of – from council's perspective it's a lot of work to go through that process, and this was seen as a simplified approach. And I am aware of other councils who would like to do that, but I also have tabled that Georges River Council  
- - -

15

MR HANN: That this one had tried ..... - - -

MR HILL: Yeah. Tried to do that - - -

20 MR HANN: Yeah.

MR HILL: - - - and, in practice, they end up negotiating. So I guess my only concern, from council's perspective, that if you start off on a low base, and developers will negotiate, it could even be lower again, too, as well.

25

MR HANN: So we're clear – this is just Steve and I. That you've taken the \$475 a square metre, essentially from the Green Square but you've looked at how that was derived and you're satisfied – I don't want to put words in your mouth, but that's a reasonably applicable rate for the Randwick .....

30

MR HILL: Can I say, no, it's the lowest rate that you could use to fund the infrastructure where the - - -

MR HANN: So the lowest rate.

35

MR HILL: The lowest rate.

MR HANN: Okay.

40 MR HILL: The highest rate will – you know, would be in the order of somewhere between – and again we'd have to model this, and it changes from side to side, and it would have to take into account the existing uses, and all of that - - -

MR HANN: Right.

45

MR HILL: - - - but the model rate would probably be somewhere between 1300 and 1500.

MR HANN: Well, certainly we're aware that Burwood, for the town centre, I think, uses \$1750 ..... - - -

MR HILL: Yeah.

5

MR HANN: .....

MR HILL: Yeah. And I think they have a four per cent section - - -

10 MR HANN: Correct.

MR HILL: - - - in 94. So quite high. Yeah.

MR HANN: Yeah, that's my understanding as well.

15

MR HILL: Yeah.

MR HANN: No, it's just that, obviously as you've explained earlier, the economic drivers for each of the areas are different.

20

MR HILL: Yes.

MR HANN: You know, whether it be Willoughby or Lane Cove or Green Square or, in this case, Randwick, they're all going to be different. So I think what you've said there is that it's the lowest rate that you think would be reasonable to apply.

25

MR HILL: Yes.

MR HANN: Exactly.

30

MR HILL: Yeah, the lowest rate. Yeah.

MR HANN: Thank you.

35 MR HILL: And if the developer had a choice of taking it or not taking it, well, I'd be very surprised if they didn't take it, because it's representing 20 per cent of the land value, the benefit that they get. So it - I guess that comes with precedence. People might say that it is low but, again, in the context, we're trying to find the lowest path to fund the infrastructure that we could find.

40

MR HANN: And you think that based on, say, the St George's council experience, that if you - - -

MR HILL: Yeah.

45

MR HANN: - - - have it significantly higher you end up spending a lot of time - - -

MR HILL: Yeah.

MR HANN: - - - negotiating.

5 MR HILL: Yeah. Now, can I also say, it won't be viable for every development site, too, as well. And, again, you don't expect every development site to be viable. There's a passage of time where improvements need to become redundant. So just because you've – so you build a brand new office building, it doesn't mean you've got to knock it down and build a residential.

10

MR HANN: Yes.

MR HILL: So you have to, in these particular modelling, try and identify a case that covers the majority, but you can't cover every site. And as I mentioned in our  
15 sample, we had a – one of the sites which would have to be a higher SFR, and we've identified that it wouldn't be viable in that case. And in the other scenario which we're struggling at Woollahra is, when people speculate and pay too much. The only trouble when they speculate and pay too much, if everyone does it, well, then that becomes the norm. And we've seen that in Parramatta Road around Strathfield in the  
20 industrial area there. They've assumed certain things occurring and raised the bar. And that comes self-defeating for council. Because if you're trying to get a VPA, and get funding, and it's not viable for them, well, then, you don't get that funding.

So it is a – in describing land value, land values increase up to the rate it's viable  
25 and, in fact, past it, because to get that site I have to compete more than you. So it is a dynamic thing. So what we have found, however, over a long period of time, such as in Willoughby, by having the four per cent affordable housing, and having section 94A people factored in their feasibility and it does fall out in their price. So there is a bit of a transition period, but in this particular case, with such a significant uplift in  
30 the FSR, that should be absorbed.

MR HANN: All right. Any other key points you wanted to make? We've got some questions that sort of flow from this, but - - -

35 MR HILL: Well, I think the point I'm making is that it's not – in context of Willaura, Willoughby, Green Square, in the context of other competing areas in Burwood, it's not out of ..... someone say, "It's much cheaper to go elsewhere." So I've done some - - -

40 MR HANN: Okay.

MR HILL: - - - sums where even if you compared – remember the uplift is only on the uplift. So averaging out – I've done some sums. It works out somewhere  
45 between 18 and 16 thousand dollars extra per unit cost. Even though the figure is much higher, it's a percentage of the total uplift.

MR HANN: Okay.

MR O'CONNOR: So if I can ask a question there - - -

MR HANN: Away you go, sir.

5 MR O'CONNOR: Understanding how that figure was derived – and I accept  
everything you've told me there – the list of community infrastructure, was it then a  
matter of saying, “Well, these are the additional units we think, you know, might be  
generated with – if this change of zoning happens. If we apply that rate, we're going  
10 to end up with X million dollars. What facilities do we think are the priority  
facilitates of the community that need to be provided within that budget constraint?”  
Is that the logic of how you've then proceeded?

MR HILL: I think there's a – timeframe, though. Yes, it's – yes.

15 MR BRIGHT: Yes, it's more – we've prepared – Sam mentioned we started with a  
urban design competition, and coming out of that design competition, we've  
prepared a planning strategy. And that planning strategy was the mechanism where  
we identified all the infrastructures needed to support the growth that we were  
20 planning for. So from that strategy, the various infrastructure components were  
drawn from. So that was the basis for that. That's basically where it came from.

MR O'CONNOR: So you're saying it was sort of coincidence that in the end your  
list of infrastructure and what it was costed at when you crunched the numbers with  
the way they derive the cost per square metre it came at about the same number - - -  
25

MR HILL: We took it over 10 years. So we've got some modelling on page 46 and  
47 which shows those various different take up - - -

MR HANN: This is of your - - -  
30

MR HILL: ..... report, yes.

MR HANN: - - - ..... report, yes.

35 MR HILL: Yes, so we had a capacity and then the increase in the capacity. So,  
again, this is – and we were looking at what amount of affordable housing would be  
developed as well. So it's that assumption.

MR HANN: All right. What if – now, it's not in our terms of reference as to  
40 whether you will get your uplift of three per cent for the section 94. That's another  
process altogether.

MR HILL: Yes.

45 MR HANN: But, nevertheless, I think it's important to understand what if you're  
not successful, and, clearly, from the costings that you've documented, that will  
leave quite a shortfall. How is that being managed in terms of meeting the

infrastructure needs? If you're stuck with one per cent, which, I think, ended up being about \$20 million roughly, off the top of my head, what will you do?

5 MR BRIGHT: Well, we would have to re-evaluate our situation and look at how we could possibly achieve that infrastructure. So we would have to go back to the drawing board for those infrastructure items, and what that shortfall would represent.

MR HANN: Okay.

10 MS S. AGAGIOTIS: And it would compromise the ideas and the objectives of the whole strategy. So it's – you know, it's tied together with the strategies and the urban design outcomes that we're seeking for the whole – the sentence – I think David can further elaborate on how it all works with the buildings and the streets and how would you we think that the full range of benefits is important strategy.

15 MR D. APPLEBY: We went through quite a process of developing urban design and looking at different arrangements and options for uplift, and where we could look at introducing new open space – for instance, on quite a constrained corridor.

20 MR HANN: Yes.

MR APPLEBY: And we looked at street closures, etcetera, and we had discussions over the council's traffic plan as to see where they were possible, where the locations were best made for that. We looked at street trees – planting of new street trees, for  
25 instance – little micro plazas. The idea of setting back – one thing that came out of the competition process was a strong desire to widen the footpaths along Anzac Parade, and we looked at increasing by one or two metres, depending on where it was – particularly around the light rail stations of widening those footpath zones by – having set back in the property – to do that.

30 But that was on new properties where you have heritage buildings; obviously they stayed where they were ..... but we got through a lot of options and ideas, and we cannot – we're trying to provide as many green paces and outdoor plazas, etcetera, that would be able to use – so that balancing the uplift that you're – all those extra  
35 hundreds of apartments with new open space as well. It was really important to us and the process we worked through.

MR O'CONNOR: And just in relation to the costing, which was mentioned earlier, you would then go back to council's infrastructure team in which you identified  
40 footpath widening needed here, etcetera – and they were the ones providing you with your costing for - - -

MR BRIGHT: It's generally a – we laisse with our city services unit ..... as Martin outlined we looked at – and Sam – we looked at similar examples of similar projects  
45 in other parts of the city, what the costings were involved, and they provided us with a cost estimate.

MR HANN: Yes.

MR HADDAD: So when we finally – when – just coming back to this question about the – you know, how did you come with all these different items and all the  
5 rest of it – the strategy – and ..... was presented with the strategy. It had components within that strategy. And then there were a number of other items, and ..... challenged in terms of this listening as to whether there were completely appropriate or whatever. I mean, it went through a bit of ..... challenging which – with the council and their officers and all the rest of it to reasonably make sure that there are  
10 items that make sense, in a sense.

MR HANN: All right. Okay.

MR HADDAD: So that's the process. And then that was costed by a different team  
15 within the council, and the costing, actually, even was – I remember questions a number of times as to the business of doing all of that, so that's the process that's made.

MR HANN: All right. Just – so in terms of the infrastructure list – and I'm in  
20 particular talking about the CIC list as opposed to the local infrastructure, which is related to section 94 – the department has made us aware of their essential works list, and they use that as, if you like – as their guide to what's in and what's out. Is that something that Martin and Sam and yourself in the council – is that something that you refer to as well?

25 MS AGAGIOTIS: Is this an essential list from where?

MR HANN: They refer to it formally as the essential work register.

30 MR D. KEARY: From the 2018, like the infrastructure contributions practice note.

MS AGAGIOTIS: Okay. So these – this is prepared before .....

MR HANN: Yes. So this- that would pre-date that .....

35 MR APPLEBY: Our work was January 2017 .....

MR HANN: Dan, was there a predecessor to that – the essential work list, or is that  
40 ..... in 2018?

MR KEARY: Not that I'm aware of, John. The – it's an interesting – not that I'm aware of.

MR HANN: Okay.

45 MR KEARY: It's an interesting question, though, because it's – whether or not going back to what Sam said earlier about VPAs being a policy of the council and

the extent to which they're bound by policy guidance around section – well, I'm going to call it section 94 contributions ..... new number, but section 94 contributions, it's – is an issue that we need to further explore, I think.

5 MR HANN: Okay.

MR KEARY: But the question is was there any – in coming up with your contributions list, was there any consideration given to any policy guidance from the department about the range of infrastructure categories that could be captured by the  
10 CIC?

MR BRIGHT: We did have an iterative process, Sam, in particular in looking at what should be on our community infrastructure list and what should be on our section 94A list. But - - -  
15

MR HANN: Right.

MR KEARY: Yes.

20 MR HADDAD: The analysis was mostly in that context – you know, using the main criteria of section 94 – you know, the direct proportionality elements, or whatever, and then – versus the much broader thing. But I don't think that we had reference, from memory, to any specific departmental sort of listing.

25 MR HANN: Okay.

MR HADDAD: Other than just a process that – the departmental guidelines that the department established in terms of making sure that – you know, there's an appropriate process to go through in justifying the VPA quantum and way of  
30 implementing it. And that's the one that was filed.

MR HILL: yes. The state infrastructure contribution had a clarification of what things were in and out, but that reply to the ..... that was – and I'm not sure whether Robert Stokes' directions to VPA – which was only planning guidance – whether  
35 that was after or before us, but again, that's – that only refers to the region. So that's not specific. It can't be just money raised for no reason.

MR HANN: All right. Okay.

40 MR HILL: This – I think the background to this is also flooding that had to be taken into account so development could be increased without flooding. So those are some of the central works that needed to be done, and as you said, there's a list of items there. So you can – some – we – priority is most definitely taken in which jobs you can do.

45

MR HANN: Right.

MR HILL: And I know, for instance, with St Leonard's they're looking at bridging over the rail line, and the costing of that started at 40 million. It's 100 million now. So these items are – what you originally hope to do and what you end up doing are usually two different things. I would imagine this would be a – very much a “this is a plan”, but what money you raise, the timing, the priorities would be quite flexible –  
5 you know, quite fluid.

MR HANN: All right. In relation to the actual location of CIC works – that's another matter I – that we understand – there's some difference in views ..... the  
10 department and the council. And if we take Green Square as something of a model for what the – what Randwick is wanting to achieve with this particular Gateway rezoning, there's a lot of emphasis in the joint ..... here that with the Green Square – I think it's 6.14 .....

15 MR HILL: Yes.

MR HANN: Where the preference is for the – if you like, the infrastructure to be on the actual development site itself. Now, there is a provision within that clause where it's not – that may not be practical or possible. With this particular proposal, do you  
20 see that as being more likely that it would not be on the actual development site – would the – but nevertheless within the zone ..... development?

MR HILL: Precinct. Yes.

25 MS AGAGIOTIS: That's correct. That's how we saw it. We saw it within the corridor – we saw it as development that would benefit the community in that corridor and not necessarily on the site, because the sites are mostly within the footprint that has been envisaged - - -

30 MR HANN: ..... sites if you would like to – for example .....

MR HILL: Yes. Connectivity. Again, Lane Cove is not too dissimilar, because from late in that station, if you look at the video there, they talk about how ..... path  
35 lead down to this open space area. So I think as long as you show there's a connection – and I think in this particular case, you know, the area need a bit of a facelift going along there. And development has been very much island-type development, just looking at itself, and I guess, you know, is something we're looking and planning in general at other areas is trying to make developments actually play a role in creating better public space and having an overall  
40 improvement to the corridor.

MR HANN: So would you see the contribution being more monetary than actually the works being completed by the developer themselves because that's – again, that's  
45 another difference to the Green Square, where it seems to be primarily directed at having those works on the actual development site completed by the developer - - -

MR HILL: Yes.

MR HANN: - - - as opposed to monetary contribution.

MR HILL: If I may answer this from – again ..... from St Leonards, again, with the Winton site, it was right next to the rail station, so they – in their planning proposal  
5 included a roadway which covered over the part of the – so it made sense for them to include some works. And they included a – included with their supermarket a public car park. So there was a number of benefits that they were providing which made sense to put in that location and we would imagine in this case, too, it makes sense where public parking is provided in some locations but not the others, so there can be  
10 some offsets there. So it's appropriate to the location – and this is, again, moving away from the island development to the corridor-making strategy where you're trying to – the overall benefit ..... area ..... improved.

So it will be specific to the development opportunity but, no doubt, developers will  
15 be putting in claims for works in kind with their developments and some of it – and – but council can reject it. And the other area, too, is – the other one is that they – is the quality of those works in kind ..... too low or too high. Council will need some standards which they're trying to apply over the whole area and make that claim there. And there's a whole series of ESD improvements that you're looking at where  
20 you're sharing site ..... it is very much an integrated approach to development.

MR BRIGHT: Can I also just point out our legal advice that we got and our solicitor has said that under the Act, a VPA is not invalid by reason that there is no  
25 connection between the development and the object of the expenditure, so - - -

MR HILL: Yes. I understand that.

MR BRIGHT: Just on that, we've got our legal advice here, which we will leave  
30 with you, as well.

MR HILL: Terrific.

MR HANN: All right. No. Thank you. Steve .....

MR O'CONNOR: Yes. I just had one more question, and it's probably more for the  
35 council officers, but feel free anyone who wants to answer. John has talked about the similarities between the Green Square clause four – sorry – 6.41 in Sydney LEP and what you're proposing. One important difference, though, is that that all refers – the Green Square all refers to floor space where as council has drafted it, it relates to  
40 building height.

MS AGAGIOTIS: Height.

MR O'CONNOR: Yes. Do you have a fundamental objection if floor space is  
45 included in the way the clause is drafted?

MR HILL: ..... I do.

MR O'CONNOR: Okay. Well, that's what we want to hear.

MR HILL: Yes, yes, I do. Again ..... experience ..... St Leonards, we've – originally the plan was for commercial development and the FSR was quite high.  
5 When you move to residential development, your ..... whatever number you introduced at the time ..... where you had to bring in – so, essentially, in a tower, it's about 50 per cent site coverage. So what you tend to do is you can – we found cases where they were within the FSR but they needed to exceed the height. So to encourage, you know, good development, you know, it's appropriate to not try and  
10 fit it all under the height and to extend it, so – and another case we've just seen recently in Woollahra is someone to be under the height limit removed the commercial on the first level and put a car park because the ceiling height was lower.

That was ludicrous because ..... wanted commercial on the first level. So height,  
15 again, from experience, is a more effective tool of identifying that planning benefit. And the argument would be that if a developer – if you took height as your limit and just moved FSR out of the site, there's a benefit for going above the height limit and we're saying that's a value benefit to you but if you argue that I haven't used up my FSR, we will say, "Well, go to .....", you know, it's – that's a use issue. So it is quite  
20 - - -

MR O'CONNOR: Okay ..... conscious .....

MR HILL: ..... yes, it's quite conscious.  
25

MR O'CONNOR: Okay.

MR HILL: Yes – no – it would be a very strong recommendation. I would say FSR and height but in reality, height will be the key critical. And we're just doing another  
30 one in Macquarie Park, just – a very similar situation ..... within the FSR – there's a commercial development within the FSR, but they need to go above the height.

MR O'CONNOR: So just to use that example you just quoted to us, where they want to go above the height limit, but they're not going above their floor space, in  
35 the scenario you're putting forward, you would only measure the floor space above the height limit?

MR HILL: ..... yes. Exactly. Yes.

MR O'CONNOR: ..... so it's within the allowable floor space - - -  
40

MR HILL: Yes.

MR O'CONNOR: - - - on the site?  
45

MR HILL: Yes. And then we've done that in St Leonards. So there's a case with the Leightons site or now the Mirvac site. That's a case where that is the case. And,

likewise, also with the Winton site ..... many times. They get the VPA and then they sell it. In – at Pacific Highway, so – now, the argument would – the developers say, “Well, I’ve got this right to this FSR,” and we say, “No, the – it’s the height – just like if you didn’t have any FSR, you had two storeys and you want three storeys,  
5 you’ve got to pay for it.” So that’s the attitude. But, again, some people may not see it that way.

MR O’CONNOR: Sure.

10 MR HANN: Thanks for that explanation .....

MR KEARY: Just – maybe to ask Steve’s question in another way. So the mapped FSR then on the maps is the maximum FSR that’s achievable even with the height bonus – is that right – because the FSR doesn’t – the allowable FSR doesn’t move  
15 around? It’s fixed on the maps?

MR O’CONNOR: It’s the maximum.

MS AGAGIOTIS: Yes.  
20

MR KEARY: So it’s the maximum. So if you’re contemplating a potential additional two storeys on a site, that’s reflected in the mapped FSR?

MS AGAGIOTIS: Yes. So the idea under this scheme was to have the heights as  
25 shown – as existing and the clause would operate to – for the CIC mechanism - - -

MR KEARY: Why?

MS AGAGIOTIS: - - - to allow the extra height – yes.  
30

MR KEARY: The heights?

MS AGAGIOTIS: For the heights.

35 MR KEARY: But the FSR is capped?

MR O’CONNOR: No - - -

MR O’CONNOR: I understood – you’ve got the existing FSR but you also have  
40 maps of future FSR.

MS AGAGIOTIS: That’s right.

MR O’CONNOR: Yes.  
45

MS AGAGIOTIS: Yes. Correct.

MR O'CONNOR: So that's all very clear.

5 MR KEARY: Okay. Okay .....

MR HILL: That's correct.

MS AGAGIOTIS: ..... yes - - -

10

MR HILL: You needed to because sometimes FSR does not change.

MR KEARY: It's an important question - - -

15

MR HILL: Yes - - -

MR KEARY: - - - because the department has focused on the differences in the mechanism between Green Square, Burwood, other schemes - - -

20

MR O'CONNOR: And this is an important difference.

MR HILL: And, I mean, a corner site will give you a greater ability to maximise your FSR within a certain height, whereas a site that's sandwiched between two sites is more difficult. So it is – but generally in residential – well, it – so, in Double Bay, we went to a great length to make sure – and this is another problem in modelling. You go to a great length that if you quote an FSR, it's achievable within the height limit because it creates an enormous amount of frustration for developers and frustrating their architects – why haven't we achieved the FSR?

25

30

MR HANN: All right.

MR HILL: It's – it is a really important issue.

35

MR HANN: : ..... we note ..... council that in your most recent notes for us, which, by the way were very helpful, you do in your terminology there combine the ..... the height and the FSR.

MS AGAGIOTIS: Yes.

40

MR HILL: Can I just further clarify, too, as well, another problem with council's FSR is if you take the – this building footprint, it would exclude the lift wells and the corridor. In the GFA calculation done in Lane Cove, it's actually all the internal floor space. So there is a difference in areas between a council's calculated FSR and

the GFA – the FSR – GFA – they’re two different items. So you’ve got – I think you need to be very careful in your definition of what the GFA – and, again, we’ve learned in Lane Cove, to define it – and when QSs talk of GFA and architects, they’re actually talking that area, not the area that council talks about. So there is a  
5 difference five per cent but five per cent - - -

MR HANN: ..... different - - -

MR HILL: ..... difference and when you’re paying dollars ..... lots of money.  
10

MR HANN: All right.

MR HILL: And we’ve had that argument, too, as well.

15 MR HANN: Okay. Well, thanks for clarifying.

MR HILL: Yes. So it is - - -

MR HANN: So I guess, just to conclude, in terms of your most recent  
20 documentation to us, it was deliberate that you used both the FSR and the height together?

MS AGAGIOTIS: Yes.

25 MR HANN: Right. Okay. Steve - - -

MR O’CONNOR: No, nothing further from me

MR HANN: - - - have you got any more questions?  
30

MR O’CONNOR: - - - me.

MR HANN: Dan, is there anything you wanted to - - -

35 MR KEARY: No.

MR HANN: Well, thank you very much.

MR TODD-JONES: I just want to say about the legal advice, obviously you’re  
40 providing this to us.

MR HANN: Thank you. Yes.

MR TODD-JONES: Obviously, the Department did not turn up today. I just  
45 wondered are you still okay with this legal advice being tendered it just seemed that you said obviously the department ..... but obviously ..... coming in .....

MR BRIGHT: Yes. It was my understanding that they were going to be here today and that they were going to table their advice - - -

5 MR O'CONNOR: They were invited to be here today.

MR HANN: We invited them to attend and they were unable to - - -

10 MR TODD-JONES: Okay. And, obviously, this would need to go up on the website - - -

MR BRIGHT: Well, we're - we had discussed - well, our solicitors discussed with the Department's solicitors - that would be confidential.

15 MR HANN: That - yes. So I think ..... we acknowledge that you've provided the advice to us and we will hand that to our counsel.

MR BRIGHT: Yes.

20 MR HANN: - - - and it will be dealt with appropriately based on the discussions and the agreement between the Department, yourselves and .....

MS AGAGIOTIS: Okay.

25 MR HANN: So it won't necessarily go up on the website.

MR TODD-JONES: Yes. Okay.

MS AGAGIOTIS: Okay.

30 MR TODD-JONES: ..... that's fine. That's fine.

MR HANN: ..... thank you.

35 MR BRIGHT: A pleasure.

MR HANN: All right. I think we're complete. Thanks very much.

MR BRIGHT: Thank you.

40 MR HILL: Thank you.

MS AGAGIOTIS: Thank you.

**RECORDING CONCLUDED**

**[3.31 pm]**