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**TRANSCRIPT OF PROCEEDINGS**

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TRANSCRIPT IN CONFIDENCE

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O/N H-1000959

**INDEPENDENT PLANNING COMMISSION**

**MEETING WITH DEPARTMENT OF PLANNING AND ENVIRONMENT**

**RE: REQUEST FOR GATEWAY DETERMINATION REVIEW –  
OLD SOUTH HEAD RD ROSE BAY**

**PANEL:** **CHRIS WILSON  
SOO-TEE CHEONG**

**ASSISTING PANEL:** **ANDREW McANESPIE**

**COUNCIL:** **AMANDA HARVEY  
LAURA LOCKE**

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

**DATE:** **8.56 AM, MONDAY, 4 MARCH 2019**

MR C. WILSON: Good morning 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 their elders past and present. Welcome to the meeting today on the request for a gateway determination review seeking to list the Rose Bay Uniting  
5 Church and Wesley Hall Group, 518A Old South Head Road, Rose Bay, as an item of local heritage under schedule 5 of the ..... LEP 214. Specifically, Woollahra Municipal Council is seeking a review of condition 1 of the gateway determination which states:

10 *The planning proposal is to be updated to include a reference to a savings provision to apply to any development application lodged but not determined.*

Council is also requesting that reconsideration be given to it being authorised as the local plain making authority. My name is Chris Wilson and I am the chair of the IPC  
15 panel. Joining me on the panel is Soo-Tee Cheong. The other attendee is Andrew McAnespie from the Commission Secretariat. In the interest of openness and transparency, 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. This meeting is one part of the commission's process of  
20 providing advice. It is taking place at the preliminary stage of process and will form one of several sources of information upon which the commission will base its advice.

It is important for the commission to ask questions of attendees and to clarify issues  
25 whenever considered – whenever we consider it appropriate. If you're asked a question and you're not in a position to answer, please feel free to take a question on notice and provide any additional information in writing which we will then put up on our website. Thank you. We will now begin. Just quickly from the department, I  
30 guess, just an overall of process today. We have the information, obviously, in the documents that have been provided, but just generally before we ask a number of questions.

MS A. HARVEY: Just the department's involvement?

35 MR WILSON: Yes.

MS HARVEY: Yes.

40 MR WILSON: That would be good, thank you.

MS HARVEY: So we received the planning proposal last year in July and we've progressed to provide a gateway determination the following month in August. As part of that determination as part of the subject of this review was the condition 1 which was to enable a savings provision to apply to the current development  
45 application that's – that was with council, and then has now gone to the Land and Environment Court on appeal as a deemed refusal. So when we received this proposal, it seeks to heritage list the whole site, and we were made aware that the

proponent and land owner had indicated that they weren't averse to the heritage listing but they wanted to list only portion of the site based on the fact that the development application they had before council before the court was to retain only part of the buildings, not the full extent of the buildings, as was the council's proposition.

So as part of our gateway determination, we reviewed that development application in terms of its timing, and it had been, in fact, submitting to council prior to council's resolution to proceed with the planning proposal to heritage list the site. So we noted also that council hadn't put it an interim heritage order which is normal practice for a lot of council's where there is a threat of demolition or removal of any part of – in this case there's moveable items, so we didn't – weren't quite sure why that had occurred. We had asked counsel but we didn't get any correspondence on why that occurred, and I think that's reflected in our report to yourselves. The other part that council had asked us for was the local plan making authority.

Ordinarily, when there are local matters, we do give council local plan making authority. However, in this instance, and often is the case with heritage sites where there's a discrepancy in views between the proponent landowner and council, we generally put the local plan making authority as the department rather than council, just in the event that there's no resolution between the two parties, so that when it comes to finalisation we often have to work through that with council and the proponent as the last part of the proposal. So I think that's basically our views, but if you would like to explore anything further, I am happy to go through in more detail.

MR WILSON: Yes. Just on the matter of the savings provision. We note in your report, and you've referred to that today as well, that you – it's a common practice. It's a practice that the department incorporates those conditions where there's a DA afoot. Is that right?

MS HARVEY: There can be, yes. I think in this instance when it's heritage, because there wasn't an interim heritage order, and the development application had proceeded the planning proposal, we felt that it was due process to allow the development application to proceed. And I don't think that the heritage listing was in dispute. It was just the degree to which the listing related. So we felt that it was fair process to allow the development application to go ahead.

MR WILSON: Okay, but the department has done that previously.

MS HARVEY: Correct.

MR WILSON: There are examples of that.

MS HARVEY: We have. Yes, we do have other instances, yes.

MR WILSON: Okay.

MS HARVEY: Yes.

MR WILSON: Thank you. Soo-Tee.

5 MR S. CHEONG: I just want to understand the procedure and what has happened between the condition being imposed. And was there a court directed hearing for reconciliation?

MS HARVEY: I don't know.

10

MR CHEONG: You don't know.

MS HARVEY: We're not party to the proceedings.

15 MR CHEONG: Yes. Yes.

MS HARVEY: And we don't have any information at the moment about what – how that's progressing, and I don't even know what date. We know that it was scheduled for this month.

20

MR CHEONG: Yes.

MS HARVEY: But we haven't had an update on where – that actual court process and what conciliation has occurred. I would imagine conciliation has occurred at this stage given that it's going to be heard this month – assumed still proceeding, but we haven't had an update from council on the proceedings at this stage. I think the other thing to note, and coming back to your timing issue that we – part of the reasoning was council had been very clear in its planning proposal that it wanted to make this LEP by March which seems to coincide with the development application. So it would also fetter the development application's process by trying to have the LEP made potentially at the same time or before the development application would have been heard by the court as well.

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30

MR WILSON: I guess it – how long does it take for – for instance, if this was to proceed now – the planning proposal was to proceed to exhibition now - - -

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MS HARVEY: Yes.

MR WILSON: - - - how long would that normally take?

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MS HARVEY: Well, since the – this has – I suppose the process of gateway review has stopped anything from occurring at this point, if a decision was made and the proposal concerns to proceed, from herein I would imagine it would probably take about four to five months at a very short period of time. It can take longer. It just depends on when, and if council and the proponent need to resolve to agree anything further.

45

MR WILSON: Okay.

MS HARVEY: Yes. We have the council nine months to prepare the LEP under the gateway conditions, and they sought eight months. It's usual for us to round it  
5 another month usually, between nine and 12 months. Sometimes it can be six if it's a minor matter.

MR WILSON: Just – I guess just confirming too, I presume the DA becomes a –  
10 the draft planning proposal won't become a mandatory matter for consideration by the court until it's exhibited. Is that correct?

MS HARVEY: Correct. Yes.

MR WILSON: Okay. Soo-Tee.  
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MR CHEONG: I think the department has answered in their assessment quite clearly what the council have actually disputed.

MS HARVEY: Sure.  
20

MR WILSON: Is there any guidance? Does the department have guidance in terms of how it should use savings provisions?

MS HARVEY: It's something that we've recognised I think through the work of  
25 this and through others that we probably need to review a little bit more closely, but we do have standard practices that we follow for savings and transition provisions. And sometimes that can come after the proposal that has been exhibited - - -

MR WILSON: Yes.  
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MS HARVEY: - - - where it's made known to us that there are development applications or other things afoot.

MR WILSON: Okay.  
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MS HARVEY: And sometimes we make that as a – at the end of the process and during finalisation.

MR WILSON: Sure.  
40

MS HARVEY: But in this case, we were aware of the development application ahead of time.

MR WILSON: Okay. So the general practice is to incorporate savings provisions  
45 where there's a known applications.

MS HARVEY: Correct.

MR WILSON: Yes. Soo-Tee, I don't think I have any further questions.

MR CHEONG: No. As I said, I think the - - -

5 MR WILSON: Is that just for heritage or it's just for any - - -

MS HARVEY: It can be for other matters.

MR WILSON: Right.

10

MS HARVEY: We do have other proposals that are afoot now that have other development applications where an LEP amendment will affect development applications. In some cases there might be numerous development applications. So, yes, we often use that savings and transition provisions, yes.

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MR WILSON: I would appreciate if you could just give us a couple of examples.

MS HARVEY: Sure.

20 MR WILSON: If you take it on notice and give us a couple of examples of where those provisions have been used, particularly – specifically for heritage would be good.

MS HARVEY: Yes ..... sure.

25

MR WILSON: I appreciate that. But beyond that - - -

MR A. McANESPIE: I will send you an email.

30 MS HARVEY: That would be great. Thanks, Andrew.

MR WILSON: Beyond that I don't think I have any further questions. Soo-Tee.

MR CHEONG: Just one more. I just - - -

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MS HARVEY: Sure.

MR CHEONG: Is that normal, that the department will seek the Office of Environment and Heritage for advice?

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MS HARVEY: Not during the gateway determination.

MR CHEONG: Not - - -

45 MS HARVEY: I think it was – it's normal practice that we don't. We do require the council as PPA, or the planning proposal authority, to undertake consultation with OEH during the course of – through the exhibition process. So we don't require it. We can, but this is a local heritage matter, and I think the other fact is that both

the council and the proponent was agreed that there was heritage significance attached to the site. Again, just the degree to which that relates.

5 MR WILSON: So on the second point, if the condition was to remain, how important then is the second condition relating to plan making?

MS HARVEY: So the second condition here requires that there be removal of the clause for explanation of the provision.

10 MR McANESPIE: No, you're taking - - -

MR WILSON: No. Sorry.

15 MS HARVEY: Sorry. You're talking - - -

MR WILSON: The second condition under review.

MR McANESPIE: The one that council has – yes. Yes.

20 MS HARVEY: Sorry. Okay. The council. So consultation is mandatory under the Act in - - -

MR WILSON: No. No, sorry. Let me rephrase that. So if – for instance, if the condition was to remain - - -

25 MS HARVEY: Yes.

MR WILSON: - - - which means – which would enable the court to make its determination on the development application, how important is it then that the department maintain the plan making role? Well, either council or the department?

MS HARVEY: I think it's still important.

MR WILSON: Okay.

35 MS HARVEY: Yes. Reason being is that even after the court case, the council – depending on which way the court goes, of course.

MR WILSON: Yes.

40 MS HARVEY: We don't know which way they will land on the development application. We would expect that even if the court had said, "We don't support the development application," I can only foreshadow that the proponent would still continue to disagree with the standing on the degree to which the heritage listing will relate.

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MR WILSON: Okay. Okay. That's it from me, and I appreciate you coming in, given that you're ill.

MS HARVEY: Thanks. I was ready to go home.

5

MR CHEONG: Thank you.

**RECORDING CONCLUDED**

**[9.09 am]**