



AUSCRIPT AUSTRALASIA PTY LIMITED

ACN 110 028 825

T: 1800 AUSCRIPT (1800 287 274)

E: clientservices@auscript.com.au

W: www.auscript.com.au

TRANSCRIPT OF PROCEEDINGS

TRANSCRIPT IN CONFIDENCE

O/N H-1250660

INDEPENDENT PLANNING COMMISSION

MEETING WITH DEPARTMENT OF PLANNING, INDUSTRY AND ENVIRONMENT

RE: NEWPORT

PANEL:

**ILONA MILLAR (Chair)
ADRIAN PILTON
STEPHEN BARRY**

**DEPARTMENT OF
PLANNING,
INDUSTRY AND
ENVIRONMENT:**

**ASHLEY RICHARDS
LUKE DOWNEND
ELVIE MAGALLANES**

LOCATION:

VIA VIDEO CONFERENCE

DATE:

10.13 AM, WEDNESDAY, 5 AUGUST 2020

MS I. MILLAR: Just for the purposes of the transcription, I will just confirm to our Auscript monitor that we are starting the meeting. Okay, great. So good morning, everyone. Before we begin, I would like to acknowledge the traditional owners of the land on which we meet, and I would like to pay my respects to the elders, past, present and emerging, and to any elders from other communities who may be with us. Welcome to today's meeting. As you are aware, the Northern Beaches Council has lodged a request to review the Gateway determination for a planning proposal seeking to amend the Pittwater Local Environmental Plan 2014 to permit seniors housing with development consent as an additional permitted use of land at numbers 2 and 4 Nooal Street and number 66 Bardo Road, Newport.

My name is Ilona Millar, and I am the chair of this IPC Panel. Joining me today is my fellow commissioner, Mr Adrian Pilton. And the other attendee of this meeting is Stephen Barry from the office of the Independent Planning Commission. In the interests of openness and transparency and to ensure the full capture of information, today's meeting is being recorded and a full transcript will be produced and made available on the Commission's website. This meeting is just one part of the Commission's consideration of this matter and will form one of several sources of information upon which the Commission will base its advice.

During the meeting, it's important for the commissioners to ask questions of attendees and to clarify issues whenever it considers it is appropriate. But if you are asked a question and are not in a position to answer it straightaway, please feel free to take the question on notice, and you can provide any additional information in writing. Any additional information will be placed on our website. Because we are doing this through videoconference means, I would request that all members here today introduce themselves for the purposes of the transcript before speaking for the first time, and also just to ask that attendees do not speak over the top of each other so that the transcript is able to capture the accuracy of all statements made. So with those housekeeping items out of the way, we will now open the meeting and begin the discussion. Perhaps to start, if I could just get the Department attendees to identify themselves and their positions for the purpose of the transcript.

MS A. RICHARDS: Good morning. My name is Ashley Richards. I'm a specialist planning officer with the North District in the Eastern Harbour City team for the Department.

MS MILLAR: Thank you.

MR L. DOWNEND: Good morning. My name is Luke Downend. I am the acting director of the North District for DPIE.

MS MILLAR: Yes.

MS E. MAGALLANES: My name is Elvie, a senior planner at the Department of Planning.

MS MILLAR: Great. Thank you all. Now, you will have provided with the agenda for today's meeting which identifies the areas where we will be seeking the Department's input and information about the process today and some of the issues relating to strategic and site-specific planning matters relevant to this proposal.

5 Could I hand over to – I expect it might be you, Ashley or Luke, to just give us a little bit of an overview of the Gateway process to date and an introduction to the matter at hand.

MS RICHARDS: Yes. Okay. So the site is under the Pittwater Local
10 Environmental Plan 2014. It's zoned E4 Environmental Living currently. In September 2017 Council first lodged the planning proposal. It was initially seeking to amend schedule 1 of Pittwater LEP 2014 to permit seniors housing as an additional permitted use on the site. That planning proposal included a concept
15 design which involved eight seniors housing independent units, had a floorspace ratio of .5 to 1, and a total height of 8.5 metres, which is within the current LEP height mapping too. In November 2017 Council resolved not to support that planning proposal, and the proponent submitted a rezoning review request to the Department.

20 This went to the Sydney North Planning Panel, who determined in May 2018 that the planning proposal demonstrated strategic and site-specific merit and it should continue for Gateway determination. At that meeting the Sydney North Planning Panel also identified that the sites surrounding the subject site at 2 to 4 Nooal Street and 66 Bardo Road were similar and should also be considered for rezoning to –
25 sorry, I should back up. Although the planning proposal was for an additional permitted use, the Planning Panel recommended that a better mechanism would be to rezone the site as R2 low density residential, and furthermore that several sites around the subject site would also benefit from being rezoned from E4
30 environmental living to R2 low density residential.

Anyway, so ultimately the planning proposal should proceed to Gateway determination. So then we're up to – so we're still 2018. In June 2018 Northern Beaches Council accepted the role of PPA, Planning Proposal Authority, and Council submitted a planning proposal to the Department seeking Gateway determination.
35 The Department reviewed the revised planning proposal, and it was initially inaccurate to be assessed for Gateway determination and required revision. I believe that that happened a couple of times, where it was returned to Council to be revised for more – revised to include more information.

40 So Council finally submitted a complete planning proposal to the Department in November 2018 for the Gateway determination – no, that was further revision. The final one was submitted 2019, June. So version 3 planning proposal, June 2019, submitted to the Department. The Department reviews the planning proposal. The Department determines – so the Department assesses the two mechanisms which
45 have been previously considered by, first, the proponent council, then the Sydney North Planning Panel, and recommended that the best mechanism for the alteration

was the first one, which is the additional permitted use under schedule 1 of the LEP to permit seniors housing, not to rezone to R2 low density residential.

5 The Department issued a Gateway determination with that in mind. The Department also confirmed with Council that the planning proposal need only concern the subject site in question, not the sites around the subject site as were addressed by the Sydney North Planning Panel. So the Department issued Gateway determination in October 2019, then Council lodged a formal Gateway determination review request in December 2019. And that wasn't specifically to do with the Gateway determination that was issued. It was contesting the strategic and site-specific merits of the 10 planning proposal in its entirety.

MS MILLAR: So with that in mind, in terms of the role and the task of the IPC, 15 what in your view is the scope of the review that we are undertaking?

MS RICHARDS: I'm not certain I understand the question.

MS MILLAR: Well, I mean, would you be saying that we are undertaking a review 20 of the Gateway determination, or are we sort of doing a full review of the strategic and site-specific merits of the proposal, or does that essentially cover the same thing?

MS RICHARDS: I think that the role of the IPC is, for the – the IPC is to complete the Gateway review which, in terms of process, should – you're asking what should a Gateway review be. So the role of the IPC is essentially to review the Gateway 25 conditions. The Gateway determination review lodged by Council, submitted by Council, doesn't concern the Gateway conditions. It's not based on the Gateway conditions. So in my opinion it's not correct use of process.

MS MILLAR: Okay. So just for complete transparency, the Council has provided 30 some submissions – which I believe, Stephen, will be placed on our website and will also be communicated to the Department – which essentially argues that our role is rather a narrowly construed review, and that it is relevant for us to be looking at the strategic and site-specific merits of the proposal. And so that's one of the matters that we will have to consider as we undertake our review and know exactly what our 35 function is and role is. So we're just sort of, as I said, seeking your view on what our role is to see how that sits with what the Council has advocated for as well.

MS RICHARDS: Okay. Well, with that in mind, if the – well, the IPC is to perform the Gateway review and thus determine whether the proposal has strategic and site-specific merit to proceed, because that - - - 40

MS MILLAR: Okay.

MS RICHARDS: - - - that is what the Gateway review has raised. 45

MS MILLAR: Okay. No, look, thank you for clarifying that, but we just wanted to make sure that that point was covered off. So in that case, in terms of the process to

date, for the purposes of the review, as I understand it, we are looking at a review that is specifically looking at the subject site and the addition of an additional permitted use, being seniors living housing on the subject site. Is there anything further that you think we need to consider based on the position that was advocated
5 by the Sydney North Planning Panel and its recommendation around a more expansive R2 rezoning, or should we – is that issue now closed?

MS RICHARDS: You're asking whether I think that the Commission should reconsider the Sydney North Planning Panel's position, which was to rezone the site
10 and the sites around it to R2?

MS MILLAR: Yes.

MS RICHARDS: As I've stated in the Gateway justification report, I think that an
15 additional permitted use is a more effective mechanism, because – well, for several reasons which I've outlined there. There's no obligation for the proponent to develop the land for seniors housing if the land is rezoned to R2 low density residential. And specifically rezoning the land to R2 low density residential also permits boarding houses, group homes and secondary dwellings under the SEPP, so
20 it doesn't limit it to seniors housing. But I've outlined that in the report, so – if the Planning Commission wishes to consider R2 low density residential while they're assessing the strategic and site-specific merits of the proposal, then that is their prerogative.

MS MILLAR: Okay, thank you. Adrian, are there any other questions that you want to raise around the process and the interaction between the Gateway review and the Sydney North Planning Panel's considerations of the matter?

MR A. PILTON: No, I don't think I have any other questions at this stage. Thanks.
30

MS MILLAR: Okay. And, Stephen, is there anything else that you think we should be flagging as part of this discussion, or - - -

MR S. BARRY: No, I am okay. Thank you.
35

MS MILLAR: Okay, thanks. Look, in that case we will move on to the next item, which is the status of Council's provisions for seniors housing and its relationship with the state target. And the Council has advocated that there is adequate provision for seniors housing within the local government area, and that they will be achieving the state targets – housing targets for the Northern District. Do you have a view on
40 whether this proposal is – and the addition of seniors housing in the Newport area is required in order to meet those targets?

MS RICHARDS: So Northern Beaches Council, in their local strategic planning statement they do address that they need more seniors housing and the need to locate seniors housing, social and affordable housing, near centres and public transport. However, they also acknowledge that their housing targets are currently focused in
45

their precinct areas, so Frenchs Forest, Brookvale and Ingleside. Also, it needs to be noted that their LSPS doesn't currently include specific housing numbers for seniors housing either, and the action they have in the LSPS concerning this is that they will work with DPIE to come up with a more local approach to deliver seniors housing.

5 So, no, we feel that the planning proposal can deliver a small amount of seniors housing and that it isn't inappropriate in the area.

MS MILLAR: And just to confirm, when you talk about Council's local strategic planning documents, you're talking about the – I think it's the Vision 2040 document
10 that was approved in March this year.

MS RICHARDS: Yes, that's right.

MS MILLAR: Okay. Great. And then what is the Department's view on the
15 strategic merit of the proposal, particularly given that it is inconsistent with the existing planning controls for the area and the proposal is also to – well, was initially lodged within the five-year period of the making of the LEP in 2014?

MS RICHARDS: Sorry, could you repeat that? You broke up just in the first
20 sentence.

MS MILLAR: Okay. So the first, I guess – well, I will break it up in terms of, you
25 know, what is the Department's view of the strategic merit of the proposal, in particular given that it's inconsistent with the Council's existing planning controls and that those planning controls are relatively new controls in the sense that the LEP came into effect in 2014 and the proposal was initially lodged in 2017?

MS RICHARDS: Okay. The planning controls that you're referring to, you're
30 referring to it being flood-affected? Which planning controls are you referring to there?

MS MILLAR: So firstly starting with the E4 zoning, and then we will come to
further questions on the flood studies and inundation risk.

35 MS RICHARDS: Okay. No, the Department feels that the planning proposal does have strategic merit, and that given the site isn't directly – given the site's proximity to a local centre, to transport, that the concept plan associated with the planning proposal involves a concept that's no more dense than the surrounding dwellings there currently, feel that it – and provides needed seniors housing to the area, the
40 Department's view is this proposal does have strategic merit.

MS MILLAR: And then from the perspective of the guidance that is provided on
the making of local environmental plans and the planning circulars with respect to
45 making local environmental plans, the Council has raised the point that it is not recommended to amend and rezone land, you know, within the first five years of a new plan on the basis, they argue, that, you know, considerable consultation had gone into the process for making the LEP for 2014. Do you have a view on the

appropriateness of amending zoning within such close proximity of the – you know, the making of a plan where that zoning had expressly been considered and applied?

5 MS RICHARDS: Look, that's one that I might take on notice and get back - - -

MS MILLAR: No, that's fine. Please feel free to do that. Adrian, are there other questions that go to the strategic sort of merit of the proposal?

10 MR PILTON: Yes. I mean, Ashley is saying that the Department's view is that it's close to the neighbourhood shopping and transport, whereas the Council's view, I think, is that transport is not that close and it's not connected to the B-line and all that kind of stuff. It's just local transport plus, saying that the Newport shops are, you know, a significant walk away for elderly people. Does the Department have a view on that, or do you think that's acceptable, the distances involved?

15 MS RICHARDS: I do think that the distances involved are quite – are quite minimal. The site is actually 700 metres from a nearby local centre, and in terms of local access this can be addressed quite easily at DA stage.

20 MR PILTON: Okay, thank you.

MS MILLAR: Okay. In that case, perhaps if we can move on to the issues of flooding, sea level rise and the potential impacts on site access. One concern that has been raised by the Council is that the site is affected by their 2019 flood study, and there could be issues around the site becoming isolated in the event of – you know, flood events. So are you able to speak to the Department's views on those issues?

30 MS RICHARDS: Yes. Yes. So the Newport flood study 2019, it was adopted just last year. There are not adopted flood planning maps in Council's LEP. The flood study is referred to in Council's development control plan, and the Department has spoken with Northern Beach Council's team leader of – sorry, flood engineer, so he's the team leader of Floodplain Planning and Rescue, Duncan Howley. Now, we've been advised that although the site is marginally identified as being affected by flooding, the flooding is mostly within the road reserve.

35 And we specifically asked him if it affects access. It does affect access to the site, however not significantly so. And it should be noted that it's a minor issue and can also be addressed at the development application stage. The only other thing that I would note there is the applicant would need to ensure that the development can be designed around flood affectation, liaise with Council's flooding engineers to ensure that this is designed suitably and those flood mitigation measures are in place. But it's definitely not precluding – it is definitely not precluding development. It does not preclude.

45 MS MILLAR: Okay. Adrian, anything further that you would like to follow up on with respect to those issues?

MR PILTON: Not really. I mean, I think I need to see these – see more details of the flood study and the inundation study that the Council has promised to give us. But information that we have to hand, I think it more or less backs up what Ashley is saying. But I really don't know what the wider picture is and what the issue
5 specifically has to do with seniors housing. Do they think that senior people can't escape or something? Is there any rules that say you have to allow immediate – what's the word – escape for seniors or anything like that? It's probably not a serious question. It's not well-formed. But the bigger picture – the bigger picture I'm asking is, I don't know from looking at the drawings that we have how serious
10 that flooding is. Is it, like, six inches deep or – sorry, 150 mils deep, or is it a metre deep or what? That's not your problem, that's the Council's problem. Did the Department have any specialist engineers look at that apart from asking the Council engineers?

15 MS RICHARDS: No. No, we haven't. We haven't had Department engineers look at it.

MR PILTON: I think I need to wait and see the Council's details before I ask any other questions. Thank you.

20

MS RICHARDS: Understood.

MS MILLAR: Okay. Well, I think that probably wraps up the questions that we have on the status of the flood study or potential impacts on site access. We did have
25 a question here onsite specifically for the amendments versus border rezoning. We've touched on that already, but just to round that out, do you have views on the precedent value of this site being sort of either rezoned or this particular additional use being added to the permitted uses for the site?

30 MS RICHARDS: Regarding creating precedents, I will also take that one on notice and send through something in writing.

MS MILLAR: Okay, great. No, thank you for that. Adrian, is there anything else that you wanted to raise with the Department? You know, we obviously have your
35 justification assessment and the material that has been provided and the information that will be coming on notice. Anything else that you want to raise at this stage?

MR PILTON: I don't have any other questions. I think we've got pretty good responses previously.

40

MS MILLAR: Okay. And, Stephen, anything that we've missed or you think we need to raise?

MR BARRY: I think just in relation to the E4 zoning, so I guess, obviously, the
45 Department concurred with that zoning through the making of the LEP, is there an issue in terms of, I guess, that potential discrepancy between the Department

agreeing to that in the first place and then effectively taking a different view in relation to this proposal?

5 MS RICHARDS: I think that I might cover off on that in my written response when I also address precedent - - -

MR BARRY: Yes.

10 MS RICHARDS: - - - because I think those are related.

MR BARRY: Yes. Okay.

15 MS MILLAR: Okay. Look, in that case, I don't think there's – actually, yes, no, I think that was more a question for Council in terms of the adjoining land uses, because we did notice that there are some apartment buildings that come down onto Crystal Bay on the southern side, and then other medium density development going up towards the Newport Arms shops. But my understanding from the Council is that those developments were all, you know, well and truly approved under different
20 planning schemes in the past, and that, you know, their view is that the role of the current LEP is to set the framework for current developments. So you wouldn't by any chance have any information about whether there is any seniors living within sort of that close proximity within sort of a one kilometre radius of this site?

25 MS RICHARDS: I'm not aware of any, no.

30 MS MILLAR: No. Okay. Okay. Look, with that, I will formally close the meeting and thank you very much for your participation and the answers that you've provided and the support you're giving to the panel in its review of this matter. The office through Stephen or one of the planners at the IPC will communicate with you in terms of getting that additional information on those points that you've taken on notice. So, you know, we will look forward to getting that response, you know, reasonably promptly given the timeframes that we have for determination – well, not determination, sorry – for providing our advice on this review. So we look forward to that, and if there's anything else that comes to our minds that we need to seek
35 further information from the Department on, we will obviously be communicating with you through the office for those matters. So thank you very much for your time today, and with that I will formally close the meeting and end the transcript.

40 MS RICHARDS: Thank you very much.

MR PILTON: Thank you.

MR BARRY: Thank you.

45

RECORDING CONCLUDED

[10.47 am]