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O/N H-1208916

**INDEPENDENT PLANNING COMMISSION**

**MEETING WITH THE DEPARTMENT OF PLANNING, INDUSTRY AND ENVIRONMENT**

**RE: THE HILLS GATEWAY REVIEW**

**PANEL:** **CHRIS WILSON (Chair)**  
**SOO-TEE CHEON (Commissioner)**  
**CALLUM FIRTH**

**COUNCIL:** **THE HILLS SHIRE**

**LOCATION:** **VIDEO CONFERENCE**

**DATE:** **11.05 AM, THURSDAY, 28 MAY 2020**

MR C. WILSON: Before we begin, I would like to acknowledge the traditional owners of the land in which we meet. I would also like to pay my respects to their elders past and present and to the elders from other communities who may be here today. Welcome to the meeting. My name is Chris Wilson. I am the chair of this  
5 IPC panel. Joining me is my fellow commissioner, Soo-Tee Cheong. Callum Firth from the Office of the Commission is also in attendance. 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.

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This meeting is one part of the commission's decision-making process. It is taking place, the preliminary stage of this process, and will form one of several sources of information upon which the commission will base its decision. It is important for the commissioners to ask questions of attendees and to clarify the issues whenever  
15 consider inappropriate. If you are asked a question and not in a position to answer, please feel free to take it on notice and provide any additional information in writing which we will then put on our website. I request that all members here today introduce themselves before speaking for the first time and for all members to ensure they do not speak over the top of each other to ensure accuracy of the transcript. We  
20 will now begin. David, we might just do a quick whip around in terms of introductions.

MR D. REYNOLDS: Sure.

25 MR WILSON: So if you just start.

MR REYNOLDS: Yes. Sure. Thank you. So David Reynolds is my name. I'm the group manager of Shire Strategy for The Hills Shire Council and we've got a couple of our technical officers with us today, who I will introduce in a second, but I  
30 would start by introducing, of course, Councillor Robyn Preston, who is also the member for Hawkesbury. She has taken the commission up on the invitation to come along today and hopefully be able to say a few words shortly. And also Councillor Brooke Collins, OAM, another one of The Hills Shire councillors. These two councillors, for the benefit of the panel, represent council's North Ward, which  
35 is a ward that contains a lot of our rural living.

And so both of these councils are being invested for some time and have, no doubt, got – been given some views from the community about this particular issue and, if possible, would like to say a few words about that shortly. We've also got with us  
40 online, Nick Carlton, who is council's manager of Forward Planning. And so Nick's team are responsible for the technical work and the preparation of the proposal and supporting information, and Nick has with him Bronwyn Inglis who is one of the planners who has worked on this particular matter. So that's the five of us from The Hills Council today. So thank you.

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MR WILSON: Okay. Well, just – myself, I’m the chair, as I said in the opening statement. My other panellist is Soo-Tee and Callum is working for the secretary within the commission. So I will go back to you, I guess, David, to run through just a quick overview of the planning proposal.

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MR REYNOLDS: Yes. Thank you. Yes. Thank you very much, Chris. So it’s a planning proposal that the council has been considering for some time and I – if the commission is happy – if you’re happy, Mr Chair, what I would like to do is give an overview, then allow the councillors a chance to speak to the community issues that are being put to them and their perspectives on this issue and then, obviously, our officers are available to deal with the technical – technical issues on the proposal and the – specifically the questions that the panel has – has put to us. But by way of overview, the planning proposal that council puts forward seeks to amend a clause in the local environmental plan to allow us to effectively do a couple of things.

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Firstly, meet a need with some really sensible local planning adjustment, but in a technical sense, it just, not the percentage amount of the size of the secondary dwelling, but to seek to look to cap the overall size of that dwelling relevant to the – to the primary dwelling. And I might run through just a few points by way of overview. So key in council’s mind has been that this is not introducing a form of development. Secondary dwellings as a class of development are already permissible in the rural zones. So we’re not seeking to add another type of development, nor are we seeking to have a secondary development that can then be subdivided and, in effect, creating a new market for, you know, property trading in this – in this particular class.

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That’s not council’s intention. Really what council has been endeavouring to do is to provide a diversity of housing product that meets the needs of our residents in the rural area. At the moment, the application of the clause effectively sees almost no taker of this type of development in that area. The clause as it currently stands puts a limit as a 60 square metre, excluding garage, or a 20 per cent of the primary dwelling. Now, that just, we would argue, doesn’t deliver a nuanced or a range of solutions that our residents would – would seek the council to try and permit in that area. And we don’t seek a huge expansion in terms of – in terms of size.

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But we do seek some capacity to adjust that size to – in our proposal, it was 110 square metres plus up to 24 a garage. We think that that goes to, as I’ve said, a diversity of housing product. And the reason we say that is we have a community who potentially have owned land for a long time in that part of the world. They are larger parcels of land, and Nick and technical planners can talk to minimum lot sizes and those sort of planning parameters later. But where we’re faced with a community as a situation where we may have people who wish to age in place. We may have people who wish to accommodate younger family ..... subset of primary

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MR WILSON: Hang on a tick, David. I think we’ve lost - - -

MR REYNOLDS: ..... dwelling and, as we know, multi-generational ..... have you still got me?

5 MR WILSON: No. Wait, David, you're breaking up. Just – you might want to revisit the last two minutes. Sorry.

MR REYNOLDS: All right. Have you got me now?

10 MR WILSON: Yes.

MR REYNOLDS: Okay. So, look, effectively, I was talking about capacity of long-term residents of the area to age in place. We have very strong communities in our rural area around our villages and around the rural part of our shire, and there's a real desire, where people can, to age in place. It also provides an opportunity for younger families to live on the same parcel of land as, perhaps, their parents, and multi-generational living is something that's becoming more common and more popular for family structures, and potentially it provides a secondary source of income or an achievable rental proposition for people as well.

20 So, again, I wanted to be clear. A couple of points. We're not seeking to change the setting in the urban area at all. That's – that's not on the cards with this proposal. Nor are we seeking to permit subdivision to allow smaller lot sizes. This really is just about adjusting the size of the secondary dwelling. And that's where we say sliding the percentage only is a – is not an elegant measure in terms of the solution that it facilitates. If we were just to slide the percentage, then what we would have is potentially part of the problem solved at the smaller end of the market. But we have some very large housing stock of, you know, 1000 square metres, 1500 plus where if we just slip the percentage, the unintended consequence would be you could legitimately have a three or four bedroom housing plus a double garage as a secondary dwelling on a rural lot.

35 And we say that's too much. So it's just part of council's responsible action to try and deal with the problem raised by the community but not have an open slather type scenario in terms of the size. Again, I've made the point that this is not a new type of development. This development is already permissible and we do think there's a key part, and I've talked about aging in place. But as you've, no doubt, had a look at our shire, you will have seen the pressure that we have on in terms of secondary and in terms of seniors living in rural areas and the pressure that that type of development brings. We see this as a – just – it's a legitimate part of a diversity of housing solutions to try and meet a mix of needs through – through the community.

45 And we think that if managed correctly by the council who understands its local community, it can actually fill a really good niche for us in terms of product. It has already got services available, doesn't place additional strain on transport infrastructure, it's able to accommodate garages and – so the amenity of the product, in terms of its visual appearance, can actually be really well managed. And so we're conscious of those things. With respect to the specific issues that have been picked

in the – in the Gateway determination as reasons for refusal, our – Nick’s team and he will talk to those – but just in summary before I invite either Councillor Preston or Councillor Collins to say a few words, look, we would just have different views about those parameters.

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With respect to bushfire protection, again I would make the point that this is a permissible form of development already. What we’re trying to do is manage the size appropriately. This is a – bushfire control, of course, has been updated into the 2019 situation rather than the 2006. And these are matters that would arguable considered at DR stage in terms of the actual approval of a specific development. And, of course, if it was – if it was a relevant matter, we would submit that in the alternative it could have been – rather than a reason for refusal, it could have been a condition on a Gateway process, that further engagement or consultation happen there to resolve it.

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Very quickly on the second reason, which was it can’t be legally made. We don’t agree with that assessment. We do think the Minister has power to amend a standard instrument. He has power to allow councils to localise a provision. Our guys will say more about that. But I will just – I will plant those seeds. And in terms of adequately testing scenarios, you will see the council documentation does provide some work scenarios. It gives some examples of very large dwellings and the type of size secondary dwelling that could achieve. But council has then gone the next step of actually looking at the typology that the 110 metre restriction with the garage in terms of that dwelling type could be provided.

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So we’ve got some workable solutions, we say, there in terms of a product and what that might do for people. So as a result, council considered the matter over a number of years and came to two options that are put forward to the department for consideration as part of their Gateway process. So that was option – option A. And option B – I won’t take you right through the working of those now as you’ve, no doubt, got those in your papers. We can talk in more detail.

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MR WILSON: I think they’re quite clear.

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MR REYNOLDS: Yes.

MR WILSON: I think your plan proposal sets out those and they’re quite clear in what they’re trying to achieve.

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MR REYNOLDS: All right.

MR WILSON: I think we understand that.

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MR REYNOLDS: Okay. Well, thank you very much. So that’s – that’s probably all I would say as an overview. I might – if – if the commission is happy, I might ask Councillor Robyn Preston, Mr Chair, if - - -

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MR WILSON: Sure.

MR REYNOLDS: - - - she's able to speak for a few minutes. Are you – thank you very much. Go Robyn.

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MS R. PRESTON: Just unmuting. Thank you, Chair. And thank you, David, for that overview. I pretty well want to reinforce what David has said. I've been a councillor for 12 years in North Ward, which is predominantly our largest rural landscape. And the reason why we're wanting to tweak the guidelines here is because of the feedback we've got from so many people living on rural lands that struggled with the formula that's existing. So where you had a percentage of the original dwelling. Questions to me would come back, does that include verandahs, eaves. What I'm trying to put forward is a very simple principle that people can have as a guideline.

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So it's 110 square metres of liveable space and then 20 square metres for garage, which is what we've explained there. So it's about managing the best outcome and a simple formula that doesn't complicate it. Because I get people living on rural lands that say how come you can have a small block in Granville's, for example, and put a secondary dwelling on that, and I'm on five acres and I can't put a small modest secondary dwelling there. One of the catalyst for this is we have an aging population in North Ward as well. Many farmers have grown up on that land. 40 years later they still love their environment in the rural landscape, but they're struggling to maintain that. Now, we want to maintain a rural landscape in North Ward. So we want to keep that ambience.

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The families want to stay there. There are different reasons why they're motivated for a secondary dwelling. And I've got to say, every week I get calls from North Ward residents saying, "How are we going? Has it moved any way forward?" So it's important that we discuss this today. What it does, it gives more senior folk the change to say on their land. The option to downsize and build a secondary dwelling for themselves and perhaps have a passive income with the larger home. Also, in this day and age, we're seeing – and with the COVID-19 pandemic, a couple of reasons why this would be very favourable: firstly, it protects older folk who might be more vulnerable.

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Then moving to, say, a clustered aged care living environment. They can stay on their land and perhaps have family move in with them. The other dilemma is that housing affordability. This is actually a really good option that creates a choice for families to live together on the one lot, make housing available for their children so they don't have to rent in exorbitant prices, and families can grow up on a rural landscape. So they're the motivations that we actually have been putting this forward. And I'm not actually proposing that we change the model for the urban way we look at it, but in rural zones, looking at a very simple formula that actually doesn't create perverse outcomes, because you heard David talk about where you've got very large main dwellings, it can actually lead to a three or a four bedroom secondary dwelling, and that's what we don't want as an outcome. It's important

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that we manage the rural landscape and have that ambience and that protection in that landscape there. So I might just leave it at that. There is some reading that you've got as well and I'm sure there will be questions that can be answered through your discussions. Thank you for your time today.

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MR WILSON: Thank you. Just – Robyn, just one question. I guess, I – no, I appreciate you've just said and I can understand that. So the opportunity exists still to achieve some of those outcomes, what you've just said in terms of housing and, you know, ensuring that you can have another secondary – you are able to have a secondary dwelling at the moment. So you're – what you're saying, basically, is there's a lost opportunity of having a reasonably sized dwelling to accommodate family, or whatever, or secondary income, so forth, because it's now permissible. So it's really - - -

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15 MS PRESTON: Well, it's a good question.

MR WILSON: - - - just a size – putting aside the oversized secondary dwellings, there's lost opportunity what – in terms of North Ward are saying, basically, that from a housing outcome it's not – they can't effectively utilise secondary dwelling for families, or whatever it might be. But so you just can't get a reasonably sized dwelling on it.

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MS PRESTON: Yes. Because a 60 square metre one gives you a one bedroom place. Now, if you're a senior - - -

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MR WILSON: Yes.

MS PRESTON: - - - and you're wanting to downsize but stay on your land, it's hard to move into a one-bedroom - - -

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MR WILSON: .....

MS PRESTON: You may as well move into an apartment.

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MR WILSON: Yes.

MS PRESTON: So that's why if we cap it at 110 square metres of living, and you can see the samples there, it gives you a two bedroom home and there's the incentive and the push and the interest in having elderly people move into a home that they can manage on site and has, you know, two bedrooms. That's what they've often looking at. They're saying it's not worth moving out of the large house into a dog box. That's literally what they say to us. And at the moment that's what they're presented with and so there's no take up.

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45 MR WILSON: Okay. All right. Thank you.

MR REYNOLDS: Mr Chair, could I just – as a matter of courtesy, could I just ask if Councillor Collins could just have a minute or two, if that’s okay?

MR WILSON: Of course. By all means.

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MR REYNOLDS: Of course. Thank you very much.

MR B. COLLINS: Thank you, David. Thank you, Councillor. You – and thank you, Chair and panel. You’ve summed it up very nicely already, David, as have you, Councillor. I’m a new councillor. I’ve only been on for three years, but in that short time in North Ward, Mr Chair, I have come across quite a bit of interest in wanting this opportunity to arise, but with 60 squares, it just doesn’t – it just doesn’t fit for someone who wants to move out of their current home and into a more appropriate sort of home. Hence, why Councillor Preston, I was happy to support her notion, is to bring this about. And what it does is it is really supporting our aging population who just don’t want to leave their home.

They live on – they live on a rural land. We’re not talking about urban here. We are talking about those who have been on their land, like Robyn said, for 20, 30, 40 years and I think, also, from another perspective, it takes a burden off our retirement homes and nursing homes, etcetera. It’s not a massive amount of people. But, certainly, it’s an opportunity, Mr Chair, for people to be able to stay on their land and be able to give their opportunity to their family and their children to be able to come on to the land and share some of the burden of running the land. But more importantly, it may even have some opportunity to address the missing middle, to a certain extent.

And that is give a younger family who doesn’t have the opportunity to live in the hills or rural land to be able to live on the land with mum and dad in an appropriate sized apartment or house, or vice versa, they swap, or mum and dad go into that or the kids can come in there and support mum and dad in the house and the land. So I – you know, again, it’s not trying to change the landscape as we know it. But just make it – make it fit where it needs to fit. So that’s really all I’ve got to say. But I think Mr Reynolds, and certainly Councillor Preston, have articulated it well enough. Thank you for the opportunity, Mr Chair. Thank you.

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MR WILSON: Thank you. So, David, who wants to speak next? Is there – or shall we go on to the questions that we’ve sort of – we’ve sort of touched on already, to some degree.

MR REYNOLDS: Yes. Thanks, Mr Chair. Look, I think what I might do is ask Nick Carlton, our manager of Forward Planning to just work through some slightly longer responses to your questions, if that’s helpful for the commission. And, obviously, you know, any – any discussion or other questions - - -

MR WILSON: Okay.

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MR REYNOLDS: - - - you would like to enter into today, we're quite happy to respond to. So I will hand over to Nick if that's okay.

MR WILSON: Thank you.

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MR CARLTON: Okay. Thank you, David. And – yes. Thank you, Mr Chair, and for the Commission for giving us the opportunity to go through these today. Without duplicating too much, I might just really quickly run through some very brief responses to the gateway refusal. So the reasons cited – I know we've put in our written submission and it has been touched on somewhat already, but I guess just for the record – so the inconsistency with the direction 4.4 around planning for bushfire protection – obviously, as has been stated, this is already a permissible use, so secondary dwellings can be approved in a rural area. We're not proposing to change that, simply just to better regulate the control around sizing of these.

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It's unclear why the department concluded that that would have an adverse impact, in terms of planning for bushfire protection. I might submit it actually – in limiting the scope for the really large secondary dwellings, it may actually have a – an improved effect on that, and in any case the direction does state that the planning authority, so in this case council, would be required to consult with the RFS if a gateway was granted. So we would see that there's a fairly clear pathway forward for that issue to be teased out through the gateway process, and that is really the normal practice: that we would get conditions on a gateway approval around what agencies need to be consulted on particular issues.

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In terms of the comment it can't be legally made, we would respectfully disagree with that. As has been discussed, I feel there's, you know, strategic and site-specific merit behind this proposal and clear justification of the local issues that it's trying to resolve, and I wouldn't accept that the proposal should not be supported simply on procedural grounds. So the department and the Minister – they do have the option of including local provisions, amended standard instrument provisions. So I wouldn't agree that it can't be legally made.

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MR WILSON: Can we just talk – this is an important point - - -

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MR CARLTON: Yes.

MR WILSON: - - - but I understand. So is your – is there an ability for your planning proposal to amend the standard instrument?

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MR CARLTON: So our planning propose is not seeking to amend the standard instrument. That would be required by the department or Minister. What we've put forward is an amendment to the clause in our LEP. So we wouldn't be changing the standard instrument.

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MR WILSON: But you've – but – sorry. I want to make this clear because it's an important point.

MR CARLTON: Yes.

MR WILSON: And I still haven't got a clear answer from either the department – my understanding – so then you would have an inconsistent – you would have a  
5 clause that was inconsistent with the standard clause – sorry, with the mandatory clause in the standard instrument. How would that clause - - -

MR CARLTON: Correct.

10 MR WILSON: How would that clause - - -

MR CARLTON: So – well, yes. So the options we would put forward – and I think option B might be worth focusing on there, in that the way that the council had put that option forward was really to leave the standard instrument clause as it exists, so  
15 – which has two subclauses to it – to leave those unchanged and then just simply add an optional clause and – correct. That would be a clause that only exists in council's local environmental plan. I wanted to also add in my response there that we are at the start of the process. So the legal drafting of a change to an instrument occurs typically at the end of the process. So council has put forward two options, but I  
20 think what's really important is the justification, the strategic merit and the particular issue that council is trying to resolve here.

MR WILSON: Yes.

25 MR CARLTON: And with that comes a willingness to, you know, through the process, continue to discuss the exact mechanism and drafting of the clause to resolve that.

MR WILSON: Yes. No. No. I appreciate that.

30 MR CHEONG: Gentlemen, can I ask a question. You know, your concern is actually, you know, twofold: the minimum size that limit the opportunity to have a secondary dwelling, which is more desirable for a family to stay on the land, and the other – the other concern is with the oversize of the secondary dwelling. If you have  
35 the clause remain (a) and (b) with – both remain, you're not going to solve the minimum size of 60 square metre. So - - -

MR CARLTON: Yes. That's correct. Yes.

40 MR CHEONG: In fact, you will be seeking to change the clause (a) of the limit of 60 square metres, whatever you - - -

MR CARLTON: Yes. So the proposal would bring in a new square metre size of 110 plus 20 for a garage. It would bring in a new size, as opposed to the 60, for rural  
45 areas only, and that's where – that's where obviously the variation to that existing standard instrument clause exists, but I propose the – the options that council has put forward really tried to show a pathway forward for actually doing that without really

changing the core of the standard instrument clause or requiring state-wide amendments, etcetera, and – and to reiterate, I think there is much further scope for this discussion to continue. If we can agree on the problem and the solution and the strategic and site-specific merits of the proposal, there’s flexibility in our planning system to really figure out what the exact drafting of a clause looks like.

MR WILSON: Yes. No. Point taken.

MR REYNOLDS: Yes. Mr Chair, if I can just add to Nick’s commentary there as well. We certainly did have some discussion – I think, Nick, at the invitation of the department – about whether simply adjusting the percentage rate would deal with the issue, but, of course, it wouldn’t. It may solve one end of the market, but not the other end of the market, if I can put it that way, and so – again, that seems a bit clunky, though. If they’re pushing back and arguing you can’t amend the standard instrument, why would they engage in a discussion around shifting the percentage rate? I – that doesn’t seem to have a clarity to me.

MR WILSON: My understanding, David – while we’re talking about that, my understanding is that councils were able to set that percentage in establishing their comprehensive LEPs whereas the 60 square metres was set by the department and put into the standard instrument. Is that right?

MR CARLTON: That’s correct. Yes.

MR REYNOLDS: Yes. Yes. So we would simply argue that the council should have some ability to determine the square metre rate that applies to its area as well.

MR CARLTON: So I might add to David’s comment. We did have discussions with the officers at the department, and this was prior to the gateway determination being issued. They have come back to us and proposed really what was an amendment to the standard instrument clause, to essentially duplicate that clause and change the heading so that you had the clause twice, effectively: ones for urban areas and ones for rural areas. And then the position was that, well, council could pick a different percentage. So we’ve sort of explained how – one of the fundamental problems with this clause is the actual mechanism of trying to regulate with a fixed area of 60 square metres and a percentage, but - - -

MR WILSON: Yes.

MR CARLTON: I mean, it was an interesting – it was a surprising result in the gateway determination because up until that point we had had discussions with the department about what really was an amendment to that clause in this local instance.

MR WILSON: Okay. All right.

MR CARLTON: Okay. I will – you’re happy for me to proceed.

MR WILSON: Yes. Yes. Yes.

MR CARLTON: I won't dwell on reason 3 because obviously in the gateway submission that we've provided – the gateway review submission, sorry, that we've provided, we've done a bit more testing around scenarios and talked about it here today, and I think we've sort of made the twofold nature of the issue relatively clear there, but happy to take questions after if you wanted more on that.

MR WILSON: Sure .....

MR CARLTON: Otherwise I will move into the five questions that were provided. Is that - - -

MR WILSON: That would be great. Thanks, Nick.

MR CARLTON: Perfect. So the first question, 1(a), around – some context to the extent of the problem relating to smaller principal dwellings and secondary dwellings. As you can imagine, that's relatively hard for us to quantify with data, and the councils and David have spoken to that because really what – what the issue there is – is something can't happen and, therefore, we've got – it's just not happening, but we know that there is a demand. And the community feedback is coming through that they would really like a different outcome there, and that different outcome really is consistent with the objectives and fundamental principle of having secondary dwelling provisions in LEPs and across the state. So – yes. I can't provide a sort of quantitative figure on that one.

MR WILSON: No. I understand you do get DAs that are oversize and they have to be amended and so forth and – and I guess what Councillor Preston is saying – basically that her constituents are saying that “we need the opportunity” or there's pent-up demand for something which is more reasonable they can't achieve.

MR CARLTON: Yes. Yes, exactly. Yes.

MR WILSON: Okay.

MR CARLTON: And so if I move on to part B of that question, which is really the other end of the spectrum. We've just done a bit of analysis over the last two or three years. To give some idea of it – so around – you know, between 30 and 50 dwellings over the last three years were approved, in terms of principal dwellings, with a floor in excess of 550 square metres, and that's the point where it starts to tip above that 110 square metre secondary dwelling.

MR WILSON: Yes.

MR CARLTON: That's around 20 per cent of new dwelling approvals - - -

MR CHEONG: Sorry. We've lost you. Couldn't hear anything.

MR WILSON: It might be you, Soo-Tee. I don't – I can hear Nick. Can you hear me Soo-Tee?

MR CHEONG: ..... yes.

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MR REYNOLDS: Nick, maybe run through the stats again for Soo-Tee, please.

MR CARLTON: Yes.

10 MR REYNOLDS: Yes.

MR CARLTON: Yes. I will start that again.

MR CHEONG: Thank you.

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MR CARLTON: So we – over the last two to three years we have around 50 dwellings approved in excess of the 550 square metres. That represents around 20 per cent of all new dwelling approvals in rural areas, and that's not factoring in the existing stock that would qualify of already being in excess. So that's just recent approvals that we've had, and really we see that trend continuing as the older housing stock turns over. It's in more cases than not, you know, starting to be replaced with those larger dwellings as well.

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We're starting to see then, as a result of that, more examples of the larger secondary dwellings, which has been touched on, as what we call, you know, three, four bedrooms, with multiple living areas and theatre rooms and not really in the spirit of what the secondary dwelling provisions are meant to be. Again, over that last three-year period we've had three secondary dwellings in excess of 200 square metres, another three in excess of 150, and another 11 in excess of 110 square metres. So – and after the meeting we're happy to send through some examples of those ones, with the floor plans, etcetera, and DA numbers, but I guess the point is - - -

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MR WILSON: Just let me – we don't need the size. We get the size issue. I guess it's the number – the extent.

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MR CARLTON: Yes.

MR WILSON: So if you could send through those states, we would appreciate. Yes.

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MR CARLTON: Yes. Sure. Yes. So there's around – so the short answer would be around 17 secondary dwellings approved on that larger end of what we would call, you know, relatively inappropriate in that rural character location, but I guess the point I would make there is that this increasingly becoming an issue and noticing. So the intent of the planning proposal – and it has been ongoing for some years to try and resolve this problem. The intent is really to pre-empt this issue - - -

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MR WILSON: Sure.

MR CARLTON: - - - before it becomes a proliferation and before that rural character is actually adversely impacted on a broad scale. So we really would like to  
5 get on the front foot and - - -

MR CHEONG: Can I - - -

MR CARLTON: .....  
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MR CHEONG: Sorry to interrupt there. Can I ask this. A larger secondary dwelling: what are the main size these dwellings are situated in?

MR CARLTON: Sorry. The land size?  
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MR CHEONG: Land size, yes.

MR CARLTON: Okay. I might get back to you on that one with some of the examples if that's okay, but as a rule, they're - - -  
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MR WILSON: And they're not relevant to .....

MR CARLTON: They're all - - -

MR WILSON: Yes.  
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MR CARLTON: They're all over two hectares - - -

MR WILSON: Okay.  
30

MR CARLTON: - - - as a starting point, as a minimum.

MR CHEONG: Thanks.

MR CARLTON: Thanks. So I will move on to question 2, unless there was any clarifications.  
35

MR WILSON: No. That's fine. Thank you.

MR CARLTON: No. So this next question: is council aware of other LGAs with similar issues? We are aware that there are some other councils on the rural fringe who are starting to consider this issue or starting to see this issue. So Hills Council is probably ahead of the curve in trying to actually put something in place to address it. What we – in terms of our closest two neighbours – so Hawkesbury Council, for  
45 example, they actually prohibit secondary dwellings in the rural areas. So in some respects that – that's an extreme solution to protecting the rural character, but as we've discussed, that's not really the intent of what we're trying to achieve in

providing people with that option and flexibility for diverse housing. So that – in terms of then the application of the clause and the mechanics, it's not an issue for Hawkesbury because the use is prohibited.

5 MR WILSON: That's an interesting question, Nick. I mean – so we have a standard instrument that says you can have secondary dwellings and a maximum of 60 square metres or a percentage set by council, yet they have the ability to prohibit.

10 MR CARLTON: Yes. Yes. So the ability to prohibit or permit is an optional – is optional for council, but then if a council chooses to permit it, it's effectively then required to apply that clause.

MR WILSON: The - - -

15 MR CARLTON: And as I will touch on in my next question - - -

MR WILSON: Yes.

20 MR CARLTON: I would submit that clause was really drafted in the context of urban development.

MR WILSON: Got you. Yes.

25 MR CARLTON: Yes.

MR WILSON: All right.

30 MR CARLTON: So I will get to that, but I will just quickly touch on Hornsby's experience because we have had a quick discussion with them. Back in 2015 they actually amended the percentage in the clause.

MR WILSON: Yes.

35 MR CARLTON: So they were seeing a similar community feedback around wanting the ability to do more than 60 square metres on people's properties. They increased the percentage from 20 per cent to 33 per cent. So it has been a couple of years now, and we have touched base with them recently to see how that has been playing out for them and the feedback is now that they're starting to see the issue at the upper end of the spectrum of the larger secondary dwellings that are  
40 inappropriate. So, you know, this is officer-level conversations at this stage. So there's obviously no resolution of Hornsby Council. We are advised that this is something they're looking at in their rural strategy work that they're preparing now and that they're watching the outcomes of this particular planning proposal closely because they do see it as an upcoming issue for them.

45 MS PRESTON: Nick and Chair, if I can just add, in my recent discussions with Mayor Philip Ruddock, he's very much interested in how we're working through this

because he has seen that as a major problem in Hornsby and he's very conscious of protecting the rural landscape there and making sure that it's managed with good outcomes.

5 MR WILSON: Okay. Thank you.

MR CARLTON: So that is probably a good segue into question 3, around the effect of just maintaining the 60 square metres, but reducing – but amending the percentage in one direction.

10

MR WILSON: Sure.

MR CARLTON: But lowering here. We've touched on the twofold nature of the issue and how amending the percentage would fix one part of the problem and  
15 worsen the other part of the problem. I guess – I just wanted to go back into the 60 square metre figure because we acknowledge it is a state-wide rule, but the groundings of that are really, you know, in the affordable housing SEPP, where interesting the affordable housing SEPP sets that 60 square metre rule, but it doesn't  
20 apply to rural areas. So the 60 square metre rule applying state-wide, I would – I would submit it really was drafted with a mind to urban development, and that's how you see it unfold in the affordable rental housing SEPP. It's obviously then reflected in the standard instrument clause, but as I mentioned, being drafted in an urban context, it's not necessarily appropriate that a council that chooses to permit that use in a rural area, as it's free to do so, is then required to apply a clause that wasn't  
25 really drafted with a focus on controlling that development in a rural context. So - - -

MR WILSON: You could probably argue that almost every council in New South Wales will have a different context in terms of secondary dwellings in rural areas. I mean, I understand this is an urban fringe issue and I – but maybe it would – would it be similar in, say, somewhere like Byron Bay or – you know, where there's a high  
30 demand for, you know, additional – in regional areas where there's strong growth for housing?

MR CARLTON: Yes.

35

MR WILSON: Would it be a similar issue?

MR CARLTON: It would be a similar issue in most rural areas, and I think the point that would come up is that 60 square metres and the clauses that operates does  
40 – does tend to result in appropriate outcomes in urban areas, but you don't have - - -

MR WILSON: Yes.

MR CARLTON: - - - the same restrictions on rural land. You don't have the same  
45 constraints. You have different opportunities, different character, and there's no real technical or tangible reason why that 60 square metre limit should be applied in rural areas. There's obviously a need to limit it at a point, and council has sort of looked

at that and come to an area of 110 plus a 20 square metre garage, but there's no real – technical justification for limiting 60 square metres in rural areas.

5 MR WILSON: Yes. No. I understand that.

MR CARLTON: Yes.

MR WILSON: Thanks.

10 MR CARLTON: So the short answer to question 3 is if we did lower the percentage, it would really exacerbate the problem of more people being unable to have a secondary dwelling outcome that's anything more than 60 square metres.

15 MR WILSON: Can I just – okay. Just trying for myself and Soo-Tee - - -

MR CARLTON: Yes.

20 MR WILSON: For instance, if you were to lower it to 12 per cent, what would be the effect of that?

MR CARLTON: If you lower it to 12 per cent – so - - -

MR WILSON: Look, you don't have to give a – it's just a guesstimate.

25 MR CARLTON: If - - -

MR WILSON: I'm just – I'm just - - -

30 MR CARLTON: If you were – so at the moment – at the moment, for example, a 300 square metre principal dwelling is the point at which 20 per cent is 60 square metres.

MR WILSON: Yes.

35 MR CARLTON: So once you start with a 20 per cent percentage – once you get it over 300, your ability to go higher goes up. If you drop that percentage to – I'm going to say – yes. If you drop that percentage lower than that, your 300 square metre principal dwelling threshold starts to drop also.

40 MR WILSON: Isn't it 60 metres or whatever is greater? I mean - - -

MR CARLTON: Yes.

45 MR WILSON: So the 60 – the minimum size you can have is 60 metres, isn't it? 60 square metres?

MR CARLTON: Yes.

MR WILSON: Yes. So if you – I'm just – sorry, we're just – I'm just musing here, but if you were – so if you had a principal dwelling which was – for all intents and purposes was 500, and let's say it's 10 per cent, you would change it 10 per cent, you would have a – what would you end up with?

5

MR CHEONG: 50 square metres.

MR WILSON: 50 square metres so - - -

10 MR CARLTON: Yes. That - - -

MR WILSON: - - - it goes back to 60 metres.

MR CARLTON: For 60, yeah.

15

MR WILSON: Yes. Okay.

MR CARLTON: So you would be increasing the number of properties that fall within that category of landing under 60 and then effectively going up to 60. Yes.

20

MR WILSON: Yes.

MR CARLTON: But I guess part of our problem is even there's the limitation of 60. So, in short, you reduce the percentage, you increase the number of principal dwellings that are then capped at 60 square metres as a secondary.

25

MR WILSON: Yes. But then you – I guess it addresses the issue of oversize dwellings, because then you can't end up with a 200-metre four-bedroom house. You would end up with a two-bedroom, 100 metre – square metre house on the - - -

30

MR CARLTON: Yes. So it's the other thousand square metre principal dwelling in use, and you're at 20 per cent, you can have a 200 square metre secondary dwelling. If the percentage was 10 per cent, that would be a 100 square metre principal dwelling. So it does address that part of it.

35

MR WILSON: But not the opportunity issue.

MR CARLTON: And it makes the opportunity issue worse.

40 MR WILSON: Yes.

MS PRESTON: And can you just – having the conversation and listening to it now, the complexities of the formula and how it applies, one of the reasons and incentives for us having this discussion is to try and make a really simple formula that everybody gets, rather than percentages. You know, just here's the limitation. You can only .....

45

MR WILSON: I appreciate that. And it is quite simple what you've put forward and it seems reasonable. I'm just trying to understand that sliding scale.

MR CHEONG: Yes. I just try to understand also the council response on 19  
5 September with regard to the standard clauses. The suggested secondary dwellings in rural zones (a) to be 110 square metres and (b) five per cent of the total floor area of the principal dwelling. I just wonder why do you come up with the five per cent? Because you – it doesn't really make sense.

10 MR CARLTON: No, no. And, well, the short answer to that is the department at that point had put to us that if we duplicate the clause and apply one to rural but one to urban, but the wording has to be exactly the same, they required us to tell them a percentage, effectively. So we picked a low percentage because it would achieve the outcome of really limiting that upper end but still allowing almost any property to be  
15 able to put forward a 110 square metre secondary dwelling. But at the point where we suggested 110 rather than 60, that discussion sort of fell over again.

MR CHEONG: Yes.

20 MR WILSON: What was the reasoning behind their saying –I mean, you know, they've obviously given their reasons now but, obviously, you have – you must have – you sound like you had some reasonable discussions with them, up to a point. I'm just trying to understand their mindset with the 60 square metres. Is it just because  
25 it's a statewide standard provision or - - -

MR CARLTON: Well, that is – the feedback given to us has generally been along the lines of this is a statewide provision, 60 square metres is a statewide provision, and we can't amend that because it's in the standard instrument.

30 MR WILSON: Right. Okay. We will move on. Thanks. Thank you.

MR CARLTON: Okay. So that was question 3. On to question 4 around the lot sizes. If it's – I might partially answer 4 and 5 at the same time. So question 5 was around the maximum permissible size of principal dwellings and question 4 was  
35 around minimum lot size for rural zoned land. So the short answers to those is the lot sizes range – the minimum lot size requirements, sorry, range from two hectares to 10 hectares in our rural zones. There's no control in our LEP or DCP which provides a maximum permissible size for a principal dwelling. What we do have is controls in the DCP for rural areas around maximum site coverage. And they range  
40 from 15 to 50 per cent as – you know, as the lot sizes get larger, obviously, the site coverage can reduce. Any of those scenarios really still enable a fairly large principal dwelling so there's no cap on that limit at the moment.

MR WILSON: All right.

45 MR CARLTON: Did that answer that question fully for you, or did you have any clarifications on that one?

MR WILSON: No. Soo-Tee, did you want to - - -

MR CHEONG: Yes. Just clarification on how many principal dwellings within the rural areas are actually of the size of 550 square metre or larger? The reason I ask  
5 550 square metre is that you suggest that 110 square metre for secondary dwelling, so 20 per cent would give you that.

MR CARLTON: Yes. So a 550 square metre principle is the point at which at 20 per cent of it is 110 square metres. Though we don't have the numbers on hand in  
10 terms of the existing dwelling stock in our entire rural area and the full area of each, other than to go back to the approvals over the last two to three years have been around 20 per cent of each new dwelling being in excess of that 550 square metres. So running at around, you know, 50 dwellings in that three-year period. But as I  
15 mentioned, we're seeing that increase as well over time as the dwelling stock turns over.

MR CHEONG: Yes. It would be ..... sorry.

MR CARLTON: Well, the interesting things with this – of course. No.  
20

MR CHEONG: It would be helpful to see, you know, what sort of percentage of the total of 550 square metres arrives at.

MR CARLTON: Yes. We will put our mind to try and extract that information.  
25

MR WILSON: Is it feasible, Nick, to get that information, or not?

MR CARLTON: It is pretty difficult to have the GFA of existing, noting the sort of length of time over - - -  
30

MR WILSON: Yes.

MR CARLTON: - - - which that dwelling stock was created.

MR WILSON: It may not be a reasonable request, Soo-Tee.  
35

MR CHEONG: No.

MR WILSON: Anyway, have a think about it and if you – you know, I understand that will probably be difficult, but if you can guesstimate - - -  
40

MR CARLTON: Yes.

MR WILSON: - - - I would accept that as well.  
45

MR CARLTON: Yes. Okay.

MR WILSON: So we've done the – that completes the questions? Yes?

MR CARLTON: Yes, if you're satisfied. And if you have any further questions, I'm happy to take them.

5

MR WILSON: Soo-Tee, have you got anything else?

MR CHEONG: Not from me. Thanks.

10 MR WILSON: Is there anything else you would like to add while you've got the opportunity?

MR REYNOLDS: Look, Robyn and Brooke, if you're happy for me to speak there? Mr Chair, no, look, we're thankful for the chance today to put what we really think is quite a simple and clear answer to a problem that our community has raised with us. There's an – you know, there's an unmet need in the community. There's a chance for the council to act I think, as Nick has helpfully said, ahead of the curve, to actually do what proper planning should do, which is set the control before the demand dictate – you know, before the demand dictates what the retrospective control should have been. We're really just trying to solve the problem simply. I think, as Councillor Preston has indicated, we just want to be clear to our community about what they can and can't do, then they can make good decisions about their properties. They can make good decisions about their lifestyles. We can work with them to ensure our rural areas maintain the character that they should have. It's a really special part of our shire and we want to make sure we maintain that well.

I will say we don't quite understand some of the reasoning behind why the department may have raised the issues that they've raised, as we think that, you know, we could have worked through to solve those things. And so we would obviously be keen for the planning process to process to progress from here, for us to be able to see the matter through and continue to advocate for council's position and get some good planning work done. So we've taken on board some of the comments and the questions from today, and Nick and I will have a chat just around trying to get good – some good steps back for you. If we can, do some estimates on those – you know, the numbers that - - -

MR WILSON: Look, yes, I know it's difficult in a short timeframe, so we don't expect you to go spend money and so forth. But if you've got – if it's handy, it would be helpful to us.

40

MR REYNOLDS: Yes. Look, and I think maybe the – I mean, obviously, depending on what the Commission is prepared to accept, we may be able to do some calculations based on looking at mapping products and simply taking dimensions of houses. Obviously, you lose some of the subtleties in terms of how a floorplan might be configured if we can't get to actual design documentation, but at least we could give you some indications of - - -

45

MR WILSON: Yes.

MR REYNOLDS: - - - site coverage and the range of dwellings.

5 MR WILSON: David, I think your plan proposal has articulated very well the response, you know, in terms of floorplates and so forth. I guess we would just like a little bit more additional evidence to support the two arguments, you know, the lack of opportunity and the oversights. That's all. We're not - - -

10 MR REYNOLDS: Sure.

MR WILSON: The actual – the plan proposal is very little clear to us – well, it's very clear to me what you're trying to achieve and why you're trying to achieve. So that's all we're saying. If you got a little bit more information, it would be useful.

15

MR REYNOLDS: Okay. Well, thank you. We're certainly happy to take that on board. And I will not allow Nick to sleep until we've addressed those questions for you, Mr Chair.

20 MR WILSON: But, anyway - - -

MR REYNOLDS: ..... sorry.

25 MR WILSON: That's been really useful, actually. So we appreciate your time and effort and ..... along or whatever we're doing, Zooming. And – yes – we'll – so just give me a bit – Callum, we need a timeframe to give council time to give us a bit more information. So can you – who are we corresponding with in council, Callum?

30 SECRETARIAT: I have been corresponding with Bronwyn and .....

MR WILSON: David, how much time do you think – we don't want you to go and read the will or we don't want you to go and do a whole lot more work. All we're saying is that we'd just like a little bit more, if you've got it, information relating to the extent of the problem, not necessarily – we understand the problem. We understand what you're trying to address. And you've made it very clear in your planning proposal. We're just, you know – if there's anything else out there in terms of, you know, the number of properties where it can happen or, you know, lack of opportunity or the potential for the oversizing problem, then just provide it to us. How much time would you need?

40

MR REYNOLDS: Yes. What do you think, Nick? I mean, we would have to do a bit of a – probably tick a couple of representative areas and do some snapshots to pull together some data there. Today's Thursday. I mean, do you have a timeframe, Mr Chair, in when you need to get back to – so we're happy to be guided by you. Do you have a timeframe - - -

45

MR WILSON: What's our timeframe, Callum? Yes.

SECRETARIAT: At 28 days from last Monday, so - - -

MR WILSON: We've got time.

5 SECRETARIAT: Yes.

MR REYNOLDS: All right. Well, could we say maybe a week from today? Seven days. If that's too long, tell me that's too long and we'll work harder.

10 SECRETARIAT: That's pretty standard, seven days.

MR REYNOLDS: Yeah.

15 MR WILSON: All right. But at least – I think we should be able to get you a fairly representative sample.

MR REYNOLDS: It's a snapshot, yes, just a representative snapshot.

20 MR CARLTON: Yes. I think some sample areas – some sample areas will be doable.

MR .....: That will be good.

25 MR REYNOLDS: Excellent. Okay.

MR CARLTON: And, of course, if that raises any more questions for the Commission, we're, of course, happy to then deal with any more questions or - - -

30 MR REYNOLDS: Yes. No. I appreciate.

MR CARLTON: - - - anything else you need.

35 MR REYNOLDS: I think that would be good. All right. Well, thank you very much, everybody.

MS PRESTON: And thank you for the time.

MR COLLINS: Yes. Thank you, Mr ..... thank you.

40 MR REYNOLDS: Okay.

MS PRESTON: Thank you.

45 MR REYNOLDS: See you.

MR COLLINS: All right. Thanks, everyone. Good on you. Thanks, Robin. Thanks, Brook. Thank you.

**RECORDING CONCLUDED**

**[11.58 am]**