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TRANSCRIPT OF PROCEEDINGS

TRANSCRIPT IN CONFIDENCE

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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**

DEPARTMENT:

**STEPHEN BARRY
GINA METCALFE
ANGELA HYNES**

LOCATION:

VIDEO CONFERENCE

DATE:

2.01 PM, WEDNESDAY, 27 MAY 2020

MR WILSON: Okay. Hi, Gina? Hi, Angela?

MS METCALFE: Good afternoon. How are you?

5 MR WILSON: So - - -

MS HYNES: Hello.

10 MR WILSON: - - - shall we quickly go around and introduce ourselves?

MR CHEONG: Yep.

MR WILSON: All right. I'm Chris Wilson. I'm the chair of the – the panel.

15 MR CHEONG: Yep. Soo-Tee Cheong - - -

MS METCALFE: Yep. Yep.

20 MR CHEONG: - - - Commissioner.

MR FIRTH: I'm Callum. I'm with the Office of the Commission.

MR CHEONG: Can't – can't hear very clearly.

25 MR FIRTH: Sorry, Soo-Tee. Is that better?

MR CHEONG: Yep.

30 MR FIRTH: I'm Callum Firth. I'm with the Office of the Commission.

MR BARRY: Stephen Barry, I'm director of planning at the office.

35 MS METCALFE: Gina Metcalfe, I'm in the acting director – Central Western with the department.

MS HYNES: And Angela Hynes, senior planning officer with the Department of Planning.

40 MR WILSON: Okay. So some formalities 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 today. My name is Chris Wilson. I'm the chair of – of this IPC panel. Joining me is my fellow Commissioner, Soo-Tee Cheong. Callum Firth from the Office of the Commission is
45 also in attendance, as is Steve Barry. 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.

5 The meeting is one part of the Commission's decision-making process. It is taking
place – 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 issues whenever we
consider it appropriate. If you're asked a question and are not in a position to answer
10 it, please feel free to take the question on notice and provide any additional
information in writing, which will then be 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 that they do not speak over the top of each other to ensure
accuracy of the transcript. So, Gina, I think I'm – I'm not quite sure how you're
15 going to approach this, but in the agenda, I guess we'd ask for a bit of an overview of
the case. Is it appropriate to throw it over to you?

MS METCALFE: Yes, happy to. Thank you. So the proposal is seeking to amend
the Hills LEP 2019. It's aiming to ensure that secondary – secondary dwellings are
20 compatible with the rural character of the locality. The amendment, if successful,
would apply to each rural zone within the Hills LEP. It involves altering subclause 9
of clause 5.4, which is the miscellaneous permissible uses element of the LEP. This
is a compulsory clause within the standard instrument. So, in – in effect, Hills is
looking to meet the needs of its local community with respect to secondary
25 dwellings.

MR WILSON: Yep. Okay. I'm just wondering maybe the best way of dealing with
this is to go through – go – just to go through the determination; discuss – there were
three items on the determination. It may be useful just – and the questions were, sort
of, focused around those three items. Is it worthwhile then just going through the
30 determination and discuss in a little bit more detail, and then you – you can include
the answers to those questions for those items? Is – is that – is that a – a good way to
approach it today? Are you happy to do it that way, Gina?

MS METCALFE: Happy to do it that way. You've asked us some questions on
35 notice. Have you got V - - -

MR WILSON: Okay. Look - - -

MS METCALFE: - - - even – and review those?
40

MR WILSON: Yeah. Well, look, maybe we'll just go through the questions,
because they're all focused around the determination anyway. And I think – I think
the answers – the answers are – are – are reasonable. I have no problems about the
answers, but you may as well just, I guess, for the record, explain to us the
45 inconsistency of bushfire protection direction.

MS METCALFE: Thank you, yes. So under section 9.1, direction 4.4, Planning for Bushfire Protection, the proposal would need to demonstrate that it had – had the ability to apply the Bushfire Protection Guidelines that are in place. Council was not required to do that at this stage pre-Gateway, and because the department chose not to grant Gateway for the proposal to proceed, there was no condition imposed on being consistent with the direction. So I would describe it as a technical, legal situation that would be resolved if there was a positive Gateway determination.

10 MR WILSON: Yeah, so it's not determinant. Also - - -

MS METCALFE: Yep.

15 MR WILSON: - - - like, I – I assume they could have – I mean, they could have easily demonstrated that those guidelines could be addressed because there's no change of views, or no – no rezoning involved.

MS METCALFE: Because the proposal would apply to all the rural zones, so RU1 through to RU6 - - -

20 MR WILSON: Yep.

MS METCALFE: - - - and it does involve an intensification of residential development in – in effect. Like - - -

25 MR WILSON: Does it?

MS METCALFE: - - - council may have had to demonstrate consistency with the direction, so changing the clause would allow more dwellings than are currently proposed.

30 MR WILSON: Like, I thought it just allowed – allowed for larger – in some circumstances larger secondary dwellings, and in some circumstances smaller secondary dwellings; is that - - -

35 MS METCALFE: Yeah, be effective - - -

MR WILSON: - - - fact?

40 MS METCALFE: - - - to change the size of dwellings that could be permitted. The impetus for it is that proponents are wanting to lodge applications, but currently can't or are choosing not to because they can't comply with the limitation of size. So the current size controls have the effect of limiting the scale of development that could be allowed in rural - - -

45 MR WILSON: Yeah.

MS METCALFE: - - - zones.

MR WILSON: Yeah. Right.

MS METCALFE: So the current provisions are aimed at the traditional secondary dwelling, which is a smaller dwelling inferior to the – the large dwelling as a granny
5 flat-style of the original - - -

MR WILSON: Yeah. No, I appreciate that.

MS METCALFE: - - - proposal. So changing the dwelling size could have an
10 impact on bringing more proposals forward than the policy intends. So - - -

MR WILSON: Okay.

MS METCALFE: - - - in progressing to analysis, the department would require
15 council to work with Rural Fire Service to evaluate any unintended consequence.

MR WILSON: Okay. No, that's fair enough. But as you say, in terms of the
determination, it wasn't determinant so no condition was imposed. So – okay. Soo-
Tee, do you have anything to ask on that – on that – on the Bushfire Protection
20 Guidelines issue?

MR CHEONG: Well, like, I thought that the – the – the number of dwelling that's
permissible is not – not going to be affected by the Bushfire Protection provision.
Isn't it – you know, that – yeah, you can either have 60 metre or 20 per cent of the
25 total floor area of the principle dwelling, whichever is greater, and that – not to
exceed that – that number. So they do have a – the – the flexibility of having a
smaller dwelling if they choose to so the – the fire protection rule is – is – is not
going to affect the number, as such, really.

MR WILSON: Oh, I think it's – I think Soo-Tee, like, I – I – I tend to agree with
you but I'm not quite there – I think, exactly there. We can – at this stage it's in –
basically, well, I guess it will depend on what advice we – we go back to the
department with. But if – if – if the department was – had given Gateway a
35 determination, then a condition could have easily been imposed. Because, basically,
the bushfire issue would be addressed at the A stage anyway.

Like, I – I guess what I'm just trying to understand, what – what would have been the
breadth and depth of those discussions with the bushfire – with the – with the Rural
Fire Service in relation to – in relation to the provision, but I guess it doesn't need to
40 be explored too much further now. Shall we move onto the issue about it – it cannot
be legally made. Like, I have some questions around this, but you might want to just
discuss that in a little bit more detail.

MS METCALFE: Thank you, yes. So the proposal technically could legally be
45 made if the department – if the Minister agreed to a standard instrument order to
effectively vary the standard instrument. So there – there was a legal pathway for the
proposal to be approved. The other option is for the – the State Environmental

Planning Policy to be made to override the provision. So the case was not made for a change to the standard instrument through the proposal; through the Gateway proposal that the department considered. The department is sympathetic to the circumstances of the Hills and is in discussion about how that could be addressed.

5 As we've said to you in our questions on notice, there is a proposed housing diversity discussion paper to be released to propose an alternate way of addressing the issue that Hills has proposed.

MR WILSON: Okay. And that – I guess, like, my question to that is if – if for
10 some reason the department had agreed to – or the Minister had agreed to change that standard in the instrument, yeah, would that then apply for other 140 – whatever it is – LGAs across New South Wales, or would it be just for the Hills?

MS METCALFE: A change to the standard instrument would apply across New
15 South Wales.

MR WILSON: Okay. So, in effect, then I guess those LGAs may have other
completely different scenarios happening in their LGAs that may be compared to
20 what's happening at the Hills; is that correct?

MS METCALFE: Yeah, that's correct.

MR WILSON: So the bottom line is it could have been legally made. It would have
had to have been by the Minister as a standard instrument or by way of a SEPP
25 privacy understanding. Okay. Any – have you got any questions on that, Soo-Tee?

MR CHEONG: Yeah. Like, even – even with the – the variation to second clause
that said apply, well, individual LGA that has to be standard across the – the state
as well. I don't – in the assessment summary in the Gateway Review Justification
30 Assessment, in the last paragraph it refers to the department's indication of an option
to replace a clause. The second clause being that the only potential variation to the
percentage provision, clause 5.4 in line B, could be investigated as applying through
the urban and rural zones subject to further discussions with the New South Wales
Parliamentary Counsel – Counsel's office. If once we have that percentage varied,
35 the – the third provision can be varied in each council to suit, if an individual
scenario?

MS METCALFE: Yes, that's correct. So if Parliamentary Counsel agreed, then
there would be scope to change it across each council area. The advice we gave was
40 at officer level, and the – my understanding is that the legal team's advice was that
change was unlikely to be accepted by Parliamentary Counsel without - - -

MR WILSON: Right.

45 MS METCALFE: - - - a direction from the Minister for Planning and, therefore,
where you would need to make the case that we had thoroughly considered the
policy implications of making our widest-ranging change. For that reason, the

proposed change was referred to our policy team. The policy team is developing a housing diversity SEPP which is undergoing final review before the explanation of intended effects that would support a SEPP is released with the Minister's approval.

5 MR WILSON: So, Gina, just on that, so what – what you're saying to me is that the 20 per cent, although it can be set by councils when they're preparing their comprehensive LEPs, yeah, it's still difficult to change; is that right?

10 MS METCALFE: Yeah, that's our understanding, the advice from our legal team in terms of what was likely to be acceptable to Parliamentary Counsel.

MR WILSON: But if council had an issue with – I mean, council's issues are obviously a real one in relation to part B of their – of their response, which is to limit the size of some of the secondary homes, and started to put forward a case to reduce
15 – just on this scenario – from 20 to 12 per cent which would, sort of, represent their – their problem, is that something like – I mean – I mean, is that something like it would be considered and accepted, or you have to put the case forward and – or could that proceed? Is that – or is that part of the LEP? From what - - -

20 MS METCALFE: No, it's - - -

MR WILSON: - - - you're saying, I understand is that they haven't made the case.

25 MS METCALFE: That would have an unintended consequence of limiting proponents that had smaller dwellings to a smaller proposal. That's – that's my understanding. Angela may want to comment. She had the direct conversations with our legal - - -

30 MR WILSON: Okay.

MS METCALFE: - - - lecture on this issue.

35 MS HYNES: Yes, Angela here. Sorry, I might just unpin. So in our discussions with Parliamentary Counsel in regards to the standard instrument clause, the only part of the clause that can be varied is that percentage, so different councils across the state have applied different percentages. So when we had discussions with council, we went back to them to say:

40 *Well, the only part of the clause you can speak at Gateway determination to vary the clause is to that percentage –*

and we – like, we considered –

45 *well, you need to have the evidence of what a suitable percentage may be before we can consider whether or not there is strategic merit in varying the cause.*

MR WILSON: Yeah, and then I guess your response is saying that – and I think that’s point 3 in the Gateway determination that they haven’t provided a scenario.

MS HYNES: Correct.

5

MR WILSON: Right. So – okay. And you got anything on that, Soo-Tee?

MR CHEONG: No, that’s – that’s fine. That’s good.

10 MR WILSON: So my next question is – and this is – this is a – I guess, an important one for the Commission, is that where’s the SEPP up to? I mean, you’ve answered this so I’m just – it says here:

15 *That the SEPP will – will or may have provision to enable councils to determine - - -*

MS METCALFE: The intent is that it will, but it’s a – until it is made and it’s the Minister’s decision.

20 MR WILSON: Sure.

MS METCALFE: Or it could - - -

25 MR WILSON: But it - - -

MS METCALFE: I understand - - -

30 MR WILSON: Like, I guess the status – and, I mean, you’ve said – what is the status? It’s been drafted; it hasn’t been exhibited; is that right?

MS METCALFE: Correct. An explanation of intended effect so it’s – it’s usually not their final SEPP instrument. It’s the explanation - - -

35 MR WILSON: Yeah. No, I understand that. So at this stage, council really isn’t aware of what might be in there until it goes on exhibition.

MS METCALFE: That’s correct.

40 MR WILSON: And there’s no way – there’s no way that the Commission understand, or there’s no certainty that that may be in there when it goes on exhibition.

MS METCALFE: Well, look, I’m happy to take that question on notice as to whether the Commission is able to have access to the draft EIE.

45

MR WILSON: It would be useful and may – may – may – it – it may help us in providing advice back to the department and, you know, well, I think that goes hand-

in-hand. I mean, the very reason that if you're looking at this in a holistic way, it's for the reason that – same reason why you shouldn't be, I guess – well, it may be our view that you shouldn't be changing the – changing a – a statewide provision that applied, just – just for the sake of one council. Soo-Tee, have you got anything
5 more?

MR CHEONG: No, I – no. I agree with that, if we can have the access of the draft, that will help – help us.

10 MR WILSON: But we – yep, we'd be happy for you to qualify that, but we – we know there's no guarantees; that these things go on exhibition as they're currently drafted so we would appreciate that. So we're happy for you to qualify it, yep.

MS METCALFE: Thank you, yes. I'll raise that with our policy director.
15

MR WILSON: That's – the other question, you're not – you're not aware of any other – this has been raised, so most councils are – you're unaware of other councils, sort of, approaching government for what changed for 60 square metres or percentages?
20

MS METCALFE: That's correct. We're not aware within the Central River City, Western Parkland City, that covers most of the metropolitan Western District Councils and Central District Councils of any other similar proposals, and our policy team is also not aware of any similar - - -
25

MR WILSON: Yep. Does - - -

MS METCALFE: - - - concern.

30 MR WILSON: - - - that include the percentage as well, or - - -

MS METCALFE: I understand, yeah, that it hasn't been raised by - - -

MR WILSON: Okay.
35

MS METCALFE: - - - others.

MR WILSON: All right. Okay. So, look, I don't know if I have – I think you've answered all the questions. Like, the questions are very similar to what we raised anyway. Soo-Tee, do you have anything else?
40

MR CHEONG: No. Do I have any further questions, yes?

MR WILSON: Yeah. Yeah, do you have any further questions, Soo-Tee?
45

MR CHEONG: Like, no, I haven't. Like, I haven't any further questions, sorry.

MR WILSON: Callum?

MR FIRTH: No thanks, Chris. No thanks.

5 MR WILSON: Is there anything else you'd like to add, Gina, or - - -

MS METCALFE: No. Thanks very much for your time. If there are any follow-up questions from our questions on notice answers we provided yesterday, let me know and I'll get back to you through Callum on the question on notice.

10

MR WILSON: I guess, like, we have asked questions. I don't know if you've seen them, but we've - we've got - similarly asked questions of council. And just, like, those - those questions go to more extended leadership, or the - like, you know, the scale of the problem. Because, you know, council's policy response seems
15 reasonable but we haven't - we have no real inkling of - of what the actual, I guess, problem is, and so we've - we've asked that of council and they'll come back to it. That would be on our website anyway, their answer, so perhaps - - -

MS METCALFE: Yes.

20

MR WILSON: - - - they've mentioned our question.

MS METCALFE: My - my understanding is the challenge is that because the instrument prevents applications being considered, people don't put them forward.
25 So - - -

MR WILSON: Yeah. Oh, look, they did - - -

MS METCALFE: Okay.

30

MR WILSON: - - - say in one - one phrase that a number of DAs had to be - had to be amended to reduce the size of the secondary dwellings consistent with the - you know, the size of the primary dwelling. So - but, you know, if - if you - if - if you're identifying there's - there's pent-up opportunity, usually there's something to
35 back that up so I guess we'll seek that from the council. But, look, that's been very useful. I think the answers to your questions were - were pretty much what we did today and what we discussed today, so thank you very much.

MS METCALFE: Thank you.

40

MR WILSON: No worries.

MR CHEONG: Yep, thank you. All right.

45 MR FIRTH: Thanks.

MR WILSON: And, Callum, you're going to stay on? Callum and Steve, just for a bit longer?

MR FIRTH: Sure.

5

MS HYNES: Bye.

MR WILSON: Bye. Oh, it's

10 MR CHEONG: All right.

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[2.22 pm]