



**New South Wales Government**  
**Independent Planning Commission**

**TRANSCRIPT OF PROCEEDINGS**

RE: 80 RAVEN STREET, KOORAGANG ADVERTISING SIGNAGE  
PART 4 DEVELOPMENT APPLICATION (DA 22/8564)  
AND  
150 CORMORANT ROAD, KOORAGANG ADVERTISING SIGNAGE  
PART 4 DEVELOPMENT APPLICATION (DA 22/8565)

**APPLICANT MEETING**

COMMISSION PANEL: PROFESSOR RICHARD MACKAY (Chair)

OFFICE OF THE IPC: STEPHEN BARRY  
NIMA SALEK

APPLICANT REBECCA JOHNSTON  
REPRESENTATIVES: SAMUEL LIU

LOCATION: VIA VIDEO CONFERENCE

DATE: 2.30PM, TUESDAY, 13 DECEMBER 2022

**TRANSCRIBED AND RECORDED BY APT TRANSCRIPTIONS**

PROF. MACKAY: Good afternoon and welcome. Before we begin, I would like to acknowledge that I am speaking to you from Dharug and Darramuragal land and I acknowledge the traditional owners of all the country from which we virtually meet today and pay my respects to Elders past and present. Welcome to the meeting today to discuss two part 4 development applications for advertising signage being for 80 Raven Street, Kooragang, that is DA 22/8564 and 150 Cormorant Road, Kooragang, that is DA 22/8565 which are currently before the Independent Commission for determination. The applicant oOh!media Limited is seeking approval for the construction and display of a double-sided Super 8 sign with one digital and one static sign at each of the above locations.

My name is Professor Mackay and I am the Chair of this Commission panel and we are joined by Stephen Barry and Nima Salek 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 complete transcript will be produced and made available on the Commission's website. The meeting is one part of the Commission's consideration of this matter and will form one of the sources of information upon which the Commission will base its determination.

It is important for the Commission to ask questions of attendees and to clarify issues whenever it is considered appropriate. If you are asked a question and are not in a position to answer, please feel free to take the question on notice and provide any additional information in writing which we will then put up on the Commission's website. I request that all members here today introduce themselves in a moment so that we can be clear for the transcription and I'd ask that those present ensure that they do not speak over the top of each other to ensure the accuracy of the transcript. So we will now begin and I'll just ask the officers from the OIPC to introduce themselves please.

MR BARRY: Hi, I'm Stephen Barry, I'm the Director of Planning at the office.

MS SALEK: I am Nima Salek. I'm a Planner from the Office of Independent Planning Commission.

PROF. MACKAY: Thank you.

MS SALEK: Thank you.

PROF. MACKAY: And our representatives from Barr Planning on behalf of the applicant please.

MS JOHNSTON: So Rebecca Johnston, I'm a Director of Barr Planning.

MR LIU: And Samuel Liu, Project Planner from Barr Planning.

PROF. MACKAY: Well, thank you all and just by way of background I should say that as not only panel Chair but panel I have looked at all of the documents which comprise the application as loaded - or the applications as loaded onto the DPE website, read the assessment report and Mr Barry and I have undertaken a locality inspection looking physically and visually at the locality of each of the signs. So we've pre-circulated an agenda. Before we get to that is there anything that you would like to say on behalf of the applicant please by way of opening?

MS JOHNSTON: Sure. Thank you very much for the opportunity to speak with you this afternoon. I've just got two matters of - that I'd like to seek clarification on. One would be whom is the applicant? So we made the submission to - so we as in Barr Planning made the submission to the New South Wales Planning portal and I understood ourselves to be the applicant. We have been engaged by oOh!media to prepare the application and the second matter is around who has made the political donations declaration. So I'm happy to come back to break up those matters and I don't believe them to be material to the assessment but just seek clarification for the purposes of correctness.

PROF. MACKAY: Look, thank you for that. I don't see any reason why we wouldn't deal with those two rather headline matters first, particularly given that it is the political donation which causes the matter to be before the Commission. So should we deal first with the question of the applicant?

MS JOHNSTON: So Barr Planning - Barr Property and Planning Pty Limited made the application in accordance with the requirements of the planning portal. oOh!media were notified to be the payee of the application, so meaning that they paid the development assessment fees but the application was made by Barr.

PROF. MACKAY: Okay. Well, look, the department assessment reports in both cases identify the applicant as oOh!media. I agree that in terms of the substance and merits of the application before the Commission it probably matters not other than any determination and particularly if consent to be granted any conditions would apply to the correct applicant. It would seem to me to be wise perhaps for Barr Planning to submit a very short document in each case which the Commission will put straight up on its website noting the applicant. I will obviously take advice from the counsel and OIPC but I don't envisage any issues. I suspect that it's simply a semantic one in that

somewhere in the documentation it says that the applicant's been made on behalf of oOh!media and that's been interpreted as meaning that they are the applicant.

MS JOHNSTON: Yes, that's correct.

PROF. MACKAY: But it would seem to me on the face of it that it comes to nothing other than needing to be a technical correction as we proceed to determination.

MS JOHNSTON: Yeah. No, I would agree with that.

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PROF. MACKAY: So look, I'd invite you to lodge that, that would help us get those ducks lined up, as it were. This application seems to have meandered around a little in that I also note that the addresses have slightly adjusted through the course of the assessment but am I right in understanding we are all now agreed that we are talking about 80 Raven Street and 150 Cormorant Road?

MS JOHNSTON: I think they are the same as the - the property is being consistent. We understood when we were advising of the property address we took the one that was recorded on the New South Wales Government SIX Maps website. Neither of the properties have a letterbox, they don't receive mail, council just happened to have a different record into whom that they record the address as.

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PROF. MACKAY: Right. But just to be clear, if the Commission makes a determination with respect to 80 Raven Street and with respect to 150 Cormorant Road that is consistent and not going to create an issue? Because it seems to me that the documentation as it's arrived at the Commission has landed on those two addresses.

MS JOHNSTON: Yeah, I think as long as the lot and deposited plan number are also included in the description of the property it should be clear to what property the applicant or the consent relates.

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PROF. MACKAY: Well, thank you, we'll make a note to do that, that's very helpful, thank you. All right. So that seems to be clear in relation to the applicant. Sorry, so what was the other matter that you raised in-chief was?

MS JOHNSTON: So the second matter relates to whom has made the political donations report. So in both assessment reports, section 4.2.3, it states that the reportable donations have been made by the applicant on behalf of Port of Newcastle Operations Pty Limited. That's not the case. The Port of Newcastle Operations have

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made those political donations themselves. Neither Barr Planning nor oOh!media have made donations on their behalf.

PROF. MACKAY: Okay.

MS JOHNSTON: So again - - -

10 PROF. MACKAY: Well, that's very clear and that is now in the transcript of this meeting. I think irrespective of the entity, the decision has been made that there are political - or there's a political donation in play and on that basis it's come to the Commission for determination. Am I right in understanding that the applicant doesn't - I mean, I know there has been some discussion about the consent authority through the assessment process with the department but my reading of the documents before me is that it is now common ground that through that process the Independent Planning Commission is now the consent authority and that is not disputed by the applicant. Is that correct?

20 MS JOHNSTON: No, that's correct. We're happy that the Planning Commission are the determining authority.

PROF. MACKAY: Thank you. Thank you. All right. Well, that seems to deal with a couple of - or, in fact, three headline matters if I include the street addresses. So look, is there anything else before we get to the matters that have been listed on the agenda?

MS JOHNSTON: No, that's fine.

30 PROF. MACKAY: All right. Well, for completeness and for the avoidance of doubt we've listed the question of compliance with standards on the agenda but as I look at the application documents, consider the instruments and the department's assessment report seems to me the application complies in all respects with any applicable development standards, guidelines or instruments and I just would seek a comment from the applicant about that.

MS JOHNSTON: Yes. We would concur. So we've read both the department assessment reports, the both applications. We find them to be an adequate and thorough assessment and we support the recommendation of approval with conditions of consent.

40 PROF. MACKAY: Okay. That's clear and that's helpful, thank you. Then I didn't want to ask about the question of public benefit. On my reading it is necessary that there be a public benefit and what the applicant has proposed is that the signs would be

made available to the council - the City of Newcastle for five per cent of the time for community use, that's correct?

MS JOHNSTON: That's correct. So, I guess, this is quite a practical way to both quantifiably measure and demonstrate material public benefit. There is precedent with oOh!media doing - exercising this kind of condition in other locations and I understand that there's already an existing - that Newcastle Council themselves also utilised this type of condition of approval for other signs.

10 PROF. MACKAY: Look, having inspected the locality and the location of these proposed signs the question I'd like to ask is, is there actually demand for community notices? I mean, it's a sort of peripheral industrial area, it's not somewhere that's going to have a school with a fete or a community event. So, I mean, has there been some testing of the water with council or otherwise about whether there would actually be any demand for the community use?

MS JOHNSTON: I can't say that there's been any consultation for this location. I can tell you that Cormorant Road and Teal Road and this eventually turns into Nelson Bay Road is a key transport route between the City of Newcastle and Port Stephens. It's  
20 also the key transport access for Newcastle Airport. So in terms of broader exposure to the travelling public it does have high exposure. The other aspect here would be as a key transport route it probably has opportunity for kind of emergency messaging and public messaging rather than just kind of smaller scale community events. So I would see weather events, that type of messaging being used in this signage.

PROF. MACKAY: Well, thank you for that and I raised this question with the department representatives yesterday and they also alluded to the value of the sign in conveying emergency messaging and so is my understanding correct or is the applicant's position that it would be possible to manage these signs, particularly with  
30 their commercial tenants on the basis that from time to time if there was a need for emergency messaging, flood or storm or fire or whatever, then they could be diverted for that use but, I guess, particularly the digital signs where the information could be redeployed quickly?

MS JOHNSTON: We understand that if council was the - like the author of those messaging then that could be accommodated within, within this arrangement.

PROF. MACKAY: Look, thank you for that, that's also very helpful. The other matter which seems to remain not agreed in the process are response to request for  
40 information and submissions between the applicant and the department seems to relate to development contributions and so look, I guess the first question to ask is, is that - is

it still the applicant's position that a development contribution should not be made in accordance with the council's development contributions plan?

MS JOHNSTON: Look, it is. So I do note that the ministerial direction does - is only given to Newcastle City Council as a consent authority but I would also suggest that the direction only applies to the Port of Newcastle lease area and by way of the transport - the Industries and Employment SEPP that relates to the ports, Newcastle Council are never the consent authority for development within the lease area. So that, in fact, makes the direction ineffective. So my suggestion is that that was not the intended outcome of the direction and that the intended outcome of the direction was that development within the Port of Newcastle lease area was not intended to pay contributions to Newcastle Council.

PROF. MACKAY: Right. There are some - I haven't got them in front of me but there are some mention in the assessment reports of precedents where similar contributions have been levied with development consents. Is there anything that distinguishes this from those examples?

MS JOHNSTON: I can't speak to the precedent that's been made other than I'm not sure whether this was tested or the questions were asked in those circumstances.

PROF. MACKAY: And so just fully pursuing that, am I right in understanding then that the applicant no longer disputes the technical lawfulness of the Commission as consent authority should consent be granted in applying a condition that required a development contribution consistent with council's plan but the applicant's argument is that that is inappropriate because that was not the intent of the ministerial direction?

MS JOHNSTON: Yes, that sounds good.

PROF. MACKAY: Yes. That's - I mean, I don't want to put words in your mouth but it's quite - - -

MS JOHNSTON: No.

PROF. MACKAY: - - - important for us to encapsulate the argument and test whether it's a common understanding.

MS JOHNSTON: So if I can just maybe elaborate further. The lease area is a substantial part of the Kooragang island. The roads other than the roads that are managed by Transport for New South Wales are managed by the Port of Newcastle Operations, so the lessee of the land. They provide the services, waste collection and

maintenance of those roads. Council have very little operational spend in that geographic location.

PROF. MACKAY: Right. Well, just - yes, I hear and understand all of that. What about the position that in terms of the benefit provided to the applicant in terms of use of the public domain for erection of income-earning infrastructure part of the system that's set up allows the providers of those infrastructure to make a small contribution to other public goods in the community generally?

10 MS JOHNSTON: Yep. And that's a fair counterargument so - - -

PROF. MACKAY: Okay. Okay. Look, thank you. I think - I mean, it's fairly clear from the documents and from that exchange just then where the lie of the land is and then the Commission will need to turn its mind to that matter as part of the determination.

MS JOHNSTON: Thank you.

20 PROF. MACKAY: And look, I think the only other thing on the pre-circulated agenda was simply to ask the - the department has published a recommended set of conditions of consent. If the Commission were of a mind to approve the applications is there anything in that set of conditions that the applicant regards as problematic or would seek to change, leading aside what we've just discussed, the development contributions?

MS JOHNSTON: We've reviewed a draft set of conditions and provided feedback to the department of those applications. Generally we're satisfied with the conditions and believe them to be able to be appropriate and workable for the applicant going forward.

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PROF. MACKAY: Thank you. Right. And is there anything else that the applicant wants to say at this point?

MS JOHNSTON: No. As I said before, the department has done a good job and it's very pleasing to hear that you've both been to the site. It's a challenging location to kind of understand - to get to and then to kind of understand how this type of infrastructure will fit into the landscape so I commend the Commissioners for their efforts in doing so and going to the site to look at it.

40 PROF. MACKAY: Thank you. Thank you. And could I just ask whether either of the officers from the OIPC have got any comment or question. First Stephen?



MR BARRY: So we'll follow up with - in writing about the question on notice in relation to the applicant. One thing I think is important to clarify in that response is you said that neither Barr Planning nor oOh!media had made political donations but I think it's important for us to get that in writing as well. So - - -

MS JOHNSTON: All right then.

MR BARRY: So if you're happy to take that on notice we'll add that to the short list.

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PROF. MACKAY: Yes, thank you, Stephen. And look, it would be helpful, if as is the case with this pair of applications, we could effectively have the same advice twice, once headed for each application - - -

MS JOHNSTON: Sure.

PROF. MACKAY: - - - because they're different parts - different pages on the website so it just makes it clean. Anything else from you, Stephen?

20 MR BARRY: No, that's it from me, thank you.

PROF. MACKAY: From Nima?

MS SALEK: Thank you. I don't have any questions. Thank you.

PROF. MACKAY: And just for completeness I'll double-check with you, Sam?

MR LIU: No further comments.

30 PROF. MACKAY: Well, where we're at now I don't think there are any other questions from the Commission so the Commission is taking further submissions on this matter until 21 December. It would be really helpful to get those two clarifications that we've just talked about sooner rather than later as the Commission will put them straight on the website. There's no other questions on notice for the Commission. I mean, if the applicant did suddenly decide to want to put more information before us then 21 December is the deadline but if that were done the Commission may take the view that the community then needs a period of time if there's - - -

40 MS JOHNSTON: Sure.

PROF. MACKAY: - - - substantive new information. And so look, it would certainly be helpful to get those clarifications up, you know, later today or the first thing tomorrow to help ensure that there's adequate opportunity for anyone who wanted to comment. Other than that, we're yet to meet with the council, we'll be meeting with the council tomorrow and transcripts of our meeting with the department yesterday, this meeting and the council meeting tomorrow will be published on the Commission's website in a matter of a day or so, again to assist with the - you know, the orderly processing and determination of the matter. The timing is necessarily going to depend on exactly what, if anything, comes in from the further public submission process but  
10 the Commission is getting a move on with things so thank you. And I think unless there's anyone waving or raising their hand that concludes all of the business in today's meeting so it just remains for me to thank you for your participation for being prepared and having answers to all the questions and to wish everyone well for the rest of the afternoon, week and lead-up to the festive season. Thank you.

MS JOHNSTON: Thanks.

MR LIU: Thank you.

20 MR BARRY: Thank you.

**MEETING CONCLUDED**

**[2.53pm]**