



New South Wales Government
Independent Planning Commission

TRANSCRIPT OF PROCEEDINGS

RE: GATEWAY REVIEW REQUEST - HERITAGE LISTING
115, 117, 119, 121, 123, 125, 131 AND 113 HOLT AVENUE, CREMORNE
(PP-2022-2712) (GR-2022-22)

COUNCIL MEETING

COMMISSION PANEL: DR PETER WILLIAMS (Chair)

OFFICE OF THE IPC: BRAD JAMES
NIMA SALEK

NORTH SYDNEY
COUNCIL: ZOE BAKER
BEN BOYD
NEAL McCARRY
LISA TRUMAN

LOCATION: VIA VIDEO CONFERENCE

DATE: 3.45PM, THURSDAY, 23 FEBRUARY 2023

TRANSCRIBED AND RECORDED BY APT TRANSCRIPTIONS

DR PETER WILLIAMS: My name's Peter Williams. I'll be running the meeting this afternoon. So thanks for joining us. I've just got a formal statement to commence, so I'll read that, and then we'll get into our formalities, if that's okay. Thank you.

Well, good afternoon and welcome. Before we begin, I would like to acknowledge that I'm speaking to you from Gayamaygal and Garigal Land and I acknowledge the traditional owners of all the country from which we virtually meet today and pay my respects to their Elders past and present. Welcome to the meeting today to discuss the review of the Gateway Determination for planning proposal PP20222712 seeking to identify the properties at 115, 117, 119, 121, 123, 125, 131 and 133 Holt Avenue,
10 Cremorne as local heritage items under the North Sydney Local Environmental Plan 2013.

My name is Peter Williams and I am the Chair of this Commission Panel. We're also joined by Brad James 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 with North Sydney Council is being recorded. This meeting is being recorded and a complete transcript will be produced and made available on the Commission's website. This meeting with council is one part of the Commission's consideration of this matter and will form one of several sources of information upon which the Commission will base its advice.

20 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 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 our website. I request that all members here today introduce themselves before speaking for the first time for the purpose of the transcript and for all members to ensure that they do not speak over the top of each other to ensure the accuracy of the transcript. So we'll now begin.

30 So I would like to welcome the Mayor, Councillor Zoe Baker, Ben Boyd, Neal McCarry and Lisa Trueman from North Sydney Council. I've set out a brief agenda, it's a series of dot points, I guess more the issues that have been identified from my reading of the materials. There is an amazing amount of material for this planning proposal, including a plethora of heritage studies, but I have done my best to go through all the council documents, the various, the GML report, on behalf of council, or the two reports. Also the various other property owners' heritage studies, and all the documentation from the department, including the Gateway Determination Review, and their justification reports, and so there's a lot in context with these sites, including history of heritage, interim heritage orders and appeals against those orders, and also development application appeals on sites there as well, so there's an awful lot going on, and I've been trying to get my head around the whole process and the history of the sites.

40 But I think the points that I've identified, or the parties have identified, I've tried to put in dot points, so to sort of help guide the meeting today. The other questions I'll have, but the idea is to give obviously as much advance indication of the areas that we

want to discuss, so that, you know, we can decide as much as possible in the meeting today and trying to avoid putting questions on notice and things like that if we possibly can. So, look, I think I'll hand it over to council to get things rolling formally. Councillor Baker, did you want to commence, on behalf of the council?

MS BAKER: Yes, if that's appropriate.

DR WILLIAMS: Yes, please.

MS BAKER: Like you, I would just like to acknowledge that I'm meeting virtually from Cammeraygal Land and pay my respects to Elders past, present and emerging, and any First Nations people here today.

10 As no doubt you are very well aware, the Heritage Act and the Environmental Planning and Assessment Act were radical and pioneering pieces of legislation that came out of a period of rampant development and the rise of resident action groups seeking to conserve heritage, and to ensure that community participation was at the heart of strategic planning in this State. Importantly today, section 1.3A of the EP&A Act includes the object to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources.

20 The District North Plan, which was adopted in March 2018, includes planning priority N6, creating and renewing great places and local centres, and respecting the district's heritage. Whilst North Sydney Local Environmental Plan 2013 includes, as an aim, clause 1.2F, which states, "To identify and protect the natural and archaeological and built heritage of North Sydney, and ensure that development does not adversely affect its significance." Our council has adopted a local strategic planning statement, and that includes local planning priority L3, which provides, "Create great places that recognise and preserve North Sydney's distinct local character and heritage."

So I'm submitting to you that that's the context in which you will be considering the Gateway Review application, and it's a planning context which specifically and purposefully includes the identification, conservation and protection of heritage.

30 The planning system, as we all know, is an imperfect tool that seeks to balance private property rights with the common good or the public interest. In recent times, community trust in the planning system has been eroded. The planning proposal process itself, and particularly Gateway Reviews, are seen by the community as a rubber stamp for developer interests, with little regard given to community concerns or the public interest. Indeed, most areas zoned for higher density residential development, as these sites are, generate building scales and densities often significantly greater than those allowed by standards in Local Environmental Plans.

40 It's really important to state because I - that the North Sydney community is not anti-development. The North Sydney Local Government Area currently has the third highest population density in the State, at approximately 6,150 persons per square kilometre, following the City of Sydney and Waverley Local Government Areas.

Council's LEP 2013 provides for significant increased density to meet State Government housing and commercial floor-space targets, and those controls are further augmented by the Crows Nest-St Leonards 2036 plan, which plans for more dwellings and commercial capacity again.

This council and our community is committed to careful, excellent planning to provide for open space and community facilities to meet the needs of our existing and future population, and also, too, as far as possible, preserve the special character of this area.

10 Council will soon be undertaking a heritage review of the whole local government area, and in the meantime, where necessary, council has responded by seeking interim heritage orders in respect of properties that have been otherwise overlooked by council's existing heritage controls.

There is very significant community concern and interest in Holt Avenue, and the protection of this group of dwellings, but particularly 115 to 125 Holt Avenue. It is acknowledged that 131 and 133 have been demolished and development has been approved for those sites. So should you support council's application today, we submit that 131 and 133 should be excluded.

20 Councillors, council staff, State MPs and the Minister for Heritage have been inundated with over 100 emails and submissions from the community in respect of both the interim heritage order and the reporting on this planning proposal to council, and that's in a context where there has been no formal public notification in relation to the planning proposal. The submissions are from individuals, they're from precinct committees, which is a system somewhat unique to North Sydney, many of whom represent hundreds of people, and community groups like the Cremorne Conservation Group, which has 989 members, all supported the protection of these houses and Council's planning proposal. So in terms of the - we would submit that when you consider the views of the community to date, that is a representation of those community views.

30 In this case, you are contemplating a planning proposal put forward by a council, not by a developer, and it reflects both a careful independent heritage advice, and the public interest to retain these properties as part of the existing and desired future character of this precinct. It must be noted, I think, that the Godden Mackay Logan Heritage Report commissioned by council is but a single independent heritage report, arrayed against a myriad of reports commissioned and prepared for the purpose of supporting a development application or an appeal to the Land and Environment Court, and paid for by a party or parties with a private commercial interest in the outcome.

40 I urge you not to be persuaded by quantity. It's not a numbers game. Numerous reports commissioned by developers in the context of a development application cannot trump a single report prepared by an independent heritage consultant commissioned by council to consider only the heritage significance of the properties outside of the context of the DA and appeal process. The Godden Mackay Logan

Heritage Report supports the planning proposal. It is comprehensive and detailed assessment that recommends a listing of the six properties, and I refer to the six properties because we would exclude 131 and 133 and I submit that it must be preferred and given significant weight in your decision.

10 Now to concerns put forward by the Department of Planning that quote, “The proposal may have implications on development potential in the R3 and R4 zones, and if listed as heritage items, this would retain the current single-storey detached dwelling houses.” That’s the end of the quote. With respect, that claim is alarmist, and it’s not based on the facts. It asserts a view of the planning system that, in my experience, is most often preferred by developers, that heritage listing sterilises sites from development.

Fact: clause 5.10 of North Sydney LEP 2013 permits demolition, alterations and additions to heritage items with consent. Heritage listing does not and will not sterilise the properties. The planning proposal does not propose any change to the zoning of the properties, and there are many permissible uses in the zones.

20 Fact: this planning proposal, as it relates to 115 to 125 Holt Avenue, is for six dwellings in Cremorne. Six dwellings out of an estimated 36,000 existing dwellings in the North Sydney Local Government Area, with thousands more already approved or under construction. The heritage listing of six dwellings will be inconsequential to the provision of housing in the North Sydney Local Government Area, and it will not restrict development in the R3 and R4 zones more generally. Such an assertion by the department must be rejected.

Frankly, it’s extraordinary that the Independent Planning Commission is involved in such a hyper-local review that relates to six heritage properties in circumstances where, in my experience, much larger, more controversial planning proposals are routinely ushered through the Gateway process by the Department of Planning.

In conclusion, on behalf of council and the community that we represent, I strongly urge you to exercise your discretion in the public interest and approve this application, restore some community faith in this system. Thank you.

30 DR WILLIAMS: Thank you, Councillor Baker. Thank you. I have got some questions, but I might pass over to other members of North Sydney Council here today, who might want to - - -

MS BAKER: Yes.

DR WILLIAMS: Some of the other issues first of all, if that’s okay.

MS BAKER: Yes.

DR WILLIAMS: Thank you.

MR McCARRY: Sure. Commissioner, in your hands. I had intended to provide an address of around 10 or 11 minutes - - -

DR WILLIAMS: Yes.

MR McCARRY: - - - nominally structured around the points you've made. I'm happy to do that field questions on the way, or if you have some pressing ones right now, then - sorry, I didn't introduce myself. Neal McCarry, Team Leader, North Sydney Council.

DR WILLIAMS: Thank you.

MR McCARRY: And Ben Boyd here is Acting Manager as well, from the North Sydney Council.

DR WILLIAMS: Thank you.

10 MR McCARRY: So, yes, up to you. I'm happy to - if you've got some particular questions that you think would benefit your thinking now.

DR WILLIAMS: Look, at this stage, I think Councillor Zoe Baker has made it very clear council's position on that overall position from both a strategic and local community perspective, so that's very clear. So it would be good to now develop on from that with the points if that's okay.

MR McCARRY: Sure, okay. Thank you, there, Mr Chair. Look, I'll run through them. I'll try not to duplicate or - I know you've got a lot of documentation before you, so I will try to truncate things so that we can have a good discussion if we need.

20 Just quickly, and I won't repeat what Mayor Baker has said, site and strategic context. Council's responsibility in the management of the Aboriginal and post-colonial heritage is obviously one we take very seriously, and it's an LGA-rich in heritage, and this is reflect in our LSPS, which was assured by the Greater Sydney Commission, and the key planning priority there is "to create great places that recognise and preserve North Sydney's distinct local character and heritage", and, as mentioned, one of the actions under that is to undertake a comprehensive heritage review, as is good practice for councils to do periodically. This has received a budget allocation recently, and is currently in the scoping phase, but will be done well will realistically take the best part of two to three years, given the breadth and depth of heritage in our area.

30 So the matter before the Commission has been brought forward in the circumstances that have been outlined, and the planning proposal, just to confirm that, is seeking the listing of the six properties mentioned, 115 through to 125, as items of local heritage significance, and it's contended that this is effectively a local planning matter, the decision for which should, subject to appropriate evidence-based and appropriate procedure being followed, should be a matter for local government and its community to be allowed to determine. So the formal exhibition of a planning proposal for the listing of these items would be the next step in the process, if a Gateway Determination is to be issued.

Moving on to the listed matters there in the agenda, I've just done them in the order presented, and happy to clarify along the way if there's anything, so please feel free to

interrupt. With respect to the previous delisting of number 125 Holt Avenue, that's the property described as Carina, which is one structure but contains four separate units within it. There was an LGA-wide heritage review conducted in 2007 by Architectus in association with John Oultram Heritage & Design, which led to the removal of that listing for 125 Holt Avenue as part of the making of the North Sydney Comprehensive LEP in the standard instrument in 2013.

10 The decision made at that time by the council was in response to what was a far more wide-ranging investigation, given the breadth and nature of that piece of work, and the more recent detailed piece of work undertaken by GML throughout 2022 provides a detailed analysis of the heritage value of number 125 Holt Avenue than had been undertaken previously, and this time it included internal visits of some of those units. Notwithstanding this, I would say that heritage values and the community's approach to heritage conversation do change over time, but council stands by this latest piece of comprehensive investigation and analysis, which supersedes the previous review undertaken.

20 Moving to the North Sydney Local Planning Panel recommendation. As the Commission maybe is aware, I think, the ministerial direction in 2018 requires planning proposals of this nature to be referred to the Local Planning Panel for advice prior to council determining whether to refer a planning proposal for Gateway. Council does give this advice due consideration, but is not bound by it.

At the sitting of the Local Planning Panel on this matter, the one member of the panel selected with architectural and heritage qualifications unfortunately had to declare a conflict of interest on the morning of the meeting and removed herself from the panel for the day. Given the late notice of her realising a conflict existed, there was not the ability to move in a substitute specialist.

30 The remaining three panel members proceeded to hear representation from six heritage specialists, who spoke on behalf of owners of either 131 to 133 Holt Avenue, or numbers 115 to 119, both of whom had proposed development applications, and clearly, as Mayor Baker indicated, applicants of developments are certainly less inclined to include heritage studies that do not support their development aspirations, and all of these objected to the proposed listing at that panel meeting.

The panel, which I am unclear as to why, even though I made efforts to provide the opportunity, actually declined to hear from the heritage specialist that council had made available of what one might argue was the truly impartial and independent analysis. So that occurred, and I believe the minutes of that meeting have been provided in the documentation.

40 The Department of Planning and Environment, in declining to issue a Gateway, so through their initial assessment and also in the justification report, have seemingly placed considerable weight on both the volume of consultants and the opinion of the Local Planning Panel. The department, in considering the request for a gateway, has not, as far as council is aware, sought any independent or external advice from either a

heritage specialist or the Government Architect's office or the New South Wales Heritage office, to assist in its decision. This is of note in that this did take place in a PP process to list 24 Cranbrook Avenue, Cremorne a few years ago, which was the subject of an IHO prior to its formalised listing.

It's also noted that in various other instances, the Department of Planning have, in their Gateway Determination Assessment Reports, given no weight or mention of the advice of the Local Planning Panel, and this has included a variety of differing instances where the Local Planning Panel have and have not recommended progression of a PP.

- 10 I just raise that for the Commission's information there, so not at all wanting to be dismissive of the North Sydney Local Planning Panel, that we have a very good panel candidature, but in this instance, obviously there was a differing of opinion, and council did give it the consideration, but chose to make the request.

DR WILLIAMS: Neal, sorry, if I might just interrupt there.

MR McCARRY: Sure.

DR WILLIAMS: You've mentioned that one of the members of the Planning Panel had to excuse herself for conflict of interest, and she was the one with the heritage and architect. That was a community rep, is that correct?

- 20 MR McCARRY: Yes. I can't recall her - Jane is her first name. I'm just trying to remember her surname.

DR WILLIAMS: Yes. So I'm just wondering, what was her capacity, as an expert or as a community rep?

MR McCARRY: So she was a community representative, with those qualifications being part of the reason for her attendance at not just this panel, she has attended others in that capacity.

DR WILLIAMS: Right.

MR McCARRY: So all our community reps have some broad - sorry. They have differing levels of expertise, so whilst they have a community rep, they bring that to the panel's consideration as well.

- 30 DR WILLIAMS: Okay. I just wanted to clarify that. Okay. Thank you.

MR McCARRY: That's okay. Look, with respect to the Land and Environment Court decisions, as has been documented, the IHO that was issued in March last year has been the subject of two separate appeals. The appeal in respect to 131 and 133 Holt Avenue was upheld and the Acting Commissioner Sheridan determined that whilst the IHO had been properly issued, that it had served its purpose in providing that level of temporary protection, and she went on to make a finding that - and I'm simplifying her reasoning - that due to the extent of modification and the nature of the dwellings, that they didn't warrant heritage listing, and that IHO was subsequently modified insofar

as it no longer applied to 131 and 133 as part of those orders, and those properties have gone on to be demolished.

The appeal in respect to numbers 115 to 119 was heard by Commissioner Horton on 18 and 19 July, who, in delivering his decision on the 17th of August, dismissed the appeal. And I raise this, and I will - the judgments are on public record - but I just wanted to draw to attention a few elements of that. Of relevance, in that the quotations contained in the department's most recent gateway review justification document, as well as in the previous report, I believe need to be read in the whole context of the entirety of the Commissioner's judgment.

- 10 The reason being is that through the language and phrasing of Commissioner Horton's judgment, it's clear that, unlike Acting Commissioner Sheridan's position, he did not see the court's role as to determine to a point of finality a heritage listing, and that he saw that role of the planning proposal process as the appropriate means for that to occur. He was, in delivering that judgment, however, convinced and accepted the evidence of Ms Trueman, of GML, formally, in these proceedings, as to the likelihood of establishment of heritage significance, and the decision in the judgment provides clear reasoning, and I won't read them all out, but I refer to paragraph 75, subpoints (1) through (5) in his decision there.

- 20 So whilst he made reference to further study and inquiry, there was no specificity as to what should be undertaken, but it was inferred by my interpretation, or council's, that the PP process should be allowed to run its course, was the reasoning overall.

- Upon handing down of that decision, after which council - the point at which, so that was August '17 - at that point, the council had already made its request for a Gateway Determination, so lodged that formally with the department. Council sought input from Ms Trueman as to whether she felt there might have been any other areas of further research or comparative analysis or the like that could be undertaken to further support and strengthen the listing. And it was confirmed that the report by council is, at 145 pages length, both comprehensive, accurate, thorough, well researched, and, in our opinion, provides a more than acceptable basis upon which to support a planning proposal to achieve a listing in the LEP.
- 30

DR WILLIAMS: That's the report from Lisa at - dated 3 June, I think it is?

MR McCARRY: Yes. So that was the report attached with the planning proposal, with the formal loading of that.

DR WILLIAMS: Yes, all right.

MR McCARRY: If I might just think, as I'm reading this, aloud, it makes more sense to - you have another dot point about the need for further inquiry, research or justification a little bit further down.

DR WILLIAMS: Yes.

MR McCARRY: I'm just bringing that forward slightly from my notes, if I may.

DR WILLIAMS: It makes sense.

MR McCARRY: Yes, because I've just referenced that and realised that. So as I just discussed with respect to the Land and Environment Court decisions, council stands by the adequacy of the heritage assessment and reports undertaken by GML and Lisa, and the full commentary of advice contained within the minutes, which are also referenced in the department's - sorry - the minutes, that is, of the North Sydney Local Planning Panel, that's referenced in the department's reports as well, I think, again, needs to be considered in their entirety.

10 So in that instance, the panel, in reaching their view, actually state, and I will just sub-quote this, is that, "Based on the reports, information and submissions, the panel is not persuaded, given the extensive alterations and additions over decades, that these properties would warrant listing as items in their own right." So that was the panel's commentary there, and then they then went on to formulate an actual recommendation that said that, called for or suggested a more thorough and lengthy inquiry to reconcile whether heritage listing was warranted.

20 So whilst the panel, as I said, is fully entitled to form their own opinions as they see fit, I feel that the inclusion of that wording was perhaps trying to be somewhat polite, saying, well, we're not absolutely closeminded, but we're not convinced as we sit now, and, as I say, they, that was their position on it, which we had a good look at, and, as I say, gave due consideration to, but ultimately then reputed the matter to council with our recommendation, which they then decided, which they then followed.

So just moving to ministerial direction 6.1 - and I'm nearing the end, so thank you for the time. It's council's position that the planning proposal is consistent with the objectives of this direction in that the planning proposal will continue to encourage a variety and choice of housing types, will continue to make efficient use of existing infrastructure and services, and will minimise the impact of development on the environment. That's the objectives of that direction. And then with respect to the subpoint, particularly number 2(b), that is, "not contain provisions which will reduce the permissible residential density of land."

30 The intent of this PP, as has been stated, is to include these dwellings or properties as local heritage items within the LEP. There's no change proposed to the underlying R3 zone, for 115 to 123, nor the R4 zone, which currently applies to number 125 Holt Avenue, which has already been converted to four separate units.

The R3 zoning does permit other forms of residential uses, as defined, including boarding houses, attached dwellings, dual occupancies and multi-dwelling housing. So these dwellings could, with a reimagined scheme, potentially be adapted or modified at some point to provide these types of housing, subject to consent.

40 So I think the notion of a potential reduction in density when compared with what might be able to achieve with a full demolition, when you consider that in the context of the LGA, would be only, even if that were accepted, of very minor significance in the order of a dozen or so dwellings, potentially, that meeting that test where - sorry - I

have it here, the wording. The ministerial direction does allow some inconsistency where it's only of minor significance. I think in the order of this kind of numbers, we're really in that space. So that's council's position with respect to the ministerial direction.

With respect to the expiration of the IHO for 115 to 119, as mentioned, that was issued 11 March 2022, and that IHO was issued and had conditions that basically said it had the effect that the IHO would cease to have effect, if, after six months, council had not made a decision to progress a planning proposal, or after 12 months, if no amendment to the LEP had been made.

- 10 So we're obviously here today to request a review of the non-issue of the Gateway Determination by the department. As council's delegation to issue an IHO prevents a subsequent IHO being issued by council on the same property, council has also made separate representations to the Minister for Environment and Heritage to consider issuing a further IHO to allow a planning proposal to be progressed.

This matter was referred to the State Heritage Register Committee for advice, and on the 31 January they recommended that a further IHO would be appropriate to be issued. So that matter is still outstanding with the Minister's office, and that committee is providing their advice, not a determination as such, just to clarify that.

- 20 I'm aware that the properties at number 115 to 119 have recently been vacated, and should the IHO lapse, this could potentially be demolished by way of a compliance development certificate, and hence the request was made to the Minister, in these circumstances, just being unsure of the timing of this process.

So, look, that was all my sort of prepared notes or main points, and happy to field any questions, and I'd like, obviously, to thank the Commission for the opportunity to address the panel, and Lisa is also here in her capacity as a heritage specialist, if there's questions. I think she had a short address, if you wanted to hear that now, as to the details on the heritage values and criteria, but happy to field anything from you now, if you wish.

- 30 DR WILLIAMS: Yes. No, thanks, Neal. I will take you up on the offer of your presentation, Lisa, in just a moment. I just have a couple of points that Neal mentioned, I better discuss it first before I forget them.

The expiry of the interim heritage order, that was an issue I raised with the department in our meeting this morning and that will be on transcript. My issue there was, without some form of extension of the interim heritage order, irrespective of what is the outcome of this process, nothing will obviously be finalised by the 11 March, and the property would - consequently would have the consequence as happened in 131 to 133, which I'm sure you're very aware of, that through the compliance development certificate, the demolition could still occur.

- 40 So my concern was, what might be available to stop that from happening in the interim until there's some finalisation of this process. So to know that you - that was going to

be one of my questions, so that you've got a, there's a recommendation now before the Minister that the IHO be extended for another - is there a certain period? 12 months, six months, or - - -

MR McCARRY: To my understanding, the minutes of that committee, they haven't put a time limit on it, and nor have, I haven't seen any other reports as such, but their minutes are basically saying that they recommend that one be issued, and I think it is at the - and Ben might be able to jump in here if I'm incorrect - I believe it's at the Minister's discretion if they were to choose to issue an IHO for a certain period of time, be it three or six or nine or twelve months, I believe that that would be at the
10 discretion of the Minister. So under the Act, I think they can vary the length or application of an IHO.

DR WILLIAMS: Yes.

MR BOYD: Just to follow on from Neal's comments, that's correct. There's no ability under the Heritage Act to extend an IHO once it's in place. 12 months is the absolute limit as to when it can apply, hence why council has applied to the Minister to seek a new interim heritage order to provide that temporary protection until this process is proceeded through.

DR WILLIAMS: Yes, okay. No, thanks, Ben. I mean, that seems to be an important
20 consideration, because in one sense, it might, you know, obviously clearly affect whatever decision is made in keeping that IHO alive, in some sense. The other point was, the - I noticed there was a development application appeal that went to conciliation conference over 115, 119. I think it was the 5 or 6 February. I can't see any outcome of that conciliation conference on the Land and Environment Court website, so I was wondering if council could fill me in on the outcome of that conciliation conference. Sorry, Lisa.

MR McCARRY: I think you're on mute, Lisa.

DR WILLIAMS: Sorry, Lisa.

MS TRUEMAN: Yes. I just - I'm not sure if Ben and Neal, because they're in a different part of council are across that particular issue, but I am.

30 DR WILLIAMS: Thanks, Lisa.

MS TRUEMAN: Thank you for listening to me, Mr Chair. As far as I'm aware, the conciliation conference has been adjourned for a number of reasons, and one of those is because council is intending to press contention 1 in that matter, which is that the buildings at 115 to 119 have heritage significance, as determined by the independent assessment done by GML Heritage.

DR WILLIAMS: Right. Thank you. That helps greatly because once again, if the DA was - if the conciliation, depending on the outcome of the conciliation conference, once again could affect this whole process as well, so it's important to, in a sense, dot

all the Is, cross all the Ts, in terms of all the other events that are happening around this process. So thanks for that, Lisa.

Sorry, there were a few other points. Look, just on that point about the need to further inquire of research and justification, Neal, and others from North Sydney Council, of course, as well. The interpretation from the department is that, particularly - not just by Acting Commissioner Sheridan, but also Commissioner Horton, even though Commissioner Horton dismissed the appeal against the interim heritage order, one of the grounds for his dismissing was that the whole purpose of an IHO is to give time for further consideration studies. And the reading is that one of the reasons why he
10 decided not to grant that appeal and to uphold the interim heritage order was to grant time for further studies, and that comment was made post the GML final study on the 3 June.

So we seem to have a difference of interpretation here between what the Commissioner actually said, and also, I would argue, or the argument is - well, sorry, it's clearly also on the basis of the Local Planning Panel's views as well, that the need for further investigations. So, Neal and Lisa, I think the point you made, Neal, was that your advice, Lisa, was that, look, there's been so much work done on this by GML, it's a long document, 145 pages, it's not going to get any better than what it is, this is it, there's not much more that can be added, in terms of further studies. This
20 constitutes the further studies, in other words. Would that be correct, my understanding of your interpretation?

MS TRUEEMAN: Neal, do you want me to talk to that?

MR McCARRY: Look, I just wanted to comment, one of the matters in the court deliberations that the other party were pressing was around this notion of, at the point of time when IHO was issued, what information was there, and then so there was an argument around that, and then also pressing that they weren't of significance. So they were very much asking the court to say, well, make the call, and then dismiss - sorry - and uphold the appeal, and we'll move in with our, you know, desires.

So whilst, yes, I appreciate the words are as written, I was just, I suppose having had
30 the benefit of sitting through the two days of the hearing and then reading the judgment, he seems careful in his words throughout it to not be making the final call as to, this is heritage, but deferring to the process. So he did make those words, and they're there on the record, around further inquiry.

DR WILLIAMS: Yes.

MR McCARRY: But I almost sort of interpreted them just, as I say, I'm carrying the two days of a hearing experience as well, was that it was, like, this is part of it, so you've got, the council had already made the request. The department, you know, due to, decides on a Gateway. The public get to see this, and sometimes, you know, there's matters do arise through a public exhibition that can prompt us to go away and
40 update or correct or do further investigation as relevant to whatever the planning issues - in this case, heritage - may be.

So, as I say, getting to your comments, we took stock and said, well, what's the further inquiry going to benefit? There have been follow-up addendums from the applicants, heritage consultants, saying things, and we reviewed all that documentation and sort of said, well, there's nothing new come forward that's sort of, that needs to be countenanced, or the extensiveness of those reports didn't, in our opinion, lead us to say, yeah, let's go away and look at, you know, some other aspect that hadn't been covered, as relevant to this listing. So we were also, just in context, the 12-month clock ticking as well.

DR WILLIAMS: Yes.

10 MR McCARRY: There was some practicality to say, okay, well, we might spend another six, eight weeks looking at something, or whatever that may be, I can't think of anything, so we did truly consider that, and the department, as I say, was sort of saying, "Oh, well, this says you've got to do more work," and it's, like, there was, it seemed to me, an exercise in kind of kicking the can down the road to maybe not make a hard decision on whether to issue a gateway. So - - -

DR WILLIAMS: Yes. Okay, Neal. No, that explains it. Thank you.

MR McCARRY: Lisa, did you - - -

DR WILLIAMS: Lisa, did you want to move on to your comments, please?

20 MS TRUEMAN: Yes. Look, I don't have a formal presentation. I just wanted to talk to a few specific issues, particularly around the significance of the properties and our independence in this process. But I first want to address the issue that you've just raised, Mr Chair, and that's around the court case and the judgment, and another area that I particularly want to speak to, which is how much change has occurred on these properties, because that was hotly debated in the court. There were a number of issues that were debated. One was a number of reports, which report was useful, which ones weren't, and which ones came first, which ones came second, and that went on and on and on, and then there was a further discussion in the witness box about the reports that GML had written and the reports that Urbis had written, which were the ones that were being considered by the court, because they were the ones written by the experts
30 in the witness box.

The IHO was appealed on the preliminary GML report, which made a recommendation to undertake that the properties were worthy of further investigation, and that is what the threshold for the IHO is.

So that was the matter that was brought before the court, and in the period between the proceedings being lodged with the court and being heard, there were a number of other reports being, that were written, including the GML final report, which I'm not quite sure - Neal, you might remember this better - but I think it was provided to the other party to the court, potentially one day before the hearing. It was not a long time before the hearing. So the applicant was given time to review that report, I think before the
40 second day of the hearing.

And there was also, in response to that, a number of other reports that the applicant submitted, which were dismissed by Commissioner Horton because the experts in the proceedings in the witness box. I have to say, because I am an independent person in this process, I'm not a North Sydney resident, and I was just engaged to oversee a process which determined whether the properties were significant or not, or likely to have significance or not, with no agenda specified.

10 It was an evidence-based review, and it came up with an evidence-based conclusion. In the witness box, it was actually determined that a lot of the information that was put into the Urbis report was based on a lack of evidence. For example, Mr Davies admitted that he had not been to the sites that were used as a comparative analysis for determining that, in his opinion, these buildings were not representative or rare. And that was very much behind the judgment of Commissioner Horton, and I think that that needs to be brought up. I wasn't given that opportunity to bring it up to the planning panel, and I think if the opportunity to bring it up here in this forum.

The other issue that was really important to the court process was the amount of change and the understanding of what a group listing means, and I think it's important that the department and you, Mr Chair, understand a group listing in the context of North Sydney and the North Sydney DCP controls.

20 So North Sydney DCP has specific controls for group listings and specific descriptions of what a group listing is and groups, buildings that form part of a group listing, their significance is around their contribution to the streetscape as a cohesive group of buildings that have a similar pattern of development. These particular buildings have a shared history, and that's written - there's a lot of information about that in the reports, which I'm sure you've written, and they have a shared form and a shared character that, in combination, and in cumulation, contributes, that provides a very strong representation into the streetscape.

30 There's much focus in the applicant's reports on the amount of change, but that change, as was discussed in the court case, is predominantly in the interior and to the rear. It's not seen from the public domain, whereas a group listing is about what's seen from the public domain. It's what community can see, and that was a real factor in Commissioner's Horton's investigation in the witness box.

The plans that are accompanied by the applicant's report, they only what you can't see. They don't show what you can see, and what you can see is a cohesive group that retains a great integrity, and those plans don't talk about the really important things about a group item, which are its scale, siting, form, setback, building lines, their primary facades and their garden settings, all of which remain intact in this group of dwellings, and that's what important in determining whether a group of buildings has significance as a group item.

40 And the DCP controls for group items allow change, and they allow change to the interior, and they allow change at the rear, and they allow change of use, as long as the

elements that form that group of significance are retained, and in this case, I've been through the list of what those things are.

So that's the thing that I think is really important to identify, because I think it's been a little bit lost in the information that's been put to the Commission at this point in time. It's really the basis of the significance of the group, and when you're assessing heritage significance, or when you're determining if something should be listed or not listed, significance is everything, and significance is based in evidence.

10 And what we tried to do when we were writing the GML report, and in fact, what we did do, was base our significance on the evidence, a full and thorough assessment of the evidence. We went far deeper than the previous reports and far deeper than the applicant's reports, and I know that I have an assessment of the different histories, the GML history being far deeper, doing an analysis, for example, of the local studies library, BA and DA documents for all of the properties. That information was later pinched and put into the applicant's report, with a different analysis to it.

20 But our analysis stands. It's evidence-based, our assessment of significance is evidence-based that these buildings have historic aesthetic representative and rarity significance to the local community to the locality of North Sydney Local Government area, and as a heritage expert of many years' experience, probably more than I would like to admit, but 35 years' experience, I can stand by the fact that these buildings have significance as a group item, and they should be listed in the LEP, simply for significance reasons, but that's not my call, and I think that going through the planning proposal process allows a community to contribute and other people to contribute to the discussion rather than just the applicant and the applicant's paid heritage consultants. So I am very happy to answer any particular questions from anybody.

30 DR WILLIAMS: Thank you very much, Lisa. Yes, look, I take your point about the group listing, and in the documentation, the department states that originally the planning proposal was for individual listings of each item, and the comments made that perhaps a group listing would be better, and I don't know who that came from first, yourself or the department, but the comment is made that a group listing would be better, but that the original planning proposal doesn't identify that. It's based on individual listings, and further work might be required to justify the group listing of those six properties. Now, could you comment on that?

MS TRUEMAN: I can say that the GML report always recommended a group listing. That recommendation comes from us in the first place, and it was clearly written into both our preliminary and our final report, so that was certainly our recommendation, our very strong recommendation. There's no need for any further research into it, but it's very clearly articulated in our report. The way that listing is done on the LEP requires that individual properties are listed in order to form a group listing, and I'll let Neal speak to that, because I'm not a strategic planner.

40 DR WILLIAMS: Okay, thanks, Lisa. Thanks, Neal.

MR McCARRY: Yes, that's right, in that the standard instrument order, as updated, requires each parcel or each item to have an individual item number. So what we presented to the department, and I recall now that you mentioned that this commentary, somewhere around this, and I dismissed it as someone not really understanding their own sort of standard instrument order, is, what we've got is the item name in each one of those properties. So you've got, you know, locality, Cremorne, item name is, house, brackets, "Holt Avenue Group, address - 115 Holt Avenue, property description, lot X", da-da-da-da, and then an item number.

10 So we present it as that, so each of those first five are part of the Holt Avenue group. If that was maybe lost in the wording, you know, that wasn't the intent, and then you get to 125, which the item name is Carina.

DR WILLIAMS: Yes.

MR McCARRY: It also contributes, but it's sort of a different element of significance as detailed in the report.

DR WILLIAMS: Yes.

20 MR McCARRY: And then you've got what has now been demolished, the two, 113 and 133 are both just described as "house". So I don't know if something has been a little bit muddled in the communication there from the department there, but the group strength, as Lisa has outlined better than I can, is in that cohesiveness, but the instrument now requires each parcel and lot to be, have an item number.

DR WILLIAMS: Sure. No, thanks, Neal. So the argument there is, you'll still do an analysis, a heritage analysis, if you like, of each individual property, but then that's, in terms of how they then combine to contribute to its heritage significance as a group of items or a group of houses. So - - -

MS TRUEMAN: That work has been done in the report, and in - it would need to be supplemented with an inventory sheet, and the inventory sheet would be for the group.

30 DR WILLIAMS: Right. So the argument - sorry. Once again, I don't want to be putting words into anyone's mouth, but the argument that individually they may not warrant, you get to a situation where that individually they may not warrant heritage listing, but as a group, they do. But then that tends to undermine the heritage significance that you've done of each individual property, in terms of the heritage, you know, the guidelines, the certain criteria for heritage assessment.

MS TRUEMAN: No, we've done an assessment of them as a group.

DR WILLIAMS: Yes.

MS TRUEMAN: So as a group, 115 to 123 - - -

DR WILLIAMS: Yes.

MS TRUEMAN: - - - there's been a, there was - in the preliminary report, there was an assessment of them as individual properties that led to the, and then the further

research, and then the further research in the final report recommended that they be, did an assessment of them as a group, and made a recommendation that they be listed as a group.

DR WILLIAMS: Right.

MS TRUEMAN: So there's, on page 128, it starts, is the assessment against the criteria of 115 to 123 as a group.

DR WILLIAMS: And that's the 3 June report?

MS TRUEMAN: Yes.

10 DR WILLIAMS: Yes. So the preliminary report was looking at them individually, but the final report looked at them also as a group, or looked at them specifically as a group. That's an additional bit of information contained in the June report?

MS TRUEMAN: No, the preliminary responded to council's resolution, I suppose, which was to look at them as individual properties, to look at them as potential groups, and to look at it as a potential conservation area.

DR WILLIAMS: Area. Okay.

20 MS TRUEMAN: So that's in fact what it did, and out of that preliminary research, it recommended that they be further researched with the potential for group, a series of groups, so there was a group which was 113, 111 and 113, and then there was the individual item of 125, and then there was the group. The preliminary report suggests different, there could be different groupings, but the further research that was undertaken as part of the final report, the 3 June report, determined that the most appropriate grouping for them, based on their history, their shared history, was that 123 to 115 or 115 to 123 be listed as a group called the Holt Avenue Group.

DR WILLIAMS: Great. That's, no, that's - - -

MS TRUEMAN: And that's, that is detailed, that whole process is detailed and articulated within the 3 June report.

30 DR WILLIAMS: Okay. Thank you. Thanks, Lisa. That's clears the - that process of, if you like, consideration of the various elements, both individual, group and the heritage conservation area, which I think was the original resolution of council, was the commission that the study (not transcribable) yes.

MS TRUEMAN: Yes. And just to show, again, the independence of our research at GML, and for myself now, as council's expert, we didn't feel there was any justification for a heritage conservation area in that area that council had suggested might be a conservation area, and we made that very clear at the beginning. We did not feel that was worthy of any further research. So we had no agenda. We came up with the evidence and the facts, and we based our significance upon the evidence and the facts.

DR WILLIAMS: All right. Thank you, Lisa. There's been recommendations made by the department, in terms of still requiring some form of clarification or some form of further investigation, which obviously I need to consider. Putting it into the context that if the interim heritage order is extended, what's council's timeframe for this? I mean, how long are you allowing or how long are you envisaging? What I'm getting at is that if the recommendation and the department's final finding was, look, there is either some amendments to be made or perhaps it might be better for a new proposal that addresses any of these issues, how does that affect council's timing of this, in terms of how long is council prepared for this to go?

10 MR McCARRY: So given where we're sort of up to and everything that's transpired - -

DR WILLIAMS: Yes.

MR McCARRY: - - - my sort of comment to that would be the department regularly issues Gateway Determinations that have conditions - - -

DR WILLIAMS: Yes.

MR McCARRY: - - - and they can require buildings to change shape, or FSRs to go up and down within reason, or whatever is relevant, so would, in this instance, you know, it would be suggesting that they can readily put a condition on that clearly would remove 131 and 133, now that they're gone, and address any other matters of
20 clarity that they felt were required to progress a, to facilitate an exhibition.

DR WILLIAMS: To go on exhibition, yes.

MR McCARRY: So, as I say, I know they've used that at several times, about further inquiry, but I would seek, you know, if - from the department, if this is to progress, just some clarify on what the additional matters would, are needed to get it on exhibition. I suppose - yes, so that's not uncommon for Gateways to be issued in that sense - - -

DR WILLIAMS: The conditions? Yes.

MR McCARRY: Yes, and then depending on what that involved and what was
30 expressed, we would obviously - the Gateway conditions would usually require things to be on exhibition in a certain period of time, and then for a final report and request to occur within a certain timeframe. So we'd be governed by those as a process, I would think.

DR WILLIAMS: Ah hmm. No, thanks, Neal. I don't know if there's any other comments that anyone wants to make at this stage, from the council. I just wanted to make the point too, obviously there has been information available to both the council and the department when making their various decisions, both pre-gateway and post, and up to the gateway determination. I'm not sure whether council is aware, but there has been some additional information that has been forwarded, like, updated reports, firstly to the department, and most recently an updated report that doesn't really

produce new information, in our opinion, but also a report submitted to the Commission.

So I just wanted the - for the purposes of transparency, just to let you know that there have been some updated, well, I guess, amended or updated heritage reports that have been prepared. One was by John Oultram, and that was on the 14 November, so I'm not sure whether council is aware of that, and also a more recent one, I think dated the 23 January. So just to let you know that they are available or have been submitted, and I think, you know, obviously in fairness to council, I just want to let you know that they have been submitted, both the department and one of those reports to the
10 Independent Planning Commission.

I take your point that, as far as North Sydney Council is concerned, is that there has been enough studies done on this, and there is a whole issue about whether there is new information that should be available. My view is that the information isn't new information, it's just a continuation of material that has been already submitted, but it is there. Our policy is that any documentation we receive, and this was unsolicited information we received, is put up on the Commission's website.

So I'll be putting that material up, and we will be putting the information up on the website within the next day, and if council wishes to obviously have a look at that and make any submissions on that, I would be happy to read submissions sometime within
20 seven days afterwards.

As I said, I can't see any value of further studies, and that would take weeks and weeks and weeks, but I think in the case of procedural fairness for council, that material will be up on the Commission website, and if council wishes to make any comment or submissions on that, we will certainly take that - you know, accept those submissions. In a sense, it's further submissions that you might want to make in relation to this meeting, which is normal Commission process.

MR McCARRY: Thank you for making us aware of that. Appreciate that. I wasn't aware of those further - I was aware that the applicant had been making
30 representations to the department, following council's request but once the Gateway was formally not issued in October, I know that they were also then seeking or writing to various parties to say, well, the IHO needs to come off now, this is done. So we then reported to council in November, an update on proceedings, and that led to this review request being lodged in late November. So, yes, no, not aware of those two further reports, but we will certainly try and have a look at them, and perhaps we will comment as to whether we can, whether they shed any further light. But - - -

DR WILLIAMS: Yes. My view, Neal, is they don't add anything substantively. It's a continuation of the same arguments, which is perfectly fine. I mean, submissions can be received, but, as I said, any submissions we receive go on the website. The department was aware of both sets of submissions, both in November and the 3
40 January - sorry - 23 January, and I wasn't sure, we weren't sure whether council was aware of those submissions. So in consultation with the department this morning, we

thought it might be an idea to make you aware that there are some further addendums, or addendum reports, if you like, or updated reports, and afford council the opportunity to remove those and make any comment that you would like to make.

MR McCARRY: Unless they may have come in in relation to the court proceedings for the DA, so they may - when I say we, I wasn't aware myself, but they may have been forwarded from legal team through council.

DR WILLIAMS: Yes.

MS TRUEMAN: Yes.

DR WILLIAMS: Sorry, Lisa?

10 MS TRUEMAN: I just want to point out at that Mr Oultram is the applicant's heritage expert in the proceedings that Helm has taken against council, so he is aware of council processing contention 1, and perhaps that has motivated the submission of yet another report. But I would value the opportunity to have a look at it, and see if there's any new information in it.

DR WILLIAMS: Yes. Thanks for that. As I said, look, it is our policy for, of transparency, and any information received is put in the public domain, so it would be going up on a website, anyway. So you - and rather than you just stumble upon it or not be aware, but it will be up on the website, and I just thought it only fair to give you some time to make submissions. As I said, it's our normal process from the
20 stakeholder submissions. I mean, the fact that they might have further questions that you might have to take on notice, well, we normally give you seven days to respond, so in a sense this is some information that's come through that you might like to respond to, that's the main - - -

MR BOYD: I just want to thank the Chair for the opportunity to do that, it's greatly appreciated. Part of the issue with not finding out about this thing is, this new planning portal system that we work through gets turned on and off for council as we move through the process, so we're at the part where we don't have any sort of direct notification when additional documentation comes in. We can get into those areas if we see fit, or we need to, but we're not directly notified of new information that comes
30 in, post it sort of leaving our post.

DR WILLIAMS: Yes. No, thanks, Ben. As I said, we've had a quick look at it, and it's really just reinforcing existing material, but, still, it is an updated submission, if I could call it that, and I think it's important that council are made aware of it and can comment.

MR JAMES: Peter and council, we'll have that document, Peter, that you referred to, dated 23 January, we'll have that up before midday tomorrow on the Commission's website, through the case page, so, Neal, if - give me a call if you have any questions about accessing it.

MR McCARRY: Sure. Thanks.

DR WILLIAMS: Yes. So, look, are there any questions at all from any one of the council at this stage before I close proceedings? Brad or Nima, anything I've forgotten to cover?

MR JAMES: Peter, do we have any questions about council records of the - in relation to the delisting of 125 Holt Avenue?

DR WILLIAMS: Well, I think there's been the oral submission given today for that delisting. I think you mentioned a comprehensive review done in about two thousand and - - -

MR BOYD: Seven.

10 DR WILLIAMS: - - - seven, and that was a - - -

MR JAMES: Was that LGA heritage review?

DR WILLIAMS: Study. Yes.

MR BOYD: Yes. If I can comment to that, the comprehensive heritage assessment that was essentially started in 2007 and was completed around about 2010 was primarily looking at reviewing all existing heritage items, and sort of consolidation and potentially removal of ones that weren't worthy. It wasn't looking at adding new additional items in that respect. I know there was, at that time, there was approximately over 1,200 heritage items within the North Sydney LGA, so the quantum and effort given to looking at each of those individual items, and then
20 determining how they got delisted, was probably not quite as comprehensive as what's happened with looking at relisting in this particular case.

So every time we go down an IHO route, there is substantial evidence-based heritage assessment undertaken, and it's usually a lot more than what's typically done in the standard heritage listing, without going through and IHO process.

MS TRUEMAN: And if I can just add to that, that it had two elements to it, that heritage review. One was the delisting, and the other one was looking at the dual listing of buildings within conservation areas. So it had two - it wasn't a comprehensive LGA-wide heritage study, it had two specific focuses to it. And the items that were reviewed for delisting or listing were ones which had been put onto a
30 list - as you probably understand, council heritage offices has a list that goes for about five years, coming up to the next review, of places which have been identified for listing by the members of the community or by property owners or by the heritage planners and planning officers that work in the council, and then also they have a list of items for delisting that come from the same nominations, but also self-nominations from property-owners who wish council to review their heritage listing because of their own particular needs, and in these circumstances, because we did at the delisting issue through the court process. It was, I think, a review done from the street, based on information which had been provided by the property owner, and wasn't, a full heritage assessment was not done.

MS BAKER: And if I may add to that, as an elected person who was part of that 2009 process, it was in large part the old-school drive-by assessment, and I can really reinforce what Ben Boyd and Lisa Trueman have said about self-nominations. As a - I was a new councillor, and I was shocked by how many people came to argue strongly their delisting based on their perception of property prices. So it wasn't a comprehensive - it's not the sort of study that the council is now scoping to do, in terms of a really thorough review, LGA-wide.

10 DR WILLIAMS: Great. Okay. Thank you for that. Well, I think that might be all. As I said, Brad, you and Neal might have to just liaise, perhaps, but I just think to give council the opportunity just to have at that material. As I said, I did discuss it with the department this morning, so I think either I entirely ignore it, or consider it, but if I do consider it, it will be in the context of council also having the opportunity to comment. But as I said, it adds a little bit more detail, but nothing substantially different from what has been already submitted by the applicant's heritage consultants, but I think it's fair for council to be able to have a look at it and comment.

20 Okay. Well, if there's nothing else, Mayor Baker and Lisa, Ben and Neal, thanks very much for your time. It's much appreciated. We're trying to make a, I'm trying to make a recommendation as quickly as possible, and that, look, and this as well, the other thing I will say, if you do remember any information about the outcome of the proposed extension or recommended extension of the interim heritage order, if you would notify the IPC, it would be very helpful, just useful for me to know if anything happens between now and any recommendation, what might be happening with the extension of the interim heritage order, will be helpful.

MR McCARRY: Will do. Certainly.

DR WILLIAMS: Good. Okay, then. Well, then if that's the case, thank you very much for your attendance this afternoon, it's been really helpful, and I wish you all a good evening.

MEETING CONCLUDED