



New South Wales Government
Independent Planning Commission

TRANSCRIPT OF PROCEEDINGS

RE: GATEWAY REVIEW REQUEST - HERITAGE LISTING
115, 117, 119, 121, 123, 125, 131 AND 133 HOLT AVENUE, CREMORNE
(PP-2022-2712) (GR-2022-22)

DEPARTMENT MEETING

COMMISSION PANEL: DR PETER WILLIAMS (Chair)

OFFICE OF THE IPC: BRAD JAMES
NIMA SALEK

DPE: ALISON McLAREN
BRENDAN METCALFE
CHARLENE NELSON
DERRYN JOHN
MATTHEW ROTHWELL

LOCATION: VIA VIDEO CONFERENCE

DATE: 9.30AM, THURSDAY, 23 FEBRUARY 2023

TRANSCRIBED AND RECORDED BY APT TRANSCRIPTIONS

DR WILLIAMS: My name's Peter Williams. I'll be chairing the Panel so what I might do to get started, we are recording this so - and I think the recording's started. So firstly, I'll begin with an opening statement. I think you have the agenda and the first agenda item will be the opening statement so I'll just read through that and then we'll start the substantive proceedings.

Well, good morning and welcome. Before we begin, I'd like to acknowledge that I'm speaking to you on 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 review of the gateway determination for planning proposal PP-2022-2712 seeking to identify the properties at 115, 117, 119, 121, 123, 125, 131 and 133 Holt Avenue, 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 of the Office of the Independent Planning Commission. So in this meeting today with the department, 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. This meeting 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.

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 and once again, welcome to you all.

We have sent out a brief agenda, it's more a dot point agenda and it's really designed to look at the - at least some of the major issues that I've been able to identify and also clearly obviously the - and that's based on the information provided by the department and by North Sydney Council. There's a surprising amount of information in this project and I've tried to get through as much of the material as I possibly can. The gateway determination report, the gateway determination itself, the gateway review, the justification assessment, the various heritage reports, particularly the GML report and the various council documents and also the various property owners heritage studies. So I've gone through that material and there is a lot there and there's a lot

that's been happening with those sites in terms of council resolutions and Local Planning Panel recommendations and Land and Environment Court decisions and so on.

So in that sort of context I understand you've got a presentation prepared so that would be very helpful. So what we might do, if that's okay, is, Alison, if you'd like to go through the presentation. I might have questions as we go along, if you don't mind. I've tried to by setting the agenda items to avoid situations of having to have questions on notice wherever possible but you might need to find and get - you know, get further
10 information so hopefully there's sufficient guidance to the agenda items for you to - you know, that cover the main issues but as I said, there will be questions I'll probably need to ask as we go along. So, Alison, if that's all right, I'll hand it over to you. Thank you.

MS McLAREN: Thank you, Commissioner. The following representatives from the Department of Planning and Environment are on the call and attending today. So I'm Alison McLaren, the Executive Director, Metro Central and North within the Planning and Land Use Strategy Division of the Department of Planning. I have with me today
20 from my team Brendan Metcalfe, Director, North District; Charlene Nelson, Manager, Place and Infrastructure, North District; Derryn John, Specialist Planning Officer; and Matthew Rothwell, Planning Officer.

Firstly, we'd like to briefly provide an overview of the planning proposal and I will hand over to Brendan and the team members to provide some further details on the gateway assessment that was undertaken and the issues raised for consideration as part of the gateway review. So, Brendan, I might hand over to you at this point.

MR METCALFE: Thanks, Alison. I'm Brendan, Metcalfe, I'm the Director for the North District as Alison stated. I've just provided the agenda there again just for a
30 quick recap but I'm sure the Commission is aware of what we're going to run through. We've tried to keep our presentation to those points.

DR WILLIAMS: Thank you.

MR METCALFE: The planning proposal - for a bit of background here, the planning proposal sought to amend the North Sydney LEP 2013 by inserting eight new items as local heritage items and including these on the heritage LEP. It's recognised by both the DPE and council that due to the demolition of 131 and 133 Holt Avenue these properties are unable to be heritage-listed and will not form part of any new proposal.
40 This presentation, therefore, focuses on the remaining properties at 155 to 125 Holt

Avenue and you can see the demolished properties on the left there. I understand the Commission has been out and done a site visit - - -

DR WILLIAMS: Yes, that's correct.

MR METCALFE: - - - recently and the remaining properties are shown circled in white and that's a little bit of context as to where we are located in the LGA. The remaining six properties are located in a small pocket of R3 medium density residential zoning surrounding - surrounded in the immediate vicinity by R4 high-
10 density residential zoning which enables greater development. The properties sit close to the LGA border between North Sydney and Mosman with some heritage items to the south and the Holt Estate Conservation Area, which is in Mosman to the east, but I think this is an interesting slide because it does show the context and what's permissible around these particular properties, which is the R4 high-density zone.

I'm just going to hand back to Alison to read our opening statement and our position on - as a first pass.

DR WILLIAMS: Thank you, Brendan. Ta.

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MS McLAREN: Thank you. So following a preliminary review on the 11th of August, 2022 the department recommended to council that the proposal was not suitable to proceed without further justification to support the heritage listing. It was requested that council withdraw the proposal and update it, firstly in response to the Land and Environment Court decision to revoke the interim heritage order on 131 to 133 Holt Avenue. (2), to address the North Sydney Planning Panel - Local Planning Panel's recommendation that the properties require a more thorough and lengthy enquiry finding that the proposal lacks both site-specific and strategic merit and thirdly, to incorporate the Land and Environment Court decision on 115 to 119 Holt
30 Avenue when it became available.

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Council responded on the 23rd of August, 2022 requesting that the proposal be considered with no updates in response to the Land and Environment Court decisions. Of note, council did not acknowledge the panel recommendations in this response despite the extent to which the department highlighted these as the key consideration of the withdrawal request. The department requests the Commission's advice on the viability of potential heritage listings for each of the remaining properties and whether a new planning proposal should be submitted addressing the concerns raised in the gateway decision, gateway review and any additional relevant material. It is requested
40 that the Commission outline the recommended scope of work to be involved in any new proposal.

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MR METCALFE: Thanks, Alison. I've just got a timeline of the planning proposal and I've highlighted a couple of key dates within this timeline. So on the 11th of March, 2022 the IHO was imposed on the properties that are proposed to be listed and then on the 28th of July we received the planning proposal for gateway determination. The next two dates are relevant to the Land and Environment Court actions. The first one is that on the 29th of July, one day after we received the planning proposal, the Land and Environment Court decision was made to revoke the IHO for 131 and 133 Holt Avenue and on the 17th of August, very close after the date we requested the
10 planning proposal be withdrawn and updated, the IHO appeal was dismissed for 115 to 119 Holt Avenue; however, the Land and Environment Court said that further investigation could lead to a better outcome to inform the planning proposal.

Council resubmitted after that decision by the Land and Environment Court but did not update the planning proposal in regards to those items and then on the 7th of October the department issued its gateway determined not to proceed and we note that the IHO for the rest of the heritage conservation area or the proposal heritage listings expires on the 11th of March, 2023.

20 Some further context is around the DAs that have been submitted in the subject area and also North Sydney LEP amendment 30 which permitted residential flat buildings in the R3 zone and that was introduced or was notified on the 30th of June, 2021. After that date on the 5th of August the DA was lodged for 131 to 139 Holt Avenue and on the 9th of August, 2021 the DA was lodged for 115 to 119 Holt Avenue for residential flat building development. On the 11th of March, 2022 council prepared the IHO and on the 1st of April, 2022 the proposal was lodged to prohibit - by council to prohibit R3 residential flat buildings in the R3 zone and that proposal is currently at the post-exhibition stage and finally, there's been a recent meeting between the Land and Environment Court and council and the applicant for 115 to 119 Holt Avenue for
30 the DA for that site.

So the department's recommendation is that the department provided council the opportunity prior to gateway to withdraw the proposal and respond to the recommendations of the Local Planning Panel and court decisions that highlighted a consistent opinion that further enquiry was needed to support the heritage listings. As this enquiry was not provided or undertaken, the department recommended the planning proposal as submitted should not proceed. An acceptable approach, however, would be for council to address these concerns in the submission of a new planning proposal to be considered through the gateway process and the department
40 request the Commission to recommend the scope of work prior to any submission of a new planning proposal, particularly the viability of each property's potential heritage

listing, whether a group listing is warranted, as that was unclear in the proposal, and whether all properties should form part of a new planning proposal.

10 Just for some context - and this is on the previous planning proposal that I was discussing, the land use residential flat building was included as a permissible land use for the R3 zone in the North Sydney LEP under amendment 30. Council lodged a planning proposal on the 1st of April, 2022 to revert back and prohibit RFBs in the R3 zone and we issued a gateway on the 12th of August, 2022 to allow that to occur and that was allowed to proceed with a savings provision that allows the DAs that have been submitted for Holt Avenue to be considered so it doesn't fetter any Land and Environment Court action.

The gateway was issued as the department agreed that the inclusion of RFBs in amendment 30 was not intended to deliver more housing but remove existing use rights for RFBs already in the R3 zone and we note that council is on track with the implementation of their local housing strategy and generally for their housing targets. So that proposal to include the R3, the residential flat building land use in the R3 zone wasn't necessary to deliver housing.

20 In terms of the gateway determination and 125 Holt Avenue, which was previously delisted as a heritage item due to lack of heritage significance and then is now included to be relisted, we've got council's position which the IPC is aware of but the department also acknowledges that heritage values may change over time. We note that delisting a heritage property is a deliberate and considered decision made by heritage experts and approved by council in the current LEP and the justification of this delisting is not available on department records or publicly available but that would add context to this current proposal if that was provided and that might be a question for council when you speak with council later.

30 Just on the gateway determination and the North Sydney Local Planning Panel we note that the panel heard from six heritage experts representing landowners and did not take up the opportunity to ask questions of council's heritage experts from GML who were there. The panel was not persuaded based on the extensive alterations and additions over the decades and in more recent years that the properties would warrant listing as heritage items in their own right. The subject properties, in the opinion of the panel, require a more thorough and lengthy enquiry to fully review and reconcile whether they warrant being listed as heritage items and meet the necessary threshold for listing.

40 The panel concluded that the proposal lacks both site-specific and strategic merit and the panel recognised that numerous heritage studies have been undertaken over the

years by both council and heritage experts, and that's only been added to in the last 12 months, and noting that the advice differs significantly and the recommendation of the North Sydney Local Planning Panel is consistent with the decisions of the Land and Environment Court to date.

10 Just on the Land and Environment Court's decisions regarding the interim heritage order imposed on 115 to 119 Holt Avenue, the department maintains its interpretation of Commissioner Horton's decision and I quote, "I consider it a real chance on the basis of the degree of research that further inquiry may support a finding that the sites at numbers 115 to 119 Holt Avenue are of heritage significance." The department does not agree with council in this regard. Council's position does not acknowledge the additional statement that reads, "On the basis of the 2022 GML assessment I am of the view there may be further inquiry of investigation that may be carried out after which the sites may likely be found to be of heritage significance." And I emphasise "after which" which implies that there's more work to do. Council did not take up the opportunity to address these events and included additional justification to support the proposal as requested. The IHO will expire on the 11th of March, 2023 following its 12-month period.

20 Regarding the section 9.1 Ministerial Direction for Residential Zones not being adequately addressed it's the department's position that the proposal did not adequately address the R3 zone in the context of the active DAs for residential flat building development should they be approved by council. The proposal did not acknowledge any heritage listing implications on future developments on the sites and any higher density zoning envisaged under the zoning at the time the DAs were submitted and the RFB DA for 115 to 119 Holt Avenue is not impacted by the planning proposal which prohibit RFBs in that zone due to the statements provision we already discussed. The separate planning proposal to remove RFBs from the R3 zone is at the post-exhibition stage and council is preparing a report for council on exhibit currently.

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Regarding the department's position not to support the local heritage listing of the properties without further inquiry, research and justification, both council and the department acknowledge there is a degree of interpretation in assessing heritage values with both GML and the landowner-commissioned heritage experts independent in their approach. The justification provided was not sufficient to support listing the properties as determined by the Land and Environment Court decisions, the Local Planning Panel and the landowner-commissioned heritage studies. Of particular note is John Oultram's assessment, which is attachment G4 to the department's report, for reference, with visual detail - which visually details the extent of alterations and additions for the properties at 115 to 123 Holt Avenue GML states that few properties

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other than 125 Holt Avenue are likely to meet the threshold for individual listing and have conducted their assessment of significance on the proposed groupings. It is unknown what conclusion would be drawn had this assessment been done individually.

Each heritage assessment commissioned by landowners has concluded that no assessed properties meet the heritage council's criteria for listing. The department acknowledges that only GML have conducted a heritage assessment on 125 Holt Avenue with no further studies being conducted by, or commissioned by the
10 landowner and we also note there's a degree of confusion in the planning proposal regarding council's proposal as item numbers are awarded to each house in the proposal schedule listings and this is confusing as to whether or not individual listings are proposed or a group listing is proposed.

Regarding the ongoing proceedings post-gateway, following the gateway being issued not to proceed, the department received two additional heritage reports covering 115 to 123 Holt Avenue. Most notably of these was the John Oultram assessment that visually picks the alterations and additions which can be seen here in this slide and picks out which parts of the buildings have been significantly altered or are new
20 additions as introduced to the buildings.

The department recognises it has received correspondence throughout the proposal process from legal representatives on behalf of landowners progressing EAs and I understanding the IPC has as well and a conciliation conference with the Land and Environment Court was held on 6th of February for the DA at 115 to 119 Holt Avenue but we don't have an update on how that went, that might be something that you could ask council when you speak with them. Regarding the expiration of the IHO for 115 to 119 Holt Avenue, as I stated, it was introduced on the 11th of March, 2022, it's valid for 12 months so it's expiring on the 11th of March, 2023 and the amendment of
30 that IHO or potential changes to that are a matter for the Heritage Council.

Just regarding the need for further inquiry, research and justification we've covered that mainly throughout our presentation but I do note the subject properties in the opinion of the Local Planning Panel require more thorough and lengthy review. The panel recognised the numerous heritage studies that have been undertaken, as I said earlier, and that the Local Planning Panel was not persuaded based on all the changes that had happened to those buildings that the properties would warrant heritage listings in their own right and again, since the gateway determination was issued there have been several heritage assessments undertaken that have been provided to the IPC for
40 consideration. That concludes our presentation and we're happy to answer any questions that the Independent Planning Commission may have.

DR WILLIAMS: Great.

MR METCALFE: I can start with Charlene if you'd like to.

DR WILLIAMS: No, please don't, Brendan, please. I've got a few questions, I didn't want to stop you in that presentation but thanks, Brendan and Alison. So I have got a few questions that have arisen. Look, thanks for the presentation, it's very helpful indeed, it addresses the agenda items well so thank you for that. Would we be able to
10 have a copy of the presentation?

MR METCALFE: That's no problem. We can provide that to you and I think we've already done so in a PDF format just in case we had a technical difficulty.

DR WILLIAMS: No, excellent. It does summarise a few things very nicely, particularly various timelines which is very helpful. Sorry, would you mind going back to the beginning of the presentation please, Brendan, if that's all right. I've got a few - yes, I had a few questions and it would be good to look at the slides that relate to the questions. The second dot point there where you've got it's not explicitly clear on
20 the proposal as to list individual items or grouped items and you refer to that again towards the end of your presentation. I sort or agree with that - well, that - generally that comment but also in the sense that it appears to me from the reading that the council ultimately decided to drop an individual listing and, rather, went for group listing of the items so in a sense of sort of an amendment of the planning proposal to go to group listing, is that correct?

MR METCALFE: I think it was just unclear in the final planning proposal what council were seeking and their intention was to have a group of - a group listing.

30 DR WILLIAMS: Yes. Yes. Okay. I'll take that up further with council, of course, but, yes, my - my reading of it was that council had changed its position from individual items to the group listing and I think you've also picked it up in one of the subsequent slides that's sort of a recommendation coming out of one of the GML reports as well.

MR METCALFE: Mm-hmm.

DR WILLIAMS: Okay. Thanks, Brendan. Can we move onto the next slide please. Yes, look, that's very helpful, it's also good to see the extent of the Holt Heritage
40 Conservation Area in Mosman Council and also the zonings, I might go back to the zonings in a coming slide. So if we move on again, thanks. Yes. Look, yes, sorry,

that's fine, I think that's all clear. With the - we move onto the timelines. This is all very helpful. You've mentioned - it's here so I might as well talk about it - the expiration - the expiry of the interim heritage order. 11th of March. It was a little bit unclear from some of the documentation, some dates had the 7th of March and others had the 11th. I think the 7th was the day in which the council under delegation made the interim heritage order but I think the 11th was the date it was gazetted and so I think legally it runs from the 11th of March, 2022 to 11th of March, 2023, if that's correct.

10 MR METCALFE: I would have to take that one on notice.

DR WILLIAMS: Yes, look, I think - I think - - -

MR METCALFE: I think you're right.

DR WILLIAMS: Yes, that's my understanding, it is the 11th but being the date of the actual gazettal but I'll confirm that - I'll ask the council the same question but that's my understanding. I guess the question I do have, and I think you might've touched on it, is what happens with the expiry of the - whether it's the 11th of March or 7th of
20 March? It's going to expire before anything happens with this matter. I mean, irrespective of what recommendation's made and what decision is ultimately made by the department, my understanding is the IHO will expire before the planning proposal, if it does proceed, proceeds very far. What happens then? I mean, I think you mentioned the point it becomes a heritage council matter. I mean, does that mean that, you know, for example, with the DAs over 115 to 119 we have a similar situation to what happened in 131 and 133 where demolition occurred through complying development applications certificates. Would that be the possibility, similar scenario here?

30 MR METCALFE: I think that is the biggest risk at the present moment. I would need to take on notice and come back to you and I can do that quite quickly. The possibility of an extension to the IHO - - -

DR WILLIAMS: Yes.

MR METCALFE: - - - and whether or not there's a way to seek something like an injunction to prevent the use of complying development pathway to allow the demolition of the subject properties.

40 DR WILLIAMS: Yes, yes, yes. I mean, that's not sort of pre-empting any recommendation from the Commission or, indeed, any action - future action that - - -

MR METCALFE: No.

DR WILLIAMS: - - - the department takes in relation to the gateway determination but I was just thinking, well, irrespective of what we do it all might become very hypothetical, you know, academic if it's - if the IHO expires and a similar fate befalls these properties as happened in 131, 133. Yes. Okay. But that was - if you wouldn't mind, Brendan, if that was - - -

10 MR METCALFE: Absolutely.

DR WILLIAMS: That would be - - -

MR METCALFE: We can do that.

DR WILLIAMS: That would be very, very, very helpful. Just - I mean, not in one sense it will affect the - well, it may in one sense reflect any recommendations I might make if I know what the process happens to be with whatever's recommended.

20 MR METCALFE: Understood.

DR WILLIAMS: Thanks, Brendan. Can we go to the next slide please. Yes, you've got the conciliation conference, the 6th of February. I got onto the Land and Environment Court website last night case law and I can't see any decision from that conciliation conference of the 6th of February between - - -

MR METCALFE: We haven't seen one either.

30 DR WILLIAMS: Yes. So I agree with you, I'll ask the council on that but the fact that there's been no - normally if a conciliation conference - even a conciliation conference the reasons are very brief but they should normally come out within a few days at the conference and there's nothing on the website. So I think that also is important contextual information for what the - the other DA appeal over that particular property but obviously you're not aware of it. I'll ask the council, having been in attendance at the conference, what the outcome was. Okay. Thanks. Can we move on again?

MR METCALFE: (not transcribable) course of action.

40 DR WILLIAMS: Yes. Thanks, Brendan. Can we move on, sorry, to the next slide. Yes. Yes. Okay. Look, I did have a little bit of a question about clarification. At the

end of the justification report the department had sort of suggestions or recommendations as to which way the Commission might go and I - this slide sort of clarifies that a little bit which is very helpful. Yes, I can see that - I think the important point here is - and this is very helpful, you know, whether - for example, whether group listing is warranted but also ultimately, you know, I think the options are that, you know, the gateway determination review is - the recommendation is upheld, you know, it's supported, agreed to.

10 The other options, I guess, are whether, you know, there should be a new planning proposal lodged or whether there should be an amendment to the existing planning proposal to clarify that. Particularly of the options of, you know, recommending a new planning proposal which ultimately means it doesn't go past gateway and a new planning proposal should be lodged or that it be - that the - it's not that it doesn't go past gateway but it would be amendment - recommended amendment to the planning proposal to address these issues.

MR METCALFE: Sure.

20 DR WILLIAMS: What would be the recommended option from the department?

MR METCALFE: So, Peter, what we'd like to do is have a new planning proposal submitted and that's because if we kicked off from this point and took up from the previous planning proposal that planning proposal won't meet the department's guideline for the progression of planning proposals. We try to generally complete these type of planning proposals in six months; the maximum time we want to take is 12.

DR WILLIAMS: Yes.

30 MR METCALFE: And given the complexity and the matters that needed to be addressed we don't think that council will be able to do that and progress it in a timely way. We think we absolutely meet the timeframe if we submit a new planning proposal and it really doesn't make a difference to council if a new planning proposal is submitted because we will assess it in the same amount of time whether it's a revised or a new one.

DR WILLIAMS: Understand.

40 MR METCALFE: But we'd like to see a new one so we can continue to make sure we're progressing the planning proposals in a timely manner.

DR WILLIAMS: Sure. I understand that's - yes, that's clear. And, I guess, this is another reason why I've asked the question about, well, what's the implications the expiry of the interim heritage order because if it expires and there can be, demolition occurs, well, the whole - what's the point of asking for a new planning proposal because - - -

MR METCALFE: Yep.

DR WILLIAMS: Yes.

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MR METCALFE: Well, we can check that and see if there's any influence on whether or not there's a live planning proposal.

DR WILLIAMS: Yes.

MR METCALFE: If that would help your decision.

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DR WILLIAMS: Yes, that would help. Well, as I said, one way or the other I still think it's going to be an issue irrespective of what my recommendation is and whatever course of action because nothing's going to happen in a timely fashion before the IHO expires.

MR METCALFE: You may like to ask council what their plan was in regards to the timing of a resubmission.

DR WILLIAMS: Yes, yes.

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MR METCALFE: I understood that they were going to take an approach where they would appeal to the IPC on the current planning proposal but also resubmit a new planning proposal so they may be very close to doing that as well.

DR WILLIAMS: Yes. Okay. No, that's well noted. Thanks for that, Brendan. Thank you. Can we move on again, sorry, to just the slides again.

MR METCALFE: Mm-hmm.

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DR WILLIAMS: Yes. Okay. So I wasn't aware that there - so residential flat buildings were allowed - permitted in the R3 zone in June 2021. Now, that's now been, in a sense, rescinded or reversed?

MR METCALFE: Reversed, yep.

DR WILLIAMS: So were both these two planning proposals at the instigation of council?

MR METCALFE: They were but different council make-ups.

DR WILLIAMS: Okay. Okay.

MR METCALFE: There was an election in between.

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DR WILLIAMS: Okay.

MR METCALFE: And I think it was always the intention of council to not have to deal with residential - existing residential flat buildings under existing use rights but there was a recent court decision that really restricted existing use rights so that issue was not as poignant as it once was.

DR WILLIAMS: Yes.

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MR METCALFE: And that's why council chose to remove RFBs from the R3 zone because they were getting DAs that they weren't expecting. They were expecting that the provision or the new permissibility would be used for existing residential flat buildings so they could regularise that development and make it consistent with the planning controls; however, they started receiving DAs for sites that were not existing use-right situations previously.

DR WILLIAMS: Right.

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MR METCALFE: And so the new council resolved to prepare a new planning proposal.

DR WILLIAMS: Okay. And obviously that's been supported by the department through gateway (not transcribable)

MR METCALFE: And it was because, as we said, the intention of the previous planning proposal wasn't to provide more dwellings but we still want that to be addressed in this proposal because you've got more dwellings being proposed. So, yeah, we still think that it's a relevant consideration which is why we're drawing it to your attention.

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DR WILLIAMS: Okay. I think also there you've just answered another one of my questions which was consistency of this latest planning proposal to prohibit flat buildings with the argument of the department of inconsistency with the section 9.1 direction, 6.1 in relation to, you know, maintaining residential densities and so what you're saying is while you're happy to see the removal of residential flat buildings you still want to retain residential densities, well, for this proposal and any - well, any places where the - effectively the savings provisions apply.

10 MR METCALFE: That's right, where the savings provisions apply just to allow those matters to be considered. We didn't want those applications to not be able to follow through given that they were prepared in good faith and they were permissible at the time.

DR WILLIAMS: Yes.

MR METCALFE: Council has a different view and if you like you can see their opinion on why they think that a savings provision shouldn't be included but that was a condition of the gateway when we prepared gateway for the planning proposal to prohibit RFBs in the R3 zone.

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DR WILLIAMS: Right. Thank you. I think also this might've been in the various timeline slides you showed but I think you might've mentioned it in a subsequent slide also that 7th of October was the gateway determination and there have been further studies that have been submitted and I think that included - yes, 14th of November, I think you've got.

MR METCALFE: That's right. And that's - that's the study that was done by John Oultram - - -

30 DR WILLIAMS: Yes.

MR METCALFE: - - - and in that study that was submitted at that point has also been further refined and I understand has been provided to the Independent Planning Commission.

40 DR WILLIAMS: Yes. Okay. I think you've got on a slide at the beginning of - I think you referred to also reference to additional information so what I'm getting at here is there's clearly been additional information that's been forthcoming since the department made the gateway determination and the issue I've got to consider is, in one sense, the admissibility of that additional information. Am I making recommendations on the basis the information before the department at the time made

its decision or should I also take into consideration subsequent information in making recommendation on your decision which didn't have that additional information available? What might be your thoughts on that conundrum?

MR METCALFE: I think that's a matter for the Commission in terms of - - -

DR WILLIAMS: Yes.

10 MR METCALFE: - - - procedure. So you might want to seek your own advice on that one.

DR WILLIAMS: Yes.

MR METCALFE: I can't give you advice on that. Part of the reason we wanted to provide that additional information is, should council want to prepare new proposal, they may wish to have regard to it and I think it would be relevant for them to do so and that could be something that you said if you were recommending that a new proposal was submitted because the new proposal would certainly need to have regard to it.

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DR WILLIAMS: Yes, to further - yes, of course. Yes. No, look, yes, without - I mean, my thoughts on this, I mean, there has been initial information very recently submitted to the council to us, by recently I mean as recently as yesterday and if I did take that in consideration I would give the council the opportunity to respond to that out of procedural fairness.

MR METCALFE: Yep.

30 DR WILLIAMS: So that's a matter I'll mull over but the normal requirements, any information received is posted on our website, in any event, you know, for purpose of transparency. So if I do decide to refer to that information I would then give the council the opportunity to make further submissions as well at this stage. Okay. I think that might be all of my questions that I can think of at the moment. I think - Brendan, I think the main question was - that you've kindly agreed to take on notice is the possibility of an extension of the interim heritage order or, you know, what could occur in regard to somehow trying to provide that.

40 Look, sorry, there's just one other question and it's actually on the dot points, the need for further inquiry and research and justification and I take the point that that was made by both the department in its gateway determination and its advice for the council before the gateway determination, it's also made by the local - North Sydney

Local Planning Panel and it appears - you know, and this is the point of difference of interpretation between the council and the department in the decision by Commissioner Horton on 115 to 119 Holt Avenue. What would your view be to the argument that council has provided that additional justification or additional investigations and research and inquiry in the form of a final GML report which I think came out in the 3rd of June. The preliminary report was, I think, was 22nd of March, I think.

10 MR METCALFE: I'd have to take that one on notice, Peter, just to get the timeline - -

DR WILLIAMS: Yes.

MR METCALFE: - - - correct in terms of what was changed in that report between those two dates and the submission to gateway.

20 DR WILLIAMS: Yes, yes, yes. I think those were the dates. I think - but definitely what they call a final report is the 3rd of June. The preliminary report, I think, was March - it's March, I think it was the 22nd of March or, in fact, might've been a little bit earlier but it was definitely in March.

MR METCALFE: Mm.

30 DR WILLIAMS: And I haven't posed this question to - I will be posing this question to the council but the argument could be put that additional inquiry, in fact, occurred - had already occurred. I think the key point there might be the decision of Commissioner Horton because I think the decision of Commissioner Horton might postdate the 3rd of June GML report in which case the Commissioner would've been aware of that final report and still felt that further inquiry was required.

MR METCALFE: I think you're right and given that those two dates that the Land and Environment Court considered the IHOs was post the final GML report.

DR WILLIAMS: Yes.

MR METCALFE: The implication is the report was done but further work could be done to support these listings.

40 DR WILLIAMS: Yes, yes, yes, yes. Yes, sorry, I've just got on my notes here the date of the decision by Justice - sorry, Commissioner Horton was the 17th of August, 2022 so certainly that - a final report was available and, nonetheless, Commissioner

Horton made those comments. Now, those comments, as I said, are, you know, further inquiry and research - yes, there it is there, 17th of August.

MR METCALFE: Mm.

DR WILLIAMS: And there's the final GML report on the 3rd of June. So clearly that was available at the time and, nonetheless, the Commissioner still made that comment about the need for further inquiry. Now, this is where the - I think - well, so then it becomes a matter of interpretation of what the Commissioner was actually saying.

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MR METCALFE: Correct.

DR WILLIAMS: Yes, yes, and obviously I'll try and drill down into council's interpretation of those words when I meet with them this afternoon.

MR METCALFE: If you like we can provide this presentation and those two slides in terms of the timelines to council so they can be prepared to answer that question.

DR WILLIAMS: Well, that's up to you if you'd like to do that but I'll leave that to you, you know. Maybe we might see how council responds today but - - -

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MR METCALFE: Okay.

DR WILLIAMS: Yes, but certainly the timelines, if you wanted to send those to council but I'll leave that as a matter for you to - - -

MR METCALFE: I can do that. I think we've got a really good working relationship with the council staff. The department is here to support council generally and I've got no problem giving - - -

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DR WILLIAMS: Yes. Okay.

MR METCALFE: - - - information so that they can inform - - -

DR WILLIAMS: Yes, yes.

MR METCALFE: - - - themselves and form a view to help you make a decision.

DR WILLIAMS: Yes. Look, that's a very generous offer and certainly it helps the process which is what we're clearly here or mainly concerned about in terms of the

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process and outcomes and also procedural fairness in this whole decision-making process. So that would be good, Brendan, thank you.

MR METCALFE: No problem.

DR WILLIAMS: Look, I think I have finished with all my questions, sorry. As I said, the presentation's been very helpful, it's addressed a number of the - you know, all the dot points and you've been able to answer, you know, the questions - the further questions I've had very well so thank you for that.

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MR METCALFE: No problem. I'd like to thank Charlene and Matthew for preparing it.

DR WILLIAMS: Thank you. There's a bit of work involved, it's not - particularly in the timeframe that we gave you so I appreciate it, it's a very helpful presentation. Is there any other final comments, Brendan or Alison, you'd like to make?

MS McLAREN: Just I reiterate thanks for the team for the work in preparing it and we will get back to you as soon as we can on that question.

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DR WILLIAMS: That would be great, Alison, thank you very much. I'll just ask the officers, Brad or Nima, is there anything you need to ask or - - -

MR JAMES: Nothing from me, Peter.

DR WILLIAMS: Nothing at all? Okay, Brad, thanks.

MS SALEK: Thank you.

30 DR WILLIAMS: Thanks. Okay. Well, if that's all I'll close the meeting. We'll look forward to getting just that answer to that question as soon as practicable. Brad, should we put that in just an email to Alison and Brendan just to formalise it as a brief request so it's actually in writing in email?

MR JAMES: Yes, sure thing, Peter, we'll do that today.

DR WILLIAMS: Great. Thanks, Brad. Well, if that's all thank you very much, Alison, Brendan, Charlene, Derryn and Matthew for your assistance today and thanks a lot to the team and I'll close the meeting now and all have a good day. Thank you.

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MS McLAREN: Thank you.

MR METCALFE: Thanks all.

MEETING CONCLUDED

[10.19am]