



**New South Wales Government**  
Independent Planning Commission

## **TRANSCRIPT OF PROCEEDINGS**

RE: TALAVERA ROAD DATA CENTRE CAMPUS EXPANSION  
(SSD-24299707)

### **COUNCIL MEETING**

COMMISSION PANEL: MS. JULIET GRANT (CHAIR)  
DR. BRONWYN EVANS AM

OFFICE OF THE IPC: JANE ANDERSON  
TAHLIA SEXTON

CITY OF RYDE COUNCIL: SANDRA BAILEY  
SANJU REDDY  
PAUL KAPETAS  
GASAN MOHAMAD

LOCATION: ZOOM VIDEO CONFERENCE

DATE: FRIDAY, 8TH DECEMBER 2023  
2.00PM – 3.00PM

**TRANSCRIBED BY LAW IN ORDER**

MS GRANT: So before we begin, I would like to acknowledge that I'm speaking to you from Gadigal Land, and I acknowledge the traditional owners of all the country from which we virtually meet today, and pay my respects to elders, past and present. Welcome to the meeting today to discuss the Talavera Road Data Centre campus expansion project SSD 24299707 currently before the Commission for determination. Macquarie Data Centres Proprietary Limited, the applicant proposes an expansion to an existing data centre located at 17 to 23 Talavera Road, Macquarie Park. The site has an area of approximately two hectares and is currently occupied by a data centre campus, which has been in operation since 2012. The SSD application seeks development consent to construct and operate an expansion to the existing data centre comprising additional data halls, associated office space, supporting infrastructure, new hardstand areas including relocated driveways, parking areas and landscaping. My name is Juliet Grant and I'm the chair of this commission panel. I'm joined by my fellow commissioner, doctor Bronwyn Evans. We're also joined by Jane Anderson and Talia Sexton from the office of the Independent Planning Commission.

MS GRANT: 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's important for the commissioners to ask questions of attendees and to clarify issues wherever it is considered appropriate. If you're asked a question and are not in a position to answer, please feel free to take the question on notice and provide any additional information in writing, which we will then put on our website. I request that all members here today introduce themselves before speaking for the first time, and for all members to ensure that they do not speak over the top of each other to ensure accuracy of the transcript. We will now begin. So, Sandra, are you taking the lead on this or who's...

MS BAILEY: Yeah, I'm---

MS GRANT: (Indistinct)

MS BAILEY: I'm happy to take the lead on this. So would you like me to start by introducing who is in the room?

MS GRANT: That would be perfect, thank you.

MS BAILEY: Fantastic. Okay, so Sandra Bailey I'm the Executive Manager of City Development, and I have Sanju Reddy, who is the Acting Manager of the Building Development Advisory Services team. He has provided a lot of the submissions back to the Department in respect of the submissions. I have Paul Kapetas sitting opposite me. He is Council's General Counsel and I also have Gasan Mohamad, who has, he is our Senior Coordinator---

MR MOHAMAD: So I'm Senior Coordinator for Activation and Compliance team and also Acting Manager for Engineering and Project Delivery Department.

DR EVANS: And Gasan and his team have been responsible for helping put a lot of the conditions together that we have previously provided the Department. So I think in the room, we should have enough people here to be able to answer any questions that you have.

MS GRANT: Fantastic. Thank you, I really appreciate you making the time to meet with us and getting all the right people together. Thank you. And I think you've probably got a copy of the agenda, hopefully. We're very happy to hear from you. We've received the  
5 Department's assessment report and conditions, which I would hope that you've also had the opportunity to see and read, and in particular whether there's any comments that you would like to make on that assessment or specifically on the conditions that they are proposing. We are meeting, later this afternoon with the applicant, and we did meet with the Department this morning. And I should also say that, Bronwyn, Talia and I went out and did a walk  
10 around the site yesterday as well. So we've got the context and we've seen what's happening in that vicinity. So yeah. Over to you. If that works.

MS BAILEY: Well, look, I think we would really like to focus first of all on clause 6.9. There's a fundamental clause that and I think that's probably going to be where we spend  
15 most of our time discussing. And there are certainly some conditions that we can touch briefly on, but we are probably going to be suggesting that the submissions, the conditions of the consent, I think, need some work. There's quite a few there that have not incorporated what Council was looking for. But I think it's really the 6.9 at this stage that is absolutely critical to this. This is, as you said, in Macquarie Park. To activate, there is a, Macquarie  
20 Park, the controls there. We have a base height and a base force base ratio. If somebody wishes to go higher than that base, that is possible to do, but you then are using the provisions of Clause 6.9 of the LEP. And Paul, I might even start handing over to you before I make a mess of that. I think you're going to be in a better role to explain that.

MR KAPETAS: Right. Thank you. Just a bit of, I guess you probably need to know a little bit about the history of what's happened with the current data centre that's on the site at the moment. It was subject to court proceedings, ADA, subject to court proceedings a number of years ago, where we went to court and it was approved by virtue of a section 34 agreement, and that agreement related to the existing easement that Council is the beneficiary of that  
30 traverses the site. The concern that we had at the time, there were some planning issues, but they were addressed in the section 34 agreement. But the concern that we had with the easement was then building at the time over our existing easement and contrary to our right to enter the site and augment or maintain the existing easement per se. As a result of that section 34 agreement, there was an agreement with the owner of the land and with the tenant that  
35 Council would be granted a deed of variation to relocate the easement. Now, what that meant was under that term was that the easement, it would give Council the right with a 20 year sunset date, if they wanted to move the easement, then the owner of the land granted us an easement variation to allow us to move that easement if need be. Now, that was at the sole discretion of Council. And what that meant was that the new path of the proposed easement,  
40 if Council took to exercise its right to do so, would sit outside the footprint of the building, as it is now, the easement is basically within the building. So the existing building overrides that easement and has some clearance to allow us to go in and maintain (indistinct) that easement under the rights, under as per the terms of that easement. But we had, as a result of that court case, an agreement, and it was registered on title that if Council wanted to relocate the  
45 easement and it was solely at the discretion of Council, then it could do so within the new easements path, within a, but only had 20 year sunset period to do so. Now, Council may or may not exercise that right, and that right is still exists on the site. And, but it's at our sole discretion and it's not as a consent authority, nor is it as the planning authority. It's simply as the beneficiary of an easement with an interest in land. So I've got to make that distinct  
50 difference as to consent or planning authority. The new SSD now seeks to even vary that

even further. And as you know, we've entered into a deed of relocation with the owner and with the tenant, whereby the easement now will run around the perimeter of the building, or the perimeter of the property, and will be constructed at the cost of the tenant, no cost to be borne by Council. Again, that agreement, we have not entered that agreement as the consent authority, nor have we entered it as the planning authority. We have entered it purely as the beneficiary of the easement.

And I need to say that, but for the SSD, that easement would not be required. Does that, is that? So we're doing it to help out the tenant and the applicant. So we've agreed to do that to assist them. They now want to build over our existing easement and occupy that space for their building. To do so we require to enter into this deed. That's been executed. That's on foot. And if the commissioners in the mind to grant consent, then the tenant under the terms of the deed will have to notify us to whether or not they will exercise their right under the deed to build the easement. If they don't exercise that right, then the status quo remains. We maintain our easement that's on that site, and we have the rights as the beneficiary of that easement in perpetuity or until we exercise our rights and if we exercise our rights with a relocated easement. So I just wanted to make that distinct difference is that we did not enter into any deed as the planning or consent authority. It's not required by any planning instrument. It is simply us exercising our rights as the owner of infrastructure on that site, which has a legal interest in the land by virtue of the easement. So we go to clause 6.9, Clause 6.9 requires the consent authority, in our view, and this is how it's been consistently applied, to look at the precinct, the needs of the precinct, the needs of the precinct with respect to, recreation areas and access networks primarily.

I've looked briefly at the assessment report by the Department and in my, you know, with all due respect to the officers, I do not think they've assessed it properly in terms of 6.9. They've assessed on the basis for my understanding that there is no requirement for a road on the on the site by the DCP, and therefore it's satisfied the provisions. You don't need to do anything further.

MS BAILEY: I think, just, Paul. If we could direct you to maybe page 55 of the Department's report, that will actually tell them the justification. Yeah.

MR KAPETAS: In my view, that is not correct. You can't assess this development in a vacuum. You have to look at the whole requirement of the precinct in terms of 6.9. The fact that no road, for example, is earmarked for the site specifically under the DCP does not mean that you've satisfied 6.9 by saying there's no road earmarked for the site. The aim of 6.9 and the way it's been applied is there is a contribution amount offered to Council via VPA, whereby that contribution amount is directed to provide in due course to the either the acquisition or the construction of the roads, as per the DCP, because the site will benefit from the access network that the DCP proposes, notwithstanding, there is no road on the site. Now, on that basis, we require a letter of offer to enter into a VPA, and that's the norm that we've been accepting for all the developments and indeed the previous day for this site, for the data centre was accompanied by a letter of offer, and it was subsequently entered into as a VPA for the exact same purpose for the height that was being proposed above the base height requirements of the LPE.

In light of clause 6.9, a contribution was proffered by a letter of offer, and it was encapsulated in the subsequent VPA that was entered into between the parties. This is no different. This is no different. We note that the applicant has subsequently withdrawn the letter of offer to enter into a VPA for this SSD, after we entered into the deed of easement relocation. From what I

can glare from the their written revocation of the letter of offer, it seems to imply, or indeed it does indicate, that the revocation was made on the basis that we have now entered into a deed of relocation, easement relocation, and we're paying for it and not the Council therefore, we should not be subject to any further contributions. That's the gist of it. With all due respect to the applicant, that is erroneous and that is on the basis of what I previously said.

We entered into the deed of easement relocation as a party or as a person, and I could say person, that has a legal interest in their land. We were protecting our right as a Council as to our interest in the easement, not as the consent authority, not as the planning authority. It is a separate matter. That should not play into the determination of the Commission with respect to clause 6.9.

MS GRANT: Can I just. Sorry. Can I just jump in then and ask - my understanding from the Department was that their suggestion in their report that additional contributions wasn't required, was not tied to the fact that the applicant was relocating and bearing the cost of works for the stormwater, but because they had done works in-kind previously, that amounted to more than the stage two that that was-

MR KAPETAS: Could I just clarify one thing? I'm not saying that the Department has said no contributions are required because of the deed of relocation. I'm only saying that the applicant has revoked their offer to enter into the VPA, primarily on that basis, that we've entered into a deed of easement, relocation of easement, and therefore they're paying for it, and they don't see any further need to provide any further contributions. That's all I'm saying, Commissioner.

MS BAILEY: So the other contributions of the Department are referring to are the 711 contributions. And certainly there in terms of the previous approval that was granted, the work was divided into stage one and stage two. Stage one, the 711 contribution was paid as part of stage two, it was to be the upgrading of the public domain outside the front of the site. That work cost more than what the 711 contributions for stage two was going to cost. So there was a work in kind agreement done. That then basically was to would write off the need for the 711 contribution for the stage two of that first development application. In terms of this development application, we acknowledge that the applicant has upgraded the public domain, and we won't be recommending a condition requiring any further 711 contributions. That, as Paul just said, that 711 contribution is different to the provision of clause 6.9.

MS GRANT: Okay, so okay, so I understand that so what you're referring to Paul and then Paul was then any VPA that's tied specifically to the clause 6.9 rather than the contributions generally. I understand that, thank you.

MR MOHAMAD: So, Commissioner, can I just say that in the absence of any letter of offer to enter into VPA to address that Councils of the view that the commission is not in a position to determine favourably that the application because we say that clause 6.9 hasn't been considered properly.

MS GRANT: And I'll be -

MR KAPETAS: Sorry. We say there is a need for that contribution to allow us to provide the access network that is proposed on the surrounding properties, which will benefit this site as well.

MS BAILEY: So again, I just want to direct you to page 55 of the report for justification for why 6.9 is met from the Department. There's three points - the site's not impacted by any future precinct, roads or parks. I think Paul has covered that one very nicely. The second one - the existing public domain along Talavera Road, was recently upgraded.

5 Yes, it was, but it's of no consideration to what the wording of clause 6.9 is actually saying. The third point for the justification is the development's landscaping scheme has been amended to provide suitable transition between the eastern and southern boundaries and adjacent Precinct Road. That landscaping, coming back to the wording of clause 6.9, is not going to be adequate in terms of recreation areas for the precinct. It doesn't satisfy clause 6.9  
10 at all.

MR KAPETAS: And Commissioner, can I just say the amount that we're actually talking about in the scheme of things, is approximately \$580,000, I thought.

15 UNIDENTIFIED SPEAKER: (Inaudible)

MR KAPETAS: For the contribution. Um, it's \$582,807.55.

MS GRANT: Okay. Thank you. That's good context and something we can certainly raise with the applicant. Bronwyn, did you have any questions on that particular point before we moved off?

DR EVANS: No thank you. I think the Council's made those points very clearly. So thank you for highlighting that link between the clause 6.9 and the Department's comments. That's been very helpful.

MS GRANT: Would it be fair to say Council that a VPAs been sought in all cases of where clause 6.9 has been applied. Has that been a consistent practice?

30 MS BAILEY: Yes, absolutely - that's a consistent practice. Even if we have a site that has a road or open space that is identified in our development control plan, we still go down a VPA path to make sure that that is all crystal clear and all locked into place.

MR KAPETAS: And can I say, Commissioner, the monetary contribution is based on a rate of \$305 per square metre, which has been adopted by Council in its fees and charges, and that then converts into the VPA. And then we work it out from there.

MS GRANT: And it's a VPA rather than a condition, because -

40 MS BAILEY: Correct.

MS GRANT: What's the rationale for that?

MR KAPETAS: The rationale is because it's the appropriate mechanism to charge that contribution. It's not in the 711 plan. It's the appropriate mechanism.

MS BAILEY: Can I also just point out the letter from Macquarie Data Centres that withdrew the offer of the VPA only came into us quite late. So the, I'm assuming that the Department have seen that as well. Part of our draft conditions that we sent over to the Department was for a deferred commencement condition requiring a VPA in accordance with the letter of  
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offer to be executed on the site before the consent is activated. But clearly, that hasn't been imposed. That one wasn't imposed and now the letter of offer has been withdrawn (indistinct) - you just can't approve the application without that VPA in place.

5 MS GRANT: Am I, I was of the impression, and maybe we need to seek some guide, legal advice of our own or guidance that it's not possible to have a deferred commencement condition that relies on payment of a VPA.

10 MS GRANT: It is possible and I guess the commission needs to get its own advice. You're absolutely right, Commissioner. But from Council's perspective, it is possible to put a deferred commencement condition on there based on the letter of offer, which would require the applicant to enter into the VPA in accordance with the terms of the letter of offer before the consent becomes operative. And indeed, that's what we propose to the Department.

15 MS BAILEY: And I'm just thinking aloud, Sanju, you might be able to correct me here. I'm pretty certain that's what we did on the last, the 2018 application, that was approved by the court. It was also a deferred commencement condition for the VPA.

SANJU REDDY: Yes it was.

20 MR KAPETAS: Can I just also clarify, Commissioner, I've looked at the contribution amount. It would slightly be more than what I've nominated, because the rate that it was initially based on was the old rate. The Council has subsequently adopted a new rate. So there will be a slight increase to that, but we can we can indicate in writing to the commission what that new rate would be.

25 MS GRANT: If you could, that would be excellent. Thank you. So does that cover everything that you wanted to share with us for clause 6.9?

MR KAPETAS: I think it does.

30 MS BAILEY: Yes.

35 MS GRANT: Okay. Thank you. I really appreciate that guidance and advice. Thank you. The conditions, was that the next if we were to get our heads around it and become satisfied that clause 6.9 had been or could be satisfactorily addressed. You've suggested that there's some conditions either that are not correctly worded or appropriately drafted or conditions, are the conditions missing?

40 MS BAILEY: I think that one of the problems where Council did these draft conditions for the Department, it was prior to the deed for the easement being put into place. So a lot of our conditions, some of the conditions that are in there certainly don't need the - some of the draft conditions that Council recommended don't need to be in the draft conditions of consent that the Department have done. But there are certainly others that we think do need to be there. (Indistinct) There's flooding conditions that, yes, the easements in place, but your Council  
45 had imposed certain flooding conditions and we're of the view that those conditions are still relevant. And it's because the easement deed doesn't address those issues. So we would certainly be suggesting that if the Commission were of a mind to approve the application, we would probably like to revise those conditions and get them back to the Department with the suggestion to the Department that we need to come up with an agreed list.

MS GRANT: I think that would be very helpful if that was something that you could provide. Jane, would that be directly to us or would that be via the Department generally?

MS ANDERSON: I believe that can be directly to us.

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MS GRANT: Okay. That would be really helpful, Sandra, for us to know exactly where you think there are gaps or which ones have been permitted. So that's predominantly around the flooding and the stormwater.

10 MS BAILEY: Yeah, it's a lot of engineering issues, but I think we're missed. I suppose from my perspective as well, there's even the noise condition that the Department had proposed, and it's a standard condition that the Department put on their applications relating to the at construction hours. And it's basically the construction hours relate to the standard times, however, the next condition underneath it gives them the opportunity to work beyond those  
15 hours. And there's like four dot points. And the first one is that it's not audible from the nearest receiver. So that basically gives, and this is the trouble we're finding with all of the developments in Macquarie Park that have got this, it gives the developer the right to be able to work Saturdays, Sundays, public holidays, whenever they want. And we're finding, we might have a Ranger who actually will go out to that, it's near impossible to police, because a  
20 ranger goes to the site on the Sunday morning and the developer, the builder, will waive the consent and say "Oh no, it gives me the permission. Where's the nearest audible property that I'm creating a noise from?" And the ranger is not able to answer that question on the spot. So it's just a bit of a nightmare for us. So that's one also that I would be suggesting needs to be  
25 tweaked.

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MS GRANT: Okay. One of the things we did discuss with the Department this morning was the approach that they had taken with the draft conditions in order to protect the college at the rear of, the tertiary college at the rear of the site, and I understand the applicant had sought extended construction hours, including Sundays and other longer time periods during the  
30 week, which the Department sought to restrict. But I guess from Council's perspective. In terms of spreading construction traffic throughout the period, would you ordinarily in an area that doesn't have residential receptors, permit, Sunday construction or is it a blanket construction?

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35 MS BAILEY: No, we don't, we don't. Because surprisingly, there is a lot of residential in that area along Khartoum Road. I'm just sort of trying to think of the nearest one. It's 101 Waterloo Road that joins onto the rear of the Macquarie Shopping Centre. It's four residential towers. There's other towers also on around number 80, Waterloo Road. And then we also have the area of North Macquarie Park, which is that residential property, which is literally  
40 just on the other side of the M2. You can hear the noise from those properties, guaranteed. And the trouble we're getting now is everyone is beginning to do that work on the Sunday and it's just it's getting louder and louder and it's very difficult for any Council to police any area. You know, you just simply can't police that. Our standard construction hours are actually longer on a Saturday than what the Department were recommending. So I would  
45 certainly be suggesting in our submission back to you that we adopt the Council standard hours.

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MS GRANT: And what, sorry, what is the standard hours?



MS BAILEY: Standard hours Monday to Friday are 7 a.m. to 7 p.m and Saturday is 8 a.m. to 4 p.m.

5 DR EVANS: And, Sandra, can I just ask a question? Bronwyn Evans here. Would your prohibition on Sunday work extend to internal fit out activities?

MS BAILEY: I'm glad you asked that, Commissioner, because I was just going to actually say that once the building is up at walk up stage, happy for it to have 24 hours construction.

10 DR EVANS: That a helpful clarification. Thank you.

SANJU REDDY: It's Sanju here, can I just add what Sandra was saying in relation to conditions - some of the conditions, the timing in terms of certain works required at certain times, it may not necessarily work. For example condition A8, it requires grout filling prior to CC prior to construction certificate being issued, but that work in fact can only be done at a much later stage once the easement has been relocated and existing pipes become redundant.

15 MR KAPETAS: Can I say, Commissioner, I think what we need to do is just we'll need to revise some of these conditions so that they line up with a deed of relocation of easement. Because the deed of relocation of easement has the complete staging plan for the construction of the new easement and the decommissioning of the old.

MS GRANT: And would the Department be privy to that deed, or is that something?

25 MR KAPETAS: Look, I haven't certainly provided to the Department. I don't know whether the applicant has. I don't, I'd have to check with the applicant to make sure that they would be okay with that to be given to the Department. But certainly from our perspective, it wouldn't be a problem. But I need to clarify with the applicant and get their consent to do so.

30 MS BAILEY: I think the condition on this one, with the deed and the stormwater pipes would be terribly difficult, so -

MR KAPETAS: And it may be that if the Department looks at the deed with the consent of the applicant, their concerns as to staging may be well addressed because it's all in there.

35 MS GRANT: Yeah, yeah. What date did you say the applicant withdrew the VPA offer?

MS BAILEY: It was the 17th of November, and we received that on the 21st of November.

40 MS GRANT: Are there any other matters that you would like to raise or you think we should be aware of?

MS BAILEY: No I think we're going to be okay. As we said, we would really like that opportunity to work with the Department to get the conditions right.

45 MS GRANT: Yeah, I think that would be terrific. If you can work up a copy where they, you know, either are no longer appropriate because of, you know, things have moved on with that deed, as you say, or whether they were missed. It would be very helpful for us to see that mark-up in those -

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5 DR EVANS: (Indistinct) - Well, I mean, we need to probably work on timing in terms of that because, you know, as we said, we're of the view that the commission can't actually approve this application because of that wording of 6.9. So I don't really necessarily want the staff spending time on the conditions on something we may not be able to approve yet.

10 MS GRANT: Well we have time frames that we need to meet, you know, that set, for process. So we, we don't have an indefinite time. In fact, our goal is to have this determined one way or the other before Christmas by the 22nd. So we obviously will need to turn our mind to that 6.9 question. But if we were to then feel satisfied that that had been met, we would then need those conditions prior to that time frame to be able to then issue that determination.

15 MS BAILEY: We're happy to start working on that as long as the Department ok as well with that.

20 MS GRANT: That would be terrific. Thank you. I mean in the first instance, perhaps even if you were to send your earlier version and then we could go through and do a compare and contrast and understand which ones had been missed and then that may free up your time to then be looking at which ones need tweaking.

25 MS BAILEY: I think we'd like to go through the ones that we did send to the Department, and then come up with which ones we think really need to be there. And then we were happy to send that because I think that's going to be a more relevant list, because I know when I looked at it, there were certainly conditions there that I thought, well, that one doesn't need to be there because it's covered by the deed.

30 MS GRANT: Yeah, okay. Although just thinking aloud about Paul's comment that, you know, that deed sits outside of Council's role as a consent authority or, you know, a planning authority. The conditions would then provide that planning certainty.

35 MR KAPETAS: Yeah. Absolutely right, Commissioner. It certainly does sits out. We didn't enter it, as I said, as a planning or consent authority, but it can be referred to in the consent and it can be as part of a condition in consent. In our view.

MS BAILEY: Yes. And the Department have included that. I think it was condition A7. Yes.

40 MS GRANT: Okay. Thank you. Bronwyn, was there anything else that you would like to seek clarification from Council on?

DR EVANS: No, thank you.

45 MS GRANT: Jane or Talia? While we have this opportunity. Is there anything that you would like to seek clarification on?

MS SEXTON: Juliet, I'd just comment to Council that given this discussion, we'll write to you in the next day or two seeking that response. So that's just a formality.

50 MS ANDERSON: Nothing for me. Thanks.

5 MS GRANT: Well on that basis, thank you so much again to you all for making the time to brief us. It's always invaluable to, you know, hear both sides of the story and to understand the full picture and all of the complications and these details, these things are never straightforward. So really appreciate you providing, taking the time and providing us with that additional information. So thank you so much. And have a lovely Friday afternoon and enjoy your weekend.

MR KAPETAS: Thank you. Thank you.

10 DR EVANS: Very valuable. Thank you.

MEETING CONCLUDED