



TRANSCRIPT OF MEETING

**RE: 50 BOTANY STREET, BONDI JUNCTION (PP 2024-104) –
GATEWAY DETERMINATION REVIEW**

APPLICANT MEETING

PANEL:	JULIET GRANT (CHAIR)
OFFICE OF THE IPC:	BRADLEY JAMES CALLUM FIRTH
APPLICANT REPRESENTATIVES:	ANDREW PIGOTT (Willowtree Planning) JAMES OLDKNOW (Mills Oakley) ANTHONY FAHEY (Bondi Exchange Pty Ltd)
LOCATION:	ZOOM VIDEOCONFERENCE
DATE:	1:00PM – 1:45PM TUESDAY, 1st JULY 2025

<THE MEETING COMMENCED

MS JULIET GRANT: Good afternoon. Do we have everybody? I think we do.

MR ANDREW PIGOTT: Good afternoon.

MS GRANT: Andrew, you're not expecting anybody else from your side?

MR PIGOTT: No, we're all here, thank you, Madam Chair, we've got all our people.

MS GRANT: Terrific. Well, in that case, I will begin by acknowledging that I am speaking to you from Gadigal land, and acknowledge the traditional owners of the lands from which we virtually meet today, and pay my respects to their Elders past and present.

Welcome to the meeting today to discuss the gateway review request for the planning proposal PP 2024-104 at 50 Botany Street, Bondi Junction currently before the Commission for advice. The planning proposal seeks to rezone part of 50 Botany Street, Bondi Junction from SP2 Infrastructure (Telecommunications) to R3 Medium Density Residential, introduce a minimum lot size control of 232 square metres, remove the redundant local heritage listing, and commit the collection of affordable housing contributions.

My name is Juliet Grant, and I am the Chair of this single-member Commission Panel. I'm joined by Brad James and Callum Firth from the Office of the Independent Planning Commission.

In the interests of openness and transparency, and to ensure the full capture of information, today's meeting is being recorded, and a complete transcript will be produced and made available on the Commission's website. This meeting is one part of the Commission's consideration of this matter and will inform one of several sources of information upon which the Commission will base its advice.

I may need to ask questions to clarify issues. If you are asked a question and are not in a position to answer, please feel free to take the question on notice and provide any additional information in writing, which we will then put up on our website.

I request that all members here today introduce themselves before speaking for the first time, and for all members to ensure they do not speak over the top of each other, to ensure the accuracy of the transcript.

We will now begin. Do you guys have a presentation or how do you want to run through ... Andrew, are you leading the charge?

MR PIGOTT: Sure, yes, look, I was just going to do a part of overview that you've really touched on, largely, it's pretty simple. And then just James, from Mills, is going

to talk through the issues in relation to the quantum of affordable housing contribution, if that works from your end?

5 **MS GRANT:** Yes, perfect. And just so that you know, we heard, we did have a meeting with both Council and the Department yesterday. So, I've got a few questions arising from that which I will save to the end because you might have covered them off. So, yes, go for it, thank you.

10 **MR PIGOTT:** Thank you very much, Madam Chair. My name is Andrew Pigott, I'm a Director at Willowtree Planning. As you have alluded to, this planning proposal seeks to facilitate the redevelopment of a former Telstra site at 50 Botany Street in Bondi Junction for residential purposes.

15 And that will involve amending the Waverley Local Environmental Plan to rezone part of the site from the current SP2 Infrastructure (Telecommunications) Zone to an R3 Medium Density Residential Zone, introduce a minimum lot size control consistent with the minimum lot size of the adjoining properties of 232 square metres, and to remove a redundant local heritage listing given the telco tower on site has been removed.

20 Essentially, all planning authorities, the Council, the Department and us are in roaring agreement in relation to the strategic merit and indeed the site-specific merit associated with the planning proposal. So, it's all in a good space in that respect. The point of contention relates to the quantum of affordable housing contribution able to be
25 effectively afforded at this site, and that relates to gateway condition 1A and how that's been imposed. And Council has a position, and we have a position and so I think at this point, James, from Mills Oakley, was just going to run through our position in relation to that issue.

30 **MS GRANT:** Thank you.

35 **MR JAMES OLDKNOW:** Good afternoon, Madam Chair. Speaking now is James Oldknow, Special Counsel from Mills Oakley in Sydney. As Andrew said, the three of us on the meeting today have been largely involved in this planning proposal for well over a year now.

40 It has been held up due to this single issue. It could be neatly summarised like this, Madam Chair, the Proponent's intention in respect of this planning proposal was to provide an affordable housing contribution to the Council by way of an offer to enter into a planning agreement. That offer was dated 25 March 2024. The IPC should have a copy of that offer. And within that offer, the IPC will observe that the Proponent offered \$100,000 in terms of monetary contributions to be used for the purpose of affordable housing.

45 The alternative position which is one proposed by Council, it's never been proposed by the Proponent, it's never been led, it's never been characterised by the Proponent as in the planning proposal which seeks to amend the Waverley LEP to introduce a site-specific control, that is based off the Waverley Council's Affordable Housing

Contributions Scheme 2024, I think it is now, it keeps getting updated. And the feasibility analysis that Council has prepared seems to inform the dollar value of the contribution.

5 So, just to summarise that, one was \$100,000 by way of VPA. Two, the Council's position was \$1,656,738 to be paid at a future point in time when development consent is granted pursuant to a site-specific LEP clause.

10 Now, that's the summary, Madam Chair, of the two positions. I can, if you like, just jump straight into agenda item two down if you think it's appropriate to do so. That agenda item was called/titled "Underlying assumptions of feasibility studies." So, as I said before, notwithstanding our primary position that we would prefer a planning agreement to be made for that dollar value, we did over the course of the last year participate in discussions with Council along the lines of feasibility and looking
15 towards an end result of a development to be delivered on this site.

20 So, and Council, in response to that process, is in reliance on a document called HillPDA Feasibility Assessment dated August 2024. And the Proponent is in reliance on a document prepared by John Virtue Valuers dated 15 July 2024. And there are some, firstly – I'll withdraw that – firstly, Madam Chair, both feasibility analysis are agreed on the price paid for the site, and both feasibility analysis are agreed and working off the same townhouse scheme, which is a scheme prepared by Smith & Tzannes in respect of seven townhouses. So, those two aspects are agreed.

25 What then happens is the two feasibility reports fall into some categories of disagreement. We summarise as follows. The Council's gross realisation is a figure of \$24,645,855 inclusive of GST. The gross realisation figure in the John Virtue Valuers report prepared by the Proponent is \$21,200,000.

30 There is also an inconsistent or disagreement in respect of the profit and risk margin in each of the valuation reports. In respect of Council's valuation report, page 7, indicates that there should be a profit and risk margin of 16 to 22% for townhouses. And Council has adopted a rate of 17%, so seemingly towards the bottom of that range.

35 I would note this, Madam Chair, if you were to jump to page 15 of the same report, you'll run into a contradiction. And you'll see that the same author now lowers the range for townhouses in respect of a profit and risk margin to 12 to 17%. So, now the 17% adopted by Council is at the higher end of the range, rather than just below the lower end of the range.
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If you then move to the Proponent's report, Madam Chair, the profit and risk margin adopted by the Proponent's valuer, there's a range of 17.5 to 22.5. And on that basis, an adopted rate of 20%. So, right in the middle of that range. So, then you have
45 impeding profit and risk margin of 17% for Council's valuer, and 20% for the Proponent's valuer. So, 3%, stating the obvious, can make a difference at the end of the day down the track.

And the final and important difference between the two valuation reports, Madam Chair, is the Council on page 12 adopts an escalation in gross realisation of 3.5%. Whereas the valuer for the Proponent says that it's appropriate for the market assessment to be undertaken as at the date of the inspection, the date of the report, and so there is a nil escalation in the gross realisation.

Those are my figures, Madam Chair, having looked at the two reports again and looked at the prior submissions that we have made to Council in the past.

My suggestion would be, and I'm not sure if this is the appropriate time to discuss what the next steps are, but our ultimate submission is that if we are going down the path of the IPC agreeing with the site-specific control, we would like the opportunity for that to be independently determined by the IPC. The IPC has the two valuation reports. What it doesn't have is perhaps hearing from the authors of those reports, at the same time to address any of those inconsistencies I've just mentioned, but to hear their reasons in support of why one position might be preferred over the other.

If you were going to ask me what the next steps would be, I would submit, Madam Chair, that it would be appropriate for the IPC to hear from the authors of the valuation reports.

MS GRANT: Okay, thank you. We did actually hear from the author of the HillPDA report yesterday.

MR OLDKNOW: Oh, okay.

MS GRANT: As part of the Council's presentation, and that did provide us with a much clearer understanding of the constraints of preparing such a report and the underlying premise.

One, I guess, question for you James is, we can debate the virtues of the dollar values, but the proposition that was put to us yesterday by Council is that the rate that they use when charging the contributions is a fixed sum – I think it was in the order of \$21,000. That number is reviewed on an annual basis and is also locality, suburb-specific, so not just a blanket for the whole LGA.

So, the question of whether you prefer one valuation versus the other becomes a bit of a moot point if you're relying on the standard rate, because it's what GFA is created by your development scheme. So, I'd be interested to understand how you kind of, how you're viewing that, and then how that ... I'll stop there.

MR OLDKNOW: That's okay. I understand, Madam Chair. I would respond like this. The site-specific clause that Council is seeking to include is based on two numerical figures. One is the percentage of the total GFA at which a contribution per square metre should be charged. There's a dispute on that aspect, that Council suggests that that numerical figure should be 9.7%. Whereas we are submitting it shouldn't be anything in our primary submission.

And the second numerical figure is the per square metre rate on which that percentage is to be calculated at the point in time that it needs to be calculated, which is at the time of the determination of the development consent.

5 My understanding of my instructions, Madam Chair, is that rate of 21,000 isn't in dispute, it's more the higher the first numerical figure is the more unfeasible the Proponent's scheme becomes. The lower that figure, it becomes more feasible. It's that calculation.

10 **MS GRANT:** Yes. So, a question then, I'm not sure who is best placed to put it, the Council's Affordable Housing Contribution Scheme is dated back 2020. The requirement to pay a levy has been in the LEP – to pay a levy for the development consent component, the 1%, that is the trigger to activate that contributions scheme has been in the LEP for a number of years.

15 So, putting aside this particular clause, when you came to DA stage, you would be subject to a 1% condition, which would be more than the 100,000 that you're offering as part of the VPA anyway. So, were you – I guess, two parts of the question then – are you aware that there was this contribution regime for Waverley, that this site and the
20 project would be subject to? And were you aware of the fact that the 1% was only one half of the scenario, the up to 10% scenario that is being sought to put in through this planning proposal mechanism, has been in abeyance and waiting to be given life for a number of years now?

25 **MR OLDKNOW:** I think actually, Madam Chair, the “given life for a couple of years now” of the up to 10% was not supported by the Department on two separate occasions. And the 1% straight figure, that clause in Waverley's LEP was introduced mid last year, 2024. So, the Proponent's subject planning proposal was lodged in advance of that clause coming into the Waverley LEP [clears throat], pardon me.

30 And I have not or no one from the Proponent's team has said that if the site-specific planning, if the site-specific affordable housing contribution is not made as part of this planning proposal, the Proponent will be paying the 1% figure as it applies globally across the Waverley LGA, and Madam Chair, I'm certainly seeing that being adopted
35 in respect of the development applications that I'm working on in the Waverley LGA. So, it's in play.

MS GRANT: Okay, yes, okay, so I take your point on that one. So, just going back to your comment about the site-specific contributions for rezoning not being supported by
40 the Department. My understanding was that that was purely a technical issue in the sense that Parliamentary Counsel doesn't favour drafting of clauses where you have a blank schedule. It wasn't that they didn't support or endorse the intent of the clause per se.

45 **MR OLDKNOW:** My comment, Madam Chair, was that in 2021 and 2023, Council attempted to adopt its Waverley Affordable Housing Contribution Scheme into the LEP without success. So, it has been around for some time but historically it has not been supported, so it's not as if this clause has been around for a number of years or

5 this idea has been around for a number of years, waiting for a proponent to come forward with a planning proposal. That's not the case. It's actually being proposed by Waverley LGA, the Council, and has not been supported to proceed. It's been given life again as part of the subject planning proposal, and the technicality I can't comment on, Madam Chair. That's just not something that this planning proposal has ever proposed from the Proponent. And that's at risk of repeating myself on that point.

10 **MS GRANT:** Understood. I presume though that when you say it's not raised by the Proponent as part of this planning proposal, that you are aware that once the planning proposal is submitted to Council, it becomes Council's planning proposal. And they are able under the Act to change a planning proposal as submitted.

15 **MR OLDKNOW:** I'm aware and we obviously have our feelings about how that works. Particularly in this circumstance, Madam Chair, when we're talking about dollar value at the end of the day down the track.

20 **MS GRANT:** Okay. So, procedurally I understand you're asking for a change to the gateway condition. And that is principally to address that quantum. But given that the planning proposal has already proceeded past exhibition, to go and change the condition now, what actual impact will it change do you see that would facilitate?

MR OLDKNOW: It hopefully would be able, Madam Chair, to change the quantum of affordable housing contribution, based on an independent assessment by the IPC.

25 **MS GRANT:** So, I think the condition just simply said there must be a plain English explanation. That explanation has been prepared and the exhibition has already proceeded.

30 **MR OLDKNOW:** Mm. That was a funny one, Madam Chair. As you know, there's a requirement within the LEP Making Guideline of the proponent to give notification to the Department within 14 days, I believe, of the gateway determination. That should have the effect of putting a hold on the public exhibition post gateway. In this circumstance, it did not, for a reason we don't know why. In our view, it should have. It should never have gone on public exhibition. And the gateway review process
35 should have been resolved prior to that point in time.

Madam Chair, page 4 of the helpful document titled "Gateway Review Justification Assessment" ...

40 **MS GRANT:** Yes.

45 **MR OLDKNOW:** ... had a neat summary at table 1 of the current gateway condition on the left-hand side of the page, and then the Proponent's altered gateway condition on the right-hand side of the page.

The right-hand side of the page says that the Proponent is suggesting a change to the condition to read as follows: "Prior to exhibition, the proposal is required to be updated to: (a) exclude the affordable housing contribution additional local provision." Now,

the intent there you can see, Madam Chair, is the Proponent is trying to revert the scheme back to one that relies on the VPA and not site-specific clause. If it is the site-specific clause, then the suggestion is now, you can seek some instructions in relation to it, Madam Chair, but the suggestion seems to be like Mr Pigott said, that the dispute might be narrowed to the quantum of affordable housing contribution to be determined by certain evidence. And so I'm sure, Madam Chair, we could craft – if we were asked, we could craft a condition that could be included.

MS GRANT: Thank you. The only other item, I guess, on the agenda that we've not sort of talked about was plan making authority. If currently it's delegated to Council, I presume should this proceed, it would be your preference that that delegation is withdrawn and it is not the Council that progresses this, is the Department or a planning panel. Is that your approach?

MR OLDKNOW: That's how it's pitched and requested in the gateway review request documents, Madam Chair. And it's on the basis that, just have some concern about the way the feasibility analysis took place and perhaps Council's feasibility analysis being dismissive of the Proponent's feasibility analysis, not giving it enough weight. And so that informs the request that you're talking about now, Madam Chair.

MS GRANT: Yes, understood. One of the questions that we were talking yesterday with Council and HillPDA in terms of understanding the premise of their feasibility was whether the cost of relocating that tower – they weren't sure whether or not the Proponent had paid for that relocation. Are you able to advise whether that was a cost borne or whether that was not?

MR OLDKNOW: Anthony, is that something you know? I don't – my understanding is we did not include the cost relocating the tower in our feasibility analysis.

MR ANTHONY FAHEY: Yes, it wasn't included in the feasibility, yes.

MS GRANT: Terrific. Thank you. Brad or Callum, do you have any other questions?

MR CALLUM FIRTH: Nothing from me.

MR BRADLEY JAMES: Nothing from me, Juliet.

MS GRANT: Is there anything else – we've come to the end of the list of questions that I had jotted down and the agenda items. Is there anything from the Proponent's side that you would also like to raise while you have the chance?

MR OLDKNOW: Only if the panel was open, Madam Chair, in circumstances where the panel has heard from Council's valuer, the author of the Council's valuer, but in my submission it would be procedurally fair and reasonable for the panel to also hear from the Proponent's valuer.

MS GRANT: I guess you did have the opportunity to bring that valuer with you today to this meeting, so ...

MR OLDKNOW: Sure. I take that on notice, Madam Chair. I didn't, we didn't obviously know who Council's attendees were or even if there was going to be a meeting with the Council. I certainly didn't know that that took place yesterday until it was mentioned today. And we would hope to be in a position to obtain, if the panel was interested in hearing from the author of the Proponent's report, the availability relatively quickly, so as not to hold up the overall process.

MS GRANT: Yes, as you're aware, we're on a pretty tight timeline for our KPIs to get this advice back to the Department. And I think this meeting is already a few days later than we'd originally proposed. So, it is absolutely standard practice that we would meet with both the Proponent, Council and the Department. So, that probably shouldn't be a surprise.

But thank you for the offer of making your valuer available – I'll have a further think and see if there's anything else that I need clarification of. Obviously, I have that valuation report and have looked at it, so I have that available information at the moment.

Unless there's anything else that you would like to raise, we've probably come to the end of the things that I was hoping to cover.

MR OLDKNOW: I don't have anything else on my list, Madam Chair.

MS GRANT: Terrific. Well, thank you to you all for making the time, for coming this afternoon and for briefing us, it's always super helpful to be able to sort of have that conversation and understand and unpack some of the issues. So, thank you, appreciate that. And as I said, we do have a short timeframe, so within the next couple of weeks to be able to get that advice back to the Department and then they will be in touch and let you know, it is advice, so then they will decide what they're going to – how they're going to act. So, thank you very much.

MR OLDKNOW: Thank you Madam Chair. Thank you, panel.

>THE MEETING CONCLUDED