



## **TRANSCRIPT OF MEETING**

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

### **DEPARTMENT MEETING**

<b>PANEL:</b>	<b>JULIET GRANT (CHAIR)</b>
<b>OFFICE OF THE IPC:</b>	<b>BRADLEY JAMES CALLUM FIRTH</b>
<b>DEPARTMENT OF PLANNING, HOUSING &amp; INFRASTRUCTURE:</b>	<b>JAZMIN VAN VEEN KELLY MCKELLAR CLAIRE MIROW</b>
<b>LOCATION:</b>	<b>ZOOM VIDEOCONFERENCE</b>
<b>DATE:</b>	<b>3:00PM – 3:45PM MONDAY, 30<sup>th</sup> JUNE 2025</b>

## <THE MEETING COMMENCED

### MS JULIET GRANT:

5 Well, good afternoon and welcome. Before we begin, I would like to acknowledge that I am speaking to you from Gadigal land, and I acknowledge the traditional owners of all the lands from which we virtually meet today, and pay my respects to their Elders past and present.

10 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,  
15 remove a 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 am also joined by Brad James and Callum Firth from the Office of the Independent  
20 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  
25 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.

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

If you could please introduce yourself before speaking for the first time, and please do not speak over each other, to ensure the accuracy of the transcript.

35 We will now begin. Who's going to take the charge? Thank you for sending through the presentation, I have a copy of that.

**MS KELLY MCKELLAR:** All right, so, I'm Kelly McKellar, I'm one of the managers in the Local Planning and Council Support, Northeast and Central Coast Team. So, we might start if you like, where we'll run through the presentation?  
40

**MS GRANT:** Perfect. Thank you.

**MS MCKELLAR:** Claire's just going to share the slides for me. So, Claire Mirow is the Senior Planning Officer in my team. Thank you, Claire.  
45

All right. So, we're talking about the gateway review for the planning proposal for 50 Botany Street in Bondi Junction. I am dialling in from Cammeraygal – I can never

pronounce that right, how embarrassing – Barigal and Cammeraygal land, and acknowledge them as the traditional custodians of this land, and pay my respects to Elders past and present.

5 So, as you're aware, because you would have read the report package, we're talking about a site in Bondi Junction in the east of Sydney. Bondi Junction in the current region and district plan is a strategic centre. The site was formerly a Telstra site and is occupied by the building which has now been decommissioned, and the tower which replaced the former tower, which was demolished and comprised the original heritage listing, but it's no longer there. So, the part of the site that's got the tower will retain  
10 the SP2 zoning and the site that contains the building is what's being proposed to be rezoned to residential.

15 So, the planning proposal is supported by a concept proposal as well, which we'll talk about in a moment. But what we're talking about today is the planning proposal as prepared by Waverley Council, as Waverley Council is the planning proposal authority.

20 So, this was a Proponent-initiated planning proposal but at the end of the day, Council is the authority responsible for preparing the planning proposal document. And in a nutshell, it seeks to facilitate the redevelopment of the site for multi-dwelling housing and allow the collection of contributions for the provision of affordable housing in the Waverley local government area.

25 To achieve this, it seeks to amend the Waverley LEP to rezone part of the site R3 Medium Density Residential and apply a minimum lot size consistent with the surrounding area. It will remove the redundant local heritage listing relating to the now-demolished telecommunications tower, and it will insert a provision into the LEP for the collection of affordable housing contributions at a rate of 9.27% for future DA  
30 on the site.

35 None of the other provisions that apply to the site will change, and we note that the maximum height of buildings and the floor space ratio that are consistent with the surrounding R3 zone already apply to the site.

40 So, in terms of affordable housing in LEPs, so section 7.32 of the Act allows Council to levy contributions if a SEPP identifies a need for housing in the area. The SEPP Housing 2021 identifies a need for affordable housing in all LGAs in New South Wales. So, under section 7.32(3)(b), a condition can only be applied on a development consent for the collection of affordable housing conditions if an environmental planning instrument, such as a local environmental plan, includes a provision that allows for that condition to be applied. And the requirements for preparing an affordable housing contribution scheme are set out in the Department's guideline.

45 So, Waverley Council previously prepared a separate planning proposal to implement its Affordable Housing Contributions Scheme which was first adopted by Council in December of 2020. So, Amendment Number 25 to the Waverley LEP came into effect

on the 16th of August 2024. It introduced a 1% levy for affordable housing contributions on certain residential developments.

5 So, it was part of a planning proposal that also proposed to introduce a mechanism for its site-specific contribution rates, which would be a clause that was supported by a schedule which would list the sites and the contribution rates. This was deferred from the making of LEP Amendment Number 25 because the drafting convention is that you can't publish an empty schedule. So, until such a time as there's a site to list in the schedule, the clause and schedule couldn't be introduced into the LEP. So, it was  
10 deferred until there was a site to list.

15 So, as I mentioned earlier, the Department has a Guideline for Developing Affordable Housing Contribution Schemes, and it includes some very high level instructions about when there's a planning proposal to introduce that into the LEP, that the Department will assess whether or not the required information has been submitted, and whether or not Council has used the correct methodology to prepare the scheme and the supporting documents.

20 In terms of this planning proposal, we issued a gateway determination that the delegate of the Minister had determined that the proposal should proceed, as it was generally consistent with the strategic planning framework, it will facilitate residential redevelopment on an under-utilised site, while also supporting the ongoing use of the current telecommunications tower on the eastern part of the site. It will support the provision of affordable housing in the Waverley LGA, and it was unlikely to result in  
25 adverse environmental, social or economic impacts.

30 In terms of the conditions on the gateway, there was an LEP completion timeframe. There was an authorisation for Council to exercise the functions of the local plan making authority. In terms of the delegate choosing to authorise Council, generally for local planning matters and site-specific planning proposals, council's the default in terms of who we'd like to see be the local plan making authority. But sometimes for complex proposals, the Minister will be the local plan making authority.

35 In terms of conditions, most of them are about community consultation and agency consultation requirements. So, the condition in terms of the requirement to amend the planning proposal is condition 1A, and that was that the planning proposal document as prepared by Council as the planning proposal authority, was updated to provide a plain English explanation of how the affordable housing contribution LEP provision would apply to the site and to future development, to make it clearer for the  
40 community who maybe aren't as familiar with the technical workings of that sort of element of the proposal. And to include a standard disclaimer that the wording of the actual provision would be subject to Parliamentary Counsel drafting, which in accordance with the planning proposal but also their drafting conventions, which do change from time to time.

45 The Proponent has initiated a gateway review. So, the LEP Making Guideline provides that a gateway review, when a gateway has been issued, of a condition other than the

consultation requirements, that they view as inappropriate or that should be reconsidered.

And so we're seeking the Commission's advice to review the planning proposal and to prepare advice concerning the merits of the review request, including a recommendation to the Minister's delegate about whether or not the gateway determination should be altered.

And I think that's the end of our presentation. Thank you, Claire, for running the slides.

**MS GRANT:** Terrific. Thank you. We met just previously with the Council and so we've heard from Waverley Council and we're meeting with the Proponent tomorrow. A couple of things that you might clarify for me.

So, does the Council's approach – has the Department endorsed that or is the Department satisfied that it meets the guidelines for developing an affordable housing contributions scheme? Is that, is the approach that they have taken in line with the Department's guideline?

**MS MCKELLAR:** Yes. So, our Gateway Assessment Report stated that we're satisfied that they have met the requirements of the guideline in terms of preparing an affordable housing contributions scheme, and providing the required information to progress past gateway.

**MS GRANT:** Okay. And there hasn't been any planning proposals in the last 12 months that would have triggered that deferred element ...?

**MS MCKELLAR:** No. This is the first site-specific planning proposal we've had since the Waverley LGA, that I am aware of, since that amendment number 25 came into effect in August of last year.

**MS GRANT:** Thank you. And are you aware of any others in the system likely to be coming through that will also then populate that schedule?

**MS MCKELLAR:** Not that I'm aware of at the moment. As you'll be aware, there's a lot of changes in the planning system at the moment, so it's definitely a bit of a different landscape in terms of rezonings since last year.

**MS GRANT:** Yes, the Council mentioned that the few that may have come in for this pathway have detoured by the HAD instead. So, yes. And one of the, I guess, the peculiarities with this one being an SP zoning, with the development standards not changing, I'm just wanting to make sure I understand what's intended by the concept of 'uplift'. So, there is potentially no uplift in the sense of no extra development yield from a height and FSR control perspective.

Do the guidelines envisage any difference in approach when it's sort of – I mean, it can't be unique circumstance where SP zones transition across.

**MS MCKELLAR:** So, the Guideline for Preparing an Affordable Housing Contribution Scheme does state that uplift also includes when a property goes from a housing that doesn't permit residential uses, to a residential zone. So, it includes that within what it considers uplift.

**MS GRANT:** Okay. And in the actual gateway conditions where you talk about providing a plain English explanation. Is that the mechanism rather than the dollar value, or ...?

**MS MCKELLAR:** About the mechanism. So, we found that a lot of – we find quite often that sometimes planning language is not necessarily easily understood by the community, and so they're looking for a bit more of a – a few more words in plain English that says, well, this is what it means for this site and this is how it will apply, and to sort of talk through that a little bit.

Whereas, I think from memory, at gateway, it was quite a technical explanation, and it referred back to that previous planning proposal that was implemented by amendment 25. And we wanted something that was a little bit more easily understood by the community, and it's not unusual to have a condition like that on something where it can be quite technical.

**MS GRANT:** So, I understand from Council that they've already done the exhibition. So, in terms of going back and reviewing conditions, it's a bit of a historical exercise, given that they've already satisfied the conditions in the gateway. And that on the basis that they currently have plan making authority could technically make this plan tomorrow. Has the Department been having any conversation with Council about how that's handled?

**MS MCKELLAR:** It's unusual and it's something that the guideline isn't particularly clear on. So, in terms of where we're at, we're letting sort of the gateway review process happen and then we'll work with Council after that, after you've issued your advice, about what the next steps potentially are and whether there needs to – some other step needs to occur.

**MS GRANT:** And I understand that originally the Department wasn't supportive of the review and then has now changed the opinion and it has obviously clearly allowed it to progress. Did something happen, was there something that triggered that change of decision?

**MS MCKELLAR:** I think – it's very unusual to appeal a condition of this sort. And I think the first submission of information that we got, it was a little bit unclear to us how some of the strategic justification they'd given us was directly relating to the condition itself. And then we had that second submission come through, I think in the package provided by Mills Oakley, and it was a bit clearer how it aligned to the condition.

And the guideline is not – it doesn't provide a lot of detail about what the exact requirements are for eligibility for a gateway review. But we felt that there was enough information at that stage to address the condition that it warranted following the process for full procedural fairness.

**MS GRANT:** And as part of the Department's assessment, forgive me if this is in the package and I just haven't got to it yet, but did you undertake any review of the actual feasibility – the percentage? I mean, I think it's fairly clearly established that there's a process for to create a mechanism to levy, but the question about the quantum about what's being levied is the other element that the Proponent has questioned. Is that something that the Department turns its mind to, or are you reliant on the Council?

**MS MCKELLAR:** So, the Department does look at the supporting feasibility studies and economic studies that are submitted. So, in this instance, my understanding was it was Council commissioned HillPDA initially to do a study, and the Proponent has a Valuer's Report, and then the HillPDA was subsequently updated to respond to that.

And so that full package of documents was submitted to us, and we checked that as Council's – the proposal is Council's as the planning proposal authority, we checked those three documents to ensure that the rate that Council had proposed was supported by the required information.

So, I guess the question is, the answer to your question is, we checked that they followed the methodology and information requirements, but we don't specify or set a rate ourselves. We check the methodology and the process in accordance with the guideline.

**MS GRANT:** So, the methodology, I think they felt that was 21,000 a square metre in Bondi Junction locality, that's embedded in their contributions scheme, and so if they've followed the correct methodology form the guideline, then you accept, that the Department accepts that that's the number and it just plays out by per square metre as it, as you say, as the methodology is applied and the mechanism is applied, it comes out with the final number.

Is – and I think you've already answered it – but there isn't another level then of sanity check or the quantum of contribution in being required, I guess, in terms of being consistent with what the State Government is levying by comparison in HDA or in state-led rezoning areas? There isn't that kind of sort of sanity check?

**MS MCKELLAR:** I mean, I think the Department definitely recognises that there are a lot of different housing markets and property markets in Sydney. And that, I guess, that's why we require the feasibility documents, is that, like, you know, it needs to be proved for each instance that a contribution is proposed, that it does have that necessary evidence base. But there's more that methodology and that expectation –

**MS GRANT:** Kelly might have frozen there.

**MS MCKELLAR:** Why is why ...

**MS JAZMIN VAN VEEN:** We lost you for a minute, Kelly, but you're back now.

**MS MCKELLAR:** Am I back? Sorry.

**MS VAN VEEN:** You're back, yes.

**MS GRANT:** Terrific. Callum, did you have any questions?

**MR CALLUM FIRTH:** No.

**MS GRANT:** Brad, did you have any other questions?

**MR JAMES:** Just one quick question, Juliet. Hi, Kelly.

**MS MCKELLAR:** Hi.

**MR JAMES:** I just wanted to check – sorry, let me get the slides up. Just the reference to in the condition to the Parliamentary Counsel drafting, that's just around language and wording – there's no quantum reference there. Is that correct?

**MS MCKELLAR:** Yes. So, councils quite often like to put some indicative wording in their planning proposals. And while planning proposals set out the intent, what ends up in that final, the words of that LEP clause are definitely at the discretion of Parliamentary Counsel, and it can change as drafting conventions change.

**MR JAMES:** Yes, sure, great, thanks. That's it from me, Juliet.

**MS GRANT:** Thank you. So, in terms of who should the plan making authority moving forward, if there was a change to be made, just say for example, would the Department be inclined to leave the plan making responsibility with Council, given the differences of opinion between Council and the Proponent? Or would that perhaps trigger the Department's thinking that it might need to no longer delegate that function?

**MS MCKELLAR:** I think hypothetically it would depend on whether or not there are changes required to the planning proposal and what they might look like. So, if at any point there's a change to a planning proposal, it usually requires a gateway alteration. So, when Council is undertaking their functions of local plan making authority, it has to prepare the LEP in accordance with the gateway conditions, but also with the planning proposal that corresponds to the most recent version of the gateway.

So, there's not – so, in answer to your question, it would depend on what changes are required to the planning proposal.

**MS VAN VEEN:** And the Department would consider the advice that the IPC provides on this gateway review, and then make any changes necessary to – or consider making changes to the gateway determination, including the LPMA if needed.



**MS GRANT:** Thank you. I think that's probably all of my questions. Did you have anything else that you'd like to share before we finish up?

5      **MS MCKELLAR:** No, thank you.

**MS VAN VEEN:** Thank you.

10      **MS GRANT:** Thank you so much for your time this afternoon, really appreciate that.

**MS VAN VEEN:** Thank you.

**MR JAMES:** Thanks.

15      **MS MCKELLAR:** Thank you.

**MS GRANT:** Thanks, ladies.

**>THE MEETING CONCLUDED**