New South Wales Government
Independent Planning Commission

TRANSCRIPT OF MEETING

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

PROPONENT AND VALUATION CONSULTANT MEETING

PANEL:	JULIET GRANT (CHAIR)
OFFICE OF THE IPC:	BRAD JAMES CALLUM FIRTH
APPLICANT REPRESENTATIVES:	JAMES OLDKNOW (Mills Oakley) ANDREW PIGOTT (Willowtree Planning) ELIE MAKSOUR (John Virtue Valuers)
LOCATION:	ZOOM VIDEOCONFERENCE
DATE:	12:00PM – 12:30PM FRIDAY, 4th JULY 2025

<THE MEETING COMMENCED

MS JULIET GRANT: Good afternoon.

MR ANDREW PIGOTT: Good afternoon.

MS GRANT: Do we have everybody? Are you expecting Anthony to join us as well?

MR PIGOTT: Yes.

MS GRANT: Okay.

MR JAMES OLDKNOW: My instructions are no longer, Madam Chair and Mr Pigott.

MR PIGOTT: Thank you, Mr Oldknow.

MS GRANT: Okay. In that case, we don't need to wait for him. Thank you. Okay. Good afternoon and welcome. 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 lands from which we virtually meet today, and pay my respects to their Elders past and present.

I would like to welcome today to the meeting to discuss the gateway review request for planning proposal PP 2024-104 at 50 Botany Street, Bondi Junction currently before the Commission for advice. This meeting follows an earlier one we had, a previous one we had earlier in the week.

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 a redundant local heritage listing, and permit the collection of affordable housing contributions.

My name is Juliet Grant, and I am the Chair of this single-member Commission Panel. I'm also joined today 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 form one of several sources upon which the Commission will base its advice.

I will likely ask you questions today to clarify issues. If you're 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'll then put up on our website.

If you could please introduce yourself before speaking, for the transcript, and just make sure that we don't talk over another for the accuracy of the transcript.

Thank you. So, over to you guys. This meeting is being held at your request, so yes, over to you.

MR OLDKNOW: Thank you, Madam Chair. It's James Oldknow from Mills Oakley, Special Counsel speaking. As identified, this meeting follows the earlier meeting with the Applicant's team on the 2nd of July. At that meeting and subsequent to that meeting, the Applicant did invite in circumstances where the IPC had heard from Council's valuer, the opportunity to also hear from the Applicant's valuer, which is important, we think, in circumstances where the IPC is in somewhat, is essentially being asked to make a decision in respect of valuation evidence.

So, we think it is fair and reasonable for Mr Maksour to join us today, who I'll introduce in a moment. We don't expect to take up too much of the Panel's time, we just wanted to wanted the Panel to hear from Mr Maksour himself in respect of the key differences and the reason why some of the points in Council's valuation are disagreed and why, in his expertise.

So, I might just lead, if that's okay, Madam Chair, Mr Maksour just to bring him up to speed following on from that meeting on Tuesday, particularly in relation to the couple of items that I raised. And then I might pass the microphone per se to Mr Maksour to impress an opinion, if that's okay.

MS GRANT: Yes, perfect. Thank you.

MR OLDKNOW: Excellent. So, Mr Maksour, just confirm for the Panel that you were the author of the John Virtue Valuer's report dated 15 July 2024.

MR ELIE MAKSOUR: Yes, yes, I was.

MR OLDKNOW: And could you just state your qualifications for the Panel, please.

MR MAKSOUR: So, I'm a registered valuer for John Virtue Valuers.

MR OLDKNOW: And Mr Maksour, you have a copy of and have reviewed the HillPDA report dated 2024 that was commissioned by the Council?

MR MAKSOUR: Yes.

MR OLDKNOW: Okay. All right. And as I said, on Tuesday at the earlier meeting, I had raised some key differences or pointed some key differences to the Panel. I'll just re-point those out and then I might ask you to make a comment on that, if that's okay, and to explain to the Panel the reason you would disagree with the key difference expressed in the HillPDA report, and the reasons why you would say your contrasting view in your report is correct in your experience.

So, the first key difference that I pointed out to the Panel was that the Council's report has a gross realisation figure of $24,645,855 including a gross realisation escalation of 3.5%. Whereas the gross realisation figure in your report was $21,200,000. So, could you just explain what you think has led to the key differences and why you say your figure should be preferred.

MR MAKSOUR: Yes, okay. So, I had a look at their report and their gross realisation, I think, equates to a rate of, what you just said, $29,000 a square metre, which is quite elevated considering the location of where this proposed development is.

Their gross realisation also sort of factors in an escalation cost, which I found a bit unusual because they're including for the value to increase during the period of construction. When we do a valuation, we do it as at the date of valuation; we don't allow for an increase, because then one raises the question, well, is there an increase in the construction cost?

But looking at, going back to their gross realisation, which is the values, I'm just looking at their report. The rate that they're getting their $30,000 a square metre, they're from Bondi Beach – sorry I'm just in a meeting – they're from Bondi Beach, which is a much superior location compared to where we are. And in terms of internal areas, their sales reflect 106 square metres reflect 34,134 reflect 23,000. They've skewed their rate right to the top end for the townhouses.

MR OLDKNOW: So, Mr Maksour, you say that Council's report – sorry, the gross realisation figure is based on incorrect sales figures. Is that what you're saying?

MR MAKSOUR: Correct. The sales that they've used are the superior, and they've adopted right at the top end of the range, which has given you a better gross realisation figure.

If I can explain this to you, just about how the feasibility works. It's got three components. You've got the gross realisation, which is at the top. The construction cost, which is in the middle. And then the site value.

The greater the gross realisation is, the more profitable and viable the site is. So, having an elevated gross realisation is going to have a very profitable site value, or a very good site value, and that's what this thing is showing – this thing is very profitable and viable when it's not, in my opinion.

MR OLDKNOW: And in your report, you say you've based your gross realisation on the more correct sales figures.

MR MAKSOUR: Yes. We've got similar sales between the two of us, but it's where they've placed their rate is right at the top end and included a 3.5% increase which is probably not right.

MR OLDKNOW: So, have you ever seen in your experience a valuer use a 3.5% escalation in gross realisation?

MR MAKSOUR: You shouldn't because the purpose of a valuation is to go market value as at the date of inspection. So, the date I went out to this property, I inspected the property, took a photo of the property, that's the date the report is sort of done at, if that makes sense. They're factoring in future growth, which is not the case. It shouldn't be the case.

MR OLDKNOW: So, in your experience, the gross escalation of 3.5% should not have been included.

MR MAKSOUR: No, it shouldn't be there. Because we're determining market values. Market value is at a certain date. That's the whole purpose, yes.

MR OLDKNOW: And including the gross, and the escalation of 3.5%, as you said, makes the project …

MR MAKSOUR: More viable.

MR OLDKNOW: Appear more viable.

MR MAKSOUR: Yes.

MR OLDKNOW: Yes. That's probably that item, Madam Chair. The next item I pointed out was there was a difference between the stated profit and risk margin in respect of each of the reports. I pointed out to the Panel that on page 7 of the HillPDA report, the author of that report identified a development margin of between a range of 16% to 22% and then adopted a 17% development margin. So, it appears to be at the lower end of that range.

I then pointed out to the Panel that if you were to turn to page 15 of that same report, you run into a contradiction where the development margin is stated by the author of that report for townhouses to be at a range of 12 to 17%, making the adopted 17% development margin appear at the higher end of the range.

And finally, I pointed out that when we look at the John Virtue Valuers report on page 22, the profit and risk margin appears to be, in Mr Maksour's expert opinion to be a range of 17.5% to 22.5%, and on that basis he adopted the middle of that range, 20%.

So, Mr Maksour, what do you say about the lower development margin adopted in the HillPDA report, and why the higher development margin that you've adopted should be preferred by the Panel?

MR MAKSOUR: So, they've – they're working off 17% profit and risk, which is probably at the lower end, yes, it's probably at the lower end for a project of this size. Like, this project is going to be – the developer is going to be somewhat $20 million in debt, that is debt exposure, you would expect a profit and risk of at least 20%.

These projects – how can I say this – When we do valuations for, whether it's banks, any of the major banks or any clients, a profit and risk usually sits between the midpoint of 17.5 and 22.5, dependent on the risk and where it is; 20% is probably the more correct and reasonable profit margin for a project like this.

And by having a lower profit and risk, which is in the HillPDA, again shows the site value to be much greater and more profitable and more viable. And again, in slide, their feasibility is showing that the site value, I don't know what they're working at, they're showing a profitable feasibility when it is not feasible.

MR OLDKNOW: That is what I pointed out to the Panel on Tuesday as the key differences. And I'll just ask you, in your, having reviewed the HillPDA report, do you want to point out any other key differences between that report and your report that have not already been identified?

MR MAKSOUR: I'll look through my list. No. It comes back down to the basics, which is their gross realisation is elevated, the construction cost is given, so we've adopted the same construction cost. And then because they've adopted such a low profit and risk factor, it's showing a profitable site value, by having … But in my opinion, the site's not viable. And I think they're talking about a $1.6 million contribution, it's not viable at all. It's in the negatives.

MR OLDKNOW: And just to wrap this up, in your expert opinion as a valuer and looking at the figures, if a project was to proceed, that is, if a development application was to be lodged on this site for the seven-townhouse scheme and be approved, and have imposed on it a site-specific requirement to pay an affordable housing contribution at a rate of 9.75% of the total residential floor area at a rate of $21,000 per square metre, do you say that project would be viable?

MR MAKSOUR: No. Not at all.

MR OLDKNOW: That might conclude Mr Maksour, Madam Chair.

MS GRANT: Okay, thank you.

MR OLDKNOW: Unless I should, as a matter of courtesy, invite the Panel, if they had any questions for Mr Maksour, now would be the time.

MS GRANT: I absolutely do, thank you. And yes, thank you for explaining those key differences, and I have read your report. So, you talk about the feasibility being three things: the gross realisation, the construction costs, and the site value. So, you've explained the gross realisation, the site value is what it is in terms of what the landowner paid for it.

But construction costs, in your report, you talk about – you make a comment that you don't have a copy of the QS report and therefore you've just adopted the HillPDA construction costs in the order of … I think they were $11 million. Have you had the opportunity, I know your report was a year ago, have you had an opportunity to get hold of a copy of the QS report that HillPDA used to estimate their construction costs?

MR MAKSOUR: I think I saw a summary. The reason why we did that was for consistency, so that across the two reports, what I have and what they have is consistent.

MS GRANT: Okay. So, are there standard industry benchmarks of how much their construction costs – I mean, I imagine there's rule of thumbs, you know, it's a cost of X square metres to build a house, it's Y square metres for a townhouse, and more for an RFB. So, what would you generally use as your benchmark for construction costs for a townhouse?

MR MAKSOUR: For something like this, I'll turn back to a QS, the QS is the expert for the construction cost; we just take their information by a qualified QS and, yes. I wouldn't make an assumption. Because it depends on a few things. It depends on the quality, it depends on the design, it can vary from a basic build to a medium build to a high-spec build. It's sort of how long's a piece of string.

MS GRANT: Yes, so I understand from the information that I've had exposure to that townhouse construction costs are anywhere between 3,000 and 7,000 a square metre, which is less than half the 11 million that has been included. So, surely a discrepancy of that large would make a difference to your ultimate conclusions and when you run the model, the estate master model, that it would come out with a different – quite a different answer.

MR MAKSOUR: Correct. If the construction costs are different, it will have a different effect on the site value, of course.

MS GRANT: Right. So, I'm just not sure how we could be debating whether or not this is feasible, when we haven't actually interrogated all of the component parts. And that leads to kind of the obvious questions, well, obviously if the project is not feasible, it will not get built. So, why would the project team there be pursuing a project that on your own data is never going to see the light of day because it's not feasible?

There's something – there's a piece of this puzzle that's just not gelling.

MR MAKSOUR: I understand your question. What the developer paid for the site is what he paid for the site. The project related site value is in isolation of what a developer could pay for a site. The construction cost is the construction cost, and we've seen construction costs rise, maybe the development scheme is not ideal, maybe instead of having seven townhouses, it should be eight or maybe nine, or maybe it could be units. A feasibility is very project related; it's driven by the actual development approval. Yes, that's all I can say about that.

MS GRANT: Okay. And to that point, I guess, that the other variable would be the highest and best use. So, in your experience, have you concluded then that townhouses is the highest and best use for this site?

MR MAKSOUR: Given its location where it is, it could be the highest and best use, but it maybe not could be developed today, maybe to be developed tomorrow. It just depends.

MS GRANT: And so, if hypothetically you were to rerun these numbers and your modelling and things, obviously your valuation assessment was a year ago and, as you say, it's kind of relevant at the point and the day that it's issued. Do you anticipate that something that's fitting into this model has changed in the last 12 months?

MR MAKSOUR: In terms of the gross realisation you're referring to or the construction cost? It depends. The construction cost could have increased. The gross realisation could be adjusted.

MS GRANT: Yes, I guess it's all of the pieces of the puzzle that you lead you to an answer that says no contribution is a viable outcome.

MR MAKSOUR: Yes.

MS GRANT: Does that statement still hold 12 months later if you were to update the numbers?

MR MAKSOUR: Yes.

MS GRANT: Okay. I don't have any other – yes, I don't have any other specific questions. Brad or Callum, do you have anything that you would like clarified?

MR BRAD JAMES: Nothing from me, Juliet.

MR CALLUM FIRTH: No, thank you.

MS GRANT: Is there anything else that you – yes, that you'd like to add?

MR OLDKNOW: I just wanted to close out the meeting with a couple of points, if that's okay, Madam Chair. And just to the point that we were discussing just then.

I have raised this the whole entire time with Council, that we are basing this viability on a hypothetical development application, that is absolutely hypothetical and it is for that reason that we set the most appropriate way for the Council to obtain affordable housing contributions, would be through its 1% scheme which is currently in play, which is determined at the time of the development application, in respect of the specific development application. And as I said on Tuesday, this proponent is happy to opt into that scheme if it is applicable at that certain time.

My clarifications, just quickly, Madam Chair, were on at our first meeting I mentioned, I just didn't have the background material in front of me but I do now, that the Council had previously attempted to push through a planning proposal with a target of a 10% for a site-specific affordable housing contribution on planning proposal sites that received uplift on two occasions. I just have those specifics for you now, and I just wanted to read those out for the record.

The first attempt was a planning proposal number 2021-3131, and I just wanted to read a couple of paragraphs from the December 2022 gateway determination from the Department, and noting that the planning proposal ultimately did not proceed. And so I just wanted to quickly read out two paragraphs from page 14 of that gateway determination.

I wanted to read out that: the planning proposal in its current form is not recommended to proceed for the following reasons. There were one, two, three, four, five, six. The second reason was for the proposed 10% levy for sites benefiting from uplift through the planning proposal process, it is unclear whether the levy applies to the total residential floor area of development on the whole rezoned area, or to the additional residential floor space created by uplift only.

The Department's guideline states that an affordable housing contribution scheme should only apply to new residential uplift. The proposal lacks details for what the proposed rate would translate to when expressed as a percentage of the proposed uplift, and the implications on the development viability.

A second last reason that the Department recommended for the planning proposal to not proceed was that there is a lack of adequate economic justification and feasibility testing in accordance with the Department's guideline. Specifically, the proposal does not adequately demonstrate the viability of a 1% contribution levy imposed on all new residential apartment development in the LGA, and the viability of a 10% contribution levy on sites proposed for uplift.

So, that was the first attempt. Neither the 1% went through, nor did the 10% go through.

The second attempt by the Council to push through, again, both the 1% contribution and the 10% contribution was in the planning proposal number 2023-2221. And similarly, I'll just read a couple of paragraphs from the Department's gateway determination in October 2023. And, as we know, a planning proposal did proceed in respect of the 1% but it did not proceed in respect of the 10% site-specific target for planning proposals.

I'll just read a couple of paragraphs from pages 9 and 10 of that gateway determination as follows. The Council's updated testing for the proposed 1% rate of affordable housing is considered satisfactory. That's what we know. Whereas the proposed targeted 10% levy in the LEP for sites benefiting from future proposed uplift through a separate planning proposals for rezoning is not supported.

This component of the proposal cannot be supported by the Department as it is not based on feasibility testing of specific sites or areas identified for uplift, nor has the supporting feasibility analysis adequately demonstrated the viability of the proposed provision. This doesn't preclude feasibility testing and the establishment of an affordable housing contributions requirement in percentage terms for any site-specific or precinct-based rezoning sought as part of a future and separate planning proposal. In the meantime, it is more appropriate for an aspirational target such as the 10% or less to be included in local council policies, such as the council's affordable housing contribution scheme, rather than within the LEP.

On this basis, the gateway determination includes a condition to update the planning proposal prior to consultation to remove reference to the 10% target being included in the LEP.

Now, the point of just reading that out onto the record, Chair, was to agree with the comment that was made that, yes, the Council has always had an aspiration of advancing a 10% target for affordable housing contributions, however, historically, the Department itself has had concern in respect of the way in which that proposed target of 10% would read in real terms on the viability of the site-specific projects.

Now, that's the realm that we're in for this specific, this site-specific planning proposal. And in summary, [inaudible] and on the Proponent's evidence, using and adopting the same figures where we can, but disagreeing on those points that we just discussed, we would say that the aspirational 10%, or in this instance 9.7%, is not viable.

So, ultimately, you asked – sorry, the Panel asked on Tuesday, ultimately what is the Applicant's position on this gateway condition, what does the Applicant propose? I'll just summarise and that might wrap this one up, Madam Chair.

The final instructions and submissions are that the Applicant's proposed all the gateway condition is set out as it currently reads on page 4 of the Gateway Review Justification Assessment. That is, the site-specific affordable housing contribution clause should not be paid with the subject planning proposal, on the basis that it is not viable, having regard to Mr Maksour's evidence.

Instead, the proponent is still open to enter into a planning agreement dated 25 March 2025, that is the offer that was issued, it's still happy for a planning proposal – sorry, a planning agreement to be entered into consistent with that offer. And as we've said a couple of times, in the event that the planning proposal is ultimately [inaudible] and the site is rezoned to R3 Medium Density Residential, the current clause in the Waverley LEP in respect of the 1% affordable housing target, that is in section 6.17, will apply to any redevelopment on this site if it is applicable.

MS GRANT: Thank you. So, just so that I'm clear. So, you're saying that your client is willing to uphold the VPA offer which – correct, remind me – that was 100,000?

MR OLDKNOW: That's correct.

MS GRANT: And in addition to the subsequent 1% that would apply at DA stage.

MR OLDKNOW: That is correct, Madam Chair.

MS GRANT: So, maths not being a planner's strong point, how, if the feasibility that we've just looked at, shows that this whole thing isn't viable, how does that work? How can you even offer a VPA if there isn't even feasibility of the project?

MR OLDKNOW: If someone offered me a $100,000, Madam Chair, I might just – I might take it. I don't know if I'd look too far behind that. But look, that's the offer, it's not my offer, it's the Proponent's offer, it's signed by him, it's dated by him, and that's what our instructions are.

MS GRANT: Okay, terrific, thank you. That's great, thanks for rounding that out. Is there anything else that you'd like to add before we wind up?

MR OLDKNOW: I'm finished, Madam Chair, and again, I'll just express my thanks for the Panel for agreeing to meet with Mr Maksour on the short notice, that was quite appreciated from our team.

MS GRANT: Yes. And thank you for making – I know I didn't have much availability today, so thank you being able to accommodate the time schedule. Terrific. Thank you. And with that, we'll close the meeting, and I thank you all for your time, and have a lovely weekend.

MR MAKSOUR: Cheers.

MR OLDKNOW: Thank you everyone.

THE MEETING CONCLUDED