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O/N H-1056081

**INDEPENDENT PLANNING COMMISSION**

**MEETING WITH PROPONENT**

**RE: REQUEST FOR GATEWAY DETERMINATION REVIEW  
OF 2 GREENWICH RD, GREENWICH**

**PANEL:** **CHRIS WILSON  
RUSSELL MILLER**

**ASSISTING PANEL:** **OLIVIA HIRST**

**PROPONENT:** **CHRIS WILSON  
ALEX BELCASTRO  
STEPHEN MOORE  
ANTHONY WHEALY**

**LOCATION:** **IPC OFFICES  
LEVEL 3, 201 ELIZABETH STREET  
SYDNEY, NEW SOUTH WALES**

**DATE:** **11.03 AM, FRIDAY, 2 AUGUST 2019**

COM C. WILSON: Okay. Good morning and welcome. Before we begin, I would like to acknowledge the traditional owners of the land on which we meet and pay my respects to their elders past and present. Welcome to the meeting today on the gateway determination review for a planning proposal seeking to amend the Lane  
5 Cove Local Environmental Plan 2009 in relation to number 2 Greenwich Road, Greenwich, known as the Northside Clinic Mental Health Hospital – former.

The proposal seeks to amend the LEP to permit shop-top housing as an additional land use in the B3 Commercial Core zone and increase the maximum building height  
10 from 25 to 33 metres. My name is Chris Wilson from the commission, and I am the chair of this IPC panel. Joining me on the panel is Russell Miller. The other attendee is Olivia Hirst from the IPC secretariat.

In the interests of openness and transparency and to ensure the full capture of information, today's meeting is being recorded, and a full transcript will be produced and made available on the commission's website. For transcription purposes, I  
15 would be grateful if you could please confirm your names when you first speak. Thank you. This meeting is one part of the commission's process for – of providing advice. It is taking place at the preliminary stage of this process and will form one of  
20 several sources of information upon which we will base – the commission will base its advice.

It is important for the commissioners to ask questions of attendees and to clarify issues whenever we consider it appropriate. If you're asked a question and you are  
25 not in a position to answer, please feel free to take it on notice and provide any additional information in writing, and we will then put it on our website. Thank you. And we will now begin. Um, so we've done the – do you want to just introduce yourselves, first, for the - - -

30 MR C. WILSON: Yeah, I might, if that's okay, Chris.

COM WILSON: Yeah.

MR WILSON: Thank you. Chris Wilson, managing director of Willowtree  
35 Planning. We're responsible for preparing the planning proposal before you. Um, I have Alex Belcastro, who's the national, ah, business development manager from Ramsay Health Care; ah, Stephen Moore, Roberts Day, who prepared the concepts that you have within the planning proposal documentation; and Anthony Whealy, who's a, um, Land and Environment Court, ah, town planning and environment  
40 specialist we thought we'd, ah, bring along today, um, from Mills Oakley Lawyers. So thank you very much for the opportunity to speak with you today.

Um, I suppose we really just want to have a conversation with you about some of the conditions that are attached to the gateway determination. We always felt and  
45 maintained throughout the whole process that we didn't want to be linked to what we'd consider a pretty political or significant political interest in that part of the

world. The application always stood on its own two feet, in terms of site and strategic merit, and we, I suppose, are questioning some of the validity of those conditions. Effectively, what we'd like to do is basically have those conditions deleted or amended to allow us to move forward, ah, with our planning proposal. I  
5 might hand over briefly to Alex to have a discussion or just give you some insight into how this has all come about - - -

COM WILSON: Yes.

10 MR WILSON: - - - and why we're here today. Thank you.

MS A. BELCASTRO: Thank you. So Alex Belcastro, Ramsay Health Care. After 40 years of the hospital operating at 2 Greenwich Road, ah, in 2015 Ramsay Health Care started to undertake an assessment of whether we could, basically, provide  
15 appropriate care via refurbishment of the 2 Greenwich Road building, um, that at the time was structurally, um, at the point which we couldn't expand it any further. Um, the beds at Greenwich Road were about 82 at the time, um, and we knew that there was a requirement to increase capacity on the Lower North Shore at the hospital, um, to around 112 beds, which is what we ended up doing through part of the relocation.

20 Um, for us, because we went from 88 beds, um, in pretty dismal conditions to, um, a new facility which was an \$84 million investment for the company, we, at the time, um, felt that it was very important to ensure that we could keep employment, um, within the area. Ramsay Health Care a – are a significant employer in the health super precinct at North Shore. So we have the northern – ah, we have the private hospital that has more beds than the public hospital, and we also have, obviously, the Northside Clinic, which we've now relocated, um, to closer, to within the precinct itself. Um, from our perspective, over 800 FTE jobs, um, within those two hospitals, and certainly as part of this relocation we increased our FTEs by 63.

30 Um, I think, significantly, we felt as though, um – that we really did require this process, um, to enable us to sell the site, um, and to also assist in funding what is an \$84 million redevelopment. Um, so from our perspective, the finished product, um, that we have been able to deliver, um, as part of the new facility, which was  
35 commissioned, um, early last year in February, is a state of the art facility. It is the best mental health hospital from a quality and facility perspective and in terms of, um, the quality of service, ah, that it provides. Certainly, on a number of clinical metrics, um, it is absolutely exceptional.

40 So I think from the perspective of Ramsay Health Care, um, this has been a really significant and strategic investment, ah, for the community. We know that, um, the Northside brand is one that is recognised, um, certainly well beyond this community. Um, it draws from a significant catchment – east, west, north and even south – and we really do, um, look to, I guess, the support of this process and this outcome and  
45 the support of government in, um, our investment and the investment of, um, I guess, ah, health facilities such as this.

COM WILSON: Thank you. Just one question. How many people are employed at Northside?

MS BELCASTRO: 150 FTEs.

5

COM WILSON: Okay. Yes.

MS BELCASTRO: So we do have up to 230 employees, but, um, that is 150 - - -

10 COM WILSON: So I know, at - - -

MS BELCASTRO: - - - full-time equivalents.

COM WILSON: At 2 Greenwich Road, how many were employed?

15

MS BELCASTRO: Um, it's been an increase of around 60 FTE through the relocation.

UNIDENTIFIED MALE: About 80 - - -

20

COM WILSON: So about 90.

MS BELCASTRO: Correct.

25 COM WILSON: ..... thank you.

MR WILSON: So I think, if it's okay - - -

COM WILSON: Yeah, go for it.

30

MR WILSON: - - - Commissioner, we might - - -

COM WILSON: Thank you.

35 MR WILSON: I just wanted to have, um, Anthony Whealy, if he may, address the panel in terms of some of the – I suppose, the validity of some of those conditions, just have a conversation about that.

40 MR A.J. WHEALY: Sure. So for the record, Anthony Whealy, from Mills Oakley. I suppose, just starting at a higher level, the reason we're here is to review two of the conditions that have been imposed on the gateway certificate. So we have a gateway certificate. What's unusual here is that there's two conditions that we think are problematic; they're hard to understand, in terms of what their meaning – what their effect is. And it's those conditions only that we're seeking to have removed.

45 Equally, though, it would be open to the commission to amend the conditions, to give them some clarity and certainty, so that this proposal can move forward.

So those conditions are conditions 1(a) and condition 5. Um, now, in my opinion, they're inherently problematic, because interpreting them in uncertain and open to debate. We just don't know what they mean. So the conditions require, for example, that the planning proposal demonstrate consistency with consistency with draft  
5 findings of a report that at that – or a study that at that time hadn't yet been issued or finalised. Um, so it was requiring the proponent to do something that no one knew what – what that involved. Similarly, condition 5 requires, ah, the planning proposal be consistent with a final report that, again, wasn't in existence.

10 Willowtree, in requesting this review, were concerned when the draft report was issued, because the draft report didn't specifically nominate or deal with the subject site. It was, effectively, between two areas that were subjects of their own planning proposals or – or rezonings. So Willowtree flagged squarely that there's a potential  
15 problem of – for us to demonstrate consistency with a draft study that doesn't, in fact, directly deal with the subject site. I was then asked to provide some advice on that issue that, ultimately, went to the Northern Regional Panel.

And the advice I provided was that personally I wasn't sure that there was an issue with consistency. That is because what was being proposed here was a development  
20 that would enable, effectively, two uses; a commercial use at the lower levels, residential above, which, in my view, would provide a fairly ideal transition between commercial development on the Pacific Highway and residential development behind.

25 But the key point is there's debate about what is meant by consistency. And so, um, in that advice that went to the Northern Regional Panel, I mentioned a couple of Land and Environment Court cases. Very well-known cases, but what they really boil down to is saying that consistency doesn't mean that you have to directly  
30 achieve what is being required, but you have to be compatible with it.

So in my opinion, the uses were compatible because there was commercial and residential and – on a site that was transitioning between those two zones. And bearing in mind as well that this planning proposal does not increase – um, sorry, does not propose any increase in floor space. So there's no proposal to increase the  
35 density of the site, unlike other planning proposals that have been before the commission recently. So really, the issue is about land use; the land use of the site having more residential, in an area where there's residential immediately adjacent to the site.

40 So in my opinion, consistency possibly could be demonstrated; certainly, it was very arguable. But, in any of the – in any case, none of that matters, because the matter then went to the Northern Regional Panel for a decision on whether or not the planning proposal was consistent with condition 1(a). And Mr Roseth issued a fairly short letter, saying that, um, in the panel's view the current planning proposal does  
45 not satisfy condition 1(a). Um, it could be inferred that that was simply because the panel decided that the – the planning proposal could not be consistent with the draft strategy 2036 because the site, presumably, wasn't specifically mentioned.

So therein lies the problem. It's difficult to deal with a condition that requires consistency when we don't know what parts of the study we need to demonstrate consistency with. Is it the whole of the study? Is it the high-level principles in the study? If it's only those, then we can meet those. We're quite comfortable that the  
5 planning proposal meets all of those high-level objective of the draft study.

But the condition just doesn't specify what it is that we need to be consistent with. Um, so we can debate whether that's the – the panel's decision or – or opinion on consistency is legally correct. We can twist ourselves in knots over all of that, but  
10 the real point for today is that there is uncertainty in conditions of that nature.

Um, now, from a legal point of view, and I don't want to be too legalistic about it, but we can draw some guidance from Land and Environment Court judgments dealing with conditions of development consents, um, but, obviously, this is a  
15 condition on a gateway certificate, so it's a slightly different, um, stream, um, of law, but at the same time we're dealing with a – an instrument of delegated legislation under the Environmental Planning and Assessment Act, so same principles apply. But a couple of key principles that the court always reminds us of with conditions is that they need to be certain they can't – the – well, firstly, they need to be reasonable.  
20 So a condition that's unreasonable – manifestly unreasonable will be invalid.

Similarly, conditions that are uncertain, or that leave essential matters to be determined at a later time, um, are also invalid. So that's a principle – comes from a case called *Mison v Randwick City Council*. Um, and then, lastly, the court has said  
25 that conditions of approval that are, effectively, a refusal, a – referred to as a constructive refusal. So I haven't dealt with that in the advice that went to the Northern Regional Panel, but the – the case reference, for the transcript, is *Hallidays Point Development Proprietary Limited v Greater Taree City Council (No. 2)*, from 2008, where the court said the:

30  
*Imposition of a condition which renders the development impossible constitutes "constructive refusal".*

So in other words, you don't impose a condition which, in fact, amounts to a refusal of an application. Um, if it's impossible to, ah, implement the condition, ah, then the  
35 condition should not be imposed. So in this matter, um, it's inherently – and legally problematic to impose conditions requiring us to comply with, firstly, a draft study that didn't exist at the time that the condition was imposed but, secondly, a final study, um, when we don't know what that means. We don't know what that entails.  
40 And there's going to be debate, as there is now, as to whether we are or are not consistent with those strategies.

So it would be open to the commission to simply delete those conditions and enable this proposal to proceed on merit, in circumstances where it's already been found to  
45 have site-specific merit. Um, alternatively, it would be open to the commission to amend those conditions, to provide clarity on what – what it is we need to be consistent with. Um, and if that's done, then, that would – that would likely resolve

the issue. Unless you have any other questions from a legal point of view, that would be all I have to say today.

5 MR R. MILLER: Thank you. I just had one question. That was just to identify the advice we – we've been provided with a copy of a letter dated the 11<sup>th</sup> of December 2018, just for the record, from Mills Oakley to, um, the managing director of Willowtree. And that's the advice you're referring to?

10 MR WHEALY: That's correct, Commissioner.

MR MILLER: Thank you.

MR WHEALY: Thank you.

15 MR WILSON: That's on our website.

MR MILLER: Yes.

20 MR WILSON: We're happy to field any questions the panel might have at this time.

25 COM WILSON: Oh, I'm just – at this stage, I'm just interested in the response of the panel. Um, I thought they gave four, five distinct reasons why they thought it was inconsistent. I'm just looking for that information here. I – I'll find that. That's okay. That's just something I have to find. Um, so – I mean, we now have the draft 2036. Um, we've been asked to delete conditions by yourselves. If we were to consider deletion of those conditions, we would need to determine consistency with the 2036 plan. That's the bottom line, is it? Is that what you're saying to us?

30 MR WILSON: Well, I – I think what's really interesting is - - -

COM WILSON: Do – are you suggesting that we – we put aside the 2036 strategic plan?

35 MR WILSON: I'm suggesting that we let the district plan requirements prevail, under the circumstances. And our proposal accords with all of the salient matters contained within that. And I think that – we've already been given the gateway, it's been recognised by the regional planning panel and the Department of Planning, that the site exudes site and strategic merit. So that, in our view, has been dealt with, and  
40 it always should have stood on its own two feet. Any planning proposal, as we know, can never just rely on, you know, draft and strategic matters. It has to be able to stand and pass the site and strategic merit test on its own. And we believe it does that. So whether you have regard for it or you consider it, sure, we think it's – it's – it doesn't – the district plan is the key prevailing document, I think, that needs to be  
45 considered here.

MR WHEALY: I would just add one thing. Sorry, this is Anthony Whealy speaking again. But there are other conditions of the gateway determination that we're not looking to disturb, and those require some revisions to, you know, the urban design outcomes for the site. Um, so there are safeguards in place already,  
5 bearing in mind that, as I've said, there's no increase in density proposed. And, really, there's only an extra two storeys on this site proposed.

COM WILSON: Yeah.

10 MR WHEALY: So it's very different to the 19-storey proposals that - - -

COM WILSON: Yeah. I understand - - -

MR WHEALY: Yeah.  
15

COM WILSON: - - - that. We understand that it may or may not have site-specific merit. I guess we – it comes back to whether or not – the question we've got to answer is whether or not it has strategic merit. I guess that's what you're asking us to do, to make a call on that by taking away that condition.

20 MR WILSON: Correct. Yep.

MR S. MOORE: And I think to – just to clarify, in terms of site-specific merit, we would be of the view that that was previously demonstrated. We provided the two  
25 scenarios; the first scenario was as if the surrounding area didn't change. We studied, within the context of site-specific merit particularly, how you define the environment.

COM WILSON: Sure.  
30

MR MOORE: We've particularly looked at the solar implications, as well as the other requirements that you need to do under the apartment design guide – and, basically, compare to a complying commercial envelope, we could actually provide improved conditions to the adjoining neighbours. Under site-specific merit, the  
35 second criteria that you do have to address are – particularly, are the activities or uses compatible with the immediate area, particularly given the surrounding residential neighbourhood context, the ability to provide child care, which was identified by council within their prevailing community infrastructure plan, as a required, um, piece of infrastructure was done.

40 And we also retained a small amount of retail and commercial floor space to largely provide those residents with a walkable daily convenience that was otherwise missing in the area. Um, those types of strategies, at a strategic level, are reinforced by the district plan, which are the prevailing document. And that then, finally, in  
45 terms of, "Is the infrastructure provided fit for purpose?" um, I think Alex has already covered off how Ramsays itself had intensified employment within the health precinct itself identified by government.

And what we were largely doing was providing local conveniences and the infrastructure, um, which was fit for purpose, and that goes right through to, for example, um, that the project, in terms of its site-specificness, is still consistent with new policy, such as local character, right through to, for example, the Premier's, um,  
5 priority on creating a greener city and increasing the proportion of homes within a 10-minute walk of, um, quality open space, which we satisfy.

MR WILSON: Chris Wilson. If I may also add that through the JRPP process it was considered that an R4 zoning would be more desirable. We have no problem  
10 with that. We only included the shop-top arrangement because we wanted to maintain – it was important to council to have some maintenance of some employment at that lower level. We're happy to go to R4. We always have been. To me, it provides a unique and sound opportunity to provide key worker accommodation in a strategic location across from an education and health super  
15 precinct. Plan 101.

COM WILSON: Just in terms of commercial and employment on the – do you – what – have you got any identified figures or estimate of how many people it employs?  
20

MR WILSON: Yeah. We had about 15 was – for a child care. We spoke with some operators early on in the piece. We engaged quite heavily with them, and there was some certain interest.

25 COM WILSON: Okay.

MR WILSON: Um, obviously, with giving rights to the people – the key workers above, you can structure those things in plans and management and things that – you know, if there was a child care down there, the people that live in the building get  
30 first rights to it, which has been done before.

MR WHEALY: I'll just add one more thing, um, Commissioner Wilson, in response to your question about whether we want the commission to determine strategic merit – is just to bear in mind that that question was addressed also by the  
35 Department of Planning in its report last year, where they said, um:

*The planning proposal is considered to have strategic merit, as it will assist in delivering housing supply and choice in an area supported by existing and future public transport infrastructure, being St Leonards Station and the future  
40 Crows Nest Metro Station.*

So none of those factors change. The proposal, we say, had strategic merit, still has strategic merit.

45 MR WILSON: So, indeed – Chris Wilson again – on behalf of Ramsay Health Care, we'd be more than happy to look at a straight R4. Um, there's no problem

with that. It's all been a party to the application process throughout the considerations by the regional planning panel and the department.

5 COM WILSON: Comes back to the same question about strategic merit and - - -

MR WILSON: Yep.

COM WILSON: And, um – and the draft plan, I guess, and what weight that plays.

10 MR WILSON: Yeah, and the principles in that, which we accord to and we achieve – all of them. So whether you apply it or you don't, we achieve the salient principles in that document.

15 MR MOORE: And I think particularly too, just in terms of strategic merit, certainly through an urban design and a place lens, we always, at that point in time, viewed the draft district plan ourselves as the prevailing document, and, whether it was the criteria for more housing in right locations we tick, those criteria are still relevant today, through to the opportunity to create new types of places which, ah, encourage walking, and particularly, too, um, at the original panel conversation they certainly  
20 appreciated there's a broad catchment of residents going down Greenwich Road that don't benefit from a local café, don't benefit from child care, and by providing those pieces of infrastructure towards the top of the hill you could reduce local trips, increase walking and actually make the area more sustainable.

25 All of those goals are completely aligned with the planning priorities of the district plan, which we always viewed as the prevailing document. Similarly, too, at that point in time, the Government Architect's, ah, Better Placed was a draft. Um, the first criteria on, ah, particularly local context or character, ah, we still tick that box, and I think our diagrams basically do show that, effectively, our finer-grain step built  
30 form, compared to a complying envelope for a commercial building, actually provides a more appropriate transition back down into the neighbourhood context if it was to remain unchanged.

35 MR WILSON: We also have R4 to the – below us and across the road from us.

COM WILSON: Sure. Sits below a medical precinct, doesn't it? Or on - - -

MR WILSON: Across the road.

40 COM WILSON: Yeah.

MR WILSON: Yeah. Across the road and - - -

45 COM WILSON: Along the highway.

MS BELCASTRO: It's a significant physical separation because of the cemetery, and there always sort of will be.

COM WILSON: I thought there were medical - - -

MR WILSON: No.

5 COM WILSON: - - - uses along the highway.

MR WILSON: No.

10 MS BELCASTRO: There are medical uses further down the Pacific Highway. Um, it's – particularly, there's some consulting suites – medical consulting suites.

COM WILSON: Yeah.

15 MS BELCASTRO: Um, and there's a small day procedure centre.

MR WILSON: And the Ramsay head office - - -

MS BELCASTRO: And the reason, historically, behind that - - -

20 COM WILSON: Um, do you have any more questions?

MR MILLER: No.

25 COM WILSON: Okay. Look, thank you very much for coming down. I really appreciate the submission today. Um, we heard from the department this morning. We're yet to hear from Lane Cove Council. They're next. And, ah, we hope to be making our determination probably in the next two weeks.

30 MR WILSON: Thank you very much.

COM WILSON: So - - -

35 MR MILLER: I take it there's nothing further that's come from this that you want to put to us. Ah, if you do, you need to put it in writing, um, within the week. Is that right, Chris?

COM WILSON: That works, Olivia?

40 MS O. HIRST: Yeah. Yeah. Within, um – if you get - - -

COM WILSON: Seven days?

MS HIRST: Within seven days to us.

45 COM WILSON: So anything - - -

MR MILLER: That's particularly relevant in relation to transcript for, um – that's come from other department or from the council, which will be up on our website  
- - -

5 COM WILSON: So if you have further to add after looking at the transcripts - - -

MR WILSON: Right.

10 COM WILSON: - - - you can make submission to us.

MR WILSON: Oh, of course. Thank you very much.

MR WHEALY: Terrific. Thanks for your time.

15 COM WILSON: Thank you very much for coming.

MS BELCASTRO: Thank you.

20 MR WILSON: Thank you.

MR WHEALY: Okay. Thanks.

MR MOORE: ..... time. Thank you.

25

**RECORDING CONCLUDED**

**[11.25 am]**