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TRANSCRIPT OF PROCEEDINGS

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INDEPENDENT PLANNING COMMISSION

NSW

RECORD OF MEETING

CHAIR: CHRIS WILSON

PRESTONS INDUSTRIAL ESTATE MOD 5

SSD 7155

COUNCIL: IAN STENDARA

CHARLIE CARABALLO

GRAHAM MATTHEWS

SYDNEY

10.35 AM, FRIDAY, 23 AUGUST 2019

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MR C. WILSON: Okay. Thank you for coming in. Before we begin, I would like to acknowledge the traditional owners of the land on which we meet, the Gadigal people. I would also like to pay my respects to their elders, past and present, and to the elders from other communities who may be here today. Welcome to the meeting
5 today. As you are aware, Logos Properties Holding Proprietary Limited, the applicant, is seeking approval to remove and modify the existing conditions of consent relating to the development contribution for drainage works required for Prestons Industrial Estate development located 5 to 35 Yurrunga Street, Prestons, in the local government – in the Liverpool Local Government area.

10

My name is Chris Wilson. I am the chair of this IPC panel. The other attendee at the meeting is Brad James from the commission secretariat. In the interest 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
15 commission's website. This meeting is one part of the commission's decision-making process. It is taking place at the preliminary stages of this process and will form one of several sources of information upon which the commission will base its decision. It is important for the commissioners to ask questions of attendees and to clarify issues whenever we consider it appropriate. If you are asked a question and
20 are not in a position to answer, please feel free to take it on notice and provide any additional information in writing to ensure accuracy – um, yeah. In writing. Ah, it will be subsequently put on our website.

I request that all members here today introduce themselves before speaking for the
25 first time and for all members to ensure they do not speak over the top of each other to ensure accuracy of the transcript. We will now begin, and thank you for coming. Now, you've requested a meeting. Can you – do you want to just quickly go through council's position in relation to this matter?

30 MR G. MATTHEWS: Um, so I'm, um, ah, Graham Matthews, ah, senior strategic planner at Liverpool Council, and, ah, I've been the, um, assessing officer, ah, from council's point of view for the, um, Prestons Industrial – from the planning point of view for, um – off and on for a number of years. Um, council, ah, made an initial –
35 received the, um, request for comment from the Department of Planning for the modification 5 in, ah, March, ah, this year. We made a submission to, ah, the department, which we were quite, um, taken aback by the, um – the scope of this, um, proposed amendment. Um, council had attempted to negotiate a, ah, works in kind agreement with the, ah – the – the applicant, um, which broke down, ah, at a certain point. The applicant then chose to, ah, complete the drainage works
40 themselves.

Um, throughout the period, um, council has been pressing that department, um, to enforce, um, conditions B23 and B23(a) which relate to the payment of, ah, development contributions. Um, they had – there was a time limit on that. I think it
45 was, um, ah, certainly before occupation certificates were issued. Occupation certificates have been issued, um, in spite of that, um, condition of consent, and still,

ah, no contributions have been paid by the applicant. Um, council, um, made it quite clear to the, um, the – the condition C17, ah, of the consent gives council flexibility whether or not to accept the drainage works completed by the developer as part or full recompense for the development, um, contributions, um, as required by the
5 contributions plan, and, in fact, um, council's works in kind policy is quite clear.

It states that, um – at 5.3 that assessment and termination of the application got to take a week. Um, council assess proposal with due regard to provisions in the contributions plan. Um, so particularly for, ah, a value for money and so forth, but,
10 um, while also – thank you – take into account, ah, the, ah, financial implications for council, which is what council did and made its offer, um, up to and including the, ah – the total value of, ah, the funds set aside, um, in the contributions plan for that – for that works. The, um – on this basis, um, staff have offered to, ah, enter into – did offer to enter into a WIK agreement with the applicant to, ah, credit the amount of
15 \$970,029, um, at the March 2017 CPI rate.

The, um – were the recommendation from the department to be, um, ah – with regard to this matter to be, ah, followed through, council would be, um, \$287,406 out of pocket, ah, which is \$287,406 which council could not then spend on infrastructure,
20 ah, particularly drainage infrastructure in the Prestons industrial area. Obviously, council has quite a tight budget, ah, for this, um, under the contributions scheme. Um, the, um, removal of, um, B23 and B23(a), um, so as I mentioned earlier, the specified timeframes, ah, within their consent have not been met by the applicant, and ah, the department took no action to enforce that.

Um, the – according to the contributions plan, the developer must provide contributions in accordance with the plan, um, as is required of all other developers in the area, um, and were the decision to be made not to enforce that, council believes that would set an exceedingly undesirable precedent, um, and the
30 expectation would be that this would not be the last applicant that, um, seeks to air their dispute with council about some matter to, um, have their contributions cut quite significantly. The indexation, um, of the contributions is consistent with clause 3.76 of the contributions plan, um, and, um, council feels, as I said, that any variation would create a very undesirable precedent.

Now, council, um, was not informed that the department had, um, made its recommendation. Um, it was simply by a little bit of trolling of the, ah, department's website, um, that I discovered that they'd made a recommendation. Um, the department did not, ah, give council a copy of the, um, proponent's, ah, response to
40 submissions. Um, they did not give us an option to, ah, provide a submission on that before they made their recommendation. Um, and, in fact, um, we believe that, um, errors were made, ah, in that, um, assessment, particularly around the, ah, the – the ultimate, um, path of the drainage works. Um, it's council's understanding, and, um, Charlie Carabello, who's the – sorry, the, um, um, the coordinator of, um, council's
45 land and development engineering section, will go into detail on that in a minute, but it's council's understanding that the department has a misunderstanding.

They believe that the – the works carried out by the developer were, um, ah, consistent with some interim drainage plan, um, where, in fact, the, ah, developer chose to construct the, ah, drainage works sort of like a dog leg, if you know what I mean, sort of, um, right angles rather than a diagonal across the site in order to free
5 up more land for development for their purposes.

MR WILSON: Yes.

MR MATTHEWS: So, yep. Council feels that, um, the assessment and the, um –
10 the recommendation that the department has made is unfortunate and unreasonable in the circumstances, and, um, we would recommend that it's set aside.

MR WILSON: Just – just on that, the department does make, um – relies heavily on that interim drainage strategy, the one that was commissioned by council in 2014; is
15 that correct?

MR MATTHEWS: Um - - -

MR C. CARABALLO: Um, the – the interim drainage - - -
20

MR WILSON: In my understanding, there was the contributions plan, 2009.

MR CARABALLO: Yes.

MR WILSON: Then there was this interim drainage strategy for Prestons which
25 was commissioned by council.

MR CARABALLO: Yep.

MR WILSON: Which came up – or may or may not have come up with an
30 alternative solution alternative to the contributions plan; is that correct?

MR CARABALLO: Um, that's partly correct. Um, Charlie Caraballo.

MR WILSON: Sorry, Charlie. Yeah.
35

MR CARABALLO: Um, um, coordinator, land development engineer. Um, council had gone, um, part way of, ah, redirecting flows from, um, the residential side of Prestons through the industrial land by taking the drainage across through to
40 the eastern side of Bernera Road.

MR WILSON: Right.

MR CARABALLO: Rather than going parallel. Um, I just want to submit, um, this
45 plan that shows that was the diagonal line that's in contention now.

MR WILSON: Yeah. Okay.

MR CARABALLO: Ah, and the trunk drainage was to make its way, ah, parallel down Bernera Road through to, um - - -

MR WILSON: Okay.

5

MR CARABALLO: - - - the creek system there. I think that's Hinchinbrook Creek. Um, council, ah, with the permission of the previous owner, they built a - a temporary detention basin.

10 MR WILSON: Right.

MR CARABALLO: And brought the water across - across Bernera Road through, um - through, um, a road called Yato Road where, um, Aldi had, ah, developed a big distribution centre there.

15

MR WILSON: Sure.

MR CARABALLO: So the drainage scheme, it still worked, but they just diverted the - the major flows through another means, and hence why sections of this box drainage culvert, ah, was never required to be built, but Logos at the time had persisted, "Oh, no, we can still build it," and I strongly advised them that it's just going to be a white elephant, so to speak, that, you know, it's not going to serve any purpose, so - and they were connecting to a box culvert that crossed over Bernera Road.

25

MR WILSON: Okay. So, ah, the - so then the drainage design approved by council engineers or approved as part of the 2016 development application eventually - I don't - it wasn't approved at the time, was it?

30 MR CARABALLO: Mmm.

MR WILSON: That came later. That was consistent with the section 94 contributions plan, the works identified in the section 94 plan?

35 MR CARABALLO: It - it was consistent. However, there was some, ah, redirection of that main diagonal line to - to suit the development, um, to get a better building for costs.

MR WILSON: That - that was the applicants.

40

MR CARABALLO: Yep. Yep.

MR WILSON: Yeah. Yeah. But - but the - the council's objective for stormwater drainage for Prestons - - -

45

MR CARABALLO: Yep.

MR WILSON: - - - the – the approved – the applicant’s approval, notwithstanding their change, it was generally consistent with section 94.

MR CARABALLO: I – yeah. Most definitely, still consistent with the section 94.

5

MR WILSON: So, in other words, the interim – the interim response was generally consistent as well, was it?

MR CARABALLO: Mmm.

10

MR WILSON: Was it?

MR CARABALLO: Yes.

15 MR WILSON: If council – if council was required to construct that public infrastructure, how much would it cost?

MR CARABALLO: Oh - - -

20 MR WILSON: Noting – noting the QS report.

MR CARABALLO: I – I wouldn’t have a – an idea at this, ah – this time.

MR WILSON: Okay.

25

MR CARABALLO: Yeah.

MR WILSON: But – but council was part of the QS process?

30 MR CARABALLO: Ah, no, because, basically, it was advised to Logos that, um, just, um, follow the – the, um – the works in kind policy and – and the procedures in that prior to making, um, a submission to council for – for council to assess. Yeah.

35 MR WILSON: Oh, I – I was under the impression that – the department may be wrong, but I guess I was under the impression that there was that condition for the independent quantity surveyor report on the – on the drainage and stormwater works.

MR CARABALLO: Yep. Yep.

40 MR WILSON: I understood that to be an attempt by the department to inform the – the contributions process. Is that your understanding?

MR CARABALLO: No. No. That wasn’t my understanding.

45 MR WILSON: What – what was your understanding of what that QS was - - -

MR CARABALLO: Well - - -

MR WILSON: Independent QS report was for?

MR CARABALLO: - - - the independent QS was for council, um, ah – we – we
5 rely upon that with regards to what would be the – the typical market rate, um, that –
what the cost would be to construct that piece of infrastructure. Um, in my team, we
deal with a lot of works in kind, um, um, processes with regards to private
development – um, residential development, where they’ll go through a similar
system to council’s, um, procurement process where, um, three tenders are - - -

10 MR WILSON: Yeah. Yeah.

MR CARABALLO: - - - called for, and then based on, you know, whether it’s the,
um, ah, the – the lowest cost - - -

15 MR WILSON: Yeah.

MR CARABALLO: - - - um, for – um, for that, um, particular infrastructure.

MR WILSON: Sure.
20

MR CARABALLO: We’ll go with that, um, sometimes the developer will say,
“Well, this particular contractor is higher than what - - -”

MR WILSON: So you’re – you’re saying he probably could have done it cheaper if
25 they’d gone through that process.

MR CARABALLO: Most definitely. Yes.

MR WILSON: Yeah. Okay.
30

MR CARABALLO: So it was just more like a – like a check for us to say, “Well,
this QS seems a bit too – too inflated.”

MR WILSON: Mmm.
35

MR CARABALLO: “And maybe we should get some more – more reliant, um,
data where typically a contractor that’s doing these – these type of works would have
more – more of a better idea than someone just going through – pardon the
expression, but going through a Rawlinsons or a Cordell-type, um, unit costs of rates,
40 ah, you know, um, document.

MR WILSON: Yep. Yep. This – this must occur, does it, in – I mean, identify –
contributions plans must identify infrastructure be provided that costs more when –
when they’re – when it’s provided by applicants.
45

MR CARABALLO: Oh, yeah. Most definitely. I – I’m always wary that, um, the
contributions plan may be undercooked at times, where - - -

MR WILSON: Yep.

MR CARABALLO: But in saying that, though, um, it goes through a – quite a rigorous process before we – we actually, um, ah, make that, um, document available
5 on council's website.

MR WILSON: Sure.

MR CARABALLO: Through – it goes through an IPART process, so they check
10 that council's numbers are – are correct, um, so – so we're quite heavily reliant upon that, that it's quite true at the time that it's been public – published.

MR WILSON: And, um – sorry I'm asking these questions.

15 MR CARABALLO: That's okay.

MR WILSON: But just in terms of your contributions plan, is – is there an obligation to – to update them, review them or - - -

20 MR CARABALLO: That's a good - - -

MR WILSON: A statutory obligation.

MR CARABALLO: That's a good question, but we've – I've never come across it
25 in – in my time at council - - -

MR WILSON: All right.

MR CARABALLO: - - - that it's been, um, reviewed for additional increases in –
30 in, um, funds, probably.

MR WILSON: Like, for instances, how – the pace of development's been reasonably quick out in Prestons, hasn't it?

35 MR MATTHEWS: It has, particularly since, um, ah, Logos – even – even before Logos, I guess, but they've particularly, um, kicked things off. Yeah. Yeah. So there – there is quite a high take-up, I think, of the, um, available land in that Prestons industrial area. Um - - -

40 MR WILSON: Yep. Okay. Look, I – look, I appreciate the issue about the – the response to submissions and so forth.

MR MATTHEWS: Yeah.

45 MR WILSON: But you've been – you've been given the opportunity now, so - - -

MR CARABALLO: Yep.

MR MATTHEWS: Yep.

MR CARABALLO: Yep.

5 MR WILSON: Yep. So that's – that's resolved. Yeah.

MR MATTHEWS: Okay. Could I – could I make a further comment?

MR WILSON: Course. Yeah. Of course.

10

MR MATTHEWS: Um, just in terms of the developer always had the option - - -

MR WILSON: Yep.

15 MR MATTHEWS: - - - to allow council to complete the drainage works. Um, that was always an option. They've never been required to actually, um, construct the drainage works themselves. Um, they constructed them without formalising a works in kind agreement with council, which, um, ah, breaches the works in kind policy, ah, and they were quite clear on that from the beginning. Um, so if we, ah, simply
20 look at the conditions of consent which existed, which, um, council, in good faith, as – and council is not a, um – a party to consent. Um, council is neither the concerned authority, nor is council the, um, the – the – bound by the – bound by the consent, but council, in good faith, um, attempted to negotiate a works in kind agreement.

25 Ah, the, ah, developer chose to stick to their guns, which, obviously, is their right. They chose to actually do the work themselves, which is their right. Um, but then, you know, council's concern is that, um, they, um, ah – two parts, that they, um, then are insisting on, um, a payment for works that they completed without a works in kind agreement being formalised, which is against the works in kind policy. It's
30 against what the consent conditions said at the time. And, secondly, that the way that the department is choosing to resolve this dispute – and there is a dispute resolution clause within the, ah – the consent conditions, and it, sort of, says the secretary will resolve disputes. The department never actually notified council that there was a dispute.

35

Council, on a number of modifications that have been submitted by the, ah – the applicant – and I think we're up to number 9 at the moment – made a comment to the department that the, ah, contributions had not been paid, that the, ah, developer was in clear breach of conditions B23 and B23(a). At no point did the department say to
40 council that they are – because they are in dispute, that they have lodged a dispute and, therefore, we are not taking action on this particular matter. You know, it's – council has been very much left in the dark. They're very much the poor cousin in this process, and I can't stress too strongly the – the – the implications were this decision to be enforced – the implications for, um, ah, council's budgeting for
45 development in the, ah – particularly in the Prestons industrial area, but I think more generally - - -

MR WILSON: Is that because most of it's SSD? Because it would only be an issue, in my understanding, where the Minister is a concerned authority.

MR MATTHEWS: Um, that's certainly the case for – that – it – inasmuch as –
5 well, I suppose it is – it is – there is a lot of SSD. That's quite clear. That's – you
know, you're quite correct in terms of the, um – the ability to, um, ah – for the
Minister to set a, um, ah – a contribution rate separate to the, um – to the
contributions plan, but, um, the – that's part of it, but also I think the, um – the – the
negotiation and the – the flagrant disregard of, um, council's WIK policy which this
10 also engenders, and I think we'd encourage developers, particularly larger
developers, and particularly, as you say, for SSDs – and many of them are SSDs in
that area – to, um, seek a similar pathway to, um, really, um, you know, cut council
for – in this case, over one and a quarter millions.

15 MR WILSON: Why wasn't it resolved at the time in 2016?

MR MATTHEWS: Um, I wasn't present. I'm sorry.

MR WILSON: The – the – the dispute seems to have been going on for three years
20 in terms of this difference of opinion about the true cost of what's in your section 94
plan; is that just – it's just there and it hasn't been resolved, and the department's
attempt to resolve it, was it through those conditions, the QS report and so forth?

MR CARABALLO: I think at the time it was just, um – it was just placed in the
25 too-hard basket. Like, we – we put on the table what we were prepared to pay, the
970,000.

MR WILSON: Yep.

30 MR CARABALLO: And Logos just refused to accept that and went through other
means trying to - - -

MR WILSON: Right.

35 MR CARABALLO: Trying to get that – that money back.

MR WILSON: Okay.

MR CARABALLO: That's my assumption, but, yeah, and it just – it just broke
40 down, and then it – there would be, like, six months down the track, nothing had –
there's no communication via the department - - -

MR WILSON: Sure.

45 MR CARABALLO: - - - through the council and whatnot, so - - -

MR WILSON: So council is satisfied that the 970,000 represents the true cost of the works if it – regardless of who undertook that work.

MR CARABALLO: It reflects what is the available funds available.

5

MR WILSON: So you're – and – and that's my next question.

MR CARABALLO: Yep.

10 MR WILSON: Council – I guess it's difficult for council.

MR CARABALLO: Yep.

MR WILSON: I'm not trying to put words in your mouth.

15

MR CARABALLO: Mmm.

MR WILSON: But it's difficult for councils to offer moneys above and beyond your section 94 contributions plan.

20

MR CARABALLO: That's exactly right, and that's what we told Logos at the time. So we can't pay above and beyond. It's beyond our pay grade, but it was something
- - -

25 MR WILSON: Right.

MR CARABALLO: - - - that would have to go through to the appropriate people at council, so yeah.

30 MR WILSON: So does that happen? Oh, I think I just – we've already asked – asked that question, but - - -

MR CARABALLO: Typically not.

35 MR WILSON: Typically not.

MR CARABALLO: No, because we've had – like, um, a lot of my, um, ah, section 94 works in kind deals with a lot of the residential, um, developments, and - - -

40 MR WILSON: Yep.

MR CARABALLO: - - - nine times out of 10 the developers will just say, "Well, it's a – it's an impost that, ah – additional cost," then they're just happy. I wouldn't say happy to wear it, but they're – it's something that they'll say, "Well, we'll just take what – what money that council's got available in the plan," and a lot of, ah, negotiations and, um, debates I've had with consultants that do a lot of these type of works are saying, "Well, we'll just claim the – the maximum amount. What's the
45

point in going through the QS?" And I always reinforce that, look, council just wants value for money.

MR WILSON: Mmm.

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MR CARABALLO: And we still want to see that process of getting the true quotation, and there are times where a developer will provide a – a costing that's way less than the contribution value in the plan, and they're happy to just take whatever they spent on that particular infrastructure and – and so be it.

10

MR MATTHEWS: Can I raise just one more point?

MR WILSON: Yep.

15

MR MATTHEWS: Charlie, you were saying earlier that the – the box culverts that, ah, run parallel but near a road were constructed, but you were saying earlier that council offered a credit for that to the, ah, developer.

20

MR CARABALLO: Yep. Yeah. We – we offered the – we offered a credit, because they were insisting, "Oh, we can still build it." I said, "There's no point, because that's gonna be an additional cost with, you know, putting in – constructing box culverts rather than, um, providing an alternate solution." I said, "The – the solution has been provided. It's – it's – ah, the box culverts are going on a easterly direction across Bernera Road. There's no need," and I said, "As a means of – like, in good faith, council will – we're still happy to – to give you that – that credit amount for those box culverts," and in lieu of that I said, "Look, what's needed there is still the drainage corridor for overland flow," and they created a – a drainage

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There was some negotiations with, um, our strategic planners with regards to the setbacks required for landscaping. Council were advised that they were going to have some sort of vehicular movement around that warehouse, which, um, in built form, it never happened. So there was kind of things that caught us by surprise, well, hang on, they've – they've really, kind of, you know, thrown the wool over council's eyes and, um, gotten away with a little bit more warehouse space than what – you know, what council would have required as landscaping.

35

MR WILSON: Okay. Um, are you aware of any – I mean, this must have come up before. Has this come up before in council's knowledge? This doesn't – doesn't seem to be something that's unusual.

40

MR CARABALLO: As far as?

45

MR WILSON: The – the developers require – or are claiming a greater offset. I know you haven't got through the WIK process under these circumstances, but, um
- - -

MR CARABALLO: I haven't come across an amount this – this much. I mean, like, we're talking about 600,000 over than what we were, um, you know - - -

5 MR WILSON: So the bottom – so – okay.

MR CARABALLO: Yep.

10 MR WILSON: So then two things. You can only offer so much under your contributions plan.

MR CARABALLO: Yep.

15 MR WILSON: And you feel those works could have been done more cheaply if it had gone out to a tender.

MR CARABALLO: Yep.

MR WILSON: And properly.

20 MR CARABALLO: Yep.

MR WILSON: Okay. All right.

MR CARABALLO: Yep.

25 MR WILSON: Um, is there anything else?

MR MATTHEWS: I guess that's – ironically, that's the smaller part of the impost on council.

30 MR WILSON: Yep.

MR MATTHEWS: The larger part is the, um – the – the pegging of the contributions at the 2017 rate.

35 MR WILSON: Which is when the works were completed. Yep.

MR MATTHEWS: Um, I think – I believe it's when the, um, ah, applicant lodged the QS with the department, February 2017.

40 MR WILSON: Yeah. I think – but they also – I think they also mentioned today it's also the same time they were – when the works were completed.

MR MATTHEWS: Okay.

45 MR WILSON: Thereabouts.

MR MATTHEWS: Okay. Um, I wasn't – I was - - -

MR WILSON: That's okay.

5 MR MATTHEWS: - - - ill at the time.

MR WILSON: Yeah. Yeah.

10 MR MATTHEWS: So I'm not quite sure. Um, the, um – yeah. So, ah, that's – of
the 1.25 million, this would effectively, um, take away from council – council's
contributions, um, ah, funds. Ah, one million of that is in indexation, so it's, ah – it's
exceedingly harsh penalty to impose on, um – on – on council particularly, as I said,
that the, ah, department was in no way forthcoming that this is what they were
15 intending at the time. It's been a – very much a, um – a – as I said, council
throughout this process has very much been the poor cousin, and it, ah, makes it very
difficult.

MR WILSON: Have you – have you been involved in discussions with the
department and the applicant?

20

MR MATTHEWS: I've attempted to, yes. Yeah. Yeah.

MR WILSON: In – in resolving it. I mean, part of the dispute resolution process,
surely you had meetings when all three parties have been – been - - -

25

MR MATTHEWS: Yep. There were. I was not involved in those particular
meetings. Um, I've been involved in discussions with the department around the, ah –
the modifications themselves, but the, um, the detail – our contributions planner
was involved in that with Charlie, so Charlie was involved in those discussions.

30

MR WILSON: Okay. All right. I – they're – they're new figures. We hadn't seen
those before, had we? In your latest letter, you – you raise the issue about the – the
loss of indexed moneys.

35 MR MATTHEWS: They are. Yeah. Yeah. They were, um – it's based on the, ah –
I think the July contributions, so indexed to July, so, yes, they are relatively new.

MR WILSON: Right.

40 MR MATTHEWS: I think if we were to go further, ah, I believe the – they were
indexed again or they will be indexed again in September. I'm not quite sure. But,
yeah, they're – they're pretty much – they're roughly what council would lose were
this process to carry through. Yep.

45 MR WILSON: Okay. All right. Um, I think – do you have anything else you want
to add? I don't have any further questions at this stage. Okay. Well, thank you.
Appreciate your coming in.

MR MATTHEWS: Thank you for hearing us.

MR CARABALLO: Thank you.

5 MR WILSON: No worries.

MATTER ADJOURNED at 11.01 am INDEFINITELY