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TRANSCRIPT OF PROCEEDINGS

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INDEPENDENT PLANNING COMMISSION

MEETING WITH CITY OF SYDNEY COUNCIL

RE: COCKLE BAY WHARF REDEVELOPMENT (CONCEPT PROPOSAL)

PANEL: **PETER DUNCAN**
PROF ALICE CLARK
DR PETER WILLIAMS

ASSISTING PANEL: **ROBERT BISLEY**

COUNCIL: **GRAHAM JAHN**
SHANNON RICKERSEY

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

DATE: **12.32 PM, MONDAY, 4 MARCH 2019**

MR P. DUNCAN: Good afternoon and welcome. Before we begin, I'd like to acknowledge the traditional owners of the land on which we meet and pay my respects to their elders past, present and emerging. Welcome to the meeting today on the State Significant Development application 7684 for the concept of a commercial building envelope at Cockle Bay Wharf, 241 to 249 Watt Road, Darling Harbour, and stage 1 early works for demolition of existing building structures.

My name is Peter Duncan, and I'm the chair of this commission panel, and with me today is Professor Alice Clark and Peter Williams, commissioners. The other attendee is Robert Bisley from the commission secretariat, and he's helping the commission on this project.

In the interests of openness and transparency and to ensure the full capture of information today, today's meeting is being recorded, and a full transcript will be produced and made available on the commission website. This meeting is one part of the commission's process of determining this application. It is taking place at the preliminary stage of the process and will form one of several sources of information upon which the commission will base its final decision.

It is important for the commission to ask questions of attendees and to clarify issues whenever we consider it appropriate. If you are asked a question and you're not in a position or comfortable to answer, please feel free to take the question on notice and provide any information in writing, which will also be put on the website subsequently. At that, we will now begin. Graham, I'll hand to you. I think if you could elaborate on council's position, and then we can – we'll save questions towards the end.

MR G. JAHN: Okay.

MR DUNCAN: Or when you're ready. Thanks.

MR JAHN: So my name is Graham Jahn. I am the director of planning, development and transport at the City of Sydney. The City of Sydney supports and promotes the development of new office space in the CBD in the right locations. The draft Central Sydney Planning Strategy, which I'm holding a copy of at the moment, developed from 2003 until – 2013, I should say, until 2016, establishes a framework of how commercial, cultural and visitor floor space in the CBD, the central Sydney, can grow to 2036 while simultaneously enhancing the quality of places, particularly the public spaces and parks and harbourages around central Sydney. They're – those two dimension are very important: protection of places and determining growth.

The subject site does not come under the City of Sydney control, as it is owned by the state and the State Significant Development pathway applies. The site has been the subject of previous significant renewal by Lendlease in the 1990s: three commercial towers, a publicly accessible open space in the form of a garden and

three publicly accessible bridges, together with a three-storey entertainment and restaurant precinct known as Cockle Bay Wharf, all subject to commercial lease arrangements until, I believe, 2088. The assessment report prepared by Department of Planning – and I’ll just refer to them as DPI from here – recommends approval to
5 a modified scheme subject to conditions.

I note design advice was obtained from Peter Webber, a former New South Wales Government Architect from ’73 to ’74 and later a New South Wales Planning Commissioner, rather than the current New South Wales Government Architect. The
10 design advice is relied upon in the assessment of architectural acceptability by the department staff.

Now, I’m going to refer to a few pages in the report. The assessment report notes – and that’s page 70 – that the development is subject to the Sydney Regional
15 Environmental Plan, Sydney Harbour Catchment, 2005, in which the public good has precedence over the private good when changes are proposed under its jurisdiction. That’s just an overriding principle. The proposal represents a dramatic-scale shift on a narrow site adjacent to the waterfront zoned W8 in that plan.

So I’ll just paint a picture of the strategic context in relation to this development. There is no strategic context to recommend that a tower on the waterfront is desirable or needed, compared to other sites within central Sydney, and, unlike other sites in central Sydney, the site has no implied development rights in terms of floor space or height, and, objectively, it could be – the proposal could be best described as
25 opportunistic. And, to be succinct, the original submission was – particularly when you see the photo of it in context – rapacious in the extreme: 235 metres high, with a very bulky planning envelope, minimal setback from the prime pedestrian promenade, and close to heritage-listed Pyrmont Bridge. It overpowered the entire area and was visually dominant, and I’ll just show a photo.

30 MR DUNCAN: That’s the original.

MR JAHN: Yes. That is the original proposition.

35 PROF CLARK: Thank you.

DR P. WILLIAMS: Thank you.

MR JAHN: Thank you. So moving on to the issues. And I’m going to tackle the
40 first issue because it brings in four or five of the other issues with it, and so the first issue is the overshadowing of future Town Hall Square. The idea of a major civic space in Sydney was first mooted in the 1980s, and, using public funds, the city has acquired, over time, the majority of properties to create this large civic space bounded by George, Park and Pitt, with acquisitions occurring as recently as last
45 year. Concept proposals have been sought regarding the design of the space, and the draft Central Sydney Planning Strategy, together with a planning proposal to amend the LEP, sought to introduce a solar access protection in the afternoon by restricting

any further overshadowing of the future square until sunset. It wasn't a plan; it was a rule. This was computer modelled and it is consistent with all existing LEP height controls. So that – no further overshadowing of the square would not cut across any existing development rights - - -

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MR DUNCAN: Right.

MR JAHN: - - - on any site within the LEP. And just in case you haven't seen an image of the square, that's an image looking from the corner of George and Park Street.

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MR DUNCAN: Thank you.

MR JAHN: Thank you. So the proposed control would protect solar access to the future square throughout the year from midday, so it's only an afternoon control, which currently varies – and this is the sun axis – varies from 3.15 in midwinter right through to 6 pm in summer solar time or 7 pm daylight savings time. Now, the report states that the amended envelope will be allowed, if agreed to by the IPC, to overshadow the future square for 48 days after 4 for about 25 to 30 minutes duration at its peak, which would occur in both autumn and spring – that's page 58.

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The shadow – and we've computer modelled the shadow and we don't disagree with the modelling provided in the report – the shadow will fall on the outdoor dining area along Park Street, when you reference the shadow-fall from the computer model with the most recent concept. When we ran a computer model of what the solar access would be if the tower was lower, compared to with the tower as proposed, and this is just to support the documents. This is without the tower and the green represents the Park Street frontage of the square - - -

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MR DUNCAN: Yes.

MR JAHN: - - - and this is with the tower to shadow.

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MR DUNCAN: And you said you ran a model at a reduced height as well. Is there something in between that or that's the with and without?

MR JAHN: We ran a model which I will talk to at the end - - -

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MR DUNCAN: Okay.

MR JAHN: - - - which is acceptable from our perspective.

MR DUNCAN: Okay, okay.

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MR JAHN: The recommendation in the report is at odds with the city's draft control, which the department has not progressed to gateway for two and a half years, and while this enables the applicant and the department to contend that

overshadowing of the future square is considered acceptable after 4 pm and acceptable as the draft control has no statutory weight – that’s page 59 – I contend that Sydney Regional Environmental Plan, Sydney Harbour Catchment still enshrines the principle that public good has precedence over private good, and that application has not been addressed in the report.

Now, the stated reasons for the department allowing overshadowing after 4 pm comes down, from my reading, to four ideas, four reasons, and they are the private publicly accessible space being proposed; second is it is unreasonable because other city spaces are only protected until 4 pm; thirdly, the draft control has no statutory weight; and fourthly, allowing overshadowing will not create a precedent. And I’d like to take each of those four reasons and discuss them.

The first is that the proposal is delivering private publicly accessible space and therefore is considered a trade-off. I suggest that there is a very concerning imprecision about the nature and the use of the proposed privately owned and operated publicly accessible open space which the department, evidenced by its report, has failed to secure. Now, a good proportion of this proposed area may be used for commercial purposes, such as restaurant terraces or ticketed event space, either public or private in nature, and there is an uncertainty regarding what the quantum of open space required or approved is ranging from 5500 square metres at the lower end to 12,000 square metres at the upper end, a variation of more than 100 per cent from the lower end of the range.

Now, the department feels that this space is of such considerable public benefit to the extent that it is used to justify almost all other negative impacts on the promenade, on the overshadowing of the town hall square, the loss of views and sunlight to the Astoria Apartments and other buildings. All of them relates somehow to this magnificent trade-off. And despite such benefit value being placed on this trade-off, from the city’s perspective it is far from acceptable that this public benefit is not secured in a permanent and transparent way.

The proposal is for it to be simply included in the terms of the commercial lease, able to be revisited by the parties to the lease in the future without any reference to any planning authority. For example, if the lease arrangements were to change, for example, the owners offer a higher fee for a more exclusive use, the department may well feel obliged in the future to modify any terms of approval to suit the amended lease arrangements, and the inability or unwillingness to secure this open space as being publically accessible without fee 24 hours a day should be grounds in fact to refuse the application as, without it, there is no permanency to the suggested public benefit.

The second reason is it is unreasonable to protect the square after 4 pm and there are two parts to this: a significant issue is that by allowing the incremental overshadowing to occur through this approval it becomes an insidious weakening of the objective of retaining solar access year around which the City of Sydney seeks and believes it should uphold in the public good. The city regards this as an

unacceptable undermining of intent through the establishment of a precedent without the technical analysis to back it up, and this stems from a misunderstanding of the proposed nature of the first significant civic square in the centre of Sydney.

5 It will be a 24-hour civic space in the city. It's not comparable to one or two other
sun-protected spaces referred to in the report, such as Town Hall Steps, as being the
basis for running the 4 pm control. Furthermore, the report concludes that is – it is
unreasonable to protect solar access to the future square after 4 pm, contrary to our
gateway request. The planning assessment of this proposal should not determine the
10 validity or otherwise of the proposed control in the gateway request. It shouldn't be
done by a DA. And so the most concerning part is that the city suggests that this
statement in the report should not be accepted by the planning – Independent
Planning Commission as a proposed limitation on – of the draft control, as it will
surely be quoted in subsequent applications.

15 Thirdly, that the draft control has no statutory weight. Although this is true and that
by not progressing the 2016 LEP amendment, the draft control does not have
statutory weight – page 59 – but the principle that the public good has precedence
over the private good in the Sydney Regional Environmental Plan still prevails, we
20 say, and it is a matter for consideration.

And, fourthly, allowing overshadowing will not create a precedent, which is an
assertion in the report and contrary to their own heavy reliance in the matter at hand,
which is the report finds solace in quoting precedent around the harbour and recent
25 towers, changing the paradigm of the valley floor – despite that heavy reliance on
precedent, it is also common planning practice that precedent plays a big part in the
arguments put forward in a project, either at the consent authority or in the courts,
and the department suggests that they don't consider the approval of the building
envelope would set a precedent for overshadowing of the square for any other
30 development applications being assessed on their merits – page 60.

So this is just a contradiction because the whole report is riddled with precedent
arguments to mount the case for a development proposal where there's no height or
floor space or any strategy for an office building to be put on the waterfront,
35 including extending their references to the Barangaroo waterside, as reasons for the
acceptability of the building form and the sighting, and – so the city does not agree
that allowing overshadowing will not create a precedent that will be used by others –
other landowners, either with a consent authority or in the court.

40 So I've just really covered off on the four reasons given for allowing the
overshadowing of the square. Now I'll move onto wind. The planning envelope was
the subject to – of wind assessment, which concluded that there will be wind-related
issues – not surprisingly – generated by a building mass on the waterfront. We've
got plenty of experiences about that, particularly the frontage to the water to the
45 winds coming from the south and the southwest. So besides overshadowing of the
public domain – that is, the boardwalks under the elevated freeway – this is the main
reason why towers have been discouraged on the waterfront in the past.

Now, the report proposes to let the wind mitigation measures be dealt with in the detailed design stage – that is, the later stage – but we have got plenty of experience to know what that means. This will mean that the foreshore promenade or areas of the proposed private publicly accessible open space will have to incorporate
5 windshields or other protective measures for public safety, similar to the elevated which was an afterthought at the Barangaroo project to protect pedestrians and those using the escalator from that risk.

The next issue is the sighting of the building. That's the proximity to the water's
10 edge. The conclusion – there were four conclusions in the independent design advice by Peter Webber, page 111, and the first of those, which is numbered A, is relied upon heavily by the department, but it's factually incorrect. There are no other towers with the same proximity to the water's edge in Darling Harbour, although perhaps it could be stretched to the Crown Casino which is near Barangaroo
15 Headland, which is far away from the W8-zoned water space at Cockle Bay and is considered – I consider and the council considers its approval to be a planning disaster and was opposed by the same adviser, Peter Webber, at the time when he presented at the Barangaroo overdevelopment rally in 2010. Figure 22 of the report, which is on page 47, is an interesting diagram, but it fails to prove that Darling
20 Harbour is characterised by towers in close proximity to the water's edge. In fact
- - -

MR DUNCAN: Just give us again what page that is.

25 MR JAHN: Page 47.

MR DUNCAN: 47. Okay.

MR JAHN: There have been no towers so close to the water's edge. In fact, you
30 can see the outline around the site being in front of the relevant examples, which is where the tower is to be located, and so the precedent which was attempted to be used – or the character – cannot actually be used to mount an argument on acceptability, and, in the past, the Sydney Harbour Foreshore Authority had plans and guidelines specifically aimed to guard against this from occurring.

35 Next is overshadowing. Overshadowing of the Darling Harbour public domain in the mornings is a by-product of locating such a tall tower on the water's edge. The valley floor concept was good planning, and, largely, it should be retained from an environmental perspective. A reduction of the height of the tower so that it does not
40 overshadow the civic space of Town Hall Square and setting back the tower by another two metres would significantly assist with the wind impacts and the overshadowing of the Darling Harbour public domain and the Town Hall Square. I'm just showing you a page from the LEP amendment in twelve – 2016, which shows the Darling Harbour edge - - -

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MR DUNCAN: Yes.

MR JAHN: - - - proposed to be protected from 11 am through to the afternoon, and that provides a zone where there would be a required setback. These are the times of the other public spaces, and you can see that 4 pm only turns up on the Town Hall Steps.

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MR DUNCAN: So the page numbers, are they – just to confirm – they’re page two-forty - - -

MR JAHN: 248.

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MR DUNCAN: Yes. Through to - - -

MR JAHN: 249.

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MR DUNCAN: Of the draft strategy.

MR JAHN: Yes.

MR DUNCAN: Thanks.

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MR JAHN: So now the question of height. The site is not subject to height and floor-space controls but is subject to, as I mentioned, Sydney Harbour Regional Plan 2005. The department’s methodology was to consider context, precedent and measurable impacts as the three issues determining whether a scheme should be supported or that the negative effects should be the subject of a trade-off, but, in doing so, they make absolutely no reference to or consideration to the surrounding statutory LEP controls, which literally adjoin the site, or that there is no precedent of a tower being so close to the water.

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So they’ve selectively chosen the developments they have themselves approved and not referred to the adjoining site and the LEP controls which determine height, and so it’s fairly significant the department fails to refer to the Sydney LEP 2012 when supporting the case for a tall waterfront tower where there is no height controls, and the LEP at that location is 80 metres, and no mention is made of this interface immediately adjoining the site rather than relying on the exceptions approved by the department.

35

Next issue is accounting for private – that is, private publicly accessible space. I acknowledge that the proposal is proposing to install this private but publicly accessible open space, but what the department’s report fails to do is account for the publicly accessible space now within the Cockle Bay development within the Sussex Street frontage, and so on. There must be a net trade-off occurring. It’s not just, “Well, another 5500 metres.” It’s 5500 metres less the current space down on the wharf, which includes the fountains and the pelicans and the accessible decks, together with the bar space and the upper podium and so on. Now, I don’t think this is a – I don’t think our position turns on this, but I would’ve thought that if you were

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using the trade-off so powerfully, it'd have to be on the basis of a net addition of publicly accessible space and not ignoring that.

5 The next issue is pedestrian foot traffic. Insufficient consideration has been given to
the Town Hall station and track from the southern edge of the site along the northern
side of Druitt Street through to Kent Street, which is at capacity at the moment and
the majority of commuters – and this is at capacity at the present at peak times. The
majority of commuters traveling to and from the Cockle Bay development really use
Town Hall Station, crossing Sussex Street, crossing Kent Street, and then crossing
10 Druitt Street through to Town Hall and Sydney Square to the station entrance. That
is a powerful reversible flow from peak mornings to peak afternoons without the
additional capacity provided by this development.

15 Now, the issues arise how can the intervening capacity be provided to meet the
proposed capacity. Already the footpath is fully fenced to prevent people from
serious injury and buses – George Street being one way – going down the hill, of
course, have less ability to stop if someone's pushed out on the footpath. That's not
addressed adequately in the report and I think it bears on the next point.

20 Contributions. The report notes itself that there's a major interface with the project
at a number of locations, the least of which is an unresolved interface on Sussex
Street. In addition to the pedestrian impacts that I just alluded to along Druitt Street
and Kent Street, it's not equitable that other developers must contribute to public
domain upgrades to deal with the impact of their developments and not the
25 leaseholders of Darling Park, considering the very significant impacts, and so a one
per cent contribution would be equitable with other developments and would help to
assist to cope with the improvements of the public domain and footpath upgrades that
will follow. I am at the end - - -

30 MR DUNCAN: Right.

MR JAHN: - - - nearing the end - - -

35 MR DUNCAN: Great.

MR JAHN: - - - you'll be very pleased to know.

MR DUNCAN: That's fine. There's a lot of ground to cover.

40 MR JAHN: I will just – it struck me that this report illustration was meant to
convey the proposal in context, and besides the somewhat deceptive fadeout effect
applied to the tower, unless there's a summer fog, buildings actually become more
distinct as they get higher against the sky, not less, but that's not my concern. On the
left in the background you can see the Citigroup tower – Citigroup Centre as it's
45 called, which is currently the third tallest building in the city, central Sydney, at 243
metres and it's situated on George Street, the corner of George and Park.

5 You may wonder what that building is, because I certainly did, and then we magnified it, and we found that it said Greenland Centre at the top, and the Greenland Centre is actually shorter than the Citigroup building and one block further away on Bathurst and Pitt, and the tower would approximate that dimension considering the Citigroup building.

MR DUNCAN: The mark up?

10 MR JAHN: The mark up. That is a significant difference and the purpose is to show the building in context. I will just conclude by saying one other thing. On a couple of occasions, the report refers to the humanistic scale of the podium of the proposed development, but it doesn't refer at all to any value to the existing Cockle Bay entertainment and destination dining precinct, and I would have to say that that one project which led to the resignation of Seidler from the Darling Park complex in
15 '93, or whenever it was, was purely because it was a humanistic scale and detail that Seidler did not feel comfortable with.

20 So to really just focus on the promise of a humanistic scale regarding a podium being so close to the waterfront and then a tower so high, set only eight metres back from the podium is really to oversell and underplay the humanistic environment of Sydneysiders that was proposed and built in that nineties development. And if you go to the website of the Cockle Bay Wharf right now, it says:

25 *Cockle Bay Wharf is a three storey complex which has become one of Sydney's premium entertainment and dining precincts. Cockle Bay Wharf has attracted some of Australia's leading entrepreneurs, who have combined to successfully realise the original development objective to provide a precinct which is a fusion of food, music and art, reflecting the Sydney lifestyle.*

30 And I would have thought that an evaluation of the humanistic potential of the podium has to be balanced against the provision contained in the existing proposal.

35 MR DUNCAN: Thank you, Graham. Well, we've got time for questions. Peter or Alice, do you have any questions? Just won't be a moment. We'll just - - -

MR JAHN: Perhaps while you're thinking - - -

MR DUNCAN: - - - get our thoughts together. Yes.

40 MR JAHN: Melbourne created a civic space for its city centre, which is Federation Square.

MR DUNCAN: Yes.

45 MR JAHN: And it enjoys sun till 5 or 6 o'clock, and we in Sydney have been planning to create our version of a civic space where we could enjoy sun in summer through till 6 o'clock or 7 o'clock daylight saving. So the point is that the huge

investment to demolish the highest turnover Woolworths, a number of hotels and office buildings to create that square is probably the most significant investment that any administration has done in the city centre, and it can't be simply terminated through a DA report for what I consider an opportunistic development that's too close to the waterfront and unnecessarily high. Melbourne has managed to achieve such a space and this is our opportunity.

MR DUNCAN: Okay. Maybe I could ask a question on that, and we've been presented this morning we had a presentation by the department and we've got a presentation this afternoon with the applicant and I'm sure the shade issue will come up again – or the shadow issue will come up again. There is pre-existing impacts on a future square already there, isn't there?

MR JAHN: Yes, yes.

MR DUNCAN: And this – the impact of this is incremental, but it's in around the side of a footprint that covered Woolworths.

MR JAHN: Yes.

MR DUNCAN: So I guess it's after 4 pm from what I see and, as you rightly point out, 48 days of the year. It's a percentage of the impact on the site itself, that whole site.

MR JAHN: Correct.

MR DUNCAN: I mean, I'm just trying to get my head around, you know, how much access – solar access does this really impinge - - -

MR JAHN: Yes, so - - -

MR DUNCAN: - - - a development such as this, because it is, as you point out, too, it's the major issue, right?

MR JAHN: Yes. Well - - -

MR DUNCAN: It leads to the major issue.

MR JAHN: Because it goes to two or three other issues.

MR DUNCAN: Yes. I understand, yes.

MR JAHN: Yes. So the shadow occurs at the times quoted in the report. We don't disagree with that.

MR DUNCAN: Yes, yes.

MR JAHN: - - - in autumn and spring and otherwise solar access would be available for up to 30 minutes and it terminates at 4. The difficulty I have is twofold: the understanding of the nature of the space by the report-writer.

5 MR DUNCAN: What will be - - -

MR JAHN: Yes.

10 MR DUNCAN: - - - in the space and the area that's impacted by the shadow.

MR JAHN: Yes.

MR DUNCAN: Yes. Yes.

15 MR JAHN: The purpose of the space, the value of the space, and the impacted edge. The reference is there are other spaces. Well, there were only two out of 16 that go till 4 pm and that's the steps on Town Hall. I mean, the steps on Town Hall and Sydney Square are the two other spaces. Now, you might ask yourself is that relevant? Well, Sydney Square can only receive solar access through the slot
20 between St Andrews Building and town Hall; it's only available till 4. So you wouldn't put a control that would unnecessarily affect development when the sun passes behind St Andrew's School, which is on the square. So that Sydney Square control is very specific to Sydney Square, because of its conditions, and it is not an appropriate precedent to relying on yet another use of the precedent.

25 So two things: it's the misunderstanding of the square's use and the misapplication of other examples that are not comparable and, two, the incremental shadowing – and as you say, it is for that time and for those hours – is not significant in itself, although we lose half an hour, but is majorly meaningful in terms of the permanency of that
30 object – of that objective, because if the government allows itself to overshadow the square then surely other developers are entitled to mount that argument as well, and by the time you get to 6 or 7 o'clock, seeking 4 o'clock as being acceptable through a report will be devastating to the intention of the square, three hours or two hours will be lost.

35 DR WILLIAMS: Sorry. Just holding that up, if the development does proceed, will there be outer sections of the proposed Town Hall Square that will have – that would guarantee solar access until sunset?

40 MR JAHN: Yes.

DR WILLIAMS: So there will be no buildings that totally under shadow?

45 MR JAHN: No. There's none in our LEP, and with – our draft strategy planning proposals take care of that. The height development polymetric volume includes such a control.

DR WILLIAMS: So there will be some elements of the square – there will be some elements of the square that will be out of shadow

5 MR JAHN: Yes. There are elements of the square which have some
overshadowing near to 4 pm, about 4.15 by the clock tower of town hall. That's just
accepted, and – of course, as pre-existing, and we accept all buildings as pre-existing.
The beauty of the square – and this is why we can pull it off – is it has got the QBV,
Gresham House, Town Hall Square, and St Andrews, all heritage buildings opposite,
10 and a policy of low buildings 80 metres, 50 to 80 metres, going down to Darling
Harbour. And it created this unique circumstance of environmental quality that can
only be found in one location in the CBD. So that environmental quality starting just
after the 71 strategy began acquisition.

DR WILLIAMS: So I'm just trying to get my head around it. So if the building
15 doesn't – so if the building does proceed, there will be that section that will now be
48 days of the year will have between and 35 minutes of

MR JAHN: I would suggest it's one and 30.

20 DR WILLIAMS: One and 30 minutes odd shadow.

MR JAHN: Yes. On the Park Street edge.

DR WILLIAMS: Yes. And what was being planned has council progress
25 what's going on that particular in terms of - - -

MR JAHN: Yes. So – yes. So that was the photo that I showed you previously.

DR WILLIAMS: Thank you.
30

MR JAHN: This shows outdoor dining.

DR WILLIAMS: So that edge there.

35 MR JAHN: Yes.

DR WILLIAMS: On the outdoor dining will be impacted. This edge here. Is that
the correct edge?

40 MR JAHN: Yes, that's the edge.

DR WILLIAMS: That would be impacted.

MR JAHN: Yes. And you will see green is the northern edge.
45

DR WILLIAMS: So what we're talking about here is this edge here down to dining
being impacted 48 days of the year somewhere between 1 and 30 minutes.

MR JAHN: Correct.

DR WILLIAMS: Between 4 o'clock and 4.30.

5 MR JAHN: Yes.

MR DUNCAN: Builds up over 14 days and then down and then up over 14 days and then down.

10 MR JAHN: That's right.

DR WILLIAMS: Just want to get some sort of – how can I put it – agreement over the impact.

15 MR JAHN: Yes. We don't disagree with the report.

MR DUNCAN: No. And I think that's the important here that you don't disagree with.

20 MR JAHN: Yes.

MR DUNCAN: It's the

25 MR JAHN: So we've done a total solar access environment for the square, because it has got the city group centre to the north, and total solar access, and then these are the hours, so you can see that it's actually beyond – just beyond 6 pm

DR WILLIAMS: Sorry

30 MR DUNCAN: Go ahead.

DR WILLIAMS: You also mentioned that a number of the problems could be overcome if the build – if the height was reduced.

35 MR JAHN: Yes.

DR WILLIAMS: And the building set back metres.

MR JAHN: Yes.

40

DR WILLIAMS: So – okay.

MR JAHN: Do you want me to explain all that?

45 DR WILLIAMS: Yes. Please. Yes. Thank you very much.

MR DUNCAN: Yes.

- MR JAHN: Okay. So the recommendation from the city is that the building will be adjusted in height from 155 RL to 175 RL, that is from the east to the west edges of the tower.
- 5 DR WILLIAMS: That's 155 to - - -
- MR JAHN: To 175. Which results in an 8.7 per cent reduction or approximately 3.4 floors of floor space. This is a diagram showing what that height control would have adjusted the proposed location of the planning so it's 175 behind – and 155.
- 10 So in other words same way that they've done an angle down to park.
- DR WILLIAMS: Yes. So the high point is still facing Cockle Bay.
- MR JAHN: Yes.
- 15 DR WILLIAMS: Yes. And it will take us down to - - -
- MR JAHN: To 155.
- 20 DR WILLIAMS: 155.
- MR JAHN: On Sussex Street.
- DR WILLIAMS: Yes.
- 25 MR DUNCAN: So at the moment that point there would be about 183.
- MR JAHN: Yes. You've got it.
- 30 MR DUNCAN: Yes. Okay.
- MR R. BISLEY: And so that height, plus a two-metre setback.
- DR WILLIAMS: Moving it back further to the east – is that what you're – pushing
- 35 it back further two metres
- MR JAHN: Our recommendation – a report written by our staff and signed by myself would have required an additional two metres clearance from the public promenade to address the wind environment that will be generated by the tower.
- 40 DR WILLIAMS: point that out on the diagram. You're saying another two metres that way.
- MR JAHN: Yes.
- 45 PROF A. CLARK: Of the proposed tower envelope.

MR JAHN: I would suggest that the two metres should apply to any future design
- - -

5 PROF CLARK: Yes.

MR JAHN: - - - but the best way of managing that is to adjust the maximum
envelope.

10 DR WILLIAMS: So two metres back on the - - -

MR JAHN: From - - -

DR WILLIAMS:

15 MR JAHN: Yes. The section passing through the tower and through the podium
and then the waterfront - - -

DR WILLIAMS: Yes.

20 MR JAHN: - - - is nowhere that tight - - -

DR WILLIAMS: Yes.

MR JAHN: - - - within the Darling Harbour precinct.

25 DR WILLIAMS: Right. So it's two metres set back from the promenade

MR JAHN: It's a further two metres from the department's recommendation of
eight.

30 DR WILLIAMS: Yes.

MR DUNCAN: Yes.

35 MR JAHN: And we - - -

PROF CLARK:

MR JAHN: Yes. We suggest 10.

40 MR DUNCAN: It's not exactly the same issue, but do you have a view on the
additional five metres you suggested over the water? I think there's a part here that's
already out that way.

45 MR JAHN: Yes.

MR DUNCAN: And then there's an indent with a suggestion of another five metres there.

5 MR JAHN: Look, as a matter of principle, there has been a diminishing water space in Darling Harbour. Every marina, every boardwalk, every development, tends to close in the water. You wonder where it will end up, because there anything to look at agree with the department's - - -

10 MR DUNCAN: Position.

MR JAHN: - - - issue with that that on balance, there isn't sufficient justification to an extension over the water.

15 MR DUNCAN: Right.

MR JAHN: Better that they provide a further setback and leave the promenade alone. It's established and enjoyable public promenade space in front of the Cockle Wharf development.

20 MR DUNCAN: I was just curious because this part is already there, and I think it looked like a relatively simple extension of that line.

MR DUNCAN: No, no, no

25 MR JAHN: Yes.

MR DUNCAN: Okay. That's okay.

30 PROF CLARK: Peter, I have one question.

MR DUNCAN: Yes, Alice.

35 PROF CLARK: You spoke, I believe – and correct me if I've got it wrong – about the certainty of the terms of use of the publicly available private space, and I'm just wondering – I'm not from Sydney – are there other precedents of large spaces like this that are publicly available - - -

MR JAHN: Yes.

40 PROF CLARK: - - - private space - - -

MR JAHN: Okay.

45 PROF CLARK: - - - and how are they managed, and - - -

MR JAHN: Okay. So I've been with the city in the current role for 10 years, and during that time all of the public space would be either dedicated or secured through a planning agreement, which is a civil deed - - -

5 PROF CLARK: Yes.

MR JAHN: - - - between parties. In the past, where the City of Sydney has created privately owned publicly accessible space – which was usually as a result of planning incentives such as, “If you set the tower back, you can go higher, provided you create a forecourt.” You see these forecourts along George Street, outside various banks and so on. Some 25 to 30 years later, I find that they have no status. They're not secured, and so development proposals are put in front of me for another little building on what was the public space created in consideration for the additional- height tower. And so, to me, that is the cardinal sin: to fail to secure it either by a covenant on the title, a surviving deed that is not lapsed – the two principal instruments – or some other legally binding commitment.

PROF CLARK: Thank you.

20 MR JAHN: Because the whole tower is justified on the fact that the big public benefit's coming with the tower. Well, if that was coming before me, I wouldn't support the terms by which it's currently being proposed, and it's under private hands beyond 2088 because I imagine the lease is being renegotiated. It's vulnerable, in a very attractive position, too.

25 MR DUNCAN: All right. Peter?

PROF CLARK: That's all I have. Yes. Thank you.

30 DR WILLIAMS: So – sorry. Just trying to - - -

MR JAHN: Not doubting all current parties' intents - - -

35 MR DUNCAN: Yes. Yes, no. I - - -

MR JAHN: - - - and bona fides - - -

MR DUNCAN: I understand your point.

40 MR JAHN: - - - but their successors may not share that.

MR DUNCAN: Things change.

45 DR WILLIAMS: So while there's some fundamental concerns about the strategic planning framework for the site and the fact that it's - - -

MR JAHN: Lack of.

DR WILLIAMS: Lack of.

MR JAHN: Yes.

5 DR WILLIAMS: At the end of the day, if council's view was, if there was to be a development here, then it would be – should be amended in the ways that you've suggested - - -

10 MR JAHN: The first issue is don't override our strategy and our gateway request for a control, which is already two and a half years old. It's not correct to do it through a DA. It's critical that this space is not incrementally robbed of solar access by a number of developments. You've got to hold the line, like on Hyde Park. We don't say, "Oh, it's only two per cent over. It's okay," or, "It's not quite reaching the war memorial. It's okay." You've got to hold the line. So the number 1 issue is the
15 height. The development could be made acceptable to the city if it was reduced in height. We've said that all along.

The second thing is my advice. My advice to you is that it is very tall and close to the waterfront promenade and it will inevitably have negative wind effects, and, from
20 a position of public safety, it will mean glass barriers, glass roofs and other things to deal with the risk. That's my advice to you. Not so much affecting our vision, but that's my advice. On a – many of the other matters that have been dealt with by the department, we do agree and support.

25 I have a list of the conditions, and so I'll just close with what – the first one is condition B1(c)(v). This is the condition around the publicly accessible space. I definitely – we, the city, definitely support a 24-hour seven days a week publicly – public accessibility to the space. It would be a positive if it remained that way, fee-free, but it's all in the detail, and that is: is it secured in perpetuity? And what is
30 missing is that it's a condition of consent without a specific requirement to secure this outcome. The second one is A12, and that is the counting and the calculation of this private public space should exclude cycleways and all pedestrian routes through to the waterfront. The - - -

35 MR DUNCAN: And outdoor – you include outdoor - - -

MR JAHN: You should exclude - - -

40 MR DUNCAN: - - - seating and eating and – yes.

MR JAHN: - - - all licensed areas - - -

MR DUNCAN: Yes.

45 MR JAHN: - - - unless they are freely – seating that is freely available to anyone. If it's got any kind of exclusivity about it - - -

MR DUNCAN: Yes.

MR JAHN: And, in any event, if a management plan subject to proper titling security was placed on the public private space, if there is private ticketed events –
5 and I sat through the ICC whole process, so very familiar with this balance between private ticketed events and publicly accessible events. It should be that any management plan approves private exclusive ticketed events that only take up a proportion of that public accessible space or 24-hour access, not entirely. Now, that’s a detail that the report does not need to address, but you need to make sure – I
10 mean, it – that’s a detail that the consent conditions don’t necessarily – but you have to make sure that the management condition – the management plan condition is sufficiently broad in intent to capture that. How can the public coexist with a private ticketed event? And, of course – yes.

15 The view-sharing, an aspirational condition number B1(i). How can this be measured? So the view-sharing to the Astoria Tower, there’s a hopeful condition which says it should – any detail design should improve compared with the submitted visual impact assessment, which is pretty devastating and recorded as severe, but what are the measures of success? How would it be measured? I raise
20 that question. The ESD targets: both the State and the Federal Governments have committed to net-zero carbon situation 2050. I think the stretch targets should be conditioned as being the requirements. So that’s the 5.5 NABERS and the 4.45 NABERS water for commercial, which other developments are committing to. The tower setback, that’s condition B1(g). I think that’s (g). (q). Sorry.

25 We are recommending that the eight metres be a minimum of 10. And I would put the height the number 1 issue for us, and the 10 is number 2 issue. And on both things there are knock-on effects beyond, say, just tower square or whatever wind, overshadowing. With the wind, which is condition B1BB, we think the wind
30 impacts are real, they can be anticipated, and more needs to be said in the conditions that it has got to be resolved as part of the design, not as an add-on around the affected locations. And in fact if it’s unacceptable that the wind impacts pose a safety risk to promenade and in the use of public accessible open space, then the design is questionable whether at the second stage it should proceed. That’s how
35 – the risk profile around it.

And finally in condition B1b, which is the reference to the act “ it should be clarified that all components need to be under the height control agreed, and not
40 in addition. And I only say that because there is some interpretation that rooftop features can be above height control in other locations in the CBD.

So the best outcome for us would be an inclined plane on the height from 155 to 175, and our calculation is that reduces the floor space by an acceptable amount and will
45 be a very prominent building on the foreshore. I do not accept the department’s argument that to reduce it sufficiently to avoid overshadowing Town Hall Square makes an inelegant tower, because they’ve reduced it already from 235 down, and no discussion of a change of elegance. And it’s not an objective in any case.

MR DUNCAN: Thank you. This diagram mind if I are you leaving that with us?

MR JAHN: I'm happy to leave it with you.

5 MR S. RICKERSLEY: That was attached to our submission.

MR DUNCAN: So it's already there in the submission, yes. Yes.

10 MR JAHN: It just helps to dig it out.

MR DUNCAN: Yes. Thanks, Graham, Shannon. We – I don't think we've got any other questions? Do you?

15 DR WILLIAMS: Can I just ask one more about - - -

MR DUNCAN: Yes.

DR WILLIAMS: - - - what's the status of the strategy where, like, is it progressing still? Is it on sort of hold?

20 MR JAHN: Officially, it is progressing still, but progressing slowly.

DR WILLIAMS: Okay. And the department, have they – they obviously haven't endorsed it, because it's not been on exhibition, but they provide sort of advice and recommendations on the square, do they support - - -

25 MR JAHN: No - - -

DR WILLIAMS: Okay.

30 MR JAHN: - - - they have provided no concerns about the sun access controls, in fact, they have said that, you know, that's one thing that they do support.

35 DR WILLIAMS: Okay.

MR JAHN: In their feedback to us, now, that's not from the DA planning group, that's from the strategic EIP. Their concerns have been around our method of winding back residential floor space in the CBD and our incentives for commercial, hotel and serviced tourist accommodation.

40 DR WILLIAMS: So the department is somewhere, through one of their teams would probably have publicly available comments or comments in some form on the square.

45 MR JAHN: No. No.

DR WILLIAMS: Okay.

MR JAHN: No. I wouldn't think there's any public comment. Now, Minister
Constance came to see us late last year in October, November or something, saying
5 can we do the square quicker? "I'm building a metro. If we're finished in '24, it
would be great to see the square progressed," and that was quite positive, but nothing
is publicly available.

MR DUNCAN: Anything else?
10

DR WILLIAMS: No, that's fine.

MR DUNCAN: All right. Graham, we may need to come back with further
questions. This is day 1 for us. You know, I know this is - - -
15

MR JAHN: Yes.

MR DUNCAN: - - - not the day 1 for everybody else, but if that's okay, we'll come
back and put something in writing or something like that, so that we can do this
20 responsibly.

MR JAHN: Happy to do that. Happy to provide copies of the photos - - -

MR DUNCAN: Yes.
25

MR JAHN: - - - that were included in the report.

MR DUNCAN: Likewise, are they anywhere else publicly at the moment, those
photos?
30

MR JAHN: Yes. This one – well, that's just the model which is - - -

MR DUNCAN: Yes, sure, sure.

MR JAHN: - - - publicly available at the Town Hall.
35

MR DUNCAN: Yes.

MR JAHN: But it just documents the original submission. This has been made
40 available on our website and publicly in talks and - - -

MR DUNCAN: Okay.

MR JAHN: - - - those sort of things, so that's no problem. The modelling agrees
45 with the department.

MR DUNCAN: The department anyway is - - -

MR JAHN: Yes.

MR DUNCAN: - - - that's an agreed tenant.

5 MR JAHN: This is a bit cheeky.

MR DUNCAN: Okay. Thank you. All right. Thank you for your time, thanks for the presentation.

10 MR JAHN: Yes.

MR DUNCAN: We will finish at that stage. Thank you.

15 **RECORDING CONCLUDED**

[1.43 pm]