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TRANSCRIPT OF PROCEEDINGS

TRANSCRIPT IN CONFIDENCE

O/N H-999748

INDEPENDENT PLANNING COMMISSION

MEETING WITH WOOLLAHRA MUNICIPAL COUNCIL

**RE: REQUEST FOR GATEWAY DETERMINATION REVIEW –
OLD SOUTH HEAD RD ROSE BAY**

PANEL: **CHRIS WILSON
SOO-TEE CHEONG**

ASSISTING PANEL: **ANDREW McANESPIE**

COUNCIL: **ALLAN COKER
CHRIS BLUETT
CATHERINE COLEVILLE**

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

DATE: **9.58 AM, THURSDAY, 28 FEBRUARY 2019**

MR C. WILSON: Okay. Good morning and welcome.

MS C. COLEVILLE: Thank you.

5 MR WILSON: 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 request for a gateway determination review
seeking to list the Rose Bay Uniting Church and Wesley Hall Group at 518a Old
10 South Head Road, Rose Bay, as an item of local heritage on schedule 5 of the
Woollahra LEP 2014. Specifically, council has requested – is seeking review of
condition 1 of the gateway determination which states:

*Planning proposal is to be updated to include a reference to a savings
provision to apply to any development application lodged but not determined.*

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The second thing – council is also requesting that reconsideration be given to it being
authorised as a local plan making authority. My name is Chris Wilson, and I am the
chair of this IPC panel. Joining me on the panel is Soo-Tee Cheong. The other
attendee is Andrew McAnespie from the Commission's Secretariat.

20

MR:

MR WILSON: In the interests of openness and transparency and to ensure the full
capture of information, today's meeting is being recorded, and the full transcript will
25 be produced and made available on the Commission's website. This meeting is one
part of the Commission's process of providing advice. It is taking place at the
preliminary stage of this process and will form one of several sources of information
upon which the Commission will base its advice.

30 It is important for the Commission to ask questions of attendees and to clarify issues
whenever we consider it appropriate. If you're asked a question you're not in a
position to answer, please feel free to take it on notice and provide any additional
information in writing, which we will then put on our website. We will now begin. I
35 guess to start with, what we would like to hear from council is just a bit of a short
chronology summary of the process to date, and then we would like to hear in
relation to the justification you gave supporting the request of amendment to the two
conditions.

MR A. COKER: All right. Well, look, I think that's contained in the
40 documentation that you already have.

MR WILSON: Yes.

MR COKER: And I think what we really need to focus on today is whether or not
45 the condition which was imposed on the gateway determination is a reasonable
condition, and our whole submission is really based – is really supporting a view that

it is not a reasonable condition and that that condition should not be imposed. The department has, in their summary, listed three reasons why the condition should be retained, and we would just like to respond to those reasons and put our case forward as to why we think the condition should be omitted. In brief, we think it thwarts the
5 very intention of the planning proposal to protect the heritage significance of the site. I think that's all I need to say at the outset, and then I've got Chris Bluett here, who's our manager of strategic planning, and Chris has been essentially project managing this, and I also have Catherine Coleville, who's our strategic heritage officer, and Catherine can answer any specific questions that you may have in relation to the
10 process that we went through in determining the heritage significance of the site.

MR WILSON: Yes.

MR C. BLUETT: All right. Well, you did ask about the process, and I think, whilst
15 it's summarised to some extent in our submission to the department for the review, it's fair to say that we've followed a fairly standard industry practice process in identifying the heritage significance of these buildings. So in terms of the chronology, we actually had a council decision back in 17 December 2017. Now, that's in the report that we just submitted to the DPE, but we acted on that
20 immediately, and part of our action involved advising the land owner that the council's decision was to carry out these investigations, so we believe we've been totally transparent with the landowner. I think there's been adequate – more than adequate procedural fairness towards the applicant in disclosing all of our actions to date. So we did engage consultants to carry out that assessment. That was Robert A
25 Moore Proprietary Limited.

MR WILSON: Yes.

MR BLUETT: They came to a conclusion, based on their investigations – and they
30 used the criteria – the standard industry criteria – they came to a conclusion that both buildings had the level of significance on all categories – all categories, Catherine?

MS C. COLEVILLE: All but two.

35 MR BLUETT: All but two.

MS COLEVILLE: But potentially in the other two.

MR BLUETT: Yes – to be listed as a local heritage item. So you only need to
40 satisfy one criteria. The assessment was fairly conclusive, we believe, in justifying the council's decision then to prepare a planning proposal. Again, we advised the landowner of the outcomes of the heritage consultant's work; in fact, we gave them a copy of the draft assessment prior to the matter going to council. That's our practice. They did have input to that. We also advised them of the council's
45 committee meeting, and they were present at that meeting. We followed that through with a report to our local planning panel, as is required. Again, the landowners were

invited to attend that, which they did, and then there was the final decision of council on 21 May to reaffirm its decision and to prepare the planning proposal.

5 Now, the gateway determination, as you understand, was quite unusual. It was not indicated to us that that condition was going to be imposed, so when we saw it, we immediately believed that that condition was really counterintuitive to the intention of the planning proposal, and it was quite unusual in that the department has recognised that the buildings have significance. All of their reporting says that they understand that the buildings have significance, and they agree to the planning
10 proposal, yet they've imposed a condition which, if it was carried through, would mean that this building, or these buildings which are subject to the DA – if it followed through that they were approved through the court's process could be demolished, and it was 85 per cent demolition of the heritage item, which we believe is not conservation. It's not managing conservation; it's actually removing the
15 buildings,

And I think that would then call to mind the question of whether or not the heritage listing should eventually proceed in any event. The condition that the department imposed and was based solely on the reason that they thought that the court would be
20 in a position to determine the heritage matters – the department took the view that there was a discrepancy between the assessment that the council had done and the assessment that the landowner's consultant had done, albeit both consultants agree that the buildings have heritage significance, so that's quite an important point. It's the degree of management of that heritage significance which – I suppose it's a
25 question – it's why the applicant is putting a DA which looks at the demolition of the buildings or at least the hall and a substantial part of the church and the interpretation of that.

Now, we don't believe that's a proper course of action. That's letting the DA dictate
30 the management practice. Okay? So in terms of the court – the department's intention to let the court determine the heritage issues, we don't believe that supports our role. The court's role is to determine the development application. Now, just recently, the lawyers acting for the applicants lodged a letter to our lawyers, who are case managing the appeal, demanding that the council remove all the heritage
35 contentions in the statement of fact and contentions, so they have put that to us, and they have said that if we had not agreed to that demand by yesterday, Wednesday, 27 February, they would take action in the court to have the court strike out those facts and contentions.

40 We've instructed our lawyers not to agree to any changes to our facts and contentions, so that is a matter that's now before the court to adjudicate on. However, the likelihood is if the court agrees to those matters being struck out, the likelihood is that any expert evidence on heritage conservation will also become inadmissible, which in fact defeats the intention of the department to have the court
45 consider the heritage matters when they're dealing with the development application. So we think this is a critical issue in terms of removing the condition. We believe that it's appropriate that the court has regard to heritage matters because both parties

in the appeal are actually agreeing that the buildings have heritage significance, and we believe it's open to the court to hear the evidence from both sides as to whether or not the buildings – or one at least should be demolished and the other one substantially demolished.

5

The other point I think that needs to be mentioned is that the department, in a number of cases, in its submission to the Commission – its report to the Commission, refers to the sequencing of the process. It's made on a number of occasions reference to the planning proposal postdating the lodging of the DA. Well, that might be a factual point, but in fact the process the council started significantly predates the lodgement of the DA, and in fact I mention that the DA – the decision of the council was 17 December. The assessment – the draft assessment of heritage significance was given to the applicant on 4 April. The DA was lodged on 20 April, so the DA postdates all the work that had been done to date by the council on assessing significance.

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So it takes time from a council decision to get to the date of 4 April. Obviously we've got to commission the consultants, we've got to get the assessment done, and then we give it to the applicant for consideration, so there's no, I suppose, case the council has delayed in getting from its decision of the 17th to 4 April, but we would contest the point made by the department that the council has lodged its planning proposal after the DA and that in some sense the council is attempting to undermine the court's process. I don't think that's true. It's just the way in which things have come to fruition over time. We think that that condition should be struck out. We don't think it's in the interest of heritage conservation, not just in this case but I think it's going to become a dangerous precedent across New South Wales. We believe it's a condition which is unreasonable. It doesn't pass the Wednesbury test. We don't believe it should have been imposed.

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We also ask that the department give us the authorisation authorisation to make the local environmental plan. We think it's a local matter. It's not a matter of state importance, and we think we've got the ability to determine the application fairly through our processes, through the council processes, which are open and transparent.

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MR: What about the direction to the department if the Commission - - -

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MR BLUETT: Yes. Yes. Sorry, there's one other point we would like to make. If the Commission is mindful of supporting the council's request to have the condition removed, we would respectfully ask if the Commission could issue a direction to the department to amend its gateway determination immediately without delay so that the council can then proceed with the public exhibition of the planning proposal. This matter has been – we submitted our review request to the department on 27 September, and it's now 28 February before we've got to a meeting with yourselves, so it has been a substantive delay in our processes, and we think it's reasonable, if you are favourable to our request, that the department is given a direction to process a revised gateway determination expeditiously.

45

MR WILSON: Okay. Soo-Tee?

MR S.T. CHEONG: Just, you know, the letter that you mention – what was that - - -

5 MR WILSON: Is that something you were giving to us?

MR BLUETT: Yes. That's - - -

10 MR WILSON: Because if you are, we will have to put that on – it goes on our website.

MR BLUETT: That's fine.

15 MR WILSON: It's all part of the process. Thank you.

MR BLUETT: That matter has come to council. It's certainly a matter which the court – will go before the court.

20 MR WILSON: Sure. So I've got a couple of questions, and I think, Soo-Tee, you may have one or two questions or – I'm just trying to understand. So there were – there was ongoing discussions with the applicant – between council and the applicant in relation to the heritage significance of the site. Both council and the applicant have their own heritage impact assessments.

25 MR BLUETT: Correct.

MR WILSON: And at what stage was council aware of the findings of the applicants? When the DA was lodged, or were there earlier discussions in relation to that?

30 MR BLUETT: Catherine can assist with that.

MS COLEVILLE: Yes. They had a statement of impact that they were preparing for their DA - - -

35 MR WILSON: Right.

MS COLEVILLE: - - - which was lodged on 20 April, and it's dated April 2018.

40 MR WILSON: Okay.

MS COLEVILLE: And they did their own assessment in that using the same guideline, the assessing heritage significance guideline, which is best practice, and came - - -

45 MR WILSON: Different findings.

MS COLEVILLE: - - - pretty much to the same conclusion.

MR WILSON: Well, same general conclusion but different opinion.

5 MS COLEVILLE: That it was of local significance.

MR WILSON: Yes.

10 MS COLEVILLE: Same conclusion, same opinion but their management of the buildings under the DA proposal is what differs to what council considers to be the appropriate measures of conservation.

MR WILSON: Sure. No, we appreciate that. Yes.

15 MR CHEONG: The department actually set out the – a time frame of the action that you have taken. My question is to deal with an interim heritage order – why wasn't that being imposed on the - - -

20 MR BLUETT: Well, Allan can – I'm not so sure of this as well, but I think certainly there is an option for an interim heritage order. Okay. The council, unlike the Heritage Council, has an additional constraint in it must be of a mind that the building – or whatever it is – the place is under harm. Okay?

25 MR CHEONG: Threat.

MR BLUETT: Under harm or threat.

MR CHEONG: Yes.

30 MR BLUETT: Okay? At the point in time of council's decision on 17 December, it did not have a development application before it. In fact, the DA was only lodged formally on 20 April. There was no – whilst the applicant had meetings with us about what he had intended to do, there was no initial formal indication that it was going to seek the demolition of the buildings. Now, the IHO gives the council – or
35 Heritage Council – the ability to stay any works, demolition of buildings, with the intention of creating – with finalising assessment of heritage significance.

40 So the initial step is council has to have some degree of understanding of the significance of the place and then the stop order – the IHO allows it to finalise its assessment of heritage significance. The council had actually made a decision to do that assessment of significance on 17 December, so we had progressed to a point which, I suppose, would be what you would do normally with an IHO in looking at the assessment of the building.

45 We had no idea that the department was going to impose this condition. We had no forewarning. In a normal process, you would go through the planning proposal, and you would exhibit it. In this case, however, the condition that has been imposed

clearly cuts across the intention of the council to recognise the significance of the building and allow the management of that building to be carried out in a proper process.

5 MR CHEONG: But the date of the planning proposal came after the deemed refusal. Isn't it true that the IHO could have been imposed after the proponent lodged the DA - - -

MR BLUETT: The DA.

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MR CHEONG: Yes, between April and the time when there's a deemed refusal?

MR BLUETT: Well, in fact, the council had actually done all the work that was required of the IHO in doing the assessment. As to whether it could have imposed an IHO - - -

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MR COKER: Yes, I'm not so sure, but, look, the two preconditions have to be in place prior to the council imposing a – or – yes, gazetting an interim heritage order: (1) the council must have evidence that the building has heritage significance. It may not be conclusive, but it must have at least some reasonable evidence that the building may warrant, under further investigation, listing; and secondly, that the building is under threat, so it probably wasn't until the DA was submitted that there was any real evidence that the building was under threat – until we got the DA, so – and that DA was submitted in April 2018, wasn't it?

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MR BLUETT: Yes.

MR COKER: Yes. Yes. And by that time, much of the purpose of the interim heritage order, to enable the heritage significance of the building to be properly investigated and carried – and done was well underway, and it – the Bob Moore report was submitted to us - - -

30

MR BLUETT: 4 April as a draft.

MR COKER: On 4 April as a draft, so much of the purpose of an interim heritage order had already been served – to enable the council to consider the heritage significance of the site, and as Mr Bluett has said, there was no forewarning that the process that the council had commenced by way of planning proposal to protect the building would effectively be thwarted by this condition, so the council had taken action to protect the building through this process, but our view is that that action has been thwarted by the inclusion of condition 1.

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MS COLEVILLE: And it would be inappropriate to prepare a planning proposal without having done the heritage assessment of the place. We can't make a planning proposal proposing to list a heritage item in our LEP as a heritage item without having done the full and proper assessment.

45

MR WILSON: So just in summary – so my understanding is you had done the work, the PP was going to offer the protection - - -

MR COKER: Yes.

5

MR WILSON: You didn't – correct me if I'm wrong – you didn't feel it necessary to lodge an IHO?

MR COKER: Because we had already taken action to prepare the planning proposal, and we had no forewarning of condition 1, so we were under every expectation that the planning proposal would provide the necessary level of protection that the council was seeking.

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MR WILSON: Just in terms of savings provisions, just in terms of your own LEP – I think it's clause 1.8A – does that apply to, you know – does that apply to LEPs that are prepared to amend the standard LEP – sorry, the comprehensive LEP?

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MR COKER: I think I would need to take that on notice. I would just have to go back and have a look at the relevant provisions of the LEP, unless Chris or - - -

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MR BLUETT: I suppose the question is does it have a life, or is it just there for the time in which the LEP was gazetted; is that what you're saying?

MR WILSON: That's what I'm saying.

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MR BLUETT: Yes. Look - - -

MR WILSON: Like, for instance, to me, from a practical perspective, it's silly to have it just for the time the LEP comes into place.

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MR BLUETT: Understand.

MR WILSON: - - - that if you do amendments to LEP that that clause should apply, but that's just my - - -

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MR BLUETT: As with Allan, I would have to take it on notice, but I have a feeling that it might only have been imposed to capture those matters at the time of the making of what this plan is, and this plan is the LEP 2014, not the LEP twenty four as amended by subsequent LEPs, so it would seem logical that it should not be a provision which – how shall I say – prevents other measures from coming into place if they're reasonable measures; do you understand? If you wanted to impose savings provisions for subsequent LEPs for good reason then you would have an additional savings measure in that particular clause.

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MR WILSON: Right.

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MR BLUETT: That's normally the way that we have structured our development control plans, and in our past life with Woollahra LEP 1995, we had subsequent savings provisions where we wanted them to apply to particular amendments to the LEP. Okay?

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MR WILSON: I understand what you're saying. I guess my view would be that they should – you know, that gives you some discretion in terms of what applications remain in the system – what date.

10 MR BLUETT: Yes.

MR WILSON: And I would – you know, I'm just interested to hear what your views would be on that. Okay. Is there anything else that - - -

15 MR CHEONG: How often, in term of time, does the Woollahra Council review their list – the heritage list? Is - - -

MR COKER: Okay. That's a very good question. I think it's fair to say that Woollahra actually has a very good record in terms of managing its heritage. The municipality is one which is rich in heritage. We have a number of significant heritage conservation areas, and we have over 600 items. The process that we have been following is that we have been reviewing those items under different themes; for example, inter-war residential flat buildings; for example, bungalows and work by various architects.

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25 MS COLEVILLE: Leslie Wilkinson.

MR COKER: Sorry?

30 MS COLEVILLE: Leslie Wilkinson.

MR COKER: Leslie Wilkinson buildings and so forth, so we do have a program where we are – we work through different groups or different themes of buildings as our time and resources permit. One of the points that was made in the department's submission was that we didn't pick up this building in the 2014 Woollahra LEP, and you would probably be aware that that LEP was basically an LEP to bring it into alignment with the standard instrument, and this was a process that was followed by all councils across New South Wales, and with the endorsement of the department at the time, we agreed that our 2014 LEP should be largely a translation of existing policy and strategic direction from our old 1995 LEP to our 2014 LEP.

35

We did not do a further comprehensive heritage study of the municipality transitioning from the 1995 LEP to the 2014 LEP. Our program on keeping up to speed with our heritage has been along the themes that I've described, and it was always intended that the 2014 LEP would be a working document – it's never an end state process, planning – and that we would be making such modifications to the 2014 LEP which was based on the standard instrument, so, you know, it's not

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possible for councils to say that they have considered every property within their area; it's just unrealistic; and councils have to manage their heritage according to their own time, their resources and in accordance with a thoughtful and careful program, and that's what we do.

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MS COLEVILLE: Can I also add to that, Allan?

MR COKER: Sure. Sure.

10 MS COLEVILLE: The other thing that happens that councils have to respond to at times is the community's opinion on what is heritage can change over time. It's an evolving thing. It doesn't remain static. It's something that what the community values is also under consideration, so at times – and this is one of those times where our councillors had community representation to say that they – there were areas of
15 the community that felt this particular property was of value and of significance and requested that we check it out, so that's the other – we can do all the thematic studies, but we also have to respond to the evolving heritage opinion.

MR CHEONG: So from what you are saying, you were saying that between 1995
20 and 2014, this site has never been brought up for consideration?

MR COKER: Correct. That's correct, and this site came to the council's notice through community concern, and that is a legitimate process.

25 MR CHEONG: And when was that?

MR COKER: Well, it was certainly at the date or – before the date of the original notice of motion, which was on 18 December 2017, so it would have been sometime before that notice of motion, but we would say that's a completely legitimate
30 process, that local communities make contact with their local councillors, and, you know, that they raise matters with their councillors. I think the – there might have been a notice that the church was selling the site - - -

MS COLEVILLE: I think – yes, so it was up for sale.
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MR COKER: - - - and that might have been, you know, the fact that sort of alerted the local community to, you know, some potential sale of the site, so - - -

MS COLEVILLE: It was advertised as a development site.
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MR COKER: Right. Okay.

MR WILSON: That would do it.

45 MR COKER: Yes. Yes. So I think when you look at the history of this, the council has actually acted quite responsibly, and I don't accept the criticism that has been provided – that has been made by the department that we've been slow in the

process. We have undertaken a very thorough process, and when you look at the dates, from the date that we got the resolution, which was on 17 December 2017, and then we actually employed the consultant – commissioned the consultant, it was early the following - - -

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MS COLEVILLE: Over the Christmas period.

MR COKER: Over the – had the Christmas break. We had a January break, and we had to go through a competitive process under our procurement guidelines, and I think if you were able to read the report that was prepared by Robert A Moore, it is one of the most thorough reports you could - - -

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MS COLEVILLE: It's extremely comprehensive.

MR COKER: A very comprehensive report, so to do it properly – Woollahra Council is committed to doing things properly, and doing things properly does take time.

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MR CHEONG: So when was that – Robert Moore's report completed?

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MS COLEVILLE: March 2018.

MR: March 2018. Yes.

MS COLEVILLE: And that included a full heritage significance assessment report and a heritage inventory form in accordance with the guidelines, and that included substantial research as well as a fabric analysis and full investigation.

25

MR COKER: And, Mr Chair, what also needs to be acknowledged is that the process – the more recent process, where planning proposals have to go through local planning panels, also adds time to the process, and in this case, the planning proposal did go through the local – to the Woollahra local planning panel, and the local planning panel has also supported it, so that just adds time to the process.

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MR CHEONG: I understand that the – sorry.

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MR WILSON: No, you're right.

MR CHEONG: I understand the site is zoned B4 mixed use. Right. When was that zoning effective?

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MR BLUETT: With the LEP in 2014. It actually got gazetted in 2015 though. The 2014 date was obviously a transition date over the new year, but it was – I haven't got the exact date, but LEP 2014.

45

MR WILSON: So what was it – was it yellow before then? Was it - - -

MR BLUETT: No. Look, I would have to take that on notice. It may have been a neighbourhood business zone under the LEP 1995.

MR WILSON: Okay.

5

MR BLUETT: What we - - -

MR CHEONG: So there was a change on that site - - -

10 MR BLUETT: Well in a sense of changing the zones into the standard instrument zones.

MR WILSON: Right.

15 MR BLUETT: So the previous zones which would applying to the state – for example, a neighbourhood 3C zone transitioned into a mixed business B4 zone.

MR WILSON: B4, yes.

20 MR BLUETT: So that's the alignment we made with the standard instrument.

MR WILSON: Right. Okay. I think we've – any more questions, Soo-Tee?

25 MR CHEONG: Just to clarify one thing – the department said that the Land and Environment Court are capable of actually consider the heritage issue. Your view is that the L and E Court only just determine on the DA without consideration of heritage, or is that - - -

30 MR COKER: Well, that is an issue which is likely to be determined by the court because we have received that notice from Mills Oakley. They are seeking – they have basically asked us to strike out in our statement of facts and contentions all reference to heritage. Now, we are going to oppose that, and so they will probably put on a notice of motion to have it heard by the court. Now, I don't know what the outcome of that might be, but if it does transpire, as Mr Bluett has said, that the court
35 agrees with the submission put forward by Mills Oakley, all of the work that we have done – the work that has been done by the consultant may well be inadmissible in the proceedings before the Land and Environment Court.

MR WILSON: Which in fact - - -

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MR COKER: On the other hand, had the condition not applied, and even if we had had it on exhibit, it then becomes a matter for consideration.

MS COLEVILLE: It's a draft

45

MR WILSON: No. Yes.

MR COKER: See, that's the key. Before it's put on exhibit, it's not strictly a matter for consideration, but once it's on exhibit, it is a matter for consideration, so that's why we think – and if the Commission did support our position, we would be seeking – you know, asking the Commission to do what it could to encourage the department to remove it so we can get it on exhibition before the appeal.

MR BLUETT: And we say that's a fairer process because heritage then become a matter of consideration. It's not just the council, it's the community that's interested in the conservation of the building, so there's a strong public interest in that matter being heard before the court.

MR WILSON: I agree with that. Just in terms, though, if – even if you didn't remove the condition, to progress the LEP as quickly as possible on the exhibition has the same effect, doesn't it?

MR COKER: Not - - -

MR WILSON: condition was

MR COKER: Not – look, the building is under threat as a consequence of this development application.

MR WILSON: Yes. I agree.

MR COKER: So it's not under threat for any other reason, and the condition has the effect of nullifying the operation of that LEP for that DA.

MR BLUETT: And any DA that's lodged with council prior to the gazettal of the LEP.

MR COKER: Even if there was another amended one.

MR BLUETT: That's correct. Yes.

MR WILSON: No, I understand the effect of the condition, but I guess the issue comes down to – and I'm not quite sure yet whether that's for us to consider – the role of the court, but, you know, if you're saying, as you said earlier, you're concerned about those directions – but I guess the question for us is should the court be allowed to determine the application regardless of those directions.

MR BLUETT: Our position is that all of the relevant information, including the heritage investigation and heritage reports, should go before the court, but there's a real threat that that may not happen in the - - -

MR WILSON: No, I understand that.

MR BLUETT: Yes. Yes. Yes.

MR WILSON: So basically you're saying the court should have all that information.

MR BLUETT: Correct, yes.

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MR WILSON: So second to that is the court should be making a decision on this?

MR BLUETT: Well, I think that's an option for the court, but I think the surety would be - - -

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MR WILSON: Because the savings provisions takes the court out of the - - -

MR BLUETT: Correct.

15 MR WILSON: Takes it totally out of the picture.

MR BLUETT: The surety would be if the planning proposal at least is on public exhibition. It's then caught up through heads of consideration for the DA. There's no guarantee that the court will agree or disagree to the action that's before it now, but we say that it needs – the surety should be given by having the planning proposal on exhibition, and that's why we're asking for the condition to be removed. There's an element of – degree of essence here that we have to get it through as soon as possible. That's why we've requested that the – if you're favourable to our request that it's directed that the gateway determination is altered immediately.

25

MR WILSON: You would know better than us – how quickly do these things get from where we are now to exhibition?

MR BLUETT: Look, you would need to get a determination from the department. Now, that is one of the things we have no control over. That's why we need some sort of direction to the department. Once we've got that, it's a matter of us just hitting the switch, and if everything lines up, we can get it done very quickly.

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MR WILSON: Right. Okay.

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MR BLUETT: But the appeal is set for the 13th of - - -

MR WILSON: 13 March, is it? Yes.

40 MR BLUETT: Is it March? 13, 14, 15, so time is of the essence.

MS COLEVILLE: We have all the documentation that needs to go on exhibition all ready to go pretty much.

45 MR A. McANESPIE: So that the removal of - - -

MS COLEVILLE: It's just the direction that we need.

MR McANESPIE: So the removal of the clause of explanation? You've got the plain English version, obviously, ready to go? That's the – condition 2. I know that's something you're not contending - - -

5 MR BLUETT: Yes.

MR McANESPIE: It says:

10 *The planning proposal be amended prior to community consultation as follows:
remove the clause of explanation of provisions, replace it with a plain English
explanation - - -*

MR BLUETT: Yes, that's fine. That's fine.

15 MR WILSON: Yes.

MR BLUETT: Yes.

20 MR WILSON: Okay. I think we've – that has been quite useful. Thank you very
much. Is there anything else that you - - -

MR COKER: No. No. No, I think we're done.

25 MS COLEVILLE: Okay. Thank you.

MR COKER: Thank you very much for coming in. We appreciate it.

MR WILSON: Thank you for your time.

30 MR CHEONG: Thank you.

MR WILSON: It has been very helpful.

35 MR COKER: Mr Chair and members, we thank you for the opportunity.

RECORDING CONCLUDED

[10.36 am]