



TRANSCRIPT OF MEETING

**BAPTISTCARE CARLINGFORD - SENIORS HOUSING
(SSD-33631237)**

DEPARTMENT MEETING

PANEL: MS JULIET GRANT (CHAIR)
PROF ELIZABETH TAYLOR AO
MR MICHAEL CHILCOTT

OFFICE OF THE IPC: KENDALL CLYDSDALE
CALLUM FIRTH

**DEPARTMENT OF
PLANNING,
HOUSING AND
INFRASTRUCTURE:** AMY WATSON
PETER MCMANUS
COURTNEY FUNG

LOCATION: ZOOM VIDEOCONFERENCE

DATE: 11:45AM – 12:45PM
WEDNESDAY, 7TH AUGUST 2024

<THE MEETING COMMENCED

MS JULIET GRANT: Morning, Amy. Good morning, Courtney.

5 **MS COURTNEY FUNG:** Morning.

MS GRANT: Can see the concentration on Amy's face trying to get her sound to work. You're on mute, Amy.

10 **MS GRANT:** Can't hear you.

MR MICHAEL CHILCOTT: Got the same issue as I think I had.

15 **MS GRANT:** Yes, sometimes, Amy, if you just duck out and duck back in, it can help.

MS AMY WATSON: Yes, is that okay now?

20 **MS GRANT:** Yes.

MS WATSON: Yes, okay, great. I had to work out how to use the video and the sound. Peter's just coming in, working out how to use his video and audio as well. Ben Lusher is an apology today as well, he's unwell. So just thought I'd just point that out from the beginning so we're not waiting.

25 **MS GRANT:** Thank you. Morning, Peter. Can you hear us? You're on mute but otherwise –

30 **MR CHILCOTT:** Try out your –

MR PETER MCMANUS: Yes, I can. Can you hear me now?

MS WATSON: Yes.

35 **MR CHILCOTT:** Great.

MR MCMANUS: Yes, thank you. Sorry.

40 **MS GRANT:** Yes, all good. All right. Thank you and good morning, everybody. Before we begin, I would like to acknowledge that I'm speaking to you from Gaimaragal country and I acknowledge the traditional owners of all the country from which we virtually meet today and pay my respects to their elders past and present.

45 Welcome to the meeting today to discuss the BaptistCare Carlingford Seniors Housing case SSD-33631237, currently before the Commission for determination. This application seeks consent for site preparation works, construction of seven one to six storey buildings and basement levels provided for a residential aged

care facility, independent living units, respite day-care centre and car and bicycle parking on the southern portion of the former BaptistCare Carlingford Seniors Housing development site.

5 My name is Juliet Grant, I'm the chair of this Commission panel. I'm joined by my fellow Commissioners, Elizabeth Taylor and Michael Chilcott. We're also joined by Kendall Clydsdale and Callum Firth from the Office of the Independent Planning Commission. In the interests of openness and transparency and to ensure the full capture of information, today's meeting is being recorded and a complete transcript will be produced and made available on the Commission's website.

10 This meeting is one part of the Commission's consideration of this matter and will form one of several sources of information upon which the Commission will base its determination. It's important for the Commissioners to ask questions of attendees and to clarify issues whenever it is considered appropriate.

15 If you're asked a question and are not in a position to answer, please feel free to take the question on notice and provide any additional information in writing, which we will then put on our website. I request that all members here today introduce themselves before speaking for the first time and for all members to ensure that they do not speak over the top of each other to ensure the accuracy of the transcript. We'll now begin. Who's taking the lead from the Department?

20 **MS WATSON:** I'll just start off. Now, we do have a presentation. It wasn't quite ready to send over beforehand but are you okay if we share screen and then share that with you afterwards?

MS GRANT: Terrific. Yes. Thank you.

30 **MS WATSON:** While Courtney's getting that up, I might just introduce myself. So my name is Amy Watson and I am the acting director of social and affordable assessments at the Department of Planning, Housing and Infrastructure. Courtney, can you put that on presentation mode at all, just a little bit bigger? Thank you for inviting us today to meet with you regarding the BaptistCare Carlingford Seniors Housing development.

35 The proposal seeks consent for a seniors housing development on a site that has formerly been used for seniors housing until 2019 and we're happy to take you through the items on the agenda. We note that the proposal has been referred to the Independent Planning Commission as the City of Parramatta Council objects and we also received one public submission objecting to the application during the exhibition period on construction impacts. The first item on the agenda was the amendment report. Are you okay if we go straight to that?

40 **MS GRANT:** Yes. Terrific. Thanks.

MS WATSON: Okay. So the application was lodged in February 2023 and was exhibited for 28 days. The applicant provided its response to submissions in

October 2023 and also provided additional information in February and May 2024. The applicant made a number of revisions and refinements to the proposal, including revisions to reduce impacts to the ecological zone and trees along Martins Lane and other minor detail design changes, including stormwater, landscaping, privacy screening and other matters, as detailed in full in the applicant's responses and as summarised in our assessment report.

These changes did not change the key features of the development, including the building siting, height, location, the number of residential care beds, independent living units, carparking or access arrangements. The applicant did not include a formal amendment of the application or did not request a formal amendment of the application, I should say, sorry, under s 37 of the Environmental Planning and Assessment Regulation 2021, and the Department was satisfied that the changes were made in response to the concerns raised in exhibition and did not necessitate a formal amendment of the application nor re-exhibition.

So on the screen there I've just shown the site layout as in the environmental impact statement and the revised proposal and as you can see, it maintains the key features of the exhibited proposal. So happy to take any questions on that particular matter if there are any.

MS GRANT: Michael, does that satisfy your query?

MR CHILCOTT: Look, I do have a residual question about whether an amendment is required. You ran through a variety of changes to the application. I think you said it doesn't affect the footprint or the height of the building but they nevertheless seem somewhat material. The other matter that we need in the application in order to grant consent is the matter we discussed with them and we've raised earlier about sprinkler systems and they need to get a formal letter to us in relation to that.

It needs to form part of the application so that we can make a lawful determination of the matter, otherwise we don't have power of consent. So these things needs to be on the application formally. I understand you don't think that the changes are substantial but some of them are – that one in particular is a precondition to us having power to determine the matter. So my suspicion is that there is still a requirement for at least an amendment on that point but it would be cleaner, I would imagine, if the application reflected what it is we're being asked to determine.

MS WATSON: Sure. So I guess the standard practice, the application, you know, additional information can be provided by applicants through the assessment process and that often does involve refinements to proposals in response to concerns raised during exhibition and we have a response to submissions process through the – the legislation provides for that through the assessment. It also does provide that situation where there is an actual amendment of the application under the regulations and that is usually in cases where the proposal has changed to such a degree that we would require that to be formally documented in an amendment

report and that does have consequences in terms of the lodgement date of the application basically being reset to that time and all relevant legislation from that time also applies. So if there had been changes to legislation in that time, the application would be taken to have been made on the day that that amendment report was accepted unless those amendments were minor. So we –

MR CHILCOTT: Sorry, Amy, is that actually the case in law?

MS WATSON: Yes, it is. So unless –

MR CHILCOTT: So it resets the parameters for the DA assessment back into a new date through the making of an amendment to the application?

MS WATSON: Yes. So if we accept an amendment and we don't inform the applicant those amendments are minor, it does have the implication of the application being taken to be made on that day. So in this case and in majority of cases where the development description that we have exhibited, in this case it was for the buildings, it was for an amount of residential care facility and ILUs, we were satisfied that the description of the proposal in the EIS and as exhibited remained the same and we did not determine that an amendment report was required.

So that's how we've processed it and we have, yes, turned our mind on this and other applications about where and when an amendment report is required and the implications if we do either require or fix an amendment report, given the extent of changes. But we didn't think that there was that extent of changes in this case. It was more additional information provided and refinements made to reduce certain aspects of the development to address those impacts and concerns raised during exhibition.

MR CHILCOTT: Look, I'm happy to take that back and have a discussion with James Innes, our inhouse legal adviser. Again, we could go into discussions but I hear what you say. I'm not sure that I'm satisfied with it but I'll take advice legally as to whether that's the position. As I say, I'm particularly concerned that the application, as it currently sits before us, doesn't include certain things that are prerequisites for us to have the power to grant consent.

MS WATSON: Okay. I think that's later in the agenda as well, so we're happy to talk to that at that point too.

MR CHILCOTT: Yes, thank you.

MS WATSON: Okay. The second item on the agenda was the clause 4.6 variation. So the relevant development standards for this site are provided in the Housing SEPP. The Housing SEPP provides additional height and floorspace ratio controls for seniors housing. In particular, the Housing SEPP provides an additional building height of 3.8 metres and an additional 25% bonus above the maximum permissible floorspace ratio for the development.

On building height, the proposal has several lift overruns which are up to 1.5 metres above the 17.8 metre Housing SEPP height limit. The applicant provided two clause 4.6 variations against the maximum permissible height in the Housing SEPP and the base Parramatta LEP height of 14 metres. The Department considered both clause 4.6 variations in its assessment report and was satisfied that the Housing SEPP is the relevant standard to be varied.

The Department supports the conclusions of the applicant's requests that compliance with the standard was unreasonable and unnecessary. This consideration is outlined in our assessment report but, in summary, we were satisfied that the objectives of the standard are met and that these minor elements which exceed the height standard would not result in any adverse visual amenity or other impacts. Next slide, Courtney.

MR CHILCOTT: Did we want to deal with these matters on the way through as we did with the amendment discussion or did you want to hold them until we deal with them later under the list?

MS WATSON: I'm happy to deal with height now or finish on floorspace ratio and then deal with them both, whatever you'd prefer, Michael.

MR CHILCOTT: Juliet, how do you want to run it?

MS GRANT: I don't mind. I think the question you've got is to do with the floorspace one, isn't it? So perhaps let Amy, yes, talk that through and then ask the question.

MS WATSON: Okay. So floorspace ratio, the Housing SEPP provides a 25% floorspace ratio bonus on the site as the proposal includes a residential care facility and independent living units. This allows a FSR of 1.25:1. The Housing SEPP, however, does not apply to environmentally sensitive land, which means that while the ecological zone could've been included in the site area under the Parramatta LEP, it must be excluded from the site area for the purposes of the Housing SEPP.

The site area also excludes the roads from the site area, as these have been built and dedicated as part of the stage A development. This therefore results in a smaller site area of 13,879 square metres for the purposes of calculating the maximum permitted gross floor area. This is approximately 5,000 square metres less than if you were to include the ecological zone and those roads, which have been delivered as part of the previous development.

As with the height development standard, the applicant provided two clause 4.6 variations against the maximum permissible FSR in the Housing SEPP and the base Parramatta LEP. The Department has considered both of these requests and we consider that the Housing SEPP is the standard to be varied. The Department supports the conclusions of the applicant's requests that compliance with the

standard was unnecessary or unreasonable.

This is outlined in full in our assessment report but in summary, we were satisfied that the objectives of the standard were met, that the density was appropriate as the site was located in a high density zone, would have acceptable built form, visual and urban design outcomes and the variation would not result in adverse solar, privacy, traffic or other impacts. Happy to take any questions on either of those.

MS GRANT: Can I ask one quick question before Michael? I know Michael's got some questions. Just if the roads and the ecological area had been able to be included, would this proposal be compliant with that FSR?

MS WATSON: If you included the roads and the ecological zone and then applied the Housing SEPP bonus, so if you applied the 1.25:1 to the total site area, it would've complied.

MS GRANT: Michael, do you want to –

MR CHILCOTT: Yes, thank you. Yes, I think the number was 1:1.23 if those things were included. My question is in undertaking your review of the clause 4.6 to do with FSR, was that subject to a legal review within the Department?

MS WATSON: I'd have to take that on notice. I'm not sure about a legal review. Definitely a planning review and we also – we did seek advice, not necessarily on the merits of the 4.6 but of the procedural in terms of which standard to vary. So that we did discuss with legal. But if your question is about anything else about the 4.6, I'd have to take that on notice.

MR CHILCOTT: No, thank you. The question – and I don't have a problem with the fact that it's addressed the correct development standard. From that point of view, I think it's – the development standard could be subject to a 4.6 variation request.

My concern relates to the fact that the Housing SEPP specifically excludes the ecological area from the calculation that you would then make and therefore to say, well, if the sole planning reason is that the statute requires you to exclude this area, it seems somewhat circular to then say, well, the fact that we have to exclude it is the reason that we need to exceed it. So that's the specific concern I've got, it's not going to the merits and it's not going to whether the objectives are unreasonable or unnecessary.

It's actually the other part of the assessment to do with whether there are sufficient planning reasons and I'd welcome a perspective from the Department and again, it's a legal question, not a planning question, in relation to the use of that approach of saying, "Well, we're required to exclude this thing and therefore it goes over." You only get access to the FSR bonus if you do exclude it and if you then meet the requirements otherwise. So yes, that's my question. It's a legal question that I'm seeking to be satisfied of.

MS WATSON: I might take that on notice.

MR CHILCOTT: No, please.

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PROF ELIZABETH TAYLOR: Could I just ask another question around that in that process that you looked at in terms of planning, my assumption would be that the planning parameters that have been structured to allow the 1.25 to be the bonus that's required, it would appear that a proponent can then come back and say, "Yes, but because I'm a valuable project and compliance would effectively inhibit my proposal, I'm therefore going to ask for 1.6, 1.7, 2," whatever it is that they have decided is viable and that would be accepted as a planning argument of merit.

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MS WATSON: In terms of the viability of the proposal?

PROF TAYLOR: Well, just the way it is written in your appendix regarding the assessment of the planning appears to be that despite the parameters that have been put up regarding access to say 1.25, if a proponent comes and wants more than that, the merit argument will be based on their – and it was said a couple of times or so when we met with them on site that the compliance would jeopardise and therefore it was very important that whatever they needed to go ahead should be taken as the argument for acceptance.

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And because I couldn't actually see where the planning argument for moving from 1.25 to 1.67 was actually made from a planning point of view, except on the basis that there was concern it might not go ahead if they weren't given that.

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MS WATSON: So our assessment report, the actual body of the report rather than the appendix, includes our planning reasons in addition to that detailed tabular assessment.

PROF TAYLOR: I went through that as well, yes.

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MS WATSON: Yes. So I guess we were satisfied that that amount of density could be accommodated on the site and was appropriate in that high density location and we're satisfied that the building height, the density could be accommodated within those building forms, which, apart from the lift overruns, complied with the height, it had adequate setbacks.

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We looked at the residual impacts in terms of shadowing and privacy and traffic and we were satisfied that that amount of density wouldn't have adverse impacts, so that formed part of our consideration about the appropriateness of that amount of density that was put forward rather than just any amount. And we would do that merit assessment on whatever amount of floorspace was proposed.

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PROF TAYLOR: So am I hearing that the way that analysis is done is independent of expectations around 1.25 being a sort of considered limitation or

it's not relevant or –

MS WATSON: The 1.25 is relevant, it is the development standard and we assess the impact of the floorspace above that standard.

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MS GRANT: It ties back, Elizabeth, to the purpose of clause 4.6, which is to provide flexibility in development standards, dating back to the very first SEPP, SEPP 1, that was to acknowledge in the planning system that numbers weren't necessarily definitive to the way the outcome should fall, so that we have that process –

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PROF TAYLOR: Yes, I appreciate that in terms of I'm just trying to work out if there is an upper limit above that. It's just I think – that's all right, I'll take –

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MS GRANT: No, there's no numeric maximum number that's tied to that through the various caselaw interpretation over time, as far as I'm aware.

PROF TAYLOR: So Amy, can I just follow that up because it will tie in with Michael's – that was based on your assessment of the ecological area being able to be included?

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MS WATSON: We excluded the ecological area because you can't pick and choose, you can't pick a site –

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PROF TAYLOR: Right, so you made that –

MS WATSON: Yes, we made that call that the Housing SEPP, we were getting the bonus under the Housing SEPP, the applicant applying the 25% bonus. You can't then pick and choose a different site area definition. We did obviously have regard for the fact that if it was included, it would result in an amount of floorspace and I know that the applicant was informed by that as well, but we assessed the impact of the amount of floorspace that was proposed on its merits, as outlined in our report.

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PROF TAYLOR: Thank you.

MR CHILCOTT: And Juliet, if I could just add a couple of things. Firstly, Amy, the way 4.6 has worked up until the recent amendments is that the merits of the design aren't the critical question, the question is what are the planning grounds that are there. And there's a body of caselaw you're probably familiar with that talks about what is the nature of the planning reasons that would be required.

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The other thing is what you have to rely on in the 4.6 is what is written in the 4.6. It's not sufficient and it's in fact legally flawed to bring in other perspectives from outside into it and say, "Well we've thought about the 4.6 and then we've got these other things." It's actually about what the 4.6 says. So it constrains your consideration of it in terms of making a lawful decision and the nature of the planning, sufficient planning justification that's required is subject to the need for

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it to be site specific.

5 There's normally something about it and as I mentioned with the height, I don't have a particular problem with the height because the site does step down and often in those areas, as in this case where the topography is sloping, you will get positions where certain elements of buildings pop up through the height plan because of the nature of the site.

10 And it's those sorts of reasons that I'm looking for and it's the question I have is both the absence of those and the way the applicant's 4.6 uses this circularity of argument that says because we have to exclude the ecological zone, we need more of an FSR. The fact is you're required to not consider the FSR – the ecological zone in order to get access to the bonus. To then say, well because we needed to do that, we now need to go to 1.6 is difficult. I think the issue with roads I think is one that's more comprehensible as a planning reason and that would push it from I think is it 1.23 to 1.33 or something like that. So you go above a 1.25.

20 And I think one could work with that but I do have this question that I'm seeking to resolve in my own mind through having a legal perspective of whether the way this has been done in the 4.6 stands up legally, notwithstanding the merits of the case, which may well be there and might indeed stack up in form of doing a merits assessment. The issue is we're not doing a merits assessment, we're doing a legal assessment in this 4.6 and that's where my residual concern sits.

25 **MS WATSON:** Thanks for that, Michael. We can take that away and come back to you.

MR CHILCOTT: Thank you. Appreciate that.

30 **MS WATSON:** Okay. The next item –

35 **MR CHILCOTT:** And Amy, can I just add one other thing? If this treatment of the way one considers the ecology components of this site is adopted, the other concern I would have is that it sets precedent for certainly the IPC, if we say yes, this is a valid way of doing or making this argument, then a series of other [unintelligible 00:27:36] will adopt a similar approach when seeking to exceed FSR. I think we've got to be very careful about the nature of the consideration we give to it because it will set a precedent.

40 **MS WATSON:** Thanks, Michael.

MR CHILCOTT: Thank you.

45 **MS WATSON:** Okay, so I'm going to hand over to Peter, who's going to talk about the next agenda items, the first one being the outstanding Council concerns.

MR MCMANUS: Okay. Thank you all. My name is Peter McManus, I'm team leader in social and affordable housing assessments and I'll speak to you regarding

the outstanding Council concerns and the remaining items on the agenda sent through recently.

5 So the first of those matters is the excessive bulk and scale or GFA. Throughout the Department's assessment, we consider the GFA of the overall proposal to be appropriate, given the site's position within an existing urban setting and the design response to its new higher density R4 zoning. The proposal has incorporated design elements to help achieve articulated building facades and other treatments include setbacks of the upper floors to sufficiently minimise and perceived potential bulk and scale impacts on the surrounding adjoining neighbours.

10 Furthermore, I guess the proposed setbacks, the position of the ecological zone and Martins Lane assist in providing that relief to the proposed scale of the development and there's no adverse amenity impacts on adjoining properties. And the traffic impacts associated with the proposal can be managed and mitigated appropriately. And I guess furthermore, as presented previously, the Department considered the proposed exceedances of the height to be acceptable in the context of the case. So if there's any questions regarding that, happy to take those. 15
20 Otherwise, we can move on to the next item.

MS GRANT: Yes, keep going. Yes.

25 **MR MCMANUS:** Yes. Courtney, next slide. So the next matter which remains outstanding from Council relates to the impacts on trees, particularly those adjacent to Martins Lane. So in terms of the Department's assessment, we were satisfied that the incursions into the structural root zones and tree preservation zones to be satisfactory in the context of the proposal, noting that previous incursions had been approved by Council through the works along Martins Lane for the footpath. 30

The Department sought further tree root mapping from the applicant and evidence was provided to the Department's satisfaction to provide the assurance that the proposed incursions and works into those tree preservation zones, particularly trees T3 to T6, were going to be minimised and the impacts would be appropriate. 35 The Department also worked closely with its colleagues at the Biodiversity, Science and Conservation Group. In its advice to the Department, BCS were satisfied that the proposed level of incursions into those tree preservation zones would be acceptable. I think the next item –

40 **MS GRANT:** Before you move on to that one –

MR MCMANUS: Yes, go, Juliet.

45 **MS GRANT:** When we were on site yesterday, we spent a lot of time looking at probably T3 and T4 and the location of that footpath and discussing with the landscape architect and the arborist on site whether or not there was some retaining wall required. They were suggesting they were going to use batter to

change the heights between the tree trunks and the footpath. Was that something that the Department looked at? We did discuss whether or not there potentially was a need for conditioning around how they would manage that transition and on the basis that the expectation is you probably would need some form of small retaining wall.

MR MCMANUS: We'd need to take that on notice as to the specific details regarding if we sought any advice on that matter and we can come back to you regarding that.

PROF TAYLOR: We did talk to the proponent and they didn't have problems with the idea if it moved forward.

MR MCMANUS: Okay. All right. Just go to the next one, please, Courtney. Thank you. The ecological zone. So as we've discussed in a little bit, the proposed ecological zone or the design of the proposal and its response to that zone has satisfactorily maintained the 20 metre wide requirement and it also retained and protects the Blue Gum High Forest stand that is located at the south of the site.

The design has incorporated a publicly accessible footpath via elevated boardwalks and paths to provide I guess the last amount of impact to the root zones of those existing trees. And in the Department's opinion, the design response satisfies item 7 of the VPA scope of works and it didn't seek any further changes based on that.

MS GRANT: Could you just outline a little bit further about what item 7 of the VPA actually includes? The discussions that we've had with Council would indicate they're expecting this land to be dedicated, whereas the applicant was very adamant that this is intended to just simply have an easement for public access. What's the expectation under the VPA in terms of that, who's owning and managing that land?

MR MCMANUS: I'd have to take it on notice to double check the specific wording but from my recollection, it is only an easement requirement, ensuring that this space remains publicly accessible and that there wasn't a specific dedication requirement in the VPA. But we will confirm that and provide you with a response in that respect.

MS GRANT: Thank you.

PROF TAYLOR: Could I ask a follow on question on that? So if it does remain in the ownership of the proponent, what are you expecting to see in terms of the protection of that as a – easement's one thing but what other legal instrument would be used to protect it as an ecologically designated site?

MR MCMANUS: The Department, as you'll note, has provided a recommended condition of consent to ensure that the easement is placed over that portion of the site to maintain that public access. And furthermore, a vegetation management

plan has been proposed or a condition to be implemented that would maintain that space of the site to ensure that Blue Gum High Forest is maintained and protected and that also includes the Blue Gum High Forest trees that are located along the western side of the site adjacent – sorry, the eastern side of the site adjacent to Martins Lane.

PROF TAYLOR: So just putting sort of a black hat on there, if somebody came back in 20 years' time and wanted to put something along the other side of the fence line, you could still have easement, you could still have a vegetation plan, but you may not have an ecological site. Is there any other belt and brace expectation you might have?

MR MCMANUS: Yes, go Amy, sorry.

MS WATSON: Yes. That area is mapped for protection as well. It's mapped under the local environment plan and I believe in another piece of legislation as well. I would have to confirm the details but there's legislation covering that and protecting that ecological area as well.

MR CHILCOTT: Amy, part of the issue I think is that the mapping that you've referred to doesn't match the 20 metre ecological zone. It sort of deals with certain vegetation –

MS WATSON: Parts of it.

MR CHILCOTT: – and I think the question also would be did you consider, did the Department consider a requirement for a covenant if it's to stay in BaptistCare's ownership, such that it would be more put on title to ensure its in perpetuity protection?

MS WATSON: We can take that on and come back to you. We'll have a look at the exact specifics of it, the VPA and we will come back to you with a response on that.

PROF TAYLOR: Thank you.

MR MCMANUS: Amy, next item. So next item is the residential amenity for the independent living units. So two key items in relation to Council's concerns related to access into those dwellings as well as the general overall compliance with the ADG design criteria.

The Department, through its assessment, was satisfied that the design of the proposal will achieve the appropriate levels of residential amenity for its future occupants. The design is generally consistent with the Apartment Design Guide design criteria and achieves the minimum cross-ventilation, solar access, open space and building separation requirements under those criteria.

Further, the Department was satisfied that the access to those ILU dwellings has

5 been accommodated appropriately within the design of the proposal and notes that dedicated street access or a lobby is not required in this instance in accordance with or having regard to the Retirement Villages Act. And furthermore, the design and access of those pedestrian points is considered legible and will ensure that those entries remain access controlled for improved safety and security in accordance with Crime Prevention Through Environmental Design principles.

10 The Department has also recommended several conditions of consent to ensure that suitable levels of residential amenity are achieved throughout the proposal for its future occupants.

PROF TAYLOR: Could I just ask a question there on whether you took ADG to be project specific or building specific?

15 **MR MCMANUS:** We took –

PROF TAYLOR: Because that changes the outcome. It’s just not noted there.

20 **MR MCMANUS:** Yes, understood. We took the position that the ADG compliance or assessed the proposal, sorry, having regard to the project, not building specific. Now, in that respect, the proposal is located above a single basement that covers the entire development, so the proposal was treated as one project rather than individual buildings.

25 **PROF TAYLOR:** So did you get any legal advice on that or –

30 **MR MCMANUS:** No, I don’t recall legal advice being received on the matter. I think the approach was taken based on other approaches that have previously been taken for residential flat building developments or the like where they are under-set by a common basement that covers the entire built form.

PROF TAYLOR: Thank you.

35 **MR MCMANUS:** Okay. The next matter was the fire sprinkler matter per s 91 of the Housing SEPP. In the Department’s assessment, it was satisfied that the proposal was to include a fire sprinkler system as outlined in the applicant’s EIS, and a condition was recommended to be imposed, requiring its delivery and certification. But as we have discussed previously, if the Commission is of a mind and I guess with the abundance of caution, further evidence can be requested from the applicant to demonstrate that compliance prior to the granting of consent if
40 they wish to do so.

45 **MR CHILCOTT:** And Juliet, we discussed this on site yesterday with the applicant and they were going to provide what you just suggested, Peter. There’s a couple of points I’d make. Firstly, the environmental assessment undertaken by the third party of the application per se needs to rely on what’s in the application. If the application doesn’t include the relevant drawings, for example, architectural drawings that confirm that there is a sprinkler system, an EIS can’t say, “Well,

there will be” because there’s nothing to base it on, it would be somewhat flawed.

The other – and again, I’m sorry to go to points of law but you can’t rely on a condition of consent to overcome a jurisdictional requirement that there be a sprinkler system in the application because you can only impose a condition once you’ve got the power to grant consent and if you don’t have power to grant consent, you can’t impose a condition. So we need it fulfilled but the applicant has suggested a way to do that that may well satisfy us.

MR MCMANUS: Okay. Go to the next item, thanks, Courtney. So structural integrity, in terms of the Department’s assessment, the appropriate documentation was provided by the applicant and noting that all buildings and structures would be constructed in accordance with the National Construction Code. Conditions of consent have been also recommended to ensure the structural engineer prepares and signs all necessary structural drawings and certifies those prior to the issuing of an occupation certificate as well.

PROF TAYLOR: Look, I’ll just tease this one out a bit.

MR MCMANUS: Yes.

PROF TAYLOR: My background is engineering, so that’s why I have a – and I’m very consciously engaged with what’s been happening particularly around the expectations of buildings and how they are failing. So the way that proposals are put together tends to just, as you know, say everything will be constructed in accordance with the NCC, which that implementation has been found to be slightly flawed. So your consideration of the structural engineer makes sense. Was there any other sort of information the Department might be working on to make sort of this area a little more robust than it has been in the past?

MR MCMANUS: From a I guess assessment practices perspective, broadly across the Department, I guess the interrogation of structural matters and engineering certification around buildings isn’t something that we’ve traditionally delved into in that level of detail and historically, yes, we have I guess relied on those conditions of consent and those various stages through the consent condition, be those prior to construction certificate being issued and then subsequently through the prior to occupation certificate matters.

I’m unsure whether Amy has any additional information regarding how we’re dealing with but in the past it’s been considered to be satisfactory in the manner that we’ve approached these.

MS WATSON: Yes, I don’t have any particular information to hand. I understand the issue you’re asking is a broader issue rather than just this application. We would have to see whether we would be able to get advice from any colleagues in relation to any broader actions the Department may be involved in in relation to certification and structural issues, but I’m not aware of any that have been directed to us in terms of implementing in terms of our assessments.

PROF TAYLOR: Thank you. So will you let us know if there is any? Because I am aware there are conversations going on but maybe it hasn't been part of the conversations people have been having with you just at the moment.

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MS WATSON: Yes. We can certainly see what we can find out internally.

MR MCMANUS: Thanks, Courtney, to the next one. So the next two items relate to building sustainability and building maintenance. Regarding the building sustainability, evidence was supplied with the proposal to demonstrate that it would achieve a minimum seven star NatHERS rating, which was equivalent to five star Green Star rating. And the building's design will outperform the minimum BASIX energy and water requirements by 20%. Is there any feedback on those matters?

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PROF TAYLOR: Look, only that I did raise it with them at the meeting we had yesterday on site and asked would they be adverse if we put a condition around the minimum seven star, which you had spoken about there. They said they'd take that on notice.

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MR MCMANUS: Okay.

PROF TAYLOR: Just in terms of perhaps being a little more forward leaning than just the BASIX 00:46:10 as the baseline. But to the point that the BASIX is the minimum.

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MR MCMANUS: Yes. Okay. In terms of maintenance of the development, the rooftop water – sorry, the design of the rooftop parapet has been designed to capture and minimise stormwater runoff throughout the site and to support the ecological sustainable design measure proposed within the development. Specific to the rooftop drainage design or the drainage system design, overflow systems have been provided within the design of that such that where there's increased rainfall intensities, additional ponding or the like doesn't occur within the roof parapet.

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And from a mitigation perspective, the applicant has proposed six two year maintenance interval periods to ensure that those design solutions continue to operate efficiently. Does that address that? Okay. And I believe that that's the closure of I guess our discussion or the points that we wanted to raise and present to you regarding the outstanding concerns and the key matters on the agenda.

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And just to go to the last slide, thanks, Courtney, in addition to that, the Department's obviously made a number of recommended conditions of consent specific to the key issues raised, particularly on public submission. So we've got the standard construction hour limitations there to ensure that construction periods and respite periods are provided throughout the construction period to minimise any noise or adverse impacts in that respect. And the proposed construction management plan includes 24 hour contact details and I guess compliance

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handling processes regarding any adverse events that do occur as well as traffic noise and vibration management matters.

5 Specific to Council's key concerns and several conditions of concern have been imposed or recommended to be imposed, sorry, relating to tree removal, planting and just general tree impacts. Specific details regarding landscape provisions, no line marking or pedestrian crossing Martins Lane, the driveway, sorry. We have included a public art condition to ensure that that is appropriately provided for the development. Several residential amenity conditions have been imposed, as
10 previously mentioned, to ensure that appropriate design outcomes are achieved to address potential privacy concerns within the proposal. And I think that finishes our presentation.

15 **MS GRANT:** Terrific. Thank you. Elizabeth, Michael, did you have any questions or comments on the conditions to raise with the Department?

MR CHILCOTT: Nothing at this point from me, Juliet.

20 **PROF TAYLOR:** Nothing on the conditions but I did want to raise the issue of the green travel plan and the way staff travel had been considered as well as residential travel. It might be expected to be included in that travel plan because they haven't written it yet.

25 **MR MCMANUS:** Okay.

MS WATSON: We can take that one away. I don't have that to hand at the moment, yes.

30 **MR MCMANUS:** No.

PROF TAYLOR: No, look, it's probably helpful to know that we did discuss this at length with [Greenwich(?) 00:50:09] and came up with some conditions regarding that that might be useful reference.

35 **MS GRANT:** I think the key point being that we've got staff who have night shifts and safety travel concerns. Yes, the applicant suggested that there would be carparking spaces for night staff but that presupposes that the staff have a car.

40 **MR MCMANUS:** Okay.

MS GRANT: The other question that the applicant asked us was to do with the condition of consent for café fit out and so just wondering if you – they were seeking that condition to be removed. I presume that the conditions, you've talked to the applicant about the conditions prior to them being submitted to us but that
45 was one that they said that they would like us to revisit. It's not uncommon to have a subsequent fit out and use approval but if it's part of the facility, they were querying the need. Could you just outline your thinking on that one?

5 **MS WATSON:** So in relation to those ancillary uses, the café, gym, those sorts of things, we typically don't get the level of detail needed to actually approve the fit out and the detailed operation of those uses as part of applications. So we typically take the approach that we impose a limit on the consent, that the consent doesn't approve the fit out and operation and a separate approval will be required.

10 In this case as well, we also asked the applicant, through the assessment process, about the operational details of that, including whether there would be public access to those components and they advised at that time that they did not intend for there to be public access to some of those key components. I'd have to double check if the café was on one of those. It's mentioned in our report.

15 But we did raise it and they did not indicate that they sought consent for that, so that's why the limit has been imposed there. So both wasn't proposed and we don't have sufficient information to be able to assess those detailed impacts to be able to give consent at this point. So we feel that the way to proceed is similar to all other developments of this nature, where we would require them to go and get a separate consent for that at a later point when they know those details.

20 **MS GRANT:** Okay. Thank you. That comes to the end of the matters that we had on our agenda. Elizabeth, Michael, any other last things while we have the opportunity to ask the Department?

25 **MR CHILCOTT:** No, I've raised all my questions. Thank you.

PROF TAYLOR: Same here, thank you.

30 **MS GRANT:** Terrific. Thank you. Amy, Peter, is there anything else that you think we need to know?

MS WATSON: No, thank you. We –

MR MCMANUS: I don't think so. No.

35 **MS GRANT:** Callum, anything else I need to be checking, asking, from your perspective?

MR CALLUM FIRTH: No, that's it.

40 **MS GRANT:** Excellent. Well, thank you so much for your time and for giving us that presentation. It's always really helpful to have that overview, so appreciate that very much and there's a few questions on notice which we'll document and just confirm back with you. But otherwise, thank you and have a great afternoon.

45 **MR CHILCOTT:** Thank you.

MR MCMANUS: Thank you.

MS WATSON: Thank you.

MR CHILCOTT: Bye.

5 **>THE MEETING CONCLUDED**