



## **TRANSCRIPT OF MEETING**

RE: 4 DELMAR PARADE AND 812 PITTWATER ROAD, DEE WHY  
(SSD-68230714)

### **APPLICANT MEETING**

PANEL: MICHAEL CHILCOTT (PANEL  
CHAIR)  
SUELLEN FITZGERALD

OFFICE OF THE IPC: BRAD JAMES  
OLIVER COPE

SPEAKERS: JOSEPH SCUDERI  
ANGUS NGUYEN  
ADAM MARTINEZ  
JENNA COLOMBINI  
AARON SUTHERLAND  
PAUL BURCHER  
SAM HADDAD  
KEN HOLLYOAK  
OASIKA FAIZ

LOCATION: ZOOM VIDEOCONFERENCE

DATE: 10:30AM – 11:30AM  
TUESDAY, 26<sup>TH</sup> NOVEMBER 2024

**<THE MEETING COMMENCED**

**MR CHILCOTT:** Good morning, everybody. My name is Michael Chilcott. I'm the panel chair for this matter. I'm accompanied by my fellow Commissioner, Suellen Fitzgerald today. I'm also joined by Brad James and Oliver Cope from the Office of the Independent Planning Commission.

To commence with, I'd like to acknowledge the Traditional Owners of the country from which we each virtually meet today, and pay respects to the Elders past, present and emerging. Welcome to this meeting today, which is in relation to the proposed mixed use development at 4 Delmar Parade and 812 Pittwater Road, Dee Why, referenced by the Commission's SSD-68230714. The project's currently before the Commission for determination.

The applicant, Landmark Group Australia, has proposed to construct a mixed use development comprising commercial tenancies and residential flat buildings that contain a total of 280 apartments, including 43 infill affordable units. The site is located in the Northern Beaches local government area. It's currently under construction in accordance with an existing development consent as I understand it, some demolition and excavation works have commenced under that consent. And that previous consent was for 219 apartments and was issued by the Sydney North Planning Panel in July, 2023.

This proposal, which is a new application, would see a different building constructed on the site, and it's a development consent that's being sought in accordance with Section 4.17(1)(b) and Subsection 5 of the EP&A Act. In the interest of openness and transparency and to ensure full capture of information from today's proceedings, this meeting has been recorded and a complete transcript will be produced and made available on the Commission's website.

This meeting is one part of the Commission's consideration of the matter, and will form one of the several sources of information upon which the Commission will base its determination. It's important during this meeting that I and my colleague Suellen Fitzgerald ask questions of the attendees to clarify issues where that's appropriate. If you're asked a question and are not in a position to answer the question today, please feel free to take the question on notice and provide any additional information in writing, which will then be put on our website.

I request that during today's meeting, if attendees and when attendees speak, if they could introduce themselves onto the tape and onto the transcript before speaking at the first time. For attendees to avoid speaking over the top of each other, please just respect everybody's speaking rights, and that will also help ensure the accuracy of the transcript once it's produced. So that's by way of opening remarks.

Otherwise, let's begin. Aaron, you were saying prior to us formally commencing that you were taking the lead for the applicant in this matter. Is that the case?

**MR SUTHERLAND:** Yes, Mr Chair, that's correct.

**MR CHILCOTT:** All right, thank you. In which case, can I just start by asking whether there are any changes that you have to the agenda?

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**MR SUTHERLAND:** No, there's no changes proposed. We have a presentation that follows that agenda to run through with you.

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**MR BRAD JAMES:** Aaron, I might just interrupt. We've just got Sam Haddad in the waiting room. He's supposed to – yeah, I'll let him in and –

**MR SUTHERLAND:** Yes, please.

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**UNIDENTIFIED SPEAKER:** Yes, he's our flight engineer.

**MR JAMES:** Yep, great. Just coming in now, and over to you, Aaron.

**MR CHILCOTT:** We'll just wait for Mr Haddad to arrive, thank you.

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**MR SUTHERLAND:** Mr Chair, is that over to me now to –

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**MR CHILCOTT:** I think that's – just bear with me. We'll just confirm that Mr Haddad is actually connected and able to hear us. Mr Haddad, can you hear us okay? If you're speaking, Mr Haddad, we can't hear you.

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Mr Sutherland, I'll perhaps leave it to you and your colleagues to be in touch with Mr Haddad to see if similar audio communications can be established. If it's a problem, let us know and we'll pause, but otherwise we'll proceed for the present time.

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**MR SUTHERLAND:** Right, yeah, thanks, Mr Chair. Look, Mr Haddad is essentially here to answer any questions. I'll give an overview of the stormwater and flooding later on, and he's here in the event that there's a question. But I don't expect we'll actually need to call on him.

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**MR CHILCOTT:** All right, no, thank you. In which case, I'm happy to receive your presentation. And perhaps as you go through each of the points in your presentation, there'll be natural points where you can pause, and we'll take questions on those points as we move through. Thank you.

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**MR SUTHERLAND:** Excellent, great, thank you. Just before I share our presentation, perhaps I'll do a quick introduction to who we have on the screen.

So we have our client, Landmark Group. We have Joseph Scuderi there in the grey shirt.

**MR CHILCOTT:** Mr Scuderi, good morning.

**MR SUTHERLAND:** And Angus Nguyen has just entered back into the board as the development manager for the project as well. We also have Jenna Colombini here from Rothelowman, who's our principal architect for the project.

5 **MR CHILCOTT:** Good morning.

**MR SUTHERLAND:** Paul Burcher, who's our ecology expert.

**MR CHILCOTT:** Thank you.

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**MR SUTHERLAND:** We have Ken Hollyoak, who's our traffic expert, who you might be familiar with.

**MR CHILCOTT:** I may be familiar with Mr Hollyoak, indeed.

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**MR SUTHERLAND:** And we have Oasika Faiz, who works with Mr Hollyoak off camera. And we also have Mr Haddad, our stormwater engineer.

**MR CHILCOTT:** Excellent, thank you.

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**MR SUTHERLAND:** Well, with your permission, I might share screen, and just go to this presentation.

**MR CHILCOTT:** Thank you very much.

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**MR SUTHERLAND:** Do I still have you there, Mr Chair?

**MR CHILCOTT:** You have us here, but we can't see your screen. It says it started sharing, but I haven't got it up yet. I'll just check. Brad, have you seen it? Can you see it yet?

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**MR BRAD JAMES:** Nothing on my end, Michael.

**MR CHILCOTT:** Thank you.

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**UNIDENTIFIED SPEAKER:** The same for us, black screen.

**MR CHILCOTT:** We're not seeing anything – oh, there we go. I think we've got it. Thanks, Mr Solomon. Thank you.

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**MR SUTHERLAND:** Thank goodness. I'm glad not to have another technical issue. Mr Chair, thank you very much for that introduction that you gave. It sounds like you are somewhat familiar with the project. And so there might be a little bit of repetition here, but for the interest of completeness, I think it's important to run through.

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So the project that we're looking at today is at 4 Delmar Parade and 812 Pittwater Road, Dee Why. Firstly, on behalf of Rothelowman, we'd also like to

acknowledge the Traditional Owners of country throughout Australia, and recognise their continuing connection to land, waters and communities. And we pay our respects to Aboriginal and Torres Strait Islander cultures and to Elders past, present and future.

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So this is a project that's been constructed by Landmark Group. I've been working with Landmark Group for close to a decade myself and Landmark Group are a builder/developer. I'll just hand over to Joe Scuderi quickly from Landmark Group to give you an introduction to who they are, and the types of projects that they do and what they do.

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**MR CHILCOTT:** Thank you.

**MR JOSEPH SCUDERI:** Thank you, Aaron, and thank you panel for the opportunity to speak today. I'm Joseph Scuderi, the Head of Development for Landmark Group. So I thought I'd just give a quick introduction on who Landmark Group is. So we're a private builder/developer in New South Wales, one of the largest currently in the New South Wales residential development area. We've been around now for 25 years, and we're essentially a fully integrated model providing full services, including sales, marketing, construction, property management and aftercare. And the property management component is very important for us with regards to who we are and what we do.

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We are currently the only for-profit private developer in New South Wales that is registered as a community housing provider. Now we've been doing affordable housing and building and constructing affordable housing for the last 10 years. Currently we've got a portfolio under management within our business that is inclusive of 200 affordable housing units. And that is looking to grow, and will grow to close to 500 apartments that are specifically affordable housing over the coming 18 months. Obviously this project can contribute into that, but also a plethora of other projects that we've received approval from or for over the past couple of years.

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So affordable housing is not something that we are adverse to, it's truly ingrained into our business model. And it's something that we understand, which is important. Because a lot of obviously now affordable housing and the development of affordable housing is now going to be a more common and prevalent part of the residential landscape. But as I alluded to before, it's something that we've been doing for the last 10 years. We know how to manage it. It is different to other asset classes in New South Wales, that it needs to be treated with care and diligence. So I think the moral of the story is you're speaking to someone today that understands affordable housing. We are a registered CHP and therefore we understand how it needs to be managed and treated. I'll hand it back over to Aaron now. Thank you, Aaron.

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**MR SUTHERLAND:** All right, thank you, Joseph. And we certainly, Mr Chair, it's worthwhile saying we worked under the previous regime for affordable housing for quite a few years now, and we're delighted with the changes that the

Department have introduced, particularly the relief on height that we didn't previously have under the former regime. That's a substantial improvement that enables us to deliver these projects easier.

5 So now in terms of the project overview, so we have an SSD application here that proposes the 30% increase in height and GFA to the existing approved development, in order to provide 15% affordable housing. For all intents and purposes, this application is for alterations and additions to the approved development. So it exactly replicates the approved development at the lower levels, and essentially provides the additional levels that you can see in blue here.

10 So just from a technical perspective, at the time that we lodged the application, we were unable to lodge it as alterations and additions and to meet the \$75 million threshold. So instead, the application is lodged as a fresh DA. The Department have since changed that provision now, so you can lodge as alterations and additions, but for all intents and purposes, the application is for alterations and additions to the previous approval. The incentivised controls allow us to provide an additional 62 units on the site and of which of those, the bulk of them, 43 units will be for affordable housing.

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20 **MR CHILCOTT:** Mr Sutherland, just before you go further, I understand the nature of the proposal as you just express it. Just to be clear that from our perspective and in terms of the job before us, as the Commission, this is a new application in totality.

25 **MR SUTHERLAND:** Yes.

**MR CHILCOTT:** And so we're required to consider it as a first application for consent.

30 **MR SUTHERLAND:** Yes, understood, yes. So that existing approval is DA2020/0145. That provided for the demolition of existing structures, the construction of a mixed use development comprising three commercial tenancies, and 219 apartments over two basement levels, lot consolidation and then subdivision. So that was approved by the Sydney North Planning Panel in July last year.

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40 Since that time, there's been a modification application lodged and recently approved by the Council. And what you can see here is on the left, the top image on the left is the approved development as viewed from Delmar Parade, and then the bottom image is this proposal. So yes, we accept that it is essentially a fresh DA. But the important point that we'd like to note here is that we've been faithful to the previous approval. And particularly on the Pittwater Road facade, we've been running that modification application in parallel with this SSD application, and there was some significant workshop process with Council to arrive at an aesthetic and a design act or an architectural expression that the Council were comfortable with, which is what you can see on the approved Pittwater Road facade. And in parallel, we've updated this SSD application to be faithful to that

agreement and approval granted by Council.

5 So the description of the proposed works is the erection of two buildings from ground floor up. So that's a recent change or amendment to the project. And what that means is we're excluding structure up to ground floor slab. Building A is a six to seven storey building presenting to Delmar Parade with ground floor commercial tenancy, 156 apartments. Building B is a 9/10 storey building presenting to Pittwater Road, which has two ground floor commercial tenancies and 124 apartments.

10 15% of the entire floor space, obviously including the commercial floor space as well, is affordable housing, which equates to 43 apartments within the project. You'll also note in the Department's assessment report that those 43 apartments are actually quite high performing apartments, with solar access and cross-vent in excess of the overall figures for the project.

15 So all vehicular access into the site is identical to the previous approval. So that's on the eastern side of the Delmar Parade frontage, and also identical is the ground floor loading bay and garbage collection area, which again was workshopped in quite some detail with Council at the time of the previous approval, and in fact was quite a challenging component to resolve as part of the project.

20 There's a central open space on the western side of building A, and then also in between buildings A and B at the ground floor. Again, they're identical to the previous approval, but there's also additional rooftop communal open spaces with this project, and part of the application is to style the subdivision into two allotments.

25 So the works that are already approved under the previous consent are the demolition and tree removal, which has occurred, shoring works, bulk excavation, the stormwater diversion works, and I'll talk to that later in the presentation, and then construction of all structure to the underside of the ground floor slab for the three basement levels. Several months ago it was intended that the construction of the slabs would occur – or sorry, the basement slabs would occur as part of this application. But as time has progressed, construction works have moved along on site, and in discussions with the Department, we've amended the application so those construction works can continue seamlessly. And then this application will be from that ground floor slab up.

30 So the diagrams illustrate the red elements, which are already approved and not proposed as part of this application. The coloured elements are what are proposed. And then the blue overlay is to diagrammatically illustrate the difference between this application and the previous approval, in terms of those extra one or two levels.

35 40 45 I understand you haven't had the pleasure of a site visit yet. I believe that's happening next week. So we thought we'd include some photos just to just give you a sense of where we're up to. So these photos are quite recent. They were

taken on the 20th of November. You can see the excavation is well underway. Shoring's been installed. So there obviously is a sense of urgency. We're very keen to see if we can secure this approval, as we're moving on quickly on site. But also what it means is we expect this will be one of the first projects in New South Wales that will be able to take up that incentivised uplift.

So there's four clause 4.6s for the application.

**MR CHILCOTT:** Sorry, just before you move on, Mr Sutherland, I'll just check to see, Suellen, whether you had any questions in relation to the background materials before we move on to the 4.6.

**MS SUELLEN FITZGERALD:** No, Michael, I'm good.

**MR CHILCOTT:** All right, thanks, Mr Sutherland. Please proceed.

**MR SUTHERLAND:** Thank you. So there's four clause 4.6 variations, which ordinarily may sound somewhat dramatic. But three of the variations are – we accept that it's a new application, but three of the variations are essentially the same as variations that have previously been granted under the previous consent. Suffice to say that demonstrates that strict compliance with those standards is unreasonable and unnecessary. But certainly we've got those, we have those clause 4.6s provided again. And we understand that it's obviously a jurisdictional consideration for the panel.

I'll just run you through those quickly. The first one is clause 7.12 of the LEP, which requires every site within the Dee Why town centre to have the ground and first floor as retail or commercial uses. That clause used to apply only to a couple of key sites within the Dee Why town centre. But there was a change to the definition of what was the Dee Why town centre about two years ago. And as a legacy – and the definition of the Dee Why town centre changed from several key sites within the centre to the entire centre. So as it stands, that clause required the entire ground and first floor of every building within the centre to have commercial uses on it.

So what this proposal does, however, it provides two commercial tenancies facing Pittwater Road and a single facing Delmar Parade. Just excuse the error in that slide there. And what it does is it activates the street edges of the site, where it's possible for us to achieve viable commercial uses within the site.

Again, that's identical configuration to what was previously approved, and the Sydney North Planning Panel and Council accepted that variation on this particular site due to the particular site circumstances. So those reasons are that the entirety of those street frontages are activated.

This site is largely disconnected from the majority of the town centre. So it sits right at the southern peripheral of the town centre. And it's quite a substantial distance from the centre of Dee Why. So the commercial floor space deep within



this particular site at ground and first floor with no street frontage simply isn't viable in this location.

5 Our client developed the site adjacent at 2 Delmar Parade, which is now complete. And in fact, had quite some significant difficulty simply leasing the retail tenancies that do face the street and have good exposure on the Pittwater Road, due to that extent of that site from the main centre. So we certainly know that the commercial deep within this site is unlikely to be viable.

10 The variation also though has the positive outcome of supporting additional housing in this particular location, that that floor space is then utilised for housing, and of course, affordable housing as well. So strict compliance would prevent the delivery of this development because the project simply wouldn't be viable with that ground and first floor through the entire site as commercial. That's just a quick summary of that. And then there's a much more detailed clause 4.6 that's  
15 been provided.

The second clause is clause 7.6A of the Warringah LEP, and just apologies for the formatting issues there. The controls within the LEP, it's quite unusual to have a  
20 podium control in an LEP. The previous consent will also vary those, and by some margin. So the LEP suggests a two-storey podium height on the Delmar Parade frontage. The approved development has a four-storey already, and this amended proposal has a five-storey podium height there.

25 On the Pittwater Road frontage, the LEP suggests a three-storey podium height. The approved development in fact has no podium. It has a singular tower form of seven storeys. The Council was satisfied that that was an appropriate design outcome for the gateway site on the southern entry into the Dee Why town centre. The subject proposal adopts the same approach, and of course is nine storeys  
30 instead of seven storeys, with no podium. So in essence, that control has effectively been abandoned by the previous approval and –

**MR CHILCOTT:** Mr Sutherland, I'm just stopping you there for a moment. Your 4.6 actually says it hasn't been abandoned. So you make that argument now, but  
35 your 4.6 does not make that argument. And I'll come back to that in the comments.

**MR SUTHERLAND:** Yes.

40 **MR CHILCOTT:** But I just thought I'd take that moment, because it may well be an argument you want to make, but it's not one that's in the written form.

**MR SUTHERLAND:** No, Mr Chair, I accept that it's not in the written form. In my experience, a consent authority is particularly nervous to take a view that a  
45 control has been abandoned. And as such, I have not prosecuted that in the actual 4.6. I guess this is a presentation, but I'm happy to retract that as part of this presentation if that gives you comfort.

Alternatively, it's certainly my view that it has been abandoned on this particular site, clearly. But as I said, I didn't prosecute that argument for the reason that it does tend to make consent authorities nervous to rely on that argument.

5 **MR CHILCOTT:** Can I suggest this? We're content to take the arguments as they're made in a non-nervous way, and to consider them in relation to what's there.

**MR SUTHERLAND:** Yes.

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**MR CHILCOTT:** I would encourage you to, generally in the 4.6s, and I'll have a little bit perhaps more to say at the end, but to make the strongest case you can in relation to that. Part of the challenge you have with the two LEP controls that you're seeking to – or the standards you're seeking to vary, is that the objectives of those controls are quite specific. And while sometimes one might criticise an assessment of a 4.6 for reading the objectives too narrowly, the challenge I think that the applicant has in this case, or one of the challenges, is that the controls in relation to the LEP matters are quite specific. And it's not a question of reading them too narrow. They are indeed narrow.

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**MR SUTHERLAND:** Yes.

**MR CHILCOTT:** And if one reads them on face, the particular proposals you have may not be consistent with those objectives. They may not achieve them, notwithstanding the non-compliance, which may be one of the tests you seek to bring forward. It's a difficult one in this case, particularly in relation to the podium, where the controls specifically say, step back and do things in a way to present. And this proposal clearly does not.

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And so you may need to focus the arguments potentially in other areas. It's really a matter for the applicant how it goes about things. But I just note your contention that in relation to the controls in the application, how consistently they've been applied, and note that that's not a matter you've brought forward in your application. So again, that's a general comment. And I'll have some more to say at the end, perhaps. But I'll just, for the moment, in the context of you making the presentation at this point, make that point.

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**MR SUTHERLAND:** Okay, look, thank you for that feedback. And certainly if there's an opportunity to bolster those clause 4.6s, we're more than happy to do so. And I accept the point that an argument in relation to abandonment, or a conclusion in relation to abandonment, may be of assistance where the objectives are very narrow.

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**MR CHILCOTT:** And we're content, I would think, to take whatever submission is made through the 4.6, and to assess it in its own right. But I think it's to the betterment of the process in total that the applicant makes its best case, so that we can assess its best arguments in relation to the matter.

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**MR SUTHERLAND:** Okay, understood. Thank you. Just closing out then in terms of merit, the amended Delmar Parade building adopts a five-storey podium, so there's an increase in one storey. And the reason for that is that the expression of the 2 Delmar Parade building adjacent, even though it's a four-storey podium, the expression presents as a five-storey podium due to the heavy brick parapet at the top of that podium. And the five-storey podium in this instance is intended to match that in a better way than what the previous approval does. I note that's something the Department of Planning were content with.

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There's a clause 4.6 variation to clause 16.1 of set housing, which is the FSR. So obviously the FSR controls carries over into clause 16.1, rather than clause 4.4 of the Warringah LEP. Again, this is a similar clause 4.6 to that which was previously supported, but fundamentally it arises from the fact that there are two FSR zones across the site. As you'll be aware, Commissioner – excuse me, old habits die hard – Mr Chair, in a matter of –

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**MR CHILCOTT:** I'm still a Commissioner, it's all right.

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**MR SUTHERLAND:** Oh, right, great, thank you. In the matter of *Mulpha v The Hills*, we take a different approach now to where to split FSR zones, and we analyse based on the split. Nonetheless, the total GFA that's available with the combined FSR zones is 25,334 square metres. This proposal is 380 square metres less than that maximum. However, there is a variation to distribution of FSR between those two zones, such that there's an exceedance in the Pittwater Road site, if you will, with a 4.16 control there.

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So a similar variation was – and I haven't, forgive me, I haven't put the variation in this particular presentation, but a similar variation was proposed and supported in the previous approval. And essentially the variation allows for a development outcome that we say is more consistent with the control, in so much as it promotes or encourages a higher density on the Pittwater Road side of the site rather than the Delmar Parade side of the site.

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So we say that that distribution is aligned with the objectives for the split FSR zones, notwithstanding the technical non-compliance there. There's no adverse impacts that result from that variation or redistribution of the FSR. And in fact, it provides some relief from needing to, or preferring to redistribute that GFA into the more sensitive part of the site where building A is located. Strict compliance with that would result in the loss of 15 apartments, if that redistribution back could not occur.

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And then the final clause 4.6 is in relation to height. So there's two height zones on the site, a 20.8 metre on the lower building A, and a 31.2 on the higher Pittwater Road part of the site. The image on the left is showing you the currently approved development with height variations, and certainly lift overruns that are a greater extent of percentage variation than what we're currently proposing. But nonetheless, this is its own application that stands on its own two feet.

5 So the variations largely arise because of two things. One is a fairly substantial fall across the site of four and a half metres directly north to south, and about six and a half metres diagonally through the site. And also the fact that we've got quite a long extent of site here. So you can see on the image on the right-hand corner where there's elements of roof that pop out at a maximum to about 1.4 metres. Those elements are set well back from the Delmar Street frontage, and are unable to be seen from the Delmar Street public domain. And certainly they don't cause any additional shadow impact, and I'll talk to that in a moment.

10 The other reason for their height variations are the desire to provide rooftop communal open space, and the consequent breach by the lift overruns. Again, those lift overruns have been shifted to the north to ensure that they don't have any visual, adverse visual outcome or shadow outcome.

15 So in terms of shadow, I just wanted to just take you to the sections quickly. So you'll see on the top section there, on the right-hand side is the southern end of the site. And what you'll see is that the leading edge of that building is in fact comfortably underneath the height control, which is then balanced by, or that more than balances the extent of the left-hand side of that image, which is at the northern end of the site, where you could see in the 3D [unintelligible 00:32:55], there was elements of roof which slightly breached the height control.

20 But because of the area at the southern end being well under the height control, as I mentioned, the breach itself does not result in any additional shadow whatsoever to the south. I have –

25 **MR CHILCOTT:** Mr Sutherland, perhaps just take a breather there in relation to the 4.6s. I'll invite Suellen to come on in a moment and add to the comments I make if she has further comments. But just to observe, I've made some observations in relation to the LEP development standards and the 4.6 requests in relation to those.

30 In relation to this matter, again, part – you've, I think in your discussion, gone very clearly to the merits of why you think the matter would ought be accepted in terms of the variations that are sought. Regrettably, 4.6s also have a sort of jurisdictional matter, which you also noted. And so there's a job to do in terms of making them sound from that legal perspective and from a legal lens perspective, not just a merits perspective. And I just had a couple of questions in relation to the two SEPP housing variations.

35 One of the first tests – and there's essentially the two things you need to overcome. One is the one in relation to whether compliance with the standard is reasonable and so forth, or should we approve.

40 **MR SUTHERLAND:** Yes.

45 **MR CHILCOTT:** And there, again, you sort of lay out the groundwork for that in terms of case law. But one of the challenges you've got in this one is that there's

no specific objective for these standards.

**MR SUTHERLAND:** Yes.

5 **MR CHILCOTT:** And where you've fallen back to is to say, well, then the divisional objective ought be the one that one assesses this against.

**MR SUTHERLAND:** Yes.

10 **MR CHILCOTT:** And I understand why you might take that view, and you may have case law that says that's the appropriate way to go. I just invite you to think whether there might be further depth to the inferred objectives of those standards. And particularly, if you look at the LEP standards which form the base from which they then flow, there might be potentially value in giving consideration to  
15 those in the context of why compliance is unreasonable and unnecessary, because, for example, the objectives are satisfied.

The difficulty I think you might have with the pathway you've chosen is that providing affordable rental housing could be achieved with a compliant building.  
20 And if you did your 30% and no more, you're there. The challenge is, well, why go the next step and seek to go further? And you've made some arguments in relation to form and topography, which I'm not sure, again, are all completely captured within your 4.6, to do with the fall on site and the need to respond to things like that. And if they're made, perhaps they're not quite in the right place, if  
25 I could put it that way.

But you maybe just wish to reflect on those. And again, a matter very much for the applicant in terms of how it moves forward on these things. But I understand how you've sought to make argument on the merit side of it. I just invite you to reflect  
30 on whether the matters of jurisdiction have their best case made at this point. And again, a matter for you as to where you go with it. But perhaps you might give that consideration.

**MR SUTHERLAND:** Yeah, I appreciate that feedback. I think based on that, we will go and seek some urgent legal advice on that. We do believe that we've addressed the jurisdictional requirement in so much as the – and I know you're cognisant of the argument that I'm making, but in so much as the variation, the cause that we are varying sits within SEPP housing, not within the –

40 **MR CHILCOTT:** No, I understand that. It's the search for the implied objectives, which is the challenge in that sense that I'm drawing to your attention.

**MR SUTHERLAND:** Yes.

45 **MR CHILCOTT:** And that is one which needs to be thoughtful to the maximum degree. And I just invite you to think whether that is indeed the route that's been found yet in your current versions.

**MR SUTHERLAND:** Yes, no, no, I appreciate that. So, I mean, there's obviously a jurisdictional requirement there, and I hear the caution. So I think we'll review that. And then the question is also whether or not the object, in terms of considering the environmental, if there are sufficient environmental planning grounds, whether or not the objectives of the height control, even if they're not necessarily a jurisdictional consideration, the height control within the LEP, whether or not from a merit perspective, they're worthwhile discussing as well. But I'll take it –

**MR CHILCOTT:** It's more than I think – the merit considerations are one thing, and they may be there in various places of the 4.6, but it's structuring the 4.6 such that it overcomes the jurisdictional hurdles that are there.

**MR SUTHERLAND:** Yes.

**MR CHILCOTT:** And as I mentioned earlier, I think it's of benefit to the process that the applicant be given the opportunity to make its best case, and that we assess it against its best case.

**MR SUTHERLAND:** Okay. No, I appreciate that, thank you.

**MR CHILCOTT:** No, that's fine. Just one other matter. And just to put the question bluntly, there's provision for an additional 30% that's available under the SEPP.

**MR SUTHERLAND:** Yes.

**MR CHILCOTT:** And a building design which sought to uplift the current design to deal with the 30%, but keep it within that, would still achieve you the uplift that is the intent of the SEPP. This new proposal, and I think it's starkly illustrated in this particular diagram you have showing at the moment, is that it incorporates elements which are different, not in the previous design, and which significantly impact on the outcomes that are seeking to be varied.

And trying to understand what is the driver, not simply – I mean, I understand the slope and I understand the merits argument you've put in terms of trying to make greater amenity, but that could be coped with, for example, by altering that front to Delmar Street, dropping it down and putting the amenity, if it was so important, within the current height bonus that you seek to take advantage of. And so it's sort of understanding why it is that moving from the compliant with uplift level to this level, is required in these circumstances.

**MR SUTHERLAND:** There's probably a couple of answers to that. Unashamedly, the project is seeking to maximise the delivery of housing on this site.

**MR CHILCOTT:** I understand that, and that's not the merits of the question, as I said, as I said, it's the jurisdictional matter that we need to assess as well. And

that's all I'm flagging to you.

**MR SUTHERLAND:** Yes, yeah, no, understood. Just to give you some background, there's a curious provision within the Warringah LEP, which meant that with the previous consent at the time the consent was lodged – sorry, the application was lodged and consent was sought, clause 4.6 is switched off in relation to clause 4.3 for height. So in actual fact, a development application within the Dee Why town centre cannot legally vary the height control.

Which probably begs the question that how come there are now breaches of the height control within the element on the left? And you probably already know where I'm heading with this, which is that they were able to be proposed as part of a Section 455 amendment, because as you're aware, we don't need to rely on clause 4.6, if it's switched off.

**MR CHILCOTT:** And [cross-talk], yes. And there you then go to the merits. I understand that.

**MR SUTHERLAND:** And essentially in the approved development, just for what it's worth, the breaches arise for two reasons. One was that we wanted to deliver additional communal open space. So that approved development was already compliant, ticked the box. But Landmark Group certainly wanted to maximise amenity provision for the project, which is admirable.

The other reason for the breaches was, as you're no doubt aware, that the changes through the NCC and the need to provide additional tolerance for floor-to-ceiling heights, meant that the elements that they just pushed through aren't to do that.

**MR CHILCOTT:** And again, I'd note that I don't think your 4.6 goes to those points.

**MR SUTHERLAND:** No, it doesn't. I mean, that was more relevant to a change that occurred in the previous approval to the mod. But look, we do appreciate the frank feedback because – and I assume there's an opportunity for us to polish those 4.6s following this session. Is that –?

**MR CHILCOTT:** No, I think that's correct. As I keep saying, it's a matter very much for the applicant, but I just wanted to be clear from our first reading of the material that's before us, where our questions lay, and to provide you with an opportunity to respond to those questions. And the questions may remain when your response comes back in some form. But we think there is merit in assessing the application on its best case, so that we can take a decision and so hence we provide this feedback at this time.

**MR SUTHERLAND:** Okay, no, I appreciate that.

**MR CHILCOTT:** Before you go on, I'll also invite Suellen Fitzgerald to make any comments she wishes to in terms of the 4.6 variation. I think I've said all I

need to do, but Suellen, have you got further comments?

**MS FITZGERALD:** Michael, my only comment, I think that Mr Sutherland was about to go on to the overshadowing issue. So I'm interested to hear about that. I note Mr Sutherland, you did say that there was almost no difference between the overshadowing before these additional variations to post these additional variations. So I'm interested to hear further about that.

**MR SUTHERLAND:** Yes, okay, thank you. Yeah, I'll move to shadow just in a moment. I just want to clarify my point in relation to shadow. There's no additional shadow as a consequence of the height breaches. So there is some additional shadow. It is minor, and I'll talk to that in a moment, but I just want to distinguish for the purpose of the clause 4.6, that there's no adverse shadow impact as a consequence of the height breach.

**MR CHILCOTT:** So it's really the compliant built form which creates a potential impact from shadow, not the further variation that's sought under the 4.6?

**MR SUTHERLAND:** Correct, and we felt that's a very important distinction.

**MR CHILCOTT:** Thank you. Do you have a shadow diagram that supports that proposition?

**MR SUTHERLAND:** Oh, we do, I don't have that in this package, but I believe that –

**MR CHILCOTT:** That's fine. If you'd be good enough to note that comment, and if you could provide that to us, that would be helpful. And just before we wrap up 4.6, as I mentioned, very much a matter for the applicant as to what it does in terms of material it relies upon in these considerations, this assessment, but should the applicant determine it wishes to provide either an amended 4.6 or an addendum to the 4.6, the Commission would be open to receipt of those, and if necessary for the applicant to amend its application consistent with any revision it came forward with.

**MR SUTHERLAND:** I can confirm already without consulting with my client that we'll be taking up that opportunity, Mr Chair. So just one final comment from me in terms of that objective within the set. I accept the proposition that the objective is achieved by a compliance scheme, but I'll still maintain the view that the objective is better achieved as a consequence of the variation. So it certainly facilitates the delivery of additional affordable housing in an ideal location. And if we can demonstrate that that is without adverse impact and within the environmental capacity of the site, it's certainly my opinion that the objective is better achieved, rather than what I would say unnecessarily reducing the yield on a site that can take that density.

**MR CHILCOTT:** Again, a matter for you, how you make matters. I just want to point out, we obviously need to rely on what's the written document, not simply



your submissions here today.

**MR SUTHERLAND:** Yes.

5 **MR CHILCOTT:** So it needs to be clear within your 4.6 request what it is you  
rely upon in relation to both satisfaction of objectives, why compliance is  
unreasonable and unnecessary, and the sufficiency of environmental planning  
grounds, which often go to matters of the site's position and topography and other  
things that provide that. I think the benchmark is satisfaction of or achievement of  
10 an objective, if that's the way one goes, rather than needing to better it.

**MR SUTHERLAND:** Yes. Understood, understood.

15 **MR CHILCOTT:** I'm sure you know the case law well. And as we mentioned  
earlier, it may be that – and again, a matter for you – some form of a legal lens on  
it may assist you to finalise matters.

20 **MR SUTHERLAND:** We'll definitely do that. Okay. So in terms of the shadow  
impact analysis, so what we've got here essentially replicates, or it's a stripped  
down version, I guess, that there's quite a comprehensive set of shadow diagrams  
within the material that you should have, which also shows the reduction in  
shadow as a result of the proposal below. I showed you the section previously  
where we're in fact below the high control at the southern end.

25 But in terms of a summary, first of all, what I'd like to point out, this is midwinter.  
I accept that we measure shadow in midwinter, but it's important to note that  
there's zero shadow onto Stony Range Reserve from this proposal from September  
through to March. So for that half of the year, there's zero shadow. And then  
obviously that shadow increases to this being the absolute worst case scenario.

30 What the diagrams there, they break down the shadow into three components. The  
grey area shadow is essentially a shadow that falls across a car park that sits to the  
south of the site, which is a public road and car park there. The red shadow is the  
shadow that results from the approved development on the site. And then if you  
35 squint, you can see the green shadow, which is the additional shadow as a  
consequence of this proposal. As I mentioned, there are other shadow diagrams  
that show a dotted line where the shadow that would result from a height  
compliance scheme, and in fact, the green shadow that you're seeing there is less  
than that would result from a strictly height compliance scheme at the rear of the  
40 site.

So in terms of the impact to Stony Range Reserve, there's a couple of  
considerations. One's a visual impact, and then the other one is an ecological  
impact. Now, none of those impacts arise from any particular – there's no DCP  
45 clause, not that DCP clauses are relevant to SSD in any event, but there aren't any  
particular clauses of that nature. So it's a pure merit assessment.

So in terms of ecological impact, I'll hand over to our ecological expert, Paul

Burcher, but he might run you through what is the nature of the vegetation that sits within that Stony Range Reserve, and give you some commentary around his opinion in relation to the additional impact from this proposal.

5 **MR CHILCOTT:** Thank you, Mr Burcher. I welcome your comments. If I can invite them to be brief, noting time. But I could also say, we'll be looking forward to visiting on site and to understanding those impacts on site, where we can actually walk edges of shadows and things, and understand it very clearly once we're out there. So we will have that opportunity to be on site and have a view and  
10 understand the potential impacts. Mr Bircher, your comments.

**MR PAUL BURCHER:** Yes, Paul Burcher, consultant ecologist. I won't go into too much detail about the nature of the vegetation as time's running short, but it's basically a mix of remnant native species in the canopy and understorey and shrub  
15 layer, and planted specimens that people at the Botanic Gardens have put in over the years. Most notably, Illawarra flame tree and Queensland tree waratah, which already cast a heavy shade over much of the affected area.

20 So it's my opinion that with the additional small amount of additional shading, it's going to make very little difference to those parts of the vegetation that would be affected by the shading, because they're already heavily shaded. It's a bit difficult to say how individual plants themselves would react to the additional shading. And it's only during a very small period of the year and a small percentage of the reserve. So of the whole development, it's 11.7% of the reserve, which is about  
25 3,640 square metres, whereas the approved development was 10.6% of the reserve, which was 3,277 square metres. So it's only another 363 square metres affected.

30 Of that, a small area is remnant native vegetation that's intact, and that's in the eastern part of the reserve. That's plant community type 3592, which is Sydney Coastal Enriched Sandstone Forest. It's not an endangered ecological community. And I don't believe there'll be any impacts on threatened species in the reserve.

35 **MR CHILCOTT:** Thanks, Mr Burcher. Suellen, did you have any questions for Mr Sutherland or Mr Burcher in relation to overshadowing?

40 **MS FITZGERALD:** Only that when reading the submissions from the public, it seems their concern seems to be mostly to do with shading, additional shading of the facilities like the picnic ground, etc, and there is some discussion about moving it, etc, etc. Could you just give us your views on that?

45 **MR SUTHERLAND:** I might comment to that. The Department's assessment report, I've just flicked, I'm hoping that it actually flicked over. Did it flick over to that report?

**MR CHILCOTT:** Yes.

**MS FITZGERALD:** It did, yes.

**MR SUTHERLAND:** That's quite helpful, the diagrams that they've included. So there's a picnic ground which is located right at the northern end of the reserve. Look, it's certainly inherently vulnerable in that location. But what the  
5 Department's assessment diagrammatically illustrates is that that area is already overshadowed by the current approval. So the additional shadow that falls from the proposal extends, in fact, beyond that space. Joseph, is there anything you wanted to add to that? You've had some discussions with the community.

**MR SCUDERI:** Thank you, Aaron. Yeah, so we've had multiple discussions with representatives of the botanical gardens. And we've also made approaches to them to see if we can assist with potential relocation of barbeque areas, or upgrading the barbeque areas. And we've got a plethora of correspondence regarding that, where we've invited them the opportunity to provide us with, whether it be plans or  
10 commentary on what we can do. Because we would love to be able to assist in that where we can.

Unfortunately, to date, and I believe it's because, obviously, they need to fall back and achieve approvals from Council also in any commentary they provide us, but  
20 to date, they haven't been able to provide us with any plans or any commentary on what we can do. We've got minutes of meetings where we both agreed that Landmark – and I mean this – we are willing to contribute and provide where we can. But unfortunately, we can't decide what they want, and we can't put forward exactly what they're seeking. So we're reliant on them to provide us with that  
25 advice. And unfortunately, to date, despite many approaches, they're yet to do that.

So I can say formally, we're definitely willing to assist them, and we would love to. But unfortunately, we need them to take the lead with Council on where we can  
30 contribute, whether it be relocation of a picnic area, or upgrading the play facilities that are there. We're more than willing to do that.

**MS FITZGERALD:** Okay, thanks.

**MR CHILCOTT:** In that case, we can follow that up, we'll be meeting with Council a little bit later, and we'll have a discussion about that.

**MS FITZGERALD:** Yep.

**MR CHILCOTT:** Thank you. And Mr Sutherland, just noting time, we're scheduled to go through to 1:30. Potentially we could go for another 10 minutes, but how are you going in terms of your presentation?

**MR SUTHERLAND:** Look, quite good. That's helpful for me to understand that, because I'll move fairly quickly. I am a fair way through it.  
45

**MR CHILCOTT:** That's fine. Suellen, Brad and where is Oliver? Oliver, are you content we just run another 10 minutes past 1:30 to complete this matter?

**MR JAMES:** Yep, not a problem, Michael, from our end.

**MS FITZGERALD:** Well, 11:30, Michael.

5

**MR CHILCOTT:** Oh, sorry, 11:30, my apologies. I'm all over the place. Thanks, Mr Sutherland.

10

**MR SUTHERLAND:** All right, I'll speed up a little bit. There's only a couple of other issues I want to touch on, but one's important. The images there are taken from the visual impact assessment. So there's a detailed visual impact assessment report that would be part of the material that you have. And we've just provided that there for you so you can understand two things.

15

One is the nature of the vegetation there, which you'll see next week. But the other is also to understand what the visual impact is. And there's a very dense canopy through the majority of that reserve, which largely shields the proposal. Obviously, you'll still be able to see that from different vantage points, but that might assist you.

20

Oh, look, this slide. So the only purpose of this slide is to demonstrate that we have in fact modified the rooftop facilities throughout the course of the assessment process to push back further from the southern edge, to mitigate or minimise to the greatest extent possible any visual impact from the reserve.

25

I've got a slide there, but you can read that. That's the Department's assessment in relation to flora and fauna, which obviously we support that and commend that to you.

30

Drainage and stormwater flow. I understood there was a question around that. First of all, I just want to point out to you that that doesn't form part of this proposal now. So those are approved works under the previous consent, and which will be constructed under the previous consent.

35

But just certainly for your background information, the pre-development outcome on the site or scenario on the site is that there's an undersized stormwater pipe that carries overland flow, but there's also a couple of substantial uncontrolled overland flow paths through the site, one of which flows through from Stony Range Reserve and into the adjacent Avis, what we call the Avis site. The approved scheme amplifies and provides a new pipe, which I think is installed now, down the eastern side of the site. And also a fairly complicated flood chamber arrangement through the front of the site. But again, you're not being asked to consider or determine that; those works are undertaken under the previous consent.

45

**MR CHILCOTT:** And there's no change to the footprint of the building, so it's overall impacts on overland flows and stormwater essentially the same, is that correct?

**MR SUTHERLAND:** Correct, it's identical, that's exactly right. So the pre and post flows are maintained as well. So I've just summarised what was the best part of a year worth of engineering work with the Council to arrive at that point.

5

**MR CHILCOTT:** And no – just in terms of flows that may increase from the site in terms of sewage and other in-development flows of water, the systems, do they require any augmentation from that that was originally proposed to cope with the additional dwellings?

10

**MR SUTHERLAND:** I don't believe so. Joseph, I don't know if you want to comment on that, but you have your Section 73 certificate. Joseph, are you –

**MR SCUDERI:** We're having technical issues. Can you hear me again? I apologise.

15

**MR SUTHERLAND:** Yes, we can hear you.

**MR CHILCOTT:** We can hear now.

20

**MR SCUDERI:** Okay, great, fantastic. No, there is, we've got Sam on the line also, but there is no additional impacts with regards to this. And we've looked at that. And one of the first things that we looked at as part of this application was to ensure there was no additional impact. But if there's – Sam, you might want to add to that very quickly.

25

**MR SUTHERLAND:** No, Joseph, sorry, we haven't got much time. The Chair was asking about sewage and water amplification, understanding that there's increased density within the development, and whether or not that's been taken into account. Not –

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**MR SCUDERI:** Yes, it has been, yes, absolutely.

**MR CHILCOTT:** All right. And it may be that in a follow-up correspondence, you could just point us to where that is specifically discussed in your assessment. That would be helpful.

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**MR SCUDERI:** Not a problem.

**MR CHILCOTT:** I know there's a lot of material, we can probably find it, but if there's a place you can point us to, that would be brilliant. Thank you.

40

**MR SCUDERI:** Not a problem.

**MR SUTHERLAND:** Yeah, there's an infrastructure appendix as part of that, but yeah, we can certainly point that out. The last issue I wanted to touch on, and I'll be fairly brief, but it is an important issue for us, is in relation to car parking. So I know we have our traffic expert here, but I'll give you a summary, and then hand

45

over to Mr Hollyoak just to embellish.

5 In terms of traffic impact, the proposed amendment or additional density results in an additional 11 to 13 vehicle trips per hour. That's a 1% increase on traffic on Pittwater Road, and it's of such a minor amount that it doesn't warrant additional modelling. That's based on the car parking that's been proposed within the development.

10 The application proposes rates that are above the minimum rates within the SEPP housing. So just to be clear, so SEPP housing, and forgive me, you probably know this, but SEPP housing has some non-discretionary development standards that provide an opportunity for an applicant to reduce, in particular in relation to parking, provides an opportunity for an applicant to reduce parking. It's not a development standard that the applicant's obligated to comply with, but it does  
15 provide an opportunity. And certainly there'll be applicants who will take up that opportunity on well-located sites or other sites.

20 In this particular instance, we're on the Northern Beaches, and the proposal provides additional car parking above those minimums. The Department's assessment suggests, or proposes to adopt those minimums or impose those minimums effectively as a standard on the proposed development. And consequently, condition B1(c) has been proposed.

25 Our submission is that we would seek for that to be deleted on the basis that there's no statutory provision that mandates those lower rates, but furthermore, there's no merit requirement for them. In other words, there's no adverse impact that needs to be remedied by reducing car parking on this site. As I mentioned previously, there's no adverse traffic impact which requires remedy. So there's no merit basis for reducing them. But conversely, in this particular location, if we fail  
30 to provide sufficient car parking within the development, there is likely to be an adverse impact on street car parking capacity. And certainly that's been a focus of some of the public submissions that you will see within the objections.

35 So our position is that there's not a statutory basis for it and there's certainly not a merit basis for it. And on those grounds, we would seek to have that deleted. I understand, and I'll just ask Mr Hollyoak just to comment very briefly, I'm conscious of time, but Mr –

40 **MR CHILCOTT:** Thank you, is there a second page there, or that's just the page?

45 **MR SUTHERLAND:** That's the page. And Mr Hollyoak, we'll talk to that in just a moment. From just a housekeeping matter, I understand that we would need to make a submission to the panel following this meeting with that request for that condition to be deleted. Is that, would that be correct?

**MR CHILCOTT:** I think that would be correct. But if I understand it, you're going to be communicating with us on a variety of matters anyway.

**MR SUTHERLAND:** Yes.

5 **MR CHILCOTT:** And I would imagine you could encompass that as part of the follow-up submissions that you make to the Commission, copy the Department, in the process of following up on today's presentation. I'll just double check with Brad. Brad, does that sound fair?

10 **MR JAMES:** Yes, that's appropriate, Michael.

**MR CHILCOTT:** Thanks, Mr Sutherland.

**MR SUTHERLAND:** Great, thank you. I'll just ask Mr Hollyoak –

15 **MR CHILCOTT:** Mr Hollyoak, did you want to make a comment?

**MR SUTHERLAND:** I've stolen his thunder to some extent, but if he can comment on what I've just proposed.

20 **MR CHILCOTT:** Mr Hollyoak's always capable of making more thunder. Good morning, Mr Hollyoak.

25 **MR HOLLYOAK:** Good morning, Mr Chair, or Commissioner. My name's Ken Hollyoak, I'm the Director of TTP Transport Planning. I think Mr Sutherland's actually summarised pretty much what I was going to say. The only two additional points I would make is that in my view, and based upon some recent studies, it's the quality of the public transport that restricts truck/car use, rather than restricting parking.

30 And to that end, we put in the traffic report two fairly – summaries of two fairly big studies we did. One of roads, which was 2022-2023, where there was big problems with existing on-street parking. And all of the developers were basically saying, we need to increase the on-site parking, because the parking provision is too low.

35 So we studied, it was tens of thousands of dollars, studying the traffic generation capabilities of the buildings in relation to the parking, and in relation to the traffic generation. And as per that letter there from Transport for New South Wales, they concluded, like we did, a relaxation of car parking controls doesn't have a measurable impact on the traffic conditions during peak periods. And this is the whole premise on what parking reduction was based upon, was trying to reduce peak hour traffic.

45 And again, in London Environment Court last year at Epping, we did exactly the same exercises at roads for Meriton. And the surveys revealed no link between the provision of residential parking and peak hour traffic, and above DCP parking rates were approved there.

And what was really interesting in some of the information we found there was that Epping was quite a good study, because there was no railway station in 2011, and there was in 2021. And what we found out was that car ownership was almost exactly the same, but the public transport use had gone up by 20 or 30%, which is suggesting –

**MR CHILCOTT:** This is in relation to the metro, the metro at Epping?

**MR HOLLYOAK:** Correct, yeah. And which kind of suggests to me that people wanted to keep their cars for leisure trips, but they didn't want them for commuting. And that's exactly what we found out by interviewing people at the transport terminus, was 63% of the people at the terminus owned cars, yet 90% of them left them at home. So there's still a desire to own a car, but not necessarily to use it and add traffic to the network in the peak hours.

So my view has always been that it's actually destination parking you should be reducing, not origin parking. And I don't think the reduction of residential car parking here will achieve any end at all. It certainly won't reduce the traffic to any great extent, and there's no great traffic impact in any event on the basis of only 12 to 13 vehicles. So I think that's why we believe that the B1(c) condition should be removed. I could go on for hours on this, but that's probably enough.

**MR CHILCOTT:** No, no, thank you very much. I'm sure you'll contribute to a submission that Mr Sutherland and colleagues at Landmark will put together, come back to the Commission in due course. Suellen, do you have any further questions on that point, or more broadly on parking? No, all right, thanks.

Mr Sutherland, the only question I had in relation to traffic was just one that arose in relation to construction traffic. There was a suggestion that at some point it may be desirable, and we weren't sure whether it was a necessary factor for use of access via the reserve to assist with some of the construction works, and how that sat within the application. Apparently in a previous application for the consent that was granted, there was an agreement reached with Council in relation to access through the reserve, but it doesn't form part of this application apparently. What is the position on that?

**MR SUTHERLAND:** So there's a construction traffic management plan already approved. It's not through the reserve, it's through the car park that sits to the south of – excuse me – to the south of the site.

**MR CHILCOTT:** Is that a Council car park?

**MR SUTHERLAND:** Correct.

**MR CHILCOTT:** And it required Council's assent to use that for the development?

**MR SUTHERLAND:** Yes, that's correct.



**MR CHILCOTT:** And that was for all of the development or only the basement?

5 **MR SCUDERI:** I can answer that. So we did a separate application, it was a traffic management plan application with the Council, in which we received consent for the construction of the basement to utilise that car park. And then we've actually gone back now subsequently to further discussions with the Council, where those discussions are promising to continue to use that car park, because there's a lot of benefits in terms of Pittwater Road congestion, in particular, and Delmar Road congestion, by continuing to utilise the road reserve neighbouring Stony Range. So we're in discussions with Council on a separate application and that is looking quite promising.

15 **MR CHILCOTT:** Now, I just ask, is that facultative? That is, it would assist in the efficiency of the delivery, or is it necessary in the sense that you can't build it without it?

20 **MR SCUDERI:** It is more to do, to be honest with you, with the impacts it would have on Delmar Parade. And we've showing Council that in particular there is quite dramatic impact in terms of traffic congestion on Delmar Parade in the events that all of our trucks and all of our traffic essentially that's been produced by the site is all being forced to tunnel through Delmar Parade. And that's really –

25 **MR CHILCOTT:** No, I understand that. My question is, is it a necessary part of this application? Because it won't work by bringing in the construction traffic through Delmar. I understand there'll be significant impact. But what is your base case for this application?

30 **MR SCUDERI:** Yeah, so for this base application, we will continue down the current path that we currently have under the current consent.

**MR CHILCOTT:** So the current consent, as I understand it, the current consent is not one that you're seeking to rely upon, you're seeking a new consent.

35 **MR SCUDERI:** Well, after this we will be, yes.

**MR CHILCOTT:** My point is that whatever arrangements you have for the current consent will not persist if you have a new consent.

40 **MR SCUDERI:** Yes. Ideally, we would have the ability under the new consent to be able to continue to utilise the road that's served that is neighbouring Stony Range Reserve.

45 **MR CHILCOTT:** But notwithstanding that, it's not part of this application?

**MR SCUDERI:** No, currently not, no.

**MR CHILCOTT:** I just want to be clear with that. Again, if I could invite you to

turn your mind to that when you provide your submissions back to us.

**MR SCUDERI:** Understood.

5 **MR CHILCOTT:** That may assist, because it's obviously one of those things we need to assess is the application before us, not the application that might become somewhere down the future pathway.

**MR SCUDERI:** Understood, understood.

10

**MR SUTHERLAND:** Yes, Mr Chair, to assist, I don't think the application seeks consent for the construction methodology. It's a condition matter, something to be negotiated with Council. Probably to give you a very direct answer, yes, the development can be constructed from Delmar Parade and Pittwater Road.

15

However, that's an adverse outcome, or a less ideal outcome for the community and obviously the developer, because it would entail work zones on Delmar Parade, which is congested, and obviously Pittwater Road, which is the arterial. So it's a preferred outcome for everybody.

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**MR CHILCOTT:** No, I understand the preference. It's more the reliance upon, rather than the preference for, that I'm trying to distinguish what's in this application and what's not in this application.

**MR SUTHERLAND:** Yep.

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**MR CHILCOTT:** All right, thank you. Anyway, we'll also raise it with Council just to flag that with you, so it's a matter that we'll get their input on as well, but just to flag that it's a matter that's exercising our mind.

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**MR SUTHERLAND:** Right, thank you so much for your time, and we appreciate the opportunity to address you, and we'll liaise, I think with Bradley and the Department on follow-up documentation for your consideration.

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**MR CHILCOTT:** All right, thank you. At the risk of running just a little bit further over time, I'll just check with Suellen. Suellen, do you have any further questions you want to bring to the applicant while we've got them before us?

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**MS FITZGERALD:** No, I don't, Michael. We were going to discuss just some of the operational issues around affordable housing, out of interest, rather than particularly relevant. So maybe we might do that at another time.

**MR CHILCOTT:** All right, thank you. Brad, in relation to the site view, is it normal that we would have applicant representatives with us in the site view?

45

**MR JAMES:** It's a matter for the applicant, but it may be beneficial to have some of their people there, experts.

**MR CHILCOTT:** All right, if you could be in touch with the applicant just to

coordinate that post this meeting?

**MR JAMES:** Yep, will do.

5 **MR CHILCOTT:** All right, in which case, my thanks to you all. Apologies it went over time, but I think it's been a valuable investment of time to get us to some common places of understanding on where things currently sit, and what further things the applicant might provide by way of information to us.

10 So I thank you all for your participation today. I'll formally close the meeting, and we may see a representative or representatives of the applicant on site next week. Thank you.

**MR SUTHERLAND:** Great, thank you, Mr Chair.

15 **MR SCUDERI:** Thank you.

**MR CHILCOTT:** If I could ask Brad and Suellen and Oliver to remain online, please, while others depart. Thank you.

20 **MR SCUDERI:** Thank you.

**>THE MEETING CONCLUDED**