



TRANSCRIPT OF MEETING

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

DEPARTMENT MEETING

PANEL: MICHAEL CHILCOTT (PANEL
CHAIR)
SUELLEN FITZGERALD

OFFICE OF THE IPC: BRAD JAMES
OLIVER COPE

SPEAKERS: AMY WATSON
KEITH NG
MICHELLE NILES
JOHN MARTINEZ

LOCATION: ZOOM VIDEOCONFERENCE

DATE: 9:00AM – 10:00AM
TUESDAY, 26TH NOVEMBER 2024

<THE MEETING COMMENCED

MR CHILCOTT: Good morning. My name is Michael Chilcott. I'm the Chair of the panel that's been appointed to deal with this matter, and I'm accompanied today by my fellow Commissioner, Suellen Fitzgerald, and we're also joined by Brad James and Oliver Cope from the Office of the Independent Planning Commission.

I'd like before we commence just to acknowledge the Traditional Owners of the country in which we each virtually meet today, pay respects to the Elders past, present and emerging.

This meeting is being called to discuss the proposed mixed use development at 4 Delmar Road and 812 Pittwater Road, Dee Why, which the Commission refers to as SSD-68230714, the project currently before the Commission for determination. Landmark Group Australia is the applicant, and has proposed to construct a mixed use development comprising commercial tenancies and residential flats, buildings that contain a total of 280 apartments, including 43 infill affordable units. The site's located in the Northern Beaches local government area, and the site is currently subject to works in accordance with an existing development consent for 219 apartments issued by the Sydney North Planning Panel in July 2023. This proposal, if approved, would modify the existing development consent, although it's not a modification application, it is a new application, and falls within Section 4.17(1)(b) and 5 of the EP&A Act.

In the interests of openness and transparency and to ensure full capture of today's information, this meeting is being recorded, and a complete transcript will be produced and made available on the Commission's website. The 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 during this meeting that Suellen and I ask questions of the attendees to clarify issues whenever is considered appropriate. 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'll then put up on our website. I'd request that all attendees in today's meeting, as I've just done, introduce themselves before speaking for the first time, and for attendees to avoid speaking over the top of each other to ensure the accuracy of the transcript.

So that's the introductory comments and otherwise let's begin the discussion. Can I ask the Department, you've seen the agenda, is there anything you wish to add into the agenda for this morning's meeting?

MS WATSON: Good morning, my name is Amy Watson and I'm the Director of Social and Affordable Housing Assessments.

MR CHILCOTT: Morning Amy.

MS WATSON: Morning. With me today I've got Keith Ng, Team Leader, Michelle Niles, Senior Planner, and we've also John Martinez with us today observing. So in terms of the agenda, we're happy to step through the items of the agenda if you like. We have a PowerPoint presentation with a few images that we could talk to, and Michelle has prepared some points on basically all of the items on the agenda. So if the Commission likes, we could run through the agenda items and give a brief overview of that, and take questions on each one, if that is the way you'd like to run it?

MR CHILCOTT: That would be helpful Amy, thank you very much. I think if you just pause at the end of those sections and see whether we have any particular matters we wish to go through. I'll just perhaps highlight in our limited discussions that we've had to date that – and I suspect this aligns with where you would be thinking – a number of the variation requests under clause 4.6 for variations to the LEP standards and the SEPP standards are probably matters that are going to be of significant interest to us. But I very much welcome you taking us through your presentation, and we'll put questions as we go.

MS WATSON: Okay, so before I hand over to Michelle, I might just note that in response to the public exhibition of the application, we received 13 public submissions, including 11 objections and two comments. We received advice from government agencies, and also an objection from Northern Beaches Council, which had been all considered as part of our assessment report. And the objection from Northern Beaches Council is the reason that triggers the Independent Planning Commission as the declared consent authority for the project.

As you mentioned as well, our assessment has been instructed by an existing development consent that applies to the land. The site is currently under construction, and this development, if approved, would add one to three storeys to the existing approved development on the site. The ground floor footprint, the building setbacks and the building design generally is fairly consistent with the approved development that's currently occurring or commenced on the site. We have also recommended conditions to address the two consents that apply to the land in terms of modifying the existing development consent.

So just with that extra background, I'll now hand over to Michelle who can share her screen with a few images, and we will talk through the issues on the agenda. So the first one is building height.

MR CHILCOTT: Thanks very much. Good morning, Michelle.

MS MICHELLE NILES: Morning. I'll just get myself organised to share my screen, just bear with me. Can everybody see that?

MR CHILCOTT: Yes, thank you.

MS NILES: Okay, brilliant. My name is Michelle Niles and I'm one of the senior planners in the team. As Amy mentioned, I will discuss the Department's

assessment of the key issues mentioned in today's agenda. If there are any questions, please feel free to ask after each section.

5 The first agenda item is in relation to built form. It's in relation to built form and will include discussion about building height, floor space ratio, podium design, podium land uses and building separation. This section will also discuss the four development standard variations proposed by the development.

10 The first item is in relation to the building height. The site has a split zoning. The site has split height controls under the Warringah LEP, with the western portion of the site having an LEP maximum building height of 24 metres, and the eastern portion having a maximum building height of 16 metres.

15 As the proposal provides 15% of GFA as affordable housing, it benefits from a 30% bonus to the LEP maximum building heights. This results in a maximum permitted building height of 31.2 metres to the west, and 20.8 metres to the eastern portion of the site. The proposal seeks to provide a maximum building height of 30.2 metres to the western part of the site, and 25.1 metres to the eastern part of the site. As such, the proposal exceeds the maximum building height in the eastern
20 portion by 4.3 metres or 20.7%.

MR CHILCOTT: Michelle, can I just clarify that there's building B and building A, but building B sits across the two zones?

25 **MS NILES:** It does, yes.

MR CHILCOTT: The height control. So that's that building B is not just the corner block, it's actually the taller corner block and the lower step down component that then moves towards building A?

30 **MS NILES:** That's right, yep. So building B has two height controls that applies to it. I guess the LEP zone of 24 metres in the western portion, and part of the site is also covered by the 16 metre zone. Council raised concerns that the building heights proposed are not in line with the Dee Why Town Centre Master Plan. The applicant has submitted a clause 4.6 variation request to Section 16 of the Housing
35 SEPP to vary the maximum building height for the eastern portion of the site that's covered by the 16 metre height limit.

40 The applicant considers that the building height standard is unreasonable and unnecessary, and that there is sufficient environmental planning grounds to justify the contravention of the development standard as the proposal is consistent with the objectives of the division and the underlying purpose of the control, which is to provide infill affordable housing to meet the needs of the community, and as the objective would be defeated if compliance was required. The applicant also argues
45 that the proposal is compatible with the existing and future character of the area and the variation will not give rise to significant impacts.

The Department considers the proposed building height is acceptable as it is

consistent with the scale of recently completed or under construction developments at 2 Delmar Parade, which is seven storeys; 822 Pittwater Road, which is eight storeys; and 701 Pittwater Road, which is nine storeys. Additionally, the variation is limited to small parts of the seventh storey of building A, which is set back 13 metres from the Delmar Parade frontage, and plant equipment, including lift overruns and rooftop communal open spaces of building A and part of building B, which are centrally located and set back from building edges.

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The variation will not be perceivable from the public domain, and scale of the building remains consistent with what is permitted on the site. The variations also do not result in unreasonable additional overshadowing privacy or view impacts. And finally, the proposal responds to the topography of the site, which has a crossfall of approximately 6.2 metres between the Delmar Parade frontage and the southern boundary. Was there any questions related to building height that the Commission wanted to discuss?

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MR CHILCOTT: Thanks, Michelle. Perhaps I'll start. Just in relation to the variation that they've sought, that's obviously required because the applicant has sought to both secure the bonus, which is a permissible increase in height under the Housing SEPP, but it goes further than that. It obviously seeks to not just secure the 30% bonus, but go a little bit further.

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Did the Department, in its consideration of the request, put questions to the applicant as to why it required that additional height, and potentially the FSR, and the things to a degree hang together, given that that obviously would secure the additional 30%, so they're in that sense already at that level being responsive to the SEPP, and the provisions it makes to encourage further affordable housing. But the question we would have, I think, in the first instance is why the requirement to go further? Was that a matter you discussed with the applicant, or formed a view on yourself?

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MS WATSON: I can answer that question. So we had many discussions with the applicant prior to lodgement, and then during the assessment of the application. And as part of our assessment process, we had pre-DA meetings and the like as well. So one of the first things that we look at in all of these projects is the development standards that apply to the site and the reasoning, if it is proposed to depart from those controls. So it was something that we talked about with the applicant when they very first approached us with the opportunity that they wanted to request the Secretary's environmental assessment requirements for the project. The variations were one of the first items that we discussed with them.

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So we understand that if the development had to fully comply and accommodate all of the services necessary to service the development, including the plant and the overruns and those roof elements, that they would lose floor space. They would have to drop a storey definitely in some parts of the building, in order to fully comply and have all elements under that height limit plus the 30% bonus.

We didn't think that the elements that were protruding above the height limit were generating significant impacts and we considered that there were sufficient grounds as set out by Michelle to justify those minor breaches in that regard. I would have to confirm, but I do understand that the previous approval by Council that was given by the panel, I know that that had a 4.6 for the floor space ratio split. We would have to check, but I understand that the previous consent may have also had similar minor height breaches for elements above the building, but we can confirm that as well if that would be of assistance.

MR CHILCOTT: All right. No, that's helpful to understand that background. Thank you. I'll just invite Suellen to see if you've got any questions in relation to that, Suellen?

MS FITZGERALD: Just one, Michael, following on, Amy, from the points you were making there. The 4.6 report from the proponent in relation to this makes quite a lot of having lifts protruding up onto the rooftop to give additional communal space. Now, in your detailed assessment, did you think that that exceedance of these lifts was required to provide that communal living space?

MS WATSON: I might have to take that particular detail and notice, Suellen, and have a look at that and come back to you.

MS FITZGERALD: Thanks, Amy, because, Michael, that provision of additional amenity is obviously a key positive. It's interesting to know how critical it is to the exceedance of the heights.

MR CHILCOTT: No, thank you. Anything else from you, Suellen, on that?

MS FITZGERALD: No, Michael, no.

MR CHILCOTT: Thanks. Amy, I don't know whether you are the person to ask or whether it was Michelle, but just in terms of the 4.6, there's a particular reading of the way they address one of the requirements of clause 4.6, which is in relation to demonstrating that compliance is unreasonable and unnecessary. And they seem to rely on identifying, saying that the objective of the standard is satisfied in relation to this matter.

And the objective that they've identified, because the standard itself doesn't have an objective, is the more general objective for the division to do with just provision of additional affordable housing. They didn't, for example, go to the standards of the height or FSR standards in the LEP and try and make that argument. Had you given any consideration to whether that's the correct approach from the Department's perspective? Was there an assessment of that internally from your legal advisors?

MS WATSON: So I can probably answer part of that question, in that we did consider very early on when we were working out how we're going to apply the new Housing SEPP provisions, where there are clause 4.6s, whether there needed

to be a variation request to the LEP standard or the Housing SEPP standard. And we had –

5 **MR CHILCOTT:** They've definitely done the right thing, by the way, [cross-talk] the Housing SEPP standard.

MS WATSON: Yeah, the Housing SEPP.

10 **MR CHILCOTT:** That's not the issue. The issue is just identifying what the underlying objectives are, and whether you've thought about and whether the Department gave consideration to whether they've done that correctly in this manner.

15 **MS WATSON:** Yeah, I can take that second part on notice if that's okay, Michael.

MR CHILCOTT: Right, no, thank you.

20 **MS WATSON:** Thanks.

MR CHILCOTT: Thanks. Any other questions Suellen? No, I don't either. Thank you. Thanks Amy, and Michelle, if you want to continue, thank you.

25 **MS NILES:** I do. So the next item is for space ratio. Similar to the building height LEP controls, FSR is also governed by split controls in the LEP. The western portion of the site has an FSR of 3.2 to 1, and the eastern portion 2.4 to 1. Also similar to building height, as the proposal provides for 15% of the GFA as affordable housing, it benefits from a 30% uplift to LEP controls.

30 This results in a maximum FSR of 4.16 to the western portion of the site, and 3.12 to the eastern portion. These controls result in an overall maximum GFA of 25,334 square metres permitted on the site. The proposal seeks to provide an FSR of 5.63 to 1 on the western portion of the site, and 2.84 to 1 on the eastern portion of the site.

35 While the proposal seeks to vary the maximum FSR for the western portion of the site by 36.4%, the total GFA proposed for the development is 380 square metres below the maximum permitted across the site. Council raised concerns that the proposed FSR is not in line with the Dee Why Town Centre Master Plan.

40 The applicant has submitted a clause 4.6 variation to Section 16 of the Housing SEPP to vary the maximum floor space ratio. The applicant considers that floor space ratio standard is unreasonable and unnecessary, and that there are sufficient environmental planning grounds to justify contravention of the development
45 standard, as the proposal is consistent with the objectives of the Housing SEPP division, and that the underlying purpose of the control, which is to provide infill affordable housing to meet the needs of the community, would be defeated if compliance was required.

5 The applicant also argues that the proposal complies with the intent of the split FSR controls as the higher density is located along the Pittwater Road frontage, and lower density at the remainder of the site. Additionally, the applicant also notes that the proposal is compliant with the maximum density on the western portion of the site – sorry, on the eastern portion of the site. Oh, sorry, apologies. Additionally, the applicant also notes that the proposal is compliant with the maximum building height on the western portion of the site.

10 The Department considers the proposed development FSR is acceptable as the building form and GFA distribution is consistent with the approved DA. The proposal provides lower GFA than allowed on the eastern portion of the site to ensure that the density overall does not exceed that permitted by the Housing SEPP for the site as a whole, and the proposal continues to achieve the intent of
15 the LEP FSR controls, which seeks to concentrate the higher density components of the development on the western portion of the site along Pittwater Road.

Was there any questions in relation to FSR by the panel members?

20 **MR CHILCOTT:** Look, just if I can flag Amy, just as I asked that question in relation to the construction of the FSR – sorry, the height 4.6 request, there’s a similar question in relation to the FSR variation request. If you could similarly take that on notice, I’d be grateful.

25 **MS NILES:** No problem. Thank you.

MR CHILCOTT: Suellen?

30 **MS FITZGERALD:** Michael, my only query as I was reading through the material was if the western portion of the site was not to exceed the FSR standards, they say that they would lose three affordable units and 12 others. I’m wondering if in your discussions with the proponent, there was any consideration of whether they would move that or part of that additional, the lost residential units and so on, to building A, where they’re under the FSRs. Was that sort of
35 switch ever discussed?

MR CHILCOTT: I’m not sure whether it’s Michelle or Amy who might want to respond to that.

40 **MS NILES:** So we can take that on notice, but what we understand to have happened is that if they were to redistribute the apartments to the eastern portion of the site, it would have increased amenity impacts to the low-density residential properties to the east, and potentially more overshadowing impacts to the Botanical Gardens to the south. And additionally, potentially further exceedance
45 of the building height permitted on the eastern portion of the site.

So the applicants kind of argued that it’s appropriate to have that density in the western portion of the site, because that’s what both the height and the FSR

controls envisage, having a higher density component facing Pittwater Road, and then lower density as you're moving to the lower density areas to the east.

MS FITZGERALD: Thanks, Michelle. That's helpful.

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MR CHILCOTT: Thank you. Thank you for that. Just going back to the height things, my apologies for wanting just to quickly revisit that. One of the questions that we had was in relation to matters raised in community submissions to do with overshadowing of the Stony Creek Reserve, Stony Ridge Reserve behind and to the south of the site. Did you form a view just looking at the height exceedance locations, or did you see along the way a shadow diagram that gave any sense of what the potential impacts to the reserve might have been in relation to height?

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MS NILES: We have and I just – sorry, yeah, we have, and I discuss it a little bit later on in the presentation.

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MR CHILCOTT: Okay, I'm happy to leave it, Michelle.

MS NILES: So if you're happy to, yeah, we've got some images there as well that kind of compare.

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MR CHILCOTT: No, thank you, no, that's great. Please continue.

MS NILES: Okay. So the next item to discuss on the agenda is built form, it's about built form, is the podium land uses. Also relevant to this topic is podium heights proposed. Firstly, in relation to the podium height, the LEP requires a maximum podium height of three storeys for land fronting Pittwater Road, and two storeys for other land.

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The proposal provides for a nine storey tower to Pittwater Road, and five storey podium to Delmar Parade. The approved DA also contained variations to LEP podium height controls, with a seven storey tower to Pittwater Road, and a four storey podium to Delmar Parade approved. Council raised concerns that the proposal should be consistent with 2 Delmar Parade in terms of podium height, being four storeys, and that levels above should be set back.

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The applicant submitted a clause 4.6 variation request to clause 7.6(a) of the LEP, arguing that compliance with the podium height standard is unreasonable and unnecessary, and that there are sufficient environmental planning grounds to justify the contravention of the development standard as the proposal is consistent with the objectives of the control, and the underlying purpose of the development standard would be defeated if compliance was required.

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The applicant considers that the objectives of the development standard are met as the building A variation provides the more consistent built form, noting the higher podium heights on Delmar Parade, and that strict compliance would result in inconsistent and incohesive built form outcomes. The building B variation is an appropriate design outcome as the site is a landmark location being the southern

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gateway into the Dee Why town centre.

5 Additionally, the applicant argues that the underlying objective to achieve a consistent built form would be diminished by strict compliance with the control, noting the surrounding redevelopments have higher podium heights than permitted by the controls, and the variations do not result in unreasonable impacts.

10 The Department considers the proposed podium heights are acceptable, as for building A the height is comparable to surrounding development, which have also varied the development standard including a four-storey podium height at 2 Delmar Parade, which contains a solid brick balcony edges which read as a fifth storey, and the eight-storey tower opposite the site at 822 Pittwater Road.

15 For building B the height is in line with the approved DA which included a seven-storey tower with no podium, and provides for a marker to the southern edge of the town centre. This is similar to the eight-storey tower at the northern edge of the Dee Why town centre at 1-5 Dee Why Parade.

20 Other developments in the town centre have also varied the LEP podium height controls. Additionally the proposal has been designed to minimise bulk and scale, and finally the variations to the podium height do not result in significant visual or amenity issues to adjoining properties or the public domain.

25 Were there any questions related to podium height?

30 **MR CHILCOTT:** Yes perhaps I'll start on this one again, if that's okay. And these comparisons are quite interesting. The controls that they're seeking to vary, if you look at their objectives, and I understand that sometimes you can read objectives too narrowly, but the objectives themselves are quite specific of the controls. And they talk about quite specifically stepping the built form in as you go up, rather than having a massed podium presenting to the street.

35 And in these two examples that you've got, the one you've got on screen at the moment and the previous ones, at the upper levels you'll see that these do step in some form either back or certainly have a different presentation. And the applicants seem to be arguing that the built form meets the objectives, notwithstanding their non-compliance. This is the other one that steps back at the top of upper levels. Whereas the one we're dealing with is a straight vertical podium.

40 I'm interested in the Department's assessment and whether you how you view in particular the first requirement of 4.6, that the compliance is unreasonable and unnecessary in relation to the objectives because the objectives are met when the objectives are so specific, and the built form doesn't appear to actually comply with those specifics.

45 **MS WATSON:** We can take that on notice, but I'd just like to clarify; so the tower component for Pittwater Road is a tower component, and it's similar to the

approved DA which also had a tower component.

MR CHILCOTT: I understand, but it's pushing up further, is my question.

5 **MS WATSON:** Yes, yeah, it is, yeah. And finally just Delmar Parade, the top story of Delmar Parade does step back in, similar to the approved, but I do know it is higher, the podium is higher under the SSE. But we'll take the remainder of the question on notice.

10 **MR CHILCOTT:** Yeah. No I'm just interested in your perspective of how you viewed the applicant's assessment of these things in the 4.6. I think if there are areas where we have questions, it's in relation to some of the clause 4.6 variation requests, and that's those areas we're seeking to clarify. Thank you. Suellen, anything from you on that?

15 **MS FITZGERALD:** No nothing in addition to your point Michael.

MR CHILCOTT: All right thank you. Thanks Michelle.

20 **MS NILES:** I will move on to podium land uses. In relation to podium land uses, the LEP requires that two levels of the proposed buildings in the Dee Why town centre be provided as employment-generating spaces, including the entire ground floor of the building. The proposal seeks to vary this requirement by providing commercial floor space only at the street frontages. Council raised concerns that
25 insufficient employment-generating floor space is being provided for the scale of development.

The applicant submitted a clause 4.6 variation request to clause 7.12 of the LEP, arguing that compliance was unreasonable and unnecessary, and that there is
30 sufficient environmental planning grounds to justify a contravention of the development standard. As while the proposal is consistent with the objectives of the control to provide employment-generating floor space, the underlying objective to provide floor space beyond the street frontages is not relevant due to the site location, and the underlying purpose of the development standard would
35 be defeated if compliance is required.

The applicant considers that the site is located in the southern edge of the Dee Why town centre, is largely disconnected from the commercial core of the centre, and does not benefit from extensive street frontages or through site links to attract
40 tenants. Additionally due to these reasons, retail across the entire ground floor and first floor of the development is not commercially viable, and strict compliance with the standard would result in the proposal being unviable, preventing the retail spaces and housing being delivered, including the affordable housing.

45 The Department notes that the approved DA also contained a similar amount of commercial floor space, and that Council considered the variation to the control as acceptable, including for the reasons mentioned by the previously.

The Department considers that the site attributes have not changed since the approved DA. It is also noted that the potential need to read it is also noted that the potential need to redesign the substations and fire exit may reduce the employment-generating fourth floor space further, however we consider that the reasons for bearing the requirement remain unchanged. On balance we consider the variation as acceptable, noting the location and shape of the site and the benefits associated with the additional housing provided.

Did the panel members have any questions regarding this topic?

MR CHILCOTT: Thanks for that Michelle. Suellen?

MS FITZGERALD: Yes, just a thought really, Michael. I mean given that the Department's mantra for so many years has been jobs close to home, I'm wondering – and I can see the layout of this particular proposal makes the whole of the ground floor being commercial very difficult. But how broadly in Dee Why is the employment generation strategy working? I guess my point there Michael is really how critical is this development to employment targets for Dee Why town centre?

MR CHILCOTT: Thanks Suellen.

MS NILES: That's a question we can take on notice.

MS FITZGERALD: Thank you Michelle. I suspect it's not, the answer is it's not critical, and it looks – I can see why. But it would be interesting to know. Thank you.

MR CHILCOTT: Thank you. And I think the only thing I would ask again is just in relation to the consideration of whether compliance is unreasonable or unnecessary. I'd welcome the Department's more detailed considerations about how the applicant has gone through that process in its clause 4.6 request, Amy, if you could, you probably want to take that on notice as well.

MS WATSON: Thanks Michael.

MR CHILCOTT: I'm keen to understand the perspective there. Your clause 4.6 has quite specific requirements, and there are generalised ways of doing it, and specific ways of doing it, but I think you just want to make sure that we clearly understand your assessment of those parameters within the clause 4.6 request. And I hear the generalised response that Michelle's provided, but some more specifics would be helpful. Thank you.

MS WATSON: Okay. Thank you.

MR CHILCOTT: Thank you. Michelle anything further? You want to continue?

MS NILES: Yes, just one more topic on built form.

MR CHILCOTT: Thank you.

5 **MS NILES:** So the apartment design guide – oh, sorry, one moment. The apartment design guidelines recommends that new buildings be designed to ensure that habitable rooms and balconies are adequately separated, to provide visual privacy and increased amenities to surrounding properties and the future residents. The key locations where the building setbacks and separations do not align with the ADG recommendations are identified on the table on the screen.

10 Council raised concerns with the separation provided, noting that upper levels should be set back to reduce impacts. The proposed building setbacks and separation between building A and B and the neighbouring properties are generally consistent with the approved DA. The Department considers that the building separation and setbacks provided are acceptable, as overlooking between
15 apartments is mitigated by high level windows, window screening and landscaping. Of the eight apartments that are within the separation distances recommended to the low density zone, two apartments overlook the front setback and four apartments are provided with balcony planting to limit overlooking. The
20 Department has recommended a condition that the remaining two apartments also be provided with treatment to limit overlooking.

In relation to the setback to 2 Delmar Parade, it is considered acceptable as windows have been provided with screening or have generally been offset.
25 Additionally the development at 2 Delmar Parade has been provided with planter boxes to mitigate its own separation variations to the proposed site.

The setback to 816 Pittwater Road is acceptable, as the proposal contains no windows where the nil setback is proposed. And to ensure a blank wall is not presented to 816 Pittwater Road, the Department has recommended a condition
30 that the façade be provided with treatment.

And finally, setbacks to upper storeys are not considered warranted to the additional one to two storeys proposed by this application, as they will not
35 significantly improve the amenity to adjoining properties, or significantly reduce perceived bulk of the building. If there are any questions by the panel?

MR CHILCOTT: All right, thank you. Suellen, I'll go to you first, any questions there?
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MS FITZGERALD: Not on this one Michael, no.

MR CHILCOTT: No, thank you. Just in relation to that, I mean there's obviously the issues that I think you touched on Michelle, there's a base case that you've had
45 a view to which is the current development. The new development sort of extends any of the non-compliances up a couple of levels. I think that's something we just need to understand, how that additional bulk and the additional impacts work with this development.

You mentioned a couple of times that vegetation had been provided in certain instances, or was required to be provided in certain instances to mitigate some of those proximity impacts. Did you give consideration, or did the Department give consideration to requiring more fixed treatments to deal with those, rather than vegetation? Because I think in general terms one doesn't rely on vegetation to deal with impacts of this nature, because vegetation can die. Was that a matter of consideration on the way through?

MS NILES: I think we can take that on notice, but I would just add that I think the vegetation has been provided to ensure that any treatment such as screening does not limit solar access into the apartment. So the vegetation's kind of strike a balance between providing open access to the apartment so that they can receive adequate ventilation and solar access, and also limit overlooking into the neighbouring property. Because of the level difference, this is generally a downward overlooking to the property. So the vegetation's kind of added a layer of separation between where you could stand on the terraces and the balconies, and the opportunity to overlook onto the neighbouring property. But we'll provide a -

MR CHILCOTT: It's more about creating a step back, so that people can't approach the edge of the balcony to get a view in, rather than it providing some sort of block to the view line per se.

MS WATSON: Yeah, the entire view line, yes.

MR CHILCOTT: No, that's helpful to understand that. Thank you very much. That's useful.

MS NILES: If there are no more questions by the panel, I'll move on to traffic and parking.

MR CHILCOTT: Thank you.

MS NILES: The proposal was accompanied by a traffic impact assessment which concluded the proposal would not have a meaningful difference in traffic impacts compared to the approved DA. The TIA advised that the proposal would generate 71 and 99 vehicles per hour in the AM and PM peaks respectively, which represents a minor increase of 11 and 13 vehicles per hour during the AM and PM peaks, compared to the approved DA.

Public submissions raised concerns that the proposal would exacerbate existing traffic issues in the area. Additionally, Council requested that additional traffic modelling of intersections along Pittwater Road be undertaken, and noted that the closure of the median on Pittwater Road may be needed to block right turns into and out of Delmar Parade. Transport for New South Wales did not raise concerns about the proposed impact on Pittwater Road or intersections.

In response to the public and Council submissions, the applicant reiterated that the minor increase in traffic does not require further modelling of intersections or closure of the Pittwater Road median. The applicant did, however, consider the impacts of extending a right turn ban from just the AM peak to the PM peak, and concluded that the redistribution of traffic resulting from this ban increase would not adversely impact on other intersections.

The Department notes during assessment of the approved DA, the only traffic concerns related to right turn movements into and out of Delmar Parade from Pittwater Road. To mitigate these impacts, the Council imposed a condition in the approved DA that the applicant consult with the Roads Authority to determine the intersection treatment to the Delmar Parade-Pittwater Road intersection. The Department considers that the proposal would have minimal impact on the surrounding road network given the additional movements associated with the proposal, when compared to the approved DA. It is noted that Transport for New South Wales did not raise concerns about traffic impacts.

To ensure that the Delmar Parade-Pittwater Road intersection continues to operate at acceptable levels, the Department has recommended the applicant undertake works to restrict or remove the right turn movements from Pittwater Road into Delmar Parade with endorsement of the Roads Authority, and that these works be completed prior to occupation of the development.

In relation to car parking, concern was raised by the public that insufficient parking was provided. Conversely, Council raised concern that too much parking was proposed. In response, the applicant maintained that the level of parking proposed was acceptable due to the quality of the public transport available, and that survey data shows that residents who commute to work still use cars for social and leisure uses. The applicant also noted that the car parking rate provided is consistent with the rate in the approved DA.

The Department notes that the approved DA provided parking at a higher rate than the DCP. As this was previously considered acceptable by Council, the Department considers it reasonable to maintain that approved number of spaces for the previously approved 218 apartments. However, as the infill affordable housing provisions of the Housing SEPP applies to development in accessible areas located in proximity to public transport options, the Department considers the additional 62 units provided above the approved DA should be limited to car parking in line with the Housing SEPP rates. This results in 35 less residential car parking spaces for the development.

In relation to other types of parking, the Department has used the DCP as a guideline for parking provision, and has recommended conditions that commercial parking be reduced by two spaces, and residential visitor parking be increased by one space to comply with the DCP guideline. The Department considers that this is a balanced approach with consideration of parking previously considered acceptable for the development on the site being maintained, and new apartments being consistent with the Housing SEPP which has reduced parking rates.

Additionally, conditions related to car parking design requirements and operational management plans have also been recommended.

5 The Department is satisfied the proposal will provide adequate car parking subject to the recommended conditions, and is not expected to adversely impact on on-street parking. Were there any questions from the panel about this topic?

MR CHILCOTT: Thanks, Michelle. Suellen?

10 **MS FITZGERALD:** Yes, Michelle, just so I understand, Transport for New South Wales has said to you that they see no need for change to right-hand turns at the Delmar-Pittwater Road intersection, but the Department is requiring a change. Now, what is that then based on, if Transport sees no need for it?

15 **MS NILES:** So the Department's recommended a condition that the applicant consult with the Roads Authority about the two options I mentioned, and the third option about whether any other treatment is required or needed. This comes off the concerns that were raised during the approved DA discussions by Council, where there was concern about the level of service of this intersection operating.

20 We do note that Transport for New South Wales hasn't provided comment on any upgrade works needed, or any concerns about traffic operation at this intersection. So the condition that we've recommended has required the applicant consult with the Roads Authority to determine whether any treatment is actually needed, and, if so, undertake that work.

25 **MS FITZGERALD:** I see. Okay. So you're suggesting the proponent kind of re-discusses that issue?

30 **MS NILES:** Yeah, that's right. Discuss it with the Roads Authority, Transport for New South Wales and Council, to determine whether they believe any road intersection works are needed to ensure adequate operation of the intersection.

35 **MS FITZGERALD:** Yes, thanks, Michelle. Thanks, Michael.

40 **MR CHILCOTT:** No, thanks, Suellen. Can I say just a follow-on to that? Just from a planning perspective, I just wonder whether that condition provides adequate finality in terms of a determination to this matter? So if I understand what you're suggesting, Michelle, it's that the applicant undertake consultation with Transport, which has said it doesn't require anything, at least hasn't said it requires anything from current consultations, but if something emerges that you require the applicant to complete those works, without having any knowledge of what those works might be. I just wonder whether you might reflect on whether that condition, if that's the nature of it, is one which meets that requirement of conditions to provide finality in the determination? It seems to me somewhat open-ended.

45 **MS NILES:** We can take that question on notice, Michael.

MR CHILCOTT: Thank you. Suellen, does that make sense to you?

5 **MS FITZGERALD:** Yes, yes, it's sort of exactly the point I was wondering about, Michael, thank you.

MR CHILCOTT: Okay. No, thanks for that. Thanks, Michelle.

10 **MS NILES:** Okay. I will now move on to impacts to the Stony Range Regional Botanical Gardens. For ease of this presentation, I'm just going to refer to it as the Botanical Gardens. So most public submissions raise concerns about impacts to the Botanical Gardens related to overshadowing, visual impacts, overlooking, loss of car parking and the significance of the Botanical Gardens. Council also raised concerns regarding overshadowing impacts to vegetation in the Botanical Gardens
15 and recommended a condition that no construction works be undertaken on land associated with Botanical Gardens.

20 In response to concerns, the applicant noted that the majority of the Botanical Gardens is unaffected by overshadowing, and there is only a minor increase in overshadowing beyond the approved DA. In relation to visual impacts, the applicant advised impacts are reasonable considering the development is permitted on the site, and variation of building materials along the southern façade since the original DA approval will aid in mitigating visual impacts. In relation to parking, the applicant notes that on-site parking has been provided for the proposal to cater
25 for future uses.

30 The proposal also included a flora and fauna assessment which concluded that vegetation will not significantly be impacted, partially because existing canopy trees are taller than the proposal; as such, their access to light will not be impacted by the proposal, and that understory plants are already overshadowed by these trees. In relation to fauna, the flora and fauna assessment concluded that fauna movements will not be impacted due to the existing urban nature of the site and surrounding development.

35 The Department has reviewed the concerns raised and responses provided and considers that the additional overshadowing and visual impacts caused by the proposal is minor and incremental in comparison to the approved DA. Additionally, the proposal would not result in any substantial amenity or flora and fauna impacts.
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45 In relation to overlooking, the Department considers that the proposal will increase passive surveillance to the Council car park, promoting safety and security. In relation to parking, the Department notes that the proposal includes on-site parking to cater for future uses of the site. In regards to site access, the Department notes that the proposal seeks site access, construction site access in the same manner as the approved DA. The Department has recommended a condition that owner's consent be obtained from Council for access via the Council car park prior to commencement of construction.

On balance, the department concludes that the proposal results in commensurate level of impact to the approved DA, which would be expected by any development on the site permitted by the planning controls.

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Were there any questions from the Commissioners about impacts on the Botanical Gardens?

MR CHILCOTT: Yes, Suellen, you've come on, so I'll go to you first.

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MS FITZGERALD: Yes, thanks, Michael. Michael, the difficulty I had with these two comparative drawings is that one shows all the facilities within the Botanic Gardens, and the other one doesn't. So it's hard to really compare. Albeit I understand that differences might be quite small. But that's sort of my first comment on these two drawings, is that they're not 100% helpful.

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The other thing I wanted to raise, too, is the construction period seems to be two years. That car park would be used by heavy vehicles and machinery for two years as an access point. Is that strictly necessary to achieve the construction? How disruptive is that going to be? Has the Department considered those issues? That's my two thoughts.

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MR CHILCOTT: Thanks, Suellen. I'll turn over to the Department. I'm not sure who wishes to respond to those.

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MS WATSON: We can take those questions on notice.

MR CHILCOTT: All right, thank you. I mean, my question – I've got two questions. One is, I understand that you've shown representations of the current DA versus the proposal. What I'd be interested in understanding is, within the proposal, what would be the shadowing impacts of a compliant development, that is one which did not exceed the height required, the height provisions under the SEPP, versus one that considered the shadowing impacts of the exceedances of that compliant development? So they get their 30% bonus, and that's a compliant development. There are elements that go up beyond that. Is there at all or what are the impacts of any overshadowing from those non-compliant elements? That would be of interest to know. My suspicion, based on what I've seen, is that these would be minor, but I'd be interested just to have that confirmed. That's number one.

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Number two is the current proposal requires, as Suellen, it was the subject of her question, construction access through a point which is not in control of the applicant in this matter, and is required, the consent is required, or at least some provision of that access is required to be achieved from the owner, and I assume the owner is Council, is that correct?

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MS NILES: That's correct.

MR CHILCOTT: So you're putting in a condition of consent that the applicant must get that owner's consent for works that it requires to be done, but it doesn't currently have them as part of the application, is that correct?

5 **MS NILES:** The applicant doesn't have it as part of this application, but for their approved –

MR CHILCOTT: But it's critical to the application being successful to get it, is that correct?

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MS NILES: I will take that on notice, but I believe the construction management plan notes access provided by the Council car park will shorten the length of the construction period for the development. But we'll confirm that in writing later on.

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MR CHILCOTT: I mean, yes, so that's quite critical. If it's just to shorten the length, but they otherwise have access but would take a longer time, I understand that probably does not present a problem. If it's required, then we get into a difficult area where there's a part of the project and some land which is required for the project, which is not currently part of the application, and for which owner's consent has not been granted. That's a more fundamental issue in terms of the application. I'm hoping that your clarification will confirm that it's not necessary, it's just facultative of a shorter timeframe, if it can be secured. But if you're good enough to clarify that, I'd be very grateful.

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MS NILES: We'll take that on notice and clarify later.

MR CHILCOTT: I just flagged that if it's absolutely required for the construction of the building, but it's not part of the application, that lack of owner's consent is quite problematic. But I hasten to add it may not be problematic if they have an alternative which they can rely upon through their own land.

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MS NILES: I will note that the approved DA, Council has approved a construction traffic management plan or the like. That provides for access from the car park onto the site for the local DA that's been approved on site.

MR CHILCOTT: But not this approval?

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MS NILES: Not for the SSDA, it has not been included, Council has not provided that for the SSDA.

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MR CHILCOTT: And again, it comes down to if it's required, and it's not there – I can understand under the previous application, Council – it was actually the City North Planning Panel which granted the approval, and there's a close relationship with Council, and it may have been that that was secured along the way prior to the consent being granted. It becomes problematic if that's essential for this one, and it's not secured at this position, at this point in the process.

MS NILES: I understand. I'll take that on –

MR CHILCOTT: If you could clarify that, I'd be grateful, thank you. Just noting time, we've got two minutes left for the Department's presentation.

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MS NILES: That's right.

MR CHILCOTT: How much further do you have to go? So there's two more topics on the agenda, affordable housing and stormwater and drainage. Maybe we can just continue on if you've got questions about each topic, rather than a summary of the Department's assessment of each issue?

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I mean, can I ask, is there something that you're about to tell us that isn't in the Department's assessment?

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MS NILES: No.

MR CHILCOTT: So it's in the Department's assessment?

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MS NILES: That's right.

MR CHILCOTT: In which case, can I just turn to Suellen, to see whether Suellen, in relation to what is read and which would be, the presentation would repeat that, did you have any questions on either matter?

25

MS FITZGERALD: No, not on top of what's in the Department's assessment report, no.

MR CHILCOTT: All right. Thank you. And we sort of are aware of the mix of affordable housing that's proposed in the development, along with the other issues which fall off it in terms of height and FSR. And I think our principal questions relate to those matters rather than to the mix per se. So I'm content at this point to leave that.

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And in terms of the water and sewerage, if there are any other questions, we'll come back. But for the moment, if what you're presenting was going to be what the Department's assessment says in any case, I'm not sure there's value in us at this point going further. We may come back with a question once we've heard from Council and heard from the applicant, and that may trigger something.

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I'd also just note that we're also very keen to view the site, because obviously a number of the matters that we've talked about require us to make comparisons of the current built form, and the setting in which this proposed building will be. And so there may be questions which arise as a result of our site view, which we would come back to you on.

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MS NILES: Okay. Understood.

MR CHILCOTT: Thank you. Can I ask, Suellen, is there anything further you wish to raise with the Department at this point?

5 **MS FITZGERALD:** No, Michael, there isn't. I've raised my issues to date, so thank you.

MR CHILCOTT: Thank you. And I'll just check with Brad or Oliver. Is there anything other of you need to deal with at this point with the Department from an administrative point of view?

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MR BRAD JAMES: Nothing from me, Michael.

MR CHILCOTT: And Oliver?

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MR OLIVER COPE: Nothing from me. Thanks, Michael.

MR CHILCOTT: All right. Thank you. In which case, I'll draw the meeting to a close, smack on 10 o'clock – sorry, smack on 12 o'clock. And thank you very much for your attendance today.

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MS WATSON: Thank you.

MS NILES: Thank you.

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MR CHILCOTT: What time are we on?

MS WATSON: It's 10. It's 10.

30 **MR CHILCOTT:** 10 o'clock, thank you. I'm looking at different clocks. Thank you very much.

MS WATSON: Cheers, thank you.

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MR JAMES: Thanks everyone.

MS NILES: See you, bye bye.

40 **MR CHILCOTT:** Thank you. And Brad and Suellen and Oliver, can you stay online for a minute? Thank you.

MR JAMES: Yep. Definitely.

MR CHILCOTT: We'll just wait for Amy to depart.

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MR JAMES: Yep. And I will stop the recording.

>THE MEETING CONCLUDED