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CITY OF PARRAMATTA COUNCIL

RECORD OF LOCAL PLANNING PANEL MEETINGS

PANEL MEMBERS:

**DAVID LLOYD QC
ANTHONY REED
DARRYN CAPES-DAVIS
HELEN DEEGAN**

COUNCIL:

**CLAIRE STEPHENS
TOWELA MBIRIMI**

LOCATION:

**RYDALMERE OPERATIONS CENTRE
316 VICTORIA ROAD
RYDALMERE, NSW**

DATE:

3.34 PM, TUESDAY, 21 MAY 2019

MR D. LLOYD QC: All right. I think we can begin, and let me declare this meeting of the Parramatta Local Planning Panel open. In doing so, on behalf of the council, I acknowledge the Burramattagal clan of the Darug, the traditional custodians of Parramatta, and pay respects to the elders both past and present. Next,
5 I should announce that this public meeting will be recorded. The recording will be archived and available on Council's website. All care is taken to maintain your privacy. However, if you are in attendance, you should be aware that your presence may be recorded. In opening these meetings, it's usual for us to introduce ourselves. I'm David Lloyd; I am a lawyer; I am a QC with a current practising certificate; I
10 am a former judge of the Land and Environment Court; I'm a former acting judge of the Supreme Court, and I am presently an adjunct professor of law at Western Sydney University. Mr Reed.

MR A. REED: My name is Anthony Reed. I'm a chartered professional engineer.
15 I've had 30 years experience as a director of engineering or general manager in local government. I am currently a member of the committee of the Roads and Transport Directorate.

MR LLOYD: All right. Thank you.
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MR D. CAPES-DAVIS: Darryn Capes-Davis, resident of the LGA in Carlingford. I've been in the area for nearly 20 years and also was born in the area in Adderton Road in Carlingford as well. I work at the Children's Medical Research Institute as the head of operations there. I'm an engineer, so also work locally in Westmead.
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MS H. DEEGAN: Helen Deegan. I'm a practising town planner; have been for some 30 years. I sit on a number of planning panels as expert witness, and am an active member and fellow of the Planning Institute of Australia.

MR LLOYD: All right. The next item is apologies; there are none. Next is declarations of interest and there are none. So with that, we can proceed straight on to the first item on the agenda, item 5.1. This is an application for modification of a condition of a development consent relating to 7/3 Sutherland Street, Clyde. The original condition, condition 2, imposed a two-year trial period on the original
35 consent. The application is to replace that condition as - so as to read that the consent is ongoing and enduring. The recommendation, however, is for a further trial period. We have notice that Mr Gadiel wishes to speak. I should say to Mr Gadiel, and anyone else who wishes to speak, you have to sit next to the microphone or you won't be recorded.
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MR A. GADIEL: Thank you, Mr Chairman.

MR LLOYD: Right.

MR GADIEL: My name is Aaron Gadiel. I'm a lawyer with accreditation from the Law Society in planning and environment law, and I'm also a registered planner,
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registered by the Planning Institute of Australia. Thank you for the opportunity to address the panel today. I provided a letter to the solicitors for the council yesterday. I do see a copy of it on the chairman – in front of the chairman.

5 MR LLOYD: We have it.

MR GADIEL: Yes. You have that letter.

MR LLOYD: Yes.

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MR GADIEL: Thank you. So essentially I will speak to that submission. The town planning report is favourable to the applicant in the sense that it discloses no planning merit reasons why the application should be refused. It acknowledges that there are no reports of criminal or anti-social activity in the vicinity of the premises – the premises, of course, being a brothel. It goes through the various planning controls and notes these issues have effectively already been dealt with by the approval of the brothel by the Land and Environment Court in its current location and, in any event, on merit, those issues are satisfactory. So, for instance, there is a place of worship nearby, but there are three other brothels in closer proximity to that place of public worship, and those have been approved.

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The only reason – and I should add that this matter has been to the Land and Environment Court twice. The consent was granted by the Land and Environment Court, and upon expiry of the first trial, in terms of prolonging its use, the matter returned to the Land and Environment Court where this further trial period began. So it has now completed its second trial period. So if - if you were to accept the officer's recommendation, you would be asking it to go through a third trial period. Now, there were good reasons why the first trial period was not successful. The – the - the – the nub of that issue – and it wasn't the operator who currently operates the premises, who operated for most of that first trial period – but the nub of that issue was that there were people operating the premises, and they were operating it as a den for dealing drugs, rather than for what it was approved for, which is for a brothel.

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That obviously meant that you couldn't properly evaluate the impacts of the brothel on the local community, because for at least part of that trial period, it was impossible to divorce the illegal drug dealing that was occurring on the premises, from the brothel activity that was lawfully approved. Moore J of the Land and Environment Court quite rightly said that you couldn't judge the brothel on the basis of the illegal drug dealing, and so he gave a further trial period. Now, of course, the people who were undertaking those illegal drugs were imprisoned by the authorities, as they should have been, and so that matter is dealt with. The operator of the premises is not associated with those individuals, and hasn't been - so the operator of the premises now during this new trial period.

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There is no planning impacts, no amenity impacts on the community that should be causing the council or the panel concern. There are no objections. The neighbours

in this strata title building have not put in any objections. The issues that are said to justify a further trial, rather than an ongoing inuring consent, which Moore J contemplated might be applied for at this juncture, is to do with deficiencies that are alleged to arise from one inspection. Overall, even if you were to take these

5 deficiencies at their highest, they are minor. They have no external amenity impacts on the community. However, all of the deficiencies bar one are rejected by the applicant and, in fact, most - all of the deficiencies bar one have never been put to the applicant, and the applicant has never had an opportunity to respond to them. Those deficiencies are listed in the town planning report as things like people - - -

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MR LLOYD: Well, I can say that one that concerns me is that no one was found who could – who could demonstrate the use of a fire extinguisher.

MR GADIEL: Indeed, so the manager of the premises had stepped out temporarily when the council officers inspected. There was a probationary employee present who had not had training in the use of the fire extinguisher, and that was the oversight and - and a breach of the plan of management. Every employee should be trained to use a – every employee who is not involved in the provision of sexual services should be trained in the use of a fire extinguisher, including probationary

15 employees who are just – have just started. The applicant has accepted that that was wrong. The applicant promptly paid the \$6000 fine that the council gave it, without

20 disputation.

The council simultaneously served a brothel closure order, which didn't – made sort of general claims, with no specificity about what was there. The applicant appealed that order to the Land and Environment Court because, frankly, the applicant wanted to clear the air. If there are other allegations, the applicant wanted to flush them out and deal with them. The council revoked the brothel closure order before they could put on a statement of facts and contentions. So these other allegations have never

25 been formally put to us in a way that we can respond. So as a matter of proper fairness, they should not be taken into the panel. But also as a matter of law, they are irrelevant, because the decision of the court in *Jonah v Pittwater Council*, which I've mentioned in that letter, makes it clear that when dealing with development applications and modification applications, you are not concerned and not to be

30 concerned with whether or not the conduct or carrying out of the land use in the past has been unlawful, or whether it may be unlawful in the future.

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You are interested in planning impacts, and the trial period for this most recent trial has demonstrated that the brothel use has no adverse planning impacts. If there are enforcement issues that - that arise, then there is an appropriate mechanism to do this, and in this case, of course, there is. We concede one issue that arose which is we had an employee who was not properly trained, and we've apologised for that, expressed regret. We are committed to ensuring that error is not made again, and we paid our fine, and that was the appropriate penalty to deal with that. It would be a

40 double penalty, and one that is not contemplated by the Environmental Planning Assessment Act, for us to be denied an enduring consent because of that mistake. We've paid the appropriate penalty.

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The rest of it is unproven, undocumented allegations. But even if they were true, they would be legally irrelevant because of this decision of the court in Jonah v Pittwater Council, and even if they were true, quite separately from that, it would be wrong for the panel to make judgments about them because they've never
5 been put to the applicant; we've never had an opportunity to respond; and we would be denied procedural fairness.

MR LLOYD: Well, you aren't denied procedural fairness, because your opportunity today is to answer it.
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MR GADIEL: Mr Chairman, I'm happy to answer the specifics of the allegations today if - if you would allow me the time to do so. I will just go to those allegations.

MR LLOYD: Page 8.
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MR REED: Page 8.

MR LLOYD: Page 8.

MR GADIEL: There is a roster of workers on the premises. The statement is incorrect. At the time the council officers visited, the manager's office was locked because the manager had temporarily stepped out of the premises, literally for a very short period of time; I understand only about 20 minutes or so, but that was the time the council officers chose to inspect the premises. There is no obligation on the
20 manager to have his office unlocked constantly, and there is no obligation on the –
25 the officers should be able to expect, if they want to inspect documents, that they make reasonable arrangements with the person in charge of the premises, to ensure that they're present so those documents can be made available. Junior staff, of course, don't have access to management documents of the organisation.
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Smoking on the premises is not correct. The best we can say is that if people felt that there was – they smelt smoke, it's more likely to be smoking on the clothing of the patrons that they've brought – come in – worn into the premises, rather than any actual smoking on the premises, and certainly the applicant denies that there's any
35 smoking on the premises. The applicant denies that there's any prohibited cooking on the premises. We've talked about the manager's office. The applicant says there is an induction book on the premises but, of course, it wasn't available because the junior employee who was present when the council officers actually attended, would not know about that book, would not be able to access that book, and, of course, was
40 not required to access that book. It's a human resources book which junior staff don't get to access.

Yes, we agree that the junior staff member who was present was a probationary employee; was not able – was not trained in the use of the fire extinguisher, and he
45 should have been, and we've discussed that. And it may well be that the council found that there was no one who could demonstrate the use of the intercom. There's no legal requirement for us to have a staff member present who can demonstrate to

the council the use of the intercom. There was an operating intercom, and still is an operating intercom facility at the premises, and if the council wanted to arrange for the manager to inspect those premises, the manager would be more than happy to show the council that that is operating and is – is working. So that completes, I suppose, my response to those particular allegations.

As I said, even if you disbelieve me on - in those matters, and I don't see why you should, because there's no evidence in this report that any of these things are true, other than assertion, *Jonah v Pittwater Council* precludes you from taking into account these law enforcement issues as part of the merit determination of a modification application. Obviously the matter is before the Land and Environment Court, so if you do reject our position, the matter will then continue in that forum, but I suppose this is an opportunity for someone other than council officers to have a look at it, and see if they agree with this position.

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MR LLOYD: Thank you.

MR GADIEL: Thank you, Mr Chairman. Thank you, panel.

MR LLOYD: Thank you. All right. I can say we inspected – we didn't inspect the site of this one, but we inspected the other sites early in the day, and we have discussed the matter amongst ourselves, and I thank you, Mr Gadiel, for - for your input. The original conditions of consent regard a plan of management. The panel needs to be satisfied that the plan of management is capable of being satisfied. The report before us says that an inspection found, actually found, a number of deficiencies contrary to the plan of management. The panel is not comfortable that this plan of management can be satisfied by this applicant and, therefore, we are only prepared to modify the condition to impose another two-year trial period for those reasons.

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So the determination of the panel, which is unanimous, is to adopt the recommendation for a further two-year trial period for the reasons that I have described. All right. So with that, I think we can move on to the second item, item number 2. This is the proposed childcare centre at 24 Murray Farm Road, Carlingford, item 5.2. We have notice that there are four people who wish to address us. Before I invite - invite any of you to come forward, is the applicant here? Is no one here from the applicant? Well, I - - -

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MS DEEGAN: No, I don't - - -

MR A. BYRNES: Sorry, Think Planners is here, but we don't intend to present. Thank you for the opportunity.

MR LLOYD: I have to tell you, Mr Byrnes, that we aren't happy with this. There are a number of problems we see with it, and we are presently inclined to refuse the application for the – basically for the reasons identified in the assessment report. If you want us to change our mind, we will hear from you, but that's our view.

45

MR BYRNES: Thank you. We're happy to - to accept your decision today.

MR LLOYD: All right. Well, then, in that case, I can say to those who wish to speak in opposition to the matter, since the recommendation is for a refusal, and the panel is prepared to support that recommendation, we are quite happy to hear from you if you wish us to change our mind. I take it that no one wishes us to change our mind, so the determination of the panel is to adopt the recommendation for refusal for the reasons set out in the assessment report, and we have to give reasons for our determination. The reason is that the panel supports the findings contained in the assessment report, and endorses the reasons for approval contained in that report. All right. Thank you for that. So we can move on to the next item, 5.3, 5 Campbell Street, Northmead, a proposed - - -

MS C. STEPHENS: Yes. Murray Farm, if you - you can go now, if you - if you don't want to stick around for Northmead.

MR LLOYD: Are there people out there interested in this matter?

MS STEPHENS: No. No. Everyone - I - I will double-check, but I think everyone for Campbell - I think only the planning proposal people are outside. You're not on your - Michael, no worries. No. Everyone outside is planning proposal people.

MR LLOYD: No one else here. Again, this is a recommendation for refusal. Is anyone here from the applicant? All right. Do you wish to speak against the recommendation for refusal?

MR G. HARTLEY: We do wish to speak - - -

MR LLOYD: Then you had better come forward.

MR HARTLEY: - - - against the recommendation for refusal.

MR LLOYD: Come forward, please. We will hear you first, and then we will hear the objectors.

MR HARTLEY: Do objectors get heard first, Chairman?

MR LLOYD: Pardon?

MR HARTLEY: Do objectors get heard first, Chairman, so we can respond to those, or what is the procedure?

MR LLOYD: Well, it's a - if it was a recommendation for - for approval, we would hear the objectors first, but because it's a recommendation for refusal, the onus is on you, not them.

MR HARTLEY: Understood, Mr Chairman.

MR LLOYD: All right. And you – you – you already have the proposed grounds of refusal in the assessment report.

MR HARTLEY: We do. We have the council officer's report - - -

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MR LLOYD: Yes.

MR HARTLEY: - - - and his recommendations, Chairman - Mr Chairman. My name is Gordon Hartley. I am the applicant's solicitor. Thank you very much for the opportunity to speak. I am one of three people speaking for the proposal today. I'm – there's Mr Vescio, the applicant's planner, and Mr Jelacic, the applicant's architect. They will be talking about the merit issues and the design issues that are raised in the – in the assessment report. I'm basically speaking to you in relation to the assessment report and the basis of the assessment report. Panel members, essentially, we say that the assessment report is – has a fundamental flaw. It is – so the development application is for a boarding house. However, council has assessed the application using the multi-dwelling housing development code under the DCP.

So that –that flows through the entire report and leads to the conclusions that are the recommendations that are included in the report, and we say that is an error in the report, and it – it should not have been assessed against the boarding house – sorry, the multi-dwelling housing provisions. Now, we say it's fundamental to the – to the report – basically reason number 3 in the recommendations, panel members, is exclusively in relation to – in relation to compliance with the multi-dwelling housing DCP, and there's also a lengthy compliance table at 17 to 21 in the report which is all about the multi-dwelling housing provisions. There are no other DCP provisions referred to in relation to the proposal and - and the assessment. I will come back to that shortly. Now, the problem is quite obvious when you are assessing a boarding house using a multi-dwelling housing provisions. They're different forms of development, and they have, yes, different – different outcomes are sought from those developments. Now - - -

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MR LLOYD: Mr – if I can just interrupt you - - -

MR HARTLEY: Yes.

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MR LLOYD: - - - proposed ground 1 of the recommendation for refusal is all about the affordable rental housing SEPP and non-compliance with various provisions of that SEPP. How do you overcome that hurdle?

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MR HARTLEY: I'm – that – that specific provision is not being dealt with by me. I can comment on that.

MR LLOYD: I see. All right.

45

MR HARTLEY: Look, I - just to respond to you briefly, we can comply. Essentially, we can provide material that will – will address those specific concerns, and other speakers will – will talk to you on those matters.

5 MR LLOYD: All right.

MR HARTLEY: I – I - I can take you through, but it's probably more appropriate to leave it to the other speakers who will focus on those points.

10 MR LLOYD: Yes. All right. You proceed.

MR HARTLEY: So, panel members, the problem with applying the multi-dwelling housing DCP provisions to a boarding house is that the DCP provisions in relation to multi-dwelling housing flow from the LEP, and the LEP has a – quite a significant
15 limitation on multi-dwelling housing development within the – the R2 zone. That provision limits the site – or sorry, imposes minimum site areas for multi-dwelling housing in the R3 zone. That development standard is 1800 square metres. Boarding houses are also permissible within the zone. However, they're not subject to any minimum – minimum site areas. Now, once you have that development
20 standard for 1800 square metres, that generates or drives the provisions in the – in the DCP for multi-dwelling housing, and you get a lot of anomalies arising from that. In particular, there's – there's a couple I want to draw your attention to.

There's a 28-metre site frontage. Now, we submit that that can be accommodated
25 more often than not in relation to 1800-metre sites. However, this is – this site is 1100 square metres. It is very difficult to accommodate that site frontage, so we're only 1500 – sorry, 15 square metres at our site frontage, so it's – it's pretty much – sorry, impossible to comply with that which – with such a site area. And the other provision that really – the other anomaly in the provisions is the – the minimum
30 setback – side setback control. Multi-dwelling housing side setback – the minimum side setback is six metres. We've got a 15-metre wide site. It would leave, essentially, a three-metre strip up the centre of the site, as the developable area for a boarding house. That simply is just an absurd outcome, so we say you wouldn't apply those controls to a boarding house, because they simply don't work.

35 Now, there is a provision that we say does apply. There is a generic residential development provisions in the – in the DCP; not the – there – there shouldn't be any dispute about whether they do apply to – to boarding houses. It's a type of residential development; it should apply. The assessment report does not take into account
40 those provisions. It doesn't include an assessment report against those provisions and, look, in our submission, we say it would be – it leads you into an error, essentially. That's a mandatory consideration. It applies to this development. However, there is no assessment of the – the generic residential provisions in the assessment report.

45 So I will be very brief because, yes, there are other speakers. Just in the reasons for – the recommended reasons for refusal, we say that number 3 is completely on the

basis of multi-dwelling housing provisions in the DCP, and we say they should not be applied in these circumstances. And that flows through to the other contentions, leaving aside number 1, which you've pointed out relates to the – to the affordable housing SEPP. There's a very unparticularised reason for refusal in relation to –
5 sorry, reason number 2, in relation to compliance with the D – with the LEP. We say that would – should fall by the wayside if we satisfy the DCP provisions, which we say we do satisfy the generic residential provisions.

10 Now, reasons 4 and 5, panel members – number 4, a BASIX certificate – that can be provided at short – very short notice. We can provide that. Number 5 talks about a plan of management. We've – we've already provided a plan of management. We can provide an amended plan of management. Acoustic report, I understand, is available. There's - a traffic report is being prepared, so the key reasons – I'm
15 leaving number 1 – we say would be addressed if there is a proper assessment of this application on the basis of the – the planning controls, which are – which are applicable and should be applied to this type of development.

What we're asking – I will ask now, just in case the other speakers forget – is we want the opportunity to be able to respond and provide the material listed in the – I
20 will call them the latter reasons for refusal, and we want an assessment, a proper assessment, on – of this proposal using the applicable and appropriate DCP controls. And then the – we – we think that if the correct or – and proper controls are applied to this, the conclusions of this report will be quite different, and we would like the – the panel to assess the application once that assessment has taken place.

25 MR LLOYD: So you're effectively asking us to defer the matter.

MR HARTLEY: Defer the matter to provide some response to these specific matters - - -

30 MR LLOYD: Yes.

MR HARTLEY: - - - and we - we would like a proper assessment, so, yes.

35 MR LLOYD: Thank you. All right. Who's next? For the record, your name, please?

MR A. JELICIC: Good afternoon. My name is Aleksandar Jelicic. I'm the architect for the project.

40 MR LLOYD: Good.

MR JELICIC: I will be focusing on just addressing particular elements which obviously are relevant to obviously my – my set of skills. So I will – I will focus on
45 clause 30(a), which is:

Design is not compatible with the character of the local area. The proposed form and design is akin to residential flat building style or development, which is prohibited land use in medium density zone.

5 This is the statement in council's assessment report. As part of our submission, we have prepared a very extensive local character study, which talks about positioning of the buildings adjacent to our site, and also adjacent to our block. So we have to the – to the west of our block, we have R4 high density residential flat building developments which are currently mostly developed. To the south we have our
10 neighbourhood shops, so obviously mixed use type development, and obviously within our block itself, which is all zoned R3, we have the majority of buildings that are on that block are residential dwellings. We also have some - - -

15 MR LLOYD: We have – we have been to the site.

MR JELICIC: Yes. Okay. Very good. I think that's important. There are some – there is a childcare centre that's – I understand – I'm not sure if it has been determined, but I understand there is a development application for such
20 development. There is also a dual occupancies which are also positioned, and there are some old – older type development, which is a group home towards the north-west corner of our block, and that's the only so-called multi-dwelling development in our whole block. Now, the – it talks about:

25 *The likely future character of the block is a combination of allowable topology within R3 zones –*

which is what I've just listed, and also it talks about obviously provision of the consistency of the built form. Now, our proposal complies with the nominated
30 10-metre front setback, which is kind of – which is in – in – in overall, if you look at our block, there are - are quite a few variables of setback compliances. Now, the height permission is up to three storeys, nine-metre height limit, which this proposal complies with. We are also consistent with the immediate neighbours to our east, where there are two developments of three storeys, plus roof structure, which is significantly greater in built form presentation to what we are proposing on our site,
35 and this – this is all evident obviously in our documentation that was provided for this assessment.

Now, we all know that the multi-dwelling controls talk about minimum site width requirements being 30 metres. Our site is only half that width, so for us to propose, I
40 guess, irrelevant controls for the site that we don't comply with, because we don't basically meet the requirements in site area and also in site width, in our opinion is obviously an incorrect approach. However, we have used the – the DCP for residential dwellings to comply with this, and we – in – in addition to that, we have provided some additional setbacks in – in – in relationship to our built form, to what
45 you would normally expect to see in a standard dwelling DCP.

Now, our proposal suggests between 1.5 to three-metre side setbacks. The DCP talks about setbacks being down to 900 millimetres at ground floor, and that obviously gets greater on upper levels. We have taken approach of providing significantly more than that. We have broken up the built form to provide better amenity in the middle of the space, rather than aiming to go with the existing subdivision of the lot, which is a quite skinny and long shape. We have provided the building footprint which is not inconsistent with the buildings that are in our neighbourhood, and also the built form - what it does with a central courtyard provision, provides us to – with an opportunity to obviously orientate most of the rooms that are proposed within our site, rather than relying on the orientation to the neighbouring property.

The other issue that was raised in relationship to the SEPP - and we only got this obviously correspondence in the council report three days ago – talks about the landscaped area being incompatible with the streetscape. Now, we comply with the landscaped area. We – what we believe we comply with the site setbacks building height. The – the comment is that onsite detention tank with the front setback is agreed upon applicant's civil engineer and council's civil engineer. As far as we know, there is no engineering issue with this design. What we do understand is there is an issue of presentation of that obviously from a planning point of view, because apparently it doesn't allow for the significant deep soil landscaping to that front setback, as otherwise it would.

Now, because we had a limited time frame to respond to this, we have gained peer review in the last couple of days to review the current design, and there is an opportunity to relocate this obviously to make sure that that front setback is completely excluding obviously services as such. So they obviously can be actually relocated within the building footprint itself. It doesn't have to be positioned – and now, if we were given this information previously, we would have potentially come up with a solution for today's meeting, but unfortunately we would – we didn't have enough time. Some additional comments in regards to the SEPP and performance of it, we were also a little bit disappointed about some of the comments in relationship in the report that we don't meet certain compliances in relationship to the room sizes and solar access to the common – common areas. Now, our town planner, Joe Vescio, will respond to some of those elements, and focus predominantly on the SEPP principles of this application.

MR LLOYD: Are you – you've finished? You've finished, have you?

MR JELICIC: Yes. I believe so.

MR LLOYD: Well, don't go away, because we may have some questions for you after we have heard your third speaker.

MR JELICIC: I will be just sitting behind.

MR LLOYD: Yes.

MR JELICIC: Yes. Thank you.

MR J. VESCIO: Thank you, Mr Chairman. Joe Vescio, consultant town planner from JVUrban. I will just follow on from some of the comments that Mr Hartley made, but what I thought I would so is specifically respond to the reasons for refusal, and if I need to then just go back to commentary in the body of the report. Unfortunately, as has already been alluded to, there are some errors or misrepresentations in the report that have probably led to a preconception by the panel as to the unacceptability of this proposal, so we now have to, sort of, try to backtrack and try to make right some of these factual issues for the benefit of the panel.

So if I just deal with reason number 1, that deals with the provisions of the SEPP. The first issue is the - the non-compatibility with the streetscape in terms of landscaped area. That's addressed in the report. I fully concur with that issue. That is a defect in the proposal, but it's something that can be readily remedied. We've had our engineers look at it, and the OSD can be simply relocated to the centre of the site underneath the - the communal area, in between the buildings. That allows the whole of the landscaped - the whole of the front yard to be landscaped absent, of course, the - the - the driveway, the minimum requirement for the driveway.

The second issue talks about the communal open space, solar access not being compliant. That is not correct. There have been drawings put in with the application that confirm that there's three hours of sunlight received to the communal open space, that receives a one square metre minimum under the ADG. Obviously the ADG is not the test, but it's - it's a formula that we use to determine acceptability. So that documentation is already with council. We can re-submit it to the panel just to confirm. We've had view from the sun diagrams that confirms there's solar access to that communal room. The third one is that communal open space is not acceptable - that, again, grossly erroneous. The - the whole of the area in between the two buildings - the whole of the area - which is tiered, comprises communal open space.

Each of those areas on their own have at least 20 square metres, so we're actually providing almost three times the minimum. It's directly accessible from the front building, which is the - the building which contains the accessible rooms. There's also a supplementary communal open space at the rear of the building as well. So the report also talks about there being two communal rooms. There are no two communal rooms. There is only one communal living room, so I'm not sure where the planners found this other room, and it talks about it being unacceptable because it's a thoroughfare. So I'm not sure whether the planner was looking at a different plan or a different publication, but there's only one communal lounge room, and it has got a communal - outdoor communal area directly adjacent to it.

29(2)(f) about the accommodation size - look, there - there obviously is a judgment or there was a case that, I think, Commissioner Murrell did at the time, that said that you must also deduct the area standing in front of the kitchen. So the reality is that some of these rooms are about half a square metre deficient in terms of net area;

easily resolved. We've already prepared a plan. We just need to move the bathroom wall in about two or three hundred millimetres; easily fixed, and that could be a CC condition. We submit that the aims of the LEP are not a relevant consideration. It's not the aims and objectives of the zone. It's not – it's the aims of the plan, and the
5 aims of the plan are achieved by the plan itself so, I mean, that's a fairly fundamental planning law, but Mr Hartley has dealt with the – the relevance of the DCP.

In terms of the BASIX certificate, there was a BASIX certificate submitted with the application so, again, I'm not sure why the report says there wasn't. The SEE that
10 was submitted with the application clearly references the BASIX certificate and the BASIX number, so we've never been asked to produce it again. Item number 5, the plan of management – the report talks about the plan of management being insufficient. However, nowhere in the report does it articulate what is deficient about the plan of management. This is a template that I prepared in consultation with
15 Judith Stubbs, a well-respected social planner, and it has gone through the scrutiny of the Land and Environment Court many, many times. However, if there's elements in there that the council wants us to address, again, we're happy to do that.

The acoustic report – again, if we had had more time, and we had been asked to
20 produce it, we could have produced it. We've had the acoustic engineer deal with this issue. They've amended their report. They've recommended some acoustic perspex screens around the communal area, and that, again, can be imposed as a condition of consent. And the traffic report, we've actually asked our traffic engineer to look at the comments from the council's traffic engineer. They've re-assessed it,
25 and they still concur that the – the – the conclusion in their original report still holds strong. Yes. So what the traffic engineer basically says is that it has been modelled on the medium density approach, which is 26 vehicle movements peak. The reality is there won't be 26 vehicles. With only 21 rooms – 21 car spaces, so there's not going to be 26 – 26 vehicle movements, so even on a worst case scenario – even on a
30 worst case scenario, the traffic engineers have said that the local infrastructure is more than adequate to cater for that – that – that amount of traffic movement. That's all I have, Mr Chairman.

MR LLOYD: Well, as - as with the other speakers, just wait there while we talk
35 amongst ourselves, and we may have some questions for you.

MR VESCIO: Thank you.

MR LLOYD: Do you want a go?
40

MS DEEGAN: Yes. Just – maybe just touching on the communal open space - - -

MR LLOYD: Yes.

MS DEEGAN: - - - if we refer to drawing DA12 E, which is just a floor plan - - -
45

MR VESCIO: Yes.

MS DEEGAN: It shows us the two buildings.

MR VESCIO: Yes.

5 MS DEEGAN: Am I correct in saying there is a communal lounge on – within each of those buildings on each side?

10 MR VESCIO: No. There's no communal lounge between – communal lounge within both buildings. There's only a communal lounge at the back of building number 1.

MR CAPES-DAVIS: Well, what we have in front of us says "communal lounge"
- - -

15 MS DEEGAN: Yes.

MR CAPES-DAVIS: - - - in text on both buildings.

20 MS DEEGAN: Would you – would you mind just coming – so we can understand we're on the right page? This is what we're referring to. You don't have that?

MR VESCIO: No. They've been - - -

25 MS STEPHENS: That's the plans we used for the assessment.

MS DEEGAN: Okay.

MR VESCIO: That's interesting.

30 MS DEEGAN: So there is another set of plans, is there, that we're not – that have been produced?

MR VESCIO: Well, it's a – that's version E, so - - -

35 MS DEEGAN: Version E, yes.

MR VESCIO: What was - - -

40 MR CAPES-DAVIS: What's – what's your version?

MR VESCIO: What was – what was supplied? There was at one stage a discussion with council's planner, where we produced some amended plans for discussion purposes, but they were never formally - - -

45 MS DEEGAN: Well, these – I mean, these do also actually talk about some increased setbacks, as well as room configurations and potentially some awning louvres, so that may have been the ones you're referring to.

MR VESCIO: Well, that's probably where there's a – an anomaly between – through – through the report.

5 MS DEEGAN: Right. So the plans we're looking at and have before us, and what the plans have been – maybe the assessment report has been based upon - - -

MR CAPES-DAVIS: Yes.

10 MR VESCIO: Yes.

MS DEEGAN: - - - is a different set of plans to the ones that you've been just referring to.

15 MR CAPES-DAVIS: Because what we're looking at here, you would easily agree with the report saying that the communal lounge - - -

MS DEEGAN: Is in two - - -

20 MR CAPES-DAVIS: - - - in the first building is a thoroughfare.

MR VESCIO: Yes. So those plans were never formally lodged with council, were they? So if you actually – and I've just got some confirmation by looking at the SEE, the appendices to the SEE. I've got the issue B plans which are the ones that I've been referring to.

25 MS DEEGAN: Right. Any comment?

MS STEPHENS: We used E. We used - - -

30 MS DEEGAN: You used E?

MS STEPHENS: We used E, which is the most recent set of plans that we were given.

35 MR CAPES-DAVIS: So E is after D, or B, did you say?

MR VESCIO: Yes.

40 MR CAPES-DAVIS: Yes.

MS DEEGAN: Okay.

MR LLOYD: And what are these?

45 MR CAPES-DAVIS: These are E, so - - -

MS DEEGAN: These are E.

MR LLOYD: So E.

MR CAPES-DAVIS: Unless there's F - - -

5 MR LLOYD: We are - - -

MR CAPES-DAVIS: - - - these would be the latest.

10 MR JELICIC: But in any case, there's not necessarily a requirement to have a second common area. The one common area would be sufficient, which is currently showing on the building there.

MS DEEGAN: Yes. If we were looking at plans that said that, but what we have before us are these unfortunately.

15 MR CAPES-DAVIS: Yes. And there's some assertion that the report is wrong. Well, the report is valid to these plans.

MS DEEGAN: The plans potentially.

20 MR LLOYD: Thank you. Any other questions?

MS DEEGAN: Well - - -

25 MR CAPES-DAVIS: I – I suppose there's questions also about the application of the R3, I think you were calling it, multi-dwelling. Who – who was it? The - - -

MR HARTLEY: That was me.

30 MR CAPES-DAVIS: Yes. What do you say about the waste that was described there – the number of waste receptacles required, and – and the – that that wasn't valid. And that's what the report said so – and that was part of the – the R3 type response or – I will get it for you.

35 MR HARTLEY: Thank you.

MR CAPES-DAVIS: So where are we? Sorry, so much paperwork here.

40 MS DEEGAN: So was it referring to the compliance table? The DCP compliance table - - -

MR CAPES-DAVIS: Which one is that?

45 MS DEEGAN: - - - in the planning's report.

MR CAPES-DAVIS: Yes.

MS DEEGAN: Look for the section on waste. Is that what you're after?

MR CAPES-DAVIS: For the assessment report, see attachment 1, yes.

5 MS DEEGAN: Yes.

MR HARTLEY: So page 21.

10 MR CAPES-DAVIS: Yes. So in the recommendation refusal on page 30, 3(a) section 3.23, waste management. Yes. So we go back to that. And I think there was a detail that I read as well, but it says:

A waste storage area had been nominated in the basement. However, the number of bins are insufficient.

15

And I think it was insufficient by about – yes. Here we go, on the next page 23, so the calculation is for, I think, 26.6, or we will take that as 26. You've only got 16, so
- - -

20 MR JELICIC: So I can answer this.

MR CAPES-DAVIS: Yes.

25 MR JELICIC: So what our response will be because, again, we had a very limited time frame – three days – to respond to it. One option is to potentially propose bi-weekly collection, which would obviously accommodate the current spatial amenity for the waste. Alternatively, if we have to expand, because currently the waste is located in the basement, if we need to expand the waste collection area to accommodate the

30

MR CAPES-DAVIS: So you're happy to look at that?

MR JELICIC: We are happy to do that.

35 MR CAPES-DAVIS: Okay.

MR JELICIC: That's actually not a – an amendment that would actually result in any changes to the exterior of the building.

40 MR CAPES-DAVIS: Well, yes. I was just – you – you were saying that these things don't apply, and – and I - I wouldn't know what would then reply from the general residential type application, so I was just trying to match that all together in my mind - - -

45 MR JELICIC: Understood.

MR CAPES-DAVIS: - - - how something like that – I mean, a community can understand waste.

MR JELICIC: Sure.

5

MR CAPES-DAVIS: It may not be able to understand lots of things in here, but they can understand waste.

MR JELICIC: Well, we understand, but I guess the issue that we've been struggling with, even preparing this application, is there is no – a boarding house DCP as such that we can clearly sort of go and tick a box and say, "Okay. We – we can comply with this. We can comply with that," so – and then also we are looking at the Baulkham Hills Shire DCP. We're dealing with Parramatta Council waste collection services, so there are some complexities there for us to manage, but unfortunately this is something that could have been passed along to us during the assessment, and we could have easily addressed it, but it has never been flagged until today. But, again, our response to that is bi-weekly collection. I mean, obviously a boarding house can also have a capacity to organise a private collection if need be, so that can be dealt with that way, or even if we have to deal with – if we have to use council's services, we can provide bi-weekly, or we can expand the waste room in the basement.

MR LLOYD: I have to say for my part, I'm concerned about compliance with the SEPP, in particular, the requirement that the development be compatible with the character of the local area. Here you're proposing to have 41 rooms, a total of 78 lodgers. That's a lot of additional people which, to my mind, is not compatible with the character of the local area. In other words, to me, it's too big.

MR JELICIC: Can I answer your question?

30

MR LLOYD: You – I – I invite your comment.

MR JELICIC: Can I – can I comment? Yes. Sure. So hypothetically, in R2 zone, where obviously the expected density is substantially lower, where everyone is expecting a – a house for potentially four or five people living in it - - -

35

MR LLOYD: Yes.

MR JELICIC: We can lodge a – a boarding house application to accommodate 12 rooms plus the manager's office. Theoretically we're talking about 24 people - - -

40

MR LLOYD: Yes.

MR JELICIC: - - - living in the R2 zone - - -

45

MR LLOYD: Yes.

MR JELICIC: - - - in - in comparison to four people living in the house next door. So what I'm trying to say, we are not talking about low density. This is an area which obviously is surrounded by high density, medium density. We're talking about mixed use developments across the road.

5

MR LLOYD: But - but - but this area is specifically zoned not for high density. It - here you're introducing 78 people onto this block of land which, to my mind, is not compatible with that character.

10 MR JELICIC: But, I mean, but nobody has been able so far in the assessment to quantify that impact and say - I mean, we're talking about the additional number of people living on this site potentially can result in acoustic or traffic. I mean, all these factual elements have been - have been provided for, assessment we've never received a comment from council to say, "Well, we've done our analysis, and we are saying the traffic doesn't comply. We've got too much traffic," or, "The acoustic design is unacceptable." I mean, all these elements of built form, as we say, complies. The landscaped areas comply, subject to the OSD being moved from the front. That's a different issue. It's a planning issue, not a landscaping performance issue.

20

MS DEEGAN: Although, would - would - would it not be fair to say maybe, in your - in this case - I - I don't agree that you can't go through the technical issues, but - - -

25 MR JELICIC: Sure.

MS DEEGAN: - - - to date, an acoustic report hasn't been provided to council to address those issues.

30 MR JELICIC: Well - well, okay. So the acoustic report has been provided to the council, but since the council has gone back to us in - with their report which, again, talks about particular elements, I believe it's to do with the communal open space in the middle, we only had three days to respond, and we do have a document that an acoustic report - an acoustic engineer has provided us with that responds to these concerns.

35

MS DEEGAN: Okay. And then the second issue here is also about traffic, since you mentioned traffic.

40 MR JELICIC: Traffic we responded - - -

MS DEEGAN: You've only now just done the modelling and obviously - - -

MR JELICIC: Sorry, no. No. Sorry. No. Sorry. Sorry.

45

MS DEEGAN: Yes.

MR JELICIC: The modelling has been done as part of the original submission - - -

MS DEEGAN: Yes.

5 MR JELICIC: - - - but the, again, concerns that were never flagged to us previously have only been brought up to our attention in this report, and we've already got a response from our traffic engineer on these comments that were flagged three days ago.

10 MS DEEGAN: Yes. But at the - at this time, but council hasn't had the chance yet to look at those issues and provide you with comment back.

MR JELICIC: Precisely, yes. So, again, we're not having an expectation from the panel to rule in any other way than what has been obviously recommended by staff,
15 but what there is an opportunity for the panel possibly to do is to at least provide us with the opportunity to provide the council with the responses to the concerns that have been given – came to us three days ago, and – and obviously that – that might alleviate some issues, but then there are disagreements

20 MS DEEGAN: No. We - we may be of a mind to do that, but I think we would also like to think that you might take it a step further, and think about a large number of the issues that have been raised by the local community, and if there isn't other things that could be done with what you're proposing, that might deal with some of the other concerns that the – the local community have, which is quite well documented
25 in the – in the reports.

MR JELICIC: If we can – like, again – I mean, my understanding is the way this works is the community will put in a submission. The assessment planner will obviously analyse these concerns and try to somehow quantify them in a way to say,
30 "Okay, so there's a particular issue, whatever they may be, whether it's overshadowing or privacy," and then potentially get back to us and say, "Well, we believe that these are the sincere issues," and then we can obviously attend to that. But when we lodged this development application, we thought about a lot of these issues before we went in. We didn't just go in with our – with one built form that
35 was responding to the site configuration, and we just said, "Okay, we will just put in a train carriage of rooms and face them in all sorts of different directions."

A fair bit of care was taken in modelling this in order to reduce the overshadowing issues and privacy, overlooking. If you look at the plans, the majority of the rooms
40 are obviously positioned in such a way to alleviate those issues, so I think that a lot of – has already been done. So we are happy to take those comments on board, but unfortunately there has been a – a very, I guess, an uncooperative relationship in a sense. I don't know whether it's – it's political or what it is, but unfortunately we haven't had an opportunity to have a – a dialogue and discussion about that because, I
45 mean, we were basically just told from day 1, "You must comply with the multi-dwelling controls, and that's it." Now, for us to comply, I think Gordon has mentioned earlier, theoretically, even if were allowed to use those controls, which

obviously we're not, we don't qualify, we would end up with a built form that's three metres wide and 57 metres long.

5 MS DEEGAN: When was your application lodged?

MR JELICIC: It was lodged - - -

MS STEPHENS: 235 days ago.

10 MR: The first or the second application?

MS DEEGAN: The 1st of the 2nd?

MS STEPHENS: Just – there's only one.

15

MR LLOYD: Any more discussion? Tony?

MR REED: The – the site is a very good site for a boarding house development. The development you're proposing to build there is too big. That is the problem.

20 The configuration of the rooms and the layout is – makes a fairly restrictive corridor of movement through the two buildings. The – under the – the driveway, because of the width of the block, and that underground driveway, means that the bulk of your frontage is driveway and downhill into the – into the – into the car park. The number of car spaces are just on the allowance that you're required to have. The – from my
25 point of view, there would be an advantage if the applicant went back and reconfigured the – the development, and reduced the amount of patronage into the – into the complex itself.

30 MR JELICIC: I mean, I don't know if, sorry, if the panel is aware obviously this has – this has already been filed with the Land and Environment Court.

MS STEPHENS: They're aware.

35 MR JELICIC: Yes.

MR REED: We're aware of that.

MR LLOYD: My – my – my – my impression, my overall impression - - -

40 MR JELICIC: Yes.

MR LLOYD: - - - having visited the site, and looked at the plans - - -

45 MR JELICIC: Yes.

MR LLOYD: - - - and heard what you've said is that it's too big; too many people on one block of land; not compatible with the local area. That's my overall impression, speaking for myself, not for the other panel members.

5 MR JELICIC: Sure. I mean, without – sorry, without having to sound like someone, you know, at the markets, like, I don't like to pull numbers out of the air and say this is the right number; that's the right number. If there is a particular aspect of the development that council is willing to talk to us about and obviously try to come up with a workable solution, we are willing to cooperate and work with the
10 council to come up with the best outcome, and I – I believe there is time for that in any case, because the section 34 conciliation is not until towards the end of the year. But at the end of the day, we just haven't had that opportunity to go, because of the position of the council assessing staff is that this is a multi-dwelling type development and that's it, and we just could not work with that. So if the panel is of
15 a different opinion that a multi-dwelling is not exclusively relevant to this site, that's something that we could possibly work with.

MR REED: Yes. But the – the real question is would the applicant be prepared to reduce the number of – that the complex is catering for?

20 MR JELICIC: Well, yes. We would like to definitely – yes, we could, but I can't tell you now from the top of my head to say - - -

MS DEEGAN: We don't want to know the number.

25 MR JELICIC: Yes. But definitely, yes, we can – we're willing to talk to the council and because ultimately, I guess, there is a bit of an economy of scale with any development, because the less you, I guess, propose, the less you have to invest and build and so forth, so it's not necessarily that more is better. It's just the – the built
30 form that has been developed at the time, we felt this is something that kind of works with the context. The – the proposal, again, as I said earlier, the proposal – especially when viewed from a public domain – is smaller than what the neighbouring properties are currently in place, so it's not something that we went in with, you know, breaching the landscaped areas or breaching the height of the
35 building, or anything like – along those lines. So, yes, we definitely are willing to speak to the council staff and try to come up with a workable solution.

MR LLOYD: Well, we already have a request for a deferment of this application. You support that, do you?

40 MR JELICIC: Yes.

MR LLOYD: So that you can go back and negotiate a better outcome with the council. Is that your application?

45 MR JELICIC: Yes.

MR LLOYD: Is that your application?

MR JELICIC: Yes. That's our – well, that's – that would be our desired outcome, I would suggest, to get an opportunity to speak to the council and try to come up with
5 a workable solution.

MR LLOYD: Because I can tell you that the majority of the panel here are inclined not to approve this development.

10 MR JELICIC: Sorry, is that in any form or just in the current form?

MR LLOYD: No. No. This development.

MS DEEGAN: Current form.
15

MR JELICIC: Sure.

MR LLOYD: It's too big. All right.

20 MR JELICIC: Understood.

MR LLOYD: And in doing that, you might overcome some of the other problems – problems that it - it generates - - -

25 MR JELICIC: Sure.

MR LLOYD: - - - in reducing the size of it. Do we agree to the deferment?

MS DEEGAN: Yes.
30

MR LLOYD: Well, the applicant has sought a deferment to enable the matter to be revisited in consultation with the council. Since this project is not proceeding, I don't think it's necessary that we need to hear from any of those who have objected, because it's not going to be this proposal. In that case, unless someone desperately
35 wants to put forward a view then that would be our – to the contrary – that will be our determination. I mean you can speak to, I guess, this development but this is not the development that will proceed so you will get an opportunity later, when a revised proposal comes forward, for you to be heard, all right? That seems to be the appropriate way to go, and if there's no dissent the - - -

40 MS DEEGAN: There wasn't. There was one lady at the end there, I think.

MR LLOYD: You don't disagree, do you?

45 MS DEEGAN: Well, she wants to make a comment.

MS: So just in terms of – just a couple of comments I wanted to make, in terms of compressed timeframes to look at new paperwork that - - -

5 MR LLOYD: Yes. You will be given an opportunity to see any amended plans that are produced.

MS: All right.

10 MR LLOYD: Yes, and given an opportunity to comment on them.

MS: So it will just get a new DA or an amendment?

MR LLOYD: It will be an amendment but because it will be different to this one it has to be re-advertised, and re-notified - - -

15 MS: All right. And - - -

MR LLOYD: - - - all right?

20 MS: Thank you. And I also want to note that there was a conciliation conference arranged by Council but the applicant refused to attend so I don't think

MR LLOYD: We're aware of that.

25 MS: Thank you.

MR LLOYD: All right. So the formal determination is that the application – at the request of the applicant the matter be deferred today and the matter to be revisited in consultation with the Council. That's the formal determination. All right. Thank you, for that. Thank you, for your attendance.

30 MS: Sorry, can I clarify one more thing; does that mean the request to go to the Land and Environment Court has been withdrawn or - - -

35 MS: No.

MR LLOYD: No, no, that's still - - -

40 MS: No.

MR LLOYD: That's still hanging there.

45 MS: Okay. So they're still putting through this massive one through the Land and Environment Court?

MR LLOYD: It will come back to us first.

MS: Right.

MR LLOYD: All right.

5 MR: So we still think it's a good idea. I still

MS: Okay. Thank you.

MR LLOYD: All right. Thank you, for your attendance.

10 MS: so don't start before we get there.

MR LLOYD: I'm sorry?

15 MS: The plain clothes people all outside - - -

MS DEEGAN: We – yes, we won't commence - - -

MR LLOYD: Okay.

20 MS: - - - before they come in.

MR LLOYD: All right. Thank you.

25 MS: approve them.

MR LLOYD: a lot of people.

MS DEEGAN: freaked out.

30 MR LLOYD: I mean there's a whole list of speakers there.

MS DEEGAN: Yes.

35 MR LLOYD: What?

MS DEEGAN: Say that again?

MS: We felt like we should have been given an opportunity to speak against
40 as well.

MS DEEGAN: Okay.

MS: - - - because there was a lot of stuff that was raised that was not correct
45

MR LLOYD: yes, but it's not going to be that application.

MS: Yes, but it was about the process as well.

MR LLOYD: Yes.

5 MS: We met with them. We accept

MS DEEGAN: When you told us there was 200 – it was clear that you - - -

MS: Yes.

10

MS DEEGAN: - - - it's not always a two-way street.

MS: Yes, but just for the transcripts, and all of that sort of stuff, it makes it look like - - -

15

MS DEEGAN: Yes, fair comment.

MS:

20 MR: Can I just apologise I was unaware that this matter was on today, and I wasn't also aware that there has been appeals so my apologies that I was unprepared in terms of my response.

MR LLOYD: That's all right.

25

MR: But we accept

MR LLOYD: That's all right. All right. I think we can proceed with item 6.1.

30 This is the outcome of exhibition planning proposal 258 to 262 Pennant Hills Road, adjoining the Baptist Care site. Now, we have a couple of people who wish to speak here; who wants to go?

MR FARRELLY: Me.

35 MR LLOYD: Yes. Please sit down there so you will be recorded.

MS DEEGAN: Okay.

MR LLOYD: And your name and address, please?

40

MR FARRELLY: Yes, Stephen Farrelly, and I live at – I'm currently living at number 13 Azile Court but I do own number 15 Azile Court as well. I'm building a duplex on that particular site.

45 MS: It's a really nice looking one.

MR FARRELLY: Thank you.

MS: It looks good.

MR FARRELLY: Thank you. Yes.

5 MR LLOYD: You said – what is your address?

MR FARRELLY: Thirteen Azile Court.

MR: The new

10 MS: Where we parked in front of the bus.

MR LLOYD: You're on the cul-de-sac, are you?

15 MS: Yes.

MR FARRELLY: Correct, yes.

MR: With the new - - -

20 MR LLOYD: So do you back onto the Baptist Care site?

MR FARRELLY: Yes, I do.

25 MS: Yes.

MR LLOYD: Yes. Thank you.

MR FARRELLY: Yes, and I also own number 15 which is the duplex.

30 MS: The duplex; it's got the drive – had the driveway been done, yes.

MR LLOYD: You've got the duplex - - -

35 MR: We commented on that

MS: Yes we like that, we thought it was very well done.

40 MR FARRELLY: Yes, yes. You have two sites there, yes, and there's a few concerns that we have with the proposed development because it adjoins our property, number 17 in particular. It is proposing to be re-zoned to an R4 which is sort of – to a high density and it is going to change the whole dynamics of the street having a sharp transition from four storeys down to single and double storey adjoining properties.

45 And when the proposal was put forward, and it was going to public exhibition, there was no shadow diagram, and we feel that during the winter months that there will be

limited sunlight, and we will not have solar access between 9 o'clock and 3 pm during the day or not for three hours which is – we're supposed to be able to access.

5 We – I approached Council, and asked them for a copy of that, and they said that that would be forthcoming at DA process which I thought was rather strange because Baptist Care, when they put theirs forward, they had a shadow diagram in their proposal but that was what I was told.

10 And another problem that we see in the street, and a lot of my local residents have spoken to me about is the vehicle movement with having the development at number 20, and 262 Pennant Hills Road will have access via Azile Court, and it is going to split the actual SPD site in two so there would be approximately 35 vehicles – or 35 residents on that side of the road having access via Azile Court which has, you probably saw today, is a quiet street, and at the top end of the street sort of only the
15 people who live at the top end of the street access the top of the street, and it's going to turn our quiet street into a busy thoroughfare to service this proposed development, and yes, a lot of the residents are concerned about that because during the evening there's a lot of vehicles parked on the road when people come home from work because people have more than two cars, because they have big families
20 or whatever, or they have work vehicles, and to pass – you cannot pass cars on the road because of the cars parked either side. So this is going to create a big issue for the street having these additional cars, and I don't know if there will be adequate parking on site for this particular development as I know there are a lot of particular unit sites that don't have adequate parking, and people do park on the street, and I
25 think that this is probably going to be the case with this one as well, and it's going to cause a problem for the local residents who are going to be burdened with additional vehicles and traffic, yes, and that's pretty much it for me.

30 MR LLOYD: Thank you, very much.

MR FARRELLY: Okay. Thank you.

MR LLOYD: Did you wish to - - -

35 MS: No, it's all right.

MR LLOYD: You don't wish to speak?

40 MS: Could I just address that; you are aware that there is a proposed development control plan for the subject site that does ensure that the set-backs to your lot are actually a minimum of nine metres?

MR FARRELLY: I'm aware of that, yes.

45 MS: Yes.

MR FARRELLY: Yes, but I still feel – I don't know if you saw my particular site; it is actually below ground level.

MS: Yes.

5

MR FARRELLY: It's probably 1.5 metres below ground level because we had to cut the land, and have a retaining wall so it may be at 14 metres at ground level but we're already 1.5 below ground level so - - -

10 MS: Right.

MR FARRELLY: - - - that means that it's 15.5 from our ground level to, you know, the height of the building proposed next door, and yes, like I said, there's no shadow diagram so I can't, you know, see.

15

MS: No, and unfortunately you won't because it is a proposal for a planning proposal as opposed to a DA so those matters in terms of a built form outcome haven't been decided, and you definitely will get the chance again, if this was to proceed, when an application was lodged to - - -

20

MR FARRELLY: Yes.

MS: - - - be able to understand and view that in more detail.

25 MR FARRELLY: Yes, because I know that with the Baptist Care they provided one, and I will have no solar access until, like, 9 o'clock in the morning from their build behind us so yes, that's an issue that – yes, I can see, you know, down the track that without a shadow diagram, you know, I can't – I can see where the sun is in the sky at the moment, and I can see that, you know, we're going to be in the shade most
30 of the winter.

MS DEEGAN: Sorry, can I speak? And so your proposed new outlook; is it still towards the east of the site – of your site – so you're looking towards the Baptist Care site?

35

MR FARRELLY: We are looking towards the Baptist Care, and we're right next door to the SPD site.

MS DEEGAN: Do you have living areas facing the SPD site?

40

MR FARRELLY: It's actually facing the Baptist Care site, and the SPD site.

MS DEEGAN: Okay. So you will have – sorry, We've tested the over-shadowing of the land so you will have access between 9 o'clock and about 12
45 o'clock, and so essentially we usually test whether, you know, you've got two and a-half hours of solar access at winter solstice which is the worst case shadow impacts for public open spaces. Also, we also test in terms of the equinox which is a more

middle line so from my recollection, I think, you would have solar access from 9 o'clock until about 11.30, 12 o'clock.

5 MR FARRELLY: Yes. It's hard to imagine when you're going to be surrounded by a four storey building at the back, and side and potentially across the road as well so that it's – we sort of feel like we're going to be boxed in.

10 MR LLOYD: Well, as Ms Deegan said you will get shadow diagrams when the actual development applications come in, and we can then determine the extent of the impact on your property, and if necessary make some adjustments then.

MR FARRELLY: Yes. I thought it was strange that Baptist Care actually provided theirs at the same, you know, when the public exhibition

15 MR LLOYD: Yes.

MR FARRELLY: But I didn't know that it wasn't a requirement to provide a shadow diagram.

20 MR LLOYD: No. That was their choice.

MR FARRELLY: All right. Okay. Yes. Well, I didn't know that - - -

25 MR LLOYD: Yes.

MR FARRELLY: - - - and I was unaware of

MR LLOYD: All right. Thank you.

30 MR: Now, in regard to the traffic, there's a provision for the future basement car parking, and it has been amended to provide access at the lowest side of the slope from the future north/south road to – which goes down through the - - -

35 MR LLOYD: Baptist Care.

MR: - - - Baptist Care block so there is access via but there's primary accesses down the new road in - - -

40 MR FARRELLY: Yes, but there's a lot of covered laneways as you

MR: - - - at that halfway state.

45 MR FARRELLY: Yes, it will be split in half so there will be half going down the and the other half there so - - -

MS DEEGAN: That won't be vehicle; that's only pedestrian.

MR LLOYD: But I think what he's saying is vehicle access to Azile Court for the west of site

MS DEEGAN: In terms of the parking?

5

MR FARRELLY: yes.

MR LLOYD: Yes. The eastern site will be from the road.

10 MS DEEGAN: Right.

MR FARRELLY: at least 35 on that side, and potentially there could be 35, if not more vehicles, in that site.

15 MR LLOYD: All right. Thank you. Mr Byrnes, we're inclined to give this proposal a tick. The only query we have is the set-back from the pedestrian pathway through the centre of the site, the set-back of buildings; what do you propose there?

MR BYRNES: So the DCP sets in place the requirement for a 12 metre separation
20 between It's entirely appropriate so I can go back to the first principle so as you were all well aware the ADG sets in place separation requirements for really three main purposes; one is about the spacial difference between buildings – the taller the building the bigger the space so we achieved that aim of the

25 The second is to ensure that there's amenity provided between the built form, and once again, for a four storey built form, 12 metres is the issue, and the third and final aim set out in the separation part to (f), I think of the ADG, is about providing enough space for other stuff, so for the open space you can space and landscaping.

30

I don't think there's any doubt in terms of that third one that we're providing enough space for other things, such as excessing of requirements so in terms of our set-back to the west we get to 10 metres set-backs there, and we provide that additional transition set-back to the nine metres to provide things like the common open space
35 and landscaping and deep soil.

So the question about the three sit link then is, I'm assuming, is about should the six metres be from the edge of the link or should it be – so it that your question?

40 MS DEEGAN: No. No, that wasn't the question but that was going to be my question - - -

MR BYRNES: That was your question, okay.

45 MS DEEGAN: - - - because I - - -

MR BYRNES: Can I answer the second one first then - - -

MS DEEGAN: Yes, and then you can come back.

MR BYRNES: - - - and then I will come back to this one.

5 MS DEEGAN: Yes.

MR BYRNES: Yes. Okay.

10 MS DEEGAN: But that was going to be mine.

MR BYRNES: So based on that analysis of what the ADG is about then it's irrelevant that there's either a private or a public pathway, and it's irrelevant to the extent that even the ADG says in some cases it's actually okay to bring a right up to the street so centre, and have a pathway just outside the open space so whether it's a public path, whether it's a private path then it's really about the 12 metres between the built form, not about the activity here that's – and I think also if you think about a large master plan estate, once again you're never required to set-back buildings based on the pedestrian movements; you're required to have the separation, and then your pathways are – they sit within separations.

20 So I've answered the wrong – a different question but at least I answered one question. Was that – did I get that right or - - -

25 MS DEEGAN: You did partially but at the same time I suppose we were just going to suggest an additional objective within the DCP which is ensuring - - -

MR BYRNES: Yes.

30 MS DEEGAN: - - - that that pedestrian walkway is integrated appropriately within the built form, and the positioning we're coming from is we don't want to see the building turning its back on it, and making it a narrow, you know, area that is isolated.

35 MR BYRNES: Yes.

MS DEEGAN: It needs to be activated, and it needs to have a sense of safety and security so that people can move through there.

40 MR BYRNES: degree, and we see that

MS DEEGAN: Yes. We don't want to see the backyards looking into it.

MR BYRNES: yes.

45 MS DEEGAN: I think we're on the same page.

MR BYRNES: Okay.

MR LLOYD: Agreed?

MR REED: Yes.

5 MR LLOYD: Agreed?

MS DEEGAN: Yes. I've got two – I would like to also, sorry, if you don't mind, I would like to add another objective to deal with the neighbour's concern about solar access.

10

MR LLOYD: Yes.

MS DEEGAN: It's just an objective. I've written some words.

15 MR LLOYD: So the determination is to adopt the recommendation together with the additional paragraph that Ms Deegan will announce.

MR BYRNES: Sure.

20 MS DEEGAN: Do you want me to - - -

MR LLOYD: Yes.

MS DEEGAN: - - - write it for you? So it's just inserting into the DCP, in particular it would be objective (5) under built form and massing so it's (05) under built form and massing.. So it starts by saying:

25

Ensure solar access to adjoining properties is taken into consideration in the future design and massing of buildings.

30

MR LLOYD: This should – this is directed to you, all right?

MR FARRELLY: Yes. Yes, yes. No, I appreciate it

35 MS DEEGAN: And then the second objective – sorry, it's effectively a control, I think, we were putting in, and flexible on where this is inserted so it's the Council officers and yourselves as to how you put this one in, but a second objective to say that:

40

Ensure that the retained Council owned pedestrian pathway is not detrimentally impacted by future built form.

Just to clarify for the applicant we – obviously, it was about surveillance as well but then we noted that you were in a surveillance objective with the DCP so if this sort of sits with it.

45

MR LLOYD: All right. Is the applicant happy with those?

MR FARRELLY: Thanks, very much

MR LLOYD: All right. Then that's the determination of the panel, and the reasons
5 for the panel's determination is the panel supports the findings contained in the
assessment before it, and endorses the reasons for the recommendation contained in
that report. The reasons for the recommendation – the reasons for the
recommendation – no, no, no, no, all right. Under there; that's where it goes. That's
how it should read, correct. Is the panel happy?

10 MS DEEGAN: Yes.

MR LLOYD: Good. Okay. Final item, planning proposal for 241 to 245 Pennant
Hills Road, and we have some people here, I believe, from the applicant. When you
15 speak we ask you to take a seat there so that you're recorded. Who wants to go first?
I do.

MR LLOYD: All right. You're - - -

20 I believe I do. I'm not using my three minutes

MR LLOYD: Okay. For the record your name?

MR KENNEDY: Sir, my name is Steve Kennedy. I'm an architect and urban
25 designer, and my practice was the author of the scheme that is the basis of this
planning proposal.

MR LLOYD: I think you are also the author of the submission we received the
30 other day. No, that's Nigel White.

MR WHITE: That's right.

MR LLOYD: No, that's you?

35 MR WHITE: Yes.

MR LLOYD: Okay.

MR KENNEDY: Panel, I believe that you received this document?
40

MS DEEGAN: Yes.

MR LLOYD: Yes, we did, and we've read it.

45 MR KENNEDY: Great. Thank you. I think I start by saying that we obviously are
very pleased that after a reasonably extensive process we have agreement on the
significant majority of this application, the planning proposal between ourselves and

Council. This includes the general principles of the organisation of the site, it includes the general principles of massing, it includes the use, it includes access, it includes three site links and the like so all of those things have been negotiated through successfully, and we are comfortable with that outcome.

5

The difference between ourselves and Council on this is now a matter of detail in built form, and a numeric difference in terms of floor space ratio. The floor space – the built form is only a portion of the massing between the highest volume and the lowest volume, and it's about the stepping of the building, and what we consider is the best built form outcome for the viewing of this building as part of the urban context, and it has its relevance in terms of density is very minor; it's actually – it's a built form issue.

10

The – bless you, I've been dealing with that – the issue of floor space ratio is, in our view, a difference between a numeric application by Council, taking an accepted gross floor area and dividing it by a number and coming up with a particular yield, and making a call on that, and the work that we did which was in fact to develop a quite defined building form, and building in itself taking into account complexities of the apartment design guide, the triangular nature of the site, the fall in the site and the like.

20

And in doing that we were able to come up with what we consider to be potentially quite an outstanding building for that location, inclusive within such things as very generous landing areas and foyer spaces. Because of the triangular nature of the building there's an integral part in the centre which we have used, and then we've been ruthlessly honest in our counting so we've counted areas of circulation within FSR and the like. That's how we have come to a number of 2.4 to one.

25

The difference, as I said, between ourselves and Council in the actual number of dwellings that may or may not occur in the small amount of massing that is being debated, and will be debated through the DCP process, is not huge. The 2.4 is what we believe is required to facilitate a process of design excellence as against a process of accommodation, and that's really what's driving the difference between us.

30

We have been thinking about this because we aren't clear exactly what the fundamental concern about the difference between point one – 2.1 and 2.4 is, at point 3 we're not completely clear what the issue is but if it is about density, as in yield, Council's report on page 352 discusses the number of dwellings that might be achieved from this development.

40

MS DEEGAN:

MR KENNEDY: That's the number I've got, I'm sorry.

45 MS DEEGAN: It's not ours unfortunately.

MR KENNEDY: All right.

MR: Paragraph

MS DEEGAN: Number 16.

5 MR:

MR KENNEDY: In there the report addresses the applicant's recommendation that Council's officer recommendation based on their numerics of a number of dwellings, and they say, "Well, based on what we're proposing you could achieve 134
10 dwellings" which is larger than we are proposing, and they're saying based on their recommendation we could achieve 119 dwellings so the implication of this is that 119 dwellings would be something that Council would have considered a reasonable outcome on a 2.1 to one.

15 So what we're going to ask the panel is to do something slightly different which is to adopt the recommendation, change the FSR to 2.4 to one but put a cap on the number of dwellings. In other words address the concern but allieve us with the capacity to produce a building there – can I pull out a large plan, please?

20 MR LLOYD: You've nominated 108 dwellings.

MR KENNEDY: We have nominated. We're taking Council's number of somewhere in between that meets the panel plans. But first, can I approach, because if you look at a layout like this you can see that there was significant
25 elements that are not going to be available for finding a unit. It's not going to be squeezing units. It's really about the nature of this, particularly to do with ADG, nor getting sun to these aspect, and it leaves us free to do a building that we think will be genuinely an outstanding building. In the end we're talking about the number of people or the number of bedrooms in a development, and if you were – the panel
30 was of a mind to say okay, we will give you that flexibility but we will constrain you so that you don't come back and say, "Oh, now I can get 150 on here" which is not the intention, then that would be, we believe, a good outcome and a good resolution of what is really a relatively minor

35 MS DEEGAN: How do you then, with that type of a conclusion; where do you sit with the a provision or a potential minimum FSR for commercial? So you can't really have an FSR. You currently have commercial activities on the site, and there – I think to be consistent with State planning principles – you would say that there needs to be a net retention of that commercial space on the site. You are allowed to
40 build an RFB so I don't want you to have carte blanche to walk back in the door with a RFB, and say, "If I'm saying to you what if I said to you I want you to have point 5 to one FSR commercial."

45 MR: We discussed this

MS DEEGAN: Where does that sit?

MR KENNEDY: Sorry, can I just – before we go?

MR LLOYD: Yes.

5 MR KENNEDY: Before we go to a number - - -

MS DEEGAN: Or

10 MR KENNEDY: Yes. I – we agree what we have proposed is that the first two floors of this building is commercial - - -

MS DEEGAN: Yes.

15 MR KENNEDY: - - - and that there is a commercial element here. In other words commercial goes where commercial is sensible. We have no issue with that, and we have provided a number - - -

MS DEEGAN: Do you know what sort of floor space we're talking about?

20 MR KENNEDY: I will have to get – I will have to get some advice on that.

MR LLOYD: You specified - - -

25 MS DEEGAN: Was that 0.23?

MS: Zero point 33 to one.

MR LLOYD: Yes. You've specified a number - - -

30 MR KENNEDY: Yes, yes, we've just – it has just been quoted by my brain

MS DEEGAN: Okay.

35 MR LLOYD: - - - which is here somewhere.

MS DEEGAN: Your brains trust?

MR KENNEDY: My brains trust, absolutely.

40 MS DEEGAN: Yes.

MR KENNEDY: In other words we – there's no suggestion that we're seeking to come back and drop an RFB on the site, and for dwellings on Pennant Hills Road ground level.

45 MS DEEGAN: So your – so the 2.4 that you're talking about is inclusive of - - -

MR KENNEDY: Inclusive

MS DEEGAN: - - - that commercial floor space?

5 MR KENNEDY: The whole lot. The whole lot, yes.

MR LLOYD: So what you're effectively asking us to do is adopt 2.4 with a cap on the number of dwellings, 108, and a specified - - -

10 MR KENNEDY: Or some number between.

MR LLOYD: - - - area of commercial, namely 1970 square metres?

MR KENNEDY: Yes.

15

MR LLOYD: Thank you.

MR KENNEDY: Yes.

20 MR: Where does 108 come from?

MR KENNEDY: One hundred and eight is what currently has shown.

MR LLOYD: Is this

25

MR KENNEDY: Yes, but Council has said – Council have said we were asking for 134. I'm not putting words in, and I'm not suggesting they actually did say that - - -

MS: Okay. No. Good. I understand.

30

MR KENNEDY: - - - but then they said, "We think 119." We're saying somewhere between that, call it 110, you know, just some number that holds it. We have designed larger units. We've looked at the demographic, we've looked at what is being expected, you know, and that way we do have that freedom, you know, it's the same issue, panel, as before FSR was brought from the outside skin to the inside skin, you could get no articulation in a building because no developer would allow you the thickness of the walls to muck around with.

35

MS: Could I just, panel, just speaking to the Council, I didn't get the impression it was a density or a yield issue; is that correct?

40

MR KENNEDY: That's correct. It's more of a – it's a - - -

MS: A built form, and height issue?

45

MR KENNEDY: - - - built form issue. But the number of dwellings isn't – isn't the issue as such because we're looking at this, at the planning proposal stage so it's still

a conceptual design stage so we have to look at what could the controls yield, irrespective of how it's actually designed so that's what the number is so it's not a matter of we want to see "x" number of dwellings or not so the number is not that important.

5

MR LLOYD: The number of dwellings is not that important?

MR KENNEDY: Yes, that's right.

10 MR LLOYD: Cool.

MR KENNEDY: I think, and we are down to the difference between that and that, and the difference is that we say rather than having a low building, and then a very tall building, we say have a step. That space there, the difference there is - - -

15

MS: There is six storeys.

MR KENNEDY: - - - six storeys, each of those unit; we're talking about It really is down to the quality of the urban built form outcome, and our analysis and our work suggests that this is when you drive up that road, or stand in that road it will read as a better building ; it really is coming from that.

20

MS DEEGAN: Can you – do you want to just expand upon the other issue which I think is in relation to the treatment of the southern – western boundary height limits, and - - -

25

MR: Road?

MS DEEGAN: Yes, the townhouses versus apartments.

30

MR KENNEDY: Townhouses versus apartments. Do you want to come to the – and speak to that? Basically there was a great deal of discourse back and forth. In the end everybody agreed about a scale of building, and I think it then is if you said the transition to the adjoining property is that you don't want anything bigger than 14 metres, which is what Council and we have agreed on, then how you break that up – I mean they're just windows and you will still have all the privacy issues, and all the other issues that we all deal with on a daily basis. I don't think it is particularly a matter of concern either way. It gets – the real – and Ms Deegan, the real issue is that as with every other aspect of this site the ADG gives it a hard time.

35
40

MR: And it reduces the density and viability of the project too so terraces over three floors in the one build, that does come into play.

45 MS DEEGAN: I don't think – I don't think the commercial viability is an issue on this site.

MR: Well - - -

MR KENNEDY: We all step away but there is – the built form of that building – we’ve gone through – we’ve gone through at least four or five different iterations,
5 and we are very happy to go through all five with Council again once we just bed down these core controls.

MR: It also wasn’t the preferred option of the group.

10 MR KENNEDY: No.

MR: I mean the third option would be to do and have a central courtyard there but directed towards doing this and providing that thoroughfare. We did that as a compromised position; we accepted that but we had never
15 contemplated doing terraces on this site when you’ve got a 3B zone directly opposite where you can do townhouses and terraces if you choose to but this is a commercial zone area where you want a higher density development.

MR KENNEDY: From an urban design perspective we didn’t have such a big issue
20 with the

MR LLOYD: All right. Who wants to go next?

MR: Well, I think - - -
25

MR LLOYD: You’ve covered the points?

MR: - - - like said we don’t want to bore you. I think we’ve given you our submissions.
30

MR:

MR LLOYD: We have read your submissions.

35 MR: Touched on that issue of commercial, we did have a discussion with the Council staff only recently because this has only come up very recently of the commercial content in the development.

MS DEEGAN: Okay.
40

MR: This only came up about two weeks ago, and we’ve been working on this for three years with Council, and we’ve always worked on the basis that two storeys in the podium was acceptable, and we actually took the initiative of providing a built form to the western edge, or the western road it fronted, Pennant Hills Road,
45 because we for in the on the site. We’ve been there for about eight or nine years as tenants of that building. It’s not an ideal commercial use without the access coming off Pennant Hills Road which is going to deny us having. So from

having an access purely from Felton Road is not an ideal destination place for a commercial development.

5 But having said that we discussed the option of providing adaptable for on the third, and possibly the fourth level where we can leave that up to market demand in the future where it could be easily a commercial tenancy or it could be an office suite or whatever, or residential use.

10 MR: The – yes, if I can interrupt you, the building of the first comply with ADG in terms of ideas around commercial

MR: But that would only necessitate an increase in floor to ceiling by half a metre per

15 MS DEEGAN: There's not a current DCP being proposed as part of the application at this stage but you prepared one for the exhibition?

MR: Correct.

20 MR LLOYD: All right. Do you want to adjourn and talk about it?

MS DEEGAN: I do have one more question, sorry. I apologise.

25 MR LLOYD: Yes.

30 MS DEEGAN: The – just – and I know this is not a point of planning so I would make that very clear because it's relating to VPAs – I was just a bit taken – I was unsure, and I wanted to understand your thoughts with child care centres for, you know, obviously because then that would take up some of the commercial floor space area as well; is that intended to be a Council owned - - -

MR: No.

35 MS DEEGAN: No.

MR: No. I think - - -

40 MR: I think we were just saying that there's two private schools that – in the Felton Road, and they would be well served by child care centres. There's a lot of passing traffic by mothers, parents and kids that go to those schools, and there isn't a child care centre that I'm aware of, of this scale that we're proposing anywhere near that pocket so it would be an ideal spot where people are always passing past the site.

45 MR: Plus there's that growing population.

MR: And a growing population.

MR KENNEDY: Yes, so it's an ideal commercial opportunity for the development.

MR: Yes, and it's a viable one.

5 MR KENNEDY: Yes.

MR: Yes. Yes. The ground floor would make an ideal, and we would really like to target a good exclusive restaurant or cafe it also would capture the people passing by so we think we've picked the primary uses, and then we've got office opportunities if there is demand for it down the track. But we certainly make scope for it in the design, if we pick up another metre in the

MR: And that road or in terms of the, you know, the terrace type use

15 MR LLOYD: We have to know who is speaking.

My apologies. Go on.

MR LLOYD: Your name?

20

MR WHITE: I'm Nigel White.

MR LLOYD: Good.

25 MR JONES: Danny Jones.

MR LLOYD: Thank you.

MR JONES: My apologies. Yes, I mean we want to try and maintain some flexibility depending what market demands are at the time so it's, you know, the road where we might have to to some commercial residential flats with the it's going to depend on further analysis particularly for commercial

MR: And we haven't really had the chance to do that because we really haven't got the consent or the approval proposal to take to that stage of analysis so we were hoping for some flexibility where we can actually do that, and it may well be that commercial may be quite ideal down the track but it may be an end user specifically I don't know if we could get people from walking off the street to take it up.

40

MR: If I may interrupt. Your question then is would – if you chose to seek that the third and fourth floors of the building were capable of accommodating future commercial use, the building form that we have developed, and the massing and the heights that are already agreed between ourselves and Council, are capable of accommodating that.

45

MR LLOYD: More questions?

MR: Just some feedback if I may, I know we discussed about you put a draft VPA in, is that correct - - -

MR KENNEDY: That's right.

5

MR: - - - to this as well but that Council is recommending that in the future that be discussed after going to Gateway; is that correct?

MR KENNEDY: That's right.

10

MR: Yes. Just, I think it would be good to see that in the development of that VPA that there is a real community outcome so one thing we discussed about the child care being commercial benefit, yes, it's indirectly community benefit but a community benefit is based on a VPA – I don't think so – and the other would be, I think, talk – the draft VPA talks about the value of the SP2 road corridor given up - - -

15

MR: That's correct.

20

MR: - - - well, that goes to RMS; it doesn't go to Council so - - -

MR: Well, it's a public authority.

MR: Well, well, this is about Council.

25

MR: Yes.

MR: Yes. The RMS deals with their roads so that's just feedback from my position here as a community representative and how I understand it fits in with the planning controls, and those are the sort of things, like, a community would be valid to discuss.

30

MR: Just with the VPA requirement is a broader community benefit so dedication of land for road widening certainly achieves that in terms of the management of traffic in the It does provide

35

MR: Yes, but it doesn't go – benefit to the Council.

MR: I don't think that's a requirement but - - -

40

MR: Well, I'm just saying that those things as seen by a community, and from looking at it within the planning framework those are the type of things that are discussed to

45

MS DEEGAN: You're not proposing – and you're not proposing that land outside of the SP2 zone so it's land that's already – excuse me – already identified as being for road purposes?

MR: Well, we are in a sense that we're going to have to enter into some sort of right of way the Council for the pedestrian thoroughfare, and that is a major impost on the development. It takes up a quite sizeable chunk of ground floor space, and if you apply an opportunity cost to that to a development – from a development point of view, it's actually really consuming a lot of land on the site.

MR: Yes, but your draft VPA did not include that at all, in words, not in value - - -

10 MR:

MR: - - - that I saw from my quick - - -

MR: Well, we put a value in.

15

MR: Yes, okay. Yes.

MR: Yes.

20 MR: Well, it's just feedback, and I think there was a point where a discussion – I couldn't bring the page – but that Council hadn't really looked at any community type facilities within the area that could come up with that, and I know there's many from my dealings with Council, an example would be the Cycleway Plan and that is – it's determined a share path on the west side of Jenkins Road which is close to the site, and also missing links just near Carlingford Station once the light rail goes in as well, say, for example between the new station, as it will be – I will just call it Carlingford Station now – and Coleman on the north side of Pennant Hills Road as well. So they're just examples so I think it's not quite correct to say that there's nothing that's out there that – and maybe that the discussion with Council hasn't come to that stage, and I understand those are the sorts of things that can come out, and I would recommend you look at when discussing the VPA with Council in the future which it's out there in the future so we're not – that's not part of the determination, I understand, today.

35 MR: Yes. There hasn't been a lot of dialogue between Council and us on the VPA side of it other than the - - -

MR: Yes. So what you presented is – it needs lots of work.

40 MR: - - - as a starting point. Well, yes.

MS DEEGAN: Did the Council officers have another comment given what you've heard before we adjourn?

45 MR: No. I guess in terms of the VPA, I mean obviously well, there will be more detailed discussions once we get to a point where there's a particular, like, a set of controls that we're working with - - -

MS DEEGAN: I'm more interested in the FSR and the discussion in the height.

MR: Yes. I mean our position is – well, it's as per what's in the report. I mean the key issue for us was the – that element of the building between the 14
5 storey one and the row of buildings on the western edge, and so we feel that the –
with the – at the 2.4 to one with the extra massing in there that it creates a much
more bulky building from the Pennant Hills Road frontage, and so our urban design
internal analysis has brought us to the – to just that key difference between the two
10 so – and we have done a lot of work with the – with the proponents in – over a long
time to get as close as we are. So we – and we aren't that far away in terms of, you
know, having agreement at officer level, and so also with the proponents but to us
that's the key difference really.

MR LLOYD: So you want a four storey limit there?
15

MR: That's what we were proposing in our – as our recommended

MR LLOYD: I'm – that's what you propose?

20 MR: Yes.

MR LLOYD: Yes.

MR: I wonder and not at one point across the Pennant Hills Road
25 frontage.

MR: It has

MR: It has
30

MR: Yes. Yes, and - - -

MR: Yes.

35 MR: - - - that's why we've moved up to the 14 storey tower limit as well.

MR: Well, that point, if I'm looking at the process, so the pre-Gateway
review was one and a-half to one at, I think, 28 metres which was the eight storeys
40 you were talking about, and now - - -

MR: No, no, no, no.

MR: No. Yes, well, that's what I'm saying just from a process what could be
reported to the community, and then that's gone between Council, yourselves, urban
45 design to get to something either 2.1 or 2.4 to one, and up to 49 metres which is a
change so we've got to do that carefully in light with what that proposal is to the
community of Carlingford.

MR: If I may make a comment we were not party or part of the original process, and we came in fresh, and we looked - - -

MS DEEGAN: We being the urban designer - - -

5

MR: Sorry, my firm.

MS DEEGAN: - - - as a designer?

10 MR: yes.

MS DEEGAN: Yes.

15 MR: I beg your pardon. And we looked at it afresh, and we looked at in terms of what was already built or being proposed, and permissible within the town centre, and the process of urban design massing of that centre, and those documents we gave you contain some of that's one of probably half a dozen presentations and reports we've done, been prepared. So really we looked at it in terms of
20 much what the eventual massing of Carlingford will be, and in that sense is where we came to this idea particularly of drawing it to the corner, accepting the break, accepting the lower, and then really, as I said, we're talking about the difference between having something that goes like that, and having something that goes like that, and we genuinely are putting it to you that from a design perspective we think we disagree with Council's urban designer, we think it is a superior built form.

25

MR LLOYD: All right. We are going to talk about this.

MR: Sorry, could I just make one other point?

30 MR LLOYD: Yes.

MR: There's a reference to 45 metres in Council's map for height.

MR LLOYD: Yes.

35

MS DEEGAN: And it's 49 in the recommendations.

MR: It's a typo.

40 MR: Yes, okay. Just to be clear.

MS DEEGAN: So we need to amend – the map needs to be amended?

MR: Yes.

45

MR LLOYD: All right. Thank you, for that.

MR: Thank you.

MR LLOYD: I hope we - - -

5 MR: So we go or do you go?

MR LLOYD: You can - - -

10 MS DEEGAN: No, we go.

MR LLOYD: We're going. We're going to talk about it.

MR: Yes, I know. I was going to say we could wait outside.

15 MR LLOYD: You can please yourself what you do, yes.

MR: Yes. As long as

20 MR: You can stay here.

MR: not being

25 **ADJOURNED** **[5.24 pm]**

RESUMED **[5.42 pm]**

30 MR LLOYD: All right. We've come to a decision, I can say, and before
announcing the formal decision I will just outline what we've decided. The panel
prefers the applicant's design to the Council's so that's basically it so we're going to
amend the recommendation to allow you to do what you want to do subject to a
number of conditions. So I will read the formal decision that the Council –
35 recommend to the Council that the Council endorse the planning proposal etcetera in
relation to the subject site:

40 1. Abide 1. Amending the maximum building height from 9 metres to part 14
metres, up to four storeys and part 14, 49 metres up to 15 storeys as
recommended.

2. That consideration be given to the ability to increase the floor space ratio up
to 2.4 to one subject to:

45 . The maximum number of dwellings being 108.

. The minimum commercial floor space of 1970 square metres.

All right.

MS DEEGAN: Sorry, I just – I was of the thought that what we were going to do is
..... additional comment, language, would go in after the word “amend the maximum
5 floor space ration from one to one to 2.1 - - -

MR LLOYD: Yes.

MS DEEGAN: - - - across the site, with the ability to consider.
10

MR LLOYD: Correct. So it is with the ability, consider that.

MS DEEGAN: That makes sense so we are effectively going with the Council’s
recommendation, and what we’re saying is - - -
15

MR LLOYD: We’re varying it.

MS DEEGAN: - - - you go away and do the work and you can improve it up, and
you want impose those other minimum and maximum conditions then there’s
20 flexibility for that floor space ratio to go up to that higher amount

MR LLOYD: And then - - -

MR:
25

MS DEEGAN: It’s we’re suggesting this would go to Gateway, and then once you
have a Gateway determination you could then do the work.

MR: Great.
30

MS DEEGAN: It gives you the certainty that you need.

MR: Great. Thank you.

MR LLOYD: All right. Then 3(a)3 remains the same. Okay. (b) remains the
same. (c) is slightly amended that:
35

(c) A site specific development control plan based upon considered urban
design principles be amended to reflect this decision, and any other
40 changes etcetera.

So it’s a slight changing of wording, all right. Is the deponent happy with that; can
you live with that?

MS DEEGAN: And the the intention is that this will be a recommendation that
goes to Council consideration, and the Council will it will go to Gateway, that
this work would need to be done prior to exhibition.
45

MR LLOYD: All right. And then the rest of the recommendation is as recommended; that's (d), (e) and (f), and we have to give reasons.

MS:

5

MR LLOYD: I will have a go, and you can correct me if I'm – if I don't get it right. The first reason is that the applicant's proposal demonstrates a potentially better urban design outcome to be further expanded, particularly in the context of a traffic analysis, and the capacity of the road network, including the roundabout at the corner of Felton Road and Baker Street, to accommodate the proposed additional traffic. We don't have that here; we don't have a traffic assessment.

10

MR: We've done one prior, and it was acceptable, and so

15

MR LLOYD: Anyway, that's just there, just in case.

MR: Yes. Yes.

MR LLOYD: All right?

20

MR: Yes, sure.

MR LLOYD: And the second reason is that the panel supports the claims contained in the assessment report, with a preference for the applicant's overall scheme, and endorses the reasons for the recommendation contained in that report. Is there anything else we should be doing?

25

MR: Just amend that height to 49 metres.

30

MS DEEGAN: Well, that's - - -

MR: If it

MS DEEGAN: Is that a - - -

35

MR: It's in the map, but yes, so it's

MS DEEGAN: Can we just – shall we put on the reasons a note?

40

MR: That the map needs to be - - -

MS DEEGAN: Note, map – the map attachment needs to be amended to reflect 49 metres.

45

MR LLOYD: Yes.

MR: Am I allowed to make a comment here, just a comment for you? We have some of the drawings you've made note of the site I know it's quite a sloping site but you've come up with a height there is a permissible – I think what's designed there is – does it have a current height level or just

5

MR: Eight storeys.

MR: Does it have an FSR or - - -

10 MS: Thirty-seven metres.

MR: So that's actually in the

MR LLOYD: Three to one. Yes, yes, that exists.

15

MR: I just – yes - - -

MR: No, we didn't make that up.

20 MR: Put that out in the community, and people will go wow, okay.

MR: Yes.

MR: Okay. I can't disagree with that then.

25

MR: Yes, thank you.

MR LLOYD: Is there anything else we need to do?

30 MR: Vote.

MS: That seems to capture that

MR LLOYD: All right. The meeting is formally closed at 6.50 pm.

35

MR: Five-fifty.

MR LLOYD: Five-fifty pm, sorry, and thank you, for your attendance.

40

MATTER ADJOURNED at 5.50 pm INDEFINITELY