



MR C. WILSON: Okay. Thanks – thank you for coming. Before we begin, I’d just like to acknowledge the traditional custodians of – my name is Chris Wilson, sorry. I’d just like to acknowledge the traditional custodians of the land on which we meet. I would also like to pay my respects to their elders, past and present and to the elders  
5 from other communities who may be here today. Welcome to today’s teleconference to discuss the request for review of the Department’s Gateway determination for the planning proposal at 112 to 134 School Lane, Southgate. The Department’s determination was for the proposal not to proceed. My name is Chris Wilson. I’m the chair of this IPC panel. Joining me is my fellow commissioner Steve O’Connor and assisting the panel is Casey Joshua, from the Commission secretariat.  
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In the interest of openness and transparency and to ensure the full capture of information, today’s teleconference is being recorded and a full transcript will be produced and made available on the Commission’s website. This teleconference is  
15 one part of the Commission’s process. It is taking place at the preliminary stage and will form one of several sources of information on which the Commission will base its advice. It is important for the commissioners to ask questions of attendees and to clarify issues whenever we consider it appropriate. If you are asked a question and are not in a position to answer, please feel free to take it on notice and provide any  
20 additional information in writing, which we will then put on our website. I request that all participants introduce themselves each time before speaking and ensure that they do not speak over the top of each other, to ensure accuracy – accuracy of the transcript. We will now begin.

25 So just before we start, we might just do a – do a round of – of introductions, just – it helps the transcription. So I – I’ll start. My name is Chris Wilson. I’m the – I’m the chair of the Commission panel.

MR S. O’CONNOR: And Steve O’Connor, a commissioner with the IPC.  
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MS C. JOSHUA: Casey Joshua for the Secretariat.

MR A. FLETCHER: Andrew Fletcher, principal of A Fletcher and Associates, the applicant.  
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MR R. DONGES: Rob Donges, town planner.

MR W. DOUST: Warren Doust, owner of one of the properties.

40 MR WILSON: Thank you. So now we’ve done introductions, I – I will throw it over to you, I think, Andrew, to just basically go through your – your request and the – and the Department’s Gateway determination.

MR FLETCHER: All right, then, Chris. I’ll just hand over to Rob. He has been  
45 practising for a little minute here. So he’s just going to head us off.

MR DONGES: Yes. You know, I – I got the – the ..... this afternoon at 4 o'clock as well, but anyway. As you would be aware, the – the application is – the planning proposal component of it is to reduce the minimum lot size on an area of land in School Road, Southgate, from 40 hectares to six hectares. And this will allow four –

5 four lots in that area to be – have boundary adjustments done, which we've already raised and which will give – give the two lots which are now – which at the moment do not have dwelling entitlements – dwelling entitlements. So in effect there will be two additional dwellings – entitlements traded in, in School Lane.

10 The other part of the offer – the other part of it is what we refer to as associated offer, is – the owners of the properties – the Dousts – own approximately 133 hectares over 19 properties in Southgate. The majority of that land is in – under cane. That is land that is on the floodplain. And the higher land including the school – School Lane road is used for very low level grazing, if – if anything. The – the alternate we've

15 made is that – there – there's two existing dwelling entitlements within the land on the floodplain. And the Dousts intend to pursue those dwelling entitlements. As you may be aware, there's a sunset clause in the Clarence Valley LEP 2011, which means that in December 2021 those dwelling entitlements will be extinguished, as will all – as will many dwelling entitlements in the – the Clarence Valley if a develop consent

20 hasn't been obtained for a dwelling by that time.

Now, that's only two years away. And the Dousts realise that if they want to realise the value of – of those dwelling entitlements on those properties, that – that they are going to have to submit development applications. As we will describe later, we

25 believe that there's – based on the – the practices of Clarence Valley Council, its history of development, allowing development in the floodplain and – and the nature of these properties, that consent will be – can be obtained for those dwelling entitlements.

30 MR O'CONNOR: Rob, it's Steve O'Connor here. Sorry to interrupt, but could you just expand on what the planning logic is for those potential dwelling entitlements to be extinguished in two years time. What – what – what was the essential reason behind the LEP 2012 requiring that – 2011, sorry – requiring - - -

35 MR DONGES: That was a – there - - -

MR O'CONNOR: It sounds like a large number of dwelling entitlements to be extinguished.

40 MR DONGES: Yes. That – that was a deliberate decision made by council when – when it prepared the draft LEP. The reason was – is because we had – we had – when I say "we", I mean council – I worked for council in those days – council was the amalgam of four councils and had six different LEPs. And those LEPs had different ways of calculating dwelling entitlements. And it was simply decided that

45 the way to solve that problem, which was a burden forever, was that people were given a period of 10 years to – to realise their dwelling entitlement or to lose it. And

that was adopted by council. And obviously it was adopted by the Department, because it became part of the LEP. And that – that clause is in the LEP.

5 And council was then required to write to every owner of a dwelling entitlement who didn't have a dwelling in the valley, letting them know that. And I think recently they've written again to everybody. And that's as an aside. There will be probably – hell will break out on the – on the 22<sup>nd</sup> of December 2021, when some people realise that they just lost their dwelling entitlements, but – anyway. The fact is that that's how the system is. And – and that's one of the basis for – for what we're suggesting  
10 here. I – I understand what the council staff are saying, that, you know, the methodology – we're – we're saying a restrictive covenant – we – we all know cases where those were put on decades and decades ago and there's no historic record of why it occurred and it's lost in the mists of time and you can't work it out.

15 These dwelling entitlements will disappear in two years. They – they will be front and forward of the corporate knowledge, the planning knowledge of the staff there. There's – there's no danger that they – it will be forgotten why these dwelling entitlements were extinguished. And so there's no danger that – that dwellings will be built if these dwelling entitlements are extinguished.

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MR O'CONNOR: And have you any idea how many dwelling entitlements might be lost? What – what's the ramifications?

25 MR DONGES: Look, I – I – I don't know. It's fairly wide. It's – it's upwards of – or up towards at least 300, from memory.

MR O'CONNOR: Okay. That's – thanks. Just wanted to quantify what that might mean.

30 MR DONGES: It has been a figure bandied around somewhere. Yes. Yes. And – yes, and it was just a – it was just seen to be one – at – at that point it was a way of resolving the issues. And – and people would come in and ask if they had a dwelling entitlement. In some areas it was simple. In other areas, you know, people would run for cover, because how – how do you work it out. And, you know, would simply  
35 say, well, look, they will all disappear – particularly when they changed the – the – the minimum lot sizes in a number of areas, which created sort of existing use rights to those. So well, let's get rid of those. And everyone's got 10 years time.

40 So that – that's really – it's – the existence of those dwelling entitlements and the fact that they disappear in two years, which we believe actually makes this – this planning proposal a – a – a realistic proposition.

45 MR WILSON: Can I – it's Chris Wilson here. Can I just – can I just ask how long – or, Warren, this is a question for you. How long you've owned your land?

MR DOUST: How long I've owned it?

MR WILSON: Yes.

MR DOUST: Well, it goes back into the late fifties; into the fifties, early sixties.

5 MR WILSON: Okay. And – and – and the - - -

MR DOUST: Father ..... sorry. Then I – we've inherited from my dad.

10 MR WILSON: Okay. And – so you've owned – and the other lots as well, up on Southgate Lane – what's it called.

MR DOUST: That's the one I'm talking about, from the late fifties, sixties, and then we bought properties back in the early sixties.

15 MR WILSON: So the – the – the – the land we're talking about, both down by the river and – and at Southgate has been in the family for some time. Yes.

MR DOUST: Yes. Yes. Yes. It's been there - - -

20 MR WILSON: Okay.

MR DOUST: - - - probably 30 or 40 years. Yes.

25 MR WILSON: Okay. Thanks.

MR FLETCHER: Can I just – just put in one thing. I mean, sort of – we labour this point a little bit, because we think it's sort of crucial to the argument. I noticed – I haven't had a good chance to read through all the determination, but the crux of it is – from the planning report, seems to be that whilst it's noted that we have a dwelling entitlement, there's no guarantee we will get a dwelling entitlement on those lots. And that if there was a dwelling entitlement on the lots – like, a dwelling approval – then the Department may view this differently. And I did run this by the local planning officer as to, okay, if we were – can we delay this proposal until we actually get a dwelling approval. And – and we're fairly confident we will. We've done surveys down on both the properties that show we can comply with the council's flood policies, in terms of amount height and that the flow velocities aren't above critical levels down there, that would prohibit a dwelling being approved, albeit that accesses to and from them – they would be – they would be isolated. But it's not far to Southgate Village, which is high and dry. And you get plenty of notice of a flood in – in the Clarence Valley. So we don't think there would be any danger to – to life down there, from – from the fact you've got a flood down there. But you can always get a bigger flood. And – and – and that can go. Yes.

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45 So sort of fundamental to the whole thing is we sort of put off putting the DAs in for the dwelling approvals, pending the result of this – of – of this review, I guess. But if the review is unsuccessful, then that's what we will be doing next. And we have instructions to do that, is to put in DAs for both these lots to get a dwelling approval

prior to – and – and commencement prior to December 2021. So the real threat is then that Warren and his brother aren't getting any younger and when it passes on to the younger generation, that the farm may well be fragmented. It may not. And that – this is obvious choice to sell off a two – two riverfront lots or two lots that have  
5 views of the river. So that's basically what it's about and shifting those entitlements up to School Lane.

MR O'CONNOR: Good. Thank you for that, explaining that history.

10 MR WILSON: We interrupted. Is there any more - - -

MR O'CONNOR: Yes.

MR WILSON: Any more you would like to say in relation to the Department's  
15 determination?

MR FLETCHER: Not without having read it all.

MR DONGES: Just – just – yes. I – just – just one point. And it's clear from the –  
20 from the – the – you know, the assessment report and they actually mention it there. That the Department viewed this as a de facto rural residential subdivision. We – we disagree with that. And as I – as the point we make that if these lots in School Lane were, say, 20 hectares each, which would still make them undersize, and we were doing a – rearrangement to create 20 hectare lots, no one would be mentioning rural  
25 residential subdivisions. They would be talking about the merits of – of the application. And I – I believe that the – the merits of the application have been lost in this belief that it – it's a mechanism to do a defacto rural residential subdivision.

MR WILSON: Did you get that?  
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MR DONGES: That – that's – that's a factor of the existing size of those four lots, not – not of – of what we're trying to achieve here.

And I – I think that that's critical if the – if the belief is that this is just a defacto rural  
35 res subdivision, then – then – then, you know, our – our case sort of has a problem. But – but it – it's simply not. It's – it's – what we're trying to achieve is we're trying to protect the integrity and the viability of the cane land so that we don't lose – lose sections out of that or – of 27 hectares and 18 hectares, which could go into .....  
40 properties, because they're – the value of those two properties will largely reside in the – the fact that they have a dwelling entitlement – the – the – and the land value differentials in the valley between land with dwelling entitlements and land without is quite significant. They're located where they – they're not that far from Grafton. They're close to the village. They – they have views of the river. These are things  
45 that people look for.

If you took that land out of the – out of the cane land, you would – there's potential for the viability of the cane land to – to suffer. And I think the – Graham will tell us

later about the viability of the cane land and the potential to actually use those two small lots for cane. He will point out what – what – how the cane industry works. So this – this is seen as a way of protecting the agricultural viability, and the only land they had available was this land in School Lane, where they were lucky enough  
5 that they've got four lots there. You know, an arrangement that two of those lots wouldn't get dwelling entitlements because of their – they are flood-prone and they don't have access. But it can be rearranged in such a way that they can do that, and that is the intent of the planning proposal.

10 And I think one more thing to add there, just briefly, is that the pattern of settlement in School Lane and along – and in Southgate, which is only just a kilometre south, there is village-type houses down there, and the lots up School Lane to where the northern boundary of Grahams lot 12 is, which is number 134, there is – you know,  
15 the six hectares or around the six hectares that we're proposing for these extra two lots. So, you know, the settlement pattern was not inconsistent up there with what's there already.

MR WILSON: Okay, so – and that leads to our next question, I guess, in relation to  
20 the Clarence Valley Settlement Strategy.

MR O'CONNOR: Well, I think, Rob, you've virtually answered that by your statement a moment ago, saying you don't view this as a rural residential  
25 subdivision.

MR FLETCHER: Yes.

MR O'CONNOR: You view it as a way of helping to preserve cane lands and saving entitlements.  
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MR FLETCHER: Yes.

MR O'CONNOR: So therefore, the Clarence Valley Settlement Strategy, which I assume is all about where, you know, rural residential lots should go, you're  
35 claiming is an irrelevant document to consider; is that right?

MR FLETCHER: Yes. The Clarence Valley Settlement Strategy is a very useful document, and it was sort of – it showed a lot of foresight when it was done many years ago, before Clarence Valley Council existed and all the existing councils got  
40 together and did it. And obviously it's a – it's a high-level overarching strategy about where your different – where your hierarchy of settlement goes. But it doesn't get down to the level that you use it to determine subdivisions.

It's where you put your – where your rural residential subdivisions go and where  
45 your – which buildings just expand and where your new growth areas are and your urban areas. It's at that level they actually would expect for a settlement strategy. We're not – we're not proposing a settlement. We're proposing a boundary

reduction in an area where it's not out of keeping with the settlement – with the subdivision pattern that's up there – and we will get into that later in one of your other questions. So I don't believe that the settlement strategy is the guiding strategic document.

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MR O'CONNOR: Okay. That's clear now. I wasn't clear about that before, but I understand your line of thinking there now. Moving on to the next question: just in relation to the agricultural impacts – and that's where I think you mentioned Warren might be able to explain about cane farming and just give us a better understanding of agricultural viability and – yes, in this particular circumstance.

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MR DOUST: In regard – so basically, if I look at what I need, the question is here, so where the lots were extinguished entitlements, the agricultural viability of that land - - -

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MR FLETCHER: Yes.

MR DOUST: - - - and its usefulness, compared to the usefulness of the land that's up on School – School Lane.

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MR FLETCHER: Yes. Well, the flood – the floodplain is a productive area. Where it would end up on a hill, it's – yes, it doesn't support agriculture. So for us it has only been a place to put machinery and cattle in times of flood, really. The main agricultural land was down on the floodplain, and that's where – that's it. It's as simple as that.

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MR DONGES: But I think the point, too, Warren, is that the cane industry needs – you need – you need a critical mass in the cane farming to make it viable.

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MR DOUST: Yes. Yes. Yes.

MR DONGES: And I think that the point is – and you might – these are just going to – you're going to have lots of 27 hectares and 18 hectares which are going to have dwellings on them.

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MR DOUST: Yes.

MR DONGES: You know, are - - -

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MR DOUST: Well, they won't stop this cane farm, because they go to ..... they will become lifestyle blocks, and it's ..... highly unlikely – we would like to keep it all as one block, one area.

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MR O'CONNOR: Can I – just on that, Warren, how much would a – or Andrew – how much would, you know, a dwelling entitlement take up of those – of the 27 and 18 hectares?

MR FLETCHER: How much of the area would the dwelling take up?

MR O'CONNOR: Yes.

5 MR FLETCHER: Probably an acre. 4000 square metres or thereabouts, with its  
septic. But I think the point is that more – you know, yes, whilst you still have the  
potential to grow cane there, if those – if you do get a joint approval there, which I  
think is fairly probable, then the potential to sell off those blocks individually  
10 increases, because the land value increases. And then the buyer-builder is a person  
running 27 or 24 hectares of cane on their own. It's just not worth it.

MR DOUST: ..... proposition.

15 MR FLETCHER: It's not a proposition. Yes. The – you really need – like, the rule  
of thumb used to be 40 hectares was a minimum, but even that now today is not  
enough, really, to be viable as a cane farm. You need several hundred hectares,  
really, to be able to any good out of cane.

20 MR DONGES: I think Warren needs to just make that point - - -

MR FLETCHER: Yes. Yes, about, you know, what sort of area you need to - - -

25 MR DOUST: Well, what have we got – how many hectares? We've probably got  
three hundred and thirty, forty acres for cane. But even though – these days it's – we  
should be trying to expand, but we're at an age where we don't want to go out and –  
and we're – and we're competing with the lifestyle people know that come in the  
area to buy that country. So we would like to keep it as it is and hopefully, you  
know, someone will come along and buy it, and one day - - -

30 MR DONGES: See, it cuts both ways here, that not only do you create two lots that  
by themselves will not support the cane industry and will not – nothing else springs –  
no other agricultural use springs to mind around here that would support on that.

35 MR FLETCHER: Some horticulture, maybe, or something like that, but - - -

MR DONGES: Yes, yes, yes. Someone may - - -

MR DOUST: .....

40 MR DONGES: - - - find something, but not cane.

45 MR DOUST: But cane is the most – but cane is the most successful thing we've  
ever – we've been dairying and vegetable-growing, and cane has been our mainstay  
in the last 30, 40 years.

MR DONGES: So not only do you extract those lands and create – and they're not used for that purpose – you undermine the viability of the whole cane operation we've got out there. You see, you've just taken 30 - - -

5 MR FLETCHER: 45 hectares.

MR DONGES: You've just 45 hectares out of the cane. The rest of – the rest of it then starts teetering on the edge of not being viable as well.

10 MR FLETCHER: And in potential conflict with, you know, people setting up – you know, might run horses or something out there, a few cattle, and then they're at conflict with other surrounding rural uses that are more large-scale.

MR DONGES: Yes. Cane is an involving industry, you know, and it has been for a long time. As Andrew said, people used to come and buy the old 100 acres, and they would run their cane, and you could, you know, make a living and raise your family on it. It doesn't happen that way any more, and unless you're – the people who are making – who are viable here are consolidating and consolidating. But I will tell you what they – if you're buying other people's cane farms, you don't buy one that has got a dwelling or dwelling entitlement on it, because you're buying something, and you're paying a lot of money for, that you don't need. Because you've got your – you've got your house down the road already. So, you know, these won't – these won't be sold to other cane farmers around there, because they're not going to pay the premium that goes with that dwelling entitlement.

25 MR O'CONNOR: So how large is Warren's holding at the moment – total holding?

MR DONGES: 133 hectares.

30 MR O'CONNOR: 133, was it?

MR DONGES: ..... acres. But, yes, I think it's 133 hectares.

MR O'CONNOR: Right. Thank you.

35 MR WILSON: So these lots adjoining aren't owned by Warren, yes? Or they are?

MR FLETCHER: Why there's – okay. So if you're looking – there is a – there was a map supplied with the submission which shows all the Doust holdings there.

40 MR WILSON: Okay.

MR FLETCHER: But it's where these two are, down on the river – the riverbank there. I don't know whether you've got a map in front of you or not.

45 MR WILSON: I have. We have. I have.

- MR DONGES: Okay. Well, just zoom in a little bit. When I talked about the people down the road, I was speaking figuratively there, because people do buy non-contiguous cane farms for their operation. But as I said, no one will buy one which has a dwelling or a dwelling entitlement on it because they're paying a premium for something they don't need.
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- MR FLETCHER: So if you're looking at – so I obviously own lots 1 and 2 in 986290, which is on the sort of northern side of Southgate Ferry Road.
- 10 MR WILSON: Yes.
- MR FLETCHER: And next, Boothbys Lane, they own lot 61, which is on the southern side of Southgate Ferry Road. Then there's – they don't lot 1 in 741176.
- 15 MR WILSON: Okay.
- MR FLETCHER: And then they own pretty much the next one, two, three, four parcels south of that as well, which are all under – you can see that they're all under cane.
- 20 MR WILSON: Yes.
- MR FLETCHER: It's pretty obvious which ones they own when you're looking on ..... or something like that.
- 25 MR O'CONNOR: Yes, don't own that.
- MR WILSON: All right. So there's a block in between that doesn't – you don't own.
- 30 MR FLETCHER: That's the only one that they don't own, yes.
- MR WILSON: Okay.
- 35 MR O'CONNOR: And how many dwellings are existing on the current holding?
- MR FLETCHER: I think Warren has got – there's two more dwellings down the bottom – bottom paddocks.
- 40 MR DOUST: Yes. And one over in Southgate.
- MR FLETCHER: And one over in Southgate itself, which is shown on that drawing that went with the submission, which show where his dwellings are at the moment.
- 45 MR O'CONNOR: So there's currently three dwellings on that total 130-odd hectares.

MR FLETCHER: Yes. Yes.

MR O'CONNOR: Thank you. Yes, okay. Next question: the Department has claimed in its gateway determination that this could set an undesirable precedent.  
5 Have you got any comments you want to raise about that issue? Because we couldn't see you – anywhere where you've rebutted that in your various submissions you've made.

MR DONGES: Well, on one side, I can't see that removing dwelling entitlements from flood-prone areas is, you know, a negative precedent, so I assume that's not what they're talking about. But we have pointed out to you that there are dwellings located along School Lane in the vicinity. And this is not even talking about the village, which is just down the road. There's dwellings on lots of – 6.67 hectares, 10.56, 8.39, 4200 square metres, 10.31, and 1.92. This might be a 40-hectare area.  
15 40 hectares is very much the exception, not the rule, in School Lane. And so I – on that basis, any quick look at the subdivision pattern on School Lane would suggest that this is not something that is out of the ordinary in School Lane. It's a reflection – Andrew can go on a bit further – it's a reflection of the workings of the ..... up there.

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MR WILSON: Yes. That - - -

MR FLETCHER: I think the undesirable precedent that somebody is basically – somebody else can come along and make this argument too. But there's really – in this particular area there's nobody else in this situation. And in the Clarence Valley there's probably very few people who are in the same situation as well. So – and also the precedent will disappear in two years anyway. So any precedent set now, unless everyone gets in that could possibly do this – and I doubt there's very many of them, because most of them would have thought of it already.

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And in fact, I think council has considered one – I'm not too sure where it was – similar situation where they wanted to try and do a boundary adjustment with a lot that had a dwelling entitlement down the bottom with one that didn't – sorry, didn't have one down the bottom, with one up the top. But that was a different situation altogether. It was like they had one – the same parcels – or two parcels they had, they were trying to do a swap. But this – yes, I don't see it – I can't see it being an undesirable precedent, because I think there's very few other people that had the opportunity to do it. And if they don't do it within two years, it doesn't happen anyway.

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MR DONGES: Yes. Yes, sorry, I get your point there. And, yes, so I think there is history, because council staff did point out that they did – they did support one that happened because it was contiguous. I mean, this is contiguous in a way, but we weren't – we're not going to make the contiguous argument here. But it's a – you know, if you work at a strategic level, it's a strategic sort of outcome that's being sought at the state and local level to try and reduce risk from – minimise risk to life and property from – from flooding. And if you can come up with a mechanism that

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removes dwelling entitlements from floodplain areas and replaces them into an area where doing – in doing so, it doesn't alter the existing settlement pattern in that area where they go, then, no, I don't really see that there's anything undesirable about that.

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I mean, if these were going out into an area which was exclusively over 40 hectares, then I would suggest that, yes, okay, there's an undesirable element to that. So you really have to – to use the colloquialism, you really have to line up a lot of ducks, you know, in a circumstance to achieve what we're – what the Dousts are trying to achieve here. And, you know, no one is going to say whether those situations exist or don't exist, because, you know, the research would be enormous. But anyway, there's a lot of factors that would have to line up in terms of ownership and location and, etcetera, etcetera, to allow this to happen. And the Dousts are in a – in a lucky position that these circumstances do line up for them.

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MR WILSON: Is it possible that – Chris Wilson – is it possible that – I mean, just because you own those separate bits of land, is it possible that anyone could put in a planning proposal to transfer entitlements to other land? I mean, you don't have to be in one ownership to be party to the planning proposal.

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MR DONGES: Yes. Well, look, obviously there – someone could do that. I think it would weaken your case. Again, you would have – you would have to – all those circumstances would have to be present, and then – anyway, look, I think that – I think that we've, to a degree – we've answered that question.

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MR WILSON: Okay. Just - - -

MR DONGES: If want any further clarification on that, as you said, we have an opportunity to put it in writing, but, you know, I still don't see that, necessarily, the precedent is undesirable if those circumstances are met, and, you know, if we go back historically, the councils in the Clarence Valley in the past went as far as looking at actually trying to move villages or areas of concentration out of floodplains and see if they can relocate them elsewhere. That was one of the options they looked at in their floodplain reports early on. And, for obviously reasons, they also looked at the option of say, "Okay, well, we simply won't allow people to build houses in floodplain areas. We'll just refuse development applications".

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Well, that was discounted at the same time too, because that was seen – that was a deleterious effect on people's property rights, particularly when you had the history of – all though now – this is an enormous floodplain, the Clarence Valley. There are houses all through it, and most houses are in it – they're either on stilts or their on mounds. The historical patterns of development in the Clarence floodway – floodplain precludes trying at some late date to try and remove people's rights.

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MR O'CONNOR: Okay. Thank you for that. Moving on to the next question, this is really about what you call the associated offer, and we're just wondering why it

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wasn't formally part of your Planning Proposal, as opposed to – you've made reference to it, but you haven't actually - - -

MR FLETCHER: Yes.

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MR O'CONNOR: - - - bound it in - - -

MR FLETCHER: We couldn't figure out a way to do it I suppose is the simple answer to that.

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MR DONGES: Yes, if someone can tell us how to do it – council staff couldn't. We couldn't think of it – how to do it, and, as you know, a Planning Proposal is a proposal to make it an LEP. Clearly, requesting that the minimum lot size be amended is the making of an LEP. We can't think what LEP you would make to extinguish dwelling entitlements. It's no good increasing the minimum lot size on those two properties, for instance, to beyond their size, because they're already under the 40 hectare size that they have dwellings on, so no change to the LEP would – would do that, unless it was a specific clause in the LEP that removed those dwelling entitlements, which seems to be a bit of an overkill when in two years' time the process will remove that dwelling entitlements anyway.

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But if that's the – if there's a method that someone can think of – and that's the sticking point. You know, if we went through the Gateway with a requirement that that amended to include that in the Planning Proposal using this method, we would be more than happy to make that change. But, you know, we seek advice from higher authorities than ourselves on how that would be achieved.

25

MR FLETCHER: Maybe, Casey, you might be able to answer that one. I just – I'm just thinking about it. Would it be possible to put a clause in there that recognises that these lots have a dwelling entitlement and/or a dwelling approval within two years? That would be the case. But that that – that there was some sort of – the sunset clause gets extended to those two lots, the same as it does to all the other lots in December 2021 that says, 'Those rights are extinguished at that point and can't be enacted up until that time'. I mean, that's the only thing I can see you could put in there – something like that. Like, sort of, a bit of gobbledygook really.

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35

MR DONGES: Yes.

MR FLETCHER: But, anyway, I'll hand over to you.

40

MR O'CONNOR: Looks, it's Steven O'Connor here. The way that I thought you might have been able to do it is just seek to have the LEP provisions amended to allow the four-lot subdivision, which is really the boundary realignment you're after in School Lane, but it would be on the proviso that those lots that you have that you believe have the dwelling entitlement on the floodplain have to be consolidated with the adjoining land so they no longer exist as lots; therefore, they wouldn't have dwelling entitlements.

45

MR FLETCHER: Well, yes. Well, I mean, I suppose it would be possible to consolidate the three lots down the bottom as some sort of deal, but what that then does is it then makes those lots above 40 hectares, which then have a dwelling entitlement under the LEP.

5

MR DONGES: Yes, just because you consolidate lots, you know – if you – the dwelling entitlement still stays with the land, and if you consolidated - - -

MR O'CONNOR: Yes, I take - - -

10

MR DONGES: If you put these together, then you may lose one dwelling entitlement, because you create one lot of 40 hectares, but, you know, that's all you could achieve. Once you have the 40 hectares – one you start going over 40 hectares, then you create a permanent dwelling entitlement.

15

MR FLETCHER: Yes.

MR DONGES: So we don't want to start moving boundaries around and doing - - -

20 MR FLETCHER: That was thought of.

MR DONGES: Yes.

MR FLETCHER: But, yes, you get – it's, sort of, catch 22.

25

MR O'CONNOR: Yes, I understand.

MR WILSON: Chris Wilson here. Look, the department's argument basically surrounds – I get what you're saying about the – the settlement pattern along Southgate Road or Southgate Lane – whatever it is. The department - - -

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MR FLETCHER: Yes, School Road – School Lane.

MR WILSON: Yes, the department's argument is that, notwithstanding that there are existing subdivisions that are well under the 40 hectares – that it's undesirable to continue to fragment that land, and it's inconsistent with their regional policies and so-forth. Can you just talk to that a bit more? I know you've said a lot about it and around it now, but the department's argument is that, "We don't want to see further fragmentation of that land in that area for a range of reasons, predominantly agricultural preservation or the ability to continue to conduct agricultural pursuit". What they're saying is that, "We don't want to see any further fragmentation in this area", and it's inconsistent with their regional policies and inconsistent with the settlement pattern. I know you've spoken to settlement pattern. But can you just talk to that a little bit more, please?

45

MR FLETCHER: The simple answer to that question is that up on School Lane – four lots already, two of which have been chopped off at the back, for obvious

reasons, because they're below the – they're flood-prone, and they have a – sometimes water – a lake there, which has environmental value. And so by putting two more – you're not reducing any agricultural viability at all by putting – getting another two dwellings up on School Lane, whereas if you don't do that, what you're going to do is then fragment land down on the floodplain by virtue of the fact that people are going to build dwellings on these two lots and become farms with unviable sizes and become, basically, rural residential development, if you like, albeit on a larger scale. They're not – I mean, one lot is only 18 hectares. The other one is 27, so - - -

10 MR WILSON: So your argument is that the impact is greater on the floodplain than it is in this area, but it has the same effect.

15 MR FLETCHER: Yes.

MR WILSON: It has the same effect, but the impact is greater; is that basically - - -

MR FLETCHER: Yes, that's right.

20 MR WILSON: - - - the crux of it?

MR FLETCHER: Yes, basically, yes.

25 MR DONGES: And I think the other thing, too, is that if we didn't have the issue of the dwelling entitlement, I would be 100 per cent supportive. If it was just an application to reduce the lot sizes in School Lane in isolation, I would be 100 per cent supportive of what the department is saying, because there's no strategic merit for doing that. But there is a real strategic benefit in removing those two dwelling entitlements, and sometimes in order to gain something, you have to give a little bit somewhere else, and so you have to be a little bit flexible in School Lane to gain the benefits that you're going to get down in – on the floodplain. If there was no floodplain issue – be rigid as you like in School Lane.

35 I think that's the approach we – if the rigidity of their approach is whatever the secondary benefits of this or the real benefits of this elsewhere – are immaterial, then, you know – then – I hate to say it, but it fails. But if you go and look at the, you know, planning – we tried to look at that, you know, on overview of costs and benefits of outcome. If you looked at it that way, does the benefit of this far outweigh the small impact of rearranging the boundaries in School Lane?

40 MR FLETCHER: And I guess one other thing there, too, with the two extra dwellings up in School Lane is that School Lane is fully serviced at the moment. It's got reticulated water. It has got overhead power. It's got Telstra, and you won't – you're not expending services, and you can – you've got plenty of area up there for wastewater management as well. So I guess that's the other point to make – that you're not – you're not putting any great extension of – well, basically not expansion of services – just an augmentation of what's there existing.

MR WILSON: So you'd submit there no impact on services, yes?

MR FLETCHER: Yes, none at all.

5 MS JOSHUA: The issue, I guess, that we're faced with is that all of the arguments  
that have been discussed so far is the extinguishment of the dwelling entitlement on  
those other two lots, but that's not formally part of this Planning Proposal, and  
there's no – nothing that's been presented to us about how that's going to happen, so  
10 if the Gateway Determination were to proceed, then, essentially, it would be an  
additional two dwellings without any kind of mechanism to actually extinguish the  
entitlements on the – on the sugarcane land.

MR FLETCHER: Well, okay. Well, in that case, then the clause that I was talking  
15 about could be inserted into the LEP document – that part of this deal is that lots 1  
and 2 and lot 61 forego their – any right to a dwelling prior to December 2021 as part  
of the Planning Proposal.

MS JOSHUA: Yes, but you're also saying to us that you've got DAs prepared for  
20 those two lots, and you're - - -

MR FLETCHER: Yes.

MS JOSHUA: - - - confident that they will be approved, so even before that  
25 timeframe - - -

MR FLETCHER: Well, yes. Well, yes, we would – but that's only – that's only the  
fallback situation. If this is unsuccessful, then, obviously, to increase the value of  
their property, that's what Graham and Warren will do – is put the DAs in for these  
30 so that their property values, you know, increase down there and, you know,  
basically things are better in terms of disposing of them in the future.

MR DONGES: I mean, we would be happy to seek legal advice on the mechanism.  
As I said, it would have to be standalone clause referencing those specific properties.

35 MR FLETCHER: Yes.

MR DONGES: And - - -

MS JOSHUA: So you haven't sought - - -  
40

MR DONGES: - - - removing - - -

MS JOSHUA: - - - legal advice so far?

45 MR FLETCHER: Sorry, Casey?

MS JOSHUA: You haven't started that process of seeking legal advice before now?

MR FLETCHER: Well, we didn't, sort of, think we had to at this stage.

MR DONGES: Well, without – the idea was restricted covenants.

5 MR FLETCHER: Yes, like, we were just going to put restrictions as the user on it –  
that you couldn't have a dwelling there, and the fact that it was only going to be for a  
period of two years – and this is – this gets done on rural – in the rural set where you  
do boundary adjustments and things, as Casey would be aware, and we had several  
10 cases that I can think of. One was in Alamy Creek, not far up the road, whereby the  
boundary adjustment gets done and that other lots has a restriction that says they're  
not allowed to construct a dwelling on it, and the determining authority or release  
authority for that is Clarence Valley Council.

15 So we've maintained – and we've said this to the council officers – that by doing that  
– and the fact that it's only for a period of two years before they get extinguished  
anyway – nobody's going to forget about why they were put there, and so nobody's  
going to do it, and council has dealt with several of these matters over the last few  
years whereby there is restriction – there has been a no-dwelling restriction placed on  
20 properties, and certainly up along Alamy Creek, not far to the west, and those –  
people have come back and said, "Oh, yeah, but, we, you know" – try to justify it,  
and they said, "No. No – restriction". And they've stuck to their guns on it.

And they were done 15 years ago. So I think within the period of two years for that  
to the last – the restrictions to last, I think it's fairly binding and something that  
25 nobody's going to release, and certainly nobody in council.

MR DONGES: Yes, I think from – I mean, my experience as a council officer was  
that the concern with restrictive covenants – and from the – from council's point of  
view is that, as I said, if they done back in the mists of time and there was no – no  
30 one knew why they were there, there was a danger people would say, "That seems so  
illogical, so let's get rid of it" or, indeed, that future councillors, over council's staff  
recommendation, say, "We feel sorry for him; let's take it away". But, let's be  
realistic. That's not going to happen in this instance. It's only two years away. It  
will be the same council staff, and most of the councillors will be the same  
35 councillors in two years' time, and they're be well aware of why this – these  
restrictions were put there.

They'll be well aware of the promises and the written, sort of, obligations that were  
made by the Dousts that this was what we going to happen. It's simply not going to  
40 happen. But, as I said, if this is what it hangs on, you know, we won't let it – we  
don't let it die just because of this question, but we really think, from a practical  
point of view, that that timeframe – for once that – that sunset clause serves the  
benefit.

45 MR WILSON: Okay.

MS JOSHUA: Okay. Thank you.

MR WILSON: Do you have any more questions?

MR O'CONNOR: No, no more.

5 MR WILSON: Look, I think that's exhausted our questions in relation to the matter. Do you have anything further to add before we wrap up?

MR FLETCHER: Warren, you got anything?

10 MR DOUST: I don't really - - -

MR FLETCHER: I – I – yes. No, I don't think so. I appreciate you listening to us today, and hopefully by talking these things through – sometimes it get through in a few words.

15

MR DOUST: Yes.

MR WILSON: Okay. Well, thank you very much. As I said, we met – well, we had a teleconference with the department this morning, and we're having a teleconference with council after this one, so – and then we'll – we'll - - -

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MR O'CONNOR: Get about - - -

MR WILSON: - - - go from there.

25

MR O'CONNOR: - - - making our decision.

MR WILSON: Yes.

30 MR O'CONNOR: Yes.

MR FLETCHER: Okay. Very good. We appreciate your time.

MR WILSON: Thank you very much.

35

MR O'CONNOR: Thank you very much.

MS JOSHUA: Thank you.

40 MR FLETCHER: Thank you.

MS JOSHUA: Thank you.

MR FLETCHER: Thank you, Casey.

45

MS JOSHUA: Thanks.

MR DOUST: Thank you.

MS JOSHUA: Bye.

5 MR DOUST: Bye-bye.

MR FLETCHER: Bye.

10 **RECORDING CONCLUDED**

**[12.22 pm]**