



New South Wales Government
Independent Planning Commission

TRANSCRIPT OF PROCEEDINGS

RE: NAMBUCCA VALLEY COUNCIL GATEWAY REVIEW REQUEST
(PP-2022-2086) (GR-2022-18)

COUNCIL MEETING

COMMISSION PANEL: DR PETER WILLIAMS (Chair)

OFFICE OF THE IPC: BRAD JAMES
COURTNEY COLEMAN

NAMBUCCA VALLEY COUNCIL: CHRIS THOMPSON
DANIEL WALSH
SUSAN JENVEY

LOCATION: VIA VIDEO CONFERENCE

DATE: 3.00PM, WEDNESDAY, 5 OCTOBER 2022

TRANSCRIBED AND RECORDED BY APT TRANSCRIPTIONS

DR WILLIAMS: My name is Peter Williams. Thank you very much for joining me this afternoon. I've just got a brief formal statement to read before we begin, but just to let you know, we are recording the meeting today, and it will be transcribed, and the transcription will go up on our website in a couple of days' time. So I'll just begin with a formal welcome.

10 So before we begin, I would like to acknowledge that I am speaking to you from the land of the Dharug people, and I acknowledge the traditional owners of all of the country from which we virtually meet today, and pay my respects to their Elders past and present.

Welcome to the meeting today to discuss the Gateway Determination review request for the planning proposal to amend Nambucca Local Environmental Plan 2010 to prohibit caravan parks on land zoned RU2 rural landscape, and R5 large lot residential.

20 My name is Peter Williams and I am the Chair of this Commission panel. We're also joined by Brad James and Courtney Coleman for the Office of the Independent Planning Commission.

In the interests of openness and transparency and to ensure the full capture of information, today's meeting is being recorded, and a complete transcript will be produced and made available on the Commission's website.

This is one part of the Commission's consideration of this matter and will form one of several sources of information upon which the Commission will base its advice.

30 It is important for the Commission to ask questions of attendees and to clarify issues whenever it is considered appropriate. If you are asked a question and are not in a position to answer, please feel free to take the question on notice and provide any additional information in writing, which we will then put up on our website.

I just request that all members here today just introduce themselves before speaking for the first time and for all members to ensure that they do not speak over the top of each other to ensure the accuracy of the transcript.

40 So we will now begin. Thank you very much for your attendance today and I have been through the materials as best I can get my head around them and have several questions, I guess, but a number of these have been already put to council in terms of the agenda items. But if it's okay, what I will do is no doubt have questions for you,

definitely at the end, but also perhaps during the course of our conversation today, of our meeting today.

What I propose to do for you is to perhaps begin with any comments or statements you want to make, or would you like to start progressing through the dot points. I'm sort of quite happy for you to address those points, those questions as best you see fit.

10 MR WALSH: Okay. So for the, yes, for the recording, I'm Daniel Walsh, I'm the Manager of Development and Environment at Nambucca Valley Council. So in terms of our justification for review, which has been submitted to the Commission, our two main points that we're looking to have reviewed as part of the Gateway Determination is point 1 of condition 1, and that is the inconsistency with the manufactured homes, section 9.1 direction, and condition 1.4, which is the savings provision. There's two other conditions, conditions 4 and 5, they relate to the timing of the, the timing conditions in the Gateway Determination, which are more asking for an extension, given the delays about the review process.

20 Firstly, I guess the main point to make from our, council's planning proposal and the Gateway Determination and the Gateway Determination report, I don't think there's any inconsistency between the department or council in terms of the strategic merit of the proposal. I think we're both on the same page, that given that, you know, volume, really, of natural disasters, standard of road access, and extension of infrastructure in regards to the North Coast Regional Plan and Local Strategic Planning Statement, that there's strategic merit for the planning proposal. What's in contention is, it's those conditions, those two main conditions that I referred to before.

So did you want me to go through those two condition points in condition 1?

30 DR WILLIAMS: Yes. Look, Daniel, that would be good, particularly as we've got them as dot points in the agenda items - - -

MR WALSH: Yes.

40 DR WILLIAMS: - - - and, look, that's my understanding as well. I think the other two conditions, in terms of the exhibition period of the planning proposal and the completion dates, I think the department's happy to extend those, given, you know, the time and circumstances we've got now. It does seem to me that they are the two main sticking points. So if you'd like to go through those in more detail, that'd be great, thank you.

MR WALSH: Okay. Yes. So point 4 of condition 1 is the savings provision, which was added to, apply to an DA lodged after the, or prior to the commencement of the draft LEP, the Gateway Determination. Council contends that condition for a number of reasons. The department's assessment report says that it was issued because the applicant of the DA had lodged, had conducted a public hearing on the 19th of February and had submitted a development application.

10 To give you a bit of background, the DA that they're proposing is what they're calling a 257-site caravan park, with two short-term caravan sites, and 255 long-term two- to three-bedroom dwellings, single- to two-storey dwellings. They're proposing to get a separate section 68 approval, post-consent, to build all the dwellings onsite, they're all attached dwellings, and, yes, they're trying to classify them as manufactured homes, that's their secondary argument.

DR WILLIAMS: Right.

MR WALSH: So from council's point of view, in terms of the assessment done of that application, we've got serious concerns in terms of the classification of the development, how it complies with the definition of caravan park, and given its
20 proposed form, there's serious sewer and capacity issues and a range of other issues that we're dealing through the DA, and that's been expressed to the applicant, and they're currently being given the opportunity to address that now.

So the key point is, given the location of this proposal, the intent or the agreed intent of restricting or removing the permissibility of caravan parks in these zones, we don't, council doesn't see it as appropriate to put a savings provision in the Gateway Determination.

30 Key points with the savings provision is that the only information the department has given us in the report is that they lodged a DA and they held a public information session. It's council's view that the applicant was aware of council's intention to prepare a planning proposal to prohibit caravan parks on the land, however proceeded in the months after being aware of that to formally prepare an application and invest the money in developing that proposal. The report at - the development application itself was submitted to council on the 8th of July this year, and not formally lodged until the 21st of July, after they needed to submit particular information and pay the application fees.

40 The issue that we've got is that the time between lodgement of the development application and the signoff of the Gateway Determination was 11 days. The reasons that we see that was protracted than what it, more than what it needed was, it was

submitted to the - because of the deemed political nature of the proposal, which is what I was verbally told from the Department of Planning staff, it was completed, the report was completed within the standard 25-day period, but took 43 days for it to be finally signed off by the executive director, which is an unusual path. So that in itself, had that in itself not occurred, like other planning proposals, that DA wouldn't have been lodged before the Gateway Determination was made.

10 In saying that, the applicant understood the risk of continuing to prepare the development application and council experienced over two months of delay trying to resolve the issues associated with the following point relating to the section 9.1 directions, trying to resolve that with the department prior to the lodgement of the application.

So in Council's view, the proposal upfront was consistent and still is consistent with that 9.1 direction. Had that been identified by the department upfront, and not delayed more than what it needed to be in the assessment process, the Gateway Determination would have been made months before the DA was actually lodged, reminding that it was only 11 days since lodgement to the Gateway Determination being made.

20 In addition to that, the department's assessment report is agreeable with council's position that the - and it says it in a number of areas, that the planning proposal appropriately directs caravan parks to urban areas which supports the efficient use of infrastructure. What's become evident as part of the development application process is that this site is outside council's mapped area that was considered for its Integrated Water Cycle Management plan or strategy. That strategy is based on a 2,000 EP, Equivalent Persons, capacity at council's sewage treatment plant. Currently there's 998 Equivalent Persons recorded in the 2021 census. In addition to that, during peak holiday periods, we get well in excess of 1,000 people in Scotts Head, visiting Scotts Head. There's a 28 per cent vacancy rate use for the holiday houses. There's a
30 substantial caravan park that exists in the village area that's got capacity for hundreds of tourists each year, not to mention visitors to existing dwellings.

So at the moment, we're at capacity. We've got significant areas that's within our urban areas, considered as part of the IWCM to expand those urban growth in existing greenfield sites, with a development proposed to commence pretty soon for 20 lots. There is no provision in that plan for this, a development of this nature. So it's council's view there is no capacity to actually take on this development in its treatment plant, which is one of the key reasons for this planning proposal to prohibiting in these zones. There's no consideration given to expanding infrastructure in rural areas to
40 facilitate developments of this nature.

Another main reason against the provision is the volume, build of caravan parks and their occupants in natural disasters, being bushfires and floods.

DR WILLIAMS: Sorry, just on this point, sorry, Daniel. I note in the Council's planning proposal, when they were looking at section 9.1 directions, I think it was direction 4.1, which is to do with flood-prone land. Council didn't consider that at all in the planning proposal.

10 MR WALSH: No, there was - planning proposals, one of the, one of the reasons for - sorry, in 9.1 - one of the main reasons the planning proposal was the exposure to these areas in natural disasters, being floods and bushfires, the main one. Page 2 identifies - sorry - page 1 identifies that, mainly under section A, part 3 of section 9.1.

DR WILLIAMS: No, the only point I'm saying there, it's not a major issue but I just notice that when you've gone through the section of, beginning on page 6, it's section 7, there's the planning proposal consistent with applicable ministerial directions, and if you go over, eventually, to page 8, you go from direction 3.5, "Registration vehicle access", and then 4.2, "Coastal management", 4.1, which I think is the one on flooding, just hasn't been considered at all.

20 MR WALSH: Yes. I'd have to look at the terms of that direction, to see why that wasn't put in.

DR WILLIAMS: Yes. Oh, no, that's fine. Look, I accept your argument, you know, and clearly the department does as well, in terms of the impacts on natural hazards. I just thought it was, yes, I just couldn't work out - I was a bit surprised that it hadn't been picked up in the planning proposals, that particular direction, that's all.

30 MR WALSH: I would just, yes, I'd have to look at the actual terms of the direction. I think, off the top of my head, it talks about if you're changing flood plan controls, or you're putting in a particular element that impact, that triggers those considerations.

DR WILLIAMS: Yes. No, that's fine. That's fine, that's okay. Sorry, look, just going back to - well, it's becoming an issue of dates, the dates in which who did what, or who thought what was going to happen or not going to happen. When did council, council resolved - it was by council resolution, I think, on the 17th of March, to proceed with the planning proposal?

40 MR WALSH: 31 March was the resolution to proceed.

DR WILLIAMS: Right.

MR WALSH: March. There was a deferral for a further report.

DR WILLIAMS: Okay. And when was the - and the date that the planning proposal was formally accepted in its final version by the department? I think I've got some dates here, but basically you're saying, are you referring to the times that are taken between the originally lodged planning proposals, or the one that was finally accepted by the department?

10 MR WALSH: Well, it's, what I'm saying in the justification letter is it's 43 days since the lodgement of the final accepted planning proposal. So it was determined on 19 July, but it was two months before that. We first submitted the first planning proposal on the, in April, and then in - the two planning proposals were returned, based on issues regarding the next dot point about the section 9.1 direction, and then the 43 days commenced when I submitted the third planning proposal.

DR WILLIAMS: Okay/ That's fine. I just wanted to clarify those times. No, thanks for that. It's just there's a lot of dates floating around for, you know, different things happening.

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MR WALSH: Essentially what we - - -

DR WILLIAMS: Okay.

MR WALSH: Two months plus the 43 days. So it's essentially three months in delay, is what we're referring to.

30 DR WILLIAMS: Right. Okay. The savings position itself is worded in the, to such that it's only affecting DAs lodged prior to the Gateway Determination, so it's a specific type of savings provision, in that sense. It won't affect any other DAs. I mean, quite often savings provisions, you can lodge anything up until an amendment has actually been made, you know, been, you know, gazetted. But the effect of this is to effectively not accept and determine DAs for caravan parks after the Gateway Determination has been made.

MR WALSH: Yes. Yes. Well, it's, it's a little bit different in that regard, but also it's about when a, it's worded in a way, it's worded that a DA made before the commencement.

40 DR WILLIAMS: Yes. Yes.

MR WALSH: Making the DA would be putting on a portal lodgement under the regulations until fees are paid.

DR WILLIAMS: Yes. Yes.

MR WALSH: There's, yes, that's why it's sort of flagged in that justification report, it was made on the 8th, but it wasn't lodged officially under the regs till the 21st.

10 DR WILLIAMS: Okay. And this does appear to be the only DA that's going to be, potentially that's going to be - well, not potentially, actually - that's going to be caught up with these, the saving provisions if they are implemented.

MR WALSH: Yes, that's right. It's just the one.

DR WILLIAMS: Just the one, okay. So Council is confident there's clearly nothing else that's going to be impacted.

MR WALSH: No.

20 DR WILLIAMS: Right, okay. Rightio. The, look, it is a dot point, but I might, it's on there now, it's on the agenda, but I might just mention it now. You mentioned the council meetings, I think, of 17 March and 31 March, and I think it was stated at the Council meetings of the 17th that there would be a request for legal advice and a General Manager's report to go to the council meeting. Was there anything in that that might assist council or support council? Or is that sort of embedded in your request? But there was a mention of getting legal advice in a General Manager's report. I don't want to touch on anything that might be, you know, legal professional privilege or anything like that, but was there anything in that that might assist council's position in relation to the rezoning itself and the savings provisions?

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MR WALSH: Not, no, there was no advice given about the Gateway Determination process. It's strictly on the permissibility of the development application.

DR WILLIAMS: Okay. Thanks for that. Sorry, I interrupted there. But was there anything else you wanted to, with those two conditions?

MR WALSH: Well, yes. So in terms of the, I don't know, the second provision, in terms of the section 9.1 direction, is that - yes. So I guess I'm at odds with the department's position on that. I don't think it's, the terminology for that direction, 40 obviously it's pretty clear in that it's all about identifying suitable, it's all about planning proposals that are identifying suitable zones and locations for caravan parks,

which is what this planning proposal is. So it applies, and it says, when in doing so, you've got to retain provisions that permit development for the purpose of a caravan park to be carried out on the land. So it's not saying the particular amendment in a particular zone has to do it or retain those provisions, it's the planning proposal must retain provisions. The planning proposal is to amend the Nambucca LEP, so I take it to be the planning proposal, being the amendment to the LEP, must retain provisions in the LEP to different caravan parks.

10 So the planning proposal identifies extensive areas for caravan parks to be carried out. There's hundreds of hectares for it in the remaining zones but it defines particular areas which is three times the size of the amount of caravan parks we've already got in the Shire. It wouldn't be suitable, in terms of, you know, flood, bushfire, access to services and facilities.

So in my view, it clearly shows that the planning proposal, the LEP will retain provisions for caravan parks moving in the future and it's not just in particular locations, it's throughout the Shire.

20 DR WILLIAMS: Yes, okay. No, no, that - yes. So, and thanks for that. So that was a point of contention, or that was part of the delay, that the, getting clarification on that point?

MR WALSH: Yes. So the first two planning proposals that were returned, that was the main contention, that was basically, we didn't have strategic merit is what the department was saying, because it doesn't justify that inconsistency with that direction, and my argument was, well, we are retaining provisions that, in terms of, I think it's maybe four or five zones, which made retaining caravan parks as permissible.

30 DR WILLIAMS: Yes. So what you're arguing there is the planning proposal itself isn't inconsistent with the section 9.1 direction because the council area as a whole, through several other zones, is clearly supplying, has an adequate supply of caravan park sites, whereas the council has, the department has taken the view, it's just looking at that particular, those particular two zones.

MR WALSH: Well, that's my interpretation of where they're coming from.

DR WILLIAMS: Yes.

MR WALSH: But they've agreed – so our planning proposal clearly states, you know, particular sites and says these are the zones, these are the locations, this is best (not transcribable) and these are the areas.

DR WILLIAMS: Yes.

MR WALSH: The department agrees with that, and they are agreeing that that's a justification to varying the ministerial direction, whereas what I'm arguing is, it's a justification that we're retaining provisions that permit caravan parks, it's not
10 justifying why we're not retaining provisions.

DR WILLIAMS: Yes. Yes. Yes. Okay. Would that be a significant issue as one on the savings provisions, in council's view?

MR WALSH: Well, it's a big provision for the consideration of a savings provision, in that council's number one objective is to remove the savings provision, but that's a big part of why the savings provision should be removed. The first planning proposal submitted in April shouldn't have taken the best part of three months, three/four
20 months, for the Gateway Determination. It would have been resolved, you know, early May, if it hadn't been returned, and the DA would have been lodged, been capable of being lodged till months later.

DR WILLIAMS: What's the status of that DA at the moment, Daniel?

MR WALSH: So it was, you know, lodged, obviously, 8 July. It's been put on exhibition, 571 submissions received, off the top of my head. So it's strong community opposition to it, we, as council, has got serious concerns - obviously permissibility and sewers are the main issues, but there's a number of others. The intention is to give them, the applicant, till mid-October, mid this month, to submit
30 information addressing those concerns. It had been written to, and then after that, put the matter to the JRPP for determination.

DR WILLIAMS: It's going to JRPP, is it?

MR WALSH: Yes. It's a (not transcribable) threshold.

DR WILLIAMS: Yes. So that's going to be my next question, yes, whether it would stay with council or would go to a regional panel. Okay. Yes, Okay. Rightio. Is there anything else? Any other agenda items that - - -
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MR WALSH: That's the main thing, yes, our main reasons, and what we want amended, aside from those final two conditions just about extending the timeframes.

DR WILLIAMS: Yes.

10 MR WALSH: We'd just be requesting from, you know, the timeframes that were originally given were fine, but that same timeframes just to be extended. I'd probably delete the condition 2 one, to be honest, because that was about exhibiting - it was a bit of an odd condition, that one. It was about exhibiting it within a particular
10 timeframe, whereas usually the Gateway Determinations, they just have it completed within a set timeframe. So either/or, I mean, preferably that one would just be deleted, and our timeframe would be the timeframe given, the same period of time given from whenever the Commission determined this matter.

DR WILLIAMS: Yes, right, right, okay I'll see what else I might have. Yes. Okay. Sorry, Councillor - or Mr Thompson, did you have anything you'd like to start, or - - -

20 MR THOMPSON: I think Daniel has covered it all, I don't have anything much to add at this point.

DR WILLIAMS: All right. Councillor?

MS JENVEY: Oh, look, I really just came to listen, to see what was said, but I just, as a comment, you know, Council remains very concerned about this and our community remains very concerned about this development. So rural land is for a purpose in our community, that's highly valued for what it produces, and it's certainly not a place where a lot of people get to live in manufactured housing estates. So it's kind of a loophole in planning matters that is driving everybody crazy, so we'd just really like a just outcome.

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DR WILLIAMS: Yes. Right. Right.

MS JENVEY: And points to consider, and Daniel has covered them very well, but from just a perspective of the community and somebody elected by them, yes.

DR WILLIAMS: Great. Great. No, thank you, Councillor. Daniel, is there anything else you'd like to add, or anything I haven't, that's not on the agenda, that you think should be stated, or comments, or - - -

40 MR WALSH: Look, I guess the summary of it - I won't rehash - but probably additional would just be what the department's and council's position has always

been, is that there's a strategic process followed before developments occur. It's seen through a number of, you know, North Coast Regional Plan, local planning, strategic planning statement, but in terms of decisions that the department has made before. For example, we had a, someone looking to rebuild a house after a, it had burnt down in the bushfire, it didn't have a dwelling entitled, so a legal dwelling. Council supported a 4.6 variation to it. It was zoned A2 land, the same zone as the caravan park, so I - as part of that, you know, we had that argument with the department about not having to do a planning proposal to justify the strategic merit of this one house. One of the next planning proposals we've got is to say, let's not let 255 houses go on the same site, but, at all, from the start, in terms of the strategic merit of it.

So I guess there just needs to, I just think there, there's, there's a strategic process to be followed and consideration needs to be given to it, and the way that this DA is proposed at the moment, it will just be focused on putting the best controls around to protect that and make that as suitable as possible, but it may not be, and I don't think it is, the most suitable site in the Shire, from a strategic point of view, where that development could go. The Council is not against these type of developments, it's just making sure it's in the right spot, and at the moment, that hasn't been afforded to this process, it's just been a blanket approach of picking a site and hoping for the best.

DR WILLIAMS: The - sorry, just one point that's occurred to me. The area itself is - or the development that's subject to this planning proposal, I believe, is just caravan parks, isn't it? It's not manufactured housing estates?

MR WALSH: No. So it's just the caravan parks. The manufactured housing estates are excluded under the - - -

DR WILLIAMS: By virtue of the SEPP, I think it is, the housing SEPP, I think. I think the fact that the Nambucca LEP is not, the zones aren't, I think, an urban zone, I think, and I think the SEPP excludes manufactured housing estates from, or only, or housing in urban zones. So I think the Nambucca LEP and the SEPP together in concert work to prohibit manufactured homes - - -

MR WALSH: Yes. Yes.

DR WILLIAMS: - - - in the RU2 and the R5 zones.

MR WALSH: Yes.

DR WILLIAMS: And it's just the, it's just the caravan park component, or caravans per se.

MR WALSH: That's it, yes.

DR WILLIAMS: Yes. And you're also saying there's an argument about permissibility in terms of about whether it is in fact a caravan park.

MR WALSH: That's right. I mean, if you picture this thing as a medium- to high-density attached dwelling, 255 attached dwellings, the two sites proposed, caravan sites, are parking bays on the sides of the road, which don't need requirements as per
10 the regulation. So it's more a token gesture to satisfy, or try to satisfy, the legal definition of a caravan park. From a planning perspective, I've got doubts on that.

DR WILLIAMS: Yes, okay. Yes, fine, okay. Look, I think that's all I've got, unless there's anything else from council?

MR THOMPSON: Sorry, I just wanted to make a point. I think the things Daniel raised about timing in particular, those timing issues were beyond council's control. So most of those reports, the delays were caused by the State Government's responses to council, so it's an inordinate of time, in my view, you know, for the State to respond
20 to Council, and had have that happened in a regular timeframe, then we probably find ourselves here today.

DR WILLIAMS: Yes, okay. That's noted. Yes.

MR THOMPSON: And it's probably - there's nothing now that's - - -

DR WILLIAMS: Yes. No.

MS JENVEY: I just wanted to say, around fire and flood egress, you know, there's
30 one road in and one road out. To be increasing the population of this coastal town by 50 per cent when it does suffer, the road is cut during floods, and bushfire, you know, it's bushfire-prone land, so it's asking for, you know, a lot, I think. So, yeah, I think they should - anyway, whether that's a, not the Planning Panel's decision or not, the Commission's is another thing, so - - -

DR WILLIAMS: Yes. Yes. I mean, that's also an issue, that, I mean, a lot of these are clearly site-specific issues, which, in one sense, is almost beyond the - well, arguably could be, you know, beyond the scope of what the Commission has been asked to do here, in terms of - so it's a fine line I need to tread between, you know, the
40 strategic justification for it, but then also the merits or otherwise of a particular

location, which normally, in planning terms, is normally left, you know, for the development application determination.

But, no, look, I do note the concerns that council has about constraints, or particularly hazards, and also supporting infrastructure for these sorts of developments in these zones, and also note the issue of, the concerns about timing of this whole process, which might have contributed or otherwise to whether the savings provisions could have been, you know, effective operation. Or, indeed, the requirement for them in the first place.

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Okay. So, look, thank you very much for that. I appreciate the time that council has made available for us. I'd just ask, Bradley or Courtney, if there's any questions or anything I haven't covered?

MR JAMES: No questions from me, Peter.

DR WILLIAMS: Courtney? You're right, Courtney?

MS COLEMAN: Yes, no questions from me.

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DR WILLIAMS: Good, thanks. Sorry, just in terms of timing, Courtney and James, I think we've got seven days for submissions, so any submissions that need to, might want to be made after the meetings.

MR JAMES: Yes, if council want to provide any supplementary info or response to any comments made today, we'd happily receive those. Preference would be in the next seven days, but, yes, Daniel, we can discuss if needed.

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DR WILLIAMS: Yes. So, Council, if there's any comments you might - anything else you want to submit at all over the next seven days or so, that would be good, because we'll aim to make a determination within one to two weeks after that, so we'd be, we allow normally seven days for submissions after stakeholder meetings or public meetings or public hearings when they're needed, and then try and finalise the reports as quickly as possible after that timeframe.

MR WALSH: Okay.

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DR WILLIAMS: So thank you very much for today, and if you do want to make submissions, perhaps any further submissions, Daniel, just get in touch with Courtney or Bradley would be great.

MR WALSH: Okay. Thank you very much.

DR WILLIAMS: Thank you. Thank you very much for your time. Thank you. Good afternoon.

MEETING CONCLUDED

[3.40pm]