



**New South Wales Government**  
**Independent Planning Commission**

**TRANSCRIPT OF PROCEEDINGS**

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

**DEPARTMENT MEETING**

COMMISSION PANEL: DR PETER WILLIAMS (Chair)

OFFICE OF THE IPC: BRAD JAMES  
COURTNEY COLEMAN

DPE: LUCY WALKER  
KATE CAMPBELL

LOCATION: VIA VIDEO CONFERENCE

DATE: 9.30AM, THURSDAY, 6 OCTOBER 2022

**TRANSCRIBED AND RECORDED BY APT TRANSCRIPTIONS**

DR WILLIAMS: Good morning and welcome. Before we begin I would like to acknowledge that I'm speaking to you from the land of the Dharug people and acknowledge the traditional owners of all 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 Environment Plan 2010 to prohibit caravan parks on land zoned RU2 rural landscape and R5 large lot residential.

10 My name is Peter Williams and I am the Chair of this Commission panel. We're also joined by Brad James and Courtney Coleman from 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 meeting is one part of the Commission's consideration of this matter and will form one of several sources of information upon which the Commission will base its advice.

20 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 on our website. I request that all members here today introduced themselves before speaking for the first time for the transcription purposes and for all members to ensure that they do not speak over the top of each other to ensure accuracy of the transcript. So we'll now begin and once again welcome Kate, and Lucy. I appreciate the time that you've given the Commission this morning.

30 We sent out some questions or some dot point questions in terms of agenda items and I've also noticed that you have prepared a Power Point presentation as well. So I'll let you present how you prefer, go through the Power Point presentation or address the dot points or address the dot points through the Power Point presentation. So we've gone through - I've gone through the materials as best I can and both from the department and the council to get my head around all the issues but also there are a number of points that, you know, I do want to clarify from both the council and the department and, hence, you know, the main reason for this meeting. So I'll hand it over to you both, Lucy and Kate, if you'd like to take me through it please.

40 MS CAMPBELL: Thank you. So it's Kate Campbell here. I'll present the Power Point presentation which does address a lot of the dot points in the agenda but if there are any further questions afterwards, obviously be happy to answer those. So I'll share my screen. Okay. Can everybody see that?

DR WILLIAMS: Yes, thank you.

MS CAMPBELL: Okay. Great. So as the panel Chair indicated this is in relation to a planning proposal from Nambucca Shire Council which proposes the prohibition of caravan parks on land zoned RU2 rural landscape and R5 large lot residential. So in terms of the planning proposal itself the proposal basically prohibits caravan parks in the rural areas under the Nambucca LEP. So caravan parks will remain permissible on land zoned RU5 village, SP3 tourist, RE1 public recreation and RE2 private recreation. So council is basically asserting that caravan parks are appropriate in the urban areas where they can be adequately serviced but there are constraints in their rural areas which mean that caravan parks really shouldn't be permitted in those areas. Constraints in terms of bushfire, flooding, land use conflicts and those types of things.

So it should be worth noting that the planning proposal itself is not the result of a local strategic planning statement or other strategic documentation. It's actually come about as a result of a council resolution which was in response to some community consultation that was undertaken by a developer looking to establish a caravan park on land zoned RU2, obviously in their rural zone. So the Gateway Determination itself was issued on the 19th of July, 2022. The department determined that there was actually some strategic merit with the proposal. It's consistent with the directions of the North Coast Regional Plan 2036 as well as the draft North Coast Regional Plan. There are constraints in the RU2 and R5 land use zones in terms of infrastructure and access as well as those constraints previously mentioned such as bushfire and flooding and the caravan parks will be permitted in the urban areas.

So information lodged by council during the planning proposal process indicated that there is adequate land available in the LGA to establish future caravan parks in the urban areas and that's both new caravan parks as well as the expansion of existing caravan parks. The LSPS also indicated that in the LGA there is adequate area in the future to accommodate housing demand. So the construction of caravan parks in the rural area wasn't necessary in order to meet a certain type of housing demand. A range of tourist and visitor accommodation also remains permissible in the rural areas, such as bed and breakfast accommodation, farm-stay accommodation, camping grounds and the like. So it's not sterilising those rural areas from that type of tourist and visitor accommodation either.

So the Gateway Determination actually included a savings provision as well. That said that prior to exhibition the planning proposal be updated to include a savings provision which identifies that a development application for a caravan park made but not finally determined before the commencement of the LEP amendment must be finally determined as if the plan had not commenced.

So this condition was included as part of the Gateway Determination as it's considered inappropriate that the planning proposal process be used to determine the outcome of a specific DA. So that DA really should be assessed on its merits and not prohibited via the planning proposal process. So in other words, the department was happy with the policy intent of the planning proposal but we didn't believe that the amendment should take away the rights of a specific DA.

10 So it's considered that the inclusion of the savings provision in The Gateway Determination is consistent with the principles of procedural fairness and natural justice and the imposition of this savings provision is also consistent with the department's policy position. So illustrated by the inclusion of clause 1.8A in the standard instrument LEP which actually provides a savings provision for all development applications during that process. So it's certainly something that we apply consistently within the northern region of the department and I understand that it is also a department-wide policy position.

DR WILLIAMS: Sorry, Kate, sorry to interrupt.

20 MS CAMPBELL: Yes.

DR WILLIAMS: While you've got that slide there it might be better if I - rather come back and ask some questions on that slide. I'm sorry to cut in there. Just on that - well two points or questions I've got here. Just on that last point with the savings provisions I was going to ask a question about that, about - well, two questions - but one was the frequency or, you know, this is the norm that the department adopts and you seemed to have addressed that question, it is standard, that it is council policy. You also mentioned the standard instrument LEP and clause 1.8A. Is that a mandatory provision?

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MS CAMPBELL: It is.

DR WILLIAMS: It is.

MS CAMPBELL: Yes, yep.

DR WILLIAMS: Right. So that as a mandatory provision it's expected that every LEP, very principal LEP has a savings provision?

40 MS CAMPBELL: That's correct, yes.

DR WILLIAMS: And by inference, therefore, any amendments that the council makes to its LEP should be consistent with that, i.e., should also allow for savings provisions?

MS CAMPBELL: Yes. So I did look into the matter of whether clause 1.8A could actually apply to an LEP amendment but generally the advice is that 1.8A applied at the time that the standard instrument or the comprehensive LEP process was implemented, it applied to pending DAs at that time and doesn't apply to subsequent amendments to the LEP. So it just sort of demonstrates that during that standard  
10 instrument LEP process the department considered it appropriate that the amendments to the LEP, or the new LEP, the creation of a new LEP didn't actually affect any pending development applications but subsequent alterations to the LEP through the planning proposal process would need to have its own savings provision if it was to affect any pending DAs.

DR WILLIAMS: Okay. Understand that. I think that's clarified that nicely. Thank you very much for that. And just a second question, if I may. The actual savings provision itself that's on the first dot point of your Power Point slide where you say that a development application for a caravan park made but not finally determined  
20 before the commencement of the LEP amendment. Now, by that phrase "commencement of the LEP amendment", you mean the actual, when the LEP amendment's finally made into law, i.e., I guess nowadays what it's called, I think it's published on the New South Wales Government website or what it used to be called gazettal?

MS CAMPBELL: That's correct. Yes.

DR WILLIAMS: Okay. That's the point, any DA is not finally determined at that point of time. Lodged but not currently determined.

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MS CAMPBELL: That's correct.

DR WILLIAMS: But the key date is the actual making of the amendment, making it into law?

MS CAMPBELL: Yes, that's right. And it's - sorry - it's probably worth noting as well that this savings provision would apply to the development application that's currently lodged with council but if a development application for a caravan park is also lodged prior to the finalisation of this LEP amendment then it also would be  
40 afforded a savings provision.

DR WILLIAMS: Yes, yes, that's - and I've noted that comment's made in your materials as well. No, that's great. So I think there might be also some difference of interpretation of that savings provision from what I can see at the moment between the department and the council and I just wanted to make sure I was clear what the precise interpretation the Department and also the council was in relation to effectively when the savings provision kicks in, in a sense. Is it at the end of the - well, as indicated here when the LEP's finally made or is it sometime earlier and I thought the normal way that savings provisions work is that they only kick in at the time of the actual making of the LEP or LEP amendment which is precisely what you've, you know, described here. Okay.

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MS CAMPBELL: That's certainly our interpretation and our interpretation of "finally determined" in terms of the development application itself as well does extend to appeal rights and that process through the courts too if necessary.

DR WILLIAMS: Yes, yes, that's great. Yes, that's fine. Okay. No, good. Thanks, Kate, that clarifies those two points. Sorry to interrupt there but I just thought we'd, I might address those while the slide was here.

20 MS CAMPBELL: Of course. Thank you.

DR WILLIAMS: Thank you very much.

MS CAMPBELL: So in terms of one of the other contentions of council, it relates to the consistency with section 9.1 direction 6.2 which is caravan parks and manufactured home estates. So the planning proposal states that it's consistent with this 9.1 direction and the Gateway Determination included a condition just requiring that prior to exhibition the proposal be updated to note that it's justifiably inconsistent with this direction. So we thought that was appropriate to update the planning proposal to reflect to the community and the public that full consideration of this matter had been undertaken and while the inconsistency exists it was considered to be appropriate in this instance.

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So the objectives of the direction are to provide for a variety of housing types and provide for opportunities for caravan parks and manufactured home estates. So our report concluded that as the proposal does not retain provisions that permit development for the purposes of the caravan park on land zoned RU2 and R5 that the proposal is inconsistent with this direction. Obviously there is a development application at the moment which proposes the construction of a caravan park on land zoned RU2. So the planning proposal does seek to remove the opportunity for a new caravan park to be developed and additionally the prohibition of the caravan park on

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land zoned RU2 could potentially result in an approved development using existing use rights.

So while there was a strategic justification for the proposal and the justified inconsistency, the condition was placed on the Gateway Determination to demonstrate to the community that the matter had been considered. So that concludes what I've got in terms of the Power Point presentation. I'm happy to hand back to you, Peter, for any further questions if you'd like.

10 DR WILLIAMS: Thank you very much, Kate. That's been very, very helpful. Appreciate that. This is a question I'll probably have to put back to council but I think there's nine, nine caravan parks in Nambucca Shire. Are you aware if any of those are currently on, those current ones are on either RU2 or R5 zones?

MS CAMPBELL: I don't believe they are.

DR WILLIAMS: So there's no current - okay. So - - -

20 MS CAMPBELL: Not currently. It's my understanding that they're all in the urban areas.

DR WILLIAMS: Okay. So there'd be no need for, you've mentioned existing use rights, there'd be no need for any - existing use rights shouldn't arise because there'd be no, if there's no caravan parks in these zones they won't need to rely on existing use rights for any future development they might want to undertake.

MS CAMPBELL: That's correct. The existing use rights would only apply to this current development application if consent were to be granted.

30 DR WILLIAMS: Granted, yes. Yes, fine, that's clear, thank you. I guess the issue here is whether the direction applies specifically to the zone in question or zones in question or to land generally in the, across the local government area. That seems, from my understanding that seems to be the point of difference between, if you like, interpretation of the ministerial direction. It's fairly new, I understand it. It was issued in March 2022 this current direction?

40 MS CAMPBELL: It's actually been around longer than that. March 2022, the directions were basically renumbered. So, yeah, all of the directions were existing but they just went through a renumbering process but they have been around for some period of time.

DR WILLIAMS: Quite a period of time. Okay. Has there been any previous cases where council - sorry - where the department's needed to apply this particular direction in the rezoning application to your knowledge?

MS CAMPBELL: It's my understanding that generally within our region we interpret the 9.1 direction at the moment to be if the planning provisions, the planning proposal does prohibit development for the purposes of a caravan park on the subject land then there's an inconsistency but obviously council in this instance have a different interpretation. They believe that it applies shire-wide and as the caravan parks are permitted in the urban areas there is that inconsistency.

DR WILLIAMS: Yes. I think you've described the differences of a view very, very succinctly there which is obviously something I've got to put my head around as well without - yes. But once again I'm just trying to clarify exactly what the department's view, particularly - well, to me these are only the two sticking points, if I can call it that, these two particular conditions. The other conditions, I think, relating to the duration of completion and so on, I think, are not in contention. The completion date and the exhibition of the planning proposal, there's no issue there.

20 Council spent a lot of time - and I should just mention it because it was a, it's a dot point on the agenda that I've put there but council spent a lot of time, and they did yesterday as well, about the various dates when things occurred, lodgements and planning proposals and so on and so forth. So I think just for the sake of equal time, I guess, have you got any comment yourself on, just to make generally at least, on the relevance of any of these dates in terms of when planning proposals were lodged and withdrawn or had to be resubmitted and determination times but also when the DA was lodged and formally lodged. There seems to be some dispute about when formal lodgement actually occurred and I think that's also tied up very much with council's interpretation of the savings provision as well.

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MS CAMPBELL: Okay.

DR WILLIAMS: Yes. From council's perspective that seemed to be so important.

MS CAMPBELL: It's interesting, when we were preparing our response to the IPC what the information that we could gather from council's online DA tracker, the dates that that tracker indicated for DA lodgement were different to what council indicated in their application. So we were going off the information that we had available at the time of the assessment of the planning proposal. So when we were assessing the proposal and before determining the proposal the DA had certainly been lodged and

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that was the information that was available publicly at the time so that's what we went off.

10 So I'm not sure where the inconsistency with the dates does come from in terms of what council considers lodged, whether the actual DA was lodged and then they took sometime before it was accepted, I'm not sure, but it certainly was publicly - a notice was given publicly about exhibition of the development application before the planning proposal was issued. So, and I guess it sort of comes from the fact that the planning proposal itself has come from a council resolution which was a direct response to community consultation undertaken in relation to the development application. So it wasn't an action in the LSPS or an existing strategic planning document.

20 So that's why we felt the savings provision is so important because I believe there's no appeal rights under part 3 of the Act. So once the proposal was prohibited then that was it in terms of the recourse for the DA. So it's always been our approach that this process of rezoning land shouldn't be a means by which to determine a development application. Whether it's an appropriate applicant or not, it should be assessed on its merits.

DR WILLIAMS: Great. No, thank you, Kate. A further point was council, was the - I understand there were two earlier lodgements of the planning proposal and they were both returned back to the council and my understanding was - correct me if I'm wrong - but insufficient strategic justification basically. Council seemed to indicate that the reason was moreover disagreement on the application of the ministerial direction on caravan parks. Could you just address that point please of why - - -

MS CAMPBELL: Yeah, sure.

30 DR WILLIAMS: - - - the reasons for the earlier two proposal being returned?

40 MS CAMPBELL: Sure. Yeah, that's correct, there were two earlier proposals and again it just related to overall strategic justification. So I believe the first proposal didn't really go into much detail about assessment with the regional plan and council's local strategic planning statement and with - so it was overall in terms of the appropriateness of the proposal wasn't really detailed in the documentation that was submitted to the department but also it was our understanding that in order to demonstrate justifiable inconsistency, or even consistency, with the section 9.1 direction that there did need to be some information lodged about whether caravan parks could even be considered elsewhere in the LGA.

So the initial two planning proposals didn't really talk about land availability and whether there was, whether they were sterilising this land use across the whole LGA because while it's still permitted in some urban zones those urban zones are relatively restrictive as well. So it's RE1 private recreation, RE2, public recreation, RU5 village. There aren't really a lot of village areas within the LGA and - sorry, I was just trying to just confirm - SP3 tourist which again is fairly, there's not a lot of land zoned SP3 tourist. So we did really want to make sure that this type of development could still be constructed at least somewhere in the LGA because it does provide for a certain type of housing.

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DR WILLIAMS: Yes, yes. No, that's clear. No, thank you, that clarifies that point. Thanks, Kate. Thank you. Okay. Kate, are there any other points that you want to, other issues that you want to raise at all that I - - -

MS CAMPBELL: I don't think so. I think, as I said earlier, I think the strategic direction of the proposal has merit. It's certainly very consistent with our regional plan and it's not about outcome for the community and in terms of development that can be located in the rural areas in the future I think that it is appropriate but I guess it's just this sticking point relating to the savings provision that it's really triggered this process. So I think we've sort of covered all of our main points on that matter.

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DR WILLIAMS: Great. No, thank you, Kate. Thanks. Thank you. Lucy, did you have anything that you wanted to add at all?

MS WALKER: Lucy Walker. No, thank you for the opportunity, Peter, but I think Kate has covered everything there from our perspective so all good unless you had any other questions for us.

DR WILLIAMS: Not that I can think of at the moment. That's not to say I mightn't suddenly get a thought later on and in which case we might need to get back to you, Courtney or Brad. So we might need to get back, you know, I mean, I think we give seven days for any further submissions and things like that after we have meetings like this including any public meetings and public hearings and so on which is not involved in this matter but we do give extra time for any further submissions. So if there's anything you do want to add to what you said today you've got I think about seven days, I think, Courtney, Brad, and we might need to come back to you if that's Okay if I think of anything else I've forgotten to ask you during the meeting today, if you don't mind.

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40 MS CAMPBELL: Absolutely.

DR WILLIAMS: But thank you. Thank you. Sorry, Courtney or Brad, is there anything that you would like to add or something I haven't mentioned or - - -

MR JAMES: Nothing from me, Peter.

MS COLEMAN: No, nothing from me, Peter.

10 DR WILLIAMS: Okay. Great, thanks. Thank you. Well, Kate, Lucy, if there's nothing else, look, thank you very much for your time. We're on KPIs ourself for getting advices and determinations out so we're given about seven days after this meeting for any further submissions or information and we're aiming to get this out within one to two weeks after that time. So we're hoping to have the advice out within two to three weeks' time.

MS CAMPBELL: Great. Thank you.

DR WILLIAMS: Thanks once again for your time this morning.

MS CAMPBELL: Thank you very much.

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DR WILLIAMS: Thank you. Thank you, Lucy. Thank you, Kate. Thank you. Bye. Bye.

MS CAMPBELL: Thanks. Bye.

MS WALKER: Bye-bye.

**MEETING CONCLUDED**

**[9.57am]**