



New South Wales Government
Independent Planning Commission

TRANSCRIPT OF MEETING

RE: 1 CLOTHIERS CREEK ROAD, BOGANGAR –
GATEWAY DETERMINATION REVIEW (PP-2024-463)

APPLICANT MEETING

PANEL: RICHARD PEARSON (CHAIR)

OFFICE OF THE IPC: KENDALL CLYDSDALE

APPLICANT
REPRESENTATIVES: DAMIAN CHAPELLE
REBECCA DINNEN

LOCATION: ZOOM VIDEOCONFERENCE

DATE: 10:15AM – 10:55AM
FRIDAY, 20th FEBRUARY 2026

<THE MEETING COMMENCED

MR RICHARD PEARSON: Good morning, Damian.

5 **MR DAMIAN CHAPELLE:** Good morning. I'll just get our camera ...

MR PEARSON: Yes, oh, okay, we can see you now. Damian and – sorry, your name?

MS REBECCA DINNEN: Rebecca Dinnen.

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MR PEARSON: Rebecca. Rebecca, hello, I'm Richard, and I've got Kendall. I'm just going to, before we start, run through a brief overview of the meeting. So, bear with me one second.

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So, before we begin, I would like to acknowledge I'm speaking to you from Gadigal land and acknowledge the traditional owners of all the lands from which we virtually meet today and pay my respects to Elders past and present.

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Welcome to the meeting today to discuss the request for a review of gateway determination for planning proposal PP-2024-463, a planning proposal sought to amend the Tweed LEP 2014 to permit a dwelling house at 1 Clothiers Creek Road, Bogangar, currently before the Commission for advice on whether the gateway determination should be amended. As I said, my name is Richard Pearson. I'm the Chair of this single-member Commission Panel, also joined by Kendall Clydsdale from the office of the Independent Commission.

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In the interests of openness and transparency and ensure a 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.

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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.

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We have issued an agenda for today's meeting which will form the basis of discussions. It is important for me to ask questions of attendees and clarify issues whenever considered appropriate. If you are asked a question and not in a position to answer, you can feel free to take that question on notice. Following the meeting, the Commission will advise you in writing of any questions taken on notice that the Panel considers requires a formal response to. Any subsequent response or information provided to the Commission will then be published on our website.

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

So, we'll now, find those words, begin. We do have an agenda that was issued. Opening statement (Panel Chair), that's done, so I think now it's over to you, Damian

and Rebecca, for you to give us an overview of the planning proposal and how you think it complies with regional and local planning objectives and what the environmental impacts of the proposal are and how they would be managed.

5 So, I'm going to hand over to you. I don't know if you've got a presentation or not. You can share your screen if you do.

MR CHAPELLE: Yes, Commissioner, we have a presentation so I might share the screen, if that's okay?

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MR PEARSON: Sure. That would be good.

MR CHAPELLE: Thank you.

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MR PEARSON: Is your name Chapelle or Chapel?

MR CHAPELLE: Chapelle, but Chapel when I was playing cricket, Commissioner.

MR PEARSON: Yes, right. Not related to Greg or Ian or Trevor?

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MR CHAPELLE: No, I'm not.

MR PEARSON: I would have used Chapel when I was playing cricket though, if I was you.

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MR CHAPELLE: Yes. Can I just confirm that the slide is on screen and able to be viewed by all?

MR PEARSON: Yes, we've got it, thank you.

30

MR CHAPELLE: Okay. Commissioner, I will hand over to Rebecca Dinnen, who had the primary carriage of this application, just to run through the presentation.

MR PEARSON: Sure.

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MR CHAPELLE: Obviously, what we will be reviewing is just the contents, the summary and history, the key issues, as you've got within the agenda. The consistency with the RLPO, so regional and local planning objectives. We'll run through DCCEEW's advice, and then also our vegetation management and evaluation of the gateway determination, and site suitability. To Rebecca.

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MS DINNEN: Good morning, Commissioner and Kendall. My name is Rebecca Dinnen, Town Planner for Newton Denny Chappelle. Firstly, I'd like to start with where the lot is located. It's at Clothiers Creek Road at Bogangar. It's west of the coastline and is in close proximity to the local shops and schools in that local area. It's within 200 metres of the closest residential dwelling, and immediately adjoins the Cudgen Nature Reserve to the west.

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5 Our lot is used for access and maintenance by National Parks and Landcare, and the current owners allows them access to be able to fix fencelines for habitat restoration for the Cudgen Nature Reserve. There's also a gate and driveway access from Clothiers Creek Road in the northeastern corner of the site, and two access tracks along the eastern boundary to the top of the hill, which cut more centrally through the site.

The land is generally flat in the northern portion and then does have some undulating topography as it rises to the south.

10 **MR PEARSON:** Rebecca, just while we're on that, so if you can just go back to that while we're on that map. Sorry, can we go back to the previous slide?

MR CHAPELLE: Yes, I'll just – there we go. Sorry.

15 **MR PEARSON:** That's all right. The land to the east of your site, you said going to the west is Cudgen Nature Reserve. But, you know, quite heavily vegetated area to the east between the urban area and your site, what's the status of that?

20 **MS DINNEN:** That's currently zoned 7(l), from my recollection, but it doesn't form part of the Cudgen Nature Reserve.

MR PEARSON: Right. So, it's got the same zoning as your client's lot – is that correct?

25 **MS DINNEN:** I would just need to double check that.

MR PEARSON: I suppose my question was more, as it's on the fringe of – is that Bogangar or Cudgen, the urban settlement there?

30 **MS DINNEN:** Bogangar-Cabarita village.

MR PEARSON: Bogangar-Cabarita. There's no plans to further extend the footprint of that area to the west, is there? That's just an open question – it's a question I can ask the Council when we meet them.

35 **MR CHAPELLE:** Damian Chapelle. I'm not aware within Council's Growth and Management in Housing Strategy of any plans to expand the boundary of the urban precinct.

40 **MR PEARSON:** Okay. Thank you. So, please keep going.

45 **MS DINNEN:** So, the planning proposal originally sought to facilitate a dwelling on the subject site. It was proposed to zone part C2 Environmental Conservation and part C3 Environmental Management and then include a dwelling opportunity within the dwelling opportunity map in the LEP. This was triggered to be able to facilitate that dwelling on the site and it would only be one dwelling. We did identify a portion of the site where there was no environmental or constraints over that area within the dwelling envelope.

The key issues we'd like to discuss today are the high environmental and biodiversity values across the site. Looking at that C3 zoning to allow the dwelling entitlement. And that we would be open to covering the entire site in a C2 Zone. Also looking at flooding, the strategic merit and the community opposition that was received throughout the public exhibition period.

MR CHAPELLE: Commissioner, Damian Chapelle here. We've also just outlined a short history – that's on the screen at the moment. You may already be aware of the details by virtue of the documents that you've had, however, we just sort of thought it was a quick snapshot that obviously we commenced in March. In December 2024 the planning proposal was supported by Council to proceed to gateway. January 2025, we basically had the gateway determination was issued, we addressed obviously the DCCEEW advice and the restriction on zoning commitments. In April 2025, Council had requested the site be rezoned part C2 and C3 to address the concerns of the DCCEEW. Obviously, we didn't object to those matters.

So, it was just sort of giving a bit of a snapshot that we have been working in a very collaborative approach with the Tweed Shire Council and certainly where they had identified and sought changes, our client was certainly open to adopting those changes because they really facilitated the objectives of what he is trying to achieve on the subject site.

MR PEARSON: Yes, thank you. And you'll make this presentation available to the Commission?

MR CHAPELLE: Yes.

MR PEARSON: Yes, thank you.

MS DINNEN: Commissioner, Rebecca again. To go through the high environmental values. So, we acknowledge that the site has high environmental and biodiversity values across the site. And there are confirmed koala habitat and usage to the connecting adjoining nature reserve. The site does function as an ecological corridor, which makes it sensitive.

And we acknowledge that the feedback from DCCEEW seeks to zone the entire lot C2, which we are open to. So, the proposed dwelling site is clear of vegetation and those mapped corridors and mapped high environmental values. And it is unlikely that the dwelling will directly impact those values across the site. Whilst there are threatened ecological communities on the site, the dwelling site is located over 55 metres from those communities, and the setback requirement that is under the DCP has been met.

The dwelling site doesn't sever the connectivity between the ecological areas, and it is going to be positioned in cleared areas, as well as the access road that is already in place. So, the changes in land use are unlikely to be significant deterrents for fauna that are going to traverse the site. And any fencing that we do propose will be in accordance with the DCP and the Koala Policy.

MR PEARSON: Yes, thank you.

5 **MS DINNEN:** In terms of the flooding, concern was raised that we didn't update any flood modelling in relation to this proposal. And the reason for that was we didn't deem it necessary to undertake flood modelling because the flooding only occurs across the front boundary of the site. And as you can see in the first image in the blue, the design flood level is 3 metres AHD and it only crosses that very front boundary of the site along the road.

10 Any future dwelling is capable of meeting the flood provisions. Whilst the site does get inundated in a PMF flood level, there is opportunity for the occupants of the dwelling to shelter in place. The site will have access to on-site sewerage management and the harnessing of rainwater. So, if they are unable to get out in a probable maximum flood, 15 they can shelter in place. Or there is access to critical services in the Bogangar-Cabarita village adjacent the coastline to the east.

20 **MR PEARSON:** What about access in a flood, Rebecca, how does that work – you know, getting out of the site, not in a PMF, but in a lesser flood? My understanding is that access is cut in the 20% flood, from memory.

25 **MR CHAPELLE:** Commissioner, Damian Chapelle here. Look, the access, it does cut into sections low lying. It's a very low depth and a low velocity, it's not a high velocity area. Notwithstanding that, as currently exists for the broader urban catchment of Cabarita-Bogangar, obviously early warning indications provide access arrangements through Rosewood Avenue through to, as Rebecca mentioned, the eastern parts of Cabarita where there are community services, shopping centres, and obviously further to the north is the Casuarina and Kingscliff settlements as well.

30 So, in that respect, access is achievable to the site, and we are talking probably in the order of a – I think, it might've been off the top of my head – about 200 to 250 metres of section of road that you may see in blue there, travelling east.

35 **MR PEARSON:** Thank you.

MR CHAPELLE: Yes.

40 **MS DINNEN:** It's Rebecca again. So, we looked at the zoning. Originally, the application was lodged where we would have a part zoning RU2 with C2 around. As part of consultation with Council, it was decided to change the zone to C3 where the dwelling is to be located, and C2 around.

45 There was concern that the proposal only delivers one dwelling and has got low strategic value across the site. And that there was limited alignment with the North Coast Regional Plan, and it doesn't demonstrate an approved ecological outcome. The Northern Council's E Zone review recommendation was to allow for the transfer of Environmental Zone 7(1), which is what our site is currently zoned, to a Conservation Zone, so that land can meet the eligible ecological criteria.

5 So, the site's marked within the Tweed Conservation Zone Review and it is proposed under this review to have it part C3 and C2, however, we are open to the C2 across the entire site. The land is underutilised and too small for viable agriculture, and by this planning proposal we are trying to support housing diversity but also achieve a sustainable development with improved ecological outcomes.

MR PEARSON: Yes.

10 **MS DINNEN:** Throughout the public exhibition period, we did receive a number of submissions. Some of these submissions were objections in relation to environmental and biodiversity impacts, impact on the koala habitat, Aboriginal cultural heritage values, bushfire risks, and inconsistency with local planning expectations – and that one mainly relates to the fact that there was an 88B instrument originally put on the DP
15 which prevents the construction of a dwelling, and that it does create an undesirable precedence.

20 There were a number of submissions that also supported the proposal, and they're listed there, you know, mostly in relation to being able to provide an extra dwelling within the local government area. There were environmental benefits associated with having a dwelling on the property. Because the current owner does want to improve the site from an ecological perspective, as well as give access continually to National Parks and Landcare to improve koala habitat and the adjoining nature reserve, and also remove a lot of the weeds that are currently on the site.

25 So, that was the outcome of the community engagement.

30 **MR CHAPELLE:** Commissioner, Damian speaking. I think in response to some of those objections that were received from broader community groups, that the application that was lodged obviously had technical assessments that are part of the gateway process were endorsed by Council. So, the Biodiversity Assessment Report, also cultural heritage was addressed as well, with no issues raised in that respect.

35 **MR PEARSON:** Okay. Can I just pick up that point that Rebecca mentioned about allowing access to National Parks and Landcare to the site to improve koala habitat. Is that on the site itself or is it related to the adjoining Cudgen Nature Reserve?

40 **MS DINNEN:** It's actually for both. So, he allows those government departments to come in, to have access to his site and also to be able to access the adjoining nature reserve as well.

MR PEARSON: Right, okay. Is there a Vegetation Management Plan for the site?

45 **MS DINNEN:** Not at the moment.

MR PEARSON: Not at the moment. Okay. That was what National Parks or DCCEEW was suggesting should be required, is it not, in return for a dwelling entitlement, from memory?

MS DINNEN: Yes. And we are open to providing that Vegetation Management Plan as part of this process.

5 **MR PEARSON:** Yes.

MS DINNEN: So, some of these submissions were as a result of some social media that happened throughout the public exhibition period as well. We did have full support of Council, and everything was looking quite positive, and everything sort of flipped after this public exhibition period closed.

MR PEARSON: Hm, okay, thank you.

MS DINNEN: This is the information in relation to local planning objectives and regional planning objectives. So, the Tweed Rural Strategy, Council's requested to amend the LEP to include a dwelling on the dwelling opportunity map. And that aligned with Action 88 of the Tweed Rural Land Strategy. This planning proposal arose from the need to provide a dwelling on land that is not viable for agriculture. And it's needed to maximise the development potential of the land and create a greater diversity of housing.

We feel that the change in this will align with the Rural Land Strategy, and having this additional permitted use will assist in achieving that.

25 **MR CHAPELLE:** Commissioner, I might just add that we can maybe share another screen post this discussion with you, where Council as part of their Growth Management and Housing Strategy, when it was adopted in 2025, a separate resolution has also been raised for investigation into dwellings on sites that do not have dwelling entitlements, such as this one. When we were, as Rebecca originally said, looking at the zoning via a DA process and thereby negating a planning proposal. So, this is a resolution that was adopted by Council, I believe, in April 2025, which we can bring on screen post this presentation.

35 **MR PEARSON:** Okay. Thank you.

MS DINNEN: Commissioner, Rebecca again. As you can see on your screen, there are also a number of other policies, local policies, the Scenic Landscape Policy, the Tweed Community Strategic Plan and the NSW Coastal Design Guidelines, the Local Strategic Planning Statement and Tweed Coast Strategy, they're all local policies that we recognise and a lot of them aim to protect the landscape but also provide for a built outcome that will have positive environmental outcomes.

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45 And if we move over to the regional planning policies. The main one that governs this area is the North Coast Regional Plan. It has a number of focus goals in it. The first one: liveable, sustainable and resilient. So, whilst this planning proposal aims to permit a dwelling house on environmentally zoned land, it protects the areas of the site that have those biodiversity values and limits the impact on the mapped hazards on the potential dwelling sites. The inclusion of a dwelling will provide a well-located home

close to amenities, so the Cabarita-Bogangar village is only 2 kilometres to the east. And it will provide a dwelling on a flood-free area of the land where bushfire threat can be comfortably accommodated. And we have that from our bushfire consultant.

5 The second goal is: productive and connected. Residential development on this underutilised land will create a new housing opportunity and not impact on the wider agricultural or ecological areas of the site.

10 Growth, change and opportunity. This residential development on the site will create a new housing opportunity and also ensures that sustainable development would continue to occur along the coastal edge of the local area.

15 But there's also objective 3 of the North Coast Regional Plan, that states that, "Strategic planning and local plans must consider the opportunities to protect biodiversity among other values on sites." We consider that we are able to identify the high ecological value and assets across this site, and position a dwelling that's outside those hazard areas, and also aim to protect those through the introduction of a Vegetation Management Plan, and be able to create protected areas of the site that have got biodiversity values.

20 **MR CHAPELLE:** Commissioner, Damian speaking. I think quite clearly with the original plan, whilst they are sort of those matters that Rebecca has stated, the purpose of that plan obviously provides a much broader scale than regional objectives. But I think when you apply the objectives that Rebecca's talked about, at a micro level, we're certainly not antipathetic to what the plan is seeking to achieve, and that is with respect to the opportunity for housing, the protection, and I will say continuation and actually enhancement of the environmental values of the site.

30 And those matters are certainly able to be enshrined through the site selection which was dictated by very early bushfire, ecology and cultural heritage assessments, and obviously with the implementation of a Vegetation Management Plan, that will provide long-term regeneration works that are based on some KPIs for delivery that can be reported back to Council and to DCCEEW generally over the average time, which is a five-year period to gauge the effectiveness [unintelligible 00:28:00].

35 **MR PEARSON:** Thank you.

40 **MS DINNEN:** So, there was advice received as part of the process from DCCEEW. As part of their recent response to us, there were three items in particular that were raised. Part of the site to be zoned C3 contains verified E2 Zone criteria in the form of key threatened species and is required to be zoned C2 in accordance with the E Zones Review.

45 We've considered this particular item number and we support the adoption of a C2 zoning across the entire site. This will provide protection of biodiversity values in perpetuity and will give us the opportunity to create those protection values through the Vegetation Management Plan and restoration of species across the site.

5 Item 2 that was raised was if the SEPP 1 objection can be resolved, including an additional permitted uses clause in the LEP enabling a dwelling to be permitted with development consent. This particular item we also support. We support the Department's proposal of permitted uses clause to enable a dwelling with development consent.

10 Item 3, placing a mechanism to commit to the preparation of a Biodiversity Management Plan for the C2 zoned land, which would be across the entire site. We agree that a Biodiversity and Vegetation Management Plan should be prepared for the property, and this would enhance and protect those values whilst accommodating a dwelling.

15 **MR CHAPELLE:** Commissioner, Damian speaking. I think within the assessments that were provided as part of the Council report, the terminology of a strong objection from DCCEEW is raised. We received two letters from DCCEEW, both of them I think being in the order of two pages each. The response from DCCEEW is not so much an objection but more so what they would like to see if the application was to proceed.

20 So, probably one point that I do want to make is that unless there were other communications that I'm not aware of, we have not seen any words along the lines of "strong objection" from DCCEEW.

25 **MR PEARSON:** Okay. Yes, I can see that they have suggested an alternate way to permit a dwelling on the site and that Council has a view on that alternate option that DCCEEW has put forward. So, I understand your questioning the characterisation of "strong objection".

30 **MR CHAPELLE:** Yes.

MR PEARSON: How would you see the Biodiversity and Vegetation – would that sit on the title or would it be ... You know, how would it be enforceable, I guess, that Vegetation Management Plan?

35 **MR CHAPELLE:** Certainly. So, look, we would – it may be the case that if Council's part of the additional permitted use was to reference a dwelling opportunity and associated vegetation management, obviously when a development application is lodged for the dwelling, a Vegetation Management Plan would be lodged and assessed by both Council and I'm assuming DCCEEW. Our client would have no objection to a requirement of the Vegetation Management Plan to be registered on title through an [unintelligible 00:31:50] to reflect the requirements.

45 But also, importantly, with approvals we do receive from Council, there is very strong benchmarking on the performance of a Vegetation Management Plan within conditions of consent. (a) We would not be, or think it's unreasonable for Council to put those conditions in, in this instance, and (b) our client would have no objection to fulfilling the requirements under a performance-based approach to the VMP.

MR PEARSON: Mm-hm. Okay. Thank you.

MR CHAPELLE: All right. I think we're probably just going over the same sort of matters again there, Commissioner, where matters are. So, just clearly, the site selection as based on the ecological assessment and the mapping that was there. Obviously, what we're wanting to do and the client's main purpose here is to enhance the biodiversity values of the site. And the goodwill of our client is that even though the access is not registered via an easement for National Parks and Landcare, our client would be more than happy to preserve those access arrangements in perpetuity.

MS DINNEN: And I think it's important to note that this particular site where the dwelling is proposed to be going, a lot of research was done in relation to finding that cleared patch of land to make sure that it was [unintelligible 00:33:25] required setbacks for all policies. So, that initial work was done upfront to make sure that we could, you know, accommodate a dwelling on that site. Because we certainly wouldn't run down this process if we thought that it couldn't work for our client.

MR PEARSON: Yes, understood. Thank you.

MR CHAPELLE: Yes. I think, Commissioner, just to unpack that just a little bit further is that, again, if the LEP process was permitted, we needed to ensure that all of Council's development control buffer requirements, access requirements, wastewater requirements, bushfire APZs were all able to be met with no environmental impact. And that was the key in terms of delineating the site location and also the key to saying that this project had specific merit to proceed to lodging a planning proposal.

MR PEARSON: Yes, understood. Thank you.

MS DINNEN: So, the gateway determination raised a number of points and they're all listed on the screen there. One, the planning proposal has limited strategic merit and alignment with the North Coast Regional Plan. Our response to that is, as we've given previously under previous slides, it does protect the areas of high environmental value and biodiversity values, and we limit that impact on those mapped areas. And also, in terms of the alignment with the North Coast Regional Plan, the dwelling will be well located and close to that Cabarita-Bogangar village.

MR CHAPELLE: And Commissioner, I might just say that in terms of the question we raised before about flooding and access along Rosewood Avenue, there are currently new houses under construction that are also accessed onto the same road that is subject to flood inundation as well, albeit accepting that it is in a residential zone for those allotments.

MR PEARSON: Okay. Thank you.

MS DINNEN: So, yes, the planning proposal does affect land that has high environmental values and we acknowledge that. I feel as though we're going over the same things as previous slides, but –

MR PEARSON: I think we are, Rebecca, yes, yes. If there's anything new that you want to bring to my attention, please do so.

5 **MS DINNEN:** I don't think there is anything on that particular slide. It's kind of a summary of the previous slides.

MR PEARSON: Yes.

10 **MS DINNEN:** So, this one is to summarise what we've already spoken about, it gives you the lot size, where [unintelligible 00:36:29], it supports housing diversity and opportunities, close to a village, and allows us – which we think is the most important thing – allows us to manage the land to improve the ecological outcome on that site.

15 We can continue that work that's been done on weeds and pests and conserving habitats and species, and those access roads are already on the site so can continue to be used as part of any future dwelling house that is located there. And we've also had the Aboriginal and cultural heritage advisor attend the site and it's also outside those mapped areas as well.

20 The site's got the capacity to support the on-site sewerage management system and as well as running water tanks, so that it gives those people that are going to live on that site the opportunity to shelter in place in the event of a big flood, but hopefully, you know, we would expect they would be able to vacate the site prior to that happening and refuge in the local village.

25 And that's all for our presentation.

MR PEARSON: Great, thank you. That was a very clear presentation, so thanks Damian and Rebecca for that. Kendall, do you have any questions at this point?

30 **MR KENDALL CLYSDALE:** No questions from me, Chair. Only comment is if we could get a copy of that presentation emailed through, that would be much appreciated.

35 **MS DINNEN:** No worries.

40 **MR PEARSON:** Thank you. Yes, the presentation's very clear. Look, I do understand the point about the potential to improve ecological values as part of the planning proposal, so that's something that I'll certainly turn my mind to as part of the advice that we give to the Department on this matter. And I do stress it is advice, you know, the Commission has a determinative role on a lot of matters, but we provide advice on this matter, which the Department is obviously free to adopt or not adopt, being advice.

45 We have met with the Department. We will meet with the Council next week. We met with yourselves. We would aim to finalise our advice on this pretty quickly; it's not going to drag on. So, I would think you'll get an outcome on this pretty soon. If there's anything more that we need from you, we'll come back to you.

Is there anything further, Damian or Rebecca, that you wanted to add in closing?

5 **MS DINNEN:** I guess, for me, I'd just like to reiterate that the recommendations that were received as part of that advice from DCCEEW, we're willing to take on board and change the zoning to C2 across the entire site to be able to achieve their recommendations as well as include that LEP clause and the Vegetation Management Plan.

10 **MR PEARSON:** Yes, that was clear from your presentation, so thank you for that. I think we've covered everything on the agenda. So, unless we have anything final, we might conclude the meeting. I do thank you both for attending and presenting so clearly. And as I say, we'll be back in touch if we need anything further; otherwise, in relative short due course, you'll find out the result of the advice that the Commission provides on this matter.

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So, good to talk to you both, and have a great day.

MR CHAPELLE: Thanks, Commissioner.

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MS DINNEN: Thank you, Commissioner and Kendall.

MR CHAPELLE: Thank you, Kendall.

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MR PEARSON: Goodbye.

>THE MEETING CONCLUDED