



New South Wales Government
Independent Planning Commission

TRANSCRIPT OF MEETING

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

DEPARTMENT MEETING

PANEL: RICHARD PEARSON (CHAIR)

OFFICE OF THE IPC: KENDALL CLYDSDALE

DEPARTMENT OF
PLANNING, HOUSING &
INFRASTRUCTURE: CRAIG DISS

LOCATION: ZOOM VIDEOCONFERENCE

DATE: 2:15PM – 2:40PM
THURSDAY, 19th FEBRUARY 2026

<THE MEETING COMMENCED

MR RICHARD PEARSON: Hello, Craig. You're on mute and no video – but yes, now we can see you.

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MR CRAIG DISS: Hello Richard, how are you?

MR PEARSON: Good, Craig. How are you?

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MR DISS: Very well, thank you.

MR PEARSON: That's good. I think we can hear you okay and we can certainly see you. So, let's me just start. 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, and is currently before the Commission for advice gateway determination should be amended. My name is Richard Pearson. I'm Chair of this single-member Commission Panel, joined also by Kendall Clydsdale from the office of the Independent Commission.

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And in the interests of openness and transparency and to ensure 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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The meeting is one of the Commission's consideration of the matter and will form one of several sources of information upon which the Commission will base advice.

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

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And I just request everyone to quickly introduce themselves before speaking the first time, and let's now talk over the top of each other so we get an accurate transcript.

Okay. So, we will now begin, Craig. Sent out an agenda which I imagine you've got before you. So, I guess it's over to you, I think you have a presentation that you were going to run through and I'll –

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MR DISS: I've got a very short – sorry.

MR PEARSON: No, no, that's fine, Craig. Go ahead.

5 **MR DISS:** Sorry. There seems to be just a very slight lag, sorry, that was all. I was just going to say, yes, I've got a very short overview presentation, if you'd like. It only covers the material you have, so happy to run through that if you think that's of any value, or happy to go directly to your questions and agenda.

10 **MR PEARSON:** Look, I think I'm happy to quickly run through the presentation. I've had a quick scan of it, but it would be useful to talk through it from the Department's perspective. And did you want to share the screen or is Kendall –

MR DISS: I'll share my screen.

15 **MR PEARSON:** Okay. Yes, we can see that, Craig.

20 **MR DISS:** Did that come through? You can see the screen, okay. I'll just flick through that. Introduce myself, Craig Diss, I'm the Director for Hunter and Northern with Local Planning and Council Support in the Department of Planning, Housing and Infrastructure. I acknowledge the country that we're on all today and of Elders past, present and future.

25 In terms of the overview of today of the proposal, the proposal involved a change for deferred matter land under Tweed LEP at present to permit a dwelling on the site. Associated with permitting that dwelling on the site, the land is proposed to rezone to C2 Environmental Conservation and part C3 Environmental Management, amending the associated development standards such as height, minimum lot size associated with that.

30 And the proposal, as it was submitted to Council who supported it and submitted it for gateway, was supported by a number of studies and reports confirming the suitability of the changes proposed.

35 The site itself is approximately 20 kilometres south of Tweed Heads and 10 kilometres south of Kingscliff, very adjacent to the village of Bogangar and Cabarita. Just to show some of the current constraints of the site and the site itself, there's an aerial photo of the site there showing that the northern part is fairly cleared, open woodland, while the southern site is much more dense and environmentally sensitive.

40 The site is currently zoned 7(1) Environmental Protection Habitat under Tweed LEP 2000. The proposed zoning for it, as shown on the diagram to the right, was a mixture of C2 over what was considered to be the more environmentally sensitive parts of the site, and a C3 zone over the less sensitive. The C3 component was actually originally proposed by Council and the Proponent to be RU2, but through a negotiation process
45 during the planning proposal it was amended as a C3 zone.

The zoning, and I think these are important diagrams to show where Council and the Proponent came up with that zoning layout as proposed. They did their own

5 biodiversity study of the site, but they also naturally, the zoning was highly reflective of DCCEEW's current biodiversity values map, the DCCEEW potential high environmental value map that's currently in the North Coast Regional Plan 2041, and also Council's koala habitat mapping for the site, which all reflected that northern component of the site as much less sensitive than the southern area of the site.

10 Other constraints that affected the site that were considered, were flooding. The majority of the site is actually flood free or above the 1% AEP. Some of the site along the northern boundary is affected by the PMF. But the primary issue when it comes to flooding is that the access road, Clothiers Creek Road, does flood in a 10% AEP, so floods quite regularly, and that is the only current access to and from the site. The site also, because of its vegetated nature, was also bushfire prone.

15 So, based on all of that, when the Department considered the proposal at the gateway determination stage, it was determined that it had sufficient strategic and site merit to move forward, as it was broadly consistent with the North Coast Regional Plan. The only minor inconsistency that was identified was that the land involved a what was arguably a rural residential lot within the coastal strip, and that should normally have been identified in a council strategy approved by the Department. But that consistency was considered to be of minor significance in the context of the situation.

20 It was also noted the proposal was generally consistent with Council's LSPS, their own Rural Land Strategy and their Community Strategic Plan, and that the proposal was fundamentally looking at providing a dwelling only in the lower biodiversity area of the site, which was considered close to facilities and services. But that it was also acknowledged that consultation with key agencies as such as the RFS, SES and DCCEEW would be needed post gateway to confirm suitability due to those constraint mappings that I just went through.

30 It was also apparent that in bringing the deferred land into the Tweed LEP, that was still using a zoning that was under a 2000 LEP, and that by bringing that deferred land forward it would allow the application and modern planning controls to the site.

35 And also, it was considered that the issue of a single dwelling was primarily a matter of local significance for the Council, and that this certainly wouldn't be out of step with a number of their other 7(1) lands. Council's Rural Strategy actually estimates that 83% of all properties currently in the Tweed Shire that are zoned 7(1) actually have a dwelling on them already. So, permitting one extra dwelling if Council thought was appropriate would be consistent with the current situation across the Tweed.

40 When it moved onto exhibition, the proposal received 76 community submissions, with 52 objecting to it primarily over concerns about environmental impacts to the land. The three state agency submissions that came in were from the RFS, who raised no objection, noting compliance with the relevant Bushfire Planning Guidelines would be needed at DA stage. The SES recommended that Council consider further issues associated with that access to the site which I mentioned, due to its flooding in a 10% AEP, and also to consider climate change modelling.

DCCEEW, however, objected and requested that the C3 area of the site proposed be changed to a C2 zone, that there also be a planning mechanism be implemented requiring a Biodiversity and Vegetation Plan. They also raised no objection to an additional permitted use being permitted to allow a dwelling on that northern part of the site, subject to those changes.

Council, however, based on the exhibition outcomes, determined not to proceed with the proposal. Even though they did not agree with DCCEEW's assessment or recommendation relating to the C3 land, that it met the C2 zone criteria under the Northern Council's E Zone Review, or the associated Ministerial Direction or their own methodology to how C Zones should be applied.

Amending this C Zone methodology may have undesirable impacts on the Stage 1 Zone deferred land proposal which they're currently working through and received a gateway determination on the 30th of August 2025. That Stage 1 proposal applies to the land as shown in the diagram, generally being the eastern part of the LGA of the motorway. Currently within that area, that proposal is applying to approximately 880 properties that are currently deferred, and over 9,000 hectares of land that they're looking at bringing into the LEP 2014 and it's their first attempt since the C Zone Review was instigated in 2011 to try and bring this important issue forward for those lands.

But Council also within their own assessment is to acknowledge that the site could actually accommodate a dwelling but based on the outcomes of the exhibition determined that it lacked sufficient strategic merit as it affected land with high environmental values, and that the proposal received strong community opposition and insufficient support from agencies. So, they elected not to move forward with the proposal at that stage.

The Department received that request to terminate the proposal, and we agreed to support Council's request. While acknowledging that both DCCEEW and Council seemed to agree that the site is actually capable of being able to accommodate a dwelling, Council's decision was supported as the biodiversity and flooding issues still remain unresolved at this time between the two of them. That the matter of a single dwelling on the land is primarily a local issue for Council rather than one for the state needing to intervene, which is also consistent with the Department's changes to clause 4.6 in 2023 which removed the need for assuming concurrence or concurrence of the Department for all dwellings on under sized rural environmental blocks. And that that was now primarily a matter that Council could deal with through DAs without the Department's involvement. And also noting Council's concern around the progression of their Stage 1 PP, they raised significant concerns that DCCEEW's approach to applying the C2 Zone was inconsistent with the intent of the C2 Zone as they're using it, as it would allow development into a zone that shouldn't be accommodating development generally.

And they also disagreed with the actual methodology that it met the C2 criteria. And that if they were to move down that path, as I understand it, it might mean that they

would have to review their entire methodology and the way it's being applied with the Stage 1 PP.

That is everything, thank you, in terms of the presentation.

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MR PEARSON: Thanks for that, Craig, that was very clear. So, in relation to DCCEEW's view that it should all be zoned C2, sorry, yes, C2, would it have been open to the Council to come back and say, you know, they disagree with that, they think it has – the C3/C2 mix is appropriate and to justify their position? I mean, it doesn't represent an absolute no from DCCEEW, or are you telling me differently?

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MR DISS: No, you're 100% right and we actually spoke to Council and advised Council that they could actually determine to work further with DCCEEW on that issue and try and find a compromise position. Or they also had the other option, rather than terminating, to actually support it if they believed that their PP was appropriate, they would not be able to use delegation, that they would have been able to forward it to the Department ...

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MR PEARSON: Yes.

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MR DISS: ... and the Department could have made an assessment and even could have negotiated further with DCCEEW if we thought it'd been appropriate.

MR PEARSON: Yes, because that slide that you put up, it showed – if we could go back to it, I'm sorry, I should have let you keep it up. The one where you have the three different maps show quite different quality of vegetation from the north to the south – I guess we don't need to put it back up. So, you would assume that some sort of differential zoning might be appropriate on that site?

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MR DISS: Oh, totally, and the Department was supportive of that, based on all the information we had. The Proponent has actually done their own Biodiversity Assessment Report that actually concluded that the land at the front of the site didn't justify a warrant a C Zone, but the Proponent actually agreed based on DCCEEW's request, because DCCEEW was consulted twice through the process – before exhibition and during exhibition. Originally, the Proponent actually agreed to try and address some of DCCEEW's concerns by changing it from the RU2 to the C3 Zone.

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MR PEARSON: Yes.

MR DISS: So, yes, but like I say, there was actually a Biodiversity Report that argues that it doesn't meet the requirement. From what I understand, DCCEEW did an inspection of the site in response to their referral from Council and identified some koala activity on the site, which they believe warrants the entire C2 zoning to it. But where Council and the Proponent believe differently, that koala activity doesn't necessarily equal koala habitat, and that the koalas could have been passing through that area of the site from a known koala habitat that surrounds it. So, therefore the habitat itself wouldn't meet the C2 Zone requirements necessarily under the C Zone review.

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MR PEARSON: Yes, okay. Thanks, Kendall, for putting that back up as that illustrates the point we're discussing. Just turning back to the agenda, the Council's evaluation and gateway determination, we pretty much discussed DCCEEW/Council position, strategic merit, environmental impacts.

Community attitudes – there were a lot of submissions. Did you find it unusually so, or was that kind of commensurate with the normal level of interests in these sorts of rezonings?

MR DISS: No, I must admit I would have thought for a single house on a single block of this size and scale, 52 objections was a significant number and more than what I would have expected. But it's probably in part due to its unique location next to the Cudgen Nature Reserve. And also, within a known koala habitat area. And the area has got some very proactive people who are interested in that nature, naturally.

So, but yes, it was a higher level than I would have expected for a standard. If it had been a development application for a single house, 52 objections would have been a lot, I would have thought.

MR PEARSON: Yes, agreed. And so, the other matter, the deferred lands, so you've spoken about the Stage 1, I think you called it, that they've got a gateway determination to proceed with the coastal – the east sort of highway land that has the deferred E zones across it. Where's that up to?

MR DISS: Council, well, we issued that gateway on the 30th of August last year. It included a number of conditions that Council had to modify the PP to address. And I understand from Council they're hoping to go out on exhibition with it shortly. So, it should be hopefully going on exhibition and it's got a 12-month completion date, so we're hoping that Council would be in a position to finalise it by August this year.

MR PEARSON: Right, 880 properties, they'll get a lot of submissions, I'm sure.

MR DISS: Very much so.

MR PEARSON: Yes, yes. But, you know, clearly it's important to resolve the strategic position for those lands. Do you get these kinds of planning proposals like the Clothiers Road one popping up frequently, or are they rare or, you know, what's the kind of like status of these kinds of spot rezoning proposals?

MR DISS: One of this size just to permit a single dwelling I wouldn't say are that common anymore. We don't see a lot for that. Some councils choose to do that, but more generally a lot of councils are using clause 4.6. If a dwelling's permissible on the site, they will just use clause 4.6 and go straight to a DA rather than doing a rezoning. Some councils like to still go through a two-step process. But yes, a lot of councils just go directly to 4.6.

One of the ironic things here is that because of the Tweed LEP and the way it's drafted, the LEP 2000, there's probably a slight question on whether you can use clause 4.6 or the equivalent in this situation. And whether it is actually a prohibited use or not. And I think we were happy to accept in this case seeing we'd received the PP from Council unsolicited, that it made it clear if it went through this process along with the added advantage of bringing it into the Tweed LEP 2024.

MR PEARSON: Yes, yes, so you think they may turn to a clause 4.6 option down the track? I guess that's ...

MR DISS: If it's legally ... It's an interesting scenario, the Tweed LEP 2000 applies to this land. The land use table itself says that dwellings on lots more than 40 hectares can be considered. And the proponent, I would suggest, would need legal advice on whether that's a development standard that can be varied or not or creates a prohibition.

MR PEARSON: Yes. Anyway, that's a matter for them to concern themselves about. But would it be fair to say that you're, the Department's headline position is that this is a local planning matter, that the Department was okay with it proceeding and equally now that the Council's decided not to proceed with it, you're, you know, a single dwelling, you're really saying it's a responsibility of the local council as to whether they want to proceed with this or not, that that appears to be the bottom line.

MR DISS: Very much so. I think that's a very good summary. That we see this as primarily a local matter for Council, and noting that even if the Department chose to intervene and rezone the land and make a dwelling permissible, the Proponent would still then have to go to Council for an actual development application and then go through that process. And if Council's unsupportive, yes, that could be difficult then for them.

MR PEARSON: Yes. Okay, well, that's very good, Craig. Kendall, did you have anything that you want to raise with the Department?

MR KENDALL CLYDSDALE: No, there's nothing from me, thank you Richard.

MR PEARSON: Thank you. Craig, anything else that you want to bring to my attention/our attention?

MR DISS: Yes, no, no, I've gone through everything, and I thank you for the opportunity, Richard.

MR PEARSON: No, very good, thanks as always, Craig, I appreciate the professional advice, and we will respond in due course. We are meeting with the Applicant, we're meeting with the Council, and we should be able to provide advice relatively quickly, I think, Kendall, once we've done that.

MR CLYDSDALE: Yes, that's right.

MR PEARSON: I won't give you a date or anything, but we'll deal with it fairly promptly.

5 **MR DISS:** No worries, appreciate that, and I guess I could only reiterate if the IPC thought it was appropriate to proceed, I don't think the Department would have any issue with that either. So, we look forward to your advice, so.

MR PEARSON: Yes. Okay. Nice to talk to you.

10 **MR CLYDSDALE:** Thanks, Craig.

MR PEARSON: Thanks, Craig. See you.

15 **MR DISS:** Likewise. Thank you, everyone.

>THE MEETING CONCLUDED