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TRANSCRIPT OF PROCEEDINGS

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O/N H-937100

INDEPENDENT PLANNING COMMISSION

PUBLIC MEETING

RE: A086-18 BELLINGEN

SESSION ONE

PANEL: DR PETER WILLIAMS
PROF SNOW BARLOW
PROF CHRIS FELL

PARTICIPANTS: MATTHEW TODD-JONES
DAVID WAY
JEFFERY HORN
MONICA GIBSON

LOCATION: IPC OFFICE
LEVEL 17, 201 ELIZABETH STREET
SYDNEY, NEW SOUTH WALES

DATE: 2.38 PM, MONDAY, 10 SEPTEMBER 2018

DR P. WILLIAMS: Just got a short introductory statement, if that's all right, for the transcript. Good afternoon and welcome. Before we begin, I would like to acknowledge the traditional owners of the land on which we meet and pay my respects to their elders, past and present. Welcome to the meeting today on the
5 review of the gateway determination for the planning proposal to amend the Bellinghen Local Environmental Plan 2010 in relation to the regulation of horticulture, in particular blueberries, proposed by Bellinghen Council.

10 My name is Dr Peter Williams. I'm the chair of the IPC panel. Joining me are Professor Snow Barlow and Professor Chris Fell. The other attendees of the meeting are David Way and Matthew Todd-Jones from the IPC Secretariat, and Jeffery Horn and Monica Gibson from the Department of Planning and Environment. In the interests of openness and transparency, and to ensure the full capture of information, today's meeting is being recorded and a full transcript will be produced and made
15 available on the Commissioner's website.

This meeting is one part of the Commission's decision-making process. It is taking place at the preliminary stage of this process and will form one of several sources of information upon which the Commission will base its decision. It's important for the
20 commissioners to ask questions of attendees and to clarify issues wherever we consider it appropriate. If you're asked a question you're 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.

25 So thank you very much, Monica and Jeffery, for attending. What we thought we might do is just the normal procedure and let you commence, and if it's okay, what we'll also do – we might have questions for you during the course, so we don't mean to interrupt, but there might be questions or clarification while you're presenting, and then, of course, we'll have questions at the end to ask you as well. So I'll hand it
30 over to your both. Thank you very much.

MR J. HORN: Okay. So the request for a gateway determination from council was the decision was meant to proceed based on a couple of key reasons, being principally the inconsistency with strategies and the lack of supporting information
35 that council actually provided in its report considered by council, and also in its submission to the department. The view was that the level of detail that was provided was not sufficient to provide that level of strategic justification to specifically single out blueberry farming as a particular form of horticultural activity that required this additional lawyer of regulation, given the alternatives that were
40 potentially available to the council to pursue, and the imminent release of the code of practice for blueberry farmers.

So in a nutshell, that is the principle reasons behind why the decision was not to issue the gateway. The gateway before making that decision considered two reports: the
45 planning team report from the Northern Region, and an alternative assessment report that was prepared by Steve Murray, the executive direction of Regions. The report

from Steve Murray identified a few additional issues of inconsistency with policies around right to farm, potential impacts on productivity, and also that, as I previously stated, there are other avenues for council to achieve this potential outcome that they were seeking, rather than introducing this additional layer of regulation.

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MS M. GIBSON: I think that's the key – the key points behind the department's decision. I guess we're interested in what the questions might be and how we can help clarify the report that we've submitted.

10 DR WILLIAMS: That material from Steve Murray, is that imbedded material that we've received, or maybe it's in here but not under his name. I'm not sure.

MR HORN: It should have been part of the gateway determination report.

15 MR D. WAY: Is that the – was as that the contained within the moratorium from the 22nd of February?

MR HORN: The memorandum, yes.

20 MR WAY: Yes.

MS GIBSON: Yeah.

MR WAY: So that was forwarded on a bit separately.

25

DR WILLIAMS: Okay. Yes.

MR HORN: So the 22nd of February 2017 it was dated.

30 DR WILLIAMS: Okay. Right. 2017.

MS GIBSON: So I think it's meant to say 2018.

MR HORN: Probably be 2018.

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DR WILLIAMS: '18. Right. Okay. Yeah. Sorry. Just trying to get that clarified there.

MR HORN: There we go.

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DR WILLIAMS: The other strategies are – once again, from memory, were they – was that really part of your job also to tell them other avenues that they could go down, or was it just really this is a gateway determination and you're responding to that? Because it'd be good to know what other strategies might have been suggested or available than this particular route.

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MR HORN: The standard instrument template – LEP provides the mechanism for councillors to be able to prohibit, permit, consent

DR WILLIAMS: Yeah.

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MR HORN: As you'd be aware. The strategies of waiting for the code of practice

DR WILLIAMS: Yeah.

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MR HORN: --- and conduct to be in place ---

DR WILLIAMS: Yeah.

15

MR HORN: Which, from anecdotal evidence, has been quite well received in other areas of agricultural practice. And obviously farmers aren't necessarily going to if it's inconsistent.

20

PROF S. BARLOW: Just – a standard code of practice, will that be binding on producers or only participants in it?

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MR HORN: That's – that was council's contention, that it doesn't necessarily bind the grower or the farmer to engage in sustainable practices. So it is – yeah. It's not arbitrary.

PROF BARLOW: It advises but it doesn't ---

MR HORN: It's a guideline.

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PROF BARLOW: It's a guideline. Yeah.

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MR HORN: Like other codes of practice, it's best practice in terms of if you are selling to this supermarket chain, this is our expectations about how you would be engaging in your farming activities.

PROF C. FELL: To what extent is this a test case for other councils doing somewhat similar things for different particular areas of agriculture?

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MR HORN: I think it was viewed as a potential precedent in that respect, and, well, the department is happy to consider those precedents. The evidence to support adopting that approach that was provided by council wasn't necessarily substantial enough to say, right, well, we're happy to at least go out on exhibition, which is the purpose of the gateway determination, to seek further advice and further information. Council based its decision to take this approach on a survey done in 2014, I think, or
45 2016, that had a very small sample number. It was 90.

DR WILLIAMS: 90, I think it.

MR HORN: Yeah.

DR WILLIAMS: Yeah.

5 MR HORN: And of that 90, only 40 said that they were happy to support it if it didn't mean that this regulation was extended to other - - -

DR WILLIAMS: Extended to other, yeah.

10 MR HORN: - - - forms of horticulture. There's only three from what I've – from the information I've been provided, there's only three existing blueberry farms in the Bellingen LGA, so it did seem to be quite responding to a particular part of the broader agricultural industry, and the justification for that particular form of
15 agriculture, and why it needed that additional regulation wasn't apparent from the information that council provided.

PROF BARLOW: And - - -

20 PROF FELL: If I could just follow on from that, the council actually provided quite a bit of information about the pollution potential of around Coffs Harbour, but one would assume to think that that also would apply in Bellingen. Okay. I note that the code of conduct on fertiliser pollution. Is that a major problem in that area?

25 MR HORN: I couldn't comment on that. I would have to take that one on notice and get some additional information from the team.

PROF FELL: I'm just wondering if there are mechanisms around through existing agencies that would actually handle that problem?

30 MS GIBSON: Absolutely. So the purpose in amending an LEP is to make a use permitted or prohibited or to set some other controls around development standards. So the impact assessment work – so the assessment of a DA, the assessment of the proposal where issues like water pollution might be considered would come after the LEP is in place. So it wouldn't necessarily be an item that impacts assessment to the
35 level of detail about existing water pollution issues – wouldn't necessarily be a matter for consideration when you're looking at a planning proposal and a Gateway assessment, so - - -

40 PROF BARLOW: But in – if I may? In that, is it an item that in their proposal, the measures that were proposed in the regulated development for blueberry farming quite apart from whether they're needed in other horticultural industries, as well – is it a factor in your decision that the effectiveness of those proposed things as opposed to their supposed effectiveness – is that a factor in the decision in making
45 that?

MR HORN: Yes, absolutely. And the advice from DPI that the arbitrary approaches that were proposed by council in terms of the setbacks from site boundaries the arbitrary corridors - - -

5 PROF BARLOW: The buffers.

MR HORN: - - - the buffers wasn't necessarily the best approach to dealing with the issues that council was purportedly going to deal with by having the LEP amendment made. So DPI being the experts, it did seem a little contrary to be
10 progressing a planning proposal to issue a Gateway on advice from an agency that said there are other ways to achieve it.

DR WILLIAMS: That – sorry. That DPI advice – I know it's mentioned in your
15 report. Is there an actual copy of that available or is it embedded in here once again?

MR HORN: Again, it should be - - -

DR WILLIAMS: Be in there? Yes.

20 MR HORN: I do have a copy that we can send - - -

DR WILLIAMS: Yes. It would just be worthwhile to see exactly what the DPI – is that okay – from the Director General was it? Have we seen that?

25 MR HORN: That's from the regional - - -

PROF BARLOW: Is that Scott Hansen or – yes – no, that was in our

DR WILLIAMS: We've got that

30 PROF BARLOW: That's Director General Scott Hansen.

DR WILLIAMS: Yes. That's fine. Okay. That's

35 I've just got a question more to do with the whole framework of planning regulation. At the moment horticulture is permissible without consent in the relevant zones, which means obviously it doesn't need development consent, but still if it needs other form of approval, it would still potentially get an assessment under part 5 or – it's still part 5, isn't it, of the Act? So there would still be some form of environmental assessment under the legislation.

40 Now, of course, by going to the extreme – or, sorry, going to the – this – well, this solution of making this – well, firstly, putting horticulture into development only with consent and then saying, “Well, in fact, all of it can, in fact, be exempt development” and, sort of, conceptually, this – historically exempt development is
45 really meant to be a sub-category almost of development without consent and if it was development with consent impacts would become complying development.

So it has, sort of, gone without consent to with consent but it's actually all now exempt with the exception of blueberries.

5 It seems to me that what you've done is you've totally deregulated all the rest of horticulture in Bellingen in terms of assessment under the Environmental Planning and Assessment Act for the purposes of potentially catching some blueberries for development consent. Has – I mean, I'm not putting words in your mouth, but, I mean, I just – it would just seem that there must be other ways in terms of planning regulation with the instrument to keep some form of regulation. And, also, the other
10 issue, of course, is what assessments have been done of the impacts of other forms of horticulture that they also might warrant the same sort of approach?

MR HORN: And that, as you say, is something that was evident in the information that was provided by council – is that there was no comparative information that said
15 this approach would also be suitable for other forms of agriculture. It very clearly singled out blueberry farming - - -

DR WILLIAMS: Yes.

20 MR HORN: - - - as a particular form of horticulture that had impacts but the level of impact and the severity and the extent of that impact wasn't necessarily clearly articulated in the submissions from council. And you're right. There are other ways that an assessment of the potential impacts of any form of agriculture can be done with native veg – the Aboriginal heritage the Heritage Act. So there are other
25 ways - - -

DR WILLIAMS: Yes, that's right.

MR HORN: - - - where potential impacts could have been considered - - -

30 DR WILLIAMS: That's right.

MR HORN: - - - to give, I guess, more of a holistic view rather than creating this uneasy do we fit in the exempt criteria or don't we and what do we have to do to fit
35 in the exempt criteria – and it relate to new farms and not necessarily the expansion of existing farms - - -

DR WILLIAMS: Right. Right. Right. It just seemed to be a very roundabout route and – to go around to capture blueberries, in fact, the – and part of that process, in
40 fact, deregulating all the rest of horticulture and – whereas at least those under development without consent, it still requires potential assessment of part 5 if you need other approvals for under the Water Management Act or something like that. Yes.

45 PROF FELL: Have you got any instances – or have there been any instances for other agricultural pursuits where councils have brought in regulations?

MS GIBSON: For Bellinghen or do you mean - - -

MR HORN: Councils in general?

5 MS GIBSON: - - - more statewide?

PROF FELL: Across the state.

10 MS GIBSON: We have to take that on notice, I think, to – about where that would apply across the state because there are lots of different options that are out there - - -

PROF FELL: Yes.

15 MS GIBSON: - - - so we could take on notice.

PROF FELL: You could imagine a council – this is hypothetical – simply being concerned about a development that they don't like and feeling there isn't enough regulation, if you like, by state agencies and attempting to do something, but it would be interesting to know if - - -

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MS GIBSON: Yes.

MR HORN: And that was one of the arguments that council did - - -

25 PROF FELL: Yes.

MR HORN: - - - present in its report was that other agencies don't have the capacity and staff to be able to be doing the compliance check under other approvals. So, again, it's that uneasy match and mesh together of where the planning legislation fits in with the Water Management Act and the other pieces of legislation that you could also seek an approval under.

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MS GIBSON: And, historically, designated development provisions have indicated the more intensive agriculture or the horticulture or the other aquaculture and where they were in sensitive locations or where they were hitting a threshold where additional assessment would be required. So that has traditionally been the way that that's addressed and that has different requirements, whether it's a certain number of birds in a poultry operation or it's a certain number of head of cattle in a feedlot or if it's, you know, been a particular location near a watercourse, so that's where those provisions have come in and been introduced in a state-wide perspective.

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PROF BARLOW: Would you say, in summary, that the dualism of – you know, in your decision of the council's proposal 1 to effectively deregulate the rest of horticulture and at the same time provide some prescriptive but untested counter-measures to intensive horticulture may conceivably result in actually some outcomes that were detrimental to the environment without any regulation on one hand but some untested prescriptions on the other hand, particularly to – you know, I'm

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particularly thinking of – particularly water, you know, water contamination and that water for contamination could be both nutrient but also could be chemical, you know, could be pesticides?

5 MR HORN: I mean, I – it's a possibility that you could have those unintended consequences as a result of introducing this approach to dealing with the blueberry farming. The evidence that was provided about the water quality in particular was not necessarily fit for purpose in that it didn't assess water quality adjacent to the site. It was further downstream. So the extrapolation, I guess, of that to therefore,
10 say, the impacts are potentially going to be the same was something that was a little bit tenuous, I guess, and not supported strongly enough by the evidence that was provided in the supporting reports from council. So I guess in the absence of current up-to-date fit for purpose evidence base, the precautionary principle comes into play.

15 PROF BARLOW: And are you talking here of the supplementary report as well as the original reports.

MR HORN: I haven't seen the supplementary reports.

20 PROF BARLOW: Okay. So this is really just the initial Bucca Creek - - -

MR HORN: yeah. That's right.

PROF BARLOW: Yeah.

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MR WAY: So those reports have been – just for the record, they've been provided to you and I'm happy to chat to you about that.

MR HORN: I was actually on leave last week, so yeah, I'm still catching up.

30

MR WAY: Yeah. They were – apologies for the late Friday.

MR HORN: No, that's all right.

35 PROF BARLOW: Could we pursue – do you know – there are only three current blueberry farms in this area. Do you know whether they're located on the lowlands or on the upslopes?

MR HORN: No. That information wasn't - - -

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PROF BARLOW: Wasn't provided? No.

MR HORN: - - - provided.

45 PROF BARLOW: I didn't read it.

MR HORN: There was no map indicating where the existing farms were in council's planning proposal.

5 DR WILLIAMS: They've selected in four zones, so in that sense they could be - - -

MR HORN: Anywhere.

DR WILLIAMS: - - - almost anywhere.

10 PROF BARLOW: Yeah.

DR WILLIAMS: The fact that they selected those four rural zones and the uniform environmental plan. So it's meant to be blanket, and any location in Bellingen that falls under those particular zones.

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PROF BARLOW: Yeah. Although I still read that, Peter, but also - - -

DR WILLIAMS: Yeah.

20 PROF BARLOW: - - - I was just curious to knowing what they were trying to prevent. Now, given that the shire has enormous differences in

MR HORN: There's no way – that's right. And there's no way of telling whether the three farms are in one road.

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PROF BARLOW: Yeah.

MR HORN: One suburb in the one area, or whether they are dispersed across the whole shire. So again, with that level of information not provided, it's difficult to make that determination.

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PROF BARLOW: Nor is it possible to even judge about what the potential in the shire of sites for potential blueberry development are.

35 MR HORN: That's right. And, I mean, three farms, it could be 10 hectares, it could be 3000 hectares of land that's farmed for blueberries. There's no indication of that, the extent of area that is subject to blueberry farming. I mean, council makes the point that as a decision-making authority, they need to take the economic, social and environmental factors into consideration.

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Council's planning proposal report was very light on looking at the social – potential social and economic impacts of implementing this approach as well in terms of whether it will restrict new farms entirely coming into the area, whether it would have impacts on existing farms, and whether if they went across the road, for example, would they be considered to be a new farm and therefore subject to this approach across the road but not on their original farming site. So the – I guess the mechanics of how council itself would police and undertake the compliance

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associated with it as well wasn't necessarily evident in the information that was provided.

5 PROF BARLOW: And was there any sort of indication – one of the sort of interesting parts of the proposed regulation was that the protected cropping, the bird netting had to be black, and so was there any evidence that the amenity – the potential amenity of – the loss of amenity, really a social reason, in the area was a major factor in the seeking to, one, implement – to sort of not prohibit, but provide regulations for blueberries in the shire that were not there for other forms of horticulture? But secondly, to be prescriptive in the terms of the colour of the netting.

15 MR HORN: The requirement for black netting again was not necessarily supported with evidence from council as to the benefits of that approach as opposed to white netting. So again, it was an arbitrary it has to be black, whether that was from a visual impact perspective, from people passing the farms or from a distance, people overlooking the farm, but I don't know that there's any evidence – and I don't recall reading any evidence to support from a flora and fauna perspective that black netting is superior to white netting in this instance.

20 PROF BARLOW: In fact, I think – I thought that the - - -

MR HORN: Contrary evidence that - - -

25 PROF BARLOW: Yes.

MR HORN: - - - it confuses the birds.

30 PROF BARLOW: Yes. That's what I have read.

MR HORN: That would confuse birds.

PROF BARLOW: It seems purely from an aesthetic - - -

35 MR HORN: Yeah.

PROF BARLOW: Yeah. Perspective. And I think, in fact – I could be wrong on this, but I thought the Northern Region had not supported that part of the colour element of it.

40 PROF FELL: Are you - - -

PROF BARLOW: Sorry, Chris. Please. Yeah.

45 PROF FELL: If the Commission were to uphold the secretary's advice to the council, what avenue would you suggest the council follow if it still has ongoing

concerns about the impact of blueberry farming? I think that's an important consideration.

5 MR HORN: Yeah, absolutely. I think it's going back to first principles and actually having the evidence to support the actual issues that they are trying to address - - -

PROF FELL: Yeah.

10 MR HORN: - - - rather than necessarily adopting a one size fits all or generic - - -

PROF FELL: Yeah. We got that - - -

MR HORN: Yeah.

15 PROF FELL: - - - point from your earlier comment.

MR HORN: Yeah. So I think if council was able to – and again, I haven't read the supplementary water quality reports. I'm not sure what's provided in that. But if that level of evidence is provided about potential impacts - - -

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PROF FELL: Let's just say - - -

MR HORN: - - - then - - -

25 PROF FELL: Yeah. For want of clarification in your answer, they say that where you have blueberry farming, you've got water pollution, right, and it's shown in

MR HORN: That's right.

30 PROF FELL: But going back to the original question, then – but yeah.

MR HORN: Yeah. It's about providing the evidence that supports the reasons as to why the regulation is required.

35 MS GIBSON: There are other mechanisms open to council to be able to pursue issues of environmental pollution. So whether those issues are compliance that involve the EPA under the Protection of the Environment Operation Act, whether that's something that involves – if it's a land clearing issue, then that might be something that involves the local land services. Council also has powers under their

40 – that are delegated to them for non-compliance with development consent. So if they did – if there was a development issue that an approval was required for some particular reason and that approval wasn't being sought, council has powers to investigate those.

45 PROF FELL: But some would say that shutting the door after the horse has got out or - - -

MS GIBSON: That mechanism is set up in legislation for compliance, but it's also one to comply with initially as well. So it's not just about rectifying an issue. It's also about setting a standard about what's acceptable. So if they did need to get consent for the land clearing, if they've undertaken that clearing without getting the
5 consent, then yes, you've got a compliance issue, but you also set up a framework to begin with about what the requirement was. So there are mechanisms open to council beyond amending their LEP to establish new regulations for blueberry farms.

DR WILLIAMS: And, of course, if Council did go down this route of requiring
10 consent, and if it didn't meet with the requirements in the schedule to become exempt development, and if Council was consent, of course, then we would see Council's responsibility, and that's what their – big issues they've got – the State Government hasn't got the resources, and it sounds like the local council probably hasn't got resources either, so they're trying to nip it off in the bud at the consent
15 stage, which means it might be more difficult getting consents, possibly. Yes.

MR HORN: Yes. You wouldn't necessarily be able to answer that until there was
- - -

20 DR WILLIAMS: No, but - - -

MS GIBSON: - - - an application lodged.

DR WILLIAMS: Yes, that's right. Yes.
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MR HORN: And, I mean, I think, if Council was to continue to pursue this option, then they've got guidance - - -

DR WILLIAMS: Yes.
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MR HORN: - - - and advice to potential applicants about what was required to submit. With a DA, for example, particularly, for blueberry farming, a fact sheet or something like that might be something that they would consider as well, so that it's very clear what the issues that they are concerned about are, so that applicants are
35 forewarned about - - -

DR WILLIAMS: Yes.

MR HORN: - - - the level of information that they need to provide.
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DR WILLIAMS: Yes.

PROF FELL: Would planning sit happily if an outcome of this process were that the council decide to require a DA for all horticultural activities? That's one way of
45 exercising control.

MS GIBSON: It would be very unusual across the state. So we would be looking at it from a state perspective in making that gateway assessment. And so – and what that – the implications of that would be, and how that would be consistent or inconsistent with other established policy. So the principles set up in the rural land SEPP, the policy set up in the “Right to Farm” guidelines. And we would also be seeking the input from DPI in making that decision, as well, about what that means for Bellingen, and what that means for the North Coast area, and what that means for the state, for horticultural activities. I suspect we would also be looking to engage with key industry representatives about what the implications of that would be, too
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10 - - -

PROF FELL: Right. Thank you.

MS GIBSON: - - - as well as what that would mean in terms of existing activities versus new activities, so what that would mean for all the activities that are already operating as horticultural – that commenced without requiring consent. So they were permitted without consent. And then you would be applying this as a requirement on new developments, so kind of set up a two-speed environment there, too, for agriculture in Bellingen.
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DR WILLIAMS: So what’s happening there is that Council says that they got the capacity to do this; the standard instrument, LEP, allows them to do this. They’ve got the discretion to either put horticulture in without consent or with consent. So they make a big case about that, and they say, “We’re in the powers; we’re in the advice that we’ve got, in terms of what we can put in it, and in terms of the different levels of permissibility under the standard instrument. But what they’re saying is, well, if you exercise that discretion, and decided to put horticulture in permissible with consent, which you’re able to do, in fact, we don’t want you to do that, because it’s then inconsistent with a whole raft of other policies.
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MR HORN: Broader state policies.

MS GIBSON: Yes. And ministerial directions about the preparation of local planning instruments. So the section 117 direction, that it was assessed as being inconsistent with – we now call them section 9.1 directions, as part of the Act renumbering – is a direction for local plan-making. So even though the standard instrument order does have the ability to move the location of horticulture within the land use table, that’s not the only consideration. So the ministerial directions about how – what you should be achieving in your local planning instrument, as well as the other relevant policies that are applying and working in conjunction with the LEP, all need to be taken into account when making a gateway determination. And that’s what the gateway determination sets up. It’s clearly outlined in the guideline that we have for that, as well as the requirements in that part of the Act.
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MR HORN: It signals that the gateway is of the view that there is strategic merit in pursuing this, and - - -
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DR WILLIAMS: Yes.

MR HORN: - - - on face value, given the range of broader government policy initiatives that we've mentioned, that it appears to not necessarily be consistent with
5 – it's almost an implied duty of care, why we would send Council down this path of issuing a gateway determination and going through this process, where the potential to receive unresolved objections, which means the plan can't be made - - -

DR WILLIAMS: Yes.

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MR HORN: - - - in the end - - -

DR WILLIAMS: Yes.

15 MR HORN: - - - is potential more of a time-wasting, resource-intensive exercise
- - -

DR WILLIAMS: Yes.

20 MR HORN: - - - than actually saying, "Okay. At this point, the information is not there."

DR WILLIAMS: Yes.

25 MR HORN: "Do you wish to pursue it? Let's regroup and do it that way."

DR WILLIAMS: And, I guess, related to that, we more or less – we know there's three blueberry farms at the moment. Is there any indication at all from the regional office about the potential that's out there for new blueberry farms? Any idea at all if
30 there's – no.

MR HORN: No.

MS GIBSON: Yes. There have been a number of studies about the important
35 agricultural land on the North Coast, and how that might be able to be used for a range of different agricultural pursuits, whether that's blueberries, bananas – you know – corn, tomatoes – who knows; there's a range of different things that would be there, and that's going to change over time. Blueberries is something where there has been a change in the consumer market, and so there's more interest in blueberries
40 at the moment.

DR WILLIAMS: Is there any – any trigger – any information you've received from the northern region about what has triggered Council's concerns specifically?

45 MR HORN: Nothing that I have read suggests it's a reaction to anything in particular.

DR WILLIAMS: Right.

MR HORN: There's – sorry; I'm just - - -

5 DR WILLIAMS: Yes.

MR HORN: - - - trying to rethink what I read in the council report. The council report itself doesn't necessarily, from memory, point as to a specific reason why, other than, it's a community concern. And again, the evidence for that is a few years
10 old now, and quite a small sample. So yes, it doesn't – the rationale for it doesn't necessarily jump out as something that's immediate - - -

DR WILLIAMS: Okay, yes. Yes.

15 PROF BARLOW: On that point - - -

DR WILLIAMS: If – sorry.

PROF BARLOW: - - - the – you mentioned early that these decisions are made on
20 environmental, economic and social grounds. Now, intensive horticulture, particularly blueberries, has a very high labour requirement. Is that any component in these decisions, the potential for that labour to be available, or to be provided in the development of new blueberry farms?

MR HORN: It would certainly be a consideration of taking that holistic view of –
25 well, what are the potential benefits and negative impacts associated with this approach. And that evidence, again, was just not clear as to whether there's 300 employees at the moment – currently involved in blueberry farming, or whether it's, you know, a family of five, or - - -

30 PROF BARLOW: Half a dozen.

MR HORN: So there's no understanding – and even the evidence that they provide
35 around the value of agricultural productivity isn't specific enough to particularly identify the component of blueberry farming as a separate activity; it's all the broader agricultural – so, again, it's a broad-brush response to saying it's an important – potentially important – potentially future growth – but it's not actually clearly stepped out by Council as to the value of it.

40 PROF FELL: Can I ask a hypothetical. If it did jump out – we were to receive an argument that's quite strong, and that is scientifically acceptable – what is the mechanism, then, that you would recommend the council follow? Let us say that if you have intense blueberry farming, or intense horticulture, it is proven to actually
45 have an effect on those coastal high rainfall in that zone. What steps would you suggest the council should stake?

MS GIBSON: Could I draw a comparison to the vineyards in the Hunter Valley, where intensive horticultural activity and the councils have established development control plans that talk about setbacks to boundaries, and how to manage spray drift that's occurring with the grape-growing that's happening there. So Council hasn't
5 set any specific controls in their local environmental plan, so they haven't – they don't call out that land use; they don't mention grape-growing; they don't mention viticultural activity in any particular way. But instead, when it comes to a development assessment perspective, they have a DCP that helps them with what's happening at the interface between new and establishing – or established and new
10 grape-growing areas, and residential receivers, tourist receivers, other sensitive receivers, as well as environmental areas. That includes how much land clearing would be affected; it talks about fencing; it talks about other threatened species moving through those areas. So that there's a – that's an example, I guess, to your hypothetical, about how councils could manage intensive agricultural and the –
15 activities – and the impacts on the natural environment.

MR HORN: And that approach would supplement the code of practice and - - -

DR WILLIAMS: It could call up the code of practice, couldn't it, in the DCP itself?
20 Yes. And so it tries to – well, enforce it or implement it – so it's actually enforced through the planning system, and you could require them, as a condition of consent
- - -

MS GIBSON: Yes.
25

DR WILLIAMS: - - - to comply with code.

MR HORN: That's right. Whereas you don't have that flexibility in the LEP.

30 DR WILLIAMS: No, of course not.

MR HORN: But a separate code.

DR WILLIAMS: No, no, no. Just wonder if Council has considered this at all.
35 That option, of the DCP route, at all.

MR HORN: It wasn't mentioned in anything that I - - -

PROF BARLOW: Just, again, hypothetically – the decision as it now stands is to –
40 not to grant a gateway certificate for this. What options now rest with the council, if this decision is confirmed? What options rest with the council? Would they – well, it would be their option, but what are their alternatives in this - - -

MR HORN: I guess, their alternatives would be to just accept the decision, and not
45 proceed with addressing their issues of concern this way; look for alternative ways to achieve the same outcomes that they were potentially seeking to achieve through the regulation, which is the DCP or other mechanisms that we've discussed; or start

again, and go back to first principles, and generate the supporting information through advice and input from relevant agencies, as well, and then submit another planning proposal.

5 PROF BARLOW: Could – in that – if they chose not to put forward another proposal – could they regulate individual development proposals for blueberry farms, and implement what they propose to implement under this regulation? Or as their – or would they even have to come to the council to get permission to establish a blueberry farm?

10 MR HORN: Not if it's permitted without consent, they wouldn't have to.

MS GIBSON: They may need to get approval for other elements - - -

15 MR HORN: For other – that's right, yes.

MS GIBSON: - - - of that. So if there was clearing involved; if they were building a structure, they may need to get consent for a structure; if they were - - -

20 MR HORN: Privilege to disturb, in case it's covered by SEPP 44, the koala habitat, or it's mapped as a area of heritage significance. So there are other - - -

MS GIBSON: Significant earthworks; all sorts of different things that may require them – that may trigger a requirement for an approval.

25 DR WILLIAMS: Under other environment legislation, that could then be assessed under part 5.

30 MS GIBSON: Or it could also trigger the need for a part 4 assessment, if they're doing something that's a - - -

DR WILLIAMS: That triggers it. Like - - -

35 MS GIBSON: Yes.

DR WILLIAMS: - - - if it's in koala habitat or something.

MS GIBSON: Yes, or you're building a big shed - - -

40 DR WILLIAMS: Yes, yes, yes. Yes.

MS GIBSON: - - - for example.

45 PROF BARLOW: But if that were triggered by, you know, the need for a development approval to build a cool store room – storage facility – could that development approval include some of the setbacks and buffer zones that have been, you know, proposed under this - - -

MR HORN: As a condition?

PROF BARLOW: Yes - - -

5 MR HORN: - - - of consent?

PROF BARLOW: Could they?

10 MR HORN: Those issues could potentially be addressed through conditions. And the agencies would be part of that referral process, in that case, to ensure that the consent conditions met their policy objectives and requirements as well.

15 MS GIBSON: A lot of it would depend on the site where this is going – where this would be happening too, and what those site conditions are and the particular characteristics of the site, so its environmentally sensitive nature, the vegetation that might be on the site, its distance to a water course, those sorts of issues would be matters that would influence whether a development application or an approval was required or not.

20 DR WILLIAMS: But then – what’s triggered then is actually the shed and what it’s doing and you’re only really conditioning the shed, aren’t you, not the actual farming activity that’s already there or - - -

25 MS GIBSON: Yeah. Unless there was something else that triggered - - -

DR WILLIAMS: Yeah.

MS GIBSON: - - - the need for it.

30 PROF BARLOW: And in that – if it did trigger it – sorry to just pursue this, but I’m just – could they impose stringency on nutrient release into waterways, or would they have to propose works that had to be carried out to prevent or to ameliorate nutrient release into waterways?

35 MS GIBSON: So if there was a development application, those matters could be considered in a development application and as conditions of consent.

PROF BARLOW: Yes.

40 MS GIBSON: That would be consistent with other development assessment.

45 MR HORN: Potentially need an EPA licence, depending on the size of the activity, discharge into the waterways. Dams – might need approval for a dam. So there’s a – yeah. There are a number of different ways that potential impacts can be considered and conditions imposed to mitigate those potential impacts.

PROF FELL: Practically speaking, if you were a councillor and faced with a situation where under one hand the Department of Agriculture is saying free farming, if I can call it that, farmers can do what they would like to do – okay. We're somewhat about worried about some of the effects for certain sort of farming. Let's
5 not particularise blueberries at the moment. Faced with that sort of pressure to grant blanket approval, if you like, or not have any formal approval process, what would you suggest that council do?

I mean, the only – the exercise at the end of the day is to not have adverse
10 consequences from the exercise. We accept that it's economically important. Blueberries happen to be a very valuable crop. Employment is needed in that region. Ought to go ahead. On the other hand, we don't want to come back in 10 years time and find that we've had a bad effect on the region for environment reasons. How would you suggest that gets solved? I mean, that's the practical problem that we're
15 facing, I think.

MR HORN: I think one of the concerns from entirely my perspective was the arbitrary buffer distances, for example. You constantly are eating away at the amount of land that you can potentially farm, and so something that may have been
20 viable and generated income and employment with site-specific responsive agricultural practices - - -

PROF FELL: Yeah.

MR HORN: - - - simply is ruled out because of the arbitrary 50-metre buffers. So council's argument around they don't want to engage in a site-specific response every time they get an application to me as well sounded quite counter-intuitive, because effectively that's what a development assessment does. So some of the arguments as to why again this was the best approval were a little bit so to me,
30 again, it comes down to what is the actual issue that council was trying to achieve as the outcome of this. And that's not necessarily the - - -

PROF FELL: Okay. Let's say that they have identified the issue. What are the mechanisms to which we help solve that problem?
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MS GIBSON: So I don't think - - -

PROF FELL: Proactively, not reactively.

MS GIBSON: Yeah. The singling out of blueberries as the only type of intensive agriculture that warrants this level of further regulation and the inadvertent making the balance of intensive agricultural or horticulture exempt development I think is part of the challenge. So if council did want to have a view that it was horticulture that was the land use that was of concern to them and that was creating impacts that
45 were unacceptable to their community, then changing where that fits in the local environmental plan as being permitted with consent or permitted without consent or

being, you know, permitted in certain locations that they want to map and be more specific about it - - -

PROF FELL: So - - -

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MS GIBSON: - - - and support it with other development - - -

PROF FELL: Please understand what I'm really saying is if you're saying you can't do it for blueberries in particular, what mechanism have they got if they share a genuine concern?

10

MS GIBSON: So I think the mechanism is still there in that they could make a future planning proposal, so they could make a future planning proposal to change where horticulture was permitted with or without consent, or as exempt development in their LEP, but they would need to provide more detailed explanation and more detailed justification. So they would need to be more thoroughly addressing the planning framework of other agricultural policies, other planning policies, they would need to be providing more detail in terms of the location of where this would be applied and how they might be supporting it with other development assessment matters.

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PROF FELL: Yes.

MS GIBSON: Even then, that might not be enough for the Department of Planning to issue them with a gateway determination, but I think it would be a better position than we are at the moment with the proposal that they've submitted, which is light on in explanation. There – you know, there's not enough evidence to support their position, and that's where the department has fallen down on the side of saying we're not prepared to issue a gateway determination, because we don't have enough justification. So that mechanism of making a fresh planning proposal remains upon to council, and including more detail in there about that, and if regional teams – the regional team based on Grafton would be able to assist council in identifying those deficiencies within the current planning proposal, and also helping frame council's thinking.

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PROF FELL: Coming into this from the side - - -

MR WAY: Sorry. Just trying to be a little - - -

PROF FELL: - - - I would've offered the comment this time on - - -

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MR WAY: Sorry, Chris. Just trying to be a little mindful of time.

PROF FELL: Sorry. Yeah.

45

MR WAY: We're down to the last couple of minutes.

PROF FELL: Yeah. That one of the problems with intense horticulture is runoff, basically sloping ground and high rainfall are bad news as far as that goes. Maybe in generalising that, it might be something. There are avenues of what you're saying, basically.

5

MS GIBSON: Yes. Yeah.

PROF FELL: Okay.

10 MS GIBSON: Absolutely.

PROF FELL: That's all.

15 PROF BARLOW: What about in that – if there was – which there is – an existing intensive horticulture, namely, bananas, you know, what we're seeing in that area is the conversion largely of bananas to blueberries.

DR WILLIAMS: In Coffs, you mean? In Coffs? In Coffs Harbour or - - -

20 PROF BARLOW: Well, even in the North and Central Coast.

MS GIBSON: North Coast?

25 PROF BARLOW: You know, the banana industry has found it difficult there for quite a few years. It's become more dominant in North Queensland. So the land that has and maybe still is being used with bananas, with perhaps the same intensity except for the netting, as the proposed use in blueberries, could be resulting in the same environmental outcomes that happen with blueberries, and how could the council respond to that?

30

MR HORN: I'd have to ask them. I mean I suspect that – not being a farmer, but I suspect that a farmer who intends to crop bananas has a very different view of the most appropriate location and type of environment to grow bananas in than somebody who crops blueberries. Land slope, for example, critical issue. So it's a –
35 I see it as being very crop-specific locational criteria that they would be looking for where they're going to get a maximum return on their property.

MS GIBSON: Rather than the planning framework that would be setting that up. So the planning framework, for example, to draw comparison, wouldn't care if the shop was a shoe shop or a dress shop. The issue is that it's a shop. That the use might change from one use to another use, different retail goods, is not something the planning system tends to get involved with, and the same with horticulture. We've set up that horticulture is a term – a group term or a term that could apply to different products, so - - -

45

PROF BARLOW: But my point was, actually, that if the existing use of the land was in the intensive horticulture, just changing it to another intensive horticulture
- - -

5 MR HORN: May not me, yeah, the outcome.

PROF BARLOW: Yes.

10 MR HORN: May not be suitable simply because of the soil type or a whole range of things. So - - -

DR WILLIAMS: I think we might have to tie it up pretty quickly, because we have got a teleconference with Bellingen Council, but, Chris or Snow, anything else in
- - -

15 PROF BARLOW: No. I'm done, thank you.

DR WILLIAMS: Gentlemen, anything?

20 MR WAY: No, thank you.

MR HORN: No, thank you.

25 DR WILLIAMS: Any other final statements at all?

MR HORN: No.

DR WILLIAMS: All right. Okay.

30 MS GIBSON: No.

DR WILLIAMS: Okay. Thanks very much, Jeff and Monica, for coming along today. We appreciate the time you've put in.

35 MS GIBSON: The only thing that I should say is that I'm here not as the director for Hunter and Central Coast, but I'm here as the acting executive director. So I don't think that – that's probably just useful to be aware of rather than being some other department employee - - -

40 DR WILLIAMS: All right.

MS GIBSON: - - - turning up to things.

45 DR WILLIAMS: Sure.

PROF BARLOW: Executive director of what?

MS GIBSON: So executive director, Regions. So Steve Murray, who is the normal executive director, Regions, is on annual leave, so I'm filling in for his role, so - - -

PROF BARLOW: Okay.

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MS GIBSON: Steve would normally have been here, and Steve was one of the people who was involved and has written some of the assessment report work on that.

10 PROF BARLOW: Yeah.

MS GIBSON: So I'm representing Steve.

PROF BARLOW: Okay. Thank you.

15

DR WILLIAMS: Thanks, Monica. Thank you very much.

PROF BARLOW: Thank you.

20 MS GIBSON: Thanks.

DR WILLIAMS: Thank you.

25 **RECORDING CONCLUDED**

[3.35 pm]