



New South Wales Government
Independent Planning Commission

TRANSCRIPT OF MEETING

505 MINMI ROAD, FLETCHER PLANNING PROPOSAL (PP-2021-2262)
– GATEWAY DETERMINATION REVIEW

DEPARTMENT MEETING

PANEL: RICHARD PEARSON (CHAIR)

OFFICE OF THE IPC: BRAD JAMES
GEOFF KWOK

DEPARTMENT OF
PLANNING, HOUSING
AND INFRASTRUCTURE: CRAIG DISS
KATE CAMPBELL

LOCATION: ZOOM VIDEOCONFERENCE

DATE: 10:00AM – 10:55AM
FRIDAY, 15TH NOVEMBER 2024

<THE MEETING COMMENCED

MR PEARSON: Before we begin, I would like to acknowledge I'm speaking to you from Gadigal land and I acknowledge the traditional owners of all of the country from which we virtually meet today and pay my respects to their elders past and present. Welcome to this meeting today to discuss the gateway determination review for 505 Minmi Road, Fletcher, a request currently before the Commission for advice.

The planning proposal seeks to facilitate residential development and secure biodiversity conservation outcomes at 505 Minmi Road, Fletcher, 140-150 new dwelling lots.

So my name is Richard Pearson. I'm the chair of this Commission panel and in fact the only member of the panel, but I'm also joined by Brad James and Geoff Kwok from the Office of the Independent Planning Commission. And in the interests of openness and transparency and to ensure the full capture of information, today's meeting is being recorded and a complete transcript will be produced and made available on the Commission's website.

This meeting is one part of the Commission's consideration of this matter and will form one of several sources of information on which the Commission will base its advice. It's important for the Commission to ask questions of attendees and clarify issues whenever it is considered appropriate. If you're asked a question and not able to answer, please feel free to take it on notice and provide any additional information in writing, which we will then put up on our website. And I do request everyone here today to introduce themselves before speaking for the first time and for all members to ensure they do not speak over the top of each other to ensure accuracy of the transcript.

So we will now begin the formal meeting and we circulated an agenda, which you have before you. So if the Department would like to just quickly introduce themselves and then move into an overview of the gateway process to date and I think you have a presentation that you wanted to run through. So pass it over to you, Craig and Kate.

MR DISS: No worries. Thank you, Richard. Craig Diss, acting director for Hunter and Northern Region within Department of Planning, Housing and Infrastructure and with me today is Kate Campbell.

MS CAMPBELL: Good morning, everyone. My name's Kate Campbell, senior planning officer in the Hunter and Northern team at the Department of Planning and I was the assessing officer of the proposal.

MR PEARSON: Great, thank you. So I'm not sure who in the Department is going to run through the presentation but I'll hand it over to either of you to do that.

MR DISS: No worries. I'll share my screen for the presentation. Kate's having a few technological issues, so I'll control the slides and Kate will talk to them as we go through.

MR PEARSON: Okay.

MR DISS: Has that come through for everyone? Can you see the presentation?

5 **MR PEARSON:** Not yet.

MS CAMPBELL: No.

10 **MR DISS:** No?

MR PEARSON: Brad, do we have to do anything to enable the Department to screen share –

15 **MR BRAD JAMES:** No, it should be –

MR GEOFF KWOK: It should be shareable, so we've got multiple – it enables multiple attendees to share their screen. So you should be able to, Craig, hopefully.

20 **MR DISS:** Yes, on my screen here it says I'm sharing screen one at the moment with everyone.

MR PEARSON: Yes, no, we're not getting anything.

25 **MR JAMES:** I think that's me, Craig. I'm happy to – let me just – is that showing up? I'm happy to work through the slides.

MR DISS: Yes, [cross-examine 00:04:35] thank you.

30 **MR PEARSON:** Is it possible to maximise that, Brad, or is that the best you can do?

MR JAMES: This is full screen on my end.

35 **MR PEARSON:** Okay, I'm only seeing it as a kind of fairly narrow thing. But look, don't worry, I've got a hard copy in front of me, so I'll follow it on my hard copy.

40 **MS CAMPBELL:** Okay. Thank you. I'll provide a brief overview of the planning proposal as well as the gateway history before outlining our position with regard to the alteration of the gateway determination. So as you mentioned, the stated objective of the PP is to facilitate the future delivery of 140 to 150 new dwellings and this is to be done by the rezoning of land from C4 environmental living to R2 low density residential and C2 environmental conservation, as demonstrated on this slide. Amending the minimum lot size from 40 hectares to 300 and 450 square metres for land zoned R2 and assigning a maximum height of building of 8.5 metres to land zoned R2.

45 Next slide, please, Brad. In terms of the gateway determination history, a gateway determination was issued by the Department in January 2023, subject to conditions and included a 12 month timeframe for completion. In January 2024, Council requested

that the minister not proceed with the proposal as it was believed that the proponent had not satisfied the Department's gateway determination conditions.

5 In response, the Department issued an alteration of a gateway determination in March 2024, which extended the timeframe for completion and included a deadline for commencement of public exhibition. The public exhibition period occurred from 22 April to 21 May 2024. The EPA submitted correspondence in response to the public exhibition period, raising potential land contamination and land use conflict concerns due to former underground coal workings as well as the site's proximity to Summerhill Waste Management Centre.

10 Council requested in July 2024 that the proposal not proceed as a timeframe of 12 months was anticipated to prepare the information as suggested by the EPA. The Department issued an alteration of the gateway determination in July 2024, discontinuing the planning proposal. Essentially this gateway review comes down to two key components, the request of the EPA and whether this is valid as well as timeframes. These two matters informed our decision to discontinue the planning proposal rather than issue another gateway alteration to extend the timeframe for completion.

20 Next slide, please, Brad. So the figure on this slide shows the site context. The subject land is outlined in red, while the Summerhill Waste Management Centre is depicted in yellow to the south. Regarding the correspondence from the EPA, they recommended that an updated preliminary site investigation for contamination be submitted. The existing contamination assessment is over 10 years old and does not consider the risks associated with subsurface landfill gases generated by the waste management centre or gases associated with coalmine workings. The Department determined that the preparation of an updated contamination report is appropriate, considering the potential risk to human health should the land be found to be contaminated.

30 Next slide, please, Brad. The focus of contamination investigations is to prevent harm rather than manage impacts after they have occurred. The proponent notes that the preliminary findings of their contamination consultant indicate that there is potential for subsurface gas contamination on the subject land. As such, any argument that further investigations are not warranted as the subject site is outside all EPA recommended separation distances for potential impacts is invalid.

40 The findings of the proponent's contamination consultant also indicate that it would be erroneous to assume that residential development is suitable on the subject land just because adjoining sites have recently been approved for residential development. For these reasons, it remains the Department's position that the matters raised by the EPA are an essential consideration of the planning proposal.

45 Next slide, please, Brad. Which brings us to timeframes. The Department's LEP making guideline details categories of planning proposals and benchmark timeframes to prepare, progress and determine a PP to provide certainty to stakeholders and the community. Timeframes aim to ensure that the LEP making process is efficient, transparent, accountable and outcomes focused, thereby avoiding delays to

development and setting clear expectations on decision making. While the extent of the investigations on the subject land is unclear from the letter of advice prepared by the proponent's contamination consultant, an approximate timeframe of four weeks for a preliminary site investigation and eight to 16 weeks for a detailed site investigation is provided.

However, the consultant notes that further time may be required for gas monitoring, depending on atmospheric pressure conditions, gas concentrations and flow rates recorded. This contrasts markedly with Council's estimation of a minimum of 12 months. It is considered that a timeframe for the completion of the contamination investigations on the subject land cannot be predicted with any certainty.

Next slide, please, Brad. Thank you. It is considered inappropriate to continually extend the gateway determination timeframe as this leads to uncertainty for stakeholders and the community regarding the future use of land. Continued extensions of time also have implications for the currency of supporting documentation and its compliance with legislation in force at the time the plan is finalised. It is also noted that upon completion of the contamination studies, considerable work will still be required to progress this PP to finalisation. A significant extension of time would likely be needed.

For these reasons, it remains the Department's position that the planning proposal should not proceed at this time, noting that the proponent retains the right to resubmit their application if outstanding matters can be resolved.

MR PEARSON: Can I just stop you there? Just that map on this slide, what's that showing because it appears to be unrelated to the contamination issue?

MS CAMPBELL: Yes, so that's just demonstrating the strategic merit, I guess, of the proposal. That's an excerpt from the Hunter Regional Plan and just indicating that it is part of a regionally significant growth area. So if the PP was to be discontinued at this time and the proponent was able to resolve all of these matters and resubmit the PP at a later date, the strategic merit remains valid.

MR PEARSON: Yes. Okay, understood. Thank you.

MS CAMPBELL: Thanks, Richard. Next slide, please, Brad. Regarding the proponent's request that an alternate PPA be appointed, s 3.32 of the EP&A Act states that the minister may direct that the planning secretary or any such panel, person or body is the PPA for a proposed instrument in various circumstances. It's considered appropriate that the decision regarding the PPA for this proposal be made by the minister as part of a separate process, should the Commission recommend that the application proceed.

So that's the conclusion of our formal presentation and we'd be happy to answer any questions that you may have.

MR PEARSON: Sure, thank you. And the next item on the agenda is key matters for

discussion, which we'll – so dot points being EPA advice, contamination and subsurface gas, timeframe to complete the additional assessment and planning proposal authority and they're all issues that you have touched on in your presentation. So we don't necessarily need to work through those point by point. But I will just – in relation to the EPA advice, which I've read, they appear to be doing two things. One is, as you've described, the contamination issue.

But the other, there appears to be a suggestion that they're advancing a view that this proposed land release is within an area that should not be allowed, given its proximity to the Summerhill Waste Facility because they talk about an amended buffer zone under new guidelines. Have you got any comments on that? There appear to be these two issues that the EPA is running with. You're right that it's principally around the contamination issue but am I correct in assuming that they're also challenging the legitimacy of residential development on this site, notwithstanding the contamination issue?

MR DISS: Yes, Richard. I believe you're 100% right, that they've raised that issue that they believe there's some potential inherent land use conflicts between the waste management facility and residential development in the area and as part of their submission they've raised that Council – the PPA would need to potentially look at a number of those land conflict issues in addition to the contamination for the proposal to be able to move forward.

MR PEARSON: Yes, which if we go back to that map that we were just talking about from the Hunter Regional Plan that identifies it as part of the regionally significant growth area and also given we did – myself and Geoff had a site inspection yesterday on our way back from another meeting in the Hunter and clearly there's a lot of quite new residential development in that locality. Some of it closer to the waste facility than this site. So I'm just wondering why are they now advancing this view, given the amount of residential development that's already recently occurred in that area and its identification in the Hunter Regional Plan or is that something you can't answer on their behalf?

MR DISS: Probably hard for us to comment on their behalf. It is an issue that both I know the proponent of the proposal and ourselves raised and generally the response that we received and I think it's within the same correspondence potentially is that they haven't been asked to comment before. So this was the first time they've proactively made a comment, so –

MR PEARSON: And did they, in making a submission on this planning proposal, were they requested to do that or did they just do it off their own bat?

MR DISS: To our knowledge, they did it totally off their own bat.

MR PEARSON: Okay. All right, well yes, there's probably not much – as far as the Department's concerned though, you appear to be focused on the contamination issue and the necessity of ensuring that's properly addressed prior to any progression of the planning proposal?

MR DISS: Yes, certainly that was our assessment focused on the contamination issue and that was the main issue that Council raised as well in seeking the alteration of determinations around the timeframes and the issue of contamination.

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MR PEARSON: Right. And is it also correct to say the Department's not challenging the strategic legitimacy of the proposal, given its identification in the Hunger Regional Plan?

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MR DISS: No, that'd be a correct statement. Our determination is based totally on the site merit issues around contamination and the lack of certainty around any timeframe and being able to resolve it.

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MR PEARSON: Yes, okay. That's good clarification. Thanks. All right, and Brad or Geoff, feel free if you have any questions of the Department that you would like to raise at any stage, that would be useful. So just in terms of the timeframe, there is this big discrepancy between the EPA – sorry, the Council essentially saying it's going to take a year and the applicant that's suggesting a much shorter timeframe. Does the Department have a view that's informed by any technical advice on this or are you

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reliant on the Council's view that it's going to take a considerable period of time

MR DISS: No, we based our assessment and determination primarily on the advice from Council. We did make informal enquiries with the EPA around more certainty around the timeframe, which we weren't able to gain from the EPA. But we also based our decision on our own experience.

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We'd dealt with a similar situation in Port Macquarie a number of years ago for a development adjoining a former landfill site and they went through the process trying to determine gas migration and potential contamination and after four years they gave up the process because it had taken that long and they were still unable to determine the outcome. So our own I guess experience with the situation, the difficulties around it also gave us a precautionary approach to probably accept where Council was coming from.

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MR PEARSON: Yes, okay. And do you know why the applicant is contesting this rather than just doing the work and then coming back in at the start of the process? Are they concerned that they might not get back in or that they'll obviously have to do another exhibition. So is it more a concern around how long it's going to take rather –

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MR DISS: I believe it's – they've noted a number of times how long this proposal's been in the system as such, dating back not from just 2023 but it's been – and rezoning that's been attempted, I believe, but according to the proponent for 15 years now. And they believed that they've got to the stage where it was coming to a conclusion and I believe again that they think that to start the process again would hinder the process greatly and they would have to then spend considerable money potentially on further updates to supporting studies works and starting through the process with Council again.

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MR PEARSON: Right. And just on the planning proposal authority, so this was – Council was the planning proposal authority, they wouldn't have delegation though to make this plan, it would have to come into the Department or would they have delegation?

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MR DISS: I'd have to check. Do you remember, Kate, whether they had delegation for this matter?

MS CAMPBELL: I don't recall. I can check now. I won't be a moment.

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MR DISS: But I guess one thing to note with the PPA issue is interestingly it came to gateway in 2023 after rezoning review.

MR PEARSON: Yes, yes.

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MR DISS: And in today's current system, a similar proposal that came for a rezoning review process would be allocated to the regional panel of the PPA, where a local council wouldn't in today's current procedures.

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MR PEARSON: So is that likely that the regional panel would be the planning proposal authority for this one going forward or is that a decision you would make at the relevant time?

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MR DISS: Well, I think that would be a decision that would be made by the Department, it's a recommendation to the minister on the request for an alternate PPA, noting the proponent's request for that and I believe and the proponent would need to confirm if they have concerns about Council continuing the PPA, noting their position, currently seeking to terminate the proposal.

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MS CAMPBELL: I can confirm that the Department is the LPMA.

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MR PEARSON: Right. Okay. So no delegation. Okay, so the Department. Yes. That means the Council's still responsible for all of the administrative steps and progressing the planning proposal through the Department ultimately that has to sign off on it at the end of the line. That was the case, yes?

MR DISS: Yes.

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MR PEARSON: Yes. Okay. All right, thank you for that. Was there anything else, Brad or Geoff, on this contamination issue because I had a couple of other questions on other matters that I was going to raise. Or the Department, did you have other stuff that you want to raise on the contamination issue?

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MR DISS: I don't. Kate, do you have anything further?

MS CAMPBELL: No, thank you.

MR PEARSON: Okay.

MR JAMES: Nothing from me either, Richard, on contamination.

MR PEARSON: Okay, thank you. Geoff, anything?

MR KWOK: No, thanks, Richard.

MR PEARSON: Okay, thanks. So the other issues that I know – I think were in Council’s submission was saying notwithstanding there’s a contamination issue, there was some issues around biodiversity and flooding that they believed had not been fully resolved. Are you able to talk to that at all or are they questions that we should ask the Council?

MR DISS: It’s probably best for Council to clarify those issues. To our knowledge, but there was a draft – a BCAR being done for biocertification for the site, which still, we understand, has substantial work to be progressed to finish it. But Council also has a position I believe now around the potential need to retain some vegetation within that western corridor area. So Council would probably be best to clarify their current position on whether they still support the proposal going forward from other issues such as biodiversity.

MR PEARSON: Yes. Okay, and nothing on flooding that you’re aware of?

MR DISS: Not that I’m specifically aware that flooding was a significant issue that couldn’t be resolved. So again, Kate, had you run across that in our assessment?

MS CAMPBELL: No, I do understand that it was part of the original gateway determination, that there was a condition to address flooding and that the proponent has been working with Council to satisfy their concerns in relation to that matter.

MR PEARSON: Thank you. Do you know in relation to the land that’s proposed to be zoned E2, that’s the relevant zoning, isn’t it? R2 and E2. What’s the management regime – sorry, C2, isn’t it? C2. What’s the management regime for that land? Who would become the land manager for that area of land?

MR DISS: I’m not sure if that issue’s been resolved, seeing the biocertification process was still ongoing, unless you have further information, Kate.

MS CAMPBELL: I don’t, no.

MR PEARSON: Yes, because there’s quite a bit of existing C2 land in the locality behind that subdivision that’s on the bottom of your map on p 32 of your slide that’s outside this site, that this C2 area will connect to. So again, maybe this is a question for Council, we can make a note, Brad and Geoff, that we ask that question of Council because I am interested to know who’s going to look after that land going forward or is it part of a community title subdivision going forward?

I don’t know. I guess we can ask the applicant that question as well because there’s a

considerable amount of land on this site that will not be zoned R2, it will be zoned C2. So I think we need to have some understanding about how all that C2 land is being managed, whether it's an integrated way or a more piecemeal way. All right, well – yes, sorry, Kate?

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MS CAMPBELL: Sorry, Richard. The connectivity of that environmental land really has formed quite a large component of the planning proposal and a big consideration for Council. I understand that during the exhibition period there were a large number of submissions from the community just sort of stating that it's an important piece of land for connectivity. So obviously the proponent's tried to allocate sections of land on the subject site to retain that connectivity, so it certainly would be worth clarifying how that's going to be managed.

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MR PEARSON: Yes, okay. And you're not aware of any of that other land that's been subdivided and recently developed having the same contamination issues being raised by the EPA? For example, that land on Waterside Drive, which I think was where we went on our site inspection. Yes, so this issue hasn't previously come up from the –

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MR DISS: No, to our knowledge this is the first time that it's been raised and was raised through a proactive submission by the EPA, so –

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MR PEARSON: All right. Well, thanks for all of that. Brad or Geoff, do you have anything further we should follow up on?

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MR JAMES: Nothing from me, Richard.

MR PEARSON: Yes.

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MR KWOK: Nothing from me as well. Thanks, Richard.

MR PEARSON: Yes. And I don't think there's anything taken on notice there that we need a response to because you answered the question about delegation. So is there anything else that the Department wanted to raise on this with the Commission?

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MR DISS: No, I think we've touched on all of our issues. As we've outlined, one of our major concerns is timeframes and certainly trying to get planning proposals finished, noting that this has already been in the system for over 18 months. So again just the uncertainty in the timeframes played a major role in our consideration along with public health when it came to contamination.

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MR PEARSON: Yes, is there a bit of a campaign in the Department to clean up the outstanding planning proposals if they're going over timeframes?

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MR DISS: Certainly we're requesting that planning proposals be finished within our KPIs as such and that they don't stay outstanding for significant periods because of the uncertainty it causes for the community.

MR PEARSON: Yes, okay. And there were a lot of submissions on this when it was exhibited, weren't there?

5 **MR DISS:** Yes, I don't have the exact numbers but yes, significant numbers.

MS CAMPBELL: 360, I believe.

10 **MR PEARSON:** Yes, okay. So yes, there was a lot of community interest. Okay, well thank you. I mean, you're aware that the Commission's role in this is to provide advice to the Department, it's not determinative. So we'll hear from the other interested parties and if we need to get anything further from the Department, we'll be back in touch. We do have a KPI of our own on this, Brad and Geoff, to provide advice. I'm not sure what it was – what our drop-dead date is. Is that something you know offhand?

15 **MR JAMES:** Yes, we've been given 35 days to provide advice on this, which takes us to I believe 5 December, is that correct, Geoff?

20 **MR KWOK:** I recall it was that first week of December, yes.

MR JAMES: Yes, 5 December, Richard, advice by that date.

25 **MR PEARSON:** Okay, so unless there's a stop the clock reason that arises, that's what we'll be working towards. So thank you for attending and presenting that advice and the clear presentation. Much appreciated. I think even though we're a bit early, we can terminate the meeting now, unless there's anything finally further you want to add?

30 **MR DISS:** No, no, not from us. But yes, no, thank you for your time today, Richard and nice to see you again.

MR PEARSON: Yes, you too. Okay. Thanks, Craig and Kate.

35 **MS CAMPBELL:** Thank you.

MR DISS: Thank you, everyone.

MR KWOK: Thank you.

40 **MR PEARSON:** See you later. Bye.

MS CAMPBELL: Thank you. Bye.

>THE MEETING CONCLUDED