



MINUTES

of the

Wingecarribee

Local Planning Panel

**Held via electronic circulation of papers pursuant to
Clause 26, Schedule 2 of the Environmental Planning
and Assessment Act, 1979.**

Meeting held via MS Teams

on

Thursday 7 March 2024

**MINUTES OF THE ELECTRONIC LOCAL PLANNING PANEL MEETING
THURSDAY 7 MARCH 2024**

Present:	Chairperson	Michael Mantei
	Expert	Heather Warton
	Expert	Larissa Ozog
	Community Representative	Anthony Neill
In Attendance:	Manager, Strategic Outcomes	Deniz Kilic
	Strategic Planner	Susan Stannard
	Executive Assistant Director Communities and Place	Leesa Stratford

Proponent Briefing	11:00 am – 12:00 pm.
Council Officer Briefing	1:00 pm – 2:00 pm

1 DECLARATIONS OF INTEREST

There are no declarations of interest for the meeting.

2.

**CONSIDERATION OF A SCOPING REPORT TO INCLUDE LAND AT
WATTLE STREET COLO VALE WITHIN THE LOCAL HOUSING STRATEGY
FOR FUTURE RESIDENTIAL DEVELOPMENT**

Report Author: Susan Stannard
Coordinator Strategic Policy

Authorised by: Deniz Kilic
Manager Strategic Outcomes

Mr Michael Brown and Mr Graham Pascoe addressed the MS Teams meeting on behalf of the property owners' group.

PANEL ADVICE

The Panel recommends:

1. Council Officers provide the proponent with feedback on the scoping proposal submitted by Michael Brown Planning Strategies. This approach is consistent with the process for the preparation of a planning proposal outlined in the document titled Local Environmental Plan Making Guide dated August 2023 prepared by the NSW Department of Planning and Environment ("the LEP Guide").
2. The basis for the feedback be the matters outlined by Council Officers in their report to the Panel's meeting on 24 January 2024.
3. The Proponent be afforded the opportunity to address the feedback provided by Council officers prior to the preparation and submission of any planning proposal to Council for formal consideration.

PANEL REASONS

Background

At its meeting held on 24 January 2024 the Wingecarribee Local Planning Panel considered a report (item 5.1 in the Meeting Agenda) prepared by Council's Coordinator Strategic Policy on a scoping proposal submitted by a group of landowners in Colo Vale to enable their land to be rezoned to R2 Low Density Residential and to amend the minimum lot size map to permit a minimum lot size of 1000 m² under *Wingecarribee Local Environmental Plan 2010* ("LEP 2010").

The Panel resolved at its meeting on 24 January 2024 in relation to item 5.1 as follows:

1. ***The Panel recommends that the Scoping Proposal to include land at 62-64, 66-68, 70-72, 74-76, 78- 82 and 99-103 Wattle Street Colo Vale NOT BE SUPPORTED and the subject land NOT BE CONSIDERED FURTHER for inclusion in the Wingecarribee Local Housing Strategy.***

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- 2. The Panel recommends that the Strategic Outcomes Team develop a wholistic and strategic Place Plan for Colo Vale following the success of the award-winning Robertson Place Plan and planned Bundanoon Place Plan in the Strategic Outcomes work program for 2024/2025.**
- 3. The Panel recommends Council maintains its support for the Wensleydale site as the proposed New Living Area for Colo Vale and the focus for future urban growth in the Colo Vale village.**

The Panel provided the following reasons for its advice:

- a. The previous Panel's resolution in respect to this site was that the site had merit for further investigation for inclusion in the Local Housing Strategy.**
- b. The Panel is satisfied that the constraints and opportunities of the site have now been fully assessed by the applicant and considered by Council Officers resulting in the recommendation to not support the Scoping Proposal.**
- c. Having further considered the site, the proposal is not an appropriate strategic approach for further residential development in Colo Vale.**
- d. The proposal is regarded as an undesirable spot rezoning request to expand the village footprint at the western fringe of Colo Vale village.**
- e. The proposal undermines Council's preference for strategically identified and master planned New Living Areas and infill sites, where infrastructure issues can be resolved cohesively, development sequencing is equitable and follows a place-based approach.**
- f. The nexus between necessary vegetation clearing to manage bushfire risk and protection of high environmental value (HEV) lands has not been clearly established and may be irreconcilable.**
- g. There is no capacity in the Mittagong Sewer Treatment Plant (STP) to receive the proposed site's effluent until at least 2028.**
- h. There are questionable legal stormwater discharge points at or near the subject land.**
- i. The proposal cannot deliver infill housing in the short-term, due to the abovementioned fundamental planning and engineering constraints.**

The scoping proposal, including the Panel's resolution, was consider by Council at its meeting held on 21 February 2024. Council resolved as follows:

- 1. Council note the letter from Michael Brown Planning Strategies dated 19 February 2024 and refer same to all members of the Local Planning Panel for their information.**
- 2. The matter be deferred and the Local Planning Panel be requested to amplify on its reasons for Item 2 and the General Manager provide a priority listing timeline for Village Place Plans.**

3. Council maintains its support for the Wensleydale site as the proposed New Living Area for Colo Vale and the focus for future urban growth in the Colo Vale village.

A Panel comprising the same members that attended the Panel’s meeting on 24 January 2024 met by MS Teams on 7 March 2024. The Panel heard from the proponent’s planning consultants Michael Brown and Graham Pascoe. The Panel received a further briefing from the Council’s strategic planners.

Panel’s Response to Council’s Resolution

The Panel makes the following two observations about the Panel’s role generally and the Council’s resolution of 21 February 2024.

Firstly, the Panel notes that the procedure for the lodgement and consideration of a planning proposal is set out in the document titled “Local Environmental Plan Making Guidelines” dated August 2023, prepared by the Department of Planning and Environment (“the LEP Guide”). That document clearly identifies the steps to be undertaken by proponent when seeking to lodge an application for a planning proposal.

A scoping proposal is a document submitted to Council prior to the formal lodgement of a planning proposal. The scoping proposal is a pre-lodgement document which is submitted to a council to enable the council to provide a proponent with “early feedback”, in relation to the strategic and site-specific merits of a proposal.

The Panel’s function in relation to planning proposals is to provide “advice” to the Council on whether the proposal should be forwarded to the Minister for a gateway determination under section 3.34 of the *Environmental Planning and Assessment Act 1979* (“EP&A Act”) (see Minister’s s9.1 Direction 29/9/2018).

A scoping proposal foreshadows a planning proposal but is not itself a planning proposal. There is no statutory decision to be made by a council in relation to a scoping proposal. Unlike a decision to “not progress” a planning proposal, there is no right of review if a council refuses to progress a scoping proposal.

The Colo Vale scoping proposal has not yet reached the planning proposal stage and was not strictly required by the Minister’s s9.1 Directions to be referred to the Panel. The timeframes in the LEP Guide suggest that the scoping proposal phase of the process is dealt with entirely at Council officer level. Nonetheless the Panel has an overriding function to advise Council on “any other planning or development matter that is to be determined by the council and that is referred to the panel by the council” (s2.19(1)(c) EP&A Act). The Panel understands that Council originally referred the Colo Vale scoping proposal to the Panel in its overriding advisory capacity.

Secondly, item 2 of the Panel’s resolution should be read in context with items 1 and 3. Items 2 and 3 are related, and the background to their inclusion in the Panel’s Advice is contained in the Council Officers’ report to the meeting on 24 January 2024. The reasons for item 1 were explained in the Panel’s Reasons for the Decision.

It would be superficial for the Panel to amplify its reasons for item 2 without also considering items 1 and 3. The Panel wishes to ensure that proper procedure is followed, and that a careful and thorough

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assessment of the strategic and site-specific merit is made when the planning proposal foreshadowed in the scoping proposal is considered by Council.

The terms of item 1 of the Panel’s resolution were based on the Council Officers’ report to the Panel. Having now considered the proponent’s briefing to the Panel on 7 March 2024, the Panel considers that the Colo Vale scoping proposal should not be characterised as an application to amend the Local Housing Strategy (“LHS”). The Local Housing Strategy has been adopted. The scoping proposal seeks to amend the Wingecarribee LEP 2010 in a way that is inconsistent with the Local Housing Strategy. The LHS is a highly relevant matter for consideration in the assessment of strategic merit of any future planning proposal. The planning proposal must contain an explanation as to why the inconsistency is justified (s3.33(2)(c) EP&A Act).

The Council officers’ reports to the Panel meeting on 24 January 2024, in effect, contained Council’s feedback to the proponents on the scoping proposal. The Council officers’ report rightly identified a number of threshold issues that must be addressed in any future planning proposal. These include the scoping proposal’s inconsistency with the LHS. Item 1 of the Panel’s resolution (dealing with the LHS) is a matter of high importance that must be addressed in any planning proposal that is ultimately prepared. The proponent ought to be given an opportunity, as clearly outlined in the LEP Making Guide, to respond to those issues before preparing a planning proposal for submission to Council.

The Panel has decided to reframe its advice to Council in the terms outlined above, prompted by the Council resolution of 21 February 2024 and having now reflected on the purpose of the scoping proposal in the planning proposal process.

The Panel otherwise supports the Council officers’ feedback as outlined in the Council officers’ report considered by the Panel at its meeting on 24 January 2024. However, the Panel’s support for the Council officers’ feedback should not be taken as pre-empting or prejudging a future decision of the Panel on this matter.

VOTING 4 – 0
