

# WINGECARRIBEE LOCAL PLANNING PANEL

## OPERATIONAL GUIDELINES

### Introduction

The Wingecarribee Local Planning Panel (WLPP) is a local planning panel established for Wingecarribee Shire Council (Council) under Part 2, Division 2.5 of the Environmental Planning and Assessment Act 1979 (the Act). It is responsible for determining certain development applications (and modifications) and providing advice on planning proposals (collectively referred to as applications in these guidelines).

Council is required to have a Local Planning Panel pursuant to Section 2.17(2)(c) of the Act and Section 291 of the Environmental Planning and Assessment Regulation 2021. They have been created to ensure that the process of assessment and determination of certain applications are transparent and accountable.

The panel comprises of four (4) members:

- Chair
- Two (2) expert members; and
- A community representative.

The members for each meeting will be selected by the Chair from the pool of members appointed by the Minister. Two alternate chairs have been appointed who will have the same role as the chair when presiding over a panel meeting or other business.

This guide details how the panel is to operate. It incorporates:

- Procedural requirements from the Act (refer to Division 2.5 and Schedule 2)
- Requirements from the Local Planning Panels Direction – Operational Procedures issued by the NSW Minister for Planning under Section 9.1 of the Act.
- General requirements to ensure the efficient and effective operation of the Panel. While these requirements will generally be followed, they may be varied by the Chair depending on the circumstances of a particular meeting or application or to respond to changed circumstances (e.g. COVID 19).

A local planning panel is not subject to the direction or control of the Council, except on matters relating to panel procedures and the time within which the panel is to deal with a matter, provided they are not inconsistent with the Directions of the Minister under Section 9.1 of the Act.

## 1. Panel Composition

### Chair

- 1.1 The chair is responsible for the management of the Panel's functions and operations, including managing conflicts of interest.
- 1.2 The chair is to preside over panel meetings and other business.
- 1.3 The chair is to ensure the Panel fully discharges its responsibilities under the Act, (including the relevant operational procedures), any other directions from Council, the code of conduct, and these guidelines in a timely manner.
- 1.4 The chair is responsible for the good and orderly conduct of the panel. The chair may do all things necessary to fulfil this responsibility.
- 1.5 The chair is to decide which panel members (or alternates) are to hear a matter prior to the meeting commencing.
- 1.6 The chair must regularly rotate independent expert members and the community representatives from the pool of appointed members to reduce opportunities to improperly influence panel members.
- 1.7 The chair and alternate chairs shall rotate presiding over meetings (unless the chair or alternate chairs are unavailable for any reason).
- 1.8 Alternate chairs have the same role as the chair when presiding over a panel meeting or any other business.

### Independent expert members

- 1.9 The expert members can be interchanged as needed by the chair for reasons including:
  - A member has a conflict of interest;
  - A member is unable to attend on the day; and/or
  - To ensure there is a rotation of expert members and alternates to hear matters.

### Community representatives

- 1.10 A community representative can be interchanged as needed by the chair for reasons including:
  - A member has a conflict of interest;
  - A member is unable to attend on the day; and/or
  - To ensure there is a rotation of community representatives and alternates to hear matters.

### Quorum

- 1.11 Where a quorum (3 members) for a meeting is not present, the meeting shall be deferred.

### Wingecarribee Local Planning Panel Members

- 1.12 A list of current Wingecarribee Local Planning Panel Members is available on Council's website.



## Review of Panel decisions

- 1.13 All of the processes detailed below for determination of a development application also apply to the determination of a request to review a decision under Division 8.2 of the Act.
- 1.14 The determination of a review application from a panel decision shall be determined by different members (including the chair) of the panel to those who made the original determination.

## 2. Conduct of Panel Members

- 2.1 All panel members must comply with the code of conduct approved by the Minister for Planning.

## 3. DETERMINATION OF DEVELOPMENT APPLICATIONS

### 3.1 BEFORE THE MEETING

- 3.1.1 Panel Chairs and Panel Members will be provided with a draft list of items for a meeting two weeks prior to the meeting. Any conflicts of interest are required to be declared by the close of business on the day following this notification to the Panel Chair, Wingecarribee Shire Council's **Director Communities and Place** and Council's dedicated email address [mail@wsc.nsw.gov.au](mailto:mail@wsc.nsw.gov.au). Selected Panel Members may be replaced for that Panel meeting due to any identified conflict of interest.
- 3.1.2 The Panel Meeting Business Paper for the Panel Meeting will be sent electronically to the Panel Chair and selected Panel Members at least one week preceding a panel meeting. If necessary, an electronic link to application documentation such as architectural drawings, engineering drawings, etc. may also be sent. If requested, paper copies of the Business Paper will also be sent to members by express post prior to the meeting date.
- 3.1.3 The Business Paper for the Panel Meeting will be made publicly available on Council's website the Friday prior to the meeting.
- 3.1.4 Applicants and people who have made written submissions will be advised of the Panel Meeting date the week prior to the meeting.
- 3.1.5 People wishing to address the Panel at the Panel Meeting must register with the Panel Coordinator via email at [mail@wsc.nsw.gov.au](mailto:mail@wsc.nsw.gov.au) by 4:30pm, two (2) business day prior to the Panel Meeting of their intention to do so.
- 3.1.6 Unless the Chair otherwise permits, any person wishing to address the Panel must have already lodged a written submission on the subject development application.



3.1.7 Unless the Chair otherwise permits, additional submissions, documents, reports and amended plans will not be received or considered by the Panel at the meeting.

## 3.2 **SITE INSPECTIONS**

3.2.1 Site inspections are held ordinarily in respect of each matter that is to come before any meeting of the Panel and when considered necessary by the Chair. Site inspections shall, so far as practicable, be held on the same day as the meeting of the Panel at which the matter is to be considered.

3.2.2 Site inspections are not open to applicants, objectors, or members of the public.

3.2.3 Council staff will generally accompany the Panel onsite inspections as appropriate.

## 3.3 **THE PANEL MEETING**

3.3.1 The Panel Meeting will generally be held on the 4th Wednesday of each month at Council's Civic Centre. The time of the meeting will be 2.00pm and open to the public. The meeting will be recorded and live streamed on Council's website.

3.3.2 Speakers for item agenda matters listed at the Meeting of the Panel shall be heard in the following order:

- Any objectors or other persons who wish to make representations; and then
- The applicant or the applicant's representative.

Unless the Panel otherwise permits, any person who addresses the Panel at any meeting of the Panel may speak for no more than 3 minutes in respect of any one matter before any meeting. The Panel Chair may exercise discretion and allow for an extension of time as required to ensure all issues are properly considered. Where there are a large number of objectors with a common interest, the Panel may hear a representative of those persons with a view to discharging its responsibilities in a timely manner.

3.3.3 The Panel Chair or any Panel Member may seek to clarify any matter with the speaker. Council staff will be invited to respond to any issues raised by the Panel Chair

3.3.4 A person is not entitled to be legally represented at any meeting of the Panel unless the Panel Chair grants permission in any particular case. On granting any such permission the Panel Chair shall have regard to the following matters:

- the nature and complexity of the matter and whether it involves a question of law,
- whether the person has the capacity to present their submission without legal representation, and
- such other matters as the Chairperson considers relevant.

3.3.5 The Panel Chair shall be responsible for the good and orderly conduct of the Panel Meeting and may do all things and take all steps necessary to control the good and orderly conduct of any meeting of the Panel or site inspection carried out by the Panel in the performance of its functions.



- 3.3.6 A person whether a member of the Panel or a member of the public, shall not speak while another person is speaking or otherwise interrupt that person while speaking. Nothing in this guideline prevents a member of the Panel from raising a point of order.
- 3.3.7 Following the speakers' addresses on all listed matters, the Panel may deliberate, conclude and determine all or any of the matters in the public (open) meeting. Alternatively, the Panel may decide to adjourn the meeting to deliberate on all or any matters. If this occurs, the Panel will return to the public (open) meeting to announce its determination.
- 3.3.8 There is no further opportunity for debate with the Panel members or the applicant and/or their representatives and speakers are not allowed to enter-into unsolicited comment or argument with the Panel.
- 3.3.9 Should the Panel resolve to request additional information or seek amendment of the application, the Panel may defer the application, providing a written request to the applicant with the reasons for deferral a copy of which will be made available on Council's website.
- 3.3.10 Determinations and any relevant decision of the Panel shall be by a majority of votes of members present at a meeting and entitled to vote. If votes are tied the Panel Chair will have the casting vote. Voting (including the names and vote of each Panel member when the vote is not unanimous) will be recorded in the minutes.

#### 3.4 **AFTER THE PANEL MEETING**

- 3.4.1 Minutes of the Panel Meeting shall be endorsed by the Panel Chair.
- 3.4.2 Minutes of the Panel Meeting will ordinarily be made publicly available on Council's website within two (2) business days following the meeting. Where email or postal addresses are available, submitters will be advised of the Panel's decision.
- 3.4.3 Except where a matter is deferred, the applicant shall be provided with a Notice of Determination in accordance with the provisions of the Environmental Planning and Assessment Act and Regulations as soon as practicable.

#### 3.5 **CONSIDERATION OF PLANNING PROPOSALS**

- 3.5.1 Planning Proposals are referred to the Panel for recommendation only. A proposal is to be referred to the Panel before it is forwarded to the Minister under section 3.34 of the Environmental Planning and Assessment Act 1979 (forwarded by the Council for a Gateway determination) and again following the public exhibition period before any final decision is made by Council.





- 3.5.2 Planning Proposals will be referred to the Panel for recommendation to Council unless the Council's General Manager determines that the planning proposal relates to:
- the correction of an obvious error in a local environmental plan
  - matters that are of a consequential, transitional, machinery or other minor nature or
  - matters that Council's General Manager considers will not have any significant adverse impact on the environment *or* adjoining land.
- 3.5.3 Planning Proposals initiated by an application to Council from a Proponent will be reported to the Panel for recommendation to the Council by staff. Any recommendation formulated by the Panel shall form part of the reporting of the matter to the Council.
- 3.5.4 Where the Planning Proposal is made by the owner/applicant, the owner/applicant will be permitted to address the Panel.
- 3.5.5 Applicants and people who have made written submissions will be advised of the Panel Meeting date the week prior to the meeting.
- 3.5.6 People wishing to address the Panel at the Panel Meeting must register with the Panel Coordinator via email at [mail@wsc.nsw.gov.au](mailto:mail@wsc.nsw.gov.au) by 4:30 pm two (2) business day prior to the Panel Meeting of their intention to do so.
- 3.5.7 Where the Planning Proposal has been publicly exhibited, speakers to the Planning Proposal at the Meeting of the Panel shall be heard in the following order:
- Any objectors or other persons who wish to make representations; and then
  - The applicant or the applicant's representative
- 3.5.8 Planning Proposals initiated by Council staff will be referred to the Panel for recommendation before reporting and consideration by the Council.
- 3.5.9 Council staff will provide a report to the Panel regarding each Planning Proposal on which it is seeking the recommendation of the Panel.
- 3.5.10 As Planning Proposals are referred to the Panel for recommendation only, the Panel will generally provide a recommendation to council formulated within the Panel Meeting.
- 3.5.11 If Council's decision is to forward the Planning Proposal for a Gateway determination, then the Panel's recommendation shall also be forwarded to the Minister.
- 3.5.12 The arrangements for the Panel before the Meeting, and general administrative matters associated with the Panel shall be generally the same as for development applications, including distribution of papers to Panel Members, site inspections, and Council staff and administrative support provided by the Council to the Panel.



### 3.6 Transaction of business outside meetings

3.6.1 A panel may, if it thinks fit, transact any of its business by the circulation of papers (electronically or in hard copy) among all the members of the panel. A resolution approved in writing by a majority of those members is taken to be a decision by the panel.

The chair and each member of the panel have the same voting rights as they have at an ordinary meeting of the panel.

The resolution is to be recorded in the minutes of the meetings of the panel.

3.6.2 A panel may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

### 3.7 Obligation to consult with Council

3.7.1 The panel must not exercise a function that will result in the making of a decision that would have, or that might reasonably be expected to have, a significant adverse financial impact on Council until after it has consulted with Council.

The consultation may be in writing, with Council being given a specified time to respond in writing. Where a meeting with the General Manager (or delegate) is held to discuss the matter, all relevant panel members should be present and minutes kept of the meeting and its outcomes.

### 3.8 Control and Direction of Court Appeals

Pursuant to Section 2.20(8) of the EPA Act, the panel has delegated to Council's General Manager, Director Communities and Place and Manager Development Assessment and Regulation the functions of the panel under Section 8.15(4) of the EPA Act in respect of the control and direction of appeals subject to the following:

- (i) As required by Section 8.15(4) of the EP&A Act, Council is to give notice to the Panel Chair and Alternate Panel Chair (electronically) of all Appeals relating to the determination or decision of the Panel or any deemed refusal within seven (7) days of the appeal being served.
- (ii) In the case of an Appeal relating to a determination or decision of the Panel that is contrary to a Council officer's development assessment report, either the General Manager, Director Communities and Place or Manager Development Assessment and Regulation will consult with the Chair of the Panel that made the determination or decision (or the Chair's nominee) as to the conduct of the Appeal within 5 business days of the notice of service of the appeal.
- (iii) In the case of all Appeals relating to a determination or decision of the Panel, either the General Manager, Director Communities and Place or Manager Development Assessment and Regulation will keep the Panel Chair that made the determination or decision (or the Chair's nominee) informed as to major developments in, and the outcome of, the Appeal.
- (iv) In the case of an appeal being lodged relating to a deemed refusal of a development application, that application shall be referred to the first practical



meeting, following the date that the Appeal was served, for determination or decision by the Panel. If it is not practical to provide a report, the Chair (or Chair's nominee) shall be consulted prior to any Statement of Facts and Contentions being filed with the Court. Should there be no opportunity to consult with, or a response to a draft Statement of Facts and Contentions no be received from, the Chair (or the Chair's nominee) at least two business days prior to the date required for the filing of the Statement of Facts and Contentions the General Manager, Director Communities and Place or Manager Development Assessment and Regulation shall have delegation to settle the Statement of Facts and Contentions without consultation or a response.

- (v) The Council shall circulate a memo to all Panel members quarterly on the status of all Appeals relating to the determination or decision of the Panel and deemed refusals which would, but for the Appeal, have come before the Panel. If an agreement under Section 34 of the Land and Environment Court Act has been made, the memo shall include reasons sufficient to demonstrate how the Panel's determination was addressed in the Section 34 Agreement.

