

MINUTES

of the
Local Planning Panel
held in
Council Chambers,
Wingecarribee Shire Council Civic Centre,
68 Elizabeth Street, Moss Vale
on

Wednesday 3 May 2023

The meeting commenced at **2:00 pm**

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MINUTES OF THE LOCAL PLANNING PANEL MEETING OF WINGECARRIBEE SHIRE COUNCIL HELD IN COUNCIL CHAMBERS, CIVIC CENTRE, ELIZABETH STREET, MOSS VALE ON WEDNESDAY 3 MAY 2023 COMMENCING AT 2:00 PM

Present:

Chairperson	Stephen Leathley
Expert	Linda Kelly
Expert	Larissa Ozog
Community Representative	Chris McCann

In Attendance:

Acting Manager Planning Assessment and Regulation	John McFadden
Manager Strategic Planning	Michael Park
Executive Assistant Director Communities and Place	Leesa Stratford

1 OPENING OF THE MEETING

The Chairperson opened the meeting and welcomed members of the public and the press.

2 ACKNOWLEDGEMENT OF COUNTRY

The Chairperson acknowledged country:

“Wingecarribee Shire Council acknowledge the Gundungurra and Tharawal people as the traditional custodians of this land we now call the Wingecarribee Shire. I pay my respect to Elders both past, present and emerging. I would also like to extend that respect to all Aboriginal and Torres Strait Islanders present here today.”

3 APOLOGIES

There were no apologies for the meeting.

4 DECLARATIONS OF INTEREST

There were no Declarations of Interest Declared at the meeting.

5 PLANNING PROPOSALS

5.1 Low Density Residential Development Controls Review

Report Author:	Senior Strategic Planner
Authoriser:	Executive Manager Strategic Outcomes

PURPOSE

The purpose of this report is to seek feedback from the Panel and its endorsement of the draft Low Density Residential Development Controls for the purposes of public exhibition.

OFFICER'S RECOMMENDATION

THAT the attached Draft Low Density Development Controls be endorsed for public exhibition for a period of four (4) weeks and be reported back to Council at the completion of the exhibition period.

PANEL ADVICE

That Council consider the following issues prior to placing the Draft Low Density Development Controls on public exhibition:

- 1. General Comment - controls are supported by objectives which is considered satisfactory, and the provision of some additional visual diagrams will assist with the interpretation of the controls.*
- 2. Council should consider clearly differentiating between some land uses such as Detached "Habitable" building and "secondary dwellings". Definitions need to be very clear in terms of uses for outbuildings and their intention and purpose. The detached "habitable" buildings like secondary dwellings should have similar numerical standards to ensure these structures are small and ancillary to the principle dwelling hence not large and dominating.*
- 3. The provisions in the DCP for secondary dwellings appear to be contrary to the provisions in Clause 52 of the Housing SEPP 2021 in relation to floor space. The provisions of the SEPP override the DCP in the 'prescribed zones' and so should be included in the DCP as a reference. The DCP controls seem to be different, and advice would be to rely on all the controls the provisions noted in the SEPP which should have the same intent across the whole LGA and therefore be simple and consistent in application.*

4. *The garages for dual occupancy developments as highlighted in the diagram on page 35 should be amended to be shown as being recessed behind the front facade in all cases so to reduce their visual dominance. It is advised that prior to exhibition this diagram and any controls be updated for clarity.*

 5. *In the privacy section 1.12.3 an additional design mechanism to reduce any potential for overlooking (in addition to the measures suggested) is to offset windows*
 - *Section 1.11 Access and Parking - a control that specifies a preferred location on a site for a carport or garage, rather than leaving it to 'reflect the current street pattern' (which may not be desirable)*

 6. *Section 1.12 Preservation of Views and Privacy*
 - *review use of words related to views for consistency (eg preserve, maintain, minimise)*
 - *as this is a document developed to be "easy to use, understand and implement", the concept of 'view sharing' is a complex one to include under this section. The control that reads - "The concept of 'view sharing' must be considered.....". This should be reworded so it is easy to understand.*
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6 DEVELOPMENT APPLICATIONS

6.1 Development Application 23/0070 - Subdivision of Land to Create Two Lots, Lot 10 DP871318, No 44 Osborne Road Burradoo

Report Author:	Senior Development Assessment Planner
Authoriser:	Manager Development Assessment and Regulation

PURPOSE

The purpose is for the Panel to consider an environmental assessment report prepared under S.4.15(1) of the Environmental Planning and Assessment Act in respect to Development Application 23/0070 for a proposed two (2) lot subdivision of 44 Osborne Road, Burradoo..

Site Inspection:

The Panel did not undertake a site inspection as it had no authority to approve the development application given the proposals non compliance with the provisions of Clause 4.6(6) of the WLEP 2010.

Speakers:

Mr Scott Lee (LEP Planning) addressed the Panel as the Applicant for the Development Application. Mr Lee indicated that he understood the Officer's recommendation and was seeking direction on a planning pathway which would assist in achieving his clients objective of creating two separate titles for the two dwellings located on the site. The Chair indicated that be done via consultation with Council's Strategic Planning section in terms of potential options to amend the WLEP 2010.

OFFICER'S RECOMMENDATION

THAT the Local Planning Panel determines development application 23/0070 for a two-lot subdivision at Lot 10 DP871318 No 44 Osborne Road Burradoo by REFUSAL subject to the reasons specified in the recommendation to the development assessment report.

PANEL DECISION:

- 1. The Clause 4.6 Variation request to clause 4.1 of the WLEP 2010 in respect to Development Application 23/0070 for two (2) lot subdivision of Lot 10 DP871318, No 44 Osborne Road Burradoo is NOT SUPPORTED.***
- 2. The Development Application 23/0070 for two (2) lot subdivision of Lot 10 DP871318, No 44 Osborne Road Burradoo is determined in accordance with s4.16 of the Environmental Planning and Assessment Act by the REFUSAL of development consent for the following reasons:***

- a. ***Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979, development consent cannot be granted as the proposal contravenes Clause 4.6(6) of the Wingecarribe Local Environmental Plan 2010 (WLEP 2010).***
- b. ***Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning & Assessment Act 1979, the proposed development does not satisfy the minimum lot size standard prescribed in Clause 4.1(2) in Wingecarribee LEP 2010.***
- c. ***Pursuant to Section 4.15(1)(e) of the Environmental Planning & Assessment Act 1979, in the circumstances of the case, approval of the proposed development is not in the public interest.***

REASONS:

1. Clause 4.6(6) of the WLEP 2010 applies to land zoned R5 Large Lot Residential, which the subject site is zoned. This provision does not enable consent to be granted in circumstances where the subdivision will result in 2 or more lots that are less than the minimum lot size area specified by the development standard set out in Clause 4.1(2) of the WLEP 2010. In this case the minimum lot size standard is 4,000m² and the proposed lots have areas of 2,200m² and 2,335m² respectfully which are both below the minimum lot size standard. Further, Clause 4.6(6) (b) also requires that the subdivision will not result in any lot that is less than 90% of the minimum lot size area specified by Clause 4.1(2), and in this case both proposed lots are proposed below this threshold. The proposal therefore fails both thresholds and therefore there is no authority to approve the proposed subdivision.
2. The Clause 4.6 Variation Request submitted by the applicant has not demonstrated to the Panel's satisfaction that there are sufficient environmental planning grounds to justify the non-compliance with the development standard, and that it is unreasonable and unnecessary to require compliance in this instance. The proposed development will be inconsistent with the objectives of Clause 4.6(1) of the WLEP 2010, the objectives of the standard set out in Clause 4.1(1)(b), the R5 Large Lot Residential zone objectives, and the objectives of the Environmental Planning and Assessment Act 1979. Further, the proposal fails the requirements set out in Cl.4.6(6) of the WLEP 2010.
3. The proposed development requires a significant variation to the minimum lot size standard prescribed in Clause 4.1(2) in Wingecarribee LEP 2010. Proposed Lot 101 (2200m²) and Lot 102 (2335m²) both fail to comply with the prescribed minimum lot size (4000m²). Approval of such significant variations to the WLEP 2010 Clause 4.1(2) provisions would undermine the local planning framework and is therefore not in the public interest.

VOTING: Unanimous

6.2 DA18/0027.05 Modification to Addition to existing building to contain an Education Room and Kitchenette as part of a Community Facility at Southern Highlands Botanic Gardens - Lot 1 DP 123536, 1 Old South Road, Bowral

Report Author: Consultation Planner
Authoriser: Manager Development Assessment and Regulation

PURPOSE

The purpose is for the Panel to consider an environmental assessment report prepared under Sections 4.15(1) and 4.55(1A) of the Environmental Planning and Assessment Act in respect to a modification application to DA18/0027.05 for an 'Addition to an existing building to contain an educational room and kitchenette as part of a Community Facility' at Southern Highlands Botanic Gardens 1 Old South Road, Bowral. The modifications are proposed to conditions 2 & 21 in respect minor amendments to the approved architectural plans. As noted in the development assessment report, these amendments principally relate to the dimensions and proportions of the approved building, with the primary design change being the enlargement of the internal floor area of the building to improve the functionality of the education space.

Site Inspection:

The Panel undertook a site inspection before the meeting.

Speakers:

There were no speakers on this application.

OFFICER'S RECOMMENDATION

THAT the Local Planning Panel determines DA18/0027.05 which seeks to modify the Development Consent (DA18/0027) for an 'Addition to an existing building to contain an educational room and kitchenette as part of a Community Facility' at Southern Highlands Botanic Gardens by APPROVAL, subject to the amended conditions of consent in ATTACHMENT 1 to the development assessment report.

PANEL DETERMINATION

The Modification Application DA18/0027.05 to conditions 2 & 21 for Addition to existing building to contain an Education Room and Kitchenette as part of a Community Facility at Southern Highlands Botanic Gardens - Lot 1 DP 123536, 1 Old South Road, Bowral is determined in accordance with Sections 4.55(1A) &(3) of the Environmental Planning and Assessment Act by APPROVAL as set out in the draft determination notice attached to the officers report.

REASONS:

1. The proposed design modifications are minor with no significant additional environmental impacts.
2. The development as approved remains substantially the same development.
3. The proposed design modifications do not give rise to any new conditions or to the modification of any additional conditions other than those sought by the modification application.

VOTING: Unanimous

**6.3 DA Shed Modification 21/1048.01 - Southern Highlands Botanic Gardens
Lot 1 DP 1231536, 1 Old South Road, Bowral**

Report Author: Consultant Planner
Authoriser: Acting Manager Development Assessment

PURPOSE

The purpose is for the Panel to consider an environmental assessment report prepared under Sections 4.15(1) and 4.55(1A) of the Environmental Planning and Assessment Act in respect to a modification application to DA 21/1048.1 for a 'Storage Shed' at Southern Highlands Botanic Gardens, 1 Old South Road, Bowral. The modification is proposed to condition 2 which references the approved plans. As noted in the development assessment report, it is proposed to extend the length of the building from 16m to 19m.

Site Inspection:

The Panel undertook a site inspection before the meeting.

Speakers:

Mr Scott Lee (LEP Planning) addressed the Panel on behalf of Mr & Mrs Alan Reekie, adjoining residents to the Southern Highlands Botanic Gardens. Issues related to a proposed Amenities Block to be located at the site were raised. These were not relevant to this application and the speaker was advised to discuss the issues with Council Development Assessment staff.

OFFICER'S RECOMMENDATION

THAT the Wingecarribee Local Planning Panel determines modification 21/1048.01 to modify an approved shed at Southern Highlands Botanic Gardens, Lot 1 DP 1231536, 1 Old South Road, Bowral by APPROVAL for the reasons specified in Attachment 1 to the development assessment report.

PANEL DETERMINATION

The Modification Application DA 21/1048.1 to condition 2 for a storage shed at Southern Highlands Botanic Gardens - Lot 1 DP 123536, 1 Old South Road, Bowral is determined in accordance with Sections 4.55(1A) &(3) of the Environmental Planning and Assessment Act by APPROVAL as set out in the draft determination notice attached to the officers report.

REASONS:

1. The proposed design modifications are minor with no significant additional environmental impacts.
2. The development as approved remains substantially the same development.
3. The proposed design modifications do not give rise to any new conditions or to the modification of any additional conditions other than those sought by the modification application.

VOTING: Unanimous

6.4 DA22/1064 - Construction of a Childcare Centre at Lot 2 DP 878094 and Lot 18 Sec 6 DP 976973, 9-11 Oxleys Hill Road, Bowral

Report Author: Consultant Planner
Authoriser: Acting Manager Development Assessment

PURPOSE

The purpose is for the Panel to consider an environmental assessment report in respect to Development Application 22/1064 for the construction of a 94-place child-care centre at 9-11 Oxleys Hill Road, Bowral.

Site Inspection:

The Panel undertook a site inspection before the meeting.

Speakers:

Mr Tony Ameneiro (Resident) - addressed the panel in favour of the recommendation.

Mr Theo Onisforou (Owner/Applicant) - addressed the panel against the recommendation and making submissions that the Panel defer determination of the application so that outstanding assessment issues relating to flooding could be addressed.

OFFICER'S RECOMMENDATION

THAT the Local Planning Panel determines development application 22/1064 for construction of a childcare centre at 9-11 Oxleys Hill Road, Bowral by REFUSAL subject to the reasons specified in ATTACHMENT 1 to the development assessment report.

PANEL DETERMINATION

Development application 22/1064 for construction of a childcare centre at 9-11 Oxleys Hill Road, Bowral is determined in accordance with s4.16 of the Environmental Planning and Assessment Act by REFUSAL of development consent for the following reasons:

- 1. Pursuant to section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with Clause 3.23 of State Environmental Planning Policy (Transport and Infrastructure) as it does not satisfactorily consider applicable provisions of the Child Care Planning Guideline, particularly in relation to building design, traffic & parking, landscaping, amenity, privacy, streetscape and environmental hazards.***
- 2. Pursuant to section 4.15 (1)(c) of the Environmental Planning and Assessment Act 1979, the site is not considered suitable for the proposed development given the flood prone nature of the land, the flood prone nature of the surrounding road network and increased risk to life from people trying to access the***

site during periods of flood events to retrieve children, the potential for landuse conflict with existing industrial uses on surrounding land and potential future heavy industrial landuses on surrounding land.

3. *Pursuant to section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with objectives of the E4 General Industrial zone.*
4. *Pursuant to section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with Clause 5.22 of Wingecarribee Local Environmental Plan 2010 in relation to flood planning.*
5. *Pursuant to section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with Clause 7.5 of Wingecarribee Local Environmental Plan 2010 in relation to riparian land.*
6. *Pursuant to section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with Part A Section 4 of Wingecarribee Development Control Plan 2010 (amended 2021) in relation to water management.*
7. *Pursuant to section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with Part A Section 5 of Wingecarribee Development Control Plan 2010 (amended 2021) in relation to development on flood liable land.*
8. *Pursuant to section 4.15 (1)(e) of the Environmental Planning and Assessment Act 1979 the development is not in the public interest.*

REASONS:

1. The Panel was not agreeable to the applicants request to defer determination of the development application as it does not consider that the site is suitable for the proposed development given flooding considerations and potential for landuse conflict with existing and potential future industrial landuses in the locality. The Panel also noted that the application had been under assessment for over 18 months with numerous outstanding issues remaining, that the applicant did not prevail themselves of a Pre DA Lodgement Meeting service so as to determine application requirements, that the applicant had not used the services of a qualified and experienced town planner to assist in the preparation of what is a complex development application prior to lodgement, and that as a result the application was lodged deficient of the required information to undertake an effective and efficient assessment of the proposal.
2. The site is subject to flooding, as is the surrounding local road network. Notwithstanding that the applicant has failed to provide the required flood impact assessment of the proposal, the Panel considers that a childcare facility is a sensitive landuse which should not be located on a site that is flood prone, and any proposed site should be accessible in flood emergency situations so that children can be retrieved. The Panel does not agree that an on-site refuge management strategy during periods of flood emergency is realistic and would put lives at risk and place additional stress on emergency services.
3. The site is located in a general industrial area with existing heavy industrial uses and potential future heavy industrial uses consistent with the E4 General Industrial zone occurring. Such landuses have potential to impact on the amenity of the development site due to noise, air quality and heavy vehicle traffic which would result in landuse conflict. For these reasons a child care facility is not a compatible landuse with such existing and potential future heavy industrial landuses.

4. The proposal is not considered consistent with the NSW Governments Child Care Planning Guideline including the objectives of the guideline which seek to “ensure that child care facilities are compatible with the existing streetscape, context and neighbouring land uses”, and that they “minimise any adverse impacts of development on adjoining properties and the neighbourhood, including the natural and built environment”.
5. Given the issues raised above, approval of the proposal is not considered by the Panel to be in the public interest.

VOTING: Unanimous

7 MEETING CLOSURE

Being no further business, the meeting closed at 2.55pm