



23/11/2021

Righting the Wrongs

Final Report on Planning, Development and Regulatory Services

Wingecarribee Shire Council

Introduction

Earnest Consulting has been engaged by Wingecarribee Shire Council (WSC) to carry out a review of the planning function of Council. This review has arisen from the suspension of Council and a decision by the Interim Administrator, Mr. Viv May, as part of his general review of Council, to have an independent review of the Planning functions of Council. There have been a significant number of representations by the community, as to how Council had been operating and carrying out its functions in this area.

The review was commenced with a series of interviews by Mr Malcolm Ryan, Director of Earnest Consulting P/L with both staff members and members of the public. Interviews have been conducted with 19 members of staff and 83 interviews with members of the community. There were often several people at each interview.

Some issues raised during the discussions with staff members have been referred to the General Manager for her action and where appropriate implementation.

A second report was requested due to the postponement of the Council election that was due in September 2021. This will now be delayed due to the decision by the Minister to have a Public Inquiry into the operation of WSC. There are consistent themes coming out of the interviews and it was considered reasonable for Council and the Minister for Local Government to consider these observations, rather than wait until the project is concluded. This second report has been received by Council.

This third and Final Report now concludes this review and a separate document containing the notes taken during the interviews will be sent to the General Manager.

These themes will be discussed below, and suggested actions and some general observations made that may assist Council in altering its strategic objectives.

This Final Report seeks to build on the themes outlined below and to produce a list of issues raised during the interviews as a way to establish a “road map” of actions that, if taken, will contribute to the change needed to take this Council into the future. There are also a small number of issues that require a detailed investigation in order to determine what actions if any, need to be taken.

Interviews

Themes arising from interviews with staff members

- Interference by Councillors to pre-determine recommendations especially on Planning Proposals
- Council adopting a strategic policy then continually amending it so that it never gets actually finalised (e.g. the Local Housing Strategy)
- Poor or no leadership from senior staff and the elected Council which manifests in a lack of trust in their decision making and a lack of authority to make decisions
- Not enough staff due to vacant positions not being filled
- Changes to the way customer service staff function at the front counter removed a lot of corporate knowledge, resulting in more enquiries going to the professional staff (and subsequently increasing workload)
- No triaging of requests, such that requests for repairs being sent to the development engineers rather than to Assets
- Old IT systems (noting that new updated system is now being installed)
- Too many hours taken up by being “on duty”
- No “technician” to check the completeness of applications, resulting in time being consumed for the assessment staff to check the application before they can start on reviewing an application
- Poor outdated Development Control Plans (DCPs)
- Inconsistency between various strategic policies of Council, such as Council’s position to promote tourism and the contents of the Local Environmental Plan (LEP) that effectively prohibits those land uses
- Poor non-competitive pay rates and working conditions
- Managers have no visibility of their budgets
- Managers appear to have little impact on Human Resources staff to get job offers out in a competitive market place
- Little or no communication to the affected staff on changes in IT or customer service function

Observations from the public

- Outcomes on applications appear to be different for people who are seen to be friends of Councillors or senior staff
- There appears to be no commitment to any of the normal ideals of customer service such as
 - returning phone calls
 - responding to correspondence
 - responding to compliance issues
 - presenting a non-hostile attitude to enquiries at the front counter
- Applications generally take too long (however some types of applications such as simple Development Applications (DAs) are dealt with in good time)
- Continual requests for more information or changes to the details of an application
- Inconsistent processes and outcomes such as different staff asking for different (and sometimes conflicting) information on the same application
- Different staff ask for changes on the layout and typography of plans
- No consistent checklists of data required for different types of applications
- Staff are tired and stressed
- Council is quick to take legal action but seems to have a high failure rate
- Difficult to access documents associated with applications even when the application is on notification, particularly with the DA Tracker
- Very few resources devoted to compliance action and responding to issues
- Duty staff are seen as being rigid in their responses and not willing to depart from the way things are done
- The DCPs are sometimes rigidly adhered to whilst other times they are not

Observations by Earnest Consulting

- Poor leadership from all levels of senior management has left the planning staff without a framework to operate in and results in inconsistent processes and objectives
- There are well documented instances where senior staff have directed staff on how to formulate their recommendations, e.g. modification of DA 19/1439.01. The report to the Planning Panel on this application sets out these requests quite clearly
- The whole issue of the calculation of developer contributions and particularly headworks contributions under the LG Act needs a complete review to ensure legality and consistency. The report mentioned above is an example of how inappropriate headworks charges affect the outcome of an application
- Staff are stressed and overworked largely due to the high number of vacant positions
- WSC does not appear to be competitive in the market place to attract new staff and retain existing staff
- The Planning instruments being used are in need of review and updating, particularly the DCPs
- The records system needs to be robust, consistent and compliant with all statutory requirements (Noting that Council has recently transitioned to a new records management system and all staff have recently undergone training in its use)
- Records management needs to be the “single source of truth” of all of Council’s records
- It is only just recently that the IT systems have been updated in hardware and software but the implementation of the systems and the utilisation of their capabilities needs to become a major priority for the whole of Council
- The data needed in the processing of planning applications comes from sources across the whole organisation and there needs to be a corporate commitment to meeting referral times and to maintaining accurate data
- There seems to be a disconnect between Council’s strategic goals and priorities and the statutory planning instruments. There appears to be a Council commitment to promoting tourism however the LEP has many provisions that limit or prohibit that outcome leading to confusion of the staff and the community over this inconsistency
- Public access to the contents of Development Applications, Planning Proposals and internal and external referrals in these applications needs to be easy, on-line and complete. It is acknowledged that some legal advice may suggest to limit access, however this simply leads to the suspicion that Council is trying to suppress information.
- The compliance function of Council appears to be spread very thinly across several teams, resulting in a perception from the community that actions are not consistent or non-existent
- There are instances of the community receiving different advice on the same issue from different parts of the organisation. Resulting in the “left-hand, right-hand syndrome”
- The amount of time devoted to “duty” at the front counter is not justified when there are so many staff vacancies
- The pre-lodgement service is poorly used due to its expense and inconsistent advice.

Issues

The issues arising from the interviews can be summarised below in a descending list of the times they were mentioned

- Customer Service
 - Answering the phone and returning phone calls
 - Answering correspondence
 - Providing clear and consistent advice
 - Delivering promised actions
- Planning
 - Old plans and DCPs
 - inconsistent application of rules
 - Planning for change and future demand for infrastructure
- Leadership
 - Inconsistent direction from senior staff
 - Listening to the needs of the staff
 - Reviewing processes to improve response times
 - Rewarding staff
 - Ensuring sufficient staff resources are available
 - Providing a safe work environment
- Transparency
 - Free unencumbered access to planning documents
 - Real engagement of the community
 - Ability to see that submissions have been received and considered
- Compliance
 - Adherence to rules and policies
 - Staff respond to instances non compliance
 - Consistent outcomes
 - Transparent actions that are predictable
- Resources
 - Ensuring there are enough staff and fiscal resources to serve the community
- Councillors
 - Perception that Councillors interfere with processes
 - Perception of favouritism towards some segments of the community
- Structure
 - The staff structure is not logical or efficient
 - Confusion as to who is responsible various issues
- Trees
 - Management of applications remove trees
 - Protection generally of the treed landscape
- Heritage
 - Inconsistent heritage advice
 - Inappropriate heritage application
- Consistency
 - Making predictable decisions when presented with the same circumstances
 - Similar applications appear to different outcomes
- Single issues – Trust, Integrity, communication and corruption

Notes taken from these interviews will be supplied to General Manager but as they contain opinions and assumptions by individuals it is not considered that they should be made public.

Discussion

The interviews with the staff of Council and members of the community have revealed a number of themes and concerns that are consistent from both groups. There are also a number of individual matters concerning applications and/or legal matters that have been referred to the General Manager for investigation.

In general, the issues concern the general leadership of Council both from the elected body and the senior staff. This in turn leads to poor customer service, apparent lack of co-ordination of the various functions of Council and general poor morale of the planning staff. There is a perception of inconsistent decision-making affecting planning matters and inconsistent application of various policy settings.

There appears to be a very limited adherence by the elected Council and the former senior staff to the normal pillars of the Local Government Act regarding the relationship between Councillors and staff. The use of the Code of Conduct, Declaration of Interests in planning matters and detailed and comprehensive communication with the community are not seen to be adhered to by staff or the community.

The planning function of Councils in NSW is complex with many different statutory obligations, varying needs of the different sections of the community and the often-vexed relationship between the elected body and the staff. The planning functions are not just confined to the statutory instruments of LEP and DCPs but permeate across the whole operation of Council.

Planning decisions locate people and activities in a wide range of environments, deliver new assets to Council, create demand for services that Council needs to deliver and can adversely affect Council's financial viability if these outcomes are not co-ordinated.

Council has a wide range of tools it must use to deliver its desired future and these need to be up to date, co-ordinated and integrated into all aspects of Council's activities, reviewed constantly and subjected to annual performance measurement. These tools include:

- Community Strategic Plan
- Local Environmental Plan
- Asset Management Plan
- Long Term Financial Plan
- Delivery Plan
- Operational Plan

The co-ordination of all of these functions is not evident at WSC. To the contrary, there appears to be a complete lack of any serious commitment to even the most basic strategic planning functions.

There are of course a diverse range of tactical plans such as the Workforce Management Plan and Delivery Program that are used to deliver the strategic outcomes. The co-ordination of all of these plans should be the responsibility of one group. These individual plans are in some cases the speciality of various parts of Council.

The annual performance measures need to be meaningful to the community and in many aspects the biennial community satisfaction survey can supply these indicators.

In parallel to this co-ordination of planning tools there is an overwhelming request from the community for a robust customer service charter that should set clear performance

indicators for all aspects of dealing with customers both outside and inside Council. These main indicators should form part of every performance agreement for every staff member and include the elected body as well.

The morale of the staff involved in Council's planning function is not high. They need to feel valued by both the leadership team and the elected body. They are there to carry out the strategic and statutory functions of Council and if the policy settings of Council need to change, they should be frank and fearless in the advice they give. Of course, it goes without saying that the elected body can make any decision they wish, but they need to be in possession of advice they can rely on before doing so.

Conclusions

This process, instigated by the Administrator originally for the purpose of reviewing the planning function of Wingecarribee Shire Council, has led to an enormous demand from the community and staff to bring forward issues to be discussed. These have ranged from:

- individual neighbour interactions
- the processing of Development Applications for both applicants and objectors
- the apparent different application of planning rules for what appears to be the same type of application
- conflicting or contrary policies of Council towards the same activity
- the tardiness of Council in processing applications
- the reluctance to act on compliance issues
- the unreasonable determination to follow compliance issues and take legal action
- the age of many planning policies
- the conflict between various strategic policies
- the lack of co-ordination between the various parts of Council
- uneasiness about Council's ability to meet the needs of an expanding population both physically and fiscally
- the attitude of staff towards applicants and objectors
- general distrust of how Council operates and the role of the Councillors

The scope of this Report however is confined to the planning functions of Council so the recommendations will deal with those aspects. However, the sheer size of the demand to be involved in interviews was surprising and may not have been completely satisfied. Many of the issues have been going since 1999

Whilst the many individual applications and associated issues will be referred to the relevant parts of Council for investigation, the underlying distrust of Council may not be ameliorated by this course of action.

The Administrator is carrying out many other investigations into several aspects of Council's functions but again this may not be seen by many as being complete enough. A Public Inquiry may be the only way to deal with all the issues associated with this Council for many years.

The following specific observations are proposed arising from this project to date.

1. Strategic Planning

Strategic planning in NSW local Councils now requires the integration of four major policies into a coherent and integrated framework to meet the needs of the community, while maintaining the financial stability of Council and the integrity of its operations. These policies are:

- a. The Community Strategic Plan (CSP). A statement of the desired future the community wants over a 10 year horizon
- b. The Delivery Plan and Operational Plan (the budget). The allocation of funds on a four-year rolling program to achieve the CSP and 10 year Long Term Financial Plan to ensure financial stability
- c. The Local Environment Plan (LEP) - the statutory plan to deliver the environmental controls over future development to achieve the CSP outcomes; and
- d. The Asset Management Strategy to ensure there is appropriate investment in the maintenance and replacement of assets to guarantee financial equity for the current and future populations.

In order to achieve this integration, there needs to be a very close relationship between the various parts of Council involved in the preparation of these plans, led by the team responsible for the Council's strategic roles.

Therefore, the strategic planning team needs to be led by a manager and be joined by the staff involved in the CSP. There also needs to be a very close relationship between the strategic planning team and the statutory planning team, therefore it would be best if these teams are in the same Division.

The LEP and DCPs at WSC are in need of being updated and made consistent with Council's other policy directions. This leads to the need to update and synchronise the planning contribution and headworks charges, along with "Works in Kind" procedures and the Voluntary Planning Agreements policy.

There is also a significant role for the strategic planning team to load all the required data into the e-services module which allows the automation of the planning certificate process and underscores the automation of the application assessment process. This automation process will be one of the most significant improvements in assessment times and the production of planning certificates.

2. Staffing

A significant proportion of the staff at the interviews commented about the number of vacant positions that Council could not fill. The general opinion is that the salaries and the working conditions are not attractive enough to retain good staff. In the past Council has relied on the attractive lifestyle available in the area to attract staff. The price of housing and now the reputation of Council longer works in its favour.

There is a high reliance on contract staff from labour hire organisations and consulting companies to fill vacant positions. Many of these contract staff have been with Council for many years without the roles being subject to a competitive tender process.

The recent issue with COVID-19 has highlighted different approaches to working from home as a solution for becoming a more attractive employer. A number of staff commute from the city and more flexible staffing arrangements would assist here as well.

Council needs to become an employer of choice by becoming competitive in the market place in order to attract and maintain high quality staff in the future. Retention of staff

gives assurance to the elected Council of consistent advice and to the community of continuity of service. Contract staff should only be used when there is no other choice available.

A significant number of the interviews raised issues with the compliance role of Council. Many about the lack of response to complaints and some about the way the enforcement role was carried out. Some also felt they were being persecuted by some senior staff members.

The compliance role is split between a single compliance officer in the Certification team, the Certifiers themselves and the Ranger team. There are vacancies and lack of training in this role among these teams. The compliance officer is well experienced and capable but is only one person.

Compliance is an important function in the management of development and protection of the environment and is a service that the community relies on. It is a difficult role and needs senior management and dedicated well trained staff. Indeed, all Council staff should be aware of what to do if they feel that something is wrong.

There was also comment both from within Council and from the community about the role of the development engineers. They were well respected but under resourced. They are also separate from the main engineering roles at Council and there didn't appear to be commitment to dealing with referrals when required or indeed issuing consistent advice. It is recommended that the development engineering role should be moved to be integral part of Council's Engineering function with appropriate performance standards to deal with referrals in good time.

3. Customer Service

The most common issue raised in all the submissions was the poor customer service. Even the simplest request such as returning phone calls, answering correspondence and polite interactions at the front counter were raised as issues. This also applied to the senior staff in the planning function and onto the previous General Manager.

There does not appear to be a "Customer Service Charter", key performance indicators to be met or the reporting of results. Although the customer service staff were appreciated for what they did, there were many comments about the need for more technical advice to be provided and more triaging of phone calls and application receivals.

The receipting and dealing with incomplete or inappropriate applications needs to be covered by a comprehensive policy. This policy should establish in clear details what applicants are expected to provide to Council, what will happen if the application is incomplete or not capable of being approved. There is an attitude of allowing applications to be modified which means that those applications that are well prepared and complete get "pushed back" whilst these incomplete applications absorb more staff time.

The provision of staff to be on duty to answer questions at the counter and deal with appointments by the community wishing to obtain advice and direction is an admirable goal. This needs to balance against the staffing resources currently available to process

applications. To reduce processing times by making staff available for “duty” does not seem to be a good balance at this time.

4. Application Processing

To be respected and appreciated application processing needs to be:

- Efficient
- Consistent
- Predictable
- Transparent

The staff need access to all the information that is needed to assess an application in an efficient and timely manner. The applicants need to know what is expected of them and to be provided to Council in order for their application to be processed. The community needs to see what information is being relied on to determine a particular application. Finally, the process should produce consistent outcomes.

Arising from the interviews it would appear that these objectives are not always being achieved. It must be noted that a large number of applications are processed successfully and efficiently. However, there is a significant number that are not and these are the ones that cause the greatest concerns to the community.

There were comments about the undue influence some Councillors appeared to have on application outcomes. It is noted that the Interim Administrator has established a Planning Panel to deal with applications and to make recommendations on Planning Proposals. This is the appropriate action to take to protect the role of Councillors in this process, to one of being an advocate for or against individual applications.

The data needed to process applications from within Council needs to be timely and accurate. The e-services modules that have recently been purchased are one of the best ways to achieve this goal. There is however a large short-term commitment of resources needed to implement these modules and this needs to be appreciated to deliver the longer-term reduction in processing times and improved accuracy of the process.

Another by-product of the use of these modules is the streamlining of all the processes involved, the consistent use of templates, consistent conditions imposed and an audited process of how each step through the process was finalised.

The pre-lodgement meeting is one of the best ways to communicate Council’s planning policies and procedures. These meetings are a “fee for service” function however the level of the fees should not deter people from attending. The current fees are very high when compared to neighbouring Councils.

The advice given must be reliable and recorded in concise minutes. There is a need for administrative assistance to ensure the minutes are promptly delivered. If a subsequent application is made, then these minutes should be displayed along with all the other application material. Any documents tabled at these meetings must be retained in Council’s records system.

This service is essential and needs to be valued both by the community and the staff involved.

5. Implementation Strategy

It is very clear that all the above recommendations cannot be carried out simultaneously. There needs to be a strategy to implement these changes over time. Applications will still need to be processed during the period of change.

There are some recommendations that could be implemented quickly such as the movement of staff from one directorate to another. However there needs to be a clear “road map” developed to guide these changes into implementation. Some of the projects will take many years, such as the review of the LEP and some will take significant staff resources.

The following list is an attempt to list in priority order the tasks to be achieved to implement these suggested changes. It is by no means a fixed list but one which the GM and Council can work with to achieve change:

- a. Review all the individual issues that were presented during the interviews
- b. Consider the suggested staff changes discussed above
- c. Attract and retain staff in order to fill vacant positions
- d. Prepare and implement a modern Customer Service Charter
- e. Review all processes used to determine planning applications and to produce certificates
- f. Confirm the source of all data used in these processes
- g. Implement the e-services modules
- h. Determine policy changes arising from this implementation
- i. Commence the Strategic Planning program outlined above

There are a small number of circumstances which require a far more detailed investigation and the preparation of individual reports for the Public Inquiry and the Administrator to consider. These

- The circumstances around the preparation of the Housing Strategy and the various reports to Council and the constant amendments that were made to the draft Strategy
- The interference by senior staff and Councillors in the recommendations being made for Development Applications and Planning proposals (eg DA 19/1439.01)
- The appropriateness of the zoning arrangements for the Milton Park development

The following recommendations are proposed.

Recommendations

1. Strategic Planning

- a. A strategic planning works program be adopted by Council to give priority to
 - i. Loading all the data needed into the e-services modules to deliver the best service to Council and the community
 - ii. A review of the LEP and DCPs
 - iii. Review and update of the contribution plans, including policies on VPAs and Works in Kind (WiK) requests
 - iv. Adoption of a housing strategy
 - v. Outsourcing of all Planning Proposals from the community to a panel of contractors on a fee for service arrangement until the major work outlined above is completed
- b. The Strategic Planning team should be led by a Manager
- c. Consideration be given to moving the Integrated Planning and Reporting function to the Strategic Planning team to ensure co-ordination between the CSP, LEP, DCPs, and Delivery and Operational Plans

2. Staffing issues.

- a. A review of the salary system and employment policies, especially in the technical service areas, be undertaken to ensure Council is competitive in the market to retain and attract staff
- b. An active recruiting program be undertaken to fill all the vacant positions
- c. Contract staff are only used to obtain skills that are:
 - i. not normally available with permanent staff or
 - ii. where external specialist advice is needed, or
 - iii. where there is a potential for a conflict of interest (e.g. applications by Council or by Councillors)
- d. These contract roles should be regularly tendered to ensure Council is receiving best value and expertise
- e. A compliance team, led by a Manager, be established that encompasses the rangers, parking officers, compliance officer, health and environmental officers and the tree officer to ensure the best available response to requests from the community
- f. The development engineers be moved to an appropriate manager in the division, responsible for engineering services to ensure consistent and co-ordinated advice is provided to both Strategic and Statutory Planning teams on infrastructure issues

3. Customer service

- a. That Council adopt a clear Customer Service Charter to ensure that staff respond appropriately to phone calls, emails, correspondence and application processing. This policy should produce measurable indicators on the appropriate standards that are expected
- b. That consideration be given to obtaining more technical skills for the front counter staff to triage applications to ensure a higher quality of application are received by the determining officers
- c. That consideration be given to adopting a DA Policy similar to that recently adopted by Central Coast Council to ensure that all applicants receive fair access to the determining officers.

- d. That consideration be given to reducing the hours that “duty” staff are available until all vacant positions have been filled.
4. Application processing
- a. That application assessment staff be deployed to the development of the e-services module
 - b. That Council adopt an appropriate policy that ensures that the community, as far as possible, has free and unrestricted access to all documents associated with Planning Proposals and Development Applications including all internal and external referrals using an on-line “DA tracking” tool
 - c. The fee for the pre-lodgement service be reduced to be similar to surrounding Councils. At the very least the service would be at a senior staff level, with business support to prepare the agenda, take minutes and book attendances. A higher fee could be considered for more additional senior staff to attend.
 - d. The attendances and attention to detail given to pre-lodgement meetings should be one of the first priorities of the officers attending to give high quality clear advice that can be relied upon.
 - e. If there is a subsequent application lodged then the minutes of the pre-lodgement discussions for that application should be publicly displayed along with the application itself.

Roadmap

- 1) The General Manager to review all the individual issues that were presented during the interviews:
 - a) Some of the issues are very old
 - b) There are active applications
 - c) There recent applications
 - d) General observations
- 2) The General Manager to consider the suggested staff changes discussed above
- 3) The General Manager to consider processes and salaries to attract and retain staff in order to fill vacant positions
- 4) Council to prepare, adopt and implement a modern Customer Service Charter which establishes (as a minimum):
 - a) Performance targets for correspondence
 - b) Telephone etiquette
 - c) Handling submissions to applications
 - d) Front counter procedures and protocols
- 5) Review all the processes used to determine planning applications and to produce planning certificates
 - a) The goal is to reduce, simplify and make transparent all the process to determine applications
 - b) Review and simplify all the standard conditions of consent to bring consistency and predictability to application processing
- 6) Confirm the source of all data used in these processes
 - a) Ensure that records for all land parcels, names and properties are accurate (remove current duplicates)
 - b) Implement an ongoing procedure to ensure that the names data is maintained and duplicates removed continually
 - c) Match the data records to the GIS map base (target 99.9% match)

- d) Link the ECM records to the map base using the property number whenever possible
- 7) Implement the e-services modules
 - a) Load the LEP and DCPs into this module
 - b) Automate the production of planning certificates
 - c) Build the "Assess" module for DAs, CCs and Planning Proposals to help automate the determination process
- 8) Determine policy changes arising from this implementation
 - a) Council should adopt a position that all documents associated with all applications and Planning Proposals are available at all times to the community on the e-services module
 - b) Council develops the e-tracking module as the "window" into Council information for mapping, tracking applications, planning data and planning rules
- 9) Commence the Strategic Planning program outlined above to ensure
 - a) That adequate resources are available to complete the program
 - b) That changes to the program can only be made by resolution of Council
 - c) That all the infrastructure needs for the future population are accounted for