



MINUTES

of the
**Independent Advisory Planning
Assessment Panel Meeting**

held remotely using audio visual link and open to members of the
community via webcast

on

Wednesday 7 July 2021

The meeting commenced at 3.30pm

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ASSESSMENT PANEL MEETING**

Wednesday 7 July 2021



**MINUTES OF THE INDEPENDENT ADVISORY PLANNING ASSESSMENT PANEL
MEETING OF WINGECARRIBEE SHIRE COUNCIL HELD IN NATTAI ROOM, CIVIC
CENTRE, ELIZABETH STREET, MOSS VALE ON WEDNESDAY 7 JULY 2021
COMMENCING AT 3.30PM**

Present:	Chairperson	Ms Julie Walsh*
	Expert	Ms Heather Warton*
	Expert	Mr Alf Lester*
	Community Representative	Mr Chris McCann*
In Attendance:	Acting Deputy General Manager	Ms Marissa Racomelara*
	Manager Development Assessment	Ms Nancy Sample*
	Manager Strategic Land Use Planning	Mr Michael Park*
	Senior Development Assessment Planner	Mr Chris Young (in part)*
	Senior Strategic Land Use Planner	Ms Susan Stannard (in part)*
	Development Assessment Planner	Mr Ross Jauncey (in part)*
	Trainee Accredited Certifier	Ms Madalyn Templer*
	Coordinator ICT Operations	Mr Ian Vong*
	Administration Officer	Ms Michelle Richardson*

NOTE: Due to current government requirements around social distancing due to the COVID-19 pandemic, Panel Members and staff attended the meeting remotely via zoom audio visual link. This is indicated by *. Remaining staff were present in Council for this meeting.

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 Straight Islanders present here today.”

3. APOLOGY

There were no apologies at this Meeting.

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4. DECLARATIONS OF INTEREST

That where necessary any interest now be disclosed and the reason for declaring such interest in the matters under consideration by the Panel at this Meeting and to complete the appropriate form to be handed up at the Meeting.

There were no declarations of interest made at this meeting.

5. DEVELOPMENT APPLICATIONS

5.1 Development Application 21/1597 - Internal alteration to create an enclosed boxing gym at Part Lot 1 DP 724437, Sports Oval, 1A Old Hume Highway, Mittagong.

Report Author: Development Assessment Planner
Authoriser: Manager Development Assessment

OFFICERS RECOMMENDATION

THAT the Independent Advisory Planning Assessment Panel determines development application 21/1597 for internal alterations to change entry foyer area to create a boxing gym.

PP 19/21

PANEL DETERMINATION

THAT development application 21/1597 for internal alterations to change entry foyer area to create a boxing gym be APPROVED subject to the conditions in Attachment 1 of the Council Officer's report amended as follows:

- ***Insert after REV A in condition 2 "as amended in red on the plan which is attachment 2 to the Council Officer's report".***

REASONS: The panel generally agrees with the council officer's report.

VOTING : UNANIMOUS

5.2 Development Application 21/1483 - Subdivision of Land to Create Two Lots - Lot 1 DP 258420, No 10 Old Hume Highway Berrima

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

Mr Scott Lee addressed the Panel on this item.

OFFICERS' RECOMMENDATION

THAT the Interim Independent Advisory Planning Assessment Panel determines development application 21/1483, for subdivision of land to create two lots, at Lot 1 DP 258420, No 10 Old Hume Highway Berrima, by APPROVAL subject to conditions specified in Attachment 1 to this report.

PP 20/21

PANEL DETERMINATION

THAT development application 21/1483, for subdivision of land to create two lots, at Lot 1 DP 258420, No 10 Old Hume Highway Berrima, be REFUSED for the following reasons:

1. **Whilst the proposed subdivision is permitted under the split zoning concession in clause 4.2C of Wingecarribee LEP 2010 (the LEP) notwithstanding that proposed lot 2 is 1,445 square metres rather than the minimum lot size of 2,000 square metres, the Panel must be satisfied with the creation of lot 2 as a lot suitable for erection of a new dwelling house (with associated carparking) having regard to the sensitivity of the site located in the heritage conservation area and in between 2 listed heritage items.**
2. **The site is identified in Part A section 9 of the Berrima Village Development Control Plan (the DCP) "Development within a heritage context" as having the potential for residential development at the rear facing Wilkinson Street rather than at the Old Hume Highway frontage and this is not addressed in the report.**
3. **The panel is not satisfied that the proposed subdivision, and in particular the creation of lot 2 as a lot for erection of a dwelling house should be approved having regard to the following:**
 - a. **The objectives in clause 5.10 (1)(a) and (b) of the LEP.**
 - b. **The lack of a heritage management document as referred to in clause 5.10 (5)(b) and (c) of the LEP.**
 - c. **The potential adverse impact on the heritage significance of the heritage conservation area and adjacent heritage items (cl 5.10(4) of the LEP).**
3. **The Panel is of the view that a combined subdivision/dwelling house development application including a dwelling house and associated garaging on lot 2 designed in accordance with the design principles and guidelines contained in the Berrima Village DCP (in particular Part A, section 9 "Development Within a Heritage Context") should be lodged to ensure that the impacts of any such dwelling house and associated garaging are able to be appropriately assessed in the context of the heritage controls in the LEP and DCP prior to the site being approved for subdivision.**
4. **Any such application should be accompanied by a landscape plan and heritage impact document and provide adequate justification for a dwelling house to be erected on the site notwithstanding the DCP provision referred to in paragraph 2 above.**

REASONS: See above.

VOTING : UNANIMOUS

5.3 Development Application 21/1578 - 32 Hood Street, Mittagong - Ancillary Residential Garage

Report Author: Trainee Accredited Certifier
Authoriser: Acting Deputy General Manager

OFFICERS' RECOMMENDATION

THAT Development Application 21/1578 for a proposed detached garage at Lot 5 DP 702376 32 Hood Street, Mittagong be APPROVED subject to conditions as described in Attachment 3 to the report.

PP 21/21

PANEL DETERMINATION

THAT Development Application 21/1578 for a proposed detached garage at Lot 5 DP 702376 32 Hood Street, Mittagong be APPROVED subject to the conditions in Attachment 3 of the Council Officer's report.

REASONS: The panel generally agrees with the council officer's report.

VOTING : UNANIMOUS

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- 5.4 Staged Concept Development Application 20/0492 including two (2) stages with Stage one (1) being a subdivision of the site into two (2) allotments and Stage two (2) being a separate future development application for a ninety (90) bed nursing home.**

Report Author: Development Assessment Planner
Authoriser: Manager Development Assessment

Mr Ross Garlick addressed the Panel on this item

OFFICERS' RECOMMENDATION

THAT Independent Advisory Planning Assessment Panel determines development application 20/20/0492 for a two (2) Stage development with Stage one (1) being a subdivision of the site into two (2) allotments and stage 2 of the proposal as a concept development Application to achieve a ninety (90) bed nursing home at 133 Old Bowral Road Bowral by APPROVAL as per the draft conditions of consent in Attachment 1 to the report.

PP 22/21

PANEL DETERMINATION

THAT development application 20/0492 for a two (2) Stage development with Stage one (1) being a subdivision of the site into two (2) allotments and stage 2 of the proposal as a concept development Application to achieve a ninety (90) bed nursing home at 133 Old Bowral Road Bowral be REFUSED for the following reasons:

- 1. The development application is unclear and the documentation is inadequate. Other than that a subdivision is proposed to excise part of the site for a new development, the scope of the development as explained in the assessment report is unclear. The application purports to seek concept approval for a nursing home, yet there is insufficient detail provided of the building envelope for the future nursing home development. The application drawings shown in the figures in the assessment report appear to show that the 'concept' master plan also applies to part of the approved development on the site, which is also proposed to be intensified with new building forms, yet insufficient details are provided of the proposed envelopes.**

The scope and details of the approved development, the terms of the existing consent and the interaction of the approved development with the proposed nursing home development is not adequately explained.

- 2. The permissibility of the proposed new use on the site (on proposed lot 2) and intensification of the proposed development (on the residual lot 1) is unclear. There is reference that the site has Existing Use Rights (EUR), but no information is provided to explain this legal position, nor whether the requirements of the Environmental Planning and Assessment Act 1979 and Regulation 2000 have been met. The Panel is unable to form a view that the proposal is permissible.**
- 3. Consent is sought for the use of proposed lot 2 for a nursing home on bush fire prone land, but no bush fire authority has been provided from the RFS verifying that this development would be acceptable. The Bush Fire Safety Authority explicitly refers to only the proposed subdivision component.**
- 4. The Applicant is strongly advised before resubmitting any review or fresh application to Council to:**
 - obtain legal advice that clearly documents the claim that the site benefits from EUR and that the proposal in terms of the proposed new land use and intensification of development on the site is permissible; and**

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- **if permissibility is established, obtain legal and planning advice as to the most appropriate planning pathway for the proposal including an amendment to the approved development including an increase in the number of units and new building forms; the excise of part of approved development from the existing consent; and a new building envelope for a new use on part of the site.**

REASONS: See above.

VOTING : UNANIMOUS

**5.5 Application 19/1439.02 to Modify Development Consent
19/1439.01 - Information and Education Facility and
Function Centre, Lot 15 DP846332, 93-95 Kirkham Road,
Bowral**

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

OFFICERS' RECOMMENDATION

THAT the Interim Independent Advisory Planning Assessment Panel determines application 19/1439.02 to modify development consent 19/1439.01, for development of Lot 15 DP846332, 93-95 Kirkham Road, Bowral for the purpose of an information and education facility, by REFUSAL for the reasons specified in Attachment 1 to the report.

THIS ITEM HAS BEEN WITHDRAWN

**5.6 Modification Application 20/0758.01 Recreation Facility
(Indoor) - Alterations and Additions at Part Lot 3 DP
1108992, Pool, Donkin Avenue Moss Vale**

Report Author: Development Assessment Planner
Authoriser: Manager Development Assessment

OFFICERS RECOMMENDATION

THAT the Independent Advisory Planning Assessment Panel determines Modification Application 20/0758.01 for the addition of a 14 square metre adult change room at the Moss Vale War Memorial Aquatic Centre at Part Lot 3 DP 1108992, Donkin Avenue Moss Vale subject to draft development conditions attached to this report.

PP 23/21

PANEL DETERMINATION

THAT Modification Application 20/0758.01 for the addition of a 14 square metre adult change room at the Moss Vale War Memorial Aquatic Centre at Part Lot 3 DP 1108992, Donkin Avenue Moss Vale be APPROVED subject to the draft development conditions attached to the Council Officer's report.

REASONS: The panel generally agrees with the council officer's report.

VOTING : UNANIMOUS

5.7 Modification DA21/0023.05 - Lot 3 DP 1266903 - Open Space Rouse Road Bowral - Access Road to service Southern Highlands Regional Art Gallery

Report Author: Development Assessment Planner
Authoriser: Manager Development Assessment

OFFICERS' RECOMMENDATION

THAT the panel approve Modification Application DA21/0023.05 to Delete Clause 4(F) relating to traffic calming devices and amend clause 32 relating to defects and liability bond for public assets.

PP 24/21

PANEL DETERMINATION

THAT Modification Application DA21/0023.05 to Delete Clause 4(F) relating to traffic calming devices is APPROVED and the application to amend condition 32 relating to defects and liability bond for public assets be REFUSED but that condition 32 be amended to read as follows:

- **Replace “cash bond” in line 1 with “bank guarantee (security bond)”**

REASONS: The panel generally agrees with the council officer’s report in respect of clause 4(F) but does not believe there is any justification for deleting the bond required by condition 32.

VOTING : UNANIMOUS

**5.8 Section 8.2 Review of Determination DA21/0212
Subdivision 2 Lots Lot 140, DP 1231974, 1 Sir James
Fairfax Circuit Bowral.**

Report Author: Development Assessment Planner
Authoriser: Manager Development Assessment

Mr Scott Lee addressed the Panel on this item.

OFFICERS' RECOMMENDATION

THAT the Interim Independent Advisory Planning Assessment Panel determines a Review of DA20/0212 under Section 8.2 of the Environmental Planning and Assessment Act 1979 for a two (2) Lot subdivision at Lot 140 DP 1231974, 1 Sir James Fairfax Circuit Bowral and delete Conditions 9, 10 and 32 from the consent.

PP 25/21

PANEL ADVICE

THAT the Review of DA20/0212 under Section 8.2 of the Environmental Planning and Assessment Act 1979 for a two (2) Lot subdivision at Lot 140 DP 1231974, 1 Sir James Fairfax Circuit Bowral to delete Conditions 9, 10 and 32 from the consent be APPROVED.

NOTE: *As the development application was determined by the full council the Panel only has power to advise.*

REASONS: The panel generally agrees with the council officer's report.

VOTING : UNANIMOUS

6. PLANNING PROPOSALS

6.1 Planning Proposal to amend Wingecarribee Local Environmental Plan 2010 with regard to Council owned Public Reserve land at Retford Park Bowral and Anembo Street Moss Vale.

Report Author: Senior Strategic Land Use Planner
Authoriser: Coordinator Strategic Land Use Planning

OFFICERS' RECOMMENDATION

THAT a Planning Proposal be prepared under section 3.33 of the Environmental Planning and Assessment Act 1979 to:

- (a) *rezone to RE1 Public Recreation Council owned Public Reserves at Retford Park West Bowral (Lot 439 DP1248107) and Anembo Street Moss Vale (Lot 1266 DP 1248764), and*
- (b) *remove the current minimum lot size provision of 1000m² for the Council owned Public Reserve at Retford Park West Bowral (Lot 439 DP1248107) and 700m² for the Council owned Public reserve at Anembo Street Moss Vale (Lot 1266 DP 1248764), and*
- (c) *confirm by Resolution the 'Community' classification of both Public Reserves, being Lot 439 DP1248107 and Lot 1266 DP 1248764, as provided for under Sect 33 of the Local Government Act 1993.*

PP 26/21

PANEL ADVICE

1. ***THAT a Planning Proposal be prepared under section 3.33 of the Environmental Planning and Assessment Act 1979 to:***
 - (a) ***rezone to RE1 Public Recreation Council owned Public Reserves at Retford Park West Bowral (Lot 439 DP1248107) and Anembo Street Moss Vale (Lot 1266 DP 1248764), and***
 - (b) ***remove the current minimum lot size provision of 1000m² for the Council owned Public Reserve at Retford Park West Bowral (Lot 439 DP1248107) and 700m² for the Council owned Public reserve at Anembo Street Moss Vale (Lot 1266 DP 1248764).***
2. ***THAT Council confirm by Resolution the 'Community' classification of both Public Reserves, being Lot 439 DP1248107 and Lot 1266 DP 1248764, as provided for under Sect 33 of the Local Government Act 1993.***

REASONS: The panel generally agrees with the council officer's report.

VOTING : UNANIMOUS

6.2 Planning Proposal to amend Wingecarribee Local Environmental Plan 2010 to update Flood Planning Area maps

Report Author: Senior Strategic Land Use Planner
Authoriser: Coordinator Strategic Land Use Planning

OFFICERS' RECOMMENDATION

THAT

1. Council request the Minister for Planning & Public Spaces determine, under s.3.35 of the Environmental Planning & Assessment Act 1979, that Planning Proposal PP_2018_WINGE_002_00 (to update the Flood Planning Area Maps in the Wingecarribee Local Environmental Plan 2010 to reflect the 100-year flood planning level identified in flood studies completed for Nattai Ponds, Nattai River, Robertson Village and Gibbergunyah Creek) not proceed, and
2. A Planning Proposal be prepared under s.3.33 of the Environmental Planning & Assessment Act 1979 to revoke the current Flood Planning Area Maps contained within WLEP 2010 and to replace them with new Flood Planning Area Maps which reflect the '100-year flood level + 0.5m extent' as identified in the following studies adopted by Council:
 - a) Bowral Floodplain Risk Management Study and Plan
 - b) Burradoo BU2 Catchment Study
 - c) Burradoo BU2 Floodplain Risk Management Study and Plan
 - d) Gibbergunyah Creek Flood Study and Plan
 - e) Gibbergunyah Creek Floodplain Risk Management Study and Plan
 - f) Nattai River Flood Study
 - g) Nattai River Floodplain Risk Management Study and Plan
 - h) Nattai Ponds Flood Study
 - i) Nattai Ponds Floodplain Risk Management Study and Plan
 - j) Robertson Village Overland Flow Study
 - k) Wembly Road & Farnborough Drive Catchments Overland Flow Study
 - l) Whites Creek Floodplain Risk Management Study and Plan review

PP 27/21

PANEL ADVICE

THAT

1. ***Council request the Minister for Planning & Public Spaces determine, under s.3.35 of the Environmental Planning & Assessment Act 1979, that Planning Proposal PP_2018_WINGE_002_00 (to update the Flood Planning Area Maps in the Wingecarribee Local Environmental Plan 2010 to reflect the 100-year flood planning level identified in flood studies completed for Nattai Ponds, Nattai River, Robertson Village and Gibbergunyah Creek) not proceed, and***
2. ***A Planning Proposal be prepared under s.3.33 of the Environmental Planning & Assessment Act 1979 to revoke the current Flood Planning Area Maps contained within WLEP 2010 and to replace them with new Flood Planning Area Maps which reflect the '100-year flood level + 0.5m extent' as identified in the following studies adopted by Council:***
 - a) ***Bowral Floodplain Risk Management Study and Plan***
 - b) ***Burradoo BU2 Catchment Study***
 - c) ***Burradoo BU2 Floodplain Risk Management Study and Plan***
 - d) ***Gibbergunyah Creek Flood Study and Plan***
 - e) ***Gibbergunyah Creek Floodplain Risk Management Study and Plan***
 - f) ***Nattai River Flood Study***
 - g) ***Nattai River Floodplain Risk Management Study and Plan***
 - h) ***Nattai Ponds Flood Study***
 - i) ***Nattai Ponds Floodplain Risk Management Study and Plan***
 - j) ***Robertson Village Overland Flow Study***
 - k) ***Wembly Road & Farnborough Drive Catchments Overland Flow Study***
 - l) ***Whites Creek Floodplain Risk Management Study and Plan review***

REASONS: The panel generally agrees with the council officer's report.

VOTING : UNANIMOUS

6.3 Planning Proposal to amend clause 1.9A(2) of Wingecarribee Local Environmental Plan 2010 to include the western portion of Retford Park Bowral residential estate.

Report Author: Senior Strategic Land Use Planner
Authoriser: Coordinator Strategic Land Use Planning

Mr Allen Robinson addressed the Panel on this item.

The Manager Strategic Planning addressed the Panel on this item.

OFFICERS' RECOMMENDATION

THAT Council request the Minister for Planning and Public Spaces to determine, under Section 3.35 of the Environmental Planning & Assessment Act 1979, that the Planning Proposal to amend clause 1.9A(2) of Wingecarribee Local Environmental Plan 2010 to include the western portion of the Retford Park residential estate not proceed.

PP 28/21

PANEL ADVICE

THAT

- 1. Council continue to seek a formal Gateway Determination for the Planning Proposal**
- 2. Council provide the Mosman Local Environmental Plan 2012 as an example of a similar amendment to clause 1.9A(2)**
- 3. Should a Gateway determination recommend the Planning Proposal not proceed, Council investigate and pursue alternative options to enforce the site specific design guidelines over the subject area.**

REASONS:

The panel recognises the unique nature of the Retford Park precinct and understands the desire of the residents to seek a mechanism to enforce the detailed design guidelines which were part of the vision of the late Sir James O Fairfax AC. The Panel understands there is precedence for amendments to clause 1.9A in at least one other Local Environmental Plan.

VOTING : UNANIMOUS

The panel moved into closed session at 4.30pm.

The meeting reopened at 5.40pm when the Chair announced the Panel's decisions.

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4. MEETING CLOSURE

THERE BEING NO FURTHER BUSINESS, THE MEETING CLOSED AT 5.45 PM