

# MINUTES

## of the Wingecarribee Local Planning Panel Meeting

held in

Nattai Room

Civic Centre, Elizabeth Street, Moss Vale

on

**Wednesday 1 December 2021**

The meeting commenced at 3.36pm

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# MINUTES OF THE WINGECARRIBEE LOCAL PLANNING PANEL MEETING

Wednesday 1 December 2021



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## MINUTES OF THE WINGECARRIBEE LOCAL PLANNING PANEL MEETING OF WINGECARRIBEE SHIRE COUNCIL HELD IN NATTAI ROOM, CIVIC CENTRE, ELIZABETH STREET, MOSS VALE ON WEDNESDAY 1 DECEMBER 2021 COMMENCING AT 3.30PM

<b>Present:</b>	Chairperson	Stephen Leathley
	Expert	Linda Kelly
	Expert	Heather Warton
	Community Representative	Robert Staas
<b>In Attendance:</b>	Director Communities and Place	Geoff King
	Manager Development Assessment	Nancy Sample
	Manager Strategic Land Use Planning	Michael Park
	Development Assessment Planner	Roland Wong
	Consultant Planner	Jeremy Swan
	Consultant Planner	Ross Jauncey
	Coordinator ICT Operations	Ian Vong
	Executive Assistant	Leesa Stratford

### 1. OPENING OF THE MEETING

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

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### 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.”

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### 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 declared at the Meeting.*

Mr Robert Staas declared a non-pecuniary, less than significant interest in **item 5.2**, S4.55 Modification Application 17/1174.03 – Commercial Alterations and Additions to Bowral Memorial Hall – 16/24 Bendooley Street, Bowral. He is the former director of NBRS Architects and has no direct contact with the firm or the works relating to Bowral Memorial Hall and therefore the interest is non-pecuniary and non-significant and he will remain in the meeting and take part on the voting there in.

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Heather Warton declared a non-pecuniary, less than significant interest in **Item 5.3**, Development Application 21/10423 Subdivision of land and carrying out of works to create 23 residential lots as she is half owner of a property in Bundanoon, which is located south of the Railway line, distant from the site and therefore the interest is non-pecuniary and non-significant and she will remain in the meeting and take part on the voting there in.

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## 5. DEVELOPMENT APPLICATIONS

### 5.1 S8.2 Review of DA 21/1889.01 for the Change of Use from Ground Floor Garages to a Residential Flat at Lot 117 DP 870922, Old Hume Highway, Berrima

Reference: DA21/1889.01  
Report Author: Consultant Planner  
Authoriser: Manager Development Assessment

Owner, William Koshakji addressed the panel on this matter.

#### OFFICER RECOMMENDATION

*THAT the Local Planning Panel determines Review of Determination DA 21/1889.01 – Change of Use from Ground Floor Garages to a Residential Flat at Lot 117 DP 870922 being Old Hume Highway, Berrima by REFUSAL, subject to the recommended reasons for refusal in Attachment 1 to the report.*

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## PANEL DETERMINATION

***THAT the Local Planning Panel determines Review of Determination DA 21/1889.01 – Change of Use from Ground Floor Garages to a Residential Flat at Lot 117 DP 870922 being Old Hume Highway, Berrima by REFUSAL, for the following reasons:***

1. It is unclear and uncertain as to what development consent is being sought given the contradictory nature of documentation accompany the development application.
2. Insufficient information has been provided to properly assess the application, in particular:
  - a. The application is not accompanied with proper survey information;
  - b. The application is not accompanied with a full set of architectural plans, including full floor plans of the building, a proper site plan, detailed elevations with dimensions or a section.
  - c. The application includes a BCA report that makes a number of assumptions which require further documentation which is not included in the application.
3. The application is not accompanied with a proper BASIX certificate in accordance with State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
4. The application does not clearly articulate the use of the land, with inconsistencies between the Statement of Environmental Effects and BCA report as to the proposed use.
5. The amenity to Bedroom 2 is not acceptable. The application proposes a glazed door to Bedroom 2 to provide sufficient natural light, however this door provides access from the living/dining area which is not an acceptable environmental planning outcome.
6. Insufficient information has been provided to determine whether the proposed development complies with the parking requirement of the Berrima Village DCP or whether flood constraints of the site have been adequately addressed.
7. The proposed development is not in the public interest.

## REASONS:

For the reasons listed in the decision.

## VOTING: UNANIMOUS

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## 5.2                    s4.55 Modification Application 17/1174.03 - Commercial Alterations and Additions to Bowral Memorial Hall - 16- 24 Bendooley Street Bowral - Lot 1 in DP1003910

Reference:                    17/1174.03  
Report Author:             Consultant Planner  
Authoriser:                 Manager Development Assessment

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### OFFICER RECOMMENDATION

*THAT the Wingecarribee local Planning Panel determines Modification Application 17/1174.03 for Lot 1 DP 1003910, 16-24 Bendooley Street Bowral for modification of the original development consent dated 28 March 2018 and further modifies on 4 November 2019 by way of APPROVAL subject to conditions specified in ATTACHMENT 1 to this report.*

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### PANEL DETERMINATION

***THAT the Wingecarribee local Planning Panel determines Modification Application 17/1174.03 for Lot 1 DP 1003910, 16-24 Bendooley Street, Bowral for modification of the original development consent dated 28 March 2018 and further modification on 4 November 2019 by way of APPROVAL subject to conditions specified in ATTACHMENT 1 to report.***

### REASONS:

The modification was considered to be for minor changes to the development and consequently the panel considered that development as modified to be substantially the same development with minimal environmental impact particularly on the heritage fabric of the building.

### **VOTING: UNANIMIOUS**



**5.3 Development Application 21/1043 - Subdivision of land and carrying out of works to create 23 residential lots and carrying out of works for the purpose of roads at 1 & 7 Reg Grundy Drive, Bundanoon - Lots 11 & 18 DP1219744**

**Reference:** 21/1043  
**Report Author:** Senior Development Assessment Planner  
**Authoriser:** Manager Development Assessment

*Samantha Bruce addressed the panel as an objector to this matter.*

Colin Tyson addressed the panel as an objector to this matter.

*Richard Anderson addressed the panel as the applicant for this matter.*

## OFFICERS RECOMMENDATION

*THAT the Local Planning Panel determines development application 21/1043 for subdivision of land and carrying out of works to create 23 residential lots and carrying out of works for the purpose of roads by APPROVAL, subject to the conditions specified in Attachment 1 to the staff assessment report.*



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**PANEL DETERMINATION**

**THAT the Wingecarribee Local Planning Panel defers determination of the development application subject to the following items being actioned:**

- 1. The applicant update the following plans and reports:-**
  - a. Vegetation Management Plan to be update to include the following items:**
    - I. The amended vegetation management plan shall be prepared by a suitably qualified and experienced restoration ecologist**
    - II. The amended vegetation management plan shall identify existing site conditions**
    - III. The amended vegetation management plan shall identify all vegetation to be retained and removed, including isolated trees**
    - IV. The amended vegetation management plan shall specify locations for protective fencing around 'no-go areas' and areas where trees will be retained**
    - V. The amended vegetation management plan shall identify the locations of all existing and proposed infrastructure including underground services**
    - VI. The amended vegetation management plan shall identify the key performance indicators required to be met in the management zones**
    - VII. The amended vegetation management plan shall identify the triggers and thresholds for remedial action should a key performance indicator not be met**
    - VIII. The amended vegetation management plan shall be implemented by a suitably qualified restoration ecologist**
    - IX. The amended vegetation management plan shall outline the ongoing management arrangements for the land.**
  - b. The biodiversity assessment report be updated in accordance with the independent Ecological assessment report recommendations dated, June 2021.**
  - c. The subdivision plan be amended to a Community Title subdivision so as to include the forested area within Lot 18 and the riparian zone of the proposed Lot 8 into community Lot. Further, that the applicant submit a draft community management statement addressing the ongoing management of these areas in accordance with the vegetation management plan.**
  - d. That the plan of subdivision be amended to include a 2.5 metre public footway from Reg Grundy Drive to Bundanoon Park, adjoining the north western side of Lot 10 DP 1219744, to Reg Grundy Drive, including a 1.2 metre wide concrete footpath for the full length of the public footway. This will necessitate a corresponding reduction in the area of Lot 11.**
  - e. That the Bushfire threat assessment report be updated in line with items a – d above. This may necessitate further review of the subdivision design.**

- f. The civil design plans be amended to include a cross section of the proposed road adjacent of lot 21 on the eastern boundary such that the finished levels match the existing levels of Lot 21.**
        - g. All other documents accompanying the development application be amended so they are consistent with items (a – f) above.**
  - 2. Once the plans and reports have been updated in accordance with item one (1) above that the application be referred back to the Rural Fire Service (RFS).**
  - 3. Once the RFS issue their GTA's and no further amendments are required to the documents supporting the development application, the development application be renotified in accordance with Council's Community Engagement Strategy.**

**REASONS:**

1. The Panel considered the biodiversity considerations to be critical to the determination of the development application and that the outstanding items with the BDAR should not be deferred to conditions of development consent. After noting the independent assessment of the BDAR, the Panel determined that the BDAR needed to be amended and in a final form, assessed by the independent consultant before the development application could be determined.
2. The Panel considered the VMP to be a critical consideration in the determination of the development application and consequently was not prepared to defer its amendment via a condition of consent. The VMP needs to be amended and in a final form supported by the independent consultant before the development application could be determined.
3. The Panel noted the Council officers advice that as a matter of policy the Council does not take on drainage reserves and other environmental land as a result of subdivision because of the ongoing maintenance costs, and that policy was consistent with the policy position on this issue adopted by other rural and regional Councils across the State. Consequently, the proposal is to include two environmental areas within the subdivision, a riparian zone running through the centre of the site, and a forested area in the north eastern corner of the holding into two of the proposed lots, and that the future owners of those lots would then be responsible for managing those environmental areas on those lots in accordance with an amended VMP.

The Panel considered that this would be an unfair burden on those two lots, and was not satisfied that the VMP would be implemented, or that Council could ensure compliance. The Panel considered that the ongoing management of these two areas is a critical threshold consideration in the determination of this development application. The Panel considered that the ongoing management of these environmental areas if not Council's responsibility, then the future lot owners collectively need to be responsible for the ongoing management of the environmental areas and infrastructure. These areas will provide the future landowners with natural amenity, and it is in their collective interest then for these areas to be appropriately managed.

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The Panel considered that the appropriate mechanism for allowing proper management of these two areas was as community lots within a community title management scheme and did not support their inclusion into individual lots. Consequently, the Panel is of the view that the application needs to be amended to a Community Title subdivision so as to appropriately facilitate the ongoing management in an equitable manner by the community created by the subdivision of the land.

4. Given the above critical matters requiring resolution before the development application can be determined, the Panel also considered that the other items that were outstanding should also be included in amended documentation, in particular the need for a pedestrian access as outlined in item 1.d. above, the need for finished road levels adjacent to Lot 21 on the eastern boundary so the impact of finished levels on adjoining land can be satisfied as per item 1.f. and the need for all documentation to be consistent, in terms of plans and documents, including the Bushfire Threat Assessment report.
5. Given the changes to the design of the subdivision from that originally proposal, it will then be necessary to refer the application back to the RFS to ensure they are satisfied with the GTAs they have issued to the original design put before the Panel.
6. The final application and supporting documentation will then need to be placed back on notification given the community interest in the proposal noting that the plan placed before the Panel was significantly different to the plan that the community previously commented on.

**VOTING: UNANIMIOUS**

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## **5.4 Development Application 22/0222 - Stage 1A Upgrade to Eastern Precinct Arrival of the Bong Bong Common at Lot 22 DP 1225783, Moss Vale Road Burradoo**

Reference: 22/0222  
Report Author: Consultant Planner  
Authoriser: Manager Development Assessment

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### **OFFICERS RECOMMENDATION**

*THAT the Wingecarribee local Planning Panel determines development application 22/0222 for Lot 22 DP 1225783, Moss Vale Road Burradoo for the construction of a formalized carpark, foot paving, landscaping, tree removal, relocation of obelisk and interpretive signage by way of APPROVAL subject to conditions specified in ATTACHMENT 1 to this report.*

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## PANEL DETERMINATION

***THAT the development application be deferred and a revised assessment report be resubmitted to the next local planning panel meeting clarifying what development consent is being sought and providing an assessment of the heritage impacts of the proposal.***

### REASON:

1. From the documentation and report under consideration, it was not clear to the Panel precisely what was being recommended to be approved. The report recommended approval within Lot 22 DP 1225783 *“the construction of a formalized carpark, foot paving, landscaping, tree removal, relocation of obelisk and interpretive signage”*. This was then spelt out in some detail over 3 pages in the report.

However, later in the report in response to a Transport for NSW submission the report stated *“The works which are the subject of the development application are solely located with Lot 22, DP 1225783 and include construction of approximately 50m of concrete pathway, relocation of the obelisk, signage, seating, the removal of 21 trees, and landscaping. All other works are the subject of an environmental assessment under Part 5 of the EP&A Act”*.

Plans and documentation need to be represented to the Panel which clearly articulate what items are sought to be granted development consent. Further, there should be some context in terms of explanation of what works are approved under the ISEPP and Part 5 of the Act, as well as an explanation of the planned future stages of the development.

2. The subject site is identified in the WLEP 2010 as being within a Conservation Area – Archaeology. The report had an inadequate assessment of the proposals impact on this threshold consideration.

### **VOTING: UNANIMIOUS**

## 6. PLANNING PROPOSALS

### 6.1 Planning Proposal to Rezone Willow Run, 105-119 Bong Bong Road, Mittagong - Post exhibition

Reference:	PN204300, PP-2021-3881
Report Author:	Senior Strategic Land Use Planner
Authoriser:	Manager Strategic Land Use Planning
Link to Community Strategic Plan:	Identify and protect the unique characteristics of towns and villages to retain a sense of place

Glenda Thomas addressed the panel as an objector to this matter.

Scott Lee addressed the panel as the applicant and David Dunbier as the owner for this matter.

#### OFFICER RECOMMENDATION

1. *THAT finalisation of the Planning Proposal to rezone part of Lot 115 DP 1067955, 105-119 Bong Bong Road, Mittagong from RU2 Rural Landscape to R5 Large Lot Residential with a minimum lot size 4000m<sup>2</sup> under s3.33 of the Environmental Planning & Assessment Act 1979 NOT PROCEED.*
2. *THAT the draft Precinct Plan for the subject land as exhibited with the Planning Proposal BE NOTED.*

#### PANEL ADVICE

1. ***THAT finalisation of the Planning Proposal to rezone part of Lot 115 DP 1067955, 105-119 Bong Bong Road, Mittagong from RU2 Rural Landscape to R5 Large Lot Residential with a minimum lot size 4000m<sup>2</sup> under s3.33 of the Environmental Planning & Assessment Act 1979 NOT PROCEED.***
2. ***THAT the draft Precinct Plan for the subject land as exhibited with the Planning Proposal BE NOTED.***

#### REASONS:

1. The Panel considers the rezoning of the land premature at this stage. The site is identified as part of the Mittagong (East) Investigation Area (MEIA) and rezoning of this land should not proceed until a full structure planning process of the MEIA has been completed by Council.
2. Given the sites location and the housing supply issues in the LGA, the Panel considers the structure planning process should determine the most efficient use of the land and the appropriate zoning and minimum lot size, in consultaion with the community.

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3. The Panel noted WaterNSW comments and considered it unlikely that they would resile from their position notwithstanding the applicant's submission that the future development of the site with on-site effluent disposal could deliver a neutral or beneficial effect on water quality as required by the provisions of the State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011. The advice provided by WaterNSW appears to be one of policy and consistent with the advice they provided Council in the development of its Housing Strategy. The Panel also agreed with WaterNSW that land within Investigation Areas should only proceed with appropriate sewer and other infrastructure, issues that would be resolved as part of the structure planning process.

**VOTING: UNANIMIOUS**

## 6.2 Planning Proposal to amend Wingecarribee Local Environmental Plan 2010 to enable the legal enforcement of Purchasers' Agreements (and associated Design Guidelines) for land within West Retford Park - Post exhibition.

Reference: PP-2021-4816  
Report Author: Senior Strategic Land Use Planner  
Authoriser: Manager Strategic Land Use Planning

Allen Robinson addressed the panel on behalf of the Estate of the late Mr James Fairfax AC in support of the recommendation of this matter.

### OFFICER RECOMMENDATION

THAT the Planning Proposal to amend clause 1.9A(2) of Wingecarribee Local Environmental Plan 2010 by adding the following:

(h) to any agreement or other relevant instrument applying to any parcel of land within Retford Park Estate, being the 26.63ha of land comprising the western portion of Lot 222 DP1206897.

be finalised under s3.36 of the *Environmental Planning & Assessment Act 1979*.

### PANEL ADVICE

#### THAT

1. The Panel considers there are no issues arising from the public exhibition process that warrant any amendment to the planning proposal.
2. The majority of the Panel considers that this proposal is unlikely to achieve the intended outcomes and may set an undesirable precedent and therefore the planning proposal should not proceed.
3. The dissenting panel member supports the officers recommendation given that she was on the planning panel that provided advice for the planning proposal to proceed to gateway and sees no reason for the planning proposal not proceed.

#### REASONS:

For the reasons noted in the advice above.

VOTING FOR THE MATTER: S Leathley, L Kelly, R Staas

DISSENTING VOTE: H Warton



### 6.3 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 - Post exhibition.

Reference: PP-2021-4964  
Report Author: Undergraduate Strategic Planner  
Authoriser: Manager Strategic Land Use Planning

#### OFFICER RECOMMENDATION

*THAT the Planning Proposal 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 1000m<sup>2</sup> for the Council owned Public Reserve at Retford Park West Bowral (Lot 439 DP1248107) and 700m<sup>2</sup> for the Council owned Public reserve at Anembo Street Moss Vale (Lot 1266 DP 1248764,*

*Be finalised under s.3.36 of the Environmental Planning and Assessment Act 1979*

#### PANEL ADVICE

**THAT the Planning Proposal 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 1000m<sup>2</sup> for the Council owned Public Reserve at Retford Park West Bowral (Lot 439 DP1248107) and 700m<sup>2</sup> for the Council owned Public reserve at Anembo Street Moss Vale (Lot 1266 DP 1248764,**

***Be finalised under s.3.36 of the Environmental Planning and Assessment Act 1979***

#### REASONS:

The Panel agrees with the Council Officer's report.

**VOTING: UNANIMIOUS**

## 6.4 Planning Proposal to enable additional permitted uses for land at 233 Railway Parade Balmoral

Reference: PP-2021-5011  
Report Author: Senior Strategic Land Use Planner  
Authoriser: Manager Strategic Land Use Planning

Scott Lee addressed the panel as the applicant and Chris Kyriacou as the owner for this matter.

### OFFICER RECOMMENDATION

THAT

1. The Planning Proposal and supporting documentation be updated as recommended by the NSW RFS and DPIE-Biodiversity & Conservation in their preliminary responses to Council, and
2. The purpose of the Planning Proposal be revised to include the subject land in Schedule 1 (Additional Permitted Uses) of WLEP 2010 for all purposes currently approved and proposed, and
3. Subject to the satisfactory completion of 1 and 2 above, the revised Planning Proposal and supporting documentation be reported back to Council for a resolution to proceed to a Gateway Determination under s.3.33 of the Environmental Planning & Assessment Act 1979.

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**PANEL ADVICE**

The panel recommends that Council not proceed with the planning proposal for the following reasons:

**THAT:**

1. The site is not considered suitable as it does not have the capacity due to environmental factors to absorb the applicant's vision for the site.
2. Balmoral Village is an inappropriate location for the proposal given bushfire history and the village nature of the area.
3. There is inadequate infrastructure to support the proposal in particular the local road network, especially given the nature of the development and the bushfire history of the area.
4. The proposal is not considered consistent with the E3 Environmental Management Zone.

**REASONS:**

1. The Panel noted that the subject site is located on the fringe of Balmoral, a small rural village that was heavily impacted by Green Wattle Creek bushfire that hit the village just before Christmas in 2019. It was considered that the site, at best, had limited potential and was unlikely to be able to support the applicant's ultimate vision given the environmental constraints and hazards, and lack of supporting infrastructure.
2. The Panel also noted the pre-lodgement advice provided to the applicant to liaise and resolve bushfire planning issues with the RFS, and that this was not done. The Panel considers such significant threshold issues, and possible consequential impacts on vegetation removal, need to be resolved before a Planning Proposal is submitted to Council for consideration. Notwithstanding, the Panel is of the view that the site is not suitable for the proposal.

**VOTING: UNANIMIOUS**

**7. MEETING CLOSURE**

**THERE BEING NO FURTHER BUSINESS, THE MEETING CLOSED AT 6.56PM**