

MINUTES

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

Wednesday 2 November 2022

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 2 NOVEMBER 2022 COMMENCING AT 2:00 PM**

Present:	Chairperson	Julie Walsh
	Expert	Linda Kelly
	Expert	Heather Warton
	Community Representative	Robert Staas
In Attendance:	Manager Development Assessment	Nancy Sample
	Executive Assessment Director Communities and Place	Leesa Stratford
	Consultant Assessment Planner	Jeremy Swan

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

Julie Walsh declared a significant, non-pecuniary interest in item 6.3, Review of determination – DA 22/0223.01, 24 Waverley Parade, Mittagong, as she chaired the Local Planning Panel meeting which refused the original Development Application. She will remove herself from the chair during discussions surrounding this matter and preclude herself for voting on item 6.3. Robert Staas declared a non-significant, non-pecuniary interest in item 6.2, DA 22/1133, 2 Holmhale Street Bowral as he is a former Director of NBRS the applicant’s heritage consultant firm. He has no continuing association with the firm and no knowledge of the project. In those circumstances the interest is not such as to preclude him from participating and voting on item 6.2

5 PLANNING PROPOSALS

No Planning Proposals listed for the meeting

6 DEVELOPMENT APPLICATIONS

6.1 DA22/0995 for Dual Occupancy and Torrens Title land subdivision from one lot into two at 13 Caroline Avenue, Bowral

OFFICER'S RECOMMENDATION

THAT the Local Planning Panel determines development application 22/0995 for construction of a dual occupancy and Torrens Title land subdivision at 13 Caroline Avenue, Bowral, by APPROVAL subject to the conditions specified in Attachment 1 to this report.

Raymond Harrison (Affected Neighbour) addressed the Panel, speaking against the proposal and in favour of the Officer's recommendation.

Mathew Boon (Affected Neighbour) addressed the Panel, speaking against the proposal and in favour of the Officer's recommendation.

Brian Barham (Affected Neighbour) addressed the Panel, speaking against the proposal and in favour of the Officer's recommendation.

Alex Goodsell (Owner) addressed the Panel, speaking against the Officer's recommendation.

PANEL'S DETERMINATION

The Wingecarribee Local Planning Panel determines development application 22/0995 for construction of a Dual Occupancy and Torrens Title land subdivision at 13 Caroline Avenue, Bowral, by APPROVAL subject to the conditions specified in Attachment 1 to the Officer's report amended as follows:

Condition 1 to read as follows:

Development consent has been granted in accordance with this notice of determination for the purpose of Dual Occupancy and Torrens Title subdivision from one lot into two at 13 Caroline Ave, Bowral.

Condition 9 to read as follows:

Amendments to approved plans

9. The applicant shall make the following amendments to the approved plans prior to the issue of a Construction Certificate:

- a) Additional street tree planting is to be shown along the Caroline Avenue frontage as advised by Council, to reflect the expected public domain for this street. This street tree planting is to be carried out in accordance with the Street Tree Master Plan and at the applicant's expense.*
- b) The proposed 1.8m high fence along Caroline Avenue shall be deleted from the plans. There shall be no fencing along that boundary.*
- c) The applicant shall relocate any proposed outdoor clothes dry facility away from public view.*
- d) The proposed air conditioning unit to the western elevation of Lot B dwelling is to be*

relocated to the northern elevation of the dwelling and a minimum of 3m from the western common boundary. This is to reduce the noise impact on the western adjoining neighbour.

Note: This involves a change to the Development Application plans as submitted to and approved by Council.

Any changes in this regard shall be reflected as amended. Plans are to be submitted to the Certifying Authority prior to the issue of a Construction Certificate for the proposed development.

Reason: To improve amenity outcomes

Condition 44 to read as follows:

An application for a Subdivision Certificate shall be lodged with Council or an Accredited Certifier (in accordance with Section 6.15 of the Environmental Planning and Assessment Act 1979) for approval to enable the subdivision plans to be submitted to and registered with NSW Land Registry Services. Should the Subdivision Certificate application be lodged with Council, a final plan of subdivision and 3 copies shall be included with the application.

*All works specified in Council's development consent **including the erection of the dual occupancy buildings** and in approved Subdivision Works Certificate plans must be completed and all development consent conditions complied with prior to issue of the Subdivision Certificate.*

The application for a Subdivision Certificate is to be accompanied by supporting documentation outlining how each condition of consent has been complied with.

Reason: To comply with clause 7.2 of Wingecarribee LEP 2010 that requires the buildings to be erected prior to subdivision, and the provisions of the Environmental Planning and Assessment Act 1979 relating to subdivision.

Note: The applicant is to ensure that works associated with the Section 138 (Roads Act) approval and Section 68 (Local Government Act) approval are completed and inspected by Council.

REASONS

The Panel generally agrees with the Officer's report.

1. The panel has amended a number of conditions to result in better streetscape and amenity outcomes and to provide clarity.
2. A number of objectors referred to the design guidelines protected by the private covenants, but the Panel notes Clause 1.9A of the Wingecarribee Local Environmental Plan 2010 sets aside the provisions of these covenants in the circumstances of determining a Development Application under that Local Environmental Plan.

6.2 22/1133 - 2 Holmhale Street, Bowral, 10 Unit Residential Flat Buildings

OFFICER'S RECOMMENDATION

THAT the Wingecarribee Local Planning Panel determines development application 22/1133 for Demolition, vegetation removal and construction of a 10 Unit Residential Flat Building at 2 Holmhale Street, Bowral, by REFUSAL for the reasons specified in Attachment 1 to this report.

Stephen Marshall (Affected Neighbour) addressed the Panel, speaking against the proposal and in favour of the Officer's recommendation.

Rosalind Morris (Affected Neighbour) addressed the Panel, speaking against the proposal and in favour of the Officer's recommendation.

Gwen Bullard (Affected Neighbour) addressed the Panel, speaking against the proposal and in favour of the Officer's recommendation.

Julie Grant, Gyde Consulting (Applicant Representative) addressed the Panel, speaking against the Officer's recommendation.

Cameron Jones, Innovate Architects Pty Ltd (Applicant Representative) addressed the Panel, speaking against the Officer's recommendation.

Sophie Bock – NRBS Heritage Consultant (Applicant Representative) addressed the Panel, speaking against the Officer's recommendation.

PANEL DECISION

The Wingecarribee Local Planning Panel determines Development Application 22/1133 for a Residential Flat Building (10 units) on Lot 1 DP 610257, 2 Holmhale Street, Bowral, by way of REFUSAL for the following reasons:

1. *The proposed development is inconsistent with the following design quality principles listed in Schedule 1 of State Environmental Planning Policy No. 65*
 - a) ***Principle 1: Context and neighbourhood character:*** *The proposal is not sympathetic to the established character and the grain of Bowral as follows:*
 - *Bowral's character is defined by its extensive tree canopy and interspersed built form, which would be undermined by the proposal's excessive building bulk, massing and length and it ignores the opportunity to have large clusters of trees to manage that change of scale, noting the site is adjoining the low-scale character of Bowral Heritage Conservation Area.*
 - *The proposal will unduly dominate Holmhale Street and Bowral Street and undermine the grain of this part of Bowral, with the eastern portion of Bowral Street located within a Heritage Conservation Area.*
 - *The third storey (top floor) is not contained within the roof line (traditional pitched form) as an attic as required by the controls of Bowral Town Development Control Plan.*
 - *The proposal is not consistent with the character of existing and new development in the vicinity*

b) Principle 2:

Built form and scale is not satisfied because the excessive bulk, scale and height of the development and its non-compliant roof form is not appropriate with regard to the existing streetscape and desired future character of Bowral.

c) Principle 3:

Density is not satisfied because of the proposed 35% exceedance of the maximum Floor Space Ratio control and the excessive bulk, mass and scale are not appropriate to the site and its context adjoining the R2 Low Density Residential zone.

d) Principle 4:

Sustainability is not satisfied because the proposal fails to achieve effective natural cross ventilation of the residential units which undermines the amenity of future occupants and the energy sustainability of the building.

e) Principle 5:

Landscaping is not satisfied as the loss of 13 trees from the site and the unlikely viability of the proposed transplanting of ten trees, combined with the excessive building bulk, mass and scale of the development, would adversely affect the streetscape character which is defined by a dominance of landscape and vegetation.

2. The proposal is inconsistent with Clause 3D of the Apartment Design Guide - Communal and Public Open Space, as it does not satisfactorily contribute towards the amenity of the future occupants, given the majority of communal open space area, to be located to the south of the building, will be overshadowed and is likely to remain underutilised.
3. The proposal is inconsistent with Clause 4B ventilation, of the Apartment Design Guide in that the proposal fails to achieve effective natural cross ventilation of the residential units which undermines the amenity of future occupants and the energy sustainability of the building noting increased heating and ventilation costs.
4. The proposal is inconsistent with Clause 4.O-Landscape Design, of the Apartment Design Guide as the landscape design does not contribute to the landscape amenity.

WINGECARRIBEE LOCAL ENVIRONMENTAL PLAN 2010

5. The applications fails to satisfy aim 1.2(1a) "to conserve and enhance, for current and future generations, the ecological integrity, environmental heritage and environmental significance of Wingecarribee" in the Wingecarribee Local Environmental Plan 2010, in that it would have an adverse impact on the heritage values of the Bowral Heritage Conservation Area and visual setting of the adjoining heritage item at 67 Bendooley Street, noting the proposed exceedance of the maximum Floor Space Ratio control, the excessive bulk, mass and scale, and non-compliant roof form.
6. The application is an inappropriate response to the site and the context with the result that:
 - The excessive bulk, mass and scale would adversely impact the amenity of the streetscape character of Bowral Street and the heritage values of the adjoining Bowral Heritage Conservation Area and of the adjoining heritage item at 67 Bendooley Street;

- The proposed development does not achieve a satisfactory urban design outcome having regard to the streetscape character of Bowral Street and the adjoining Heritage Conservation Area.
 - The form of the development results in unreasonable impacts on the amenity of adjoining properties, particularly the residential properties within the R2 Low Density Residential Zone.
7. The proposal fails to satisfy Clause 5.10 of the Wingecarribee Local Environmental Plan 2010, as the proposal detracts from the significance of the Bowral Heritage Conservation Area and heritage item at 67 Bendooley Street because it would result in a significant adverse visual impact on the streetscape and the visual setting.

BOWRAL TOWN DEVELOPMENT CONTROL PLAN

8. The proposal does not comply with the Bowral Town Development Control Plan, as follows:
- It fails to comply with Control C3.4 as the proposal exceeds the maximum permitted FSR of 0.60:1 by 35%. Inadequate justification has been provided for the exceedance of that control.
 - It fails to comply with control C3.12 in that it does not provide an appropriate mix of apartment unit sizes, only providing three to four bedroom unit sizes and fails to provide diversity of housing choice in Bowral.
 - It fails to comply with control C3.9.3, as the third storey is not contained within the roof line and combined with the elevated ground floor level above the footpath level, this non-compliance contributes to excessive bulk and scale and visual impact on neighbours and the streetscape.
 - The projection of the building beyond ground level (existing) results in additional bulk and effectively a four storey building contrary to control C3.9.3. The development fails to respect the existing topography of the site.
 - These non-compliances contribute to excessive building bulk, mass and scale, unreasonable visual impact on the streetscape and an inappropriate architectural design which is not in keeping with the existing character and desired future character of the area.
9. There is inadequate information to be satisfied that the proposal complies with control C3.10(b) Dwelling Orientation (solar access), as it fails to demonstrate compliant solar access on June 21 to a minimum 50% of the primary private open space of adjacent dwellings at Units 1, 2, 3 at 6 Holmhale Street, given insufficient information is provided on the winter solstice shadow diagrams and 'solar eye' study.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

10. The proposed development has unacceptable amenity impacts on the neighbours including visual bulk, loss of landscaping and privacy impacts.
11. The site is not suitable for this development, given the development's non-compliances with the applicable planning controls and the adverse impact on neighbour amenity and the existing character of the streetscape.
12. The proposal has not addressed the issues raised in the submissions made by residents of neighbouring properties, in relation to the height & bulk, non-compliance with the applicable planning controls, incompatible with heritage values of Bowral HCA and streetscape character, and impacts on neighbours' amenity, solar access and privacy

13 The proposal is not in the public interest.

REASONS:

As above.

The Panel notes the additional information regarding point 9 above which was provided by the applicant shortly prior to the meeting, but this was unable to be assessed by Council's officers prior to the decision.

VOTING:

6.3 Review of Determination – DA22/0223.1 – Demolition of existing building, ancillary works and construction of multi dwelling housing development comprising 4 dwellings at Lot 1 DP1267002 (former Lot 1 DP508745), 24 Waverly Parade, Mittagong

OFFICER'S RECOMMENDATION

THAT the Wingecarribee Local Planning Panel determines Review of Determination DA22/0223.1 for the demolition, ancillary works and construction of a multi dwelling housing development comprising 4 dwellings at 24 Waverley Parade, Mittagong by REFUSAL for the reasons specified in Attachment 1 to this report.

Note: *The Chair, Julie Walsh vacated the chamber and did not take part in the discussion or determination of this item, Heather Warton assumed the Chair during this item.*

Jennifer Hill (Affected Neighbour) addressed the Panel, speaking in favour of the Officer's recommendation.

Scott Lee (Applicant) addressed the Panel, speaking against the Officer's recommendation.

Justine Day (owner) addressed the Panel, speaking against the Officer's recommendation.

Sibone Nadin (Arborist – Applicant Representative) addressed the Panel to provide clarification on Arborist Report

PANEL DECISION

The Wingecarribee Local Planning Panel determines the Review of Determination of development application DA22/0223.1 for the demolition, ancillary works and construction of a multi dwelling housing development comprising 4 dwellings at 24 Waverley Parade, Mittagong by DEFERRED COMMENCEMENT APPROVAL, subject to the conditions annexed to the report to the Local Planning Panel of 1 June 2022 (Attachment 1 of the 2 November 2022 report), with the following amendments:

1. SCHEDULE A

Deferred Commencement - The following matters must be complied with to Council's satisfaction:

- a) The applicant is to engage a AQF Level 5 Arborist to undertake root investigation within the area of encroachment within the TPZ of Tree 1 (Council's street tree) to ensure that the tree will be retained. An updated Arborist Report following the root mapping with details of recommended construction methods to ensure the retention of the tree is to be provided. Any requirements shall become conditions of the consent when made operational.
- b) The stormwater and landscape plans are to be updated to ensure that the plans in relation to Tree 1 are consistent with the root investigation and recommendations undertaken by the Level 5 Arborist.

This deferred commencement consent shall not operate until the applicant satisfies Council, in accordance with the Environmental Planning and Assessment Regulation 2000, in relation to the matters listed in the Schedule A condition, within 5 years of the date of this determination. Upon Council being satisfied as to the matters listed in the Schedule A condition, Council will notify the applicant in writing that the consent has been made operative subject to the conditions listed in Schedule B.

Should Council not be satisfied as to the matters listed in the Schedule A condition within the specified timeframe, this deferred commencement consent will be rendered permanently inoperative.

In Schedule B, the Conditions of Consent, insert the heading **SCHEDULE B** and

2. ***In Condition 1:*** the description of the approved development is to read: *“for the demolition, ancillary works and construction of a multi dwelling housing development comprising 4 dwellings at 24 Waverley Parade, Mittagong”.*
3. ***In Condition 2:*** the reference to
 - the approved arborist report is to refer to the updated Arborist Report dated 26 October 2022
 - the approved landscape plan, is to refer to the amended Landscape Plan Revision B dated 1 September 2022.
4. ***In Condition 62:*** the reference to the qualified arborist is refer to a Certificate Level 5 not Certificate Level 4.

VOTING: 2:1

Note: The Chair, Julie Walsh vacated the chamber and did not take part in the discussion or determination of this item, Heather Warton assumed the Chair during this item.

REASONS:

1. The **majority of the Panel** considered the retention of the Tree 3 was not warranted in the circumstances given its growth pattern and future impact on any development of the site.
2. The existing tree may result in adverse impacts on the existing any future development on the site, particularly any over shadowing or drainage issues, given its future growth pattern and life expectancy.
3. The development substantially complies with the desired future character of the area which is undergoing transition.
4. The development substantially complies with development controls for the site.

DISSENTING REASON: Heather Warton supports the officer’s recommendation for refusal of the application as the proposal fails to consider the significant constraint of the tree on the site, that the applicant’s own arborist report indicates has high retention value and a continued life span of 40 years. A redesign of the proposal would be possible to achieve a development of the same density, and still retain Tree 3.

7 MEETING CLOSURE

Being no further business, the meeting closed at 6.32pm

