

ITEM 8 WOLLONGONG LOCAL PLANNING PANEL DRAFT SUBMISSIONS POLICY

On 25 June 2018, Council endorsed the exhibition of a draft Wollongong Local Planning Panel Submissions Policy (policy). This policy identifies additional triggers for the referral of Development Applications to the Wollongong Local Planning Panel (WLPP) for determination and is complimentary to the generic referral criteria set by the NSW Minister for Planning and Public Spaces.

The policy was publicly exhibited from 11 July to 11 August 2018 and received five submissions. The policy was refined based on the submissions and operational experience. On 24 September 2018, Council resolved to endorse the policy and refer it to the Department of Planning, Industry and Environment (DPIE) for adoption and that it be applied as referral criteria for 'advice' to the Local Planning Panel while awaiting DPIE adoption.

On 23 August 2019, DPIE informed Council that it does not support this policy and recommended changes. Following further engagement with DPIE and review of recent data, a simplified amended policy has been prepared for endorsement which has in principle support from DPIE.

RECOMMENDATION

- 1 The amended draft Wollongong Local Planning Panel Submissions Policy be endorsed for exhibition.
- 2 The amended draft Wollongong Local Planning Panel Submissions Policy be adopted as referral criteria for 'advice' to WLPP until it is reviewed post exhibition, replacing the previously endorsed Policy of 24 September 2018.

REPORT AUTHORISATIONS

Report of: Pier Panozzo, Manager Development Assessment and Certification (Acting)
Authorised by: Mark Riordan, Director Planning + Environment - Future City + Neighbourhoods (Acting)

ATTACHMENTS

- 1 Local Planning Panels Direction - Development Applications - Schedule 2
- 2 Draft Submissions Policy - adopted by Council 24 September 2018
- 3 Amended Draft Submissions Policy

BACKGROUND

A background report was provided to Council on 24 September 2018. In summary a Council may prepare a Submissions Policy to supplement the Minister's Local Planning Panel Direction referral criteria for Development Applications (DAs) being referred to a Local Planning Panel, subject to DPIE approval. The Minister's DA referral criteria (Attachment 1) is grouped as:

- Conflict of interest – where the applicant is Council or a Councillor, MP, delegated officer, or a relative
- Contentious development – receiving 10 or more objections or as per an approved Submissions Policy
- Departure from development standards – greater than 10%
- Sensitive development – designated, apartments (4 storey or more), demolition of heritage items, clubs, hotels, sex services, restricted premises, involving planning agreements

Council endorsed a policy on 24 September 2018 (Attachment 2) which was sent to DPIE in October 2018 for approval. DPIE subsequently requested additional information on multiple occasions and

flagged concern with the call-up provisions of 'significant community interest', and how this is determined by the General Manager and Director Planning & Environment.

In its letter of 23 August 2019, DPIE was concerned that aspects of the policy would introduce complexity and uncertainty into the referral process. In coming to this decision, DPIE indicated that the current advice from the Independent Commission Against Corruption was that value-based criteria was open to manipulation, and discretionary criteria could lead to pressure being placed on public officials and increase corruption risk.

DPIE also advised that it would consider Council's policy subject to removal of multiple numerical thresholds for unique submissions by way of objection, and the removal of value-based discretionary component. Discussions continued with DPIE during 2020 on possible alternative policy options to satisfy their concerns. A simpler amended policy model is now proposed which has received support in principle from DPIE. It is noted that currently no other Council has an adopted Submissions Policy approved by DPIE.

Whilst discussions occurred with DPIE the original Council endorsed policy has continued to be applied as additional referral criteria for WLPP 'advice', where applicable, prior to those DAs being determined by the Manager Development Assessment & Certification under delegation. This is consistent with the provisions of the Environmental Planning and Assessment Act which enables development related matters to be referred to Panels for 'advice' and has maintained continuity of process for community and industry.

PROPOSAL

A revised and simplified amended Submissions Policy has now been prepared (Attachment 3) in response to changes recommended by DPIE. The amended policy reduces the number of unique public submissions (ie objections) required for a DA to be referred to WLPP from 10 to 6. The discretionary call-up criteria for Councillors (4 or more) or for senior staff has been removed, along with the multiple numeric thresholds for submissions on various development types.

The reduced threshold for objections from 10 to 6 will be applied in addition to the other criteria as prescribed by the Minister, ie conflict of interest, departure from development standards (>10%) and sensitive development (Attachment 1).

The proposed amended policy will maintain transparency and continuity of the WLPP service to the local community, with the ongoing referral of those DAs that are deemed to be locally sensitive or significant. The six (6) unique submission threshold criteria, rather than the prescribed standard of 10, is considered more relevant to local context and reflects the numbers of submissions received on sensitive DAs. Modelling indicates that the number of DAs referred to WLPP for determination, rather than a mixture of determination and 'advice', will be slightly increased under this amended policy from around 3.5% to 4%. This equates to around 60 DAs per year in total.

The small increase in DA referrals to WLPP may be accommodated within budget and without significant impact on overall assessment times. It is noted that WLPP is now utilising electronic meeting procedures where appropriate and holding extra meetings throughout the year when required. WLPP Chairs are under Ministerial direction to work with Councils to facilitate timely DA determinations. Wollongong City Council has a strong performance record in relation to best practice DA assessment practice and DA determination times, and this will not be impacted by the amended Submissions Policy, if adopted.

Given the period of time that has lapsed since the initial policy exhibition and the changes proposed, it is recommended that the amended policy be re-exhibited. It is proposed to apply the draft policy as a trigger for WLPP 'advice' only until such time as it is exhibited and endorsed by Council, and approved by DPIE, after which time these DAs will be 'determined' by WLPP.

CONSULTATION AND COMMUNICATION

The policy was originally exhibited from 11 July to 11 August 2018 on Council's website, in the local community newspaper, all Council Neighbourhood Forums and a media release was also published.

WLPP members were also consulted. A total of five (5) submissions were received and minor changes were made and reported to Council on 24 September 2018, and the endorsed policy forwarded to DPIE for approval. DPIE requested significant changes to the policy to facilitate its approval. Following ongoing discussions with DPIE and a review of data, the amended simplified policy is recommended for exhibition to ensure ongoing community and industry support.

PLANNING AND POLICY IMPACT

This report contributes to the delivery of Wollongong 2022 goal “We value and protect our environment”. It specifically delivers on core business activities as detailed in the Development Assessment Service Plan 2020-21.

CONCLUSION

Wollongong Council's Independent Hearing & Assessment Panel (IHAP) commenced in 2008 to review sensitive development applications. Recent legislative changes have been successfully implemented and the replacement for IHAP, WLPP, continues to provide a transparent process for stakeholders to make submissions and review relevant applications. To ensure that all locally sensitive development applications continue to be referred to WLPP, an amended Submissions Policy is proposed to complement the WLPP framework. This amended policy reduces the submission threshold from the prescribed standard of 10 individual submissions to 6. This will apply in addition to the Minister's criteria relating to conflict of interest, departure from development standards and sensitive development. The combined referral criteria will direct around 4% of annual DAs which raise significant community concern to WLPP for peer review and public hearing. An amended Submissions Policy has now been prepared to reflect this and is recommended for exhibition.

LOCAL PLANNING PANELS DIRECTION - DEVELOPMENT APPLICATIONS AND APPLICATIONS TO MODIFY DEVELOPMENT CONSENTS

SCHEDULE 2

1. Conflict of interest

Development for which the applicant or land owner is:

- (a) the council,
- (b) a councillor,
- (c) a member of council staff who is principally involved in the exercise of council's functions under the Environmental Planning and Assessment Act 1979,
- (d) a member of Parliament (either the Parliament of New South Wales or Parliament of the Commonwealth), or
- (e) a relative (within the meaning of the *Local Government Act 1993*) of a person referred to in (b) to (d).

but not development for the following purposes which requires:

- (a) internal alterations and additions to any building that is not a heritage item,
- (b) advertising signage,
- (c) maintenance and restoration of a heritage item, or
- (d) minor building structures projecting from the building facade over public land (such as awnings, verandas, bay windows, flagpoles, pipes and services, and sun shading devices).

2. Contentious development

Development that:

- (a) in the case of a council having an approved submissions policy - is the subject of the number of submissions set by that policy, or
- (b) in any other case - is the subject of 10 or more unique submissions by way of objection.

An **approved submissions policy** is a policy prepared by the council and approved by the Secretary of the Department of Planning, Industry and Environment which details the circumstances in which a local planning panel or council staff should exercise the consent authority functions of the council, based on the number or nature of submissions received about development.

A **unique submission** means a submission which is in substance unique, distinctive or unlike any other submission. It does not mean a petition or any submission that contains the same or substantially the same text. Separate unique submissions may be made in relation to the same issue. One individual, or one household, could potentially submit multiple unique submissions.

3. Departure from development standards

Development that contravenes a development standard imposed by an environmental planning instrument by more than 10% or non-numerical development standards.

Note: If the Secretary allows concurrence to be assumed by council staff for contravening development standards, the panel can delegate these applications to council staff to determine.

4. Sensitive development

- (a) Designated development.
- (b) Development to which *State Environmental Planning Policy No 65- Design Quality of Residential Apartment Development* applies and is 4 or more storeys in height.
- (c) Development involving the demolition of a heritage item.
- (d) Development for the purposes of new licensed premises, that will require one of the following liquor licences:
 - (i) a club licence under the *Registered Clubs Act 1976*,
 - (ii) a hotel (general bar) licence under the *Liquor Act 2007*, or
 - (iii) an on-premises licence for public entertainment venues under the *Liquor Act 2007*.
- (e) Development for the purpose of sex services premises and restricted premises.
- (f) Development applications for which the developer has offered to enter into a planning agreement.

DRAFT WOLLONGONG LOCAL PLANNING PANEL SUBMISSIONS POLICY

(adopted by Council on 24 September 2018)

OBJECTIVE

To identify the circumstances in which contentious development applications should be referred to the Wollongong Local Planning Panel (WLPP) for determination. This policy is made pursuant to point 2 of schedule 2 of the Local Planning Panels Direction dated 23 February 2018 and extends those referral provisions.

POLICY STATEMENT

Wollongong City Council is committed to providing a robust, transparent and independent process for assessing contentious development applications. This policy outlines the circumstances in which an application will be referred to WLPP for determination based on the number and nature of submissions.

APPLICATIONS TO BE REFERRED TO THE WLPP FOR DETERMINATION (Contentious development)

Development that

1. Is the subject of five or more unique submissions by way of objection in relation to the following categories;
 - (a) Class 2-9 building under the Building Code of Australia (BCA) and including, mixed use developments, multi dwelling housing, retail and commercial, industrial, motels, hospitals, clubs etc. and has a construction cost greater than \$1 million, or
 - (b) subdivision of land creating five or more lots, or
 - (c) subject of a Section 8.2 review of determination, or
 - (d) modification to a development referred to in one above and made under Sect 4.55(2)
2. Subject of two or more unique submissions by way of objection in relation to any development that contravenes a development standard imposed by a Local Environmental Plan by up to 10%, or
3. Subject of a written submission by 4 or more Councillors, or
4. Deemed to be of significant community interest or identified as a significant planning policy matter by the General Manager and the Director Planning and Environment.

Notes:

1. To avoid doubt, any of the above matters recommended for refusal will be reported to the WLPP.
2. For the purposes of this policy pro-forma letters, petitions, or multiple letters from a single address will not be considered as unique submissions.

AMENDED

DRAFT WOLLONGONG LOCAL PLANNING PANEL SUBMISSIONS POLICY

Wollongong Local Planning Panel Submissions Policy

OBJECTIVE

To identify the circumstances in which contentious development applications should be referred to the Wollongong Local Planning Panel (WLPP) for determination. This policy is made pursuant to point 2 (a) of schedule 2 of the Local Planning Panels Direction dated 30 June 2020 and extends those referral provisions.

POLICY STATEMENT

Wollongong City Council is committed to providing a robust, transparent and independent process for assessing contentious development applications. This policy outlines the circumstances in which an application will be referred to WLPP for determination based on the number of submissions.

APPLICATIONS TO BE REFERRED TO THE WLPP FOR DETERMINATION (Contentious development)

Development that:

- 1 Is the subject of six or more unique submissions by way of objection.

Notes:

- 1 Unique submissions have the same meaning as contained within the Local Planning Panels Direction dated 30 June 2020