



northern  
beaches  
council

# MINUTES

## **NORTHERN BEACHES LOCAL PLANNING PANEL MEETING**

held via Teleconference on

**WEDNESDAY 1 FEBRUARY 2023**

## **Minutes of the Northern Beaches Local Planning Panel held on Wednesday 1 February 2023**

The public meeting commenced at 12.00pm and concluded at 12.06pm.

The deliberations and determinations commenced at 12.30pm following the public meeting and concluded at 2.54pm.

### **ATTENDANCE:**

#### **Panel Members**

Peter Biscoe KC	Chair
Brian Kirk	Town Planner
Lisa Bella Esposito	Town Planner
Andrew Doherty	Community Representative

The Panel have visited all sites personally, or electronically, and have had regard to the assessment report, all accompanying documentation, submissions from the public and any supplementary reports in determining all applications.

## **1.0 APOLOGIES AND DECLARATIONS OF INTEREST**

No apologies

In accordance with Section 4.9 of the NSW Government Code of Conduct for Local Government Planning Panels, all members have signed a declaration of interest in relation to each item on the agenda. No conflicts of interest were disclosed.

## **2.0 MINUTES OF PREVIOUS MEETING**

### **2.1 MINUTES OF NORTHERN BEACHES LOCAL PLANNING PANEL HELD 14 DECEMBER 2022**

The Panel noted that the minutes of the Northern Beaches Local Planning Panel held 14 December 2022, were adopted by the Chairperson and have been posted on the Council's website.

## **3.0 CATEGORY 3 APPLICATIONS**

Nil

## 4.0 PUBLIC MEETING ITEMS

### 4.1 DA2022/0919 - 3 GONDOLA ROAD, NORTH NARRABEEN - DEMOLITION WORKS AND CONSTRUCTION OF SHOP TOP HOUSING.

#### PROCEEDINGS IN BRIEF

The proposal is for demolition works and construction of shop top housing.

At the public meeting which followed the Panel was addressed by no neighbours and no representatives of the applicant.

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#### DETERMINATION OF DEVELOPMENT APPLICATION

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2022/0919 for demolition works and construction of shop top housing at Lot 188 DP 16719, 3 Gondola Road North Narrabeen, for the reasons for refusal set out in the Assessment Report, for the following reasons:

##### 1. Building Height

The development proposes a building height that is 91% in excess of the maximum permitted height.

##### Particulars

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal is inconsistent with the provisions of Clause 4.3 *Height of Buildings* of the Pittwater Local Environmental Plan 2014.

##### 2. Request for Variation

The Panel is not satisfied that:

- a) the applicant's written request under clause 4.6 of the Pittwater Local Environment Plan 2014 seeking to justify a contravention of clause 4.3 Height of Buildings development standard has adequately addressed and demonstrated that:
  - i) compliance with the standards is unreasonable or unnecessary in the circumstances of the case; and
  - ii) there are sufficient environmental planning grounds to justify the contraventions.
- b) the proposed development will be in the public interest because it is consistent with the objectives of the standards and the objectives for development within the zone in which the development is proposed to be carried out.

##### 3. Objectives of the B4 Mixed Use zone

The development is inconsistent with the objectives of the B4 Mixed Use zone as detailed in the Land Use Table of the Pittwater Local Environmental Plan 2014. Specifically, the ratio of commercial to residential floor space is unacceptable and does not strengthen or encourage retail vitality or active day and evening economies.

##### Particulars

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal is inconsistent with the provisions of the *B4 Mixed Use zone* of the Pittwater Local Environmental Plan 2014.

##### 4. Site Suitability – Contaminated Lands

Inadequate information has been submitted to demonstrate that due to the risk of hydrocarbon contamination resultant of the adjacent petrol station, that the basement car parking areas would not be exposed to major vapour intrusion. Because of this, the consent authority cannot be satisfied that the site is or can be made suitable for the purpose which the development is proposed to be carried out.

#### Particulars

Pursuant to Section 4.15(1)(a)(i) and (iii) of the Environmental Planning and Assessment Act 1979, the consent authority is not satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose of which the development is proposed to be carried out. The proposal is inconsistent with Clause 4.6(1) and (3) of the State Environmental Planning Policy (Resilience and Hazards) 2021, and with Part B3.6 Contaminated Land and Potentially Contaminated Land of the Pittwater 21 Development Control Plan 2014.

### 5. **Design Quality Principles**

#### (a) Principle 1 – Context and Character

The building is too big for the site and is proportionally incongruent with all other developments within the zone, and immediately adjacent zones. The development sets a poor precedent and would jeopardise the future success of the locality when considered against the underlying zone objectives and desired future character statement.

#### (b) Principle 2 – Built Form and Scale

The building is too tall and will tower over all adjacent developments. The development has inadequate areas of deep soil planting. The flank facades of the building do little to ameliorate the buildings proportions when viewed from the undeveloped neighbouring properties.

#### (c) Principle 4 – Sustainability

The development is not of a good sustainable design. The BASIX and NatHERS Certificates submitted are misleading and do not represent the building's performance in actuality given the absence of basement ventilation, and the reliance on air-conditioning which is not sought for on the plans.

#### (d) Principle 5 – Landscape

The development provides an inadequate provision of landscaped area and deep soil area. The architecture of the building inhibits the provided deep soil areas from accommodating large plantings. The landscaping proposed is contextually incongruent with the locality.

#### (e) Principle 6 – Amenity

The development provides a poor level of amenity to future occupiers.

#### (f) Principle 7 – Safety

The developments does not provide a safe pedestrian environment for residents, users of the commercial space or pedestrians in general. The publicly accessible and complexly laid out ground floor plan jeopardises public safety.

#### (g) Principle 9 – Aesthetics

Because of the reasons above, the aesthetics of the building are flawed and unacceptable.

#### Particulars

In accordance with Clause 28(2)(b) of the State Environmental Planning Policy 65 (Design Quality of Residential Apartment Development), the development is inconsistent with the Design Quality Principles detailed in Schedule 1. Pursuant to Section 4.15(1)(a)(i) of the

Environmental Planning and Assessment Act 1979, the proposal is inconsistent with the provisions of the SEPP.

6. **Apartment Design Guide**

(a) Part 3A – Site Analysis

The development has not adequately assessed the context of the site. Inadequate justification is provided that design decisions have been based on relationships with the surrounding context and site opportunities and constraints.

(b) Part 3B – Orientation

The development is not orientated to protect the solar amenity of neighbours or future occupants; does not address the contextual constraint of existing next to a scrap metal yard; and does not respond to the desired streetscape character.

(c) Part 3C – Public Domain Interface

The development has a poor public domain interface given the uninviting building entrance, building height, minimal landscaping and prominence of driveway infrastructure into the site.

(d) Part 3E – Deep Soil Zones

The development provides an insufficient area of deep soil landscaping, at only 17m<sup>2</sup>.

(e) Part 3F – Visual Privacy

The building provides inadequate spatial separation to the west to provide an acceptable level of visual privacy. Half of the apartments are set back only 3m from the western boundary. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Part C1.5 *Visual Privacy* of the Pittwater 21 Development Control Plan 2014.

(f) Part 3G – Pedestrian Access and Entries

The entryway into the building is not safe. Inadequate information is supplied regarding the front lift to demonstrate that it can be used in the event of flooding, to ensure the safe ingress or egress of wheelchair bound persons. The entry into the building is convoluted and unsafe for Council's waste collectors who would have to navigate complex pathways and proceed to carry heavy bins down ten steps to kerb level.

(g) Part 4B – Natural Ventilation

Only 25% of apartments are naturally cross-ventilated, instead of a minimum of 60%.

(h) Part 4D – Apartment Size and Layout

Habitable room depths exceed more than 2.5 x the ceiling height in every apartment. Kitchens would likely never receive direct solar access. The maximum room depths are greater than 8m.

(i) Part 4N – Roof Design

The use of the roof as trafficable space is not appropriate for the site. The roof has not been maximised for sustainability, and the plans do not adequate detail infrastructure that would likely be required on the roof (i.e., air-conditioners, exhaust ducts).

(j) Part 4O – Landscape Design

The shortfall in landscaped area inhibits the ability for any landscape plan to demonstrate compatibility with the character of the locality.

(k) Part 4U – Energy Efficiency

The requirements of the BASIX Certificate are not reflected on the architectural plans – specifically the air-conditioning units that are relied on throughout the building are not shown.

(l) Part 4W – Waste Management

Council's Waste Officers cannot easily or safely enter the building or remove bins from the site. The development relies on waste officers to traverse the driveway or a complex pathway. The storage room is too far from the property boundary. The waste areas are behind locked security doors.

Particulars

In accordance with Clause 28(2)(c) of the State Environmental Planning Policy 65 (Design Quality of Residential Apartment Development), the development is inconsistent with the design criteria detailed in the Apartment Design Guide. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal is inconsistent with the provisions of the SEPP.

7. **Public Interest**

The building is excessively proportioned and if approved, would create an undesirable precedent for development such that it would undermine the desired future character of the area and be contrary to the expectations of the community.

Particulars

Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposal is not in the public interest.

8. **Flood Planning**

Pedestrian access to the site for disabled persons is via an external lift that would, in the event of flooding, be submerged. No details are provided as to how this lift can operate in such a situation. Council cannot be satisfied as to the safe occupation and efficient evacuation of people in the event of a flood.

Particulars

Pursuant to Section 4.15(1)(a)(i) and (iii) of the Environmental Planning and Assessment Act 1979, the proposal is inconsistent with the provisions of Clause 5.21 *Flood Planning* of the Pittwater Local Environmental Plan 2014 and Part B3.11 *Flood Prone Land* of the Pittwater 21 Development Control Plan 2014.

9. **Acid Sulfate Soils**

The site falls within the Class 3 of the Acid Sulfate Soils Map, clause 7.1 of the Pittwater Local Environmental Plan 2014 provides that development consent must not be granted for the carrying out of the proposed works unless an Acid Sulfate Management Plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority, and no such plan has been provided to the consent authority.

10. **North Narrabeen Desired Future Character**

The height of the building, its lack of landscaping, and minimal contribution to commercial floor space are inconsistent with the desired future character of the North Narrabeen locality.

Particulars

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Part A4.11 *North Narrabeen Locality* of the Pittwater 21 Development Control Plan 2014.

11. **Commercial Floor Space**

The development provides an inadequate provision of commercial floor space in contrast to

the amount of residential floor space.

Particulars

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Part B2.6 *Dwelling Density and Subdivision – Shop Top Housing* of the Pittwater 21 Development Control Plan 2014.

12. **Landscaping**

The development provides an inadequate provision of landscaping throughout (not limited to deep soil landscaping). The variation is detrimental to the existing and desired character of the locality.

Particulars

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Part C1.1 *Landscaping* of the Pittwater 21 Development Control Plan 2014.

13. **Safety**

The ground floor of the building is unsafe and contrary to the principles of CPTED.

Particulars

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Part C1.2 *Safety and Security* of the Pittwater 21 Development Control Plan 2014.

14. **Solar Access**

The application is not accompanied by adequate shadow diagrams. The diagrams supplied show adjacent buildings that do not exist – including one that is not yet built, and another where development consent has lapsed. Inadequate information is provided to assess solar access implications on existing developments.

Particulars

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Part C1.4 *Solar Access* of the Pittwater 21 Development Control Plan 2014.

15. **Acoustic Privacy**

The plans rely on air-conditioning units but do not show where the required equipment would be housed. Inadequate information is provided to make an assessment as to whether the air-conditioning equipment would harm the acoustic privacy of neighbours or future occupiers.

Pursuant

Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Part C1.6 *Acoustic Privacy* of the Pittwater 21 Development Control Plan 2014.

16. **Aims of Plan**

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 *Aims of The Plan* of the Pittwater Local Environmental Plan 2014.

REASONS FOR DETERMINATION

The Panel agrees generally with the assessment report. However the Panel also considers that clause 7.1 of the Pittwater Local Environmental Plan 2014 mandates that development consent

must not be granted. That is because the proposed works include works more than 1 metre below the natural ground surface as well as works by which the water table is likely to be lowered more than 1 metre below the natural ground surface. Clause 7(3) prohibits the grant of development consent under clause 7.1 for the carrying out of such works unless an acid sulfate soils management plan has been prepared for such works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority. No such plan has been provided to the consent authority.

Vote: 4/0

## 5.0 NON PUBLIC MEETING ITEMS

### 5.1 MOD2022/0342 - 135 RIVERVIEW ROAD, AVALON BEACH - MODIFICATION OF DEVELOPMENT CONSENT DA2018/2051 GRANTED FOR DEMOLITION WORKS AND THE CONSTRUCTION OF A DWELLING HOUSE.

#### PROCEEDINGS IN BRIEF

The proposal is for Modification of Development Consent DA2018/2051 granted for demolition works and the construction of a dwelling house.

#### DEFERRAL OF FURTHER CONSIDERATION OF MODIFICATION APPLICATION

The Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **defers** further consideration of Application No. Mod2022/0342 for Modification of Development Consent DA2018/2051 granted for demolition works and the construction of a dwelling house on land at Lot 1 DP 1135396, 135 Riverview Road, Avalon Beach, Lot 2 DP 1135396, 135 Riverview Road, Avalon Beach, Lot LIC 499296, 135 Riverview Road, Avalon Beach, to give the applicant the opportunity to submit to Council by 1 March 2023 information as to whether sub clauses (4) or (6) of clause 7.1 of the Pittwater Local Environmental Plan 2014 applies. Under clause 7.1(2) development consent is required for the carrying out of the proposed works unless, relevantly, sub clauses (4) or (6) applies. Therefore if neither applies, then this Modification Application must be refused and would need to be substituted by an application for development consent rather than modification. On any such development consent application, sub clause (3) of clause 7.1 would apply: it provides that development consent must not be granted for the carrying out of the works unless an acid sulfate management plan has been prepared for the works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority. No such plan has been provided to the consent authority in the present case. If either sub clauses (4) or (6) applies, then the Panel may proceed to deal with this Modification Application on the merits.

If the requested information is not received by the date above, the Panel may proceed to determine the application on the material before it. The Chair will have the discretion to extend the above date if reasonable grounds are provided by the applicant.

The Panel will determine the application electronically.

Vote: 4/0

## 5.2 DA2022/1399 - 60 CHISHOLM AVENUE, AVALON BEACH - CONSTRUCTION OF A CARPORT INCLUDING DRIVEWAY ACCESS, INCLINATOR AND TREE REMOVAL.

### PROCEEDINGS IN BRIEF

The proposal is for construction of a construction of a carport including driveway access, inclinator and tree removal.

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### DETERMINATION OF DEVELOPMENT APPLICATION

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2022/1399 for construction of a carport including driveway access, inclinator and tree removal on land at Lot 1 DP 1104192, 62 Chisholm Avenue, Avalon Beach, Lot 2 DP 1104192, 60 Chisholm Avenue, Avalon Beach subject to the conditions set out in the Assessment Report.

### REASONS FOR DETERMINATION

The Panel agrees generally with the assessment report. The Panel is satisfied that the publication and notice requirements of clause 56 of the Environmental and Planning Assessment Regulation 2021 have been met.

Vote: 4/0

**5.3 DA2022/0965 - 2/49 JACKSON STREET, BALGOWLAH - ALTERATIONS AND ADDITIONS TO A DUAL OCCUPANCY.**

**PROCEEDINGS IN BRIEF**

The proposal is for alterations and additions to a dual occupancy.

**DECISION ON EXCEPTIONS TO DEVELOPMENT STANDARDS**

A. The Panel is satisfied that:

- 1) the applicant's written request under clause 4.6 of the Manly Local Environment Plan 2013 seeking to justify a contravention of clause 4.3 Height of Buildings development standard has adequately addressed and demonstrated that:
  - a) compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
  - b) there are sufficient environmental planning grounds to justify the contravention.
- 2) the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. The Panel assumes the concurrence of the Secretary, Department Planning and Environment required under clause 4.6.

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**DETERMINATION OF DEVELOPMENT APPLICATION**

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2022/0965 for alterations and additions to a dual occupancy on land at Lot 2 SP 11282, 2 / 49 Jackson Street, Balgowlah subject to the conditions set out in the Assessment Report.

**REASONS FOR DETERMINATION**

The Panel agrees generally with the assessment report.

Vote: 4/0

**5.4 DA2022/1466 - 48 SERPENTINE CRESCENT, NORTH BALGOWLAH - DEMOLITION WORKS AND SUBDIVISION OF ONE (1) LOT INTO TWO (2) LOTS.**

**PROCEEDINGS IN BRIEF**

The proposal is for demolition works and subdivision of one (1) lot into two (2) lots.

**DECISION ON EXCEPTIONS TO DEVELOPMENT STANDARDS**

A. The Panel is satisfied that:

- 1) the applicant's written request under clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of clause 4.1 Minimum Subdivision Lot Size development standard has adequately addressed and demonstrated that:
  - a) compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
  - b) there are sufficient environmental planning grounds to justify the contravention.
- 2) the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. The Panel assumes the concurrence of the Secretary, Department Planning and Environment required under clause 4.6.

**DETERMINATION OF DEVELOPMENT APPLICATION**

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2022/1466 for demolition works and subdivision of one (1) lot into two (2) lots on land at Lot 31 DP 8443, 48 Serpentine Crescent, North Balgowlah subject to the conditions set out in the Assessment Report, subject to the following:

1. The amendment of condition 1(a) Architectural Plans to read as follows:

**1(a) Approved Plans**

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Subdivison Site Analysis Plan - A001, Rev A	24 August 2022	Studio Haptic
Draft Subdivison & Indicative Building Plan - A002, Rev A. The building footprint shown thereon does not form part of this consent.	24 August 2022	Studio Haptic

Reasons for amendment: To provide clarity as to the extent of the subdivision approved.

**REASONS FOR DETERMINATION**

The Panel agrees generally with the assessment report

Vote: 4/0

**5.5 DA2022/1838 - 1/9 EUSTACE STREET, MANLY - ALTERATIONS AND ADDITIONS TO A RESIDENTIAL FLAT BUILDING.**

**PROCEEDINGS IN BRIEF**

The proposal is for alterations and additions to a residential flat building.

**DECISION ON EXCEPTIONS TO DEVELOPMENT STANDARDS**

A. The Panel is satisfied that:

- 1) the applicant's written request under clause 4.6 of the Manly Local Environment Plan 2013 seeking to justify a contravention of clause 4.4 Floor Space Ratio development standard has adequately addressed and demonstrated that:
  - a) compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
  - b) there are sufficient environmental planning grounds to justify the contravention.
- 2) the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. The Panel assumes the concurrence of the Secretary, Department Planning and Environment required under clause 4.6.

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**DETERMINATION OF DEVELOPMENT APPLICATION**

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2022/1838 for alterations and additions to a residential flat building on land at Lot 1 SP 31425, 1 / 9 Eustace Street, Manly subject to the conditions set out in the Assessment Report.

**REASONS FOR DETERMINATION**

The Panel agrees generally with the assessment report.

Vote: 4/0

**5.6 DA2022/0717 - 99 OLD PITTWATER ROAD, BROOKVALE - DEMOLITION WORKS AND CONSTRUCTION OF A MIXED USE DEVELOPMENT COMPRISING SELF-STORAGE UNITS AND INDUSTRIAL UNITS INCLUDING LOT CONSOLIDATION.**

**PROCEEDINGS IN BRIEF**

The proposal is for demolition works and construction of a mixed use development comprising self-storage units and industrial units including lot consolidation.

**DECISION ON EXCEPTIONS TO DEVELOPMENT STANDARDS**

A. The Panel is satisfied that:

- 1) the applicant's written request under clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of clause 4.3 Height of Buildings development standard has adequately addressed and demonstrated that:
  - a) compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
  - b) there are sufficient environmental planning grounds to justify the contravention.
- 2) the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

B. The Panel assumes the concurrence of the Secretary, Department Planning and Environment required under clause 4.6.

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**DETERMINATION OF DEVELOPMENT APPLICATION**

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2022/0717 for demolition works and construction of a mixed use development comprising self-storage units and industrial units including lot consolidation on land at Lot 2 DP 402645, 101 Old Pittwater Road, Brookvale, Lot 3 DP 402645, 101 Old Pittwater Road, Brookvale, Lot 4 DP 402645, 101 Old Pittwater Road, Brookvale, Lot 1 DP 402645, 99 Old Pittwater Road, Brookvale subject to the conditions set out in the Assessment Report.

**REASONS FOR DETERMINATION**

The Panel agrees generally with the assessment report. The Panel is satisfied that the publication and notice requirements of clause 56 of the Environmental and Planning Assessment Regulation 2021 have been met.

Vote: 4/0

This is the final page of the Minutes comprising 15 pages numbered 1 to 15 of the Northern Beaches Local Planning Panel meeting held on Wednesday 1 February 2023.