

WINGECARRIBEE SHIRE COUNCIL PUBLIC INQUIRY

GENERAL PRACTICE DIRECTION - PUBLIC HEARINGS

Interpretation

In this Practice Direction:

- (a) “Authorised Person” means a person granted leave to appear at the Public Hearings of the Inquiry and includes a legal practitioner representing such a person.
- (b) “Council” means the Wingecarribee Shire Council.
- (c) “Hearings” means the Public Hearings of the Wingecarribee Shire Council Inquiry currently scheduled for 28 March 2022 - 14 April 2022.
- (d) “Inquiry” means the Wingecarribee Shire Council Public Inquiry.
- (e) “Inquiry Website” means: www.olg.nsw.gov.au/public-inquiries/wingecarribee-shire-council-public-inquiry/
- (f) “Inquiry Email Address” means: wingecarribee.publicinquiry@olg.nsw.gov.au
- (g) “Inquiry Postal Address” means Wingecarribee Shire Council Public Inquiry, Locked Bag 3004 NOWRA NSW 2541 (Attention Angus Broad).
- (h) “Terms of Reference” means the Terms of Reference for the Inquiry, which are available on the Inquiry Website.
- (i) References to the singular include the plural where appropriate, and vice versa.

General

1. This practice direction is intended to provide guidance as to the procedures that the Commissioner intends to adopt during the Hearings.
2. Where the Commissioner thinks it appropriate, the procedures outlined below may be dispensed with or varied.
3. Nothing in this Practice Direction limits the Commissioner’s general discretion to conduct the Hearings and the Inquiry generally in the manner he sees fit.

Venue and sitting times of the Hearings

4. The Hearings will commence on 28 March 2022 at the Council Chambers, Civic Centre, Elizabeth Street, Moss Vale. The Hearings are currently scheduled to continue until Thursday, 14 April 2022.

5. The sitting usual hours for the Hearings will be from 10.00 am to 1.00 pm (with a 20-minute break between about 11:30 am and 11:50 am), and from 2.00 pm to 4.00 pm.
6. The Commissioner may, at his discretion, vary any of the sitting dates or times identified above.

Persons permitted to be present in the hearing room during the Hearings

7. As set out in the Notice of Public Hearings, in order to reduce the risk that the efficient and orderly conduct of the Hearings will be impacted by the ongoing impact of COVID-19 (including but not limited to the particular risk posed by the current self-isolation requirements), the Commissioner has determined that only the following persons are to be present in the hearing room during the Hearings:
 - a. the Commissioner and those appointed to assist the Inquiry;
 - b. any person granted leave to appear at the Hearings (including any legal representative of such a person);
 - c. witnesses giving evidence (including any legal representative of such person);
 - d. the Councillors elected for the 2016 term, including those that resigned from civic office during that term;
 - e. the General Manager of the Council (or a delegate appointed by her for the purpose of observing the Hearings);
 - f. the Interim Administrator of the Council (or a delegate appointed by him for the purpose of observing the Hearings);
 - g. current or former members of Council staff who can demonstrate to the Commissioner's satisfaction that they have a material interest in the Terms of Reference or that their interests may be materially affected by the evidence given during the Hearings; and
 - h. any other person who can demonstrate to the Commissioner's satisfaction that they have a material interest in the Terms of Reference or that their interests may be materially affected by the evidence given during the Hearings.
8. Subject to the ongoing control of the Commissioner, and the reasonable capacity of the hearing room, in addition to those persons falling within the categories identified in

paragraphs 7(a)-(c) above, any person falling within the categories identified in paragraphs 7(d)-(f) above may attend the Hearing in person without seeking prior permission to do so. Any such person must, however, notify the Officer Assisting the Inquiry of their intention to attend and the day(s) on which they intend to do so by email to the Inquiry Email Address to be received no later than **12.00 noon** on the business day immediately prior to the first day on which that person proposed to attend the Hearings in person.

9. Persons falling within the categories identified in paragraphs 7(g) and (h) above and who wish to attend the Hearings in person must request permission to do so by email to the Inquiry Email Address to be received no later than **12.00 noon on Wednesday, 23 March 2022**.
10. Any such request for permission made in accordance with paragraph 9 above must:
 - a. set out the person's name and contact details;
 - b. list the date(s) on which the person wishes to attend the Hearings;
 - c. identify the category or categories set out in paragraphs 7(g) and 7(h) above into which the person falls;
 - d. identify the person's interest in the Terms of Reference and/or how that person's interests may be affected by the evidence given at the Hearings.
11. Requests made in accordance with paragraph 10 above will be considered by those assisting the Inquiry and applicants will be notified of whether their request has been approved as soon as practicable.
12. Nothing in paragraphs 10 or 11 above prevents a person falling within the categories identified in paragraphs 7(g) and (h) above seeking permission to attend the Hearings in person after they have commenced. In that event, a request for permission in the form specified in paragraph 10 above must be made by way of email to the Inquiry Email Address and be received by no later than 24 hours prior to the first day of the Hearings that the person wishes to attend. Any request made in accordance with this paragraph will be considered by those assisting the Inquiry and applicants will be notified of whether their request has been granted as soon as practicable.

13. Any permission to attend the Hearings in person remains at the discretion of the Commissioner. That permission may be withdrawn at any time or may be made subject to altered or additional conditions to those identified below.
14. Nothing in this Practice Direction limits or detracts from the power of the Commissioner to direct that part of the Hearings be conducted in private and to limit the persons who may be present in the hearing room for that purpose.
15. The grant of permission to attend the Hearings in person is subject to the following conditions. A person granted permission to attend the Hearings in person must:
 - a. comply with any conditions of entry that apply to the Civic Centre from time to time and comply with any directions of Council staff in relation thereto;
 - b. comply with all extant public health orders;
 - c. not disrupt the Hearings;
 - d. not attend the Hearings if suffering from COVID-like symptoms.
16. No persons other than those granted permission to attend in accordance with paragraphs 8-12 above will be permitted to attend the Hearings in person.
17. The arrangements set out in paragraphs 7-16 will be kept under review and may change prior to the commencement of, or during, the Hearings. Notification of any such changes will be posted to the Inquiry Website.

Live streaming of the Hearings and Transcripts

18. Having regard to the matters set out in paragraphs 7 to 17 above, the Commissioner is concerned to ensure that members of the public are able to observe the Hearings should they wish to do so. Accordingly, arrangements are being made for the Hearings to be live streamed. Details of where the live stream of the Hearings can be accessed will be posted on the Inquiry Website prior to the commencement of the Hearings.
19. In addition, a written transcript of the Hearings will be prepared and posted to the Inquiry Website.
20. In the event that the Commissioner directs that any part of the Hearings are to be conducted in private, the live stream of the Hearings will be suspended and no transcript of that part of the Hearings will be made available.

Legal representation and authorisation to appear

Application for legal practitioner to represent a witness while giving evidence

21. Although the Commissioner wishes to avoid undue formality in the conduct of the Hearings, and it is not necessary for a person who gives evidence at the Hearings to be represented by a legal practitioner, any person who gives evidence during the Hearings may nevertheless seek authorisation to be represented by a legal practitioner while giving evidence.
22. Where authorisation is sought by a witness to be represented by a legal practitioner while giving evidence, notice of that application is to be given in writing by way of email to the Inquiry Email Address.
23. Any application of a kind identified in paragraph 22 above should:
 - a. identify the individual on whose behalf such authorisation is sought;
 - b. the legal practitioner(s) who propose to appear if authorisation is granted and their contact details; and
 - c. be received no later than 24 hours prior to the individual being called to give evidence.

Applications for authorisation to appear at the public hearings in all other case

24. Paragraphs 24 to 32 apply in any case other than that described in paragraphs 21 to 23 above.
25. Any person wishing to seek authorisation to appear at the Hearings must apply in writing to the Inquiry.
26. Although the Commissioner wishes to avoid undue formality in the conduct of the Hearings, and it is not necessary for a person who seeks authorisation to appear at the hearings to be legally represented, any such person may also seek authorisation to be represented by a legal practitioner for that purpose.
27. An application for authorisation to appear at the Hearings (including for leave to be represented by a legal practitioner where applicable) must be made in the form of the application annexed to this Practice Direction and be sent by email to the Inquiry Email Address such that it is received by no later than **5.00 pm on Tuesday, 22 March 2022**.

28. The Commissioner will make a ruling on any applications made in accordance with paragraph 27 in chambers and the applicant will be notified of that ruling prior to the commencement of the Hearings.
29. Nothing in this Practice Direction prevents a person from seeking authorisation to appear at the Hearings (including to be represented by a legal practitioner) at any time before or during the Hearings if something occurs which leads the person to believe that the person's interests may be materially affected by the Terms of Reference, or the evidence given during the Hearings. Such an application should address the matters identified in the form of application annexed to these practice directions and will be determined at a time considered appropriate by the Commissioner.
30. The Hearings will not be delayed for the purpose of considering and determining an application for authorisation to appear (including to be represented by a legal practitioner) which is not made in accordance with the process identified above.
31. Unless the Commissioner otherwise determines, a grant of authorisation to any Authorised Person to appear at the Hearings (including to be represented by a legal practitioner) is subject to the following conditions:
 - (a) authorisation to appear at the Hearings may be withdrawn by the Commissioner, or made subject to altered or additional limitations or conditions, at any time;
 - (b) the nature and extent of the participation of an Authorised Person is subject to the Commissioner's control at all times;
 - (c) an Authorised Person, whether represented by a legal practitioner or not, has no automatic right to examine any witness. Amongst other things, the Commissioner may, depending on the circumstances at the relevant time, direct that there should be no examination of a particular witness by or on behalf of the Authorised Person, or that any examination shall be limited as to topic, time or otherwise;
 - (d) an Authorised Person, whether represented by a legal practitioner or not, who wishes to examine a witness must seek permission from the Commissioner to do so immediately after that witness has been examined by Counsel Assisting. In making an application for leave to examine a witness, the Authorised Person should be prepared to address the Commissioner on the topic(s) on which leave

is sought to examine the witness and the relevance of those topics to the Terms of Reference or that person's interests;

- (e) the Authorised Person is expected to follow the practice and other directions of, and rulings from, the Commissioner;
- (f) the Authorised Person will not engage in conduct which disrupts the efficient conduct of the Hearings.

32. The Commissioner will determine the nature and extent of any other conditions attaching to any grant of authorisation to appear at the hearings taking into account all relevant considerations.

Prior notification required to be given of certain matters

33. Any Authorised Person who wishes to apply to call any person as a witness must make a written application to the Inquiry, identifying the person by name, providing short reasons why the person should be called to give evidence and attaching a copy of a statement, signed by that person, setting out the evidence that person would give to the Inquiry. The Commissioner will make a ruling on the application and notify the applicant of his decision at a time he considers appropriate.
34. Each Authorised Person should also give the Inquiry written notice of the following matters:
- (a) if the Authorised Person proposes to request permission to call any person as a witness to give evidence at the hearings: a copy of a statement, signed by that person, whose name must also be clearly printed, setting out the evidence that person would give if called to give evidence;
 - (b) any issues of law which the Authorised Person proposes to raise accompanied by a short outline of submissions; and
 - (c) any procedural matter the Authorised Person proposes to raise (including, by way of example only, any objections to evidence, confidentiality issues, non-publication concerns and administrative arrangements) accompanied by a short outline of submissions

35. Written notice provided under paragraphs 33 and 34 above should clearly state the identity of the Authorised Person and should be sent by email to the Inquiry Email Address such that it is received by no later than **12.00 noon on Friday, 25 March 2022**.
36. Nothing in this Practice Direction prevents an Authorised Person from making an application of a kind referred to in paragraphs 33 and 34 during the Hearings if circumstances arise after the commencement of the Hearings which lead the Authorised Person to consider that such an application is then warranted in order to protect their interests. In that event, such an application should be made as soon as those matters come to the attention of the Authorised Person and the Commissioner will then consider that application at a time he considers appropriate.

Conduct of the Hearings – witnesses

37. Subject to the control of the Commissioner, Counsel Assisting will determine which witnesses are called at the Hearings and the order in which they are called and examined. It may on some occasions be necessary to call some witnesses to give evidence on more than one occasion.
38. Any person who has been summoned to give evidence at the Hearing may provide a witness statement to the Inquiry relevant to the Terms of Reference. Such statement is to be lodged with the Inquiry at least 7 days prior to the date upon which the witness is due to give evidence. Where a witness has provided a written statement, a copy of that statement will be made available to any person that the Commissioner or Counsel Assisting considers may be substantially and directly interested in or affected by the evidence prior to that witness being called at the Hearings.
39. All witnesses will be called to give evidence by Counsel Assisting, and then examined by Counsel Assisting. If leave is granted by the Commissioner, the witness may then be examined by or on behalf of any person considered by the Commissioner to have a sufficient interest to do so. If leave is granted by the Commissioner, the witness may then be examined by his or her own legal representative (if any). If leave is granted, Counsel Assisting may then re-examine the witness.
40. Any person who is granted leave to examine a witness will be expected to proceed with that examination without delay after the witness has first been examined by Counsel

Assisting. There should be no expectation that there will be any adjournment after the witness has been examined before further examination or by other persons takes place.

41. The Commissioner may impose time limits on the length of any examination and may limit the topics upon which a witness may be examined. The Commissioner will not allow a witness to be examined multiple times on the same topic unless good reason for doing so can be demonstrated.

Conduct of the Hearings – documents

42. Subject to the control of the Commissioner, Counsel Assisting will determine which documents are tendered and the time at which they will be tendered.
43. Any Authorised Person or person who is to be called as a witness during the Hearings who wishes to tender a document must notify the Inquiry by providing a copy of the document(s) by way of email to the Inquiry Email Address or post to the Inquiry Postal Address such that they are received by no later than **12.00 noon on Friday, 18 March 2022**. Subject to the control of the Commissioner, Counsel Assisting will decide whether or not to tender the document. An application may be made directly to the Commissioner to tender a particular document if the above procedure has been complied with.
44. Nothing in paragraphs 42 and 43 above prevents an Authorised Person or a witness from seeking to tender a document where something happens during the Hearings that gives rise to the Authorised Person or witness believing that the document ought to be tendered. If that occurs, a copy of the document should be provided (in hard copy where possible) to Counsel Assisting immediately. Subject to the control of the Commissioner, Counsel Assisting will decide whether or not to tender the document. An application may be made directly to the Commissioner to tender the document in those circumstances if the above procedure has been complied with.

Submissions

45. At the conclusion of the evidence, the Commissioner proposes to make directions for final written submissions. Counsel Assisting will make submissions first. An opportunity will then be given to any person whom the Commissioner considers is directly interested or potentially materially affected by those submissions to make their own written submissions. Counsel Assisting will then have an opportunity to make short written submissions in reply.

46. The Commissioner may place limits on the length of any written submissions.
47. Unless good reason can be demonstrated, the Commissioner does not propose to receive oral submissions (as distinct from oral evidence) during the Hearings. However, nothing in this Practice Direction prevents Counsel Assisting or any Authorised Person from making an application to the Commissioner to make oral submissions, including oral submissions that are confined to a particular topic or issue.

Dated: 8 March 2022

Ross Glover

Commissioner

WINGECARRIBEE SHIRE COUNCIL PUBLIC INQUIRY

APPLICATION FOR AUTHORISATION TO APPEAR

<u>Part 1 – Name and contact details</u>	
Name:	<i>[Name of the person seeking authorisation to appear, or the name of the person who proposes to be represented by a legal practitioner (as the case may be)].</i>
Address:	
Contact person:	
Telephone:	
Fax:	
Email:	
<u>Part 2 – Name and contact details of legal practitioner (if any)</u>	
Name:	
Address:	
Telephone:	
Fax:	
Email:	
Details of instructing solicitors:	
Name:	

Address:	
Contact person:	
Telephone:	
Fax:	
Email:	
<u>Part 3 – Terms of reference</u>	
Which particular term or terms of reference does the person in question claim to have an interest?	
<u>Part 4 – Nature and extent of interest</u>	
In respect of each term of reference identified in answer to Part 3, what is the nature and extent of the person's asserted interest in that matter?	
<u>Part 5 – Assistance to the Inquiry</u>	
a) Will the person appearing or to be represented be in a better position to assist the Inquiry if authorisation to appear is granted? If so, how?	

b) Please specify precisely the nature and extent of any assistance that will be provided to the Inquiry if authorisation is granted?

Part 6 – Conflicts

In the case of an application for authorisation for a legal practitioner to appear, does the practitioner (and in the case of Counsel, his or her instructing solicitors) act for any other person in relation to the Inquiry and the matters it is inquiring into? If so, what information can be provided to the Inquiry such as to enable the Commissioner to determine whether it is appropriate for authorisation to be granted?

Part 7 – Submissions in support of the application for authorisation to appear

What submissions do you wish to make, and what other matters do you wish to rely upon, in support of the application for authorisation?



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Office of the Commissioner