

Chapter 17:

Public Exhibition and Notification of Development Applications

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CHAPTER 17 – PUBLIC EXHIBITION AND NOTIFICATION OF DEVELOPMENT APPLICATIONS

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1. CITATION AND PARAMETERS

- (a) This plan may be cited as Byron Shire Development Control Plan 2010 Chapter No. 17 – Public Exhibition and Notification of Development Applications.
- (b) This Chapter is prepared pursuant to Section 3.43 of the Environmental Planning and Assessment Act, 1979. In accordance with Section 3.43(1)(c) this plan provides for particular advertising and/or notification relating to specified development. This plan does not include public participation provisions relating to:
 - (i) Designated Development;
 - (ii) State Significant Development;
 - (iii) Advertised Development; or
 - (iv) Other Advertised Development,
 as defined within Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2000.
- (c) Definitions are those contained in the Environmental Planning and Assessment Act 1979, the Environmental Planning and Assessment Regulation 2000, the Local Government Act 1993 and Byron Local Environmental Plan 1988.
- (d) This DCP chapter shall prevail over any other DCP chapter with regard to advertising and public exhibition and notification provisions.

2. OBJECTIVES

The objectives of this chapter are:

- (a) To provide for public participation in the development application process.
- (b) To specify which development applications will require pre-lodgement community consultation, which will be notified, which will be advertised and which will not be notified or advertised.
- (c) To specify whether the whole public, only sections of the public or specified persons will be notified.
- (d) To specify the procedures for advertising and notification of development applications.
- (e) To specify which applications to modify consents (Section 4.55) will be placed on public exhibition or notified.
- (f) To specify where an application is made to review a determination (Division 8.2 & Section 8.9) and amendments are made to the development described in the original application, when that application will be placed on public exhibition or notified.
- (g) To recognise the traditional owners of the land in Byron Shire Council and to provide them with an opportunity to provide advice to Council on matters of Aboriginal significance and heritage.

3. COMMUNITY CONSULTATION PRIOR TO DEVELOPMENT APPLICATION LODGEMENT

For all developments considered to be community significant development, consultation with the community is required prior to the lodgement of the development application.

The following development types will always be considered as community significant development.

- a) a building with a gross floor area of 5,000m² or more in an industrial, rural or commercial zone; or
- b) any development that will be referred under the Act to the Joint Regional Planning Panel; or
- c) any subdivision resulting in 50 lots or more; or

- d) residential accommodation resulting in 10 or more dwellings; or
- e) any development that proposes demolition of a heritage listed item; or
- f) pubs; or
- g) small bars (nightclubs) within the meaning of the Liquor Act 2007; or
- h) function centres; or
- i) restaurants in rural areas; or
- j) offensive industries; or
- k) telecommunications facilities.

3.1 Minimum Requirements for pre-lodgement community consultation

Pre-consultation with communities likely to be affected by community significant development will assist with identifying issues of concern and enable the development design to respond at an early stage. Pre-consultation can reduce costs, time and quantities of submissions.

Well considered community consultation has the ability to address issues and inform the community with background information to assist in understanding the proposed development. It also allows the community more involvement in the design of development in the Shire.

The following Pre-lodgement community consultation must always be carried out as a minimum:

- a) A facilitated community meeting or workshop.

The following advertisements must always be undertaken as a minimum prior to the consultation period, giving at least 10 days notice of the above meeting or workshop:

- a) Advertisement in a weekly Shire wide newspaper,
- b) Site notice
- c) Letter to any known community groups and/or property owners within 500m of the proposed development,
- d) Use of social media platform

The following must always be included in the above advertisements as a minimum:

- a) An explanation of the proposed application, noting that it has not yet been lodged with Council,
- b) Details of where further information can be found,
- c) Information, including the date and time, on the arranged community meeting or workshop,
- d) Alternative avenues for feedback to be shared – email, telephone etc.
- e) Final date feedback will be received and considered.

Council will consider facilitating/assisting pre-lodgement consultation processes within reasonable means which may include:

- a) Putting applicants in contact with local community groups
- b) Attending community meetings
- c) Publishing details of the proposed application and consultation on Council's website and Council's foyer screens.

It is the responsibility of the applicant to collect and collate the submissions and/or feedback received.

If an applicant would like to alter the required consultation as set out, an engagement plan, stipulating the consultation that would take place instead, must be submitted to Council in writing for approval, giving at least 14 days notice prior to the commencement of any consultation.

3.2 Minimum Documentation Required upon Lodging the Development Application

In addition to any requirements when submitting a development application, the following documents are required where a development requires pre-lodgement consultation with the community.

The developer must submit a report to Council as part of the development application at the time of lodgement.

At a minimum, submitted information must include:

- a) a statutory declaration that consultation was undertaken in accordance with this DCP
- b) accurate details of the nature and extent of the consultation
- c) copies of what the community was shown during the consultation process
- d) copies of all submissions and/or written feedback received
- e) a summary of how the community responded to the proposal and the main comments received
- f) an outline on how the submitted application has responded to the community's concerns with meaningful changes highlighted. If the application being submitted is substantially different to what the community was shown during the consultation period detailed reasons are to be given for how and why the proposal is different. Where there are significant changes that do not respond to community feedback, further pre-consultation may be required.

This report will be made publicly available through the statutory notification period for the development application.

3.3 Timing of Pre-lodgement community consultation

It is recommended that community consultation is designed, prepared for and executed as early as possible. This is to allow the community enough time to genuinely engage and provide feedback and to ensure that the development application can have time to respond and potentially adapt prior to lodgement.

The developer must ensure that the community has adequate time to consider and comment on a proposal depending on its complexity and the issues involved.

The period between 20 December and 10 January (inclusive) is excluded from the calculation of a period of public exhibition as per schedule 1 of the Environmental Planning and Assessment Act 1979 (The Act).

Development applications advertised during periods of public holiday will have their exhibition period extended by a minimum of the holiday period.

4. FORMS OF PUBLIC EXHIBITION AND NOTIFICATION

Public exhibition and notification of development applications must consist of one or more of the following components:

4.1 Display within Council's Website:

The application and the documents accompanying that application will be made available for inspection within Council's website, for the duration of the exhibition period. Council may specify additional locations for inspection of the application at its discretion.

4.2 Newspaper Notice

A public notice must be placed within a newspaper that is circulated within the Byron Shire on the day the public exhibition period commences. That notice must be repeated one week later. The notice must contain the following:

- a) a description of the land (including the address) on which the development is proposed to be carried out,
- b) the name of the applicant and the name of the consent authority,
- c) a description of the proposed development,
- d) a statement that the application and the documents accompanying that application may be inspected at Council's Front Counter, Station Street Mullumbimby during ordinary office hours (Council may specify additional locations for inspection of the application) or within Council's website during the exhibition period,
- e) the dates of the exhibition period,
- f) a statement that any person during the exhibition period may make a written submission to the General Manager in relation to the application,
- g) a statement that, where the submission is by way of objection, the submission must set out the grounds of the objection.
- h) a statement as to Council's policy for supplying copies of written submissions to other people
- i) in the case of an application to modify consent, a statement summarising the modification sought.

4.3 Letter to adjoining and/or surrounding landowners:

A letter to an adjoining and/or surrounding landowner is to be posted no later than three business days before the exhibition period and must contain the following information;

- a) a description of the land (including the address) on which the development is proposed to be carried out,
- b) the name of the applicant and the name of the consent authority,
- c) a description of the proposed development,
- d) a statement that the application and the documents accompanying that application may be inspected at Council's Front Counter, Station Street Mullumbimby during ordinary office hours (Council may specify additional locations for inspection of the application),
- e) the dates of the exhibition period,
- f) a statement that the person may during the exhibition period may make a written submission to the General Manager in relation to the development application,
- g) a statement that where the submission is by way of objection the submission must set out the grounds of the objection.
- h) a statement as to Council's policy for supplying copies of written submissions to other people.
- i) In the case of an application to modify consent, an outline of the modification sought.

- j) notification that an email address must be supplied to Council by all those wishing to stay informed on the progress and outcome of the development application. Email addresses should be supplied to council@byron.nsw.gov.au stating the development application number.

An adjoining landowner is a person who owns land that abuts the land the subject of the development application or is separated only by a road, access handle, railway line or public pathway.

A surrounding landowner is a person who owns land up to 500m in distance from the application site.

When notifying adjoining and/or surrounding landowners;

- a) if the land is a lot within the meaning of the Strata Schemes (Freehold Development) Act 1973, a written notice to the owners corporation is taken to be a written notice to the owner or occupier of each lot within the strata scheme, and
- b) if the land is a lot within the meaning of the Strata Schemes (Leasehold Development) Act 1986, a written notice to the lessor under the leasehold strata scheme concerned and to the owners corporation is taken to be a written notice to the owner or occupier of each lot within the strata scheme, and
- c) if the land is owned or occupied by more than one person, a written notice to one owner or one occupier is taken to be a written notice to all the owners and occupiers of that land.

4.4 Site Notices

A sign on the land is to be erected by Council no later than the day before the exhibition period and;

- a) must be headed in capital letters and bold type 'DEVELOPMENT PROPOSAL',
- b) must display a copy of the notice to be placed in the local newspaper and, if practical, a plan showing the boundaries of the development,
- c) must contain the applicant, a brief description of the development proposal and the location where further details can be found,
- d) must be erected on the land to which the development application relates,
- e) must, if practical be capable of being read from a public road, public place or public reserve (Council may erect a second sign near the land where the sign can not be read from a public road, public place or public reserve),
- f) must be displayed on a board with minimum dimensions of A3 standard paper,

4.5 Exhibition Period

The exhibition period is the period in days during which a copy of the Development Application and supporting information is available to be viewed by any member of the public at Council's Front Counter, Station Street Mullumbimby or via Council's website.

The exhibition period is determined by the type and scale of the development as per clause 5 of this DCP chapter. The period between 20 December and 10 January (inclusive) is excluded from the calculation of a period of public exhibition as per schedule 1 of the Environmental Planning and Assessment Act 1979 (The Act).

Development applications advertised during periods of public holiday will have their exhibition period extended by a minimum of the holiday period.

If a particular matter has different exhibition or notification periods that apply, the longer period applies.

5. LEVELS OF PUBLIC EXHIBITION AND NOTIFICATION

The types of development listed below are to be subject to the nominated levels of notification prior to determination. Should there be any conflict between the following provisions or the development is described in more than one level the higher level must apply. A reference to a type of development must also be read as a reference to alterations or additions to that type of development (i.e. Hotel includes additions to a hotel).

5.1 No Public Exhibition or Notification

No Public Exhibition or Notification
Development applications involving the following types of development will not be exhibited or notified:
<i>Development Types</i> ◆ Advertising signs and structures. ◆ Agriculture. ◆ Alterations and additions to a building type that is not specifically listed in Level 1 or Level 2. ◆ Boundary adjustment subdivisions that do not provide an additional dwelling entitlement. ◆ Buildings and works ancillary to a dwelling-house (garages, pools, sheds, fences etc.). ◆ Buildings and works ancillary to agriculture 5 metres or greater from a property boundary. ◆ Change of use to a commercial premises within a Business Zone. ◆ Change of use to a light industry within an Industrial Zone. ◆ Commercial premises within a Business Zone that are single storey. ◆ Demolition of a structure that is not a heritage item. ◆ Development required to be carried out in an emergency (e.g. relocation of a dwelling to prevent damage from coastal erosion). ◆ Dwelling-houses that are single storey. ◆ Dwelling-houses that are double storey and comply with the prescriptive measures of this DCP for setbacks and building height plane. ◆ Environmental facilities. ◆ Forestry involving establishment of native plantations. ◆ Fences. ◆ Industrial buildings within an Industrial Zone. ◆ Internal alterations to a building. ◆ Shops within a Business Zone that are single storey. ◆ Strata subdivision of existing buildings. ◆ Tree removals and tree lopping. ◆ Utility installations.

5.2 Level 1

Level 1

Development applications, with less than \$3 million dollar estimated development cost, involving the following types of development will be notified via:

- a letter to adjoining landowners, as defined in 4.3 of this DCP.
- a fourteen (14) day exhibition period.

Only those adjoining landowners who may detrimentally affected by the proposed development will be notified (e.g. a garage with a reduced setback will only be notified to the immediately adjoining landowner). Exhibition of the proposal will take place within Council's website.

Development Types

- ◆ Alterations and additions to building or use that is included within this Level.
- ◆ Buildings ancillary to agriculture within 5 metres of a property boundary.
- ◆ Change of use to a light industry not within an Industrial Zone.
- ◆ Clearing of land within a Rural Zone.
- ◆ Dwelling-houses that do not comply with the prescriptive measures of this DCP for setbacks and building height plane.
- ◆ Dual occupancy developments.
- ◆ Professional consulting rooms.
- ◆ Rural industries.
- ◆ Rural tourist facilities.
- ◆ Rural workers dwellings.
- ◆ Secondary dwellings.
- ◆ Any other development type not listed in any other level.

5.3 Level 2

Level 2

Development applications, with less than \$20 million dollar estimated development cost, involving the following types of development will be notified and exhibited via:

- a letter to adjoining landowners, as defined in 4.3 of this DCP.
- a site notice
- a newspaper notice.
- notification to the Bundjalung of Byron Bay (Arakwal) where located within a property that is mapped as an area of Aboriginal significance or Development on a public reserve or community land.
- a fourteen (14) day exhibition period.
- exhibition of the proposal will take place within Council's website.

Development Types

- ♦ Any development type listed under with an estimated development cost of more than \$3 million dollars and less than \$20 million dollars
- ♦ Animal establishments.
- ♦ Brothels.
- ♦ Change of use to a restaurant within a Business Zone.
- ♦ Change of use to a shop or a food shop within a Business Zone
- ♦ Change of use to a drive-in take-away food shop within a Business Zone
- ♦ Demolition of a building or work that is an item of environmental heritage or a use of a building or land that is an item of environmental heritage for a purpose that would otherwise be prohibited.
- ♦ Development on a public reserve or community land.
- ♦ Educational establishments.
- ♦ Erection of a general store or shop within a Residential Zone.
- ♦ Forestry involving harvesting of native forests or establishing non-native plantations.
- ♦ Hotels.
- ♦ Hostels.
- ♦ Liquid fuel depots.
- ♦ Motels.
- ♦ Places of assembly.
- ♦ Places of public worship.
- ♦ Residential flat buildings, tourist facilities, multiple occupancies or the like.
- ♦ Restaurants and commercial premises other than within a Business Zone.
- ♦ Sawmills.
- ♦ Subdivisions involving the creation of additional allotments.
- ♦ Tourist facilities.
- ♦ Clearing of land within an Environmental Protection Zone.
- ♦ Non-designated extractive industries.
- ♦ Offensive or hazardous industries.
- ♦ Residential flat buildings, tourist facilities or the like.

5.4 Level 3

Level 3
Development applications involving the following types of development will be notified and exhibited via: ▪ a letter to adjoining landowners and surrounding landowners ▪ Site notification ▪ a newspaper notice ▪ notification to the Bundjalung of Byron Bay (Arakwal) where located within a property that is mapped as an area of Aboriginal significance or Development on a public reserve or community land. ▪ a twenty one (21) day exhibition period. ▪ exhibition of the proposal will take place within Council's website. ▪ Notification to all community members involved in the pre-consultation process
<i>Development Types</i> ♦ Any development type with an estimated development cost of \$20 million dollars or more ♦ Any development application that will be referred to the Joint Regional Planning Panel for determination ♦ Subdivision that create more than 50 lots ♦ Telecommunication towers

6. PUBLIC EXHIBITION AND NOTIFICATION OF APPLICATIONS TO MODIFY DEVELOPMENT CONSENTS AND REVIEW OF DETERMINATIONS

Applications to modify a development consent pursuant to Section 4.55(1A), 4.56(AA) and 96(2), and applications to review a determination pursuant to Division 8.2 and Section 8.9 of the Environmental Planning and Assessment Act 1979, must be placed on public exhibition and notified in the same manner as described above, as for the original development application.

Where the original development application was advertised/placed on public exhibition/ notified prior to this Development Control Plan coming into force, the level of public exhibition or notification of the application to modify the consent must be determined in accordance with the levels set out in Clause 5 above.

6.1 Exceptions

Applications to modify development consent (Section 4.55) and applications to review a determination (Division 8.2) will not be placed on public exhibition or notified where the modification or amendments to the development involves either:

- (a) modification to conditions of consent where those conditions do not involve the design or location of a building (or key component) or hours of operation,(i.e. developer contributions); or
- (b) modification considered by Council to be a minor change to the proposed development and of low environmental impact (i.e. altered car parking layout, changes to the entry of a shop); or
- (c) internal alterations to a building; or
- (d) modification to a dwelling-house which does not involve a reduction in setback of the dwelling-house from the boundaries of the property; or modification to the first or higher floor level of the dwelling-house; or
- (e) In the case of Division 8.2 or Section 4.56, where no amendments are made to the development described in the original application.

7. NOTIFICATION TO THE BUNDJALUNG OF BYRON BAY (ARAKWAL) AND LAND COUNCILS

~~Written notification shall be provided to the Bundjalung of Byron Bay (Arakwal) for development on a public reserve or community land; or applications listed within the category of Level 2, where such developments are located within a property that is mapped by Byron Shire Council, in association with Bundjalung of Byron Bay (Arakwal), as having Aboriginal significance.~~

Written notification shall be provided to the Bundjalung of Byron Bay (Arakwal) **and relevant Land Council** for any of the following:

- a) development on a public reserve or community land,
- b) applications listed within the category of Level 2 and Level 3, where such developments are located within a property that is mapped by Byron Shire Council, in association with Bundjalung of Byron Bay (Arakwal), as having Aboriginal significance,
- c) **Artwork subject to Chapter D8 that:**
 - (i) **is produced in an Indigenous style; or**
 - (ii) **is identified as an Aboriginal artwork; or**
 - (iii) **is in any way related to Indigenous heritage or culture**

8. INCREASES IN THE LEVEL OF PUBLIC NOTIFICATION OR EXHIBITION

Council may, at its discretion:

- (a) notify or publicly exhibit (Levels 1 to 2) a development application that would not have been otherwise notified or publicly exhibited; or
- (b) publicly exhibit (Level 2) a development application that would not have been otherwise publicly exhibited (ie. Level 1); or
- (c) increase the period of notification from 14 days to 21 or 28 days.

Council's discretion on this matter will have regard to:

- (i) whether previous developments on the land have received a significant level of objection; or
- (ii) the location of the development is unique in terms of unusual landform or vegetation; or
- (iii) the size or extent of the development is beyond that which would normally be expected for the category of development.

Council may increase the level of public exhibition at the time of first giving public notice or at any time prior to the conclusion of the exhibition period.

9. WAIVING OF PUBLIC NOTIFICATION OR EXHIBITION

Council has the discretion to waive the public notification or exhibition of any application.

10. DETERMINATION OF A DEVELOPMENT APPLICATION - STATEMENT OF REASONS

Once a development application has been determined, Council will email notification to all submitters and interested parties who supplied a valid email address – as per 4 of this DCP chapter.

The determination will also be published online to Council's website. The notice of determination of the development application includes Council's reasons for the decision and how community views were taken in to account in making the decision, in accordance with schedule 1 of The Act.

This will include:

- a) the decision, and
- b) the date of the decision, and
- c) the reasons for the decision, and
- d) how community views were taken into account in making the decision