

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 74C of the Environmental Planning and Assessment Act, 1979. In accordance with Section 74C(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 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 96) will be placed on public exhibition or notified.
- (f) To specify where an application is made to review a determination (Section 82A & Section 96AB) 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. FORMS OF PUBLIC EXHIBITION AND NOTIFICATION

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

3.1 Display within Council's Front Counter or Website:

The application and the documents accompanying that application will be made available for inspection at Council's Front Counter, Station Street Mullumbimby during ordinary office hours, and/or within Council's website, for the duration of the exhibition period. Council may specify additional locations for inspection of the application at its discretion.

3.2 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.

3.3 Letter to adjoining landowners:

A letter to an adjoining 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.

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.

When notifying adjoining 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.

3.4 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 14 days. The exhibition period is to be extended by 7 days if the period between Christmas and New Years Day or if the Easter weekend coincides with the exhibition period.

4. 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).

4.1 No Public Exhibition or Notification

No Public Exhibition or Notification

Development applications involving the following types of development will not be exhibited or notified:

Development Types

- ◆ 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.
- ◆ Change of use to a restaurant within a Business Zone.
- ◆ Change of use to a shop or a food shop within a Business 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.

4.2 Level 1

Level 1

Development applications involving the following types of development will be notified via:

- a letter to adjoining landowners.
- 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 at Council's Administration Building (Station Street, Mullumbimby) and / or 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.

4.3 Level 2

Level 2

Development applications involving the following types of development will be notified and exhibited via:

- a letter to adjoining landowners.
- 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 at Council's Administration Building (Station Street, Mullumbimby) and / or within Council's website.

Development Types

- ◆ Animal establishments.
- ◆ Brothels.
- ◆ 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. PUBLIC EXHIBITION AND NOTIFICATION OF APPLICATIONS TO MODIFY DEVELOPMENT CONSENTS AND REVIEW OF DETERMINATIONS

Applications to modify a development consent pursuant to Section 96(1A), 96(AA) and 96(2), and applications to review a determination pursuant to Section 82A and Section 96AB 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 4 above.

5.1 Exceptions

Applications to modify development consent (Section 96) and applications to review a determination (Section 82A) 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 Section 82A or Section 96AB, where no amendments are made to the development described in the original application.

6. NOTIFICATION TO THE BUNDJALUNG OF BYRON BAY (ARAKWAL)

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.

7. 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.

8. WAIVING OF PUBLIC NOTIFICATION OR EXHIBITION

- (a) Council has the discretion to waive the public notification or exhibition of any application.