



Mr Peter Gesling
General Manager
Port Stephens Council

7th December, 2009

Access to Information

Dear Sir,

You will be aware from previous correspondence that Tomaree Ratepayers and Residents Association has concerns about the level, and channels, of information available to the public about Council policy matters and about Development Applications (DAs) in particular.

We request an explanation of the Council's access to information policies and how these comply with the current requirements of the Freedom of Information (FOI) and Local Government (LG) Acts. We also request advice as to Council's preparation for compliance with the new 'right to information' regime under the Government Information (Public Access) Act which will replace the FOIA and s.12 of the LGA early in 2010 (see www.informationcommissioner.nsw.gov.au). We raise these issues in the context of the Council's Community Engagement Policy.

Current FOI and LG Act requirements

We note that the Port Stephens Council website includes pages on 'How to access Information' (at <http://www.portstephens.nsw.gov.au/council/1633/50196.html>) This does not however follow the model Access to Information Policy put out for voluntary adoption in April 2008 (DLG Circular 08-15), and there are some inconsistencies for which we seek an explanation.

Section 12(1) of the LG Act requires certain information to be publicly available, generally free of charge. This information includes 'development applications and associated documents', with the only commonly relevant exception being 'plans and specifications for any residential parts of a proposed building other than plans that merely show its height and its external configuration in relation to the site on which it is proposed to be erected' (s.12(1A)(a)).

While s.12(1) only *requires* the information to be available for inspection at the office of the Council during ordinary office hours (s.12(3)), councils are free to make copies available in other places e.g. libraries (and by implication, on websites) (Note to s.12).

The LGMA guidance circulated by DLG, referred to above, expressly suggests that all the information required to be made available under s12 should be placed on a Council's website, and further explains that any copyright restrictions on copying plans do not apply to plans forming part of or accompanying a development application (copyright exemption in clause 57 of the Environmental Planning and Assessment Regulation 2000).

The FAQs attached to the DLG Circular include further guidance on publication of DAs (FAQ 10 answers the question "What information can I access about development applications?" and advises that "any member of the public may also inspect a DA and the documents lodged

with the application while the application is under consideration.”

In contrast, the Port Stephens Council How to access Information webpage only includes the bare text of s.12(1) and 12(1A) without further explanation, and gives the impression that the information can only be obtained by completing and submitting an application form. This is clearly a completely impracticable way of accessing DAs given the limited period generally available for public submissions.

The information published on the DA Tracker pages of the Council's website is limited to basic details as follows:

[Street address]

Description: [usually no more than a few words]

Applicant: [Name]

Application number: [eg. xxx/year]

Advertised from: day/month/year Expires: day/month/year

The details published in the Examiner are never more than this, and the paper version sometimes (but not consistently) available for inspection at Tomaree library rarely has much more detail – in some cases a basic plan.

As we have repeatedly pointed out, these limited details are a wholly inadequate and unacceptable basis for inviting public comments – no context, explanation or rationale for the DA is given, and no detail of what is proposed or its implications. As we have said before, at least the full DA and ‘associated documents’ (as required by s.12(1)) should be available for public inspection (and not only by attending the Council offices in Raymond Terrace).

As we have also noted, limiting the DA details to the street address can often lead to confusion – in at least two recent cases (Gan Gan Rd Anna Bay, and Salamander Way Salamander Bay, led to many interested parties mis-identifying the sites in question. Public notices of significant DAs need to be more helpful in identifying sites, preferably on a map.

We again note that many other NSW Councils publish DA information in a much more helpful manner – we cite the following as examples:

Lane Cove Council

<http://www.lanecove.nsw.gov.au/Council%20Services/Development%20Control/Application%20Progress/DACurrentlyAdvertised.htm>

North Sydney Council

<http://masterview.northsydney.nsw.gov.au/Modules/applicationmaster/default.aspx?page=search>

Shellharbour City Council <http://www.oasis.shellharbour.nsw.gov.au/index.pl?page=3442>

Lake Macquarie City Council

<http://aptracking.lakemac.com.au/modules/ApplicationMaster/default.aspx>

Future enhanced publication requirements under the GIPA Act

The Government Information (Public Access) Act 2009, which will commence in early 2010, will replace the access to information requirements of the FOI and LG Acts with a new 'right to information' regime with much greater emphasis on proactive publication of information. Schedule 5 of the GIPA Act will require local councils to publish information about development applications, and spells out the information required in more detail, giving non-exhaustive examples of 'associated documents' (Schedule 5, Clause 3).

This information will be 'open access information' which the council will be required to publish in accordance with Section 6 of the GIPA Act. This includes a requirement that "Open access information is to be made publicly available free of charge on a website maintained by the agency ... and can be made publicly available in any other way that the agency considers appropriate." (s.6(2)).

TRRA seeks advice as to what steps Port Stephens Council is taking to comply with the new publication requirements of the GIPA Act, both generally and specifically in relation to Development Applications. There is, as far as we can see, nothing to prevent Port Stephens Council from voluntarily complying with the new requirements as soon as practicable – exercising the discretion allowed by s.12 of the LG Act, but they will in any case become mandatory for any DAs received after the GIPA Act commences in early 2010.

We look forward to your considered reply to our concerns about access to information and answers to our specific question concerning preparation for the GIPA Act. We will make contact with you shortly to follow up this letter.

Yours faithfully,

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