



19 March 2020

The General Manager  
Port Stephens Council

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Reference: File No PSC2019-05565

### ***Proposed DCP amendment 13 – deletion of Chapter A11 of the Port Stephens Development Control Plan 2014 - Submission***

TRRA previously commented on the proposed deletion of Chapter A11 when Council exhibited the Community Consultation Plan (CPP) which in effect replaces Chapter A11. The CPP, forming a section 2 of the Community Engagement Strategy, was adopted by Council at its meeting on 26 November 2019. In the 'summary of submissions' (Attachment 3 to Item 4 in the Agenda Paper) Council staff responded to our submission as it related to the CPP. Apart from accepting one minor suggested change<sup>1</sup>, the summary put forward reasons for not accepting our other objections – effectively asking the community to trust the planning staff to exercise their discretion to advertise additional DAs where they consider them to be significant.

We do not accept this as a satisfactory response to our concerns. We remain of the opinion that the adopted CPP does not adequately replace Chapter A11 (which in itself had been previously weakened in terms of the level and type of notification of DAs). **The changes represent a significant loss of transparency and of the opportunities for community input on some very significant development proposals.** We therefore repeat below the key points from the CPP-related part of our submission on the Community Engagement Strategy (6 November 2019).

**We request Council to review its decision on 26 November and either re-instate Chapter A11 or amend the CPP to achieve at least the same level of transparency.**

### **General Comment on Community Participation Plan (CPP)**

This Plan (CPP) which relates to planning matters only – and is a new requirement under the EPA Act – will replace section 11 in Chapter A of the DCP. Confusingly, the CPP is now included as a Section 2 in the Community Engagement Strategy.

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<sup>1</sup> Relating to advertising of electricity generation DAs – see last page of this submission



TRRA submits that the CPP is a poor substitute for the existing Chapter A.11. The clear table at the current Figure AA (in the DCP) lists *all* development types and the corresponding level of notification or advertising. In contrast, the table at Appendix A of the new CPP lists only those development types with either no notification/advertising requirement (Type A) or an advertising requirement (Type B – although no exhibition period is specified).

Table 3 in the CPP explains that ‘by default’ other development types not included in the Appendix ‘Exhibition Periods’ (described (in error?) as Table 1) will be notified to neighbours (for 14 days). However, readers of the CPP will not know what these other development types are, and would have to look elsewhere to find out – this is clearly not best practice in transparency. We submit that any table should include *all* development types and the associated notification/advertising requirements.

We are also concerned about the significant change in notification requirements relating to subdivisions, with the removal of neighbour notification for strata and of public advertising for 5-10 lot subdivisions. While this was mentioned in the staff report to Council for its 8 October 2019 meeting, the reasons for this were not provided and the implications flowing from the change are not discussed in the CPP.

We submit that strata and 5-10 lot subdivisions can have very significant implications for neighbours and for the wider community – e.g. in relation to amenity, environmental impact, parking and traffic. We submit that Council could face a serious ‘backlash’ from affected residents who find out about subdivisions too late to have a say, if this change is implemented.

## More detailed comments

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*If the exhibition period is due to close on a weekend or public holiday we may extend the exhibition to finish on the first available work day. In accordance with the planning legislation, the period between 20 December and 10 January (inclusive) is excluded from the calculation of a period of public exhibition.*

The word ‘may’ should be changed to ‘will’.

*Include a statement of objection or support and reasons.*

This ‘binary choice’ requirement does not accommodate submissions which may generally support an application but identify components which are objectionable or aspects which should be subject to specific conditions to overcome objectionable aspects.

We submit that Council should make it clear that submissions may both support and object to different aspects of a DA, and should also encourage reasons to be provided to justify comments or objections.

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### **Development applications**

*Table 3 outlines Council's minimum notification requirements for development applications. Where there is an inconsistency between the notification requirements of this Community Participation Plan and legislative requirements, the legislative requirements will prevail.*

We submit that the legislative requirements should be regarded as the minimum requirement and where Council has good reason to extend the period, this longer period should apply.

### **Type B - qualification (2<sup>nd</sup> row in table)**

*Council may also at its discretion decide not to advertise development.*

We submit that the community would prefer that Council did not exercise a discretion NOT to advertise. At the least this Plan should specify the circumstances where this discretion might apply.

### **Not included in Table 1 (3<sup>rd</sup> row in table)**

*Written notification will be sent to all owners of land directly adjoining or opposite the development site. Additional owners and occupiers may be notified at the discretion of Council staff. Council may at its discretion decide not to notify development where impacts on adjoining land owners are considered minor in nature.*

TRRA would prefer a requirement for notification to at least the owners/occupants of two lots on all sides.

There may be times when impacts appear to be minor in nature, but nearby owners/occupant may have very different valid objections.

### **Modification applications**

Too much discretion is allowed for Council staff – we have experience of modifications of significant public interest not being advertised.

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## **Appendix A, Community Participation Categories**

The table at Appendix A includes only selected development types and only two columns showing either 'no notification' (Type A) or 'notification + newspaper advertising' (Type B).

By comparison, the existing Fig. AA in the DCP lists all development types and has three columns which is much clearer, corresponding to the following three categories:

1. *No notification required*
2. *Notification*
  - *Written notice to immediately adjoining landowners*
    - *At the discretion of Council, written notice may also be additionally provided to those landowners not immediately adjoining*
3. *Notification and Advertisement*

- *Notification requirements as required by 2. Notification (above), and*
- *Newspaper notice in the Port Stephens Examiner*

These remain the 3 de facto Community Participation categories in use under the new CPP – i.e. Type A, Type B and ‘Not included in Table’ (page13), but the presentation in the old Chapter A11 is much clearer than in the new CPP.

In the **Residential Accommodation** category, “Secondary dwellings” should be in Exhibition type B instead of A

#### **Subdivision (all types of subdivision)**

Strata Subdivision if within a block of units already approved in some circumstances can have significant impacts on issues such as parking, and should therefore be at least notified.

Requiring notification of Subdivisions only where they have more than ten Torrens or Community title lots is too high a threshold – we submit that 5 or more lots should require notification.

Warehouse or Distribution Centres should be in type B to be consistent with Freight transport facilities as they would potentially involve traffic issues that would affect others.

Another situation where notification would be appropriate is where applications for Industrial Developments are made for lands not zoned “industrial” (e.g. 97 Stockton St Nelson Bay - DAs 2017-452 & 2019-277).

#### **Miscellaneous**

Boatshed, Electricity generating works, Environmental Facilities / Environmental Protection works and Moorings / Mooring Pens should be Type B.

We note that the CPP was changed after our submission to include Electricity generating works (but not the other miscellaneous categories) as a type B development normally requiring both notification and newspaper advertising.

We continue to argue that the other types of development we recommended be included as Type B.

Nigel Waters  
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