



25 September 2020

The General Manager  
Port Stephens Council

**File Reference PSC2013-00406**

**Submission on Council Policy: Development Applications to be reported to Council**

We note the proposed name change to 'Planning Matters...'. While this is a welcome recognition that the Policy applies more broadly than just to DAs, it does now create some confusion with the recently adopted 'Rezoning Request Policy' which has limited the 'pre-Gateway' reporting to Council of Planning Proposals. Paragraph 2.2 of the revised Policy addresses this relationship but is ambiguous – the relationship should be clarified – see our further comments below on Criteria for Reporting.

We made a detailed submission (attached) on this policy when it was under review in 2015. Regrettably, few of our suggestions were adopted, and subsequent changes in other policies and practices have in our view taken Council backwards in terms of transparency and participation.

We observe that the revised policy on exhibition is presented without any explanation of the changes or context, other than some notes in Version History, which most readers would not easily find. This makes a mockery of public consultation – the public should be given at least the same explanatory material 'up-front' as was provided to Councillors on 25 August. We are able to comment substantively only because we have been following the issue – others seeing the item in the Public Exhibition section of Council's website would have no idea what changes were being made or why, unless they knew to look at Version History at the end of the Policy.

We have no objection to this submission being published in full and unredacted.



## The Policy in context

This is a very important policy in the context of community participation in significant planning decisions. It needs to be considered alongside several other documents, practices and procedures, including:

- Relevant Delegations
- Relevant sections of the Community Participation Plan dealing with Notification of Development Applications (DAs) – this Plan replaced Section A12 of the DCP 2014, and ended the routine publication of notice of DAs in the local newspaper
- The Council website and dedicated online DA Tracker, which have improved functionality and accessibility but have limitations in ‘reach’ into the community

Other documents which used to throw further light on Council’s processes appear to have been removed from Council’s website. These include:

- Council’s Development Application Assessment Policy
- PSC Work Practice Note – DEVELOPMENT ASSESSMENT PROCESS (this Note is still referenced in the revised Policy as a ‘related document’)
- Internal PSC Development Assessment ‘End to End Process’ revised September 2014 (version 3.0)
- Part 6.1 of the Development Application Guide (version 1, undated)

Council’s website does now include a page which gives information about the DA process, but this does not fully replace the previously available detail, and cannot be downloaded as a single document.

<https://www.portstephens.nsw.gov.au/grow/development-applications/development-application-process> It has also not been updated to reflect, in Step 5, the change to 3 Councillors required for ‘call-up’.

## Criteria for reporting

TRRA (like other community groups) monitors advertised DAs to identify those which raise issues of wider community concern – criteria include:

- DAs of significant scale – particularly in terms of height or bulk
- DAs in sensitive locations – particularly those affecting major view corridors, alongside main access roads, or on the coastline
- DAs which may set precedents
- DAs which may be inconsistent with the LEP, DCP or planning strategies

We would expect that Council staff in the Development Assessment section apply similar criteria in deciding whether to take advantage of delegated authority or to use their discretion (explained in this Policy) to report DAs to Council in

circumstances where Councillors have not 'called up' (i.e. requested reporting of) a particular DA to Council.

Unfortunately, the revised policy has only a limited set of 'triggers' for **mandatory** reporting. These are (paraphrased):

1. DAs with a cost of works >\$250k (with exception of works on road reserves) where Council is owner of land or where works on behalf of Council
2. DAs (and s.4.55 mods) for development on Community land (except amenity buildings)
3. s.4.55(2) mods (i.e. those with more than minimal environmental impact), where original DA was determined by Council
4. Requests to vary a Development Standard by more than 10%
5. A Planning Proposal that is not consistent with existing Council strategies (we have taken this from the Rezoning Request Policy adopted in February 2020 – as noted above the treatment of PPs in section 5.2 of this Policy is incomplete)

Reporting is otherwise confined to two circumstances:

6. 'Call-up' by 3 Councillors
7. At (unfettered) discretion of senior planning staff

We note that all DAs and all Planning Proposals will be included in the PS Newsletter circulated to the Mayor/Councillors and internal staff. However this newsletter is not made public. We submit that many of our concerns about this *Planning Matters to be reported to Council Policy* (and the *Rezoning Request Policy*) would be alleviated if the PS Newsletter was made publicly available at the same time as it circulates internally. This would allow interested parties to review DAs (without having to routinely monitor the DA Tracker) and Proposals and afford the opportunity to lobby Councillors for 'call-up'.

**Recommendation: The PS Newsletter (or at least the parts of each issue that lists DAs and Planning Proposals received) should be made public.**

We acknowledge that the vast majority of DAs do not need to be reported to Council and can be appropriately determined under delegated authority, on the proviso that neighbours and any other directly affected property owners are notified and have the opportunity to lodge an objection – and/or to lobby Councillors to have a DA 'called up'.

We do not agree that staff should have so much discretion to decide that a Planning Proposal is consistent with existing Council Strategies, and therefore does not need reporting to Council. (this repeats our objection made when the *Rezoning Request Policy* was on exhibition)

**Recommendation: Planning Proposals for significant changes to the LEP should not be allowed to proceed under Delegated Authority. The *Rezoning Request Policy* should be withdrawn and revised to include appropriate thresholds of ‘significance’ so that LEP changes with the potential to deliver large increases in land value to private landowners or developers remain more transparent and accountable.**

We submit that the *Planning Matters to be reported to Council Policy*, and supporting internal documents, should expressly acknowledge that expressions of interest or concern from the community (either multiple individuals **or community groups**) *can be* a relevant factor in the exercise of staff discretion to report. This means that in addition to the mandatory triggers, there would be three other ‘triggers’ for reporting to Council:

- Call-up from Councillors
- Staff discretion based on professional judgement
- Staff discretion based on significant community concern

The **DAP Work Practice Note**<sup>1</sup> already includes ‘more than 10 objections/submissions’ as a trigger. We submit that an alternative trigger should be ‘*significant objection/submission from one or more recognised community representative organisation(s)*’. While organisations such as TRRA could organise 10 or more submissions from individual members to invoke the existing trigger, they exist primarily to raise concerns *on behalf of* members, and it would be helpful for Council to expressly recognise this.

**Recommendation: The *Planning Matters to be reported to Council Policy* should formally recognise ‘*significant objection/submission from one or more recognised community representative organisation(s)*’ as an additional trigger for reporting a DA or Planning Proposal to Council.**

We have no difficulty with the decision to report on these ‘non-mandatory’ grounds remaining ultimately remain a matter of staff judgement – subject to an effective Councillor ‘call-up’ option as a final safeguard.

However, we have significant concerns about the current Councillor ‘call-up’ trigger. Since this was revised (in 2019) to require 3 Councillors rather than one, we submit that it is no longer a practicable and effective safeguard.

In practice it will be unusual for any 3 Councillors to agree that a particular matter deserves to be called up, particularly since for many local matters it will only be the three ward Councillors who are sufficiently interested. Given evident political

<sup>1</sup> We are summing the last publicly available Practice Note remains unchanged

and philosophical differences, it would be rare that all 3 ward Councillors could agree on the significance of a local planning matter.

Even where 3 Councillors can reach agreement on a call-up, there is no guarantee that this consensus will survive. The recent example of DA 2019-20 (a \$25 million development at 60 Port Stephens Drive) illustrates the fragility of this supposed safeguard. While 3 Councillors initially indicated support for 'call-up', two of these subsequently withdrew support for the call-up and only one other then supporting. This resulted in approval of the DA under delegated authority without any of the 20+ objectors even being aware that it was no longer coming to Council. The community was deprived of the opportunity for 'public access' and an open debate on significant planning matter.

In our 2015 submission, we also questioned whether the Mayor could have any involvement in responding to a 'call-up' request. For example, are there circumstances in which staff may be directed to have discussions with one or more of the requesting Councillors in an attempt to resolve concerns and therefore avoid the need to report? If so, we would be concerned about the potential for inappropriate pressure to be brought to bear to avoid a matter coming to full Council. These concerns remain.

**Recommendation: Council should revisit its policy on 'call-up' of DAs and Planning Proposals to ensure that it is more transparent, and to require only 2 Councillors to request a call-up.**

We also submit that the *Planning Matters to be reported to Council Policy* will only work effectively if three other related processes provide appropriate support and information. These are:

**Adequate descriptions of DAs** in the DA Tracker, public notices and weekly report to Councillors. While there has been some improvement in recent years, including the clickable map, too many DAs are still listed with unhelpful descriptions and even in some cases misleading addresses – and failing to use 'common names' (e.g. 155 Salamander Way for the entire Council owned land surrounding the Salamander Shopping Centre). There is no reason why staff have to confine the description to the technically correct address or Lot/Plan number – significant development proposals should be described in a way that will be noticeable and meaningful to citizens (e.g. supermarket, hotel, or resort complex). Even the Councillors cannot be expected to 'spot' potentially controversial DAs if they are not given an adequate description.

**Adequate public advertising of DAs, where appropriate.** We note that the *Community Participation Plan*, which recently replaced section A12 of the DCP, specifies different levels of notification for different types of development – e.g. neighbour notification only, or website advertising.

TRRA remains disappointed that Council did not adopt our suggestion, made in previous submissions, for ‘threshold’ criteria for requiring both press and website advertisement. We have separately voiced our concern about Council’s recent decision to stop routinely advertising significant DAs received in the local newspaper.

Nevertheless, there is clearly some discretion and we submit that staff should always err on the side of public advertising for any obviously significant DA.

**Appropriate development assessment policies and processes.** In this respect, we repeat our 2015 concerns the material available online about DA processes are somewhat unbalanced. In our view they continue to place too much emphasis on facilitating DAs, efficiency etc. While clearly important objectives, these need to be balanced with the statutory purpose of the planning system and legislative framework. We note that the Objects of the EPA Act include:

- ‘....promoting the social and economic welfare of the community and a better environment. (s5(a)(i))
- ‘the protection of the environment ...’(s5(a)(vi)), and
- ‘ecologically sustainable development’ (s5(a)(vii))

We do not see these objectives adequately reflected in the Port Stephens Council’s current policies and procedures.

**Recommendation: The *Planning Matters to be reported to Council Policy*, the *DA Assessment Policy*, and the *DA Work Practice Note* should all be revised to include a more balanced summary of the objectives of the planning legislation.**

In our 2015 submission (attached) we noted that the *DA End to End Process* document (which included a business process flowchart) did not fully incorporate the Development Assessment Process (DAP) set out in the *DAP Work Practice Note*. There were no ‘decision points’ in the *End to End Process* that reflect judgements about the criteria in the Work Practice Note, or consequent referral of DAs to a wider team (implicit in the Note’s provision for ‘referred back to DAP prior to determination’ if one or more of the ‘triggers’ in the Terms of Reference apply – also referred to elsewhere as ‘referral to DAC’). Nor was the automatic requirement for ‘peer review’ reflected in the *End to End Process* or flowchart. We submitted that the *End to End Process* needed to be revised to ensure fully consistency with the *DA Work Practice Note*. We also called for the latter Factsheet to be clearer, particularly in respect of the referral to a wider team and/or supervisors. We assumed that this Practice Note was intended to be public, but noted that it did not (in 2015) appear in the library of Factsheets on the website.

As noted in the introduction to this submission, we can no longer find either the Work Practice Note or the End to End Process on the website or elsewhere. We also note that the Development Application Guide (available online in 2015) which was admirably clear and accurate is also no longer available, having been replaced by an online only resource which is less complete and less helpful - at <https://www.portstephens.nsw.gov.au/grow/development-applications/development-application-process>

**Recommendation: Council should publish information about the DA process at least as complete and detailed as was available in 2015.**

Thank you for your consideration of this submission. Whether or not Council accepts our recommendations and proposed changes, we would appreciate feedback.

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**Attachment: TRRA 2015 submission**

