14 July 2022

The General Manager
Port Stephens Council

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PSC Planning Matters to be reported to Council Policy

File number PSC2013-00406

Proposed changes

We welcome the minor changes proposed to the 2020 version of the Policy, as set out in the staff report (p118 of the 14 June Council agenda papers) and shown highlighted in yellow in the Attachment (pp 121-128). The changes now also include amendments to the 'call-up' provisions resulting from a separate Council resolution on 28 June. We do however have several proposed additional changes, and editing and formatting suggestions to clarify the Policy – as set out below.

Wider context – transparency and accountability of planning matters

This Policy addresses a very specific and narrow aspect of transparency – reporting to Councillors.

We note that this ***Planning matters to be reported to Council Policy***, as well as the recently revised ***Rezoning Request Policy***, relates directly to the ***Community Participation Plan*** **(CPP)** required under the EPA Act and currently on public exhibition as an Attachment to the ***Draft Port Stephens Communication and Engagement Strategy***. The CPP deals with how DAs and Planning Proposals are made public, but this cannot and should not be separated from the communication of DAs and Planning Proposals to Councillors which is addressed in this Policy.

It is clearly in the public interest for transparency and accountability (to which Council is committed) for the relevant provisions in all three documents to be consistent and as closely aligned as possible.

For example, we can see no good reason why the reports to Councillors on DAs and Planning Proposals included in the PS Newsletter (clauses 5.1(b) and 5.2(a)) cannot be made public. While DAs and Planning Proposals can be found by the public and Councillors on Councils' DA Tracker and the State Government Planning Portal, it is

not easy to locate items in Port Stephens of interest. If the reports are a useful shortcut' for Councillors, why the community should also get the benefit – there would be no additional cost or effort. **We submit that reports to Councillors on DAs and Planning Proposals included in the PS Newsletter also be made public**.

This wider issue has also been raised in the context of advertising of DAs and other matters in local newspapers – most recently in a Notice of Motion at the 22 February 2022 Council meeting. We note that the Information Paper on Council Resolutions for the 14 June Council meeting flags a report to Council on this matter in August.

There are also two outstanding Council Resolutions from the 13 July 2021 meeting relating to Publication of DA information and submissions. The same Information Paper for the 14 June 2022 meeting notes that a discussion with Councillors on these matters is scheduled for 19 July 2022.

Because these closely related matters are outstanding, **we submit that Council should revisit the all the relevant policies and documents as a 'package' later in 2022**. It may be that a simplified overall policy relating to transparency and accountability of planning matters could be developed to replace and consolidate the various overlapping provisions, which are confusing to all interested parties.

We will be suggesting in our submission on the ***Draft Port Stephens Communication and Engagement Strategy*** that the CPP references the other two Council Policies, including this one. **We submit that, similarly, this Policy should reference the CPP**.

'Call-up' of planning matters

We note that the provisions in this Policy relating to 'call-up' of a matter to Council (= withdrawal of delegated authority) overlaps with provisions in the ***Port Stephens Council Code of Meeting Practice***. Amendments made to the Code of Meeting Practice at the 28 June Council meeting changed the number of Councillors required for a 'call-up' from 3 to 2. The amended draft Code is on exhibition until 15 August. We note that this change has been carried over into this Policy since the version with the 3 councillors was approved for exhibition on 14 June (Clauses 3.3, 3.4, 5.1(c) and 5.2(b)). The change to the Code from 3 to 2 Councillors was supported by several Community Groups including TRRA, and Councillors unanimously approved the change on 28 June – consistent with this **we support the change to this Policy as well**.

We submit that there needs to be a related change. If one Councillor withdraws their support (as envisaged by Cluse 3.4 and as has happened) there appears to be no mechanism for interested parties (or even the other Councillor?) to be informed so that a replacement 'sponsor' can be found. **We submit that this Policy include a requirement for at least all Councillors sponsoring a 'call-up' to be informed of any withdrawal of support.**

We also submit that a field should be included in Council's DA Tracker to inform the public of the status of a DA with respect to delegated authority, with similar transparency for the status of Planning Proposals. Where Council staff have used their discretion to bring a matter to Council, or where Councillors have 'called up' a matter, this needs to be obvious to the public. This would avoid unnecessary lobbying by interested parties to have a matter 'called up' when it will already be coming to Council for Determination.

Variations – exceptions to development standards

The intention of Clause 5.1(h) is to require DAs which seek to vary a development standard by greater than 10% to be reported to Council for determination. We submit that this should be the criterion in the clause rather than it including the preamble that the DA includes a '**Request** to vary…'. While DAs that seek to vary should (and usually do) include a specific request, the 'trigger' for reporting should apply whether or not the applicant has expressly requested a variation. Whether a variation is or is not greater than 10% is sometimes contentious, and the applicant may assert that it is less and therefore not submit a Request under Clause 4.6 of the LEP. Council staff must be required to independently assess whether a DA includes a variation to one or more development standards and if so whether it crosses the 10% threshold. **We submit that the criterion for reporting under clause 5.1(h) be changed to 'DAs which seek to vary a development standard by more than 10%'**

We note that this issue is not clearly dealt with in Council's ***Exceptions to Development Standards Policy*** – Clause 5.4.4 of that Policy appears to leave the judgement in the hands of the applicant. This should be corrected.

The ***Planning matters to be reported to Council Policy*** should also make it clear whether 'Development Standard' for the purposes of Clause 5.1(h) includes both ***Local Environmental Plan*** **(LEP)** standards such as height limits and floor space ratios and ***Development Control Plan*** **(DCP)** standards such as setbacks or site coverage. According to the definition of 'Development Standard' in the ***Environmental Planning and Assessment Act 1979*** **(EPA Act)**, this will hinge on whether Council's DCP is an 'environmental planning instrument'. This needs to be made clear, and even if it is not officially an EPI, **we submit that Council should ensure that both Policies do apply to DCP standards**.

If the **Exceptions … Policy** can ensure that it applies to DCP standards such as setbacks, then we submit that this **Planning matters… Policy** should address the increasingly common situation where a DA 'pushes the boundaries' (sometimes literally) with requests for multiple variations – e.g. of height and setbacks. While no one variation may exceed 10%, the overall effect may be to significantly increase the scale, bulk and impact of a building. **We submit that there should be an additional criterion for reporting a DA to Council, along the lines of: 'where either the planners or objectors raise legitimate concerns about the cumulative impact of multiple variations, even where they are individually less than 10%**'.

Reporting of DAs and modifications on public land

We submit that 5.1(d) should apply to crown land managed by Council as well as to Council owned land, and that the $250,000 dollar threshold is too high – works costing much less than this on public land could be of great public interest. We submit that a threshold of $100,000 would be more appropriate.

In 5.1(e) we cannot see any justification for the exclusion of *'…amenity buildings and structures such as; toilet facilities, playgrounds, small refreshment kiosks and the like.'* These amenities are almost always of great public interest – as evidenced by recent controversies over the design of replacement amenities buildings in several locations in the Tomaree peninsula. We submit that the exception be removed so that all such DAs and s.4.55 modifications on 'Community land' are reported to Council for determination.

The net effect of the changes we propose to 5.1(d) and (e) is that a single clause would suffice. **We submit that clauses 5.1(d) and (e) be replaced by a single clause, requiring reporting to Council for *all DAs and s.4.55 modifications* with a cost of works of *more than $100,000* on *Council owned or managed land*, whether classified as *Community or Operational*.**

Reporting of modification applications

Clauses 5.1 (f) and (g) appear to overlap and their relationship should be clarified. We are aware that sub-clause (g) has been changed pursuant to a Notice of Motion at the 22 February 2022 Council meeting but we submit that sub-clause (g) may not be necessary. Surely any 'condition moved on the floor of Council and approved by the Council' would have been in the context of an 'original DA … determined by Council'. If so, then sub-clause (g) would seem to be redundant – sub-clause (f) would ensure that any such application would be 'reported to the Council for determination" (the intended outcome of both sub-clauses)?

We submit that the easiest way to clarify this is to modify 5.1(f) to read 'Section 4.55 (1A) & (2) …' and to delete (g).

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

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