

## **Section 4 - Notification**

### **About notification**

Muswellbrook Shire Council is committed to community involvement in the assessment of proposed new developments in consideration of the provisions within the Environmental Planning and Assessment Act 1979. This section outlines Council's policy concerning notification.

### **How this section is used**

This section applies to:

- applications for development consent lodged under the *Environmental Planning and Assessment Act 1979 (EPA Act)*
- amendments to development applications lodged before an application is decided

Modifications -

- changes to development consents (s 96)
- applications for review of determinations (s 82A).
- This section does not apply to Construction Certificates or Exempt Development as defined by Section 76A(5) and Section 76(2) respectively of the *EPA Act*.

### **Definition of terms**

In this Section the following terms apply (for other definitions refer to the LEP):

**“Adjoining Land”** means land which abuts an Application Site or is separated from it only by a road, land, pathway, driveway, right of way or similar thoroughfare.

**“Application Site”** means the land to which an application for development consent relates and includes any easement or right of way relating to the site.

**“Building”** includes part of a building and any structure or part of a structure, including a swimming pool.

**“Council”** includes Council officers who may make a decision on an application with delegated authority.

**“Delegated authority”** means authority to make a decision as resolved by Council under s 377 of the *Local Government Act 1993* or as described in Council's Delegations of Authority.

**“Demolition”** means the complete or partial dismantling of a building or structure including damage, defacement or the relocation of a building or structure.

**“Neighbouring Land”** means any land, other than adjoining land, which may be adversely affected by the use of an Application Site or the erection of a building on an Application Site (includes properties in a neighbouring Local Council Area).

**“Land”** includes any building or part of a building erected on the land.

**“Owner”** means the name and address of the proprietor as registered in Council's rating records.

### **What we want to achieve**

Through notification of proposed new development Muswellbrook Shire Council intends to:

- encourage wider public understanding of the development application process;
- enable public participation in the consideration of development applications;

- provide a reasonable time for the public to view applications and make comments, which does not interfere with the Council's obligation to determine applications within the required timeframe;
- provide a process for property owners and residents to make submissions;
- notification of landholders who may be affected by a development application even though they do not own adjoining land;
- detail the process to be carried out in advertising and notification; and
- define the circumstances when advertising and notification are not required.

#### ***4.1 ADVERTISEMENT AND NOTIFICATION OF APPLICATIONS***

Development applications will be advertised/notified in a local newspaper (or other appropriate newspaper); by letter sent to landholders/residents who in the opinion of the Council may be adversely affected. If in the opinion of Council it is considered that the application is of a nature that may have potential adverse impacts upon the wider community, a site notice may be erected on the subject site. Notification of amended plans, modifications to applications, and reviews of determinations are dealt with in section 4.2.

##### **4.1.1 Who will be notified**

Unless otherwise exempted by the *EP & A Act* or this policy, notice of a development application will be sent to:-

- all persons who, according to Council's property records, own or occupy land immediately adjoining that part of the application site affected by the proposed development;
- owners and occupiers of any neighbouring land which, in the opinion of Council, may be adversely affected by the application [except as specified in Section 5.2 of the *EPA Act*];

For the purpose of this section:

- i) if 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.
- ii) Council may also direct that:
  - an application be advertised or notified to any person or group of persons whom it considers may have an interest in the matter;
  - the application be available for inspection and submissions for such additional periods as it considers appropriate.

##### **4.1.2 Cost of advertising and submissions**

Applicants are required to pay a fee to Council to cover the cost of advertising and notification of the original application and subsequent amendments to an application prior to determination and any modification.

##### **4.1.3 Matters considered in forming the opinion that enjoyment of land may be adversely affected**

In determining which neighbouring land may be adversely affected Council will consider:

- i) the likely impacts of the development on both the natural and built environment of the neighbourhood;

- ii) the social and economic impacts on the neighbourhood.

#### **4.1.4 Content of notification letter and advertisement and site notices**

All advertisements, notification letters and site notices will include:

- i) a description of the land (including the address) on which the development is proposed to be carried out;
- ii) the name of the applicant and the name of the consent authority;
- iii) a description of the proposed development;
- iv) a statement that the application and the documents accompanying that application may be inspected at the consent authority's principal office for a period specified in the notice during the consent authority's business hours;
- v) a statement that any person during the period specified may make a written submission in relation to the development application to the consent authority;
- vi) the specified submission period.

Where the application involves erecting a building the notification letter will include an A4 size plan showing the height and external configuration and façade of the building in relation to the site.

#### **4.1.5 Period for inspection of applications and lodgement of submissions**

Applications may be inspected during business hours and submissions made during the notification period which will be a period of not less than 14 days and not more than 28 days. This period may be extended of the Christmas/ New Year period at Council's discretion.

Council will not decide on the application before the notification period has expired. Late submissions may be received by the Council after the exhibition period, and will be addressed by Council as appropriate to the circumstances and timing of the submission.

#### **4.1.6 Advice to applicants of submissions**

Applicants will generally be supplied with a copy of all submissions upon request and pursuant to relevant legislation, unless they are submitted in strict confidence or in the opinion of Council contain information or statements irrelevant to the assessment and determination of the development application.

Council policy is that applicants are entitled to read all submissions in full, however, the names and addresses of persons who specifically request that their names be withheld will not be made available.

#### **4.1.7 Consideration of submissions**

Council will consider all submissions on their merits. Submissions will be summarised in the report prepared for the consideration and determination of the application. The report will include names and addresses of those who made the submissions.

Council is not bound by any submission and its assessment of an application will involve considering the merits of the application together with all submissions.

#### **4.1.8 Other notifications**

A notice in accordance with Section 4 of the *EPA Act* will be given to Upper Hunter, Singleton and Mid-Western Regional Councils in respect of applications for development on land adjoining those Local Government areas.

In respect of Integrated Development Applications, notification will be given in accordance with the provisions of the EPA Regulations in force at the time.

#### **4.1.9 When notification is not necessary**

There will be no notification of applications relating to:

- i) existing buildings where the work will not change the height, external shape or façade of the building;
- ii) modifications that will result in a lesser impact than the original proposal;
- iii) change of use, (except change of use to a cafe/restaurant or cultural resource in a zone) where, in the opinion of the Council, there will be no adverse impact on the neighbourhood;
- iv) minor modifications that do not alter the consideration of impacts previously considered acceptable by Council;
- v) intensification of use including change to the hours of operation of a business, (except a cafe/restaurant or cultural resource in a zone) where, in the opinion of the Council, there will be no adverse impact on the neighbourhood;
- vi) proposals which have no material impact on adjoining properties (eg. a window on one side of a building which has no impact on properties on the opposite side of the property, or changes to technical matters in conditions of consent, minor changes to detail);
- vii) applications to strata subdivide or to company title;
- viii) applications made by Muswellbrook Shire Council for capital or public works on Council land, where prior public consultation consistent with clause 4.1.1 has occurred. Any submissions received during this pre-submission notification must be considered in accordance with 4.1.7.

#### ***4.2 AMENDED PLANS***

An applicant may amend an application at any time before Council has made its decision, subject to the agreement of Council and payment of additional fees determined by Council.

If, in Council's opinion, the amendments are considered likely to have a greater adverse effect on or a different adverse effect on adjoining or neighbouring land, then Council will renotify:

- those persons who made submissions on the original application;
- any other persons who own adjoining or neighbouring land and in the Council's opinion may be adversely affected by the amended application;

Where the amendments in the Council's opinion do not increase or lessen the adverse effect on adjoining or neighbouring land, Council may choose not to notify or advertise the amendments.

Where the amendments arise from a Council-sponsored mediation, and it is considered that the amendments reflect the outcome of the mediation and do not otherwise increase the application's environmental impact, the amendments will not be notified or advertised.

#### **4.2.1 Modifications**

All applications to modify a development consent will be advertised unless:

- i) the modification does not change the height or external shape or facade of the proposal as shown on the original application; or
- ii) Council is satisfied that the modification or amendment has none or only a minimal impact on the environment; or
- iii) The modification is to correct a minor error, misdescription or miscalculation; or
- iv) Council is satisfied that the modification or amendment does not substantially change the original application; and
- v) Council is satisfied that no disadvantage will be caused to any person who owns adjoining or neighbouring land or who has made a submission relating to the application.

In determining who is to be notified of the proposed modification, if Council is satisfied that the modification is of a minor nature, or of minimal environmental impact, the requirement for newspaper advertisement/site notice may be waived.

#### **4.2.2 Modification of consents granted by the Court**

If an application is made to modify a consent granted by the Court, Council will notify:

- i) those persons who made submissions on the original application, by sending written notice to the last address known to Council;
- ii) any other persons who own adjoining or neighbouring land and in the Council's opinion may be adversely affected by the amended application;

In determining who is to be notified of the proposed modification, if Council is satisfied that the modification is of a minor nature, or of minimal environmental impact, the requirement for newspaper advertisement/site notice may be waived.

After determining an application for modification of consent granted by the Court, Council will send notice of its determination to each person who made a submission in respect of the application for modification.

#### **4.2.3 Review of Determination**

In the event that Council receives a request for a review of determination (section 82A application), Council will renotify:

- i) those persons who made submissions on the original application; and
- ii) in the event of amended plans being lodged with the request for review, any other persons who own adjoining or neighbouring land and in the Council's opinion may be adversely affected by the amended application;
- iii) in determining who is to be notified of the proposed modification, if Council is satisfied that the modification is of a minor nature, or of minimal environmental impact, the requirement for newspaper advertisement/site notice may be waived.
- iv) this notification will give details of the likely timing and processing of the matter, but will not allow a formal time for submissions.

#### **4.2.4 Complying Development Certificates**

All complying development certificates issued or received by Council will be notified in accordance with the provisions of the Environmental Planning & Assessment Act & Regulations, after the determination of the application.

This courtesy notification letter is for advice only, and will contain no provision or period for submissions to be made regarding the application. The letter will advise that the details of the application are available for inspection at Council's offices.

Upon receipt of a complying development certificate issued by an accredited certifier, or determination of a complying development certificate by Council, an advertisement will also be published in the local newspaper.

#### ***4.3 NOTIFICATION OF COUNCIL DECISIONS***

Council is not obligated by legislative requirements to advise parties prior to the determination of any application. Council will as a matter of courtesy, endeavour to notify the applicant and all people who made submissions of the proposed determination of a development application that was subject to submissions, prior to the determination of the application.

Council will publish a notice of its decision on an application in a local newspaper (or other appropriate newspaper).

The notice will include a statement that a copy of the conditions relating to the application can be provided to anyone who made a submission on the application, including other documentation available for public inspection under the provisions of the *Local Government Act 1993* and the *Environmental Planning and Assessment Act 1979*, except for reports which are deemed by Council to be confidential in accordance with the *Local Government Act 1993*.

Council will also notify all those persons who made submissions of the determination of the application.

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