

Mayor: Cr K Milne

Councillors: P Allsop
R Byrnes
C Cherry (Deputy Mayor)
R Cooper
J Owen
W Polglase

Addendum Agenda

**Planning Committee Meeting
Thursday 3 October 2019**

held at
Harvard Room, Tweed Heads Administration Building, Brett Street, Tweed Heads
commencing at 5.30pm

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - Section 4.15 Evaluation

(1) **Matters for consideration—general**

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) the provisions of:
 - (i) any environmental planning instrument, and
 - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
 - (iii) any development control plan, and
 - (iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and
 - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and
 - (v) any coastal zone management plan (within the meaning of the *Coastal Protection Act 1979*),that apply to the land to which the development application relates,
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations, (e) the public interest.

Note. See section 75P(2)(a) for circumstances in which determination of development application to be generally consistent with approved concept plan for a project under Part 3A.

(2) **Compliance with non-discretionary development standards—development other than complying development.**

If an environmental planning instrument or a regulation contains non-discretionary development standards and development, not being complying development, the subject of a development application complies with those standards, the consent authority:

- (a) is not entitled to take those standards into further consideration in determining the development application, and
- (b) must not refuse the application on the ground that the development does not comply with those standards, and
- (c) must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards,

and the discretion of the consent authority under this section and section 4.16 is limited accordingly.

(3) If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards:

- (a) subsection (2) does not apply and the discretion of the consent authority under this section and section 4.16 is not limited as referred to in that subsection, and
- (b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.

Note. The application of non-discretionary development standards to complying development is dealt with in section 4.28 (3) and (4).

(3A) **Development control plans**

If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:

- (a) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development, and
- (b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and
- (c) may consider those provisions only in connection with the assessment of that development application.

In this subsection, **standards** include performance criteria.

(4) **Consent where an accreditation is in force**

A consent authority must not refuse to grant consent to development on the ground that any building product or system relating to the development does not comply with a requirement of the *Building Code of Australia* if the building product or system is accredited in respect of that requirement in accordance with the regulations.

- (5) A consent authority and an employee of a consent authority do not incur any liability as a consequence of acting in accordance with subsection (4).

(6) **Definitions**

In this section:

- (a) reference to development extends to include a reference to the building, work, use or land proposed to be erected, carried out, undertaken or subdivided, respectively, pursuant to the grant of consent to a development application, and
- (b) **non-discretionary development standards** means development standards that are identified in an environmental planning instrument or a regulation as non-discretionary development standards.

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Items for Consideration of the Planning Committee:

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ADDENDUM ITEMS

ADDENDUM REPORT FROM DIRECTOR PLANNING AND REGULATION

6 ADDENDUM [PR-PC] Community Participation Plan Requirements

SUBMITTED BY: Strategic Planning and Urban Design and Communication and Customer Experience

mhm



Leaving a Legacy
Looking out for future generations



Making decisions with you
We're in this together

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- | | |
|-------|--|
| 1 | Leaving a Legacy |
| 1.4 | Managing Community Growth |
| 1.4.1 | Strategic Land-Use Planning - To plan for sustainable development which balances economic environmental and social considerations. Promote good design in the built environment. |
| 2 | Making decisions with you |
| 2.2 | Engagement |
| 2.2.2 | Communications - To inform, educate and engage the public about Council and community activities. |

ROLE: **Leader**

SUMMARY OF REPORT:

Community Participation Plans (CPPs) are a new requirement under the *Environmental Planning and Assessment Act 1979 (EP&A Act)*. A CPP is specific to land use planning and must outline how and when planning authorities engage the community across their planning functions.

Council is required to have an endorsed CPP provided to the NSW Planning Portal by 1 December 2019.

The requirements of the EP&A Act have been reviewed in the context of the adopted Community Engagement Strategy (CES), prepared based on the requirements of the Local Government Act, 1993 (LG ACT).

In order to ensure integration of the plans, meet the legislative requirements of both the EP&A Act and the LG Act, and ensure a more streamlined framework for all community engagement and participation, the approach taken is to combine the CES and the CPP into a single document called the *Community Engagement and Participation Plan (the Plan)*.

The result will be one document that outlines Council's engagement and participation framework across all of its functions, and includes a Part B which addresses the requirements and standards specifically for land use planning.

As the CPP requires the inclusion of exhibition time frames for both strategic planning and development assessment planning functions the notification and advertising requirements, of the current Tweed *Development Control Plan (DCP) Section A11 Public Notification of Development Proposals* (DCP A11) are also incorporated into the Plan. In doing so notification requirements and land use definitions have been updated to be consistent with the current local environmental plans.

Given the provisions of the DCP A11 are incorporated into the Plan it is intended to repeal Section A11 of the DCP. In doing so Council is required to provide notice of its intent to repeal DCP Section A11 prior to formally repealing Section A11.

This report seeks Council endorsement to publicly exhibit the draft Plan, as provided in attachment 1, and to provide notice to repeal DCP A11.

RECOMMENDATION:

That Council:

- 1. Endorses the draft Community Engagement and Participation Plan for public exhibition for a minimum period of 28 days;**
- 2. Considers any public submissions following the public exhibition of the Plan; and**
- 3. In accordance with Section 23 of the *Environmental Planning and Assessment Regulation 2000* a notice be published in the Tweed Link notifying of Council's intent to repeal *Section A11 Public Notification of Development Proposals* of the *Tweed Development Control Plan 2008* and the reasons for the repeal.**

REPORT:

Background

Council endorsed the *Community Engagement Strategy* (CES) in August 2018. The CES is prepared consistent with the requirements of Section 402 of the Local Government Act 1993 (LG ACT) and provides a framework for all of Council's engagement and consultation.

Following the adoption of the Community Engagement Strategy, Councillors also included a '12 month review of the Community Engagement Strategy' as a key performance indicator for the General Manager. The review of the CES was considered at the Councillor workshop of 30 May 2019. Council supported to continue with the adopted CES and its actions, while also:

- Developing a supporting one page summary infographic, separate to the Plan; and
- Commencing the project to consider the legislative requirements of the Community Participation Plan (CPP).

Recent provisions of the Environmental Planning and Assessment Act, 1979 (EP&A Act) Section 2.23 now requires the preparation of a *Community Participation Plan* (CPP) which sets out consultation requirements specifically for land use planning. Under the legislation, this plan may be either a standalone CPP or integrated with the CES and must be completed by 1 December 2019.

Combining the CES and the CPP provides an opportunity for Council to consolidate and integrate its consultation framework into a single document which is easy for the wider community to understand, avoids duplication of information, identifies consultation and engagement methods commonly utilised across all of Council's business units. In doing so this plan has been prepared as a single document called the *Community Engagement and Participation Plan* (the Plan).

The Plan has been developed collaboratively by the Strategic Planning and Urban Design unit and the Communication and Customer Experience unit.

Preparation of the draft Plan provided an opportunity to review and update the Community Engagement Strategy and meet the legislative requirements for a Community Participation Plan as well as bring the current public notification of development proposals into alignment with the Tweed LEP standard instrument land use zones and land use definitions.

Review and content of the Plan

The review of the CES and drafting of the Plan has been based on a cross check of the legislative requirements to ensure the consultation and engagement objectives, commitments, intent, language, methods and information of the CES are retained, meet the legislative requirements and broadly apply to all engagement.

The engagement methods of the CES remain unchanged. Notwithstanding parts of the CES have been reviewed.

What has changed?

1. A redesign of the document for an improved layout and increased use of icons and imagery to convey the same message;

2. Inclusion of a standard table of contents;
3. Integration and replacement of some existing principles and theory to align with, and meet the needs of, the CPP legislative requirements;
4. Re-introduced the 'methods matrix' rather than the list of methods and description to make it clear to the community, industry and staff about what minimum standards for engagement are required for different scales of development or strategic planning;
5. Specific actions and operations removed from the draft so that the document does not date and remains an operational framework document. These actions have instead been captured in the organisations Corporate Reporting system and form part of the 20 internal Community Engagement Improvement actions the organisation is implementing. This action is consistent with the presentation to Councillors at the workshop on 26 September;
6. Removed the Councillors and Executive Management Team message so the document does not date and remains an operational framework document; and
7. Significantly, Part B has been added to specifically address land use planning notification requirements, as is required by the EP&A Act. This part captures the provisions of *Tweed Development Control Plan (DCP) 2008 Section A11 Public Notification of Development Proposals (DCP A11)*. This has included a reconfiguration of the public notification of land use tables to now be in alignment with the Tweed LEP standard instrument land use zones and land use definitions. The broader intent and type of notification (advertised, notified, not notified) remains relatively consistent with the intent of the current development proposal notification practice.

Relationship to *Tweed Development Control Plan (DCP) Section A11 Public Notification of Development Proposals*

The Plan as is now statutorily required, includes the exhibition timeframes and notification and advertising requirements for all forms of land use planning and development.

This is especially relevant to development applications (DAs). Currently the notification requirements for all DAs are identified within the DCP A11.

DCP A11 has not been reviewed since the introduction of the Standard Instrument LEP requirements and as such the definitions used do not correlate directly with the *Tweed City Centre Local Environmental Plan (TCCLEP) 2012* and the *Tweed Local Environmental Plan (TLEP) 2014*.

Council cannot have two Plans addressing the same requirements with potentially conflicting information (based on the outdated definitions). Given the standards for notification are now required to be included in the CPP the repeal of the DCP A11, in accordance with Section 23 of the Environmental Planning and Assessment Regulation 2000, is recommended.

The requirement to include the advertising and notification requirements in the Plan provides a timely opportunity to update the current provisions, which has been undertaken as follows:

- Review of definitions to ensure currency with the TCCLEP and TLEP;

- Maintain the current structure of advertising and notification requirements by land use category (i.e. rural land permissible uses, residential land permissible uses);
- Given some of the land use definitions have changed, as have some of the land use permissibility's the reconfiguration of the notification tables does include some variation to the existing land use notification tables. In these cases a best fit categorisation has sought to identify the type of notification (advertised, notified, not notified) to remain relatively consistent with the intent of the current development proposal notification practice. This process has had the input from Council's Development Assessment and Building and Health Units; and
- The updated land use notification schedules are included as Appendix 2 within the attached CPP Plan.

Timeframe and project milestones

The NSW Planning Secretary has a set a timeframe for councils to complete their Community Participation Plans by 1 December 2019, with the final step being the publication of the Council endorsed plan on the NSW Planning Portal. This timeframe has proven difficult for Tweed to achieve owing to the many planning commitments that were already on-foot and as such, Tweed is likely to complete their plan by after 1 December. During the period 1 December and the completion of the Tweed's plan, the DPIE have advised that the new community participation requirements detailed in Schedule 1 of the EP&A Act will apply.

The following timeframe outlines the key steps required to meet the December deadline:

Department provided Draft CPP	During Exhibition Period
Proposed exhibition dates	8 October – 8 November 2019
Proposed councillor workshop	14 November 2019
Council report on the exhibition (seeking adoption)	5 December 2019
Department notified of adopted version	Week following 5 December 2019

Further Information about Community Participation Plans

More guidance information and frequently asked questions about the community participation plans can be found: <https://www.planning.nsw.gov.au/Policy-and-Legislation/Environmental-Planning-and-Assessment-Act-updated/Guide-to-the-updated-Environmental-Planning-and-Assessment-Act-1979/Part-2-Community-Participation-Plans>

OPTIONS:

1. Council endorses the public exhibition of the draft Plan for a minimum 28 days and notification of repealing the DCP 2008 Section A11; or
2. Council does not endorse the public exhibition of the draft Plan and notification of repealing the DCP 2008 Section A11 and/or defers for a further workshop. In taking this action Council are aware the Plan will not be able to be completed by the NSW DPIE timeframe 1 December and the basic standard notification timeframes will apply.

Option 1 is recommended.

CONCLUSION:

Council is required to have a consultation framework under the LG Act (the current Community Engagement Strategy) and is now required to have a community participation plan under the EP&A Act.

Council staff have taken the approach of integrating the CES and the requirements of the CPP to ensure a holistic document which addresses the requirements of both Acts whilst presenting a consolidated engagement and participation framework and the required notification and participation requirements specifically for land use planning.

The Plan retains the objectives, commitments, intent, language, methods and information of the CES with redesign of the document for an improved layout and increased use of icons and imagery to convey the same message.

The timeframe for the publication of the CPP on the DPIE website is 1 December 2019. The DPIE have advised that a minor extension would be supported subject to Council making significant progress on the completion of the Plan. This leaves a very tight timeframe and requires the Plan to be reported to the December Planning meeting following public exhibition.

This report seeks Council endorsement to publicly exhibit the draft Plan.

COUNCIL IMPLICATIONS:

a. Policy:

All Councils in NSW are required to have a Community Participation Plan adopted by 1 December 2019 and provided to the NSW Planning Portal.

a. Budget/Long Term Financial Plan:

Council has committed a staff member for a period of 12 months to assist with the development of Community Participation Plan, Local Strategic Planning Statement and other strategic planning and urban design projects. Ongoing consultation and engagement will come at a cost to ratepayers which is not funded through the development application process.

b. Legal:

Community Participation Plans (CPPs) are a requirement under the *Environmental Planning and Assessment Act 1979 (the Act)*. A *Community Engagement Strategy* is a requirement under the *Local Government Act 1993*. A table in the appendix of the draft Community Engagement and Participation Plan addresses the requirements of both pieces of legislation and identifies where these have been addressed in the document. No legal advice was required for this project.

c. Communication/Engagement:

Consult - We will listen to you, consider your ideas and concerns and keep you informed.

The draft Community Engagement and Participation Plan is a consultation project where the community will be invited to provide feedback on the draft Plan, prior to considering any submissions and seeking Council adoption for the final version of the Plan. The methods of engagement while On Exhibition will include, but are not limited to:

- Your Say Tweed project page and email communication to the 3500 registered users.

- Tweed Link advertising notifications (formal) and editorial articles.
- Special invitational meeting of the Resident, Industry and Environmental Group.
- Hard copies at Customer Service Centres and libraries.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1. Draft Community Engagement and Participation Plan
(ECM 6079086)
