

**DRAFT**

**DEVELOPMENT CONTROL PLAN 45**

**PUBLIC NOTIFICATION OF PROPOSED DEVELOPMENT,  
REZONING APPLICATIONS AND DRAFT LOCAL  
ENVIRONMENTAL PLANS**



Adopted by Council: **8<sup>th</sup> December 1999**  
Effective: **29<sup>th</sup> December 1999**  
Amended:

## **PART ONE: INTRODUCTION**

### **1. Citation**

This plan shall be cited as “Development Control Plan No. 45 Public Notification of Proposed Development, Rezoning Applications and Draft Local Environmental Plans”.

### **2. Land To Which Plan Applies**

This development control plan applies to all land in the Shire of Wingecarribee.

### **3. Purpose of the Plan**

To clearly set out Councils requirements for the notification of the public where different types of development are proposed or rezoning applications are received. The development control plan does not apply to development categorised as exempt or complying development under relevant clauses of the Wingecarribee Local Environmental Plan 1989 as amended.

### **4. Associated Planning Instruments**

This plan has been prepared in accordance with Section 72 of the Environment Planning and Assessment Act 1979 and Part 3 of the Environment Planning and Assessment Regulation 2000.

This development control plan shall be read in conjunction with the Wingecarribee Local Environmental Plan (LEP) 1989 as amended and with the Residential Development Control Plan that sets out various standards relating to setbacks and amenity protection provisions.

### **5. Structure of the Plan**

Part One:	Introduction	<ul style="list-style-type: none"><li>• Sets out statutory qualifications as they relate to this development control plan</li><li>• Describes the structure of the plan</li></ul>
Part Two:	Aims	
Part Three:	Regulation	<ul style="list-style-type: none"><li>• Sets out Councils policies and procedures for public notification of proposed development <u>and rezoning applications</u></li></ul>
Appendix One		<ul style="list-style-type: none"><li>• Schedule of how the public is to be notified</li></ul>

## **Part Two: Objectives**

1. To allow the public to have input into the development assessment process when an application is lodged to develop land or build on land where there may be a detrimental effect upon the enjoyment of other property.
2. To set out matters Council will consider when determining whether or not the enjoyment of adjoining land may be detrimentally affected by the erection of a building or completion of a development.
3. To specify the circumstances when notification is not required.
4. To specify the procedure Council will follow in the public notification and assessment process.
5. To specify the exhibition processes for notification of rezoning applications and Draft Local Environmental Plans.

## **Part Three: Regulation**

Council must specify, pursuant to the Environmental Planning and Assessment Act 1979 and Regulations, where and when public notifications of a proposed development must be carried out. Further to this process, pursuant to section 79C of that Act, Council must consider any submissions made in respect of a proposed development.

There are also prescribed processes for public notification and participation for advertised and designated development and these are specified in the Environmental Planning and Assessment (EPA) Act 1979 and Regulations. Council through the LEP also stipulates in clause 11 that Residential Flat buildings, Units for Aged Purposes, a Place of Public Worship, an Educational Establishment or a Hospital are also Advertised Development under the EPA Act. The processes for all of these types of development are therefore not covered by this Development Control Plan (DCP).

### **3.1 WHAT WILL COUNCIL CONSIDER WHEN FORMING AN OPINION THAT ENJOYMENT OF LAND MAY BE DETRIMENTALLY AFFECTED?**

With all new development applications received, along with proposed amendments, Council will consider:

1. Views to and from the land.
2. Overshadowing.
3. Privacy.
4. Noise.
5. Visual quality of the building in relation to streetscape.

Council will determine who may be detrimentally affected in terms of the above five criteria. The Council may broaden the above criteria and extent of notification depending on the type and scale of development and following an inspection of the application site.

### 3.2 WHO WILL BE NOTIFIED?

Council does **not** automatically notify neighbours for all proposed development. Council will notify a development application where, in Council's opinion the enjoyment of the adjoining land may be detrimentally affected by the development or the building proposed in the application.

Council will notify:

- Owners of land adjoining the site upon which the development is proposed.
- Owners of land in close proximity to the site, upon which development is proposed, who may be potentially affected.
- Other landowners that are potentially affected through increased traffic movements where the development is a large scale development.
- Some applications will need to be referred to other Government authorities for notification or concurrence.
- If the plans have been endorsed by a body corporate the Manager or Secretary of the Body Corporate, or an Association (under Community Land Development Act 1989) will be sent the notice. If not endorsed, each owner in the title scheme will be notified.
- Council will determine who is to be notified by referencing the owner's name and address as indicated in Council's Property information system as at the date of the neighbour notification process. This may mean that new owners may not be on Council's property system at the time of notification.

#### ***PARAGRAPH DELETED***

Notification is not required where, in the opinion of the Council, the enjoyment of land will not be detrimentally affected in terms of the matters listed under section 3.1 (1) to (5) of this development control plan.

Exempt and Complying Development, as specified in Council's Local Environmental Plan, are excluded from this Development Control Plan.

### 3.3 NON-DISCRETIONARY PUBLIC NOTIFICATION

With some forms of development, and in some instances amendments to developments, Council will notify the public regardless of the assessment conducted in Section 3.1. This applies to:

- a) Proposals that are termed "advertised or designated development" under the EPA Act 1979.

b) The following specific types of development that are classified as 'Advertised' development pursuant to clause 11 of Council's Local Environmental Plan:

- (i) Units for Aged persons.
- (ii) Educational establishments.
- (iii) Hospitals.
- (iv) Place of public worship and
- (v) Residential flat buildings

In addition Cluster Housing and other forms of Medium density housing will be advertised in the same manner as the above developments.

c) Mandatory notification for fourteen (14) days or a greater period if deemed necessary will occur for the following development types:

- (i) Two storey residential buildings or two storey ancillary buildings
- (ii) Dual Occupancy development
- (iii) Any additions to an existing residential building or ancillary building where the proposed floor level is greater than 0.5m above surrounding and adjoining ground levels and is deemed to be an impact upon privacy of the properties.
- (iv) New Commercial Buildings.
- (v) Subdivision of land in residential and rural zoned areas.
- (vi) Applications where a variation to Council's policies are being proposed, eg building lines, setbacks, and heights.

**Note:**

- The receipt of all significant development applications will be listed once in Council's standard one page advertisement that appears weekly in the local press.

### 3.4 WHAT ABOUT AMENDMENTS AND REQUESTS FOR A REVIEW OF A DETERMINATION

The plans for a proposed development may be amended prior to consent or after consent is issued (a Section 96 Application).

In instances where a notification process has occurred and Council has deferred the determination of an application, Council will generally include items raised in the neighbour notification process. The applicant may then submit amended plans that address the concerns. In these instances Council will generally choose not to renotify the development proposal.

Where issues have not been addressed in the opinion of staff, the application may be renotified or alternatively reported to a committee or Council meeting outlining all of the issues and dealing with submissions received.

For applications that have been approved a Section 96 application may be submitted and this is an application to modify a consent. These applications may be of a minor or more significant nature. Council will only notify if there are amendments proposed that will directly impact upon adjoining owners eg Buildings may move closer to a boundary.

A Section 82A request for a review is a request to have Council reconsider either a condition(s) of consent or reconsider a refusal of an application. Where new information has been submitted that amends or charges the proposal Council will notify the S82A application. Where there are no changes or amendments Council will not renotify. In either case Section 82A applications will go before Council or a committee of Council.

### 3.5 HOW ARE THE PUBLIC NOTIFIED?

The public will be notified as set out in Appendix One.

### 3.6 SUBMISSIONS AND VIEWING OF PLANS

- *Development Applications*

The notice allows either a minimum thirty (30) or minimum fourteen (14) days from the date of notification to inspect plans at Council and make any written submissions.

- *Additional Time Period*

An additional time period may be specified having regard to the circumstances of a particular case or if the development application is submitted to Council in the Christmas/New Year or other holiday period. If you need extra time to prepare a full submission, then a preliminary submission stating this should be received within the specified time.

- *Plans available for Viewing*

Plans relating to development applications are available for viewing at Council's Division of Environment & Planning at the Civic Centre, Moss Vale, between 8.30am - 4.30pm any week day except Public Holidays.

- *Submissions made in respect of applications must be:*
  - i) in writing;
  - ii) addressed to the General Manager;
  - iii) clearly indicate name and address of person making the submission; and
  - iv) if the submission is an objection, clearly specify the grounds for objection.

Special arrangements can be made where any difficulty exists in providing a written submission.

- *Will the applicant be advised of an objection*

The applicant upon request will be advised of the nature of the objection.

The applicant is entitled to read any submission received provided that the objection does not comprise a document affecting the personal affairs or business affairs of the person making the submission.

Should an appeal be taken to the Land & Environment Court of NSW or Council is required to disclose its files under the Freedom of information Act , access to Council's records including all the submissions in opposition, would invariably be granted.

Should Council refuse the application, the development applicant has the right to request a review of the determination pursuant to Section 82A of the Environmental Planning and Assessment Act.

### 3.7 COUNCIL PROCEDURES WITH SUBMISSIONS

#### ***PARAGRAPH DELETED***

- Where the Director of Environment and Planning or delegate, considers it necessary, an on-site meeting may be convened. This meeting may be between the objector, the applicant and a senior member of the Division of Environment & Planning, to discuss the issues of concern. The objective of the meeting will be to attempt to achieve consensus. Areas for amendment will also be discussed if the objection is considered valid. Where consensus cannot be obtained the Director of Environment & Planning shall consider the matter and make a decision.
- Where the Director of Environment & Planning considers it appropriate, or where applications are called forward to open Council by a Councillor, the proposal will be the subject of a report to Council or one of its committees. In these instances Council may grant an opportunity for both the applicant and a representative of those making a submission on a development, to address a meeting of the elected Council or committee.
- For Shire Significant developments or other developments where there is a large number of submissions, Council may choose to hold an information session on a development proposal. This would occur after the notification period has finished and prior to any report to Council or a committee dealing with determination of the development application.
- Council may also choose to appoint a mediator or facilitator to work through specific issues of concern. The costs involved in this process makes this process a less favoured approach for Council.

Council will give notice of the determination of an application to each person who made a submission.

### 3.8 HOW DOES COUNCIL FUND THE COST OF NOTIFICATION?

Council funds the cost of carrying out notifications by charging a fee as set in Councils revenue policy on all Development Applications. This fee is not refundable.

If you need further information, please contact Council's Department of Environment & Planning:

In person:	Civic Centre, Kirkham Street Moss Vale
By telephone:	(02) 48680888
By facsimile:	(02) 48691203
By mail:	PO Box 141, Moss Vale, 2577 or DX 4961, Bowral

### 3.9 NOTIFICATION OF REZONING APPLICATIONS AND DRAFT LOCAL ENVIRONMENTAL PLANS

The Environmental Planning and Assessment Act 1979 and Regulation sets out the minimum requirements for public notification of the exhibition of a draft LEP which may have derived from a rezoning application or initiated by a Council decision/resolution. The minimum statutory time for the exhibition of a draft LEP is 28 days. Depending on the significance of the Draft Plan, a longer exhibition period can be nominated by Council.

The Draft Local Environmental Plan will be on public exhibition at the Council Administration Building in Moss Vale as well as other venues including Libraries if it is considered appropriate that the display of the Draft LEP at an additional venue will enable easier access for local residents to inspect. Copies of the Draft LEP and accompanying documentation will also be available on Council's website at [www.wsc.nsw.gov.au](http://www.wsc.nsw.gov.au)

Submissions must be received by the close of business as nominated in the advertisement/notification.

## APPENDIX ONE – HOW ARE PEOPLE NOTIFIED

Notification will be in a combination of the following:-

1. Newspaper advertisement
2. Letter to affected people (written notice)
3. Sign on site
4. Public Meeting

The following table indicates specifically the method of notification that Council will use in the circumstances where notification is to be given:-

<b>Description of use/development or environment plans</b>	<b>Period allowed for submissions</b>	<b>Newspaper advertisement</b>	<b>Letter to adjoining and affected owners</b>	<b>Sign on-site properties</b>	<b><u>Public Meeting</u></b>
Proposed development that is Designated or Advertised Development Pursuant to the EPA Act 1979 or Council's Local Environmental Plan	<u>Minimum</u> 30 days	Yes	Yes	Yes	<u>No</u>
Other development proposals where the enjoyment of lands ,other than the proposed development site, may be detrimentally affected according to this Development Control Plan.	<u>Minimum</u> 14 days	No	Yes	No	<u>No</u>

Description of use/development or environment plans	Period allowed for submissions	Newspaper advertisement	Letter to adjoining and affected owners	Sign on-site properties	<u>Public Meeting</u>
<u>Rezoning resulting in a Draft Local Environmental Plan and/or an Environmental Study LEP amendments initiated by Council Resolution.</u>	<u>Minimum 28 days</u>	<u>Yes</u>  <u>Cl.12 of the EPA Regulation requires that public notice be given no later than the start of the exhibition period. All LEPs will be advertised at the beginning of the exhibition period in a local newspaper circulating at least weekly throughout the area.</u>	<u>Yes</u>  <u>Adjoining property owners and residents will also be notified in writing of a proposal which involves a zoning change or a new use on a subject site. The extent of the notification area will be dependant on the scale of the proposal.</u>	<u>No</u>	<u>Yes</u>  <u>At the discretion of Council.</u>  <u>Where a DLEP proposes to rezone community land a public hearing must be held (Section 29 of the LGA Act)</u>

This notification is in addition to the list of non residential development applications received that will appear in the local press as part of Council's weekly one page advertisement (each Landuse application will appear once only).

#### WHAT IS INCLUDED IN THE NOTICE (NOTIFICATION)

When a written notice is required, it will contain the following information:

- a) a description and address of the site;
- b) the proposed use of the building; a description of the building (including height, primary materials of construction and a site layout plan and elevations – not to scale);
- c) the name of the applicant and the Council;
- d) where and when the plans can be inspected;
- e) when written submissions must be lodged;
- f) warning that the substance of written submissions may be included in reports and be available for the applicant to consider.
- g) Details relating to the Privacy and Personal Information Protection Act 1998, Pre collection (section 10)