

8.6 Community Participation Plan - Amendment 1 (Public Exhibition)

REPORT BY THE MANAGER, PLANNING
TO 17 AUGUST 2022 ORDINARY MEETING
GOV400098, LAN900106

RECOMMENDATION

That Council:

1. **receive the report by the Manager, Planning on the Community Participation Plan - Amendment 1 (Public Exhibition);**
2. **endorse and publicly exhibit the proposed amendments to the Mid-Western Regional Community Participation Plan (CPP) outlined in this report, pursuant to Part 2, Division 2.6 and Schedule 1 of the Environmental Planning and Assessment Act 1979; and**
3. **receive a further report following conclusion of the public exhibition period to consider any submissions received, or if at the end of the public exhibition period, no submissions are received, adopt the changes to the CPP as proposed.**

Executive summary

Mid-Western Regional Council's Community Participation Plan (CPP) outlines how Council will notify the community regarding development and other matters prescribed by the *Environmental Planning and Assessment Act 1979* (EP&A Act), allowing the community to access, participate and provide feedback. Following feedback from members of the public and changes in legislation by the NSW Government, the following amendments to the CPP are proposed:

- Remove newspaper advertisement requirement from the CPP completely.
- Expand neighbour notification to include applications where there are works to a heritage item.
- Stipulate a mandatory condition for dwelling applications to give adjoining neighbours notification 2 days prior to construction.
- Other minor administrative updates.

If endorsed, the draft CPP Amendment 1 will be placed on public exhibition for 28 days in accordance with the EP&A Act (as amended).

Disclosure of Interest

Nil

Detailed report

On 17 April 2020, the *Environmental Planning and Assessment Regulation 2000* (EP&A Regs) was amended removing the requirement to publish notices and documents in the 'local newspaper', instead requiring publication online. This is in relation to planning matters stipulated by the EP&A

Regulations such as DCPs, State Significant Development, EIS etc. The impetus for this change is the general decline in print media and a trend towards online/digital media.

“Outdated provisions in the EP&A Regulation required planning authorities to notify the public of various planning matters through local newspapers. There is a broader industry trend away from hardcopy to digital media. Local newspapers have been transitioning to online-only delivery, often with a paywall, or suspending publication entirely.”

(NSW Department of Planning, Industry and Environment)

Council is seeking to amend the CPP to better reflect print media trends, reduce cost to developers, improve approval times and to align with the legislation.

Current CPP Exhibition Requirements

Development can be placed into one of three categories, which determines what type of public consultation occurs, being:

1. No public exhibition required – exempt (small scale minor development),
2. Neighbour notification – letters sent to adjoining property owners (Cost \$83), or
3. Advertisement (includes neighbour notification) – advertisement placed in the Friday edition of the *Mudgee Guardian* (Cost \$448).

Proposed Changes to CPP

- **Newspaper advertisements**

Remove the requirement to place an advertisement in the newspaper, and replace with publication on Council’s website. This mirrors the change made by the NSW Government to go electronic and removes the \$448 fee currently paid by the applicant.

This change will also help reduce delays and improve efficiency. Online publication will allow the application to be notified within 24 hours of the application being lodged, as opposed to print media, where owing to the papers print cycle, there could be up to 10 days delay.

Online publication also allows Council to better communicate information about an application with the community. Reports, plans and other documentation associated with an application can be uploaded on to Council’s website for immediate viewing by members of the public. This is contrasted with Council’s current approach, where customers must come into Council to view application material.

Excluding exempt applications, all applications will therefore be neighbour notified and published online on Council’s website.

Note: Council has been placing applications on its website since May 2021 as an initiative by staff. This amendment will ensure that this practice becomes a requirement and will help standardise the process for all applications.

- **Types of development requiring notification**

It is proposed that neighbour notification be expanded to include all works to a heritage item, regardless of the development being residential, commercial or industrial. This will ensure the community has an opportunity to provide comments and reflect Council’s commitment to “respect and enhance the historic character of our Region and heritage value of our towns”.

Other minor changes

The CPP currently includes the minimum exhibition timeframes for plans and applications as mandated by Schedule 1 of the EP&A Act. It is proposed that nominated integrated development be

added as a document type in the table to reflect the statutory minimum exhibition period of 28 days and provide clarity to readers of the CPP.

Updating references to new legislation, and removing old references. Deletion of reference to transitional arrangements with notification requirements contained in the DCP – now deleted.

Note: This is not a change to current practice but simply an administrative addition to ensure the CPP comprehensively reflects Schedule 1 of the EP&A Act.

Public exhibition

All changes proposed have been made in red throughout the draft CPP document included as Attachment 1.

The draft CPP Amendment 1 is required to be placed on public exhibition for a period of 28 days to enable submissions from the community in response to the proposed amendments.

A further report will then be prepared and presented to Council for final adoption. However, if no submissions are received, the proposed changes will be adopted as presented immediately at the conclusion of the public exhibition period.

Community Plan implications

Theme	Good Government
Goal	Good communications and engagement
Strategy	Encourage community access and participation in Council decision making

Strategic implications

Council Strategies

Nil

Council Policies

The report is presented to consider an amendment to the Mid-Western Regional Community Participation Plan.

Legislation

The amendment to the CPP is being undertaken in accordance with Part 2, Division 2.6 and Schedule 1 of the *Environmental Planning and Assessment Act 1979*

Financial implications

Not Applicable

Associated Risks

If Council does not wish to proceed with the Draft Community Participation Plan – Amendment 1, the risk is that there will continue to be an unnecessary financial burden on the applicant, current delays as a result of newspaper deadlines and the community will not have an opportunity to comment on development involving a heritage item or variations to development standards.

LINDSAY DUNSTAN
MANAGER, PLANNING

ALINA AZAR
DIRECTOR DEVELOPMENT

27 October 2020

Attachments: 1. Amendment to CPP.

APPROVED FOR SUBMISSION:

BRAD CAM
GENERAL MANAGER



COMMUNITY PARTICIPATION PLAN

Amendment 1

OCTOBER 2019

MID-WESTERN REGIONAL COUNCIL

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Amendment No.	Description
1	Newspaper advertisements removed; types of development to be notified.

INTRODUCTION

Role of Community Engagement

Mid-Western Regional Council (Council) recognises the value of engaging with the community in a meaningful way to build long term, sustainable community relationships and achieve a shared vision for the future. Council is committed to understanding the needs and expectations of the community and providing inclusive, credible and equitable community engagement opportunities on a proactive and ongoing basis.

Community engagement allows individuals, community groups and interested parties to share ideas with Council, helping to shape planning and project outcomes that best meet the needs of the local community. It promotes open discussion and an opportunity for a diversity of voices to be considered by Council as part of its decision making process.

Council wants to ensure that all individuals and groups have the opportunity to have a say on the decisions that affect them. It utilises the Public Participation Spectrum by IAP2 to guide its approach to public participation activities.

Council's Community Engagement Strategy developed as part of the Integrated Planning and Reporting framework identifies how Council will engage the community to establish future priorities and aspirations across all Council functions.

Purpose of Community Participation Plan

The Mid-Western Region Community Participation Plan has been prepared in accordance with Division 2.6 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The purpose of the Community Participation Plan (CPP) is to enhance opportunities for all members of the community to participate in planning decisions and achieve better planning outcomes in the Mid-Western Region.

The CPP sets out how Council will notify the community and allow them to access, participate and provide feedback on planning matters being considered, including plan making and proposed development decisions.

The CPP outlines the minimum requirements for community participation in the planning system under the EP&A Act and Council's policy. The level and extent of community participation will vary depending on the nature, complexity and potential impact of a planning proposal or decision.

Community Participation Principles

The CPP is based on community participation principles which set the standard for how the community will be engaged. These principles are outlined in Section 2.23 (2) of the EP&A Act and include:

- The community has a right to be informed about planning matters that affect it.
- Planning authorities should encourage effective and on-going partnerships with the community to provide meaningful opportunities for community participation in planning.
- Planning information should be in plain language, easily accessible and in a form that facilitates community participation in planning.
- The community should be given opportunities to participate in strategic planning as early as possible to enable community views to be genuinely considered.
- Community participation should be inclusive and planning authorities should actively seek views that are representative of the community.
- Members of the community who are affected by proposed major development should be consulted by the proponent before an application for planning approval is made.
- Planning decisions should be made in an open and transparent way and the community should be provided with reasons for those decisions including how community views have been taken into account.
- Community participation methods and the reasons given for planning decisions should be appropriate having regard to the significance and likely impact of the proposed development.

Relationship with other Plans and Strategies

The CPP should be read in conjunction with Council's Community Engagement Strategy which outlines how the community can be engaged in forming a shared vision for the future and strategies aligned to all Council functions. The Community Engagement Strategy is reviewed every 4 years as part of the Integrated Planning and Reporting Cycle and there is an opportunity to incorporate the matters required under Division 2.6 of the EP&A Act into one document as part of the next review.

The CPP also supports Council's commitment in the Towards 2030 Community Plan, to demonstrate leadership, transparency and accountability in Council's decision making and to make it easy for the community to be involved in Council activities.

~~Council's existing advertising and notification requirements are contained in Chapter 1.12 of the Mid-Western Regional Development Control Plan 2013 (DCP). Upon adoption of the Mid-Western Regional Community Participation Plan, the requirements of the DCP will be superseded and therefore, Chapter 1.12 will be repealed.~~

Land and Functions Covered

The CPP applies to all land within the Mid-Western Region Local Government Area. It relates specifically to the strategic planning and development assessment functions undertaken by Council as the relevant planning authority.

MANDATORY COMMUNITY PARTICIPATION REQUIREMENTS

Minimum Exhibition Timeframes

The following tables provide the mandatory minimum exhibition timeframes for the planning functions and documents that this Community Participation Plan applies to, as set out in Schedule 1 of the *Environment Planning & Assessment Act 1979* (EP&A Act). The *Environmental Planning & Assessment Regulation 2021* (EP&A Regulations) may amend **Part 4** of Schedule 1 of the Act to prescribe additional mandatory requirements for community participation or to make other changes to that Part.

Minimum Public Exhibition Period for Plans

DOCUMENT TYPE	MINIMUM EXHIBITION PERIOD
Draft Community Participation Plans	28 Days
Draft Local Strategic Planning Statements	28 Days
Planning Proposals for Local Environmental Plans subject to a Gateway Determination	28 Days or: <ul style="list-style-type: none"> a) If a different period of public exhibition is specified in the gateway determination for the proposal – the period so specified; or b) If the gateway determination specifies that no public exhibition is required because of the minor nature of the proposal – no public exhibition.
Draft Development Control Plans	28 Days
Draft Contribution Plans	28 Days

Minimum Public Exhibition Period for Development Applications and Other Matters

DOCUMENT TYPE	MINIMUM EXHIBITION PERIOD
Application for Development Consent for Designated Development	28 Days
Application for Development Consent for State Significant Development	28 Days
Application for Development Consent for Nominated Integrated Development	28 Days
Application for Development Consent (other than Complying Development Certificate, for Designated Development or for State Significant Development)	14 Days* *Specific Local Requirements are provided in the section below.
Application for Modification of Development Consent that is Required to be Publicly Exhibited by the Regulations	14 Days*. *Specific Local Requirements are provided in the section below.
Environmental Impact Statement Obtained Under Division 5.1	28 Days
Environmental Impact Statement for State Significant Infrastructure Under Division 5.2	28 Days
Re-exhibition of any Amended Application or Matter Referred to Above Required by or Under this Schedule	The period (if any) determined by the person or body responsible for publicly exhibiting the application or matter*. *Specific Local Requirements are provided in the section below.

Local Requirements

As per the table above, the minimum exhibition period for an application for development consent (other than Complying Development Certificate, for Designated Development or for State Significant Development **or for Nominated Integrated Development**) is 14 Days, unless a different period is specified under this CPP.

A variation to the minimum 14 Days public exhibition requirement is provided by Council for the types of development detailed below.

No Public Exhibition Required

Development that does not require public exhibition includes:

- Single storey dwelling;
- Single storey additions to a house;
- Minor dwelling additions such as carports, pergola and verandahs;
- Private swimming pools;
- Detached garage or shed associated with a dwelling to be used in conjunction with the dwelling (ie. not for commercial/industrial use);
- Subdivision creating less than 5 lots;
- Commercial or industrial development within a business or industrial zone that does not adjoin a dwelling;
- Attached dual occupancy within the R5 Large Lot Residential zone.

The above exemptions do not apply if the proposal involved works to a heritage item.

Despite the above exclusions, following a site inspection and consideration of relevant factors such as the character of the existing development, slope of the site and local amenity, Council may determine that notification should occur.

Likewise, Council may determine that public exhibition is not required due to the minor nature of the proposal.

Advertising Required

~~As part of the 14 Days public exhibition period, some types of development requires advertising in the local newspaper. This includes:~~

- ~~■ Demolition of a building identified as a heritage item in Schedule 5 of the Mid-Western Regional Local Environmental Plan 2012;~~
- ~~■ Major Council projects (not including utility service infrastructure) with a value exceeding \$1.0 million or likely to be of significant community interest;~~
- ~~■ Non-residential uses in or adjacent to the R1 General Residential and R2 Low Density Residential zones;~~
- ~~■ Subdivision creating 20 or more allotments;~~
- ~~■ Sex services premises;~~
- ~~■ Within the R1 General Residential, R2 Low Density Residential or RU5 Village Land zones, development applications for the purposes of multi-dwelling housing, residential flat buildings, senior housing, hostels, boarding house, group homes, tourist and visitor accommodation-~~

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~~(excluding B&Bs), caravan parks, exhibition villages and child care centres.~~

~~Despite the above, Council may determine that a development should be advertised in the public interest.~~

~~For development that requires advertising, the period of exhibition comprises a minimum of 14-Days from the date the notice is published in the local newspaper.~~

Modification of Development Consent

If an application for modification of a development consent is received, the requirement for public exhibition will depend upon the type of modification requested as outlined below.

MODIFICATION TYPE	MINIMUM EXHIBITION PERIOD
Minor Error, Misdescription or Miscalculation (Section 4.55(1))	Public exhibition is not required
Minimal Environmental Impact (Section 4.55(1A))	Public exhibition is not required, where Council is satisfied that the development will have the same or lesser impact on the amenity of adjoining property owners as the original application
All Other Modifications	Public exhibition will be required in the same manner as the original development application

Amended Applications

Where an application is amended prior to final determination, the application will be notified in the same manner as the original development unless Council is satisfied that the amended, substitute or later application differs only in minor respects from the original application, or the changes are made to address objections received, or the changes will have the same or lesser impact on adjoining property owners.

The EP&A Regulations may specify the circumstances in which a plan or other matter is required or not required to be re-exhibited.

Further explanation of the public exhibition and notification process is provided below.

PUBLIC EXHIBITION AND NOTIFICATION

Exhibition Process

Public exhibition plays an important role in enabling the community to participate in the planning process. It provides the opportunity for those potentially impacted by development to provide feedback on the possible impacts.

Where a planning matter needs to be placed on public exhibition, Council may do any, or all of the following:

- Determine the relevant exhibition period
- Make documents publicly available
- Give notice to adjoining property owners
- Advertise the exhibition notice and advise how submissions can be made

Publicly exhibited plans, applications and other matters cannot be made, determined or finalised until after the minimum public exhibition period. If a plan, application or other matter is placed on public exhibition for a specified longer period, the plan or application is not to be made, determined or finalised until after that specified longer period.

Further details regarding the public exhibition process including mandatory provisions under the EP&A Act (Schedule 1 Division 3) are provided below.

Exhibition Timeframes

Council will always exhibit a planning matter for the mandatory minimum timeframes set under the EP&A Act, the EP&A Regulations and Council's Local Requirements as outlined above. In some circumstances, Council may consider an extended public exhibition timeframe based on the scale and nature of the proposal.

Public exhibition timeframes are in calendar days and include weekends. If the public exhibition period is due to close on a weekend or a public holiday, Council will extend this to finish on the next working day.

The period between 20 December and 10 January (inclusive) is excluded from the calculation of the public exhibition period.

If a particular matter has more than one different exhibition or notification periods that apply, the longer period applies.

Access to Plans and Documents

During the public exhibition period, Council will make the relevant plans, policies and development applications available for public inspection. These documents can be accessed via the following:

- At Council's website (www.midwestern.nsw.gov.au);
- At Council's main administration centres during normal business hours, at the following locations;
 - 86 Market Street, Mudgee
 - 109 Herbert Street, Gulgong
 - 77 Louee Street, Rylstone
- ~~In advertisements placed in the local newspaper (where applicable).~~

Council is not required to make available for public inspection any part of an environmental impact statement whose publication would, in the opinion of Council, be contrary to the public interest because of its confidential nature or for any other reason.

Notice to Adjoining Property Owners

When a development application is required to be placed on public exhibition, a direct written notice will be sent to adjoining property owners. Direct notification provides an opportunity for potentially affected people to raise any concerns, provide support, make a comment or provide useful information before a planning decision is made.

The written notice will include as a minimum:

- A brief description of the proposal;
- The site address and name of the applicant;
- Where and when the relevant plans and documentation can be viewed;
- The public exhibition period; and
- Details for making a written submission.

For the purposes of notification to adjoining property owners, this will include all property owners with a shared boundary and directly opposite the proposed development site.

When a development application is lodged, written notification will normally occur within a few days of lodgement. If more information is required from the applicant, notification will be delayed until this information is received.

If notice is to be provided to adjoining property owners, the applicant will be charged a fee in accordance with Council's adopted fees and charges.

~~In addition, the documents included in the development application will be uploaded onto Council's website to allow for public viewing.~~

~~Advertising During Public Exhibition~~

~~When a planning matter or development application is required to be advertised as part of the public exhibition process, Council will place an exhibition notice in the local newspaper. The exhibition notice will normally be included in Council's weekly column or under the public notices section of the local newspaper.~~

~~The exhibition notice will include:~~

- ~~■ A brief description of the planning matter or proposal;~~
- ~~■ The site address and name of the applicant (for a development application);~~
- ~~■ Where and when the relevant plans and documentation can be viewed;~~
- ~~■ The public exhibition period; and~~
- ~~■ Details for making a written submission.~~

~~If advertising is required, the applicant will be charged a fee in accordance with Council's adopted fees and charges.~~

Submissions

Anyone with an interest in a planning matter is welcome to make a written submission which must be lodged with Council by 4.30pm on the final day of the exhibition period.

Submissions by the community with respect to a plan, application or other matter may be made during the minimum period of its public exhibition. If the plan, application or other matter is placed on public exhibition for a specified longer period, submissions may be made during that specified longer period.

The EP&A Regulations outline the method of public exhibition under the EP&A Act, how people can make submissions, how people can obtain further information and the requirements for something to be considered a submission for the purposes of the EP&A Act.

Submission Requirements

A submission must meet the following requirements:

- Be addressed to the General Manager;
- Be received in writing (either by email or letter);
- Be submitted within the nominated public exhibition period;
- Be based on planning grounds (whether in support or objection);
- Include reference to the application, policy or plan being exhibited; and
- Include the name, address and telephone contact details of the author.

Whether a submission is made in support or objection of a matter, it is important that clear reasons are provided in the submission to identify the impacts on a person or property that is potentially affected.

Lodgement of Submissions

Any of the following methods of lodgement will be accepted:

- In person, at Council's main administration centres during normal business hours, at the following locations;
 - 86 Market Street, Mudgee
 - 109 Herbert Street, Gulgong
 - 77 Louee Street, Rylstone
- By mail, to PO Box 156, Mudgee NSW 2850;
- By email, to council@midwestern.nsw.gov.au;
- By online submission, via Council's website.

If a submission is not received by any of the above methods, the submission is not considered a formal written submission for the purposes of the EP&A Act. Comments on social media, written and verbal discussions with Councillors or staff will not be treated as a submission.

Late Submissions

Whilst community feedback is strongly encouraged as part of the planning process, Council also has to balance this with a requirement to process plans, policies and development applications in a timely manner.

This means that Council cannot guarantee that it will consider submissions received after the exhibition period unless an extension of time has been explicitly granted and only in exceptional circumstances.

Acknowledgement of Submissions

At the end of the public exhibition period, a letter of acknowledgement will be sent to the author of each submission. This letter will not respond to any questions or issues raised in a submission, or express an opinion on the planning matter or subject proposal.

All submissions received during the exhibition period will be considered as part of the assessment report.

Political Donations or Gifts

When making a submission to Council, the author of the written submission is required to disclose any reportable political donations or gifts. It is an offence not to disclose relevant information or to make a false disclosure statement under the EP&A Act.

Please read and complete a Political Donations Disclosure Statement which is available on Council's website, if this may be applicable.

Privacy

Submissions are considered as public documents, and other people may be able to review them on request, so it is important to read Council's privacy statement which is available on Council's website.

Notification of Decisions

Council is required to publicly notify certain decisions and reasons for decisions under the EP&A Act. This includes:

- The determination by Council of an application for development consent;
- The determination by Council of an application for the modification of a development consent (being an application that was publicly exhibited);
- The granting of an approval, or the decision to carry out development, where an environmental impact statement was publicly exhibited under Division 5.1.

~~Council publishes these decisions on its website, and places notification of a monthly summary of decisions in a local newspaper.~~

Post-determination notification of decisions will be carried out in accordance with the provisions of section 4.18 of the EP&A.

The mandatory public notification requirement for these decisions is:

- The decision;
- The date of the decision;
- The reasons for the decision (having regard to any statutory requirements applying to the decision); and
- How community views were taken into account in making the decision.

The requirement to provide reasons for the decision may be satisfied by reference to any document that contains the reasons for decision.