

# Public participation

(development applications)

Blue Mountains  
BETTER LIVING DCP

The most common matters that are referred to the community for comment are development applications. The Better Living Development Control Plan (DCP), Part L - Public participation (development applications) outlines the criteria and procedures used to inform the community of development applications. It seeks to achieve a consistent approach to the notification of development applications and to balance the public participation process with the timely assessment of an application.

The Plan applies to all land zoned under Blue Mountains Local Environmental Plans (LEPs) 1991 and 2005.

Not all notification is undertaken by the Council, for example 'State significant' development is managed by the State Government. There are also other development categories that have either no approval or pre determination notification requirements such as 'Exempt' and 'Complying' development. This Part of the Better Living DCP focuses on the notification requirements managed by the Council for 'Designated', 'Advertised' and 'other notifiable' development'.

**Where there is any perceived inconsistency between this Part and legislation, the legislation shall prevail.**

Advisory notes have been included to give additional information and guidance on the submission and post determination process. These notes are procedural and do not form part of the Plan. As such, they are updated as the need arises without the need to re exhibit the Plan.

## Advisory notes

**Exempt development** is low impact, minor development that does not require any form of notification or approval. Examples may include garden sheds, gazebos, pergolas and the like.

**Complying development** is a class of development identified by a planning instrument that is not subject to merit assessment but rather compliance with specified technical and non-discretionary standards. Applications for this class of development are not notified prior to determination. Adjoining property owners will however receive a written notice by the Principal Certifying Authority (who could be Council or a private accredited certifier) after a Complying Development Certificate (CDC) has been issued. A determination notice is also published in the local paper for Council issued CDC's.

**State significant development** is a type of development declared as such by a state or regional environmental plan (SEPP or REPP). Applications and the notification process for 'State significant' development is managed by Planning NSW. The criteria for State significant development is listed in the Environmental Planning and Assessment Act 1979 and its Regulations.

For information on exempt and complying development refer to [www.planning.nsw.gov.au](http://www.planning.nsw.gov.au)

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### 'Affected' defined

*Affected:* is any property, as determined by the Council, the enjoyment of which may be detrimentally influenced by the proposed development. This will generally be adjoining properties. However, the need for notification will be determined by the potential for detrimental impact. This may include properties not directly abutting the proposed development but which may be visually affected or properties along a road where traffic impact is likely to be significant.

Whether land may be detrimentally affected is to be determined by taking into consideration the effect that a proposal would have on:

- views to and views from the land
- overshadowing
- privacy
- noise
- the quality and character of the adjoining streetscape
- light spillage

### 'Adjoining' defined

*Adjoining:* means land which abuts or has a common boundary with or is directly opposite an application site or is separated from it only by a pathway, driveway or similar thoroughfare. See examples.

- "Adjoining" properties
- Proposed development site



## 2. Designated development

Designated development is defined under the Environmental Planning and Assessment Act as a class of development declared as such by an environmental planning instrument or the Regulations. Schedule 3 of the Regulations lists the various activities and types of development that are considered 'Designated'. Very few applications received in the Blue Mountains are associated with this type of development. The public participation process for 'Designated' development is specified under s.79 of the Act and cls.77-85 of the Regulations. The procedures outlined below follow the Act and Regulations with additional provisions to clarify administrative processes.

### Criteria for notification

All 'Designated' development applications are notified.

### Time period for notification

The notification period for 'Designated' development is 30 calendar days. Notification shall not commence or end between the Christmas – New Year period (ie., 20 December until 5 January). Notification spanning this time shall also make allowance for the holiday period.

The notification period will apply from the date on which the notice was first published in the newspaper.

### Online notification

The Council's website [bmcc.nsw.gov.au](http://bmcc.nsw.gov.au) publishes an updated list of applications in notification. Documents submitted by the applicant will generally be available for viewing online during the notification period.

### Written notice

A written notice will be given to:

- (i) Persons who appear to own or occupy adjoining land;
- (ii) Those public authorities that Council considers may have an interest in the determination of the application (other than concurrence authorities or other approval authorities);
- (iii) To such other persons as appear to own or occupy the land, the use or enjoyment of which, in Council's opinion, may be detrimentally affected if the 'Designated' development is carried out. Where the area of affectation is large then advertising in the local press shall occur instead of notification for other than the properties in the immediate vicinity.

If a notification letter is sent and that notice is returned, Council is considered to have fulfilled its obligations.

For the purpose of written notification:

- (a) Where the land is a lot within the Strata Titles Act, Strata Titles Leasehold Act or Community Development Act, a written notice to the Body Corporate is taken to be a written notice to the owner of each lot.
- (b) If the 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.
- (c) The notice sent to the land owner will be at the address shown on Council's ownership records at the date the notice was generated.

The written notice is to occur at the same time as the published notice.

## Designated development continued

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### Published notice

A published notice will be included in the local paper as soon as practical after the development application is lodged. The notice for 'Designated' development must:

- (a) Be published on at least 2 separate occasions;
- (b) Appear across 2 or 3 columns in the display section of the newspaper;
- (c) Be headed in capital letters and bold type "**DEVELOPMENT PROPOSAL**".

### Notice on the land

A signpost or board must be exhibited on the land to which the development relates and, if practical, in a location capable of being read from a public place. The sign will be installed at the same time as the published notice.

### Content of a written / published notice

The written and published notice will contain:

- (a) A description of the land (including the address) on which the development is proposed to be carried out;
- (b) The name of the applicant and the name of the consent authority;
- (c) A description of the proposed development;
- (d) A statement that the proposed development is 'Designated' development;
- (e) A statement that the application and the documents accompanying that application (including the environmental impact statement) may be inspected on Council's website during the exhibition period;
- (f) A statement that any person may, during the notification period specified, make a written submission.

The written notice shall also contain an A4 notification plan showing the elevations and site plan.

In the case of an application nominated for integrated development, the following additional information will be included in the written and published notice:

- (i) A statement that the development is nominated as integrated development; and
- (ii) The approvals that are required and the relevant approval bodies for those approvals.

## Designated development continued

### Content of notice on the land

The notice on the land must be clear and legible and headed in capital letters and bold type “**DEVELOPMENT PROPOSAL**”. The sign must contain under that heading:

- (a) A statement that the development application has been lodged;
- (b) The name of the applicant;
- (c) A brief description of the development application;
- (d) Notice that the development application and relevant environmental impact statement may be inspected on Council’s website during the notification period.

**DEVELOPMENT PROPOSAL**  
Notice of Application Received - X/9999/2010

**Applicant:** BMCC  
**Location:** Council HQ, 2-6 Civic Place, Katoomba NSW 2780  
**Proposed Development:** Description of proposal  
**Notification Period:** Dates

**Exhibition Location:** The proposed application and environmental impact statement can be viewed on Council’s website [www.bmcc.nsw.gov.au](http://www.bmcc.nsw.gov.au) at ‘Development applications in notification’ or Blue Mountains City Council at Civic Place, Katoomba from 8.30am to 5.00pm

**Submissions:** May be made in writing to the General Manager, up until close of the notification period. The Environmental Planning & Assessment Act impose certain obligations on applicants, those making submissions and decision makers in relation to the disclosure of information relating to political donations and gifts. Submissions are not confidential. For further information refer to Council’s website [www.bmcc.nsw.gov.au](http://www.bmcc.nsw.gov.au), or phone Council on 4780 5000.

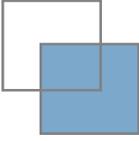
### Amendment after notification

Council will not renotify an application that has been amended prior to determination, where in the opinion of Council, the amended, substituted or later application differs:

- (a) Only in minor respects from the original application; or
- (b) Is of a lesser impact; or
- (c) Addresses impact issues.

Such an application will be referred to as a ‘replacement’ application.

Where renotification occurs, the application will be notified to any person who made a submission in respect of the original application, and to the owners of land that in the opinion of Council, could suffer increased adverse impacts as a result of the proposed amendment.



## 3. Advertised development

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'Advertised' development is a class of development nominated in an environmental planning instrument. It includes:

- Any development listed as a scheduled activity at any premises under the Protection of the Environment Operations Act 1997 (other than those identified as 'Designated' development).
- Development nominated as such in a State Environmental Planning Policy (eg., SEPP 33 - Hazardous and Offensive Development, SEPP 37 - Continued Mines and Extractive Industries).
- Any development identified as 'Advertised' by a Local Environmental Plan (LEP). For example:
  - Under LEP 1991 (cl.31) - childcare centre, educational establishment, home industry, hospital, place of public worship, registered club, recreational facility or works involving the demolition of a heritage item or building work, relic or place within a Heritage Conservation Area, unless the demolition is partial and in the opinion of the Council will be of a minor nature and will not adversely affect the heritage significance of the heritage item or Heritage Conservation Area.
  - Under LEP 2005 (cls.72&77) - works involving the demolition of a heritage item or building work or a place within a Heritage Conservation Area or a heritage item or place subject to conservation incentives.

Specific provisions apply under s.79A of the Environmental Planning and Assessment Act and cls.86-91 of its Regulations. The procedures outlined below follow the Act and Regulations with additional provisions to clarify administrative processes.

### Criteria for notification

All 'Advertised' development applications are notified.

### Time period for notification

The notification period for 'Advertised' development is:

- (i) 30 calendar days for nominated integrated or threatened species development;
- (ii) 14 calendar days for all other types of 'Advertised' development.

Notification shall not commence or end between the Christmas – New Year period (ie., 20 December until 5 January). Notification spanning this time shall also make allowance for the holiday period.

The notification period will apply from the date on which the notice was first published in the newspaper.

### Online notification

The Council's website [bmcc.nsw.gov.au](http://bmcc.nsw.gov.au) publishes an updated list of applications in notification. Documents submitted by the applicant will generally be available for viewing online during the notification period.

## Advertised development continued

### Written notice

A written notice will be given to:

- (i) Persons who appear to own or occupy adjoining land; and
- (ii) Those public authorities that Council considers may have an interest in the determination of the application (other than concurrence authorities or other approval authorities).

If a notification letter is sent and that notice is returned, Council is considered to have fulfilled its obligations.

For the purpose of written notification:

- (a) Where the land is a lot within the Strata Titles Act, Strata Titles Leasehold Act or Community Development Act, a written notice to the Body Corporate is taken to be a written notice to the owner of each lot.
- (b) If the 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.
- (c) The notice sent to the land owner will be at the address shown on Council's ownership records at the date the notice was generated.

### Published notice

A published notice will be included in the local paper as soon as practical after the development application is lodged.

### Content of a written / published notice

The written and published notice will contain:

- (a) A description of the land (including the address) on which the development is proposed to be carried out;
- (b) The name of the applicant and the name of the consent authority;
- (c) A description of the proposed development;
- (d) A statement that the application and the documents accompanying that application may be inspected on Council's website during the notification period;
- (e) A statement that any person may, during the notification period specified, make a written submission.

The written notice shall also contain an A4 notification plan showing the elevations and site plan.

In the case of an application nominated for integrated development, the following additional information will be included in the written and published notice:

- (i) A statement that the development is nominated as integrated development;
- (ii) The approvals that are required and the relevant approval bodies for those approvals; and
- (iii) In the case of development that is threatened species development, a statement that the development is threatened species development.

## Advertised development continued

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### **Amendment after notification**

Council will not renotify an application that has been amended prior to determination, where in the opinion of Council, the amended, substituted or later application differs:

- (a) Only in minor respects from the original application; or
- (b) Is of a lesser impact; or
- (c) Addresses impact issues.

Such an application will be referred to as a replacement application.

Where renotification occurs, the application will be notified to any person who made a submission in respect of the original application, and to the owners of land that in the opinion of Council, could suffer increased adverse impacts as a result of the proposed amendment.

## 4. Other notifiable development (also referred to as specified development)

This category includes any development proposal other than 'Designated' or 'Advertised' development. The majority of development applications received fall into this category. There are no statutory requirements to formally notify this type of development, the Council however chooses to do so in some circumstances. In accordance with s79A(2) of the Environmental Planning and Assessment Act, these circumstances are stated below.

### Criteria for notification

A written notice will be sent to the owners of adjoining land (refer to definition of 'adjoining') to obtain their view in relation to the proposal, unless:

- (a) The application is for internal works in an existing building and there will be no change or external impact as a result of that application;
- (b) The application involves the demolition of a structure (other than a heritage item);
- (b) It is a strata application involving the adjustment of boundaries;
- (c) In the opinion of Council, it is considered that the enjoyment of the adjoining land will not be detrimentally affected (refer to definition of 'affected').

A published notice in the local newspaper will only occur where:

- (i) The application is for a significant development that is not expected to occur with any frequency in that land use zone;
- (ii) The application is for a non residential use, other than where the application comprises: ancillary works, change of use; first use or similarly minor works;
- (iii) The application is for a multi residential development (including villas, townhouses) other than where the application comprises ancillary or similarly minor works;
- (iv) More than 5 additional lots are proposed.

### Time period for notification

The notification period for 'other notifiable' development is 14 calendar days. For exceptionally complex development proposals the notification period may be increased to 30 calendar days. Notification shall not commence or end between the Christmas – New Year period (ie., 20 December until 5 January). Notification spanning this time shall also make allowance for the holiday period.

Where published the time frame will apply from the date on which the notice was first in the newspaper.

### Online notification

The Council's website [bmcc.nsw.gov.au](http://bmcc.nsw.gov.au) publishes an updated list of applications in notification. Documents submitted by the applicant will generally be available for viewing online during the notification period.

### Written notice

A written notice will be forwarded to the land owner at the address shown on the Council's ownership records at the date the notification letter was generated.

If a notification letter is returned, Council is considered to have fulfilled its obligations.

## Other notifiable development continued

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### *Written notice continued*

For the purpose of written notification:

- (a) Where the land is a lot within the Strata Titles Act, Strata Titles Leasehold Act or Community Development Act, a written notice to the Body Corporate is taken to be a written notice to the owner of each lot.
- (b) If the land is owned by more than one person, a written notice to one owner is taken to be a written notice to all the owners of that land.
- (c) The notice sent to the land owner will be at the address shown on Council's ownership records at the date the notice was generated.

### **Published notice**

A published notice (where required) will be included in the local paper as soon as practical after the development application is lodged.

### **Content of a written / published notice**

The written and published notice will contain:

- (a) A description of the land (including the address) on which the development is proposed to be carried out;
- (b) The name of the applicant and the name of the consent authority;
- (c) A description of the proposed development;
- (d) A statement that the application and the documents accompanying that application may be inspected on Council's website during the notification period;
- (e) A statement that any person may, during the notification period specified, make a written submission.

The written notice shall also contain an A4 notification plan showing the elevations and site plan.

In the case of an application nominated for integrated development, the following additional information will be included in the written and published notice:

- (i) A statement that the development is nominated as integrated development;
- (ii) The approvals that are required and the relevant approval bodies for those approvals.

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### **Amendment after notification**

Council will not renotify an application that has been amended prior to determination, where in the opinion of Council, the amended, substituted or later application differs:

- (a) Only in minor respects from the original application; or
- (b) Is of a lesser impact; or
- (c) Addresses impact issues.

Such an application will be referred to as a replacement application.

Where renotification occurs, the application will be notified to any person who made a submission in respect of the original application, and to the owners of land that in the opinion of Council, could suffer increased adverse impacts as a result of the proposed amendment.

## 5. Modifications

Changes may occur to a development application after determination. The following sets out Council's criteria and procedures for notification associated with a modification to a development application.

### Criteria for notification

The Environmental Planning and Assessment Act provides for three levels of modifications:

- **Modification involving a 'Minor Error, Misdescription or Miscalculation' – Section 96(1).** No notification required.
- **Modification involving 'Minimal Environmental Impact' – Section 96(1A).** Generally, no notification required unless the original consent was issued by the Court.
- **All 'Other Modifications' – Section 96(2).** These modifications are notified in accordance with the type of development as detailed below.

### Designated development

Notice of the proposed modification must be:

- Published in a local paper;
- Forwarded to any persons who made a submission in respect of the original application; and
- Forwarded to the owners or occupiers of land, who in the opinion of Council, could suffer increased adverse impacts as a result of the proposed amendment.

The information contained in any written or published notice shall include:

- A brief description of the development consent, the land to which it relates and the modification sought; and
- A statement that written submissions concerning the proposed modification may be made to the Council within the time period specified.

The notification period for a modified 'Designated' development is 30 calendar days.

## Modifications continued

### **Advertised development**

Notice of the proposed modification will be:

- Published in a local paper;
- Forwarded to any persons who made a submission in respect of the original application; and
- Forwarded to the owners and occupiers of land, who in the opinion of Council, have the potential to be detrimentally affected (refer to definition of 'affected') as a result of the proposed modification.

The information contained in any written or published notice shall include:

- A brief description of the development consent, the land to which it relates and the modification sought; and
- A statement that written submissions concerning the proposed modification may be made to the Council within the time period specified.

The notification period for a modified 'Advertised' development is 14 calendar days.

### **Other notifiable development**

Written notice of the proposed modification will be forwarded to:

- Any persons who made a submission in respect of the original application.
- To the owners of land, in the opinion of Council, could suffer increased adverse impacts as a result of the proposed amendment.

The information contained in any written notice shall include:

- A brief description of the development consent, the land to which it relates and the modification sought; and
- A statement that written submissions concerning the proposed modification may be made to the Council within the time period specified.

The notification period for a modification associated with other notifiable development is 14 calendar days.

## 6. Review of determination & revocation of consent

### Revocation of consent

Under s.96A of the Environmental Planning and Assessment Act, a development consent can in certain circumstances be revoked or modified by the Director General.

In such cases, Council is required to notify any person who it considers would be adversely affected by the revocation, prior to the making of any such decision. The time period for notification will be determined on the basis of the revocation being considered.

### Review of determination

The Council will not notify an application seeking a review of determination under s.82A of the Environmental Planning and Assessment Act, except where an applicant proposes to make amendments to the development and such amendments are, in the opinion of the Council, likely to increase the environmental impacts of the development.

In these cases the application will be notified to any person who made a submission in respect of the original application, and to the owners of land, who in the opinion of Council, could suffer increased adverse impacts as a result of the proposed amendment.

A notification period of 14 calendar days will apply.

## Advisory notes

**Models / artist impressions** Where a model / artist impression is supplied by the applicant this will be displayed at our Katoomba office (for development on land from Lawson to the Mounts) or Springwood office (for development between Lapstone to Hazelbrook).

**Copying of documents** All plans and reports associated with a development application are subject to copyright. Whilst documents may be viewed online, print access will be restricted to only those parts exempt for the purposes of s.105 of the Environmental Planning and Assessment Act. Copies of Environmental Impact Statements which accompany a 'Designated' development are made available for purchase.

**Content of a submission** In determining an application the Council forms a decision based on the overall merits of the proposal. An extensive range of planning matters are considered and these are outlined in planning instruments such as Local Environmental Plans 1991 and 2005, the Better Living Development Control Plan, relevant State and / or Regional Environmental Plans.

Submissions, referral comments from agencies and compliance with planning instruments form part of the assessment.

In making a submission view the development proposal in the context of the character of the streetscape. Consider amenity impacts such as accessibility, privacy and overshadowing, potential loss of views, landscaping, stormwater management, traffic and parking as well as other environmental, social and economic impacts in the locality. Consider also ways in which adverse impacts (if any) could be mitigated.

**Political donations** A person or an associate of that person who makes a submission on a development application is required to disclose political donations and gifts (if any) to a local Councillor or employee. This includes any donation or gift within 2 years before the submission is made up until the application is determined. Further details refer to [www.bmcc.nsw.gov.au](http://www.bmcc.nsw.gov.au)

## Advisory notes

### Lodgement of a submission

A submission to an application can be made by mail, email or via the online form. Refer to [bmcc.nsw.gov.au](http://bmcc.nsw.gov.au) - 'Development applications on notification'. To allow for proper consideration of submissions (and where the application is 'Designated' development, to retain any third party appeal rights), submissions should be received in the Council offices before the close of business on the last nominated date.

Submissions are acknowledged. In the case of:

- Form letters, letters and emails - the acknowledgement will be sent to the name and address where that name and address is legible and complete.
- Petitions - (ie., submissions received referencing more than one address) the acknowledgement will be sent to the representative nominated on the petition where that name and address is legible and complete.

Where an submission is acknowledged all other communications eg., advice of a Council meeting or the determination outcome of the development application will follow to that submitter's name and address.

### Confidentiality of submissions

Submissions are not confidential.

A submitter who has concerns about the release of their name and address, or any other identifying material, must provide and highlight in their submission valid written reasons for seeking confidentiality. In such circumstances, the Council may attempt to withhold the release of the submission. If an application is called up before the Courts all details are available.

A copy of all submissions received in response to the public exhibition of a development application for 'Designated' development are sent to the Director-General immediately after the relevant submission period. Note: This does not apply if the Director-General has waived the requirement under s.80(10)(b).

Copies of submissions are also given to the determining authority - Joint Regional Planning Panel.

### Calling of a public meeting

Where Council determines that a proposal for which consent may be given is of sufficient interest and significance to the community, a public meeting may be called to discuss the proposal before the assessment is finalised. This is however followed only in unusual circumstances where such a meeting can add information not easily obtained through submissions.

In such circumstances meetings will generally be arranged by written invitation to those persons who made submissions. Where there is likely to be a wider community interest, a notice will be placed in the local newspaper or displayed in a prominent position in the respective village/town.

Council has in place a Mediation Policy which in some circumstances may be an appropriate means of facilitating the resolution of conflicting points of view.

# Public participation

(development applications)

Blue Mountains  
BETTER LIVING DCP

## Advisory notes

**Notice of Council meeting** Where a development application is referred to the Council for determination, people who have made a written submission to that application, together with applicants will be advised of the scheduling of the item for the Council meeting. While Council will endeavour to give reasonable notice of the meeting, the period may be limited due to the scheduling of meetings. Council business papers are available online.

**Notice of Joint Regional Planning Panel meeting** Where an application is to be determined by a Joint Regional Planning Panel, people who have made a written submission to that application, together with applicants, will be advised of the date and time of the meeting by the Panel Secretariat.

**Advice of determination** A list of development consents and refusals will be regularly published in the local newspaper. The notice will describe the land and the development, and advise that the determination is available for inspection free of charge at the office of the Council during ordinary office hours. This information will be made available on Council's website for applications determined after 1 January 2011.

Any person who makes a written submission to a development application will be notified of the determination of that application. In the case of a modification to a consent, advice will only be sent to those who made a submission on the modification.

In the case of 'Designated' developments, advice to an objector will be made at the same time as the notice of determination is given to the applicant and will advise the objector of the rights of appeal. A consent for a 'Designated' development will not commence operation until 28 days after the issue of the notice, being the time in which objectors may lodge an appeal in the Land and Environment Court.

**Complying Development Certificates** In accordance with s.101 of the Environmental Planning and Assessment Act, a determination notice of a complying development certificate is notified in the local newspaper by the issuing authority. If the public notice is given by an accredited certifier then they must send a copy of the page of the newspaper to Council within 7 days after the notice is published.

**Register of applications** Council is required to keep a register of applications under cls.264-265 of the Environmental Planning and Assessment Regulations. This register is available in an electronic format and may be viewed at our Katoomba and Springwood Offices. Web access will be available for applications lodged after 1 January 2011.