



# FACT SHEET – MAKING A DA SUBMISSION

## **Background**

Lismore City Council is committed to making development application information and submissions accessible via publishing on Council's website in order to ensure transparency in the decision making process for development applications. This fact sheet has been prepared to assist people considering making a submission to be aware of the submission process, and the fact that submissions will also be made accessible to the public via Council's website.

Council has implemented a DA Online tracking facility on Council's website to make application information more readily available to the community to assist in reviewing development proposals that may affect surrounding residents. As part of this DA Online facility, Council also publishes submissions that are lodged regarding development proposals.

The activities of Council are subject to the provisions *Government Information (Public Access) Act 2009* (GIPA), which mandates that all submissions received by Council in relation to development applications and related certification are "open access information" which Council must make available to the public. Council facilitates making this information readily accessible in accordance with the provisions of the GIPA by publishing submissions on our DA tracking facility on our website.

## **1. Council's Notification Process**

You **can** have your say in what Council does in relation to development. Community input in the decision making process is a major focus of the *Local Government Act 1993* and *Environmental Planning and Assessment Act 1979*. These Acts require Council to be open, accountable and approachable.

Lismore City Council has a policy to advertise and notify adjoining owners of certain development applications lodged with Council for determination. Submissions on these applications assist Council's staff and elected representatives to identify how a given development will affect the community, and then to make informed decisions.

Council's policy is called "Notification and Advertising of Development Applications" and can be found on Council's website at: [www.lismore.nsw.gov.au](http://www.lismore.nsw.gov.au)

Some applications are not publicly notified in accordance with the provisions of the above policy. If an application is notified, there are several means of notification for development proposal:

1. Occupants or owners of neighbouring land are advised by letter of minor developments.
2. More complex applications may include letters to owners and occupiers of adjoining lands, an advertisement printed in the Local Matters published by Lismore City Council, and a site notice may be placed on the development site.
3. Council may, at its discretion, determine notification or consultation in addition to the above policy to ensure greater community awareness of the development proposal.

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Information in this fact sheet has been sourced from fact sheets published by the NSW Ombudsman and Environmental Defender's Office.

## **2. Notification Periods**

The notification process will ordinarily include a closing date for submissions. It is important to make your submission within this period to ensure that it is taken into account by Council, as the application may be determined at any time after this closing date. If you are unable to make your submission prior to the closing date, there is no need to apply for a formal extension of time, as Council is obliged to consider all submissions received prior to determination of a development application. You may wish however, to advise Council in writing of your intention to prepare a detailed submission, and advise when it can be expected to be received.

It is important to understand however, that Council has an obligation to determine applications, and if you delay too long, the application may be determined before your submission is received, and the opportunity to consider your submission prior to determining the application will be lost.

However, in the case of submissions in response to a proposed designated development (as identified in the advertisement/notification), it is important to remember that failure to lodge a submission within the submission period may prevent you from seeking merits review of the decision in the Land and Environment Court. In your submission, you should clearly state that you are objecting to the proposed development.

## **3. What is a submission?**

A submission is a document setting out your point of view and your argument which supports that point of view. A submission will contain comments that seek to influence the outcome of Council decision making. Submissions may take many forms.

## **4. Who can make a submission?**

Anyone may make a submission to a council about a development application, whether or not it has been advertised or notified. Submissions are not limited to adjoining owners or occupiers of land. A submission may support an application, oppose it, request that modifications be made or that conditions be imposed. You are not obliged to lodge a submission simply because you have been notified of an application. If you have an opinion on a matter that has been exhibited then you can make a submission. If the matter is complex, you may engage a consultant to prepare and make a submission on your behalf.

If the proposed development is on your neighbour's property, it may be worthwhile asking them for details and discussing your concerns with them before considering making a submission. They may be willing to accommodate your concerns by modifying and resubmitting their plans.

## **5. How do I make a submission and what should be included?**

For you to make an informed submission it is recommended that you view the plans and documentation available at Council or on Council's website. Make sure you get information as possible before writing your submission. Submissions must be made in writing, addressed to the General Manager and lodged by the date specified in the notification letter or exhibition notice.

Good submissions are fairly short and to the point. They do not use emotive language or personal criticism. They focus on non-compliance only where that has a significant impact, and they suggest changes that might resolve the problems identified.

Framing a submission in accordance with the terms of reference or legislative requirements increases its relevance, by addressing the issues in the same way that Council staff have to. It does not mean you have to disregard other issues. Feel free to raise these upfront where they are crucial to the construction of an issue - or, for example, at the end under "other issues".

In the case of a submission on a development application, first analyse the development application and supporting documents such as the environmental impact statement. You should consider the broader issues (for example, whether the development is necessary) as well as the particular facts and figures put forward by the developer. Experts may be able to provide evidence to support your case.

Always give details about how you arrived at your assertions. For example, instead of saying:

*'The golf course proposal is outrageous. It will pollute the river.'*

consider saying something like:

*'Irrigating the lawns of the 50 hectare golf course, together with using fertiliser and herbicides, is likely to result in changes to the water table, nutrient pollution, and an adverse impact on the red gum forest next to the land where the golf course is proposed'.*

The following points may also improve the effectiveness of your submission:

- 1) make your submission as clear and concise as possible;
- 2) avoid using emotive or abusive language;
- 3) include headings, subheadings and page numbers;
- 4) include your name and contact details and date the submission.

A submission can be any length. If you are short of time, consider writing a submission in point form under subheadings.

## **6. Getting Your Point Across**

Council assessment staff summarise submissions as part of their assessment reports and consideration of matters regardless of the complexity of the issue. You should consider this when preparing your submission or talking to councillors and council staff. It is one of the fundamental principles of good communication that you speak the language of your audience. This does not mean that your message needs be 'dumbed down'.

### **a) Letters**

Letters are most effective when many people write in response to the same matters. Avoid 'form' or pre-prepared letters where possible, and encourage people to write in their own style. Faxed and emailed letters are treated the same as posted letters by Council.

The same considerations relating to structure of submissions apply to writing letters. Help the Council staff to understand why you don't like a proposal by telling us why you don't like it. It does not assist for you to simply say that "*I object to this development*". You should include all the matters that you feel are relevant, such as social, environmental, traffic or amenity impacts.

You should identify what the issue is and what level of impact it may have. For example, a proposed building may block out the sun to your backyard. You need to tell the Council that this is an issue and that it will affect your enjoyment of your land. If you can identify how badly this will affect you, or make suggestions regarding how your concerns may be addressed, this will assist us in making an assessment of the DA.

### **b) Petitions**

Petitions to Council, while not as effective as letters, can assist in conveying community concerns about a proposal. Both the quality and quantity of petitions can help put your case.

Petitions may be presented to Council, however, if you are organising a petition, you must ensure that people signing the petition are aware that Council will publish the petition on Council's

website, including any details signatories provide. Failure to disclose this fact to signatories on a petition may expose the person submitting the petition to action under NSW privacy legislation.

### **c) Defamation**

People who are considering making submission often operate in a highly stressed environment, which can be emotionally difficult. Amidst all this, it is important to be aware that some things that are said and written - even unintentionally - can result in you being sued for defamation. Defamation laws attempt to balance freedom of speech with the need to protect the reputation or privacy of individuals.

Defamation is primarily a civil action where a person or entity seeks damages for loss of reputation from someone who has published defamatory material about them. There are three aspects to defamation - publication, identification and damage to reputation.

A publication is a communication by one person to at least one other person (other than the one defamed). It should be noted that cyberspace is not a law-free zone and internet defamation is treated as seriously as defamation in traditional forms.

A publication will be defamatory if it identifies one or more people. A submission may be defamatory if it conveys a meaning which is likely to either:

- lower the person's reputation in the eyes of ordinary reasonable members of the community,
- lead people to ridicule, avoid or despise the person, or
- injure the person's reputation in business, trade or their profession.

There are several things you can do to minimise the risks of having defamation action taken against you, based on an understanding of the basic principles set out above.

**First**, you should assess any submission, statement or document (that you know will be published by Council on the internet) in light of these principles. Do you identify a person or particular people? Is the publication likely to damage their reputation?

**Second**, you should assess whether any defences apply, such as fair comment or qualified privilege. For example, can you substantiate any alleged facts and prove that the worst suggestion is both true and in the public interest?

**Third**, if possible, you may wish to get independent legal advice on your draft before sending to Council who will be publishing it.

Injurious falsehood applies where a person maliciously makes a false statement (by words or deeds) about a person or company to a third person, who acts on that statement to the detriment of the person or company. Conservation groups who make fraudulent or reckless statements about the business practices of corporations, with a view to moving customers and contractors away from the business, may fall within this category.

Council staff will not review the content of submissions to determine public interest considerations prior to publishing them on Council's website due to limited resources.

## **7. Protecting your privacy**

Council is committed to development assessment processes that are transparent and enable access to information by the community about development proposals that may affect residents. In order to achieve this **Lismore City Council will publish all submissions received regarding development applications on the Council website via the DA Online facility**. You need to be conscious and aware of this fact in preparing your submission.

It is considered that people who wish to lodge submissions to development proposals should be willing to share their views with the rest of the community. In the same context, applicants are expected to make their application documentation accessible for viewing online to assist the community in reviewing proposals.

If you are concerned about your personal information being accessible via Council's website, you may wish to consider the following measure to protect your personal information:

- a) If you are emailing your submission, you can provide personal details such as
- b) addresses and contact phone numbers in the email (this will not be published online). Prepare your comments on the DA as an attachment and include your name. (this document will be published online). If you include DA submissions/comments in both the covering email and any attachment, Council will publish all written submissions.
- c) Council will redact personal information such as signatures, phone numbers and email addresses from any submissions it publishes online, in accordance with the provisions of the GIPA and published guidance from the Information and Privacy Commissioner of NSW.
- d) Submissions and all DA documents (other than the conditions of consent) are removed from Council's website after determination of the development application. This action is to protect an individual's privacy and ensure compliance with Federal Copyright laws.
- e) If you are writing a letter for your submission, consider putting your personal details such as addresses, and contact phone numbers are on a separate page to assist Council in redacting information prior to publishing online.
- f) You may wish to not include addresses and contact phone numbers, but you should still include your name.
- g) Council staff will not review the content of submissions to determine public interest considerations prior to publishing them on Council's website due to limited resources.
- h) You may request in writing to Council not to publish your submission, however, please note that this relates to publication on Council's website only. Copies of submissions are open access documents under the GIPA, and will still be available to view upon request i.e. no anonymous submissions.
- i) A person can request Council not to publish a submission, but this request must have regard to the public interest considerations against disclosure in section 14 of the GIPA Act. Reasonable grounds must be provided to Council, and approved under the GIPA, for a submission not to be published.

***If you have concerns about:***

**8. *How much weight will my submission be given?***

This depends on the types of impacts and how severe the impact will be on the social or physical environment. Each submission is considered on its merits. However, submissions cannot solely determine the outcome of a Development Application, as there is a range of legislation and other matters which Council must also take into consideration in making its decision.

The number of submissions made objecting to a development and those made in support will not determine the outcome of any application assessment.

**9. *What happens after I make a submission?***

You will be notified that your submission has been received and this letter will include the name of the person assessing the application or plan amendment. The officer assessing the application will not contact you directly regarding your submission, unless clarification is required of matters raised in your submission.

In some circumstances the application may require modification as a result of either submissions or the planning assessment. Such modification may require the re-exhibition of the amended proposal. When this happens, you have a fresh opportunity to comment on the amendments. You do not need to re-lodge your previous submission(s), as they will still be considered in the assessment of the application.

The officer assessing the proposal will consider all of the issues, including all submissions. In the case of Development Applications, this assessment is reported to qualified and experienced planning staff or the full Council, who will consider the assessment and either refuse or approve the DA.

Any person who has made a submission will be able to access a copy of the notice of determination.

Councillors determine any DA for which two Councillors have requested that the application be submitted to a Council meeting for determination. Council will not contact people who made submissions to advise them that the DA is due to be considered at a Council meeting. If you make a submission, you should monitor progress of the DA via online DA Tracker facility on the Council's website to inform yourself of when a Council meeting or decision might be imminent, and to determine whether you wish to address Council during the "Public Access" part of the Council Meeting. Councillors may ask you questions so that they can fully understand your concerns before making any decision regarding the development.

