


## LG525 – ADVERTISING OF DEVELOPMENT APPLICATIONS

	<b>LG525:</b> Advertising of Development Applications
<b>Key Focus Area:</b> Leadership and Governance	<b>Responsibility:</b> Director Planning and Development  <b>Relevant Council Delegation:</b> Chief Executive Officer

### Purpose

To ensure high levels of public consultation are maintained and that the community is informed and, where appropriate, involved in the approval of new developments and land uses under Local Planning Scheme No. 3 (LPS3) which may affect them.

The advertising requirements are based on the guidelines as to when and how to advertise Development Applications in accordance with LPS3, the deemed provisions contained in Schedule 2, Part 8 of the *Planning and Development (Local Planning Schemes) Regulations 2015* (LPS Regs), the Residential Design Codes (RDC) and Council Policy.

It is noted that when this policy was reviewed in 2014, it was determined that the policy was a procedural (or administrative policy), not a Planning Policy. Accordingly, the policy is not required to be adopted under any planning legislation.

### Policy

#### Background

Clause 64 of the LPS Regs specifies that Council must advertise certain types of applications, although Council may waive the requirement to advertise if the application is minor in nature. Clause 64(3) of the LPS Regs specifies the minimum advertising requirements of 14 days. These requirements include publishing a notice by electronic means in a form approved by the local government CEO, newspaper advertising, placing of a sign on site and giving notice to all owners and occupiers of property in the vicinity of the development, who in the opinion of the local government are likely to be affected by the application.

Clause 85 of the LPS Regs provides for the Town to refuse to accept an application for Development Approval if it is not satisfied that there is an agreement in place for the local government to use any copyrighted material provided in support of the application (e.g. plans) for the purpose of advertising or implementing a decision on the application for zero remuneration. The new Development Application form contained in Part 11 of the deemed regulations requires

the applicant to indicate whether or not the information and plans lodged with an application may be made available for public viewing in connection with the application.

Clause 43 requires consultation with neighbours and occupants of adjoining land for setback variations for applications for Aged or Dependent Persons' Dwellings or a Dwelling (Self-contained). Other uses which may be approved under LPS3 and variations to provisions of the scheme or discretionary requirements of Council's Local Planning Policies and Local Laws should be advertised for public comment in accordance with the provisions of Council Policy.

The RDC requires that potentially affected adjoining owners and occupiers be advised and requested to make comment on development proposing a 'design principle' consideration under the RDC only where Council is of the view that there is a possible impact on their amenity or the street and only to those directly impacted by the proposal.

The Town has traditionally required a greater level of advertising than provided by the above statutory requirements through its Policy requirements designed to respond to the desires of the local community. This included the notification of all affected property owners and occupants of development proposals which vary Council's development requirements by way of Registered Post. All Development Applications are to be advertised in accordance with Council Policy.

On occasion, the community has made comment and sought refusal or changes to compliant applications. Where an application is compliant, it is unrealistic for Council to issue a refusal or apply a condition which goes beyond the statutes of LPS3 or the RDC (unless a serious breach of amenity will result) due to the applicant's right to seek a review of the decision through the State Administrative Tribunal.

As a result, full consultation has at times raised unrealistic community expectations of the planning process and has the potential to compromise the capacity of the Council to deliver an open and accountable planning service which is cognisant of its statutory limitations whilst at the same time responding to local concerns. Where an unrealistic expectation cannot be delivered, the community may lose faith in the planning process or the Council. This has the potential to fracture community relationships (between competing neighbours) and Council relationships with the community (as the arbiter and determining body).

Accordingly, this Policy takes into account the realistic requirements for consultation to respond to the legislative bounds of the planning process, whilst at the same time ensuring the public has the capacity to comment on Development Application matters which are relevant.



### **Requirement to Give Public Notice of Certain Development Applications**

Prior to consideration for approval, Development Applications under LPS3 are required to be advertised to all potentially affected owners and occupiers of property in accordance with the deemed provisions of the LPS Regs or RDC requirements (except in circumstances where the Manager Statutory Planning and Building or the Director Planning and Development considers an adjoining or adjacent property to not be adversely affected by the proposal).

The potentially affected properties may include those adjoining, abutting or adjacent to the site, subject of a proposal. Typically this will mean the adjoining and abutting properties (sharing a boundary) in addition to the properties directly opposite (across the road). Lot configurations and proposal details relative to an individual application may require modification to this guideline (e.g. corner sites), however the principle will remain the same.

It should be noted that, regardless of these Policy guidelines, the Manager Statutory Planning and Building or the Director Planning and Development may require advertising of a proposal contrary to these guidelines where it is considered to be in the interest of the affected owners and occupiers in the locality. Where larger significant development is proposed and the impact may be more far reaching, the consultation area may be increased at the discretion of the Manager Statutory Planning and Building or the Director Planning and Development. Consultation in this situation may include requirements for a sign to be erected on site to advertise the proposal for the duration of the advertising period in addition or supplementary to the letters being sent by Registered and Priority Post.

### **Where a Development Application Requiring Advertising is Received**

The following requirements shall apply to all Development Applications required to be advertised under LPS3, the RDC or this Policy:

- The Town or applicant shall write to all potentially affected owners and occupiers of property advising them a Development Application has been received and noting plans (and pertinent supporting documentation) are available for inspection at the Council offices during normal office hours.
- All consultation letters are to be sent by Registered and Priority Post at the cost of the applicant.
- Comments sought on residential applications should be focused on the 'design principles' being considered by the application – as required by the RDC.
- If a proposed residential Development Application is considered in the first instance by the Town to be unacceptable, the application may be refused without undertaking public consultation.
- Although the duration for comment on an 'SA' use under LPS3 is not less than 21 calendar days, the period of 14 days advertising stated in deemed provision Clause 64(3) of the LPS Regs overrides the 21 day period. All Development Applications under the RDC, LPS3 or for general variations to Council Policy or Local Law are to be advertised for 14 calendar days.
- Council may choose to have regard to a submission received after the advertising period has concluded, provided the application has not been determined.

- Affected parties may only be provided with a copy of the plans (hard copy or digital) when the applicant and copyright owner of the plans have provided consent (See additional comment on the Publishing of application material on the Town's Website below).
- Where the comment from affected parties has been acquired for the original Development Application, the comment from those parties (or subsequent parties) is also to be obtained for the amended plans with the exception of amendments that fully comply with the 'deemed to comply' or previously supported 'design principle' considerations of the RDC, variations to LPS3 or Council Policy requirements.

### **Publishing of Material by Electronic Means**

Where an applicant for Development Approval does not sign and mark 'yes' to making the plans provided with the application available for public viewing in connection with the application, the Town shall determine the application invalid until such time as the 'yes' box is checked. This will provide for the Town to load plans onto an electronic link if requested by an adjoining owner who is unable to attend the Town's offices to view the plans during the consultation period. The Town is to implement processes which provide for neighbours to apply for and receive a password to access the plans and where the neighbour is required to agree to terms of use, inclusive of a requirement not to reproduce or copy plans. Plans loaded through the electronic link for viewing will be made available for the formal submission period only and where the application is to be referred to Council for determination, the plans shall be included in the Restricted Attachments linked to the Council report.

### **Evidence of Non-Objection**

The Council may waive the notification requirements in respect of any Development Application (except for 'SA' uses and major development) in instances where the applicant provides a copy of the plan or letter/s which include certification by the owners and occupiers of the adjoining/adjacent property stating that they have no objection to the proposal. Signatures should include all persons shown as owners on the Certificate of Title as ownership details will be confirmed.

The certification must include:

- The full name of the owner/s or occupier/s certifying no objection and a signature
- A statement indicating no objection to the proposal
- A current contact address and a contact telephone number, and
- A statement including the specific variations to the RDC, LPS3, Council Policy and Local Law requirements.

Applicants are encouraged to liaise with Planning Services to identify the specific variations involved in the application prior to obtaining sign-off from neighbours in order to avoid mistakes and further delays resulting from the potential need to readvertise proposals incorrectly advertised.

### **Opportunity for Applicant to Respond to Submissions**

Copies of written submissions will be forwarded to the applicant to provide the opportunity to respond to issues raised in any submissions. The RDC requires that the period for response by the applicant is to be no more than 10 calendar days. Personal details such as names, telephone



numbers and addresses of the party making the submission will not be provided (noting however that they may be obvious from submission received and information provided).

### **Submissions**

All written submissions are required to relate to a 'relevant planning matter'. The supporting or objecting comments from affected parties does not mean automatic approval (with or without appropriate conditions to address the submission) or refusal to the Development Application. All written submissions together with the Development Application will be considered on the planning merits of the proposal and the determination of the application will take into account technical assessment and balanced judgment of the application.

### **Review**

The Policy must be kept under review to ensure it is appropriate for the circumstances of the time. The Chief Executive Officer is to present a review on a regular basis.

### **Other Relevant Policies and Documents**

NIL

### **Work Procedures**

#### **Policy LG524 Community Consultation**

#### **Policy Adoption and Amendment History**

<b>Reviewed/Modified</b>	<b>Minutes Reference</b>	<b>Date</b>	<b>Meeting Type</b>
Adopted	210/10	05/10/2010	Ordinary Council Meeting
Reviewed	360/13	10/12/2013	Ordinary Council Meeting
Reviewed	160/14	07/10/2014	Ordinary Council Meeting
Reviewed	203/14	09/12/2014	Ordinary Council Meeting
Reviewed	226/15	15/12/2015	Ordinary Council Meeting
Modified	206/16	13/12/2016	Ordinary Council Meeting
Modified	228/18	18/12/2018	Ordinary Council Meeting