

When does an application require public notification?

Before making a decision on some types of development proposals, the planning authority may be obliged to give public notification of the application so that people likely to be affected by that development have an opportunity to comment.

The Regulations and/or the provisions of the Development Plan itself set out the situations where people have this right available to them. The extent of the notification depends upon the type of development. Generally, the larger or more important the development, the greater the scope for public involvement.

There are three public notification categories:

Category 1

This type of development is legally exempt from any requirement for public notification. These are straightforward types of proposals and generally deemed to satisfy the Development Plan provisions. They include such development as:

- All detached dwellings;
- All single storey dwellings;
- Two storey semi-detached dwellings;
- Two storey row dwellings;
- Land division of not more than four allotments;
- The division of land by strata plan; and
- Minor development unlikely to be the subject of reasonable objection.

Category 2

This type of development requires personal notification to adjoining property owners only and includes the following:

- Two storey residential flat buildings;
- Two storey group dwellings; and
- Some commercial or industrial development where the site of the proposed development is adjacent to a different zone.

Category 3

This development includes all those not listed in either Categories 1 or 2. It predominantly involves non-complying development, a range of commercial and industrial uses and some forms of rural activity.

How is this done?

The public notification process is different depending upon the respective public notification category in which the proposal falls. Category 3 represents the most involved public notification and includes placing a notice in a newspaper(s) circulating generally in the district and individual notification direct to adjoining owners or occupiers (as well as others who in the opinion of Council may be affected by the proposal). Category 2 involves just giving individual notice direct to adjoining and adjacent neighbours only.

The notice will specify where and when the application may be inspected and by which time any comments must be received by Council.

The costs associated with this notification are borne by the applicant and are additional to the usual lodgement and assessment fees.

Who has a say?

Any person who has been offered the opportunity, and wishes to make a representation for or against a proposal must do so in writing before the date specified in the notice (being within 10 business days of the date of the notice). Representations must provide be based on planning grounds and reasonable details as to the reasons for the objection to (or support for) the development and whether in some circumstances you also wish to be heard in person by Council.

What is the purpose of this notification?

The process of advertising certain applications allows adjoining or nearby property owners, and others, to look at an application, consider the likely impact the proposal may have on them, and provide comment as to their opinion about the development, either for or against. In this way, Council can be made aware of particular issues that may affect people living in the vicinity of the proposal.

What happens when you lodge a representation?

The Council must take into account any planning matters raised in a representation in so far as they relate and are relevant to the provisions of the Development Plan. Any comments expressed which do not address the planning issues fundamental to these policies are immaterial and cannot be considered by Council. The applicant is provided with a copy of every representation received and given an opportunity to respond to Council in writing on the matters raised in these. Again, Council needs to take this response into consideration.

Can you be heard personally by Council?

If proposal was subject to Category 3 notification, the right to appear personally before Council to elaborate verbally upon the submission is provided. However, you must specifically indicate on your written submission that you do wish to take advantage of this opportunity, otherwise it is assumed that you do not wish to be heard. Where parties have indicated that they do wish to be heard, that right must be extended to the applicant as well.

If the notification was for a Category 2 development, then the Council has discretion as to whether the parties may appear before it or not, it is not mandatory. Many Councils have adopted a policy regarding this question and it is suggested that you contact Council for clarification.

What happens when you appear before Council?

You or your nominated representative, and the applicant, will be invited in writing to attend a meeting of Council or a Committee and advised of the time and place. The purpose of the hearing is for you to elaborate upon your representation and highlight the key points of your concerns. There is no need to read your submission in full, as generally each member has been provided with a copy. The opportunity for members to ask you and the applicant questions and to clarify the issues is also available. Generally, a set period of time is allocated for each party to address Council so that everyone has an equal chance of making their case.

Can you challenge the decision made?

In the case of Category 3 notifications, if a valid written representation has been lodged and there is dissatisfaction with the decision of Council, then a right of appeal to the Environment, Resources and Development Court exists. Third-parties have to be formally advised of the outcome along with their right to appeal, which must be exercised within 15 business days from the date of the decision.

There are no appeal rights available to third-parties where Category 2 notifications are involved (or Category 1 developments which are not advertised).

The applicant can appeal against Council's decision in either case.