



Upper Hunter Shire Council  
**COMMUNITY  
PARTICIPATION PLAN**





**Title:** Upper Hunter Shire Council Community Participation Plan  
CD-11/20

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# 1. COMMUNITY PARTICIPATION IN THE PLANNING SYSTEM

Upper Hunter Shire Council recognises community participation throughout the planning system is not only your right, it also delivers better planning results for the people of the Upper Hunter Shire. It is Council's responsibility to ensure the objectives of the Environmental Planning and Assessment Act 1979 (EP&A Act) are met in relation to local development including the promotion of orderly and economic use of land, facilitating ecologically sustainable development and promoting social and economic wellbeing.

Community participation refers to how Council engages the community in planning and development decisions under the EP&A Act, including plan making, development control policy and making decisions on proposed development. The level and extent of community participation will vary depending on the community, the scope of the proposal under consideration and the potential impact of the planning decision. The community includes anyone who is affected by the planning system and includes individuals, community groups, Aboriginal communities, peak bodies representing a range of interests, businesses, local government, and State and Commonwealth government agencies.

## 1.1 What is the community participation plan?

Council's Community Participation Plan (CPP) is designed to make participation in planning clearer for the Upper Hunter Shire community. It does this by setting out in one place, how and when you can participate in the planning system, our functions and the different types of proposals. This CPP also establishes the community participation objectives which Council will use to guide community engagement.

This CPP repeals Chapter 2b Public Participation of the Upper Hunter Development Control Plan 2015.

## 1.2 Who does this community participation plan apply to?

The CPP is a requirement of the EP&A Act (see Division 2.6 and Schedule 1) and applies to the exercise of planning functions by the Council (and their delegates), as well as the Regional Planning Panel when exercising consent authority functions on behalf of the Council under section 4.8 of the EP&A Act. The CPP will be reviewed on a periodic basis.

# 2. HOW THE COMMUNITY CAN PARTICIPATE IN THE PLANNING SYSTEM

The Community Participation Plan seeks to enhance the opportunities for all members of the community to participate in planning decisions to achieve better planning outcomes, at an appropriate level, relative to the development.

The Upper Hunter Shire's community is made up of a range of stakeholders, including individuals and interest groups that may, at some stage, be interested in participating in planning decisions.

A stakeholder is defined as "an individual or group who has a direct interest in, or can directly affect or be affected by the actions of Council with respect to a specific issue. Council needs to engage with a different mix of stakeholders on different issues."

**Key individuals include, but are not limited to:**

- Applicant
- Landowner

- Neighbour
- Property developer
- Business owner
- Real estate agent
- Planning specialist or consultant

**Key interest groups and organisations include (but are not limited to):**

- Progress associations
- Landcare/ Rivercare groups
- Environmental groups
- Aboriginal groups

**Government agencies or bodies (including but not limited to and subject to name changes):**

- NSW Rural Fire Service
- Roads and Maritime Services
- NSW Environment Protection Authority
- NSW Office of Environment and Heritage
- NSW Department of Primary Industries
- NSW Department of Industries
- Australian Rail Track Corporation
- Ausgrid
- Essential Energy
- NSW Police Service

## 2.1 Our community participation objectives

Council's community engagement objectives are to:

- enhance opportunities for all members of the community to participate in planning decisions to achieve better planning outcomes, in an open and transparent process;
- ensure the community understands how they can participate in planning decisions;
- ensure that the needs and concerns of the community are identified and addressed wherever possible;
- ensure our strategic planning reflects the aspirations of our community and partners; and
- ensure Council meets its legislative requirements in regards to community engagement.

## 2.2 Council's approach to community participation

In line with the existing Community Engagement Strategy, Council encourages open, inclusive, easy, relevant, timely and meaningful opportunities for community participation in the local strategic planning, plan making/local environmental plan development, development control planning and development applications. Engagement does not replace the final decision making power of Councillors or the General Manager, however it is considered invaluable in the Council's capacity to make well informed, acceptable and sustainable decisions with proper and genuine consideration given to community views and concerns.

Council's approach to community engagement in relation to its planning functions will be based on the spectrum of engagement activities including informing, involving and collaboration as advocated by the International Association for Public Participation (IAP2).

## 2.3 Limitations of the Community Participation Plan

This CPP does not outline Council's engagement strategies for the delivery of other Council services, functions or infrastructure. Community engagement for these activities are developed considering the requirements of Council's Community Engagement Strategy.

## 3. COUNCIL'S PLANNING FUNCTIONS

Council's planning functions are divided into two streams under the Environmental Planning and Assessment Act 1979: development assessment and strategic planning.

### 3.1 Development assessment

Council is the Consent Authority for a range of development types under the EP&A Act. When planning decisions are made consideration is given to whether development proposals are in accordance with the strategic priorities of the Upper Hunter Local Environmental Plan 2013, the Upper Hunter Development Control Plan 2015, applicable state environmental planning policies and guidelines, likely environmental impacts, public interest and public submissions.

#### 3.1.1 Application for development consent

A development application is a formal application for development that requires consent under the NSW Environmental Planning and Assessment Act 1979 (EP&A Act). It is usually made to Council and consists of standard application forms, supporting technical reports and plans.

#### 3.1.2 Application for integrated development consent

Nominated integrated development means integrated development (not being threatened species development or Class 1 aquaculture development) that requires an approval (within the meaning of section 4.45 of the Act) under a provision of the:

- a. Coal Mine Subsidence Compensation Act 2017;
- b. Fisheries Management Act 1994;
- c. Heritage Act 1977;
- d. Mining Act 1992;
- e. National Parks and Wildlife Act 1974;
- f. Petroleum (Onshore) Act 1991;
- g. Protection of the Environment Operations Act 1997;
- h. Roads Act 1993;
- i. Rural Fires Act 1997; or
- j. Water Management Act 2000

as specified in section 4.46 (1) of the Environmental Planning and Assessment Act 1979.

#### 3.1.3 Application for development consent for designated development

Designated Development refers to developments that are high-impact developments (e.g. likely to generate pollution) or that are located in or near an environmentally sensitive area (e.g. a wetland). There are two ways a development can be categorised as designated development:

- the class of development can be listed in Schedule 3 of the Environmental Planning and Assessment Regulation 2000 as being designated development, or
- a Local Environmental Plan (LEP) or State Environmental Planning Policy (SEPP) can declare certain types of development to be designated.

#### 3.1.4 Modification of development consents

After a development consent has been issued, the applicant or anyone entitled to act on the applicant's behalf can apply to Council, or approval authority, for approval to modify that development consent.

An application to modify a development consent is made under Section 4.55 of the Environmental Planning and Assessment Act 1979 (the Act) provided the development is substantially the same.

If Council does not agree that the proposed modifications would result in substantially the same development as was originally approved, a new development application will need to be submitted for assessment.

## 3.2 Strategic Planning

Council's strategic planning functions incorporate the preparation of plans including:

### 3.2.1 Community Participation Plans

The Community Participation Plan (CPP) sets out when and how Council will engage with their communities across all the planning functions they perform and establish the minimum requirements for community participation for each type of document.

### 3.2.2 Local Strategic Planning Statements

The Local Strategic Planning Statement will set out the 20-year vision for land-use in the Upper Hunter Shire, the special character and values that are to be preserved and how change will be managed into the future. The Local Strategic Planning Statement will support Council's Local Land Use Strategies.

The Local Strategic Planning Statement will implement actions from the Hunter Regional Plan, as well as Council's own priorities identified in the Upper Hunter Community Strategic Plan, its landuse strategies and other studies that support the growth of the Upper Hunter Shire. The Local Strategic Planning Statement must:

- identify the planning priorities for an area,
- explain how these priorities are to be delivered,
- demonstrate how Council will monitor and report on how the priorities will be implemented.

The statement will shape how the development controls in the local environmental plan (LEP) evolve over time to meet the community's needs, with the LEP the main planning tool to deliver Council's and the community's plan.

### 3.2.3 Strategic Land Use Plans, Strategies and Studies

Council develops a range of long-term plans and strategies for specific areas or development issues. Many of these plans and strategies will become Council policy after community consultation and will be implemented through Council's planning controls. Some Strategies and Plans also require endorsement from government agencies and support the Hunter Regional Plan.

### 3.2.4 Planning proposals for local environmental plans subject to a gateway determination

The Local Environmental Plan (LEP) guides planning decisions for the Upper Hunter Shire. It does this through zoning and development controls, which provide a framework for the way land can be used. The LEP is the main planning tool to shape the future of communities and ensure local development is achieved appropriately. A planning proposal is required to amend the Local Environmental Plan. A planning proposal must demonstrate the strategic merit of the proposed LEP amendment. A planning proposal is submitted to the NSW Department of Planning and Environment for a Gateway Determination.

A Gateway Determination will identify whether there is merit in the proposed amendment proceeding further in the plan making process. A Gateway Determination is issued by the NSW Department of Planning and Environment and will determine:

- whether or not to proceed with the planning proposal
- whether or not to impose conditions to the proposal
- the minimum public exhibition period

### 3.2.5 Development Control Plans

The principal purpose of a DCP is to provide guidance on matters related to carrying out development. In particular the DCP: gives effect to the aims of any environmental planning instrument that applies to the development, facilitates development that is permissible under UHLEP; and achieve the objectives of land zones. The provisions of a development control plan made for that purpose are not statutory requirements, however they are given strong

consideration in development application assessment. In 2015 Council adopted the Upper Hunter Development Control Plan (UHDCP).

Council will periodically amend the DCP to introduce new controls relating to specific development types, to reflect legislative changes, or to clarify the intent of an existing control.

### **3.2.6 Developer and Infrastructure contribution plans**

Contributions plans allow Council to levy contributions on development consents issued for land within the Upper Hunter Shire. These contributions assist the provision of community facilities or infrastructure to meet demand created by development. Council will periodically amend these Plans, reflecting revised population growth, rezoning of additional land, completion of works, or to amend the schedule of works to reflect Council's priorities.

### **3.2.7 Planning agreements**

A planning agreement (also known as a voluntary planning agreement) is an offer by a developer to Council to dedicate land, make monetary contributions, or provide any other material public benefit, to be used for or applied toward a public purpose.

**A public purpose includes the provision of:**

- a. a community facility eg. affordable housing
- b. transport or other infrastructure relating to the development
- c. the funding of recurrent expenditure relating to the provision of community facilities, affordable housing or transport or other infrastructure
- d. the monitoring of the planning impacts of development, and
- e. the conservation or enhancement of the natural environment. Planning agreements are entered into in relation to a development application or an amendment to the Local Environmental Plan.

### **3.2.8 Exempt and complying development**

Some development, such as exempt and complying development under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, does not allow opportunities for community engagement.

## **4. THE ROLE OF PUBLIC CONSULTATION IN THE PLANNING SYSTEM**

### **4.1 Development assessment**

#### **4.1.1 Objectives of consultation for development applications**

- a. Provide a framework for the notification and advertisement of development applications, applications to modify development consents and the review of development determinations.
- b. Provide an opportunity for public participation in the development application process.
- c. Establish a clear process and expectations of how public views are considered in the development application process.
- d. Specify circumstances where notification and advertising of applications is not required.
- e. Identify development applications that will be notified and/or advertised and those persons who will be notified.
- f. Facilitate the efficient processing of applications without unreasonably compromising the opportunity for public participation.
- g. To ensure notification and advertisement is carried out in accordance with the Environmental Planning & Assessment Act and Regulation.



- h. To outline other relevant procedures for development applications.
- i. To ensure that there is consistency in the notification of similar applications.

### **4.1.2 Consultation goals**

The primary goals are to:

- obtain public feedback on the development proposal.
- ensure that a development proposal has been fully explored, concerns identified and, where possible, alternatives considered.

Consultation does not necessarily mean that all interested parties will be satisfied with the outcome.

### **4.1.3 Consultation media**

Council will communicate opportunities for participation in the development assessment process using methods including:

- Newspaper notices
- Notices on the land (if required by the Regulations)
- Letters to stakeholders
- Council's website
- Council's DA Tracker website

### **4.1.4 Consultation feedback**

In all instances, Council will encourage the community to lodge written submissions in addition to feedback received through one of the other methods above.

### **4.1.5 Public exhibition and notification of development applications**

The key method used to encourage participation in the development assessment process is by way of public exhibition or notification of the application. This section establishes the minimum requirements for neighbour and stakeholder notification for local development, nominated integrated development and designated development, where Council is the consent authority. There may be occasions when these minimum provisions are increased at the discretion of the Council, considering the possible impacts of a development application. Council staff have delegated authority to administer the provisions of this Community Participation Plan.

In relation to the public exhibition or notification of a development application, Council will exhibit it for no less than the time indicated in Table 1 of Schedule 1.

## **4.2 Strategic planning**

Council prepares a range of strategic planning documents as outlined in Section 3.2. Council also reviews and amends these plans either as a result of an internal review or request from private property owners.

Draft planning documents must be reported to Council seeking endorsement for exhibition prior to the commencement of the formal exhibition period. The minimum timeframes for public exhibition of strategic planning documents is mandated as outlined in Schedule 1 of the EP&A Act. Council will exhibit a proposal for this minimum timeframe and will consider an extended timeframe for exhibition based on the scale and nature of the proposal. Minimum exhibition timeframes for strategic planning documents are set out in Schedule 1 Table 2.

### **4.2.1 Consultation goals**

The primary goals are to:

- Engage with the community to understand their priorities.
- To enable the integration of the community's vision into strategic planning.
- Obtain public feedback on the preferred strategy or action.

## 4.2.2 Consultation media

Council will communicate opportunities for participation in the strategic planning process through the most appropriate methods for the specific project. Methods may include:

- Newspaper notices
- Letters to stakeholders
- Articles in ratepayer's newsletter
- Council's website
- Social media posts
- Public meetings, community events, information sessions/workshops

## 4.2.3 Consultation feedback

In all instances, Council will encourage the community to make written submissions in addition to feedback received through one of the other methods above.

## 4.3 How is the commencement and conclusion of the public exhibition or notification period calculated?

The public exhibition or notification period dates are calculated using the following methodology.

### 4.3.1 Public exhibition

The commencement of the exhibition period is taken to be the first business day following the publication of the notice in the newspaper. The conclusion of the exhibition period is based on the required number of consecutive days (as outlined in this CPP), inclusive of weekends, following the commencement of the exhibition period. For the purposes of this CPP, Public Holidays or Bank Holidays that apply to the State of NSW are excluded from the exhibition period.

### 4.3.2 Public notification

The commencement of the notification period is taken to be the fourth day following the posting of the letter of notification.

The conclusion of the notification period is based on the required number of consecutive days (as outlined in this CPP), inclusive of weekends, following the commencement of the notification period.

For the purposes of this CPP, Public Holidays or Bank Holidays that apply to the State of NSW are excluded from the notification period.

### 4.3.3 Exhibition or notification during the Christmas period

Public exhibition and/or notification periods over the traditional Christmas period will be extended so as not to include the period between 20 December and 10 January (inclusive).

## 4.4 How does Council determine who will be notified?

Except as noted below, written notice of a notified Development Application will be given to the owners of land directly adjoining the land on which the development is intended to occur.

For the purposes of determining what adjoining land is, Council will generally include land which is separated by a road, pathway or other significant feature. Council may consider wider notification depending on the extent of potential environmental impacts.

Notice to the owners of adjoining land means written advice of the making of a development application, including the time and location at which the documents may be inspected, forwarded by ordinary post to the owner of the adjoining property as identified in Council's property records at the time of lodgement of the development application.

With respect to amended applications, Council will give notice to owners of directly adjoining land and other property owners considered to be materially adversely affected by the amended development application.

Note: In the case of the adjoining land being part of a strata plan, notification will be given to the Body Corporate only.

## 4.5 Notification to properties in adjoining local government areas

Where properties in adjoining local government areas are considered by Council to be affected by development in the Upper Hunter Shire, Council will notify the adjoining Council as if they were the property owner in accordance with this Community Participation Plan.

## 4.6 Deficient development applications

Council reserves the right not to publicly exhibit and/or notify development applications that in its opinion are deficient. A deficient development application is one that is indecipherable, does not contain important information and/or does not adequately consider the relevant planning controls. Such applications will either be rejected or the applicant given an opportunity address the deficiencies.

# 5. THE PUBLIC EXHIBITION PROCESS

Opportunities to participate in the planning system will respond to the nature, scale and likely impact of the proposal or project being considered or assessed. A regular and valuable way for the communities to participate in the planning and development process is by making a formal submission on a proposal during an exhibition. You can also provide us with feedback at any time.

## 5.1 The exhibition

A key technique we use to encourage community participation is formal exhibitions. During an exhibition we make available relevant documents that may include a draft of the policy, plan or proposed development that we are seeking community input on. In conducting an exhibition, we and adhere to our Privacy Policy and defamation and discrimination laws.

In the case of development applications, modifications to development consent and planning proposals for local environmental plans the exhibition also will entail notification of adjoining and/or adjacent landowners/occupiers.

In reaching decisions on proposals that have been exhibited, the Council balance a wide range of factors to ensure that decisions are in the public interest. This includes considering the objects of the EP&A Act, the strategic priorities of the Government, the community's input, the land use priorities identified in strategic plans and applicable policies and guidelines.

## 5.2 Additional exhibition

Where an applicant seeks to amend a development application (prior to its determination) pursuant to Clause 55 of the Environmental Planning and Assessment Regulation 2000 an additional exhibition period may be granted where there is a substantial change to the original development or where the amended application has the potential to result in increased environmental impacts.

## 5.3 Exhibition timeframes

Section 2.21(2) of the EP&A Act details the types of proposals that must be considered in the CPP and Schedule 1 sets a minimum exhibition timeframe for most of these proposals. We will

always exhibit a proposal for this minimum timeframe and will consider an extended timeframe for exhibition based on the scale and nature of the proposal.

## 5.4 Development not requiring public exhibition

Some categories of developments that are taken to have a very low or negligible potential for impact on the use or enjoyment of adjoining or nearby land are presumed to not require public exhibition or notification. Development applications and subsequent modifications relating to these categories will in general be excluded from public notification processes. However, public notification will be required where the council assessing officer/Council forms an opinion that the development should be publicly notified.

In forming an opinion whether a development application or modification to a consent is to be publically exhibited and/or notified, the council assessing officer/Council is to take the following matters into consideration:

- obstruction of views
- sunlight
- privacy
- noise, odour, light or other pollution
- visual impact, streetscape and local character
- traffic and access
- ground levels
- drainage, stormwater and watercourse issues
- natural or other hazards, including flooding, bushfire and geotechnical hazards
- heritage, Aboriginal cultural or archaeological significance.

**Table 1 Applications for development consent that would typically not require public exhibition \***

Pursuant to Schedule 1 Div 2(7)(b) of the EP&A Act

Development category	Development type
Residential	Dwelling houses —single-storey only (includes new dwellings, extensions and minor interior alterations).
	Other residential accommodation—single-storey extensions or minor interior alterations only.
	Outbuildings or other minor structures that are ancillary to residential accommodation (must be located behind the front building line of the principal dwelling house), including: <ul style="list-style-type: none"> <li>• swimming pools.</li> <li>• garages, car ports.</li> <li>• sheds and other minor outbuildings</li> <li>• awnings, pergolas, decks</li> <li>• water tanks.</li> <li>• retaining walls</li> </ul>
Commercial	Commercial premises—interior alterations or minor extensions only.
	Wall and awning signs.
	Roadside stalls.
Industrial	Industries—interior alterations or minor extensions only.
	Wall and awning signs.
Rural	Subdivision involving the creation of up to two rural allotments.
	Dwelling houses—single-storey only (includes new dwellings, extensions and minor interior alterations and residential type development listed above).
	Farm and machinery sheds.
	Farm buildings (stables).

\*Council reserves the right to publicly notify any development that may impact on the amenity of adjoining land owners.

## **6. MAKING A SUBMISSION**

A person is entitled to make a submission on a planning matter within the public exhibition period. Submissions can object to or support the proposal. Formal submissions must be made in writing, addressed to the General Manager and submitted via email or post.

### **6.1 Anonymous submissions**

Anonymous submissions will not be considered by Council.

### **6.2 Disclosure of submissions**

Submissions are not kept confidential. Council releases submissions when a request is made in accordance with the relevant provisions under the Government Information (Public Access) Act 2009. When a submission is released by law, Council routinely withholds contact numbers, emails addresses and signatures.

Should you wish for all personal details or any information that may identify you to be withheld from the public, please advise Council of this in your submission.

### **6.3 Provision of submissions to the application/proponent**

Copies of submissions may be forwarded to the applicant or proponent seeking that they address the issues raised in the submissions, by way of comments or amendments to the proposed application or plan.

### **6.4 Publication of submissions**

Copies of submissions are published in Council business papers which are public documents available on Council's website. Contact numbers and email addresses are redacted from submissions prior to publication.

### **6.5 Acknowledgement of submissions**

All submissions received during public exhibition will be acknowledged as soon as practicable by Council during, or following the conclusion of, the exhibition period.

### **6.6 Petitions**

Where a petition is received the person who submits the petition to Council will be acknowledged as the point of contact for all future correspondence on the progress of the application/project.

Petitions will not be counted as a submission and will be tabled separately.

### **6.7 Notification of the outcome**

Following determination of a development application, or the adoption of a strategic planning document, all persons who made a submission shall be notified in writing of the decision.

## Schedule 1 Exhibition Timeframes

**Table 1: Development assessment mandatory exhibition timeframes**

	Exhibition Period	Engagement Method
Application for development consent (other than for complying development certificate, for designated development or for State significant development)	14 days, unless the proposal is a category of development specified in Table 1.0	Notification of adjoining and adjacent landowners/occupiers. Notice on Council website including DA Tracker. At Council's discretion, additional advertisements may be placed in newspapers and/or through such other mechanisms as may be appropriate, to ensure that the public is reasonably aware of the proposal.
Application for development consent for designated development	28 days	
Application for modification of development consent that is required to be publicly exhibited by the regulations	14 days, unless the proposal is a category of development specified in Table 6.4a or minor modification with minimal impact	
Environmental impact statement obtained under Division 5.1 (of the Environmental Planning and Assessment Act 1979)	28 days	

**Table 2: Strategic Planning exhibition timeframes – legislated**

	Exhibition Period	Engagement Method
Draft Community Participation Plans	28 days	Notice in local newspaper
		Notice on Council website
Draft Local Strategic Planning Statements	28 days	Notice in local newspaper
		Notice on Council website
Planning Proposals	28 days	Notice in local newspaper
		Notice on Council website
		Notification of adjoining and adjacent landowners/occupiers
		Or
		If a different period of public exhibition is specified in the gateway determination for the proposal – the period so specified, or
		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	Notice in local newspaper
		Notice on Council website
Draft Contributions Plans	28 days	Notice in local newspaper
		Notice on Council website
Draft Planning Agreements	28 days	Notice in local newspaper
		Notice on Council website



**Table 3: Other Strategic Planning matters – best practice**

	Exhibition Period	Engagement Method
Reclassification of land	28 days	Notice in local newspaper
		Notice on Council website
		Notification of adjoining and adjacent landowners/occupiers
Draft policies or guidelines	28 days	Notice in local newspaper
		Notice on Council website
Public domain plans, masterplans and similar plans of urban renewal	28 days	Notice in local newspaper
		Notice on Council website
		Notification of adjoining and adjacent landowners/occupiers
Re-exhibition of any matter referred to above	As per original exhibition period	As per original exhibition