



THE DEVELOPMENT ASSESSMENT PROCESS

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PURPOSE

This pamphlet provides a plain English explanation of the development assessment process. It explains the key stages from lodgement to determination, answers frequently asked questions and will help you understand what can appear to be a very technical and complex process.

DA lodgement and preliminary review

All Development Applications (DAs) are initially checked at lodgement by Customer Service. This ensures all necessary information required in our DA Guide has been provided. If an application is submitted without enough information, it may be rejected and returned to the applicant.

A secondary review of all applications is done within the first week of lodgement by our Development Review Unit (DRU) which consists of assessment officers and other professionals within Council who are also involved in assessing DAs. The Development Review Unit assesses the adequacy of information provided, allocates the application to an officer and initiates the neighbour notification and internal/external referral processes.

DA notification

Our notification process gives owners of surrounding properties the opportunity to provide written comments to us about DAs. We generally give surrounding residents 14 days to comment on most DAs but allow an extended (30 day) period for more significant developments.

In some cases, we are also required to advertise DAs in the local newspaper. Our neighbour notification procedures are set out in the Ku-ring-gai Development Control Plan. While most DAs are notified, this is not required for minor applications. When we notify residents of a DA we encourage them to view the plans and documentation submitted with the application on our website using the DA tracking system at www.kmc.nsw.gov.au/datracking. Alternatively this information can be accessed using the computer terminals at chambers or any of our libraries during business hours.

Submitting comments on DAs

When making a submission to us about a DA, it is important that you understand the following basic requirements:

- Make sure your submission relates to the current DA.
- Clearly set out the grounds for any objections you may have to the DA. This could include perceived impacts relating to privacy, solar access, views, streetscape, landscaping or traffic.

- Make sure your submission is lodged with us within the timeframe specified in our notification letter.
- Time and logistical constraints do not permit us to respond to each individual submission as we receive on average over 6,000 submissions on DAs each year. However, we acknowledge receipt of all submissions in writing and we take each submission into account when assessing an application.
- All submissions are kept on the DA file and may be accessed by members of the public.
- In making a submission on a DA, you are also reminded of your obligations under the *Local Government and Planning Legislation Amendment (Political Donations) Act 2008* (NSW) to disclose any gifts or reportable political donations by you or your associates to any Ku-ring-gai councillor or Council employee. A reportable political donation is a donation of \$1,000 or more (whether as a lump sum or when aggregated with any other donations made to the same person within the same financial year) made to any local councillor (or candidate for election) of Ku-ring-gai Council for the benefit of a party, councillor, group or candidate). For more information visit www.kmc.nsw.gov.au

Amendments to an application

Amendments to a DA may be made by an applicant before the application is determined. Amendments are usually made to resolve issues raised either by our assessment officers, objectors or both. Amendments can only be made with the permission of Council officers.

The circumstances in which we may ask for or agree to amendments are where the changes required are not substantial but would result in an acceptable or reasonable outcome. As a rule, amendments are not requested or accepted where a DA is fundamentally unacceptable.

If we agree to accept amendments to a DA before it is determined, these will only be notified to owners of surrounding properties where the amendments are likely to have a greater or different environmental impact than the original proposal.

DA assessment

When assessing a DA, our assessment officers have regard to the following considerations:

- The relevant controls, standards and provisions set out in State, Regional and Local Environmental Plans (LEPs) and policies. The most common of these is the Local Environmental Plan.
- The relevant controls and provisions of all Development Control Plans that apply to a DA. Development Control Plans, or DCPs, contain more detailed controls than LEPs and are policy guidelines, as opposed to LEPs which have statutory weight.
- Any submissions made by or on behalf of residents during the notification process.
- The assessment considerations under Section 79C of the Environmental Planning and Assessment Act.

Council's planning documents (LEPs and DCPs) regulate the use of land and identify the form of development that can take place on any given parcel of land. These documents contain specific development standards and controls, such as maximum height, floor space ratio and building setback.

For a DA to be acceptable, it must satisfy the applicable aims and objectives of Council's planning controls. While there is an expectation that DAs should comply with Council's planning controls and guidelines, some departures may be acceptable where it can be justified that the departure or non-compliance:

- Results in a development that on its merits still achieves the aims and objectives of the control that is proposed to be varied.
- Will not result in any greater amenity impacts on surrounding properties than a compliant development.

Where a DA will result in an amenity impact (such as overshadowing, privacy and view loss) our development assessment staff consider:

- The extent of the impact.
- Whether the impact arises from poor design.
- Whether the impact arises from a non-compliance with a planning control.
- The overall reasonableness of the DA.

Non-compliance with a planning standard or control may not necessarily result in a DA being refused. Development assessment is a finely balanced process and each DA must be considered on its individual planning merits and specific site circumstances. Where a non-compliance causes unreasonable impact and undermines applicable objectives, the application should be refused. However, where a non-compliance is merely technical, causes no unreasonable impacts and accords with the applicable objectives, the application may be approved.

Making the decision

Council has a legal obligation to assess and make a decision on DAs. A DA may be approved subject to conditions or refused. In making our determination, we use a peer review process. All recommendations made by our assessment officers are reviewed by a team leader and, where required, by the Manager or Director. This ensures transparency and consistency in the recommendations and decisions made by our staff. On larger, more controversial DAs such as multi unit residential developments and certain types of subdivisions, Council or the Sydney West Joint Regional Planning Panel may be the decision makers. Most other DAs may be determined by our assessment staff, unless they are called by a councillor to a Council meeting for determination. When an application is to be considered at a meeting of Council, the applicant and anyone who has made a submission to Council on the DA are notified and may speak about the application at the meeting. At a Council meeting, the councillors may:

- Approve the application.
- Refuse the application.
- Defer consideration of the application and request the applicant to submit amend plans.
- Defer the application for a site inspection.
- When an application is deferred by Council, it must ultimately be referred back to a future meeting of Council for determination.

Communicating the decision

When Council has made a decision on an application, a notice of determination is sent to the applicant. Where an application is approved, the notice will include conditions of consent and the date of the consent. Where an application is refused, the notice will include the reasons for refusal.

Any person who has made a submission to us on a DA will also be advised of our decision and may view the notice of determination at our Customer Service Centre or visit www.kmc.nsw.gov.au.

Post decision DA processes

Following determination of an application, the following options are available to an applicant:

- A request, under Section 82A of the Environmental Planning and Assessment Act, that Council review its determination. This mainly applies where a DA has been refused.
- An application, under Section 96 of the Environmental Planning and Assessment Act, requesting a modification to an approved DA. This can apply to the approved design and/or conditions of consent.

An applicant who is dissatisfied with Council's determination may appeal to the NSW Land and Environment Court. Appeals may relate to a refusal of consent or conditions of consent.