



Planning Proposal Policy
Adopted 21 February 2012
Last revised 20 March 2018
Environmental Services



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Planning Proposal Policy

1.0 Purpose

The purpose of this Policy is to guide and standardise Council's preparation and review of Planning Proposals.

A Planning Proposal is the document that explains the intended effect of, and justification for, a proposed amendment to the Local Environmental Plan (LEP).

Planning Proposals can be prepared by an applicant however they must be endorsed by Council and the Department of Planning & Environment (DPE) in order to take effect. There are two (2) main types of Planning Proposals; external proponent or Council driven proposals.

Generally, external proponent driven Planning Proposals are specific to an individual site and include, but are not limited to: rezoning, the introduction of new minimum lot sizes or the establishment of additional permitted uses on a site.

Council driven Planning Proposals can involve broad scale rezoning of areas, the introduction of new zones or provisions or 'housekeeping' amendments to the existing provisions of the Kiama LEP 2011. To ensure that Council can meet both its financial and legislative requirements Council will only prepare a maximum of two (2) 'housekeeping' Planning Proposals per calendar year.

2.0 References

This document should be read in conjunction with:

- Kiama Urban Strategy
- Department of Planning & Environment's 'Guide to Preparing Local Environmental Plans'
- DPE's 'Guide to Preparing Planning Proposals'
- Illawarra-Shoalhaven Regional Plan
- *Environmental Planning and Assessment Act 1979*

3.0 Steps in Process

With the adoption of this policy all Planning Proposals will need to adhere to the following process.

3.1 Meet with Council Staff

All proponents are required to meet with Council staff to discuss concept proposals. If the proposal meets any of the following criteria Council staff may agree in principle that a concept Planning Proposal be prepared:

- Land is identified as a nominated area in the Kiama Urban Strategy.
- Land can be identified as assisting to meet Council's strategic direction.
- A clear zoning anomaly exists on site.

Staff will provide proponents with a copy of the minutes of the meeting to outline any constraints or additional matters that need to be considered.

Public authorities, included elected Council members, should also discuss concept proposals with staff prior to submitting or resolving to prepare Planning Proposals. This will ensure that all Planning Proposals follow the same process and that Council resources are utilised efficiently.

3.2 Proposal lodged with Council

All proposals submitted to Council are to be accompanied with the relevant lodgement fees, in line with the adopted Fees and Charges, and a completed 'Application for Planning Proposal form'.

All Planning Proposals will need to be prepared in accordance with relevant sections (including sections 3.32 and 3.33) of the *Environmental Planning and Assessment Act 1979* and the DPE's 'Guide to Preparing Local Environmental Plans' and 'Guide to Preparing Planning Proposals' as well as this Policy.

All Planning Proposals must include the following information:

- Part 1 A statement of objectives and intended outcomes of the proposal
- Part 2 An explanation of the provisions that are to be included in the proposed instrument
- Part 3 The justification of those objectives, outcomes and process of for their implementation. Including consideration of:
 - Section A - Need for the planning proposal
 - Section B - Relationship to strategic planning framework
 - Section C - Environmental, social and economic impact
 - Section D - State and Commonwealth interestsAn Information Checklist is available in Attachment 1 of 'Guide to Planning Proposals'
- Part 4 Maps, where relevant, to identify the intent of the Planning Proposal and the area to which it applies
- Part 5 Details of the community consultation that is to be undertaken on the planning proposal
- Part 6 A project timeline to detail the anticipated timeframe for the plan making process for each planning proposal.

Where technical studies were carried out as a part of the Planning Proposal, consideration of their findings will need to be described under relevant headings in this section. Technical studies submitted with the Planning Proposal will be made available during consultation with the community and public authorities.

Where required, maps will need to be prepared in accordance with the DPE's 'Standard Technical Requirements for Spatial Datasets and Maps'.

3.3 Proposal supported by Council

The request to prepare a Planning Proposal will need to be considered by Council. Council staff will prepare a report on the concept proposal, including an overview of findings of the reports including where required, peer review of any consultant's reports lodged.

At the completion of review of the concept Planning Proposal, Council has the following options available:

- Council may resolve to support the concept proposal. In this instance Council will forward the Planning Proposal to the DPE for a “Gateway Determination”.
- Council may seek amendments or changes to the concept proposal. In this instance the proposed changes will be made before Council forward the proposal to the DPE.
- Council may resolve not to support the concept proposal. In this instance Council will inform the proponent that the proposal is not supported

It should be noted that even if Council resolves to prepare or support a Planning Proposal this does not guarantee that the subsequent proposal or rezoning will proceed.

If Council determines not to support a proposal or fails to indicate its support with 90 days of the initial submission of the proposal or fails to submit the proposal for a Gateway determination within a reasonable time a proponent may request a review by the Joint Regional Planning Panel (JRPP). This process is called a Rezoning Review where the JRPP assume the role of Council in determining if a Planning Proposal should be forwarded to the DPE for a Gateway Determination. The DPE’s ‘Guide to Preparing Local Environmental Plans’ outlines the fees associated with processing a Rezoning Review.

3.4 Gateway Determination

If supported, Council will request the payment of additional fees, in line with the adopted Fees and Charges, before forwarding the Planning Proposal to the DPE to receive a Gateway Determination. This process is undertaken by the Minister (or delegate) and will determine whether the Planning Proposal proceeds.

The Gateway Determination process reviews the proposal and may indicate if further detailed studies are to be undertaken. The Gateway Determination will also outline the required community consultation process, which can involve both the community and public authorities, is determined at this time.

The Gateway Determination will also prescribe the timeframe for the LEP amendment to be completed.

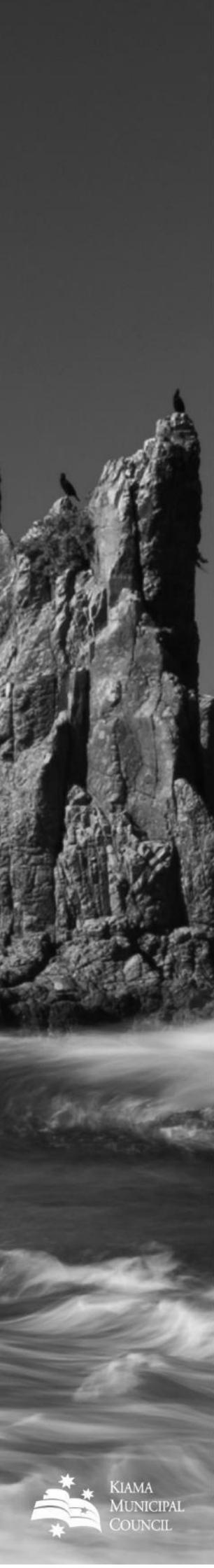
The Minister or their delegate can vary the planning proposal at this time.

The Gateway Determination also informs Council if the delegation of the NSW Minister of Planning to make LEP amendment has been granted or not. (See below for further information on Minister’s delegations).

If Council or the proponent are dissatisfied with the Gateway Determination either party can request a review of the determination by the JRPP. This process is called a Gateway Review where the JRPP provides advice on whether the original Gateway Determination should be altered. The Minister’s final decision on whether to alter the Gateway Determination will be informed by this advice. The DPE’s ‘Guide to Preparing Local Environmental Plans’ outlines this process. The DPE’s ‘Guide to Preparing Local Environmental Plans’ outlines the fees associated with processing a Gateway Review.

3.5 Consultation

The Gateway Determination will outline which public authorities are to be consulted. Copies of all relevant materials will be forwarded to applicable public authorities prior to consulting with the community. This will ensure that the public authorities’ comments can be made available when the proposal is publicly exhibited.



The Gateway Determination will outline the length of the time the proposal is to be publicly exhibited. The DPE's 'Guide to Preparing Local Environmental Plans' outlines that the Planning Proposal is to be publicly exhibited in the following manner:

- Notification in a newspaper that circulates in the area affected by the proposal;
- Notification on Council's website; and
- Notification in writing to affected and adjoining landowners, unless Council is of the opinion that the number of landowners makes it impractical to notify them.

Council will notify the affected and adjoining landowners. Generally, this will include contacting the adjoining landowners and any landowners Council deems to be affected by the proposal (i.e. owners of land fronting road that will provide access to site). Council will also notify the appropriate community representative group. Consultation will be carried out in accordance with any community participation plan/policy adopted by Council.

Certain types of Planning Proposals may require a public hearing (refer 4.0).

3.6 Assessment and final endorsement

Council reviews all of the submissions made by the relevant public authorities and the community during the consultation period. The Planning Proposal may be varied at this point as a response to concerns raised.

The finalised Planning Proposal is again considered by Council. Council may at this point:

- Resolve to support the proposal. In this instance Council will either carry out the regulatory process for making the LEP amendment or request that the DPE undertake this process.
- Council may seek amendments or changes to the proposal. This may require requesting an amendment to the Gateway Determination and subsequent re-exhibition.
- Council may resolve not to support the Planning Proposal. This will require Council contacting the Minister (or delegate) and request that the LEP amendment not proceed.

3.7 Regulatory making of amendment

If endorsed, Council will request the payment of additional fees, in line with the adopted Fees and Charges, for the regulatory making of the LEP amendment.

If delegation of the NSW Minister of Planning to make LEP amendment has been granted, as part of the Gateway Determination, Council will be responsible for:

- Consulting with the NSW Parliamentary Counsel (State Government's legal service) regarding legal wording of LEP amendment
- Authorising/signing the legal documents (this is usually done by Council's General Manager, Director of Environmental Services or Manager Strategic Planning); and
- Requesting publication of the LEP on the NSW legislation website.

If delegations have not been received, the Minister (or delegate) will be responsible for carrying out the above processes.

If delegations have not been received Council will still need to form an opinion on whether or not the LEP amendment should ultimately be made. In doing

so Council may request the Minister to determine that the matter not proceed. It will ultimately be up to the Minister to determine agreement to this request.

Once published on the NSW legislation website, the LEP amendment comes into force and the Planning Proposal process is complete.

4.0 Public Meetings/Hearings

Council may arrange a public meeting/hearing if it considers such a meeting/hearing is warranted due to the nature of the Planning Proposal.

Section 29 of the *Local Government Act 1993* requires Council to arrange a public hearing for any Planning Proposal that seeks to reclassify community land to operational land, unless a public hearing has already been held in respect of the same matter.

Council will arrange for an independent consultant to chair any public hearing, required as part of a Planning Proposal, and to prepare the required report.

If a public hearing is required as part of a Planning Proposal Council will request the payment of additional fees, in line with the adopted Fees and Charges, for the public hearing to be held.

5.0 Notes

1. There are costs associated with the Council's consideration of planning proposals. An overview of associated costs can be found in Council's fees and charges schedule.
2. Council has the ability to recoup costs associated with preparing planning proposals. Section 3.32(3) of the Environmental Planning and Assessment Act provides that where an owner of land asks a relevant planning authority to exercise its powers under Division 3.4 (and prepare a planning proposal), the relevant planning authority may recover the costs of preparing the planning proposal from the landowner. The regulations allow relevant planning authorities to enter into an agreement with such persons for payment of the costs and expenses incurred by the authority in undertaking studies and other matters required in relation to the planning proposal.
3. Council may also recoup, from the applicant, costs associated with a peer review of any consultant report provided during the concept planning proposal stage.

"Clause 3.32 (3) A planning proposal authority that is requested by the owner of any land to exercise its functions under this Division in relation to the land may, as a condition of doing so, require the owner to carry out studies or provide other information concerning the proposal or to pay the costs of the authority in accordance with the regulations."

6.0 Fees

Please refer to Council's fees and charges for the processing of a planning proposal.

7.0 Document control

Directorate:	Environmental Services
Policy name:	Planning Proposal Policy
Date adopted by Council or N/A:	21 February 2012
Date endorsed by MANEX:	N/A
Revision dates:	Amendment 2 20 March 2018 Amendment 1 18 October 2016
Next review date:	February 2020
Trim doc number:	16/76433