

Ordinary Meeting

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Location: Council Chambers, City Administrative Building, Bridge Road, Nowra

Attachments (Under Separate Cover)

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13. Reports

CL23.106 Draft/Interim Guideline - Proponent-Initiated Planning Proposals

Attachment 1 Draft/Interim Guideline for Proponent-Initiated PPs2



Guideline for Proponent Initiated Planning Proposals

DRAFT / INTERIM

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Prepared by Strategic Planning, Shoalhaven City Council

CL23.106 - Attachment 1

Abbreviation	Definition/term
CCBs	Community Consultative Bodies
Council	Shoalhaven City Council
DCP	Development Control Plan
Department or DPE	NSW Department of Planning and Environment
EP&A Act	Environmental Planning and Assessment Act (1979)
GMS	Shoalhaven Growth Management Strategy
LEP	Local Environmental Plan
LMPA	Local Plan Making Authority
LSPS	Local Strategic Planning Statement
PPA	Planning Proposal Authority
SEPP	State Environmental Planning Policy
URA	Urban Release Area

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1. Preliminary

1.1. Introduction

This guideline outlines how Shoalhaven City Council (Council) assesses and administers the planning proposal (PP) process to amend its local environmental plan (LEP).

An LEP is a legal document that provides the framework for land use and development in a local government area. All land, whether privately owned, leased or publicly owned, is subject to the controls set out in the relevant LEP.

An LEP consists of a written document and maps. It sets out land use zones and specifies standards and other provisions to control development such as minimum subdivision lot sizes and the maximum height of buildings.

Sections 3.31 to 3.36 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) set out the process to amend an LEP via the preparation of a **planning proposal (PP)**. A PP explains the intent and justification of the proposed change(s) to an LEP. Any proposed change to an LEP control such as, rezoning of land or an amendment to an existing control or clause requires a PP.

PPs can be initiated by Council or by landowners/developers as proponent-initiated PP.

1.2. Purpose of this guideline

This guideline focuses on the PP process for proponent-initiated PPs: it outlines Council's process for considering and managing proponent-initiated PPs, as well as the respective roles of Council and proponents in the PP process. It complements the NSW Department of Planning & Environment's' (DPE) *Local Environmental Plan Making Guideline* (referred to herein as 'the DPE Guideline') which otherwise remains the overarching guideline in relation to:

- PP preparation, content and process; and
- LEP making process and procedures.

1.3. What are the steps in the Planning Proposal (PP) process?

The DPE Guideline defines the six (6) stages of the PP process as follows:

1. Stage 1 Pre-Lodgement – scoping the proposal and what should be included in the PP
2. Stage 2 Planning Proposal - preparing the PP
3. Stage 3 Gateway Determination – DPE review of the PP
4. Stage 4 Post-Gateway - actioning Gateway determination conditions
5. Stage 5 Public exhibition & and assessment - engaging with the community
6. Stage 6 Finalisation - making the LEP

DPE's summary diagram showing the key PP/LEP making stages is provided in Appendix 1.

This guideline has a particular emphasis on the earlier stages of the PP process – stages 1 (pre-lodgement) and 2 (lodgement). Refer to sections 3 and 4, respectively of this guideline.

1.3.1. Review mechanisms

The DPE Guideline describes the available review mechanisms including:

Rezoning Review Review of proponent-initiated PP by independent planning panel if not supported/or progressed by council (in stage 2, before stage 3)

Gateway Review Reviewing and altering a Gateway determination (stage 3, before Stage 4)

Further information on these review mechanisms is provided in the DPE Guideline.

1.4. Risks, roles and responsibilities

1.4.1. Risks

The PP process can be costly and several variables can influence the outcome and/or delay the process, including:

- environmental considerations
- site constraints
- the views of neighbouring landowners and the community, Councillors, and government agencies.

The PP process may stop and/or be extinguished at any stage by Council (s.3.35 (1), EP&A Act) or the Minister (s. 3.34 (7), EP&A Act).

Council:

1. Has the statutory ability to discontinue the PP process at any stage and cannot provide an undertaking that a PP request will continue to finality.
2. Will not refund any fees except where stated in Council's fees and charges, and will not pay any damages, penalties or other costs incurred by the Proponent if a PP is discontinued/terminated.
3. At its absolute discretion, can engage the services of consultants, and authorise any consultant to engage sub-consultants, to undertake any studies or preparation of any document relating to the request at the proponent's expense in accordance with its fees and charges.
4. Will not assess or advance a PP unless the relevant Council fees/charges have been paid.
5. Will publish the proponent's PP report and any accompanying studies provided by the proponent.

All of these risks need to be considered by the proponent before initiating the PP process.

Landowners intending to submit a PP request should engage the services of an independent qualified town planner or similar professional with relevant experience in the PP process.

1.4.2. Ownership

Once a PP has received a formal Council resolution of support, Council assumes the role of the Planning Proposal Authority (PPA) and:

- i. takes ownership of the PP; and
- ii. is responsible for managing the process leading up to requesting a Gateway determination and beyond the issue of a Gateway determination except for rezoning reviews and determination of Gateway reviews.

1.5. PP categories, fees and timeframes

1.5.1. PP categories and fees

PPs can vary in size, complexity and purpose, ranging from correcting a mapping or typing error, to rezoning land to create a new urban release area.

Fees apply for considering, preparing and managing proponent initiated PPs in accordance with Council's fees and charges. The fee structure is intended to cover the costs of Council staff time and resources involved in the various stages of the PP and LEP amendment process in line with its full cost recovery policy in its fees and charges.

Table 1 below provides an outline of the principal fees & charges associated with Council's current PP classification aligned with the DPE PP categories. Other applicable fees and charges items are outlined below.

Table 1 - PP Categories and minimum applicable fees

Council PP classification	Description 1	Base fee ²
Basic PP	Progressed under s.3.22 of the EP&A Act, or corrects an anomaly, or is otherwise regarded as straightforward and uncontroversial. Has negligible impacts on the environment and other properties. PP will not allow intensification of development and generally does not require any supporting studies. <u>Scoping proposal not required</u>	<ol style="list-style-type: none"> #14849 PP lodgement – Basic & Standard #15892 Exhibition & statutory processing – Basic & Standard
Standard PP	Neither 'basic' (see above) nor 'complex' (see below). Typically requires a limited number of supporting studies, e.g. to address potential impacts on the environment and/or other properties, or other issues of concern. <u>Scoping proposal required</u>	<ol style="list-style-type: none"> #15891 Pre-lodgement - Standard #14849 PP lodgement - Basic & Standard #14850 Gateway request - Standard #15892 Exhibition & statutory processing - Basic & Standard
Complex PP (previously 'major')	Requires multiple supporting studies to address potential impacts and other issues of concern, and is likely to require one or more of the following: <ul style="list-style-type: none"> Amendment to the Development Control Plan (DCP) A Voluntary Planning Agreement (VPA) and/or contributions plan amendment Likely to be controversial and/or is inconsistent with elements of a Council-prepared endorsed strategy/plan (e.g. Growth Management Strategy). <u>Scoping proposal required</u>	<ol style="list-style-type: none"> #15893 Pre-lodgement - Complex #15894 PP lodgement - Complex #14852 Gateway request - Complex #15895 Exhibition & statutory processing - Complex

Refer to Council's current [fees and charges](#) for the dollar amounts and description for each fee. Council reviews its fees and charges each financial year. Council's written advice as part of the Stage 1 Pre-lodgement will include advice on the likely PP category.

Other fees and charges components are applicable as indicated in the table below.

¹ Council's interpretation of descriptions in the DPE Guideline

² Other fees may apply. Refer to Table 2 and to Council's [fees and charges](#)

Table 2 - Other fees related to proponent-initiated PPs

Fee ³	Description
#15896 Pre-Gateway Review (Stage 2)	(a) Where a proponent initiates a rezoning review request with the DPE (b) Fee to recoup Council's costs in responding to DPE request for information and advice; and preparing a Planning Panel agenda and attending Planning Panel meeting
#15899 Public hearing (Stage 5)	To recoup the cost of convening a public hearing where one required
#15897 Re-exhibition & statutory processing	To partially cover costs of re-exhibition and statutory processing
#15898 PP amendment (Stages 4 and 5)	Where change to PP needs to be re-reported to Council for endorsement
#15139 Technical Studies and supporting documents for a PP (Stages 2, 3 & 4)	Applicant to pay 105% of the cost of specialist/technical report preparation (5% is to cover Council's project management costs)
#15387 PP - Miscellaneous staff time	Provides for charging out additional staff time on an hourly rate

1.5.2. PP timeframes

The timeframe and process for progressing a PP differs for each proposal according to the complexity. The DPE Guideline establishes maximum benchmark timeframes for completing each category of PP as well as each stage of the PP process for each category of PP. These are reproduced below.

Table 3 - DPE's maximum benchmark timeframes (Excerpt from the DPE Guideline)

Stage	Maximum Benchmark Timeframes (working days)			
	Basic	Standard	Complex	Principal
Stage 1 - Pre-lodgement	30 days	50 days	60 days	20-30 days
Stage 2 - Planning Proposal	80 days	95 days	120 days	40 days
Stage 3 - Gateway determination	25 days	25 days	45 days	45 days
Stage 4 - Post-Gateway	20 days	50 days	70 days	160 days
Stage 5 - Public Exhibition & Assessment	70 days	95 days	115 days	95 days
Stage 6 - Finalisation	25 days	55 days	70 days	80 days
Sub-total (Department target)	140 working days	225 working days	300 working days	380 working days
Total (end to end)	220 days	320 days	420 days	420 days

Note: Department target of 380 working days is measured from Stage 3 - Stage 6 (inclusive).

The relatively short post gateway timeframes allow little time to resolve technical or planning issues prior to public exhibition. If a PP fails to be progressed within the post-gateway stages, DPE can terminate the process, and there have been several instances where this has occurred. If a Gateway is terminated, the process cannot continue, and a new Gateway determination will be required.

³ Dollar amounts for each item are provided in Council's [fees and charges document](#) for the current financial year

Therefore, any supporting studies should generally be completed, and key planning issues resolved prior to lodging the PP to Council. Hence, Council will not accept PPs that:

- have significant information deficiencies; and/or
- have significant unresolved planning issues.

To ensure applications contain necessary information to enable assessment, the pre-lodgement process is undertaken to identify:

- whether the proposal has both strategic and site merit and hence, the prospects of a PP progressing;
- what, if any supporting information or studies will be required;
- what, if any supporting planning mechanisms may be required, e.g. Development Control Plan, Voluntary Planning Agreement, Contributions Plan amendment.

1.6. Associated planning mechanisms

A range of associated planning mechanisms may be required to support a PP to help achieve the intended outcomes and ultimate development. These include:

- Development control plans (DCP) and DCP amendments
- Contributions Plans
- Planning Agreements
- Biodiversity Certification

These are discussed further in **Appendix 2** to this Guideline.

1.7. When will Council support a Planning Proposal request?

The DPE Guideline states that a PP must demonstrate strategic merit/consistency and site merit to progress. The DPE Guideline includes criteria for assessing strategic merit and site merit. Strategic merit means consistency with the strategic planning framework – see below.

In addition, Council is more likely to support a PP request if one or more of the following criteria are met:

1. There is a clear error or anomaly in the LEP
2. Council is satisfied that the proposed amendment is minor and has sound justification
3. The proposal would not create an undesirable precedent
4. The proposal would provide considerable public/community benefit

Proposals that do not meet the above criteria are unlikely to be supported by Council.

1.7.1. Strategic planning framework

The strategic planning framework currently includes the following:

- Minister's section 9.1 Directions
- State Environmental Planning Policies ("SEPPs")
- Illawarra Shoalhaven Regional Plan 2041
- Shoalhaven Growth Management Strategy (GMS), which incorporates:
 - Nowra Bomaderry Structure Plan
 - Jervis Bay Settlement Strategy

- Milton Ulladulla Structure Plan
- Sussex Inlet Settlement Strategy
- Shoalhaven 2032 Community Strategic Plan (CSP)
- Council's Local Strategic Planning Statement (LSPS) Shoalhaven 2040 - Our Strategic Land-use Planning Statement (Shoalhaven 2040)

Other Council strategies may also be relevant for consideration in particular circumstances. These can be identified during the pre-lodgement phase. The proponent should check if there have been any changes to the strategic planning framework.

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2. Pre-lodgement (Stage 1)

Pre-lodgement is the important first stage in the PP process. Stepping through the pre-lodgement stage can help determine a proposal's alignment with the strategic planning framework, site merit issues, supporting information requirements, and whether any related planning mechanisms are likely to be required to help achieve the intended planning outcomes. This helps to reduce time and cost later in preparing the PP (and reduces the risk of a PP being terminated by DPE if the benchmark timeframes are not met) and formalising the amendment to the LEP.

The steps in the pre-lodgement process are outlined below.

2.1. Discuss your proposal with Council's Strategic Planning staff

Council recommends early engagement with Council's Strategic Planning staff. Council can provide general advice only to interested enquirers on PP/rezoning process, potential standout issues, fees etc. Such a discussion may also be able to indicate:

- The likely planning proposal category depending upon the details provided.
- If a scoping proposal is likely to be required as part of the pre-lodgement process.

Contact Council's Strategic Planning Section on **(02) 4429 5377**.

2.2. Prepare a scoping proposal (standard and complex PPs)

A scoping proposal will be required for all standard and complex planning proposals and in some instances may be required for some basic PPs. Council has developed a Scoping Proposal template for use when requesting and submitting a Pre-lodgement meeting request. This can be accessed on the "Planning Proposals" page on Council's website.

1. A scoping proposal, if required, must include the following:
 - a summary of the proposed changes to the LEP and the intended development outcome
 - discussion of key issues/matters that would need to be addressed in the PP
 - an assessment of strategic merit
 - identification and scope of any supporting studies
 - agencies and authorities that may need to be consulted during the PP
 - any associated planning mechanisms that might be needed to support the PP, e.g. development control plan, contributions plan, planning agreement, biodiversity certification
2. Council will not consider the scoping proposal until the applicable pre-lodgement fee has been paid. Refer to section 7 - Fees & Charges and Council's Fees & Charges.
 - Scoping proposal review. Following the receipt of a scoping proposal and payment of the applicable fee, the process outlined at Stage 1 of Section 1 of the DPE Guideline will be followed, which is to:
 - Review proponent's scoping proposal
 - Consult with the relevant external authorities and Council staff
 - Arrange a pre-lodgement meeting with the proponent and any key Council staff and agencies
 - Provide meeting minutes and written advice to proponent.

2.3. Pre-lodgement meeting

A formal pre-lodgement meeting is required with Shoalhaven City Council prior to submitting a PP request.

Council follows the pre-lodgement framework as set out in the DPE Guideline. If the PP is a standard or complex PP, a scoping proposal will need to be submitted and reviewed before a pre-lodgement meeting can be arranged.

The proponent will be advised of a suitable pre-lodgement meeting date. The purpose of the pre-lodgement meeting is to:

- provide early feedback about the strategic and site-specific merits of a proposal
- identify the information and key supporting studies that need to be submitted
- facilitate early consultation with key authorities and government agencies (as required)
- identify infrastructure needs and determine what form of infrastructure funding may be needed to support the proposal
- resolve planning issues upfront to enable a streamlined LEP making process
- confirm Council fees and the PP category.

Written advice will be provided following the pre-lodgement meeting of planning proposal requirements, including any required supporting studies.

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3. PP Preparation and Submission (Stage 2)

3.1. Key supporting studies

The proponent is responsible for procuring and completing any specialist or technical studies identified during the pre-lodgement process. The scope of any required studies should be confirmed with Council before they are commenced.

Supporting studies must be prepared by persons with appropriate expertise, qualifications, and accreditation (where relevant) to objectively identify and assess the impacts of a proposal. In some circumstances, Council may commission additional studies, such as independent reviews of the proponents' studies at the proponent's cost.

Examples of supporting studies include:

- Aboriginal Cultural Heritage
- Biodiversity (flora and fauna)
- Bushfire
- Flooding
- Geotechnical stability and acid sulfate soils
- Infrastructure requirements
- Land Contamination
- Stormwater and water quality
- Traffic Impact Assessment
- Urban design and masterplans

The DPE has developed a [Supporting Technical Information](#) guide (Attachment C to DPE Guideline) to assist both proponents and councils to identify and inform which supporting studies and information may be required when a PP is being prepared.

The full cost of all studies for proponent initiated PPs is the responsibility of the proponent.

3.2. Planning Proposal Preparation

A PP report may be prepared after receiving Council's pre-lodgement advice and after any required supporting studies have been completed. It is important that the PP is informed by, and consistent with the findings of the required studies.

The PP report must be prepared having regard to the following:

- The written planning advice from Council following the Stage 1 pre-lodgement process, inclusive of any supporting studies to inform the preparation of the PP that have been identified in such written advice.
- The statutory provisions under the EP&A Act and the DPE Guideline.

The PP document structure and content must follow the 6-part structure outlined in the DPE Guideline:

- Part 1 - **Objectives and intended outcomes** (for the proposed LEP amendment)
- Part 2 - **Explanation of proposed LEP provisions**
- Part 3 - **Justification of strategic merit** (including Council's strategic planning framework) and **site-specific merit**
- Part 4 - **Maps** (any proposed amendments to the LEP map overlays)
- Part 5 - **Community consultation** (to be undertaken as part of the PP process)

