

## PURPOSE

This policy aims to inform the community about the Planning Proposal process, guide applicants and improve the efficiency of assessment.

## POLICY INTENT

This policy has been developed in order to guide the preparation and submission of Planning Proposal requests.

A request to change the zoning, permitted land uses or development standards applicable to a parcel of land (height of buildings, minimum lot size for subdivision, floor space ratio etc) is a formal process that amends the statutory planning controls contained in the Local Environmental Plan.

The main objectives of this policy are to:

- Outline what is a planning proposal and what is its purpose;
- The steps in the planning proposal process;
- Consideration of planning proposal requests;
- Information to be submitted in a planning proposal request; and
- The fees applicable to a planning proposal.

## WOLLONGONG 2028 OBJECTIVES

This policy relates to Wollongong 2028 Objective 1.3 “The sustainability of our urban environment is improved”, and specifically to Action 1 “Assess new developments and planning proposals or environmental impacts”.

The processing of planning proposals (including reclassification of Council land) resulting in the preparation of local environmental plans is identified as “Core Business” in Wollongong 2028.

## POLICY

### ***Amending a Local Environmental Plan (LEP) – Planning Proposal Request***

A request to amend the zoning of land, the development standards applying to land, or the permitted land uses is known as a planning proposal and is undertaken through the Gateway process under the NSW planning legislation. Council or a Government agency can initiate a planning proposal based on a strategic direction or policy, or a land owner may request Council to consider the preparation of an amendment.

To amend an existing LEP, an application needs to be made to Council in the form of a “**Planning Proposal Request**”. The Planning Proposal Request explains the intended effect of the proposed LEP amendment (change) and the reasons or justification for making it. The planning proposal request must include appropriate supporting material or investigations. The preparation of a planning proposal is the first step in the process of amending a LEP.

Rezoning requests must be justified, having regard to Council’s strategic plans and policies, and the NSW Department of Planning and Environment’s Regional Strategy, the Illawarra Shoalhaven Regional Plan 2041. A draft Planning Proposal request must be referred to the Wollongong Local Planning Panel for advice prior to being formally considered at a Council meeting. Council officers prepare reports to the

Wollongong Local Planning Panel and Council on the merits of the proposal, noting that the Environmental Planning and Assessment (Statement of Expectations) Order 2021 outlines performance indicators for the assessment of Planning Proposals, as well as strategic planning obligations.

The applicant is required to lodge a Planning Proposal with the Council via the online NSW Planning Portal and pay the necessary Planning Proposal fee. Council officers will undertake an adequacy assessment within 14 days. Requests that are inconsistent with endorsed strategies, or are incomplete will not be accepted. This is not a merit assessment on the request.

Once lodged and accepted, preliminary consultation may be undertaken to inform the preparation of the report, depending on the complexity of the proposal. Council will prepare an exhibition webpage for each Planning Proposal request. Any additional studies or supporting information lodged subsequently during the process, will be made available on the webpage.

A Council resolution is required to support an application to change the zoning, permitted land uses or development standards applicable to a parcel of land. It should be noted, however, that a Council resolution to prepare a planning proposal or an amendment to the LEP does not necessarily guarantee that the proposed amendment will proceed.

If supported by Council, the draft planning proposal is then referred to the NSW Department of Planning to go through the *Gateway determination process*. The “Gateway” process allows a planning proposal to be reviewed at an early stage to make a decision whether to proceed further. At the Gateway determination, the Department of Planning will decide whether the proposal has merit and is justified on planning grounds, whether further technical studies must be undertaken, and the consultation required. Any proposed amendment to the LEP requires community consultation, such as public exhibition or in the case of a reclassification of land, a public hearing. During the exhibition period, relevant Council Reference Groups or Advisory Committees will provide comment on relevant Planning Proposal requests.

Following exhibition, Council considers a report on submissions and should the resolution be to finalise the Planning Proposal, Parliamentary Counsel then prepares the amending LEP – the legal instrument. With the Minister’s (or delegates) approval the amending LEP becomes law and is notified on the NSW Legislation website.

It should be noted that an Independent Planning Panel may also act as the local planning authority when directed by the Minister.

The proponent and those making submissions are advised of Council report dates and resolutions through the process and given the opportunity to address Councillors at Council meetings through the Public Access Forum.

[https://wollongong.nsw.gov.au/data/assets/pdf\\_file/0020/43409/Public-Access-Forum-Application.pdf](https://wollongong.nsw.gov.au/data/assets/pdf_file/0020/43409/Public-Access-Forum-Application.pdf)

Should Council initially resolve not to support a planning proposal request, the proponent can request an independent review of Council’s decision through the “Rezoning Review” mechanism.

An *online tracking system* is available for any person to follow the progress of a Planning Proposal once it has been submitted to the NSW Planning Portal.

### **Consideration of Planning Proposal Requests**

Applications to rezone land or change development standards or permitted uses are generally not encouraged by Council and should only be submitted in the following circumstances:

- Where land cannot be reasonably developed or used under the existing zoning or controls;
- Where it is necessary to correct an error or anomaly (eg mapping);
- Where there is a sound strategic argument for an amendment, based on consistency with Council’s Strategic Plan, the Regional Strategy, Council’s Local Strategic Planning Statement, or similar strategy or policy;
- Where the proposed amendment is considered to be minor in nature and has merit, and has been sufficiently justified;
- Where development of land in accordance with the existing zoning would not be in the public interest.

***The following Planning Proposal requests will generally not be supported by Council:***

- requests that are not supported by an endorsed local or regional strategy, plan or policy and are considered speculative;
- the rezoning of single properties to increase housing density;
- increasing housing in the Illawarra Escarpment, except where implementing an adopted strategy;
- permitting housing within C2 Environmental Conservation and C3 Environmental Management zoned land;
- increasing residential density in medium and high flood hazard areas (ie within the 1% AEP flood level);
- proposing the loss of employment land;
- proposing the linear expansion of town centres;
- requests that will result in land uses or development intensification that is beyond the capability of the land or incompatible with important environmental values and/or constraints; and
- requests that will result in unacceptable demands on utilities and services, such as sewerage, water, transport etc.

It is necessary to prioritise the processing of planning proposal requests to ensure those providing the greatest public benefit are given preference over those serving individual interest or are of limited benefit to the greater Wollongong community. As a guide, the following would be given priority:

- Contributes to economic growth and promotes sustainable practice;
- Significant employment generating development;
- Provision of high quality, appropriately located housing accessible to the broader and lower income community;
- Education, medical or community facilities and services;
- Commercial or retail development in accordance with an adopted Council or State Government strategy;
- Preservation and conservation of the environment;
- Reducing an identified conflict between incompatible land uses;
- Improving tourism opportunities; and
- Implementing endorsed Council Strategies or Concept Plans (eg West Dapto Amendments).

Some areas will have Strategies, Masterplans or Concept Plans requiring that a Planning Proposal request to address certain criteria, for example the demonstration of an improved environmental outcome associated with proposed development.

Applicants must discuss any request with a Council officer from the Land Use Planning team prior to formally lodging a planning proposal and incurring the associated costs. A scoping proposal must be submitted to Council with a request for a pre-lodgement meeting. It is also recommended that consultation with surrounding residents be undertaken to inform the preparation of the Planning Proposal request.

***Planning Proposal Request: Information to be submitted***

A Planning Proposal must be prepared in accordance with Section 3.33 of the *Environmental Planning and Assessment Act 1979* and relevant Department of Planning and Environment's guidelines including the "Local Environmental Plan Making Guideline" (2021).

Section 3.33 of the Act outlines that a planning proposal must include the following components:

- (a) A **statement** of objectives or intended outcomes of the proposal.
- (b) An **explanation** of the provisions of the proposal.

- (c) A **justification** for those objectives and outcomes, including how it is to be implemented – details on why Council should support the change in zoning or development standards and compliance with relevant directions under Section 9.1
- (d) **Maps** containing the appropriate detail are to be submitted, including site map; land use zonings; land constraints such as flood risk, bushfire, heritage areas etc.
- (e) Details of the **community consultation** to be undertaken.

The Planning Proposal is structured as a number of statements and questions which must be responded to with accurate, current and sufficient information to allow assessment of the proposal by Council officers, Councillors and the Department of Planning and Environment.

The Planning Proposal must contain sufficient detail to demonstrate that relevant environmental, social, economic and other site specific matters have been identified and if necessary that any issues can be addressed with additional information and/or through consultation with agencies and the community. The level of detail required in a Planning Proposal should be proportionate to the complexity of the proposed amendment, recognising that a Planning Proposal must provide enough information to determine whether there is strategic merit in the proposed amendment and to demonstrate compliance with relevant statutory considerations.

A Planning Proposal request may be accompanied by a proposal to enter into a Planning Agreement under Section 7.4 of the EP&A Act under which a material public benefit will be provided. Council's policy on Planning Agreements sets out Council's approach to the use of Planning Agreements through negotiation when considering planning proposals.

In order for Council officers, Councillors and the Department of Planning and Environment to ascertain the appropriateness of the Planning Proposal, the constraints on site must be identified, and any proposed development on site will need to have consideration to these constraints. Any proposed intensification of land use will require identification of any environmental and physical constraints such as flood affectation, land stability, contamination, natural environment, bush fire, heritage and scenic landscape considerations. The proposed impacts on traffic and transport, town services and infrastructure also require consideration.

Where the Planning Proposal is seeking to rezone to residential or uplift the density of residential land, the application is to be accompanied by a residual land value of the site under both the existing and proposed planning controls. This is to assess the "uplift" to enable an Affordable Housing contribution to be determined.

### How to Lodge a Planning Proposal Request

The following is required to be lodged with Council via the online NSW Planning Portal along with the necessary Planning Proposal fee, as part of any planning proposal request:

- 1 Justification for the planning proposal, including:
  - a The need for the Planning Proposal;
  - b Relationship to strategic framework – how is the planning proposal consistent with legislation and statutory requirements such as section 9.1 Directions and State Environmental Planning Policies (SEPPs), regional strategies and Council endorsed policies, strategies and locality Concept Plans (eg Council's Community Strategic Plan and Local Strategic Planning Statement);
  - c The context of the planning proposal – if the planning proposal implements the outcomes of a strategic study or report (a copy of the study or report to be submitted with the planning proposal request); and
  - d Potential economic, social and environmental impacts of the planning proposal and how they are proposed to be managed – positive and negative impacts should be identified, including proposed methods of amelioration where negative impacts are likely.
- 2 Appropriate supporting technical studies completed by suitably qualified experts to demonstrate the capacity of the land, concept diagrams, preliminary plans and illustrative maps. The level of detail

will be proportionate to the impact the planning proposal is likely to have. This may include (but is not limited to) the following technical issues/considerations:

- a Environmental – flora and fauna, bush fire, flooding, stormwater, riparian, geotechnical, coastal, contamination;
- b Traffic and transport;
- c Urban design;
- d Aboriginal and Industrial Heritage;
- e Consistency with Council Strategy or Concept Plan;
- f Economic;
- g Social and cultural, including the preparation of an Aboriginal Cultural Heritage “Due Diligence” Assessment;
- h Infrastructure and servicing;
- i Visual impact; and
- j Water Cycle Management (management of stormwater, wastewater, site and development specific pollutants or contaminants).

**NB** The Gateway determination may require additional information.

- 3 The completed Planning Proposal *Application Form and Checklist* (including the legal property description in full and land owner consent authorising the lodgement of the Planning Proposal request and the eventual making of a draft LEP over the subject land).
- 4 The submission of all documentation in electronic format (PDF). All documentation will need to be uploaded on Council’s website for consultation and therefore should be kept under 50MB (noting that files over 10MB generally cannot be emailed). Wherever possible, a suite of documents should be combined into one file (while keeping under the 50MB guide).
- 5 Mapping data is to be supplied in a format compatible with ARC GIS.

To ensure transparency in Council’s decision making functions, any application which is made by a Council employee / Councillor and/or their immediate relative/s, will be referred to an independent consultant for assessment.

For more information proponents should refer to the Department of Planning and Environment’s publication “Local Environmental Plan Making Guideline 2021”.

Planning Proposal requests will require external planning expertise on behalf of the applicant. It is recommended that a town planning consultant be engaged for the preparation of planning proposal applications, and other specialist consultants may also be needed to provide technical input in support of the proposed changes. The application must include an accurate assessment of the likely impacts of the change in land use and identify any land constraints, supported by technical investigations. Any study that is deemed necessary to assess the suitability of the proposal and may have a significant bearing on Council’s decision making about whether to proceed with preparing a planning proposal, will be required prior to a report being prepared for Council.

Council staff may refuse to accept the submission of a planning proposal request if the proposal is deemed to be lacking the necessary information and detail required of a planning proposal, as outlined in this section.

### **Fees**

For applicable fees and charges, please refer to Wollongong City Council’s *Schedule of Fees and Charges*. The proponent is required to pay the prescribed fee associated with preparing a planning proposal as outlined in Council’s Fees and Charges. The proponent is also required to pay for any required technical studies.

## LEGISLATIVE REQUIREMENTS

A Local Environmental Plan (LEP) is a legal document which guides development and land use within a particular Local Government Area. The LEP generally comprises a written document and accompanying maps and states whether development:

- Is permissible on the land;
- Is subject to specific restrictions, including controls on height, minimum land area, floor space, heritage, acid sulphate soils, flooding etc;
- Requires consent of Council.

LEPs are also used to reserve land for open space, schools, transport and other public purposes, as well as control advertising and protect vegetation. The law outlining the process for making a LEP is the *Environmental Planning and Assessment Act 1979 (the EP&A Act)*, administered by the NSW Department of Planning and Environment (DPE). The majority of land within the Wollongong Local Government Area, whether privately owned, leased or publicly owned, is subject to the controls set out in the relevant LEP, typically the Wollongong LEP 2009. Three precincts are controlled under State Environmental Planning Policies (SEPPs) - land at McCauleys Beach, Thirroul and Calderwood is zoned under State Environmental Planning Policy (Precincts - Regional) 2021 and development within the port of Port Kembla is controlled under the State Environmental Planning Policy (Transport and Infrastructure) 2021.

Council has the ability to amend the Wollongong LEP 2009 as the need arises. Regular reviews of the LEP occur to implement policy changes that have been guided by the adoption of strategies which have been prepared and exhibited, and it the preferred approach. However, Council may also consider requests for LEP amendments where such a change is warranted, via the planning proposal process.

## REVIEW

This Policy will be reviewed every two years from the date of each adoption of the policy, or more frequently as required.

A resolution of Council is required to adopt any variations to this policy, with the exception of minor administrative changes, such as updates to legislative references, which may be endorsed by the Executive Management Committee (EMC). Endorsement of administrative changes made to this policy by EMC does not alter the requirement for it to be reviewed and adopted by each Term of Council.

## ROLES AND RESPONSIBILITIES

- Council, or an Independent Planning Panel, can request that the Minister for Planning terminates a Planning Proposal at any point of the process, including after all investigations, analysis and community engagement has been completed. However, proponents can request an independent review of decisions if Council has refused or failed to respond to a Planning Proposal;
- Council officers may seek an extension of time from the Department of Planning and Environment for the completion of a Planning Proposal should Council resources be required on other higher priority projects;
- The Planning Proposal process can occur over a number of years, depending on the nature and complexity of the proposal, and there are several key milestones that need to be achieved along the way. With each one there is a risk for the process to cease;
- Council officers may decline to accept the lodgement of a planning proposal request, where the application content is deemed inadequate;
- Council officers may, based on a preliminary desktop assessment of a submitted planning proposal request, determine that the information submitted is not satisfactory and should not be reported to the Local Planning Panel, or a Council meeting. This may arise where the initial review of the information submitted reveals that the proposal is inconsistent with local and/or state policy, or is



subject to insurmountable environmental constraint etc;

- Referral of the Planning Proposal to agencies and/or the Local Planning Panel may result in additional reports or information being requested. Applicants are advised that agencies or the Local Planning Panel may or may not support the Planning Proposal.
- The proponent is responsible for the payment of any studies, specialist advice, or consultancies as required during the LEP amendment process;
- Time of lodgement does not determine the priority of processing and progressing of an amendment – it is necessary to prioritise proposals to ensure those providing the greatest public benefit are given preference over those servicing individual interest or are of limited benefit to the greater Wollongong community;
- The Planning Proposal request must be accompanied by the relevant fee. Part of the initial fee is refundable should the Planning Proposal process be terminated or be unsuccessful. The second part of the fee (if Council resolved to support the preparation of a Planning Proposal) is not refundable. If the Regional Planning Panel support a Planning Review and the Department of Planning and Environment issues a Gateway determination, the second fee is payable;
- Council gives no undertaking that the processing of a Planning Proposal will result in the requested LEP amendment occurring. It is possible that all the steps in the process can be completed and an amendment declined by Council, the Independent Planning Panel, or the Minister for Planning; and
- A rezoning given effect by a successful Planning Proposal does not necessarily mean that a later development application for subdivision or other development will be automatically supported or approved. Any later development application will need to be lodged separately and assessed on its merits and consistency with relevant planning controls.

## RELATED PROCEDURES

- Planning Proposal Application and Checklist

APPROVAL AND REVIEW	
Responsible Division	City Strategy
Date/s adopted	23 May 2022
Date/s of previous adoptions	7/05/2018
Date of next review	May 2024