

Planning Proposal Procedure for Amendments to Central Coast Local Environmental Plan 2022

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Date: March 2023

Version 0.7 Approved by: Section Manager, Local Planning and Policy, Strategic Planning

Date of Approval: March 2023

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Procedure for Amendments to Central Coast Local Environmental Plan 2022



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Objective

The objective of this procedure is to establish the protocol for the assessment and administration of Planning Proposals (rezonings) to amend Central Coast Local Environmental Plan (CCLEP) 2022.

1.0 Application

This procedure applies to all requests to amend CCLEP 2022 lodged with Council.

2.0 Disclaimer

Council does not make any representation or promise that a request to amend an LEP will continue to finality, or that it will exercise the statutory discretions that it has under the *Environmental Planning and Assessment (EP&A) Act, 1979* in any manner.

Council maintains a discretion to terminate the request, and if it is terminated, that no damages, penalties or other costs are payable by the Council in respect of any costs incurred by the Proponent in relation to the request.

Council may, at its absolute discretion, 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 my/our expense.

Council will not be compelled to undertake any work in the furtherance of the request until such time as the terms or outstanding fees of any written requirements or invoices have been settled or paid to Council's satisfaction.

The process may stop and/or be extinguished at any stage by Council (EP&A Act, 1979 s.3.35 (1)) or the Minister (EP& A Act, 1979 s. 3.34 (7)).

3.0 Lodgement Process

3.1 Scoping Proposal and Pre-Lodgement Meeting

A [pre-lodgement meeting](#) with Council staff is required prior to submitting an LEP amendment request (Planning Proposal).

This will help identify if the Planning Proposal demonstrates one or more of the following:

- an error or anomaly in the LEP

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- the land cannot reasonably be developed or used for a permitted use under the existing zone
- the rezoning would provide considerable public benefit
- the proposal has strategic and site-specific merit.

All proposals need to be consistent with the Central Coast Regional Plan, the Central Coast Local Strategic Planning Statement, and any relevant Council adopted Strategy or plan for the area.

A scoping proposal is required to accompany the request for a pre-lodgement meeting. Information required in a scoping proposal will vary depending on the site and the extent of the changes proposed. Information about preparing a scoping proposal is available on the [Department of Planning and Environment website](#). It is strongly recommended that you engage someone with experience and expertise, such as a qualified town planning consultant to prepare the scoping proposal.

There is a fee for the formal pre-lodgement meeting but generally proponents find the meeting to be beneficial, saving time and money. When Council receives the pre-lodgement meeting booking form, an invoice will be sent to the applicant and fees are payable as per Council's Fees and Charges. This fee is payable prior to the meeting date.

To schedule a pre-lodgement meeting, please follow the steps below:

1. **Pre-lodgement form** – Complete the [pre-lodgement booking form](#)
2. **Scoping Proposal** – Review the DPE's [Local Environmental Plan Making Guideline](#). Complete the [scoping proposal template](#) to outline the proposal, key matters, and expected consultation with agencies.
3. **Submit** – Submit the pre-lodgement form and scoping proposal to Council via email to ask@centralcoast.nsw.gov.au
4. **Pay invoice** – Council will issue an invoice to the proponent. Fees are payable as per Council's Fees and Charges in the current [Operational Plan](#), and this fee is payable prior to the meeting date.
5. **Attend meeting** – This may include referring the scoping proposal to relevant authorities and government agencies for comment.

Council will provide the proponent with minutes of the meeting and written advice. Where a proponent does not respond to a specific requirement, justification should be provided in the Planning Proposal submitted to Council.

For complex proposals, or where the proposal changes significantly after the first pre-lodgement meeting, a second pre-lodgement meeting may be required to consider any proposed concept changes and/or the outcomes of initial site investigations.

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3.2 Pre-Lodgement Document Review

A pre-lodgement review of the draft Planning Proposal and supporting studies may be recommended prior to formal lodgement of the proposal on the NSW Planning Portal. The pre-lodgement review aims to expedite the Planning Proposal by ensuring all supporting documentation has adequately addressed the site constraints and proposal impacts. This will reduce the proposal assessment time and/or the need for Council to return or refuse the Planning Proposal. As part of the pre-lodgement review all supporting documents and investigations will also be reviewed by Council's specialist staff with detailed feedback provided on any amendments necessary. This may also involve referral to relevant State Government agencies for consideration and comment. If considered necessary, Council may also seek formal pre-Gateway comments from the Department of Planning and Environment as part of the pre-lodgement review.

To commence a pre-lodgement review, please follow the steps below:

1. **Pre-lodgement review form** – Complete the [pre-lodgement review form](#)
2. **Submit** – Submit the pre-lodgement review form to Council via email to ask@centralcoast.nsw.gov.au. Where possible, CC the relevant Council staff to expedite processing.
3. **Pay invoice** – Council will issue an invoice to the proponent. Fees are payable as per Council's Fees and Charges in the current [Operational Plan](#), and must be paid prior to the review commencing.

Council will then provide the proponent with a pre-lodgement review of the draft Planning Proposal and supporting documentation. In some instances, an additional pre-lodgement meeting may be beneficial following the pre-lodgement document review to discuss the outcomes of the review and ensure all issues are addressed prior to lodgement of the Planning Proposal.

3.3 Lodgement

Each LEP Amendment Request needs to be supported by a [Lodgement Form](#). The request should be submitted in the Planning Proposal format as described by the DPE's [Local Environmental Plan Making Guideline](#) (September 2022) which provides further guidance for the preparation of a Planning Proposal. All Requests to amend CCLEP 2022 must be lodged via the [NSW Planning Portal](#).

Relevant information and studies should also be submitted, as described by Council's [Information Requirements for Lodging Requests to Amend Central Coast Local Environmental Plan 2022](#). Planning Proposals should only be submitted on the NSW Planning Portal after all required studies have been prepared to Council's satisfaction. Council staff may reject incomplete or inadequate Planning Proposals. Before lodging a Planning Proposal please refer to Council's [Planning Proposal Pre-lodgement Review Criteria & Checklist](#).

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When an LEP Amendment Request has been deemed to have sufficient strategic merit, a request will be made for payment of the applicable fees as per the current [Operational Plan](#). The assessment of the proposal will not commence until the fees have been paid in full.

Following a desktop review of the proposal by Council specialist staff it will be reported to the Central Coast Local Planning Panel (CCLPP) and then to the Council for its consideration, taking into account the CCLPP advice. The Council will determine whether or not to support preparation of a Planning Proposal. If supported, Council submits the Planning Proposal (as PPA) to the DPE for Gateway Determination.

4.0 Assessment Process

4.1 Local Planning Panel (LPP) Reporting

Prior to reporting the LEP Amendment Request to Council, an assessment report is submitted to the Central Coast Local Planning Panel (CCLPP) providing relevant information to the panel for review. This will determine whether the proposal has merit to proceed to Council for consideration.

The CCLPP is an independent panel of qualified people that meet monthly to review and determine a range of development applications and strategic planning matters for the Central Coast Local Government Area (LGA) on behalf of Council.

4.2 Council Reporting

When an LEP Amendment Request has been deemed to have sufficient strategic merit, it will be reported to the Council for its consideration. The Council will determine whether or not to prepare a Planning Proposal (*EP&A Act, 1979, s.3.33 (1)*).

The Council will also consider requests that have been asked by Council staff to be withdrawn and where the Proponent has failed to do so. These will be recommended for refusal. Submission of additional information or modification of the request may be sought by the Council and the matter may be deferred and require further assessment and/or reconsideration at a later date.

4.3 Request for Gateway Determination

If a request is supported by the Council, Council staff will prepare a Planning Proposal, consistent with the requirements of s.3.33 (2) of the *EP&A Act, 1979*. At this point, the Proposal becomes a Council document.

Council will request the Minister of Planning (via the Regional Office of the DPE) to issue a Gateway Determination to proceed with the Proposal (*EP&A Act, 1979 s.3.34 (1)*).

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4.4 Post-Gateway Determination

Phase 2 commences on receipt of a Gateway Determination under s.3.34 (2) of the *EP&A Act, 1979*.

The Gateway Determination will identify:

- whether the Planning Proposal should proceed,
- any resubmission requirements, as well as any further investigations required to satisfy legislative requirements,
- whether the Planning Proposal needs to be amended,
- agency and community consultation requirements and timeframes,
- whether consultation with State or Federal authorities is required,
- whether a local contributions plan is to be exhibited at the same time as the Proposal,
- any public hearing requirements,
- timeframes for the completion of the Proposal,
- whether Council is authorised to make the amending instrument to effect the Proposal (*Written Authorisation to Exercise Delegation*), and
- any other conditions.

In the event a Gateway Determination is issued which does not support the continuation of the Planning Proposal, the Proposal will be discontinued by Council (see Section 9.0 of this procedure).

4.5 Agency/Stakeholder Consultation

Council will undertake consultation with relevant State/Commonwealth authorities as required by the Gateway Determination. Government agencies may or may not support the Planning Proposal.

One or more of the following may occur following this consultation:

- The Proponent may be required to submit additional information or undertake further investigative studies to demonstrate that the Proposal reflects or responds to site issues and/or constraints. This information will be subject to further review by both Council and relevant public authorities.
- The Proposal may require modification. This may require amendment of development footprints to avoid certain constraints (e.g. sensitive environmental areas) or amendment of other aspects of the Proposal (e.g. proposed zoning, development heights, FSR, etc.)
- The preparation of site-specific development controls (a locality specific Development Control Plan (DCP) chapter, and/or a Planning Agreement (PA) to address or resolve site specific issues.

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In the event that government agencies raise significant issues which cannot be addressed by further investigative studies or modifications of the Proposal, the Proposal may be discontinued by Council.

4.6 Community Consultation

Subject to the resolution of any issues identified by Council and/or public authorities, the Planning Proposal will be reviewed and updated in preparation for community consultation (public exhibition).

The time period for exhibition will occur for the minimum time period specified by the Gateway Determination. Exhibition periods may be extended by Council at its discretion.

Council will arrange and undertake community consultation. This will generally involve:

- preparation of exhibition material, including advertising requirements,
- briefing relevant internal and external customers and the Council,
- responding to enquiries from the community and undertake public briefings and presentations (if required).

Council will advertise the commencement of the exhibition of a Proposal on Council's website notice. Further, Council will also attempt to notify adjoining or affected landholders of the exhibition, prior to the commencement date.

The exhibition material will be available for comment between the dates specified on Council's website notice and on the NSW Planning Portal. In some circumstances, hardcopies of the material may be made be available in the Wyong Administration Centre or particular library branches. This will be at the discretion of Council.

Exhibition material will generally include the following:

- The Planning Proposal in the form approved for public exhibition by the Gateway determination.
- The Gateway Determination.
- Supporting documentation including (where relevant):
 - assessment of the Proposal against statutory requirements and the outcomes of the Council's consideration of the Proposal (i.e. Council reports and minutes);
 - land use provisions which may include zone tables;
 - copies of submissions and responses from public authorities;
 - mapping including locality plans, pre and post amendment maps which relate to the amendment (e.g. before and after zoning maps, height maps etc.);
 - copies of any studies undertaken to inform the Planning Proposal.

If applicable, site specific Development Control Plans (DCPs) and/or Planning Agreements (PAs) will generally be exhibited concurrently with the Planning Proposal.

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Public hearings in relation to reclassification of land will be held in accordance with the relevant provisions of the *Local Government Act, 1993*.

4.7 Submission Consideration and Council Reporting

Council will consider the issues raised by submissions received during the exhibition period. Late submissions or submissions made anomalously will generally not be considered.

During the consideration of submissions, Council determines whether the Planning Proposal and supporting material adequately responds to the issues raised.

Where submissions identify significant shortfalls or gaps in the Planning Proposal or supporting documentation, Council will seek responses from the Proponent. This may involve minor clarifications or undertaking additional investigative studies.

Where substantial amendments are required to be made to a Planning Proposal (or supporting documentation), Council may consider that re-exhibition of the Proposal and supporting documentation is warranted. In some circumstances, a revised Gateway Determination may also be necessary.

A report will be prepared for the consideration of the Council. Site specific DCP provisions and PAs are generally also considered by the Council concurrently with the Planning Proposal.

Council will endeavour to notify those who have made submissions when a report regarding the Proposal will be considered by the Council.

The Council will resolve one of the following actions:

- Support the Proposal as exhibited, or
- Support the Proposal as exhibited subject to minor amendments (as detailed in the report), or
- Require re-exhibition of the Proposal and/or request additional investigations, or
- Refuse or discontinue the Proposal.

Generally, Council will notify the Proponent and submission makers of the outcomes of the Council's deliberation and resolutions.

4.8 Plan Making

If the Council resolves to support a Proposal, a number of actions will occur. These include:

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- **Finalising the Planning Proposal.**

This may involve seeking approvals from the Secretary of DPE for any inconsistencies a Planning Proposal may have with Ministerial (Section 9.1) Directions.

- **Finalisation of mapping amendments.**

- **Drafting of the legal instrument (LEP) to implement the Planning Proposal.**

This requires liaison with the Parliamentary Counsel (PC). If Council has not been issued with *Written Authorisation to Exercise Delegation*, this, and the following actions will be undertaken by the DP&E.

- **Making the plan.**

This involves the delegated officer (either the Chief Executive Officer (CEO) of Council (if Delegation has been issued), or the Secretary or representative of the DPE) "signing off" on the legal instrument and map amendments.

- **Notifying the LEP on the NSW Government legislation website (gazettal).**

- **Advising the Proponent, Council staff and Councillors** of the notification of the amendment and implementation of supporting DCP provisions and/or PAs.

5.0 Minor LEP Amendments

Minor amendments to LEPs may be made where agreed to by Council.

The Minor LEP category applies to amendments that fall under Section 3.22 of the *EP&A Act, 1979* (i.e. amendments to correct obvious errors or matters which are consequential or transitional in nature) or are consistent with the Local Environment Plan (LEP).

Where an amendment is consistent with the provisions of Section 3.22 of the *EP&A Act, 1979*, the proposal will be classified as a basic LEP amendment.

All other Minor LEP Amendments will follow the process outlined in this document.

Where it is unclear on whether a Proposal falls into this category, the Director of Environment and Planning will make the final decision on whether the Minor LEP category applies.

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6.0 Payment and Refund of Fees

Fees are payable at the commencement of each phase for the processing of Planning Proposals. The fees have been calculated to ensure that the staff costs associated with the assessment and progression of the Proposals are covered. Fees are payable as per Council's Fees and Charges in the current [Operational Plan](#).

NOTE: Fees and charges are payable in accordance with the rates specified in the Central Coast Council Operational Plan. These rates are subject to annual review.

Commencement of each phase of the rezoning process is contingent on full payment of outstanding fees from the previous phase, and any associated studies, public hearings or consultant engagement.

In the event a Gateway determination is issued which does not support the continuation of the Planning Proposal, Phase 2 fees will not be requested and the Proposal will be discontinued.

Should the Proponent fail to pay the required fees in accordance with this procedure, staff will notify the Proponent and no further work will be undertaken until the outstanding amount is paid.

For large Planning Proposals, such as urban land release or large infill rezonings, advanced instalment payments may be requested from Proponent at Phase 2 of the rezoning process to reflect anticipated staff work commitments on the project.

In the event the Proposal is withdrawn by the Proponent or refused by Council, any unspent fees will be refunded, exclusive of any staff time costs associated with undertaking the assessment to that date, preparation of relevant reports and/or briefings as required.

7.0 Tracking Planning Proposals

The status of Planning Proposals is tracked by the DPE through its online [tracking system](#). Proposals may be listed under the former Gosford or Wyong Local Government Areas (LGA) or the Central Coast LGA.

Documents relevant to the Proposal are also available on this site, including the Gateway Determination and assessment reports.

8.0 Planning Proposal Authority (PPA)

In most instances, Council will be the Planning Proposal Authority (PPA). The PPA is responsible for the assessment and progression of Planning Proposals.

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However, in some instances, the Minister may direct the Director-General of the DPE to be the PPA. In such instances Council may still, depending on what tasks are required, require payment for Council staff assisting the PPA in the process.

9.0 Reviews and Appeals

There are a number of opportunities during the Planning Proposal process for Proponents to seek reviews through the Regional Planning Panel (RPP).

a) Rezoning Reviews

A rezoning review is available to a Proponent if:

- Council advises a Proponent in writing that an LEP Amendment Request is not supported, or
- Council has not indicated its support within 90 or 115 calendar day (depending on the planning proposal category) of the proponent lodging the planning proposal or
- failed to submit the planning proposal for Gateway determination within 28 calendar days after it has indicated support.

Proponents have a period of 42 days from the date of advice from Council that an LEP Amendment Request is not supported in which to seek a Rezoning Review.

b) Gateway Reviews

Gateway reviews are available to Council or a Proponent when a Gateway Determination:

- specifies the Proposal should not proceed, or
- requires the resubmission of the Proposal to the Gateway, or
- imposes requirements (other than consultation requirements) or makes variation to the Proposal which the Proponent or Council thinks should be reconsidered.

The processes for seeking a Rezoning Review and Gateway Review are detailed in the DPE [Local Environmental Plan \(LEP\) Making Guideline](#). Further, relevant forms are available from the Regional Planning Panel RPP [website](#).

There are limited opportunities for interested third parties to be involved or commence proceedings in respect of Planning Proposals. It is only where there has been a failure to comply with the provisions of the EP&A Act, 1979 in making an LEP, are there opportunities to bring proceedings to the Land and Environment Court (LEC).

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10.0 Further Information

For further information regarding the amendment process please refer to the Plan and Build page of Council's website

[Local Environmental Plan Amendment Requests \(Rezoning\) | Central Coast Council \(nsw.gov.au\)](https://www.centralcoast.nsw.gov.au/plan-and-build)