



Central Coast Council
Procedure for Amendments to
Wyang Local Environmental Plan 2013 or
Gosford Local Environmental Plan 2014

Version 0.4
Central Coast Council Land Use and Policy Unit
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Planning Proposal Procedure for Amendments to Wyong Local Environmental Plan 2013 or Gosford Local Environmental Plan 2014

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Planning Proposal Procedure For Amendments to Wyong Local Environmental Plan 2013 or Gosford Local Environmental Plan 2014

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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 Wyong Local Environmental Plan (LEP) 2013 (WLEP 2013) or Gosford Local Environmental Plan 2014 (GLEP 2014).

1.0 Application

This procedure applies to all requests to amend WLEP2013 GLEP2014 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 Pre-Lodgement

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

A pre-lodgement meeting provides guidance and advice as to the suitability of a proposed LEP amendment and the information requirements to be lodged with a Request to Amend an LEP.

The meeting gives prospective Proponents an overview of the processes and procedures involved in the preparation, assessment, progression and timing of LEP amendments.

3.2 Lodgement

An [LEP Amendment Request Form](#) must be completed when the Planning Proposal is lodged at Council.

The LEP Amendment Request Form is accompanied by documentation in the form of a Planning Proposal, in accordance with s3.33 of the *Environmental Planning and Assessment (EP&A) Act, 1979*. The Department of Planning and Environment (DP&E) document, [A Guide to Preparing Planning Proposals \(August 2016\)](#) provides further guidance for this purpose.

Matters to be addressed by the Planning Proposal include:

- Objectives or Intended Outcomes – what the Proposal seeks to achieve
- Explanation of provisions – how the objective will be implemented
- Justification for the Proposal – the strategic merit of the Proposal
- Community Consultation – how the wider community will be consulted
- Project Timeline – the steps involved and how long it will take to finalise the Proposal

An LEP Amendment Request must also be supported by relevant studies and investigations. These requirements are further detailed in Council's [Information Requirements for Lodging Requests to Amend Local Environmental Plans](#).

4.0 Assessment Process

The assessment process for an LEP Amendment Request begins when the request is lodged with Council. The assessment process occurs in two phases as outlined below.

4.1 Phase 1

4.1.1. Initial Assessment

An initial assessment of an LEP Amendment Request will be undertaken to determine the strategic merits of the request. This assessment includes:

- research and investigation of subject land and the proposed purpose of the LEP amendment;
- assessment of the strategic context for Proposal;
- a site inspection; and
- consultation with relevant Council staff, (e.g. Traffic Engineer, Ecologists, Water and Sewer Planners etc.).

As a result of the above, one of three actions will be implemented:

a) Issue of Withdrawal Request

Where the initial assessment identifies that the request is inconsistent with established planning strategies, or it does not adequately respond to site constraints (e.g. presence of significant threatened species, flooding etc.), Council will request a Proponent to withdraw the LEP Amendment Request.

If the Proponent fails to withdraw the request, the matter will be determined by the Council and refusal will be recommended.

b) Request for Additional Information

Where the information lodged is insufficient to assess the strategic merit of the Proposal, Council will request a Proponent to submit additional information. Council may also seek the Proponent to modify the request at this point (e.g. amendment of zonings, development footprints etc.).

c) Acceptance of Request

Where the initial assessment indicates that the information provided sufficiently demonstrates the strategic merit of the Proposal and responds to site constraints, the request is considered to be accepted.

However, additional information and supporting investigative studies may be required during the further assessment and progression of the request.

4.1.2. 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.

4.1.3. 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 DP&E) to issue a Gateway Determination to proceed with the Proposal (*EP&A Act, 1979 s.3.34 (1)*).

4.2 Phase 2

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
- agency and community consultation requirements and timeframes,
- any public hearing requirements,
- timeframes for the completion of the Proposal, and
- whether Council is authorised to make the amending instrument to effect the Proposal (*Written Authorisation to Exercise Delegation*). In most instances Council will request delegations to make the final plan from the DP&E.

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 also section 9.0 of this procedure).

4.2.1. 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, floor space ratios etc.)
- The preparation of site specific development controls (a locality specific Development Control Plan (DCP) chapter, and/or a Voluntary Planning Agreement (VPA)) to address or resolve site specific issues.

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.

4.2.2. 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. Generally, this is for a period of 28 days, or 14 days where a Planning Proposal is relatively minor. 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 within a locally circulating newspaper, generally, the Central Coast Express Advocate. 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 in the newspaper advertisement and will be available on Council's [website](#). In some circumstances, hardcopies of the material may be made available in the Wyong or Gosford Administration Centres or particular library branches. This will be at the discretion of Council.

Exhibition material will generally include the following:

- The Planning Proposal.
- 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 DCPs and/or VPAs will generally be exhibited concurrently with the Planning Proposal.

Where a Proposal relates to Council owned land, an assessment against best practice guidelines will also be exhibited. Additionally, any Proposal which relates to Council owned land will be the subject of a public hearing which will be held during the community consultation period.

Public hearings are not ordinarily held in respect of other Proposals, unless specifically required by a Gateway Determination or requested by the community and are considered warranted by Council.

4.2.3. 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 determine 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 VPAs 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.

4.2.4. Plan Making

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

- Finalising the Planning Proposal.

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

- 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.

- Finalisation of mapping amendments.

- 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 DP&E) "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 VPAs.

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), and
- do not require additional studies, and
- do not involve or apply to more than 2 lots of land

Where an amendment is consistent with the provisions of Section 3.22 of the *EP&A Act, 1979*, the amendment may be undertaken without complying with the process outlined in this document.

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.

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.

Phase 1 Fee: Payable on lodgement

This fee covers 80 hours staff assessment time. Any work which exceeds this timeframe will be charged at an hourly rate.

Phase 2 Fee: Payable on receipt of a Gateway Determination to proceed

This fee covers 75 hours of staff assessment time. Any work which exceeds this timeframe will be charged at an hourly rate.

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.*

In addition to staff costs, the Proponent will pay for any studies, specialist advice, consultant studies, public meetings and/or advertisement costs as required during the LEP amendment process. This may also involve verification of technical studies provided by the Proponent if they are deficient.

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. This shall apply to Planning Proposals that propose to rezone more than 15 hectares of land for residential, industrial, rural-residential or tourism purposes.

Any unspent Phase 1 fees may be "rolled over" to the Phase 2 fees. Any unused portion of phase 2 fees will be refunded when the Planning Proposal is finalised.

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 DP&E on 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 Relevant Planning Authority (RPA)

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

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

9.0 Reviews and Appeals

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

a) Rezoning Reviews

A rezoning review is available to a Proponent if:

- Council advises a Proponent that an LEP Amendment Request is not supported, or
- Council has not indicated its support within 90 days of lodgement of an LEP Amendment Request, or
- there are significant delays between Council making a determination and submitting a Planning Proposal for a Gateway Determination.

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 DP&E [*Guide to Preparing Local Environmental Plans \(August 2016\)*](#). Further, relevant forms are available from the Joint Regional Planning Panel JRPP [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).

10.0 Further Information

Further information regarding the Planning Proposal process, as well as access to relevant forms, can be obtained from Council's [website](#) or by contacting Council's Principal Duty Planner on 02 4350 5555.

Local Environmental Plan Amendment Process

