

# Guideline for Proponent Initiated Planning Proposals

DRAFT / INTERIM

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| <b>Abbreviation</b> | <b>Definition/term</b>                           |
|---------------------|--|
| 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 a 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 <sup>2</sup>   |
|---|---|---|
| <b>Basic PP</b>                           | <p>Progressed under s.3.22 of the EP&amp;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.</p> <p><u>Scoping proposal not required</u></p>  | <ol style="list-style-type: none"> <li>1. <b>#14849</b> PP lodgement – Basic &amp; Standard</li> <li>2. <b>#15892</b> Exhibition &amp; statutory processing – Basic &amp; Standard</li> </ol>   |
| <b>Standard PP</b>                        | <p>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.</p> <p><u>Scoping proposal required</u></p>  | <ol style="list-style-type: none"> <li>1. <b>#15891</b> Pre-lodgement - Standard</li> <li>2. <b>#14849</b> PP lodgement - Basic &amp; Standard</li> <li>3. <b>#14850</b> Gateway request - Standard</li> <li>4. <b>#15892</b> Exhibition &amp; statutory processing - Basic &amp; Standard</li> </ol> |
| <b>Complex PP</b><br>(previously 'major') | <p>Requires multiple supporting studies to address potential impacts and other issues of concern, and is likely to require one or more of the following:</p> <ul style="list-style-type: none"> <li>• Amendment to the Development Control Plan (DCP)</li> <li>• A Voluntary Planning Agreement (VPA) and/or contributions plan amendment</li> </ul> <p>Likely to be controversial and/or is inconsistent with elements of a Council-prepared endorsed strategy/plan (e.g. Growth Management Strategy).</p> <p><u>Scoping proposal required</u></p> | <ol style="list-style-type: none"> <li>1. <b>#15893</b> Pre-lodgement - Complex</li> <li>2. <b>#15894</b> PP lodgement - Complex</li> <li>3. <b>#14852</b> Gateway request - Complex</li> <li>4. <b>#15895</b> Exhibition &amp; statutory processing - Complex</li> </ol>                             |

<sup>1</sup> Council's interpretation of descriptions in the DPE Guideline

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

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.

**Table 2 - Other fees related to proponent-initiated PPs**

| Fee <sup>3</sup>   | Description   |
|--|---|
| #15896 Pre-Gateway Review (Stage 2)  | (a) Where a proponent initiates a rezoning review request with the DPE<br>(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.

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

**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.

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.

## 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)

- Part 6 - **Project timeline** (for the PP / LEP making process in accordance with the DPE benchmark timeframes)

Statements made in PPs and supporting studies in relation to impacts and consistency with strategies, plans, policies and directions need to be substantiated by evidence or other suitable justification. It is an offence under the EP&A Act (section 10.6) to provide false or misleading information.

### 3.3. PP Lodgement and Review (Stage 2)

#### 3.3.1. Lodgement

All PPs are required to be lodged online via the NSW Planning Portal (Planning Portal). Details of how to register for a Planning Portal account and use the Planning Portal can be found at:

<https://www.planningportal.nsw.gov.au/applicant-resources>

PP lodgement documentation must include:

1. Council's PP Lodgement Form
2. Main PP document, inclusive of any appendices. Appendices may also be separate documents or files if necessary due to file size or volume of material.
3. Supporting studies - all supporting studies, concept diagrams and preliminary plans requested and advised by Council as part of the Stage 1 pre-lodgement process. Supporting studies may be included as appendices to the PP document.
4. Pre-lodgement meeting outcomes letter (from Stage 1).

An adequacy review is undertaken by Council upon receipt of a PP. Council can reject a PP within 14 days if it is illegible, unclear or is not accompanied by all the information specified in pre-lodgement advice.

If deemed adequate, Council will issue the proponent with an invoice for the applicable fee. Assessment of the PP commences upon payment of the **PP lodgement fee**. Refer to table in section 1.5.1 above. For the purposes of triggering a **rezoning review** request, the timeframe begins from the day an adequate PP is lodged with Council on the Planning Portal and the fees are paid.

#### 3.3.2. Following lodgement

##### Notification of stakeholders

Adjoining landowners and other relevant stakeholders will be advised in writing that a PP has been lodged, and initial community input invited. The timeframe for providing any such feedback will generally be no more than 21 days, noting that the proponent has the option of requesting a rezoning review if Council doesn't reach a decision on the PP request within 90 days for basic and standard PPs, and 115 days for complex PPs.

There may be other circumstances where Council may seek additional community feedback or apply engagement methods beyond that specified in the legislation and the DPE Guideline.

##### Assessment of the proposal

Council will assess the PP once it has been accepted and the lodgement fees paid. Refer to Stage 2 of Section 1 of the DPE Guideline for further details.

According to the DPE Guideline, Council may request further information within 1 - 4 weeks of the PP being lodged on the Planning Portal, and the proponent must provide this within 4 weeks.

Council staff will assess the PP and prepare a report for Council's consideration. The staff report will assess whether the PP:

- has sufficient strategic merit;
- adequately addresses any site merit issues;
- meets other criteria outlined in section 1.7 of this guideline; and

Based on the above assessment, the staff report will recommend that the proponent's PP request be either:

- supported in full
- supported in part, or
- not supported

#### Council meeting

The staff report and recommendation will be included in the business paper for consideration at a formal Council meeting. The business paper for meetings is generally published on Council's website on the Wednesday before the meeting. The proponent and other interested stakeholders will be notified in advance. Further information on Council's meeting procedures is available at:

[www.shoalhaven.nsw.gov.au/Council/Meetings](http://www.shoalhaven.nsw.gov.au/Council/Meetings)

The minutes of the meeting are generally finalised and published within a few days. The resolution made at the Council meeting is Council's adopted position – see below.

#### Council resolution

If Council resolves to support a PP (whether in full or in part), Council will:

- generate and issue an invoice for the applicable fee
- upon payment of the fee, update/amend the PP or may request the proponent to amend the PP
- submit the PP to the Department via the NSW Planning Portal for a Gateway determination. Council will identify if it wishes to seek or not seek to be the **Local Plan making Authority (LMPA)**.

Refer to section 1.4.2 of this guideline regarding the "ownership" of a PP once Council has resolved to support a PP.

## 4. Gateway and Post Gateway (Stages 3 & 4)

### 4.1. Gateway Determination (Stage 3)

A gateway determination is DPE's decision to either allow the planning proposal to proceed, with or without variation; or to not allow it to proceed. Key points of the Gateway determination stage include:

1. Council, is usually appointed as the **Planning Proposal Authority (PPA)** if the Gateway determination allows the PP to proceed.
2. The **PPA** is responsible for satisfying the conditions of a Gateway determination, public exhibition and its finalisation.
3. DPE may require the **PPA** to provide additional information<sup>4</sup> to address any outstanding matters or issues. Additional information<sup>5</sup> is to be provided back to the Department within 20 working days.
4. A Gateway determination to proceed is issued subject to a range of conditions. Gateway conditions typically include minimum exhibition/consultation duration, PP finalisation date and authorities and other stakeholders to be consulted. A gateway determination may in some instances also require additional studies and for the PP to be updated to reflect these prior to public exhibition.

### 4.2. Gateway Review

A Gateway review is an optional mechanism enabling a proponent or Council to request DPE to alter a Gateway determination where a proponent or council disagrees with the determination that:

- states the PP should NOT proceed
- requires that the PP be altered and re-submitted, or
- imposes a condition (other than consultation requirements) which the proponent and/or council thinks should be reconsidered, e.g. a condition that requires the proposal to be varied.

A Gateway review must be requested (to DPE) within 42 days of Gateway determination - in the case of a determination to "not proceed" or to resubmit the PP.

An intention to request a Gateway review is to be submitted (to DPE) within 14 days followed by the formal Gateway review request within 42 days of the "intention" - in the case of a determination permitting the PP to proceed with conditions that the proponent and/or council considers inappropriate.

The Minister or (or delegate) determines the outcome of the review following the process outlined in Stage 3 of Section 1 of the DPE Guideline. Refer to the DPE Guideline for more details on the Gateway review process.

### 4.3. Post Gateway (Stage 4)

Any pre-exhibition conditions of the Gateway determination must be satisfied prior to public exhibition, including completion of any required studies and government agency consultation. Council will review and potentially refine the PP based on the outcomes and findings of this work.

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<sup>4</sup> Depending on the nature and extent of the additional information sought, Council in turn may require the proponent to provide such additional information

<sup>5</sup> the DPE Guideline states that where the additional information sought is more significant or where the information cannot be provided within a reasonable timeframe, DPE will request that the PP be withdrawn from the Gateway and be resubmitted when the additional information is available. This emphasises the importance of ensuring all the relevant information is provided "pre-gateway"

If the Gateway determination requires any additional study or studies prior to public exhibition, Council will generally direct the proponent to undertake and submit these, and where relevant, require the proponent to amend the PP document accordingly.

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## 5. Public Exhibition and Community Engagement (Stage 5)

### 5.1. Public Exhibition

Council generally follows the consultation and public exhibition requirements set out in the EP&A Act, the DPE Guideline; and the Gateway determination.

Schedule 1 of the EP&A Act prescribes the minimum periods for exhibition of PPs subject to a Gateway determination as follows:

- The period specified in a Gateway determination; or
- No public exhibition if a Gateway determination specifies that none is required; or
- 28 days otherwise.

DPE's recommended exhibition period for the relevant PP categories is reproduced below.

**Table 4 - DPE's recommended exhibition period: basic, standard and complex PPs (DPE Guideline)**

| PP Category | DPE's recommended exhibition period (working days) <sup>6</sup> |
|-------------|---|
| Basic       | 10  |
| Standard    | 20  |
| Complex     | 30  |

The Gateway determination will nominate the minimum duration of the exhibition period. Council may choose to extend the period in certain circumstances provided this is not contrary to the Gateway determination or DPE's benchmark timeframes.

### 5.2. Council Meetings

Council will notify the relevant stakeholders prior to a PP being considered at a meeting of Council (including a committee that has delegation to make decisions on Council's behalf). Relevant stakeholders include:

- Owner(s) of the subject land/s OR the proponent
- Relevant Community Consultative Bodies (CCBs) and/or other community groups with an interest in the matter
- Anyone who has made a submission on the PP
- Anyone who has subscribed to a "Get Involved" Page (if applicable)
- Anyone who has requested to be notified of the PP after its lodgement with Council
- Applicable Local Aboriginal Land Council where relevant
- Other stakeholders where appropriate

Note: Due to limitations imposed by Council processes and timeframes, it is generally not possible to provide more than 5 days' notice. The notification will include details of the meeting time and place, and information on how to register to make a deputation to the meeting.

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<sup>6</sup> Working days means Monday through Friday excluding Saturday and Sunday, public holidays, and the Christmas/New Year period between 20 December and 10 January (inclusive).

## 6. Public Exhibition, Assessment and Finalisation (Stages 5 & 6)

Once consultation has been completed, the feedback will be collated and summarised and a report on the outcomes will be prepared for consideration by the elected Council. Further details are provided below.

### 6.1. Public Exhibition and Assessment (Stage 5)

- Council will summarise issues raised in community and government agency submissions and provide a copy to the proponent.
- The proponent will be asked to prepare a response to the issues raised, including any potential amendments to the PP. The proponent may be requested to provide further information to clarify or support the PP following exhibition depending on the nature of the submissions received and/or any changes to the PP that may be recommended.
- Council will liaise with government agencies to resolve any key issues.
- Council will consider the community and government agency feedback, and the proponent's response and will discuss any potential changes to the PP with the proponent.
- Council will prepare a report for consideration by the elected Council to determine if the PP (with or without amendments) should be finalised.
- If a planning proposal is revised, forward a copy of the revised proposal to DPE.
- If the PP is significantly modified or the potential impacts are increased, the PP may need to be re-exhibited.
- Any changes to the PP may require the Gateway determination to be altered (in particular if additional time is required to finalise the proposal).

### 6.2. Finalisation – Post Exhibition (Stage 6)

Once Council has resolved to finalise a PP, the LEP amendment process (Stage 6) is largely administrative, involving Council, DPE and the Parliamentary Counsel's Office. There is usually no role for the proponent in this stage.

The DPE Guideline outlines the steps and processes for finalisation of the PP and ultimate LEP amendment.

The process for finalisation of a PP/LEP depends on whether or not Council is the **Local Plan Making Authority (LPMA)** and whether the LEP amendment involves changes to the written instrument and/or the map overlays.

The PP is given legal effect and formally concluded when the LEP is amended. The LEP amendment takes legal effect on the date it is notified on the NSW Legislation website. Once the LEP amendment is notified, Council will notify the proponent and other relevant stakeholders.

## Appendix 1 – Stages of the PP Process (Source: DPE Guideline)

|  |   |
|--|---|
| <b>STAGE 1</b>   | <b>Pre-Lodgement</b><br><b>What is your LEP amendment and what should be included in a planning proposal?</b><br>Early analysis of the development potential of the relevant land including key environmental or site constraints, review of the strategic planning framework, obtaining advice and consultation with authorities and government agencies and identification of study requirements to underpin a planning proposal.                       |
| <b>STAGE 2</b>   | <b>Planning Proposal</b><br><b>Preparing the planning proposal</b><br>Where the planning proposal has been initiated by a proponent, council is to review and assess the planning proposal and decide whether to support and submit it to the Department for a Gateway determination. Where the planning proposal has been initiated by council, council is to prepare the planning proposal and submit it to the Department for a Gateway determination. |
| <b>Rezoning Review</b><br><b>Review of proponent-initiated planning proposal by independent planning panel if not supported / or progressed by council</b><br>A proponent may request a rezoning review if a planning proposal is not supported by council or no decision is made within 115 days for complex planning proposals or 90 days for all other types of planning proposals. |   |
| <b>STAGE 3</b>   | <b>Gateway Determination</b><br><b>Department review of the planning proposal</b><br>Department assesses the strategic and site-specific merit of a planning proposal and issues a Gateway determination specifying if the planning proposal should proceed and whether consultation with authorities and government agencies is required.  |
| <b>Gateway Review</b><br><b>Reviewing and altering a Gateway determination</b><br>A proponent/PPA may request review of conditions or determination within 42 days of Gateway determination.   |   |
| <b>STAGE 4</b>   | <b>Post-Gateway</b><br><b>Actioning Gateway determination conditions</b><br>PPA reviews the Gateway determination and actions any required conditions prior to public exhibition.   |
| <b>STAGE 5</b>   | <b>Public Exhibition and Assessment</b><br><b>Engaging with the community</b><br>Consultation with the community, key authorities and government agencies (as required). Review of the planning proposal to address conditions of Gateway determination and submissions.  |
| <b>STAGE 6</b>   | <b>Finalisation</b><br><b>Making the LEP</b><br>Final assessment of the planning proposal and if supported, preparation of the draft LEP, review and finalisation. Once finalised, the LEP may be made, notified and come into effect.  |

## Appendix 2 - Associated Planning Mechanisms

The following are a range of other planning mechanisms which may be required and carried out simultaneously with a PP. The appropriate mechanism may be flagged by Council at the pre-lodgement stage.

### Biodiversity Certification

Biodiversity Certification is a streamlined biodiversity assessment process through which the potential impacts on biodiversity can be identified and fully resolved at the PP stage. Where land is certified, development may proceed without the usual requirement for further assessment at the development application (DA) stage.

Biodiversity Certification is administered by the NSW DPE under the authority of the NSW Minister for Environment and Heritage.

To prevent any complications or delays at the development stage, Council may insist that sites with significant flora and fauna issues be biodiversity certified as part of the PP process.

### Development Contributions Plans

Development Contributions Plans (CPs) are a mechanism under the EP&A Act allowing councils to levy developers for certain types of infrastructure in certain situations. Once adopted, development contributions are compulsory at the DA and approval stage.

CPs are an appropriate means to fund infrastructure in the following circumstances:

- All required infrastructure is able to be levied in a CP
- The financial risk to Council is acceptable
- The ownership of the land is fragmented or the owner(s) are otherwise unwilling to negotiate a planning agreement.

Council's CP has a number of site-specific contributions. If a PP adjoins or is within a site specific CP area, Council will consider the appropriateness of amending that site-specific CP.

If a CP is proposed, it should be identified as early as possible in the PP process.

A CP will be exhibited with the PP.

### Planning Agreements

Planning agreements are a legal agreement between a public authority and a landowner aimed at delivering infrastructure outcomes associated with proposed development including any development that might be facilitated by a PP.

Local planning agreements are negotiated between a developer and a council to enable the provision of development contributions for a variety of additional public purposes not covered by any local contributions plan (CP) or fixed development consent levies plan.

A contribution made by a developer under a planning agreement can be one of or a combination of a monetary contribution, the dedication of land free of cost or the provision of another material public benefit, to be used for or applied towards a public purpose. A planning agreement can exclude the application of any relevant CP in appropriate circumstances.

A planning agreement is usually preferable to a CP in that it offers more flexibility to Council and the landowners. A planning agreement is, however, a voluntary agreement. Consequently, this mechanism can only be used where all landowners involved, and the Council are willing to sign off on the agreement.

Planning agreements must be prepared in accordance with Council's Planning Agreement Policy which can be found at:

<https://doc.shoalhaven.nsw.gov.au/Displaydoc.aspx?Record=POL08/417>

The cost of planning agreement preparation is to be borne by the proponent in accordance with Council's fees and charges.

If a planning agreement is proposed, it should be identified as early as possible in the PP process. Generally, a planning agreement will be exhibited with the PP.

## **Development Control Plans – Site Specific Chapters**

A Development Control Plan (DCP) is a Council document that supports the Local Environmental Plan (LEP) and provides additional objectives, development controls and guidance.

Shoalhaven DCP 2014 is divided into over 60 individual chapters that have been grouped into the following:

- Generic chapters: 28 chapters (G1-G28) relating to types of development or development-related issues across the Shoalhaven LGA.
- Area specific chapters:
  - Various Areas: Lot averaging (V1), building lines for specific localities (V2), and miscellaneous site-specific issues (V3)
  - Nowra-Bomaderry Urban Release Areas: Reserved for URAs identified in the Nowra-Bomaderry Structure Plan.
  - North Shoalhaven: Area specific provisions for localities north of Sussex Inlet. (N1-N28)
  - South Shoalhaven: Area specific provisions for localities from Sussex Inlet to the south (S1-S10).

Council will determine the form and place for any DCP controls required to accompany a given PP on a case by case basis, but in general does not wish to see unnecessary site specific DCP chapters that do not achieve substantial planning outcomes.

Generally, site-specific DCP chapters or provisions will only be considered in the following circumstances:

- URAs
- Sites that have been master planned in detail during the PP process
- Sites that have significant constraints that are best managed through a site specific DCP chapter or provisions
- Heritage conservation areas and/or groups of heritage items
- Sites that require detailed urban design controls because of their particular context
- Town and village centres

If the DCP needs to be amended to facilitate the intended outcomes of a PP, it should be identified as early as possible in the PP process. A DCP amendment (including a new chapter) will be exhibited with the PP.

All amendments are managed by Council. In the case of proponent initiated PPs, fees apply for preparing any supporting DCP amendments in accordance with Council's fees and charges.



Address all correspondence to:

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