



BALLINA SHIRE COUNCIL

**Planning Proposals and Local Environmental Plan
Amendments**

Process Guidelines

Ballina Shire Council - Planning Proposals and LEP Amendments: Process Guidelines v1.1



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Version Control

Document Version	Date	Reviewed and Approved
1.0	23 March 2011	MANEX/ Strategic and Community Services Group
1.1	7 September 2012	Strategic & Community Services Group

1.0 BACKGROUND

1.1 Scope and Purpose of Guideline

Amendment to the *Environmental Planning & Assessment Act* and the associated Regulation on 1 July 2009 introduced the current system for the preparation of local environmental plans (new or amending) known as the 'Gateway' system. Under the Gateway system, Council is identified as a Relevant Planning Authority, meaning it has a central role in the processing of LEP amendments.

This guideline provides an overview of the way in which Ballina Shire Council discharges its responsibilities under the EP&A Act with respect to the preparation and processing of LEP amendments.

1.2 Local Environmental Plan Amendments

Local environmental plans may be amended in order to introduce new planning provisions or policy where considered appropriate by the Relevant Planning Authority (RPA), being either Council or the State Government. Amendments can be in a variety of forms and may comprise of changes to development standards, assessment requirements, land use permissibility or zoning. Most commonly, LEP amendments that are sought by landholders are centred on a request to rezone land in order to enable certain development.

Local environmental plan amendments may be requested by landowners, developers or the community. Amendments may only be undertaken by an RPA and RPAs may initiate an amendment. Decisions regarding the progress of an LEP amendment are made by RPAs and are not open to merit based court appeals.

1.3 Planning Proposals

A Planning Proposal is a document that outlines and examines the effect and purpose of a proposed LEP amendment. Planning Proposals are the vehicles for amendment to LEPs under the EP&A Act.

Where an amendment to the Ballina LEP is proposed, Ballina Shire Council or its agent will prepare the Planning Proposal (see below for further details regarding information requirements, process and fees).

1.4 Further Information

Further information can be obtained by contacting Council's Strategic and Community Services Group on telephone 6686 1284.

Alternatively, the NSW Department of Planning may be contacted - see www.planning.nsw.gov.au for contact information. The Department also publishes several guides with respect to LEP amendments and Planning Proposals.

2.0 LEP AMENDMENT PROCESS

2.1 Process Overview

The following flow charts illustrate the LEP amendment and Planning Proposal process as undertaken by Ballina Shire Council. Table 1 provides further details with respect to the key steps in the process.

CHART 1 – Local Environmental Plan Amendment Initiation

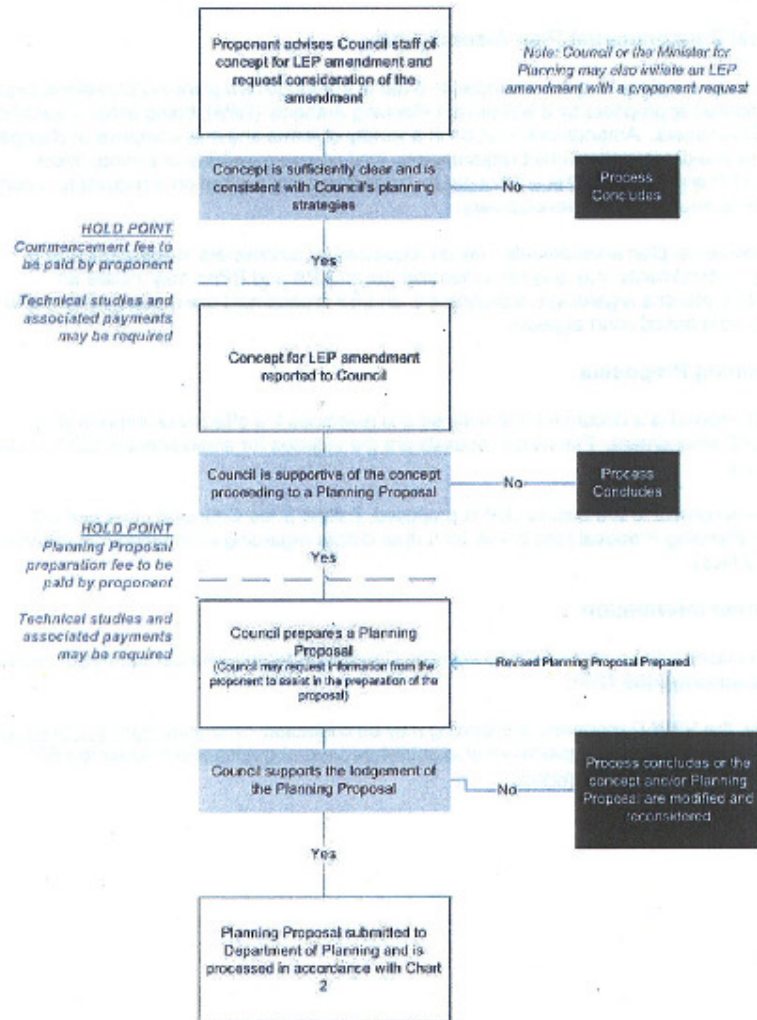


CHART 2 – PROCESS FOR MAKING A LOCAL ENVIRONMENTAL PLAN (Council as RPA)

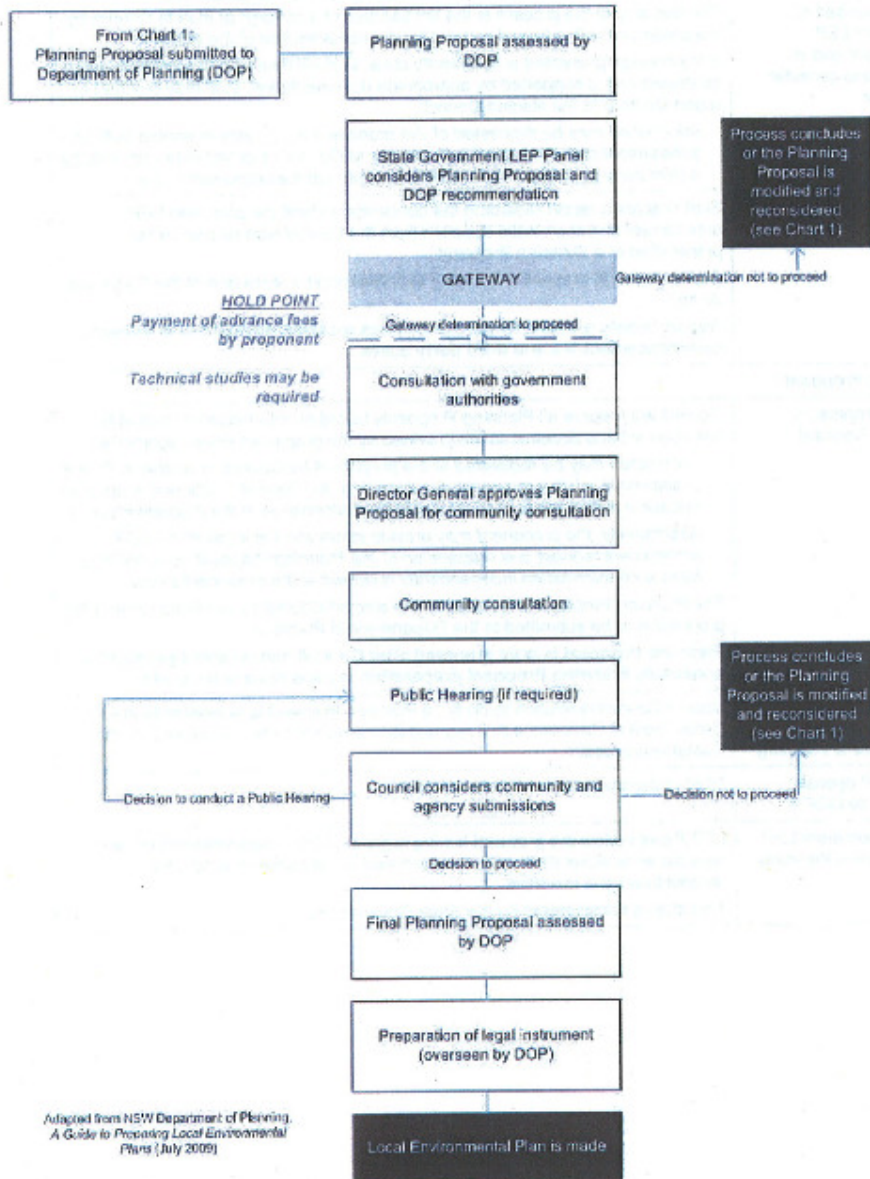


Table 1: Overview of Key Steps in LEP Amendment Process

Step	Overview
LEP Amendment Initiation	
Council advised of concept for LEP amendment and is requested to consider the matter	The first step in the process is the introduction of a concept or idea to Council by the proponent with a formal request for the consideration of the matter. If the concept presented is sufficiently clear, is consistent with Council's planning strategies and is supported by appropriate documentation, staff may proceed to report the item to the elected Council. <i>Information may be requested of the proponent by Council to enable sufficient assessment of the proposal for reporting to Council. Council may also engage a third party to prepare necessary information at the proponent's cost.</i>
Concept for LEP amendment reported to Council	Staff prepare a report regarding the concept(s) behind the proposed LEP amendment and seek initial direction from the Council with respect to the preparation of a Planning Proposal. Staff proceed to prepare a Planning Proposal upon a resolution of the Council to do so. Report is only prepared after Council has received payment of applicable commencement fee and third party costs.
Planning Proposal	
Council prepares a Planning Proposal	Council will prepare all Planning Proposals based on information compiled by both Council and documentation provided by the proponent where appropriate. <i>Information may be requested of the proponent by Council to enable sufficient assessment of the proposal for reporting to Council. Council may also engage a third party to prepare necessary information at the proponent's cost.</i> <i>Alternatively, the proponent may provide information to support the LEP amendment request and preparation of the Planning Proposal. Council may have such information independently reviewed at the proponent's cost.</i> The Planning Proposal is reported to the elected Council for confirmation that the proposal is to be submitted to the Department of Planning. Planning Proposal is only prepared after Council has received payment of applicable Planning Proposal preparation fee and third party costs.
Planning Proposal submitted to the Department of Planning	Upon a Council resolution to do so, a Planning Proposal is submitted to the Department of Planning with a request for the matter to be considered via the Gateway process.
Planning Proposal assessed by DOP	DOP undertakes review of the proposal.
State Government LEP Panel reviews Planning Proposal	LEP Panel review the proposal having regard for DOP recommendations and determines whether the matter may proceed, must cease or should be reconsidered and modified. This step is administered by the State Government.

Step	Overview
Engagement and Plan Making	
Consultation	<p>Government agencies and the community are engaged with respect to the Planning Proposal and feedback and comment is sought.</p> <p>Community consultation occurs following approval to do so by the Director General of the DOP.</p> <p><i>Council may require technical studies and assessment to be undertaken prior to or after the consultation phase. This may involve review and assessment of material submitted by the proponent by Council and/or a Council engaged third party for preparation of reporting by Council staff.</i></p> <p><i>Council may elect to have technical documentation compiled into an environmental study for exhibition at the proponent's cost</i></p> <p>Planning Proposal and LEP amendment is only processed after the applicable advance payment has been paid to Council.</p>
Public Hearing	Council may elect to hold a public hearing into all or part of the LEP amendment proposed.
Council review of community and agency submissions	Submissions are reviewed and a decision is made as to whether to proceed with, cease or modify the Planning Proposal. This decision is made by resolution of the elected Council.
Final Planning Proposal assessed by DOP	Where a Planning Proposal proceeds following the review of submissions, the finalised proposal is forwarded to the DOP for the Minister to determine whether the matter proceeds to completion and implementation.
Preparation of legal instrument	DOP arrange for the legal instrument to amend the Ballina LEP to be prepared.
Local Environmental Plan is made	Amendment is introduced into the LEP and commences operation at the time of publication by the NSW Government or at a date specified.

2.2 Applicant Risk and Termination of LEP Amendments

Key procedural notes:

- Council may decline to progress an LEP amendment concept, Planning Proposal or investigations into an LEP amendment at any time.
- Council may decline to endorse an LEP amendment at any time including after all investigations, analysis and community engagement have been completed.
- Council staff may decline to accept proponent prepared technical studies for review where they are considered inadequate to enable a complete and integrated assessment.
- Costs associated with the LEP amendment process and Planning Proposals (where following a request from a proponent) are to be paid by the proponent. All costs for processing and investigations by Council engaged third parties (at any phase) are to be paid by the proponent. All Council staff costs associated with a Planning Proposal after submission of the Planning Proposal to the DOP are to be paid by the proponent based on a fixed hourly rate.
- Council may process LEP amendment requests in the order it sees fit. Time of lodgement does not determine the priority for processing and progress of an amendment. Council may hold or defer consideration of LEP amendments at its discretion.
- Council gives no undertaking that the processing of an LEP amendment will result in the requested amendment occurring. It is possible that all steps in the process can be completed and an amendment be declined. There is no merit based court appeal avenue available in NSW where an LEP amendment is declined or processing is ceased.

2.3 Independent Planning Consultants

Where the processing of a Planning Proposal involves the assessment and compilation of technical information, Council may engage a third party to act on its behalf. Council may engage a third party at any phase to undertake assessment, compilation of material, preparation of technical studies, reporting, meetings, consultation, presentations and the like in relation to the amendment. The engagement of such a third party and the associated scope of works is at the Council's discretion and costs associated with such an engagement are to be paid for by the proponent. The proponent is also liable to pay staff time costs associated with the assessment and processing of an amendment following submission of a Planning Proposal to the DOP, regardless of whether a third party assessment is engaged.

Advance payments are required for third party fees.

A third party assessment may utilise material prepared by the proponent or may compile its own technical documentation depending on the circumstances associated with the amendment.

Third party engagements are administered by Council. Contact between third parties (acting on behalf of Council) and the proponent may only occur by approval from Council.

2.4 Fees

Council has established the following fee structure that is applicable to LEP amendment requests. As outlined above, amendment requests will be held at set points pending payments of applicable fees.

Phase 1: LEP Amendment Initiation

Commencement Fee: This fee is payable upon a formal request for Council to consider an initial concept or idea for an LEP amendment. This fee is for Council staff to prepare an initial report to the elected Council regarding the concept. The purpose of the report is to seek direction regarding further progress of the matter. This fee is non refundable regardless of the decision of Council or if the proponent withdraws following the making of a formal request.

The commencement fee for 2011/2012 is \$2,500 exclusive of GST

Phase 2: Planning Proposal

Planning Proposal Preparation Fee: This fee is payable upon a Council decision to proceed to prepare a Planning Proposal. This fee is for Council staff to prepare a Planning Proposal for consideration by the elected Council and subsequent submission to the DOP (should Council decide to proceed with the proposal). This fee must be paid prior to the preparation of a Planning Proposal and is non refundable following commencement of the Planning Proposal's preparation.

The Planning Proposal fee for 2011/2012 is two tiered and applies as follows:

Minor amendment (limited technical assessment anticipated for project)	\$2,500 excl of GST
Major amendment (extensive technical assessment and reporting anticipated for project)	\$5,000 excl of GST

Council's General Manager or his/her nominee will be the arbiter for determining whether a proposal constitutes a minor or major amendment where there is uncertainty.

Phase 3: Engagement and Plan Making

Prior to the commencement of the engagement and plan making phase, Council requires an advance payment to cover costs incurred for work undertaken after a Planning Proposal receives both Council and State Government endorsement to proceed. This payment may be used for the payment of both consultant fees and Council staff time incurred in relation to the amendment.

Additional advance payments will be required as the project progresses.

Advance payments are based on stages established for each amendment process and are levied as follows:

Invoice Timing	Invoice Value
Following LEP Panel approval for the matter to proceed.	Amount for stages 1 and 2 based on the staging plan.
Following completion of Stage 1	Amount for Stage 3
Following completion of Stage 2	Amount for Stage 4
Following completion of Stage 3	Amount for Stage 5

Additional stages will be invoiced using the same logic as outlined above.

Work will not commence on the engagement and plan making phase of an LEP amendment until the initial advance payment is received.

Where an invoice is not paid within the specified timeframe on the invoice, work may cease on the project until such time as the required amount is paid in full or another arrangement satisfactory to Council is made.

Notes:

Council may engage the services of an independent third party to compile or review materials at the proponent's cost. Where this occurs at the commencement or Planning Proposal phases, payment for the service will be required from the proponent prior to the commencement of the required work.

No fees are payable where the amendment request relates to the correction of an anomaly.

Fees are subject to change each financial year. Council's adopted fees are charges should be consulted to determine applicable fees for the current financial year.

Where the processing of a Planning Proposal extends across financial years, the fees payable will be levied on the basis of the fees applying in the financial year in which a processing phase is commenced.

2.5 Proponent & Proposal Information Form

To assist Council in the processing of an LEP amendment request, Council requires a completed Planning Proposal / LEP Amendment Request Proponent & Proposal Information Form at the time a request is lodged with Council.

9.1 **LEP Amendment Request and Planning Proposal Status Report.DOC**

David Kitson
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Gosford 2250

Mob 043 227 1110

Paul Hickey
General Manager
Ballina Shire Council

2 October 2012

Attention: Matthew Wood

**Re: Draft Amendment No. 108 to Ballina Local Environmental Plan 2011
Reservoir Site, Lennox Head.**

Dear Matthew

I confirm receipt of your telephone advice of advice of 28 September 2012, as the land owner of Lot 1 DP 878933, corner of North Creek Road & Henderson Lane, Lennox Head, that you are reviewing the progress of the above matter.

I wish to confirm that we have undertaken and completed the following studies in respect to our land:

- Contamination Investigations. As you would be aware, the investigations indicated areas of contamination from past agricultural practices. In addition to the investigations, we have also completed the work necessary to remediate the site to the requirements of Council and the EPA. The remediation report was lodged with Council in December 2011 and signed off by Council in February this year.
- Geotechnical Investigations – completed August 2012.

Further studies will be commissioned in the near future to complete the necessary documentation for the planning proposal over our land to be completed.

It should be noted that the Condon Family have also expended significant monies on studies and consultants and have an intention to either complete the planning proposal themselves or to on-sell the land to a party that will.

Clearly, Council active support is important for the continued investment in the planning proposal.

9.1 LEP Amendment Request and Planning Proposal Status Report.DOC

It is request that Council continue to support this planning proposal by submitting a case that the deadlines for the completion of the planning proposal imposed by the Department be waived on the basis that.

- The significant investment that has and is occurring towards the completion of the necessary studies and investigations.
- The long term strategic planning for the land.
- The unnecessary time and cost involved in restarting the process for no good reason.

Your support in respect of this request is appreciated.

Your sincerely

David Kitson