



## **BALLINA SHIRE COUNCIL**

# **Planning Proposals and Local Environmental Plan Amendments**

## **Process Guidelines**

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## Version Control

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## **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 planning proposal authority, meaning it has a central role in the processing of local environmental plan (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 a planning proposal authority (PPA). The PPA can be Council or another body appointed by the Minister for Planning and Public Spaces, such as the Department of Planning, Industry and Environment or a Joint Regional Planning Panel.

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. Council may also initiate amendments as a planning authority. Amendments may only be undertaken by a PPA. Decisions regarding the progress of an LEP amendment are made by PPAs and the Minister for Planning and Public Spaces and are not open to merit based court appeals. However, there are opportunities to seek review of decisions by the Department of Planning, Industry and Environment at certain points in the amendment process.

### **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 and the proposal is supported by Council, Ballina Shire Council or its agent will prepare a 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 Planning Section on telephone 6686 1284.

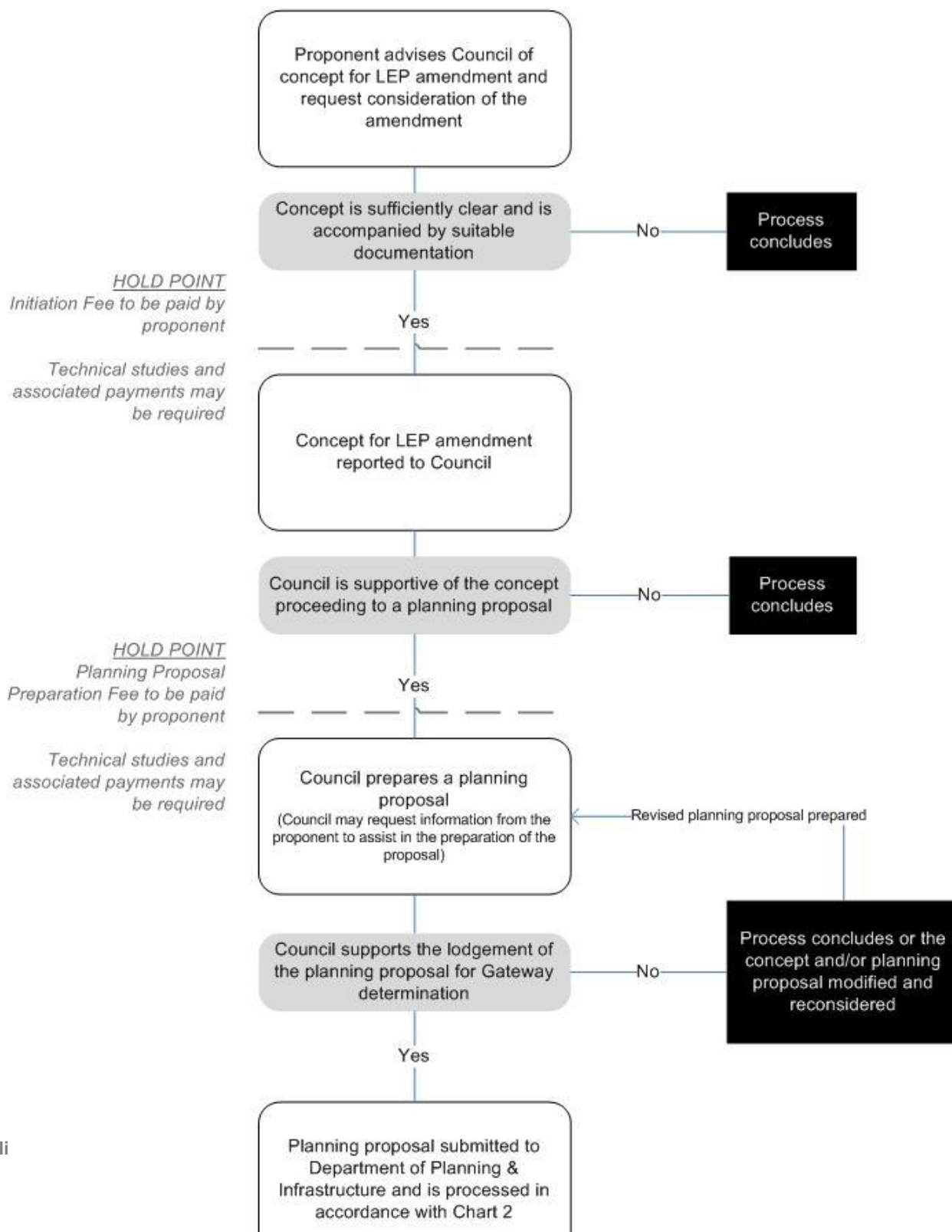
Alternatively, the NSW Department of Planning, Industry and Environment may be contacted - see [www.planning.nsw.gov.au](http://www.planning.nsw.gov.au) for contact information. The Department also publishes several guides with respect to LEP amendments and planning proposals.

## 2.0 LEP AMENDMENT PROCESS

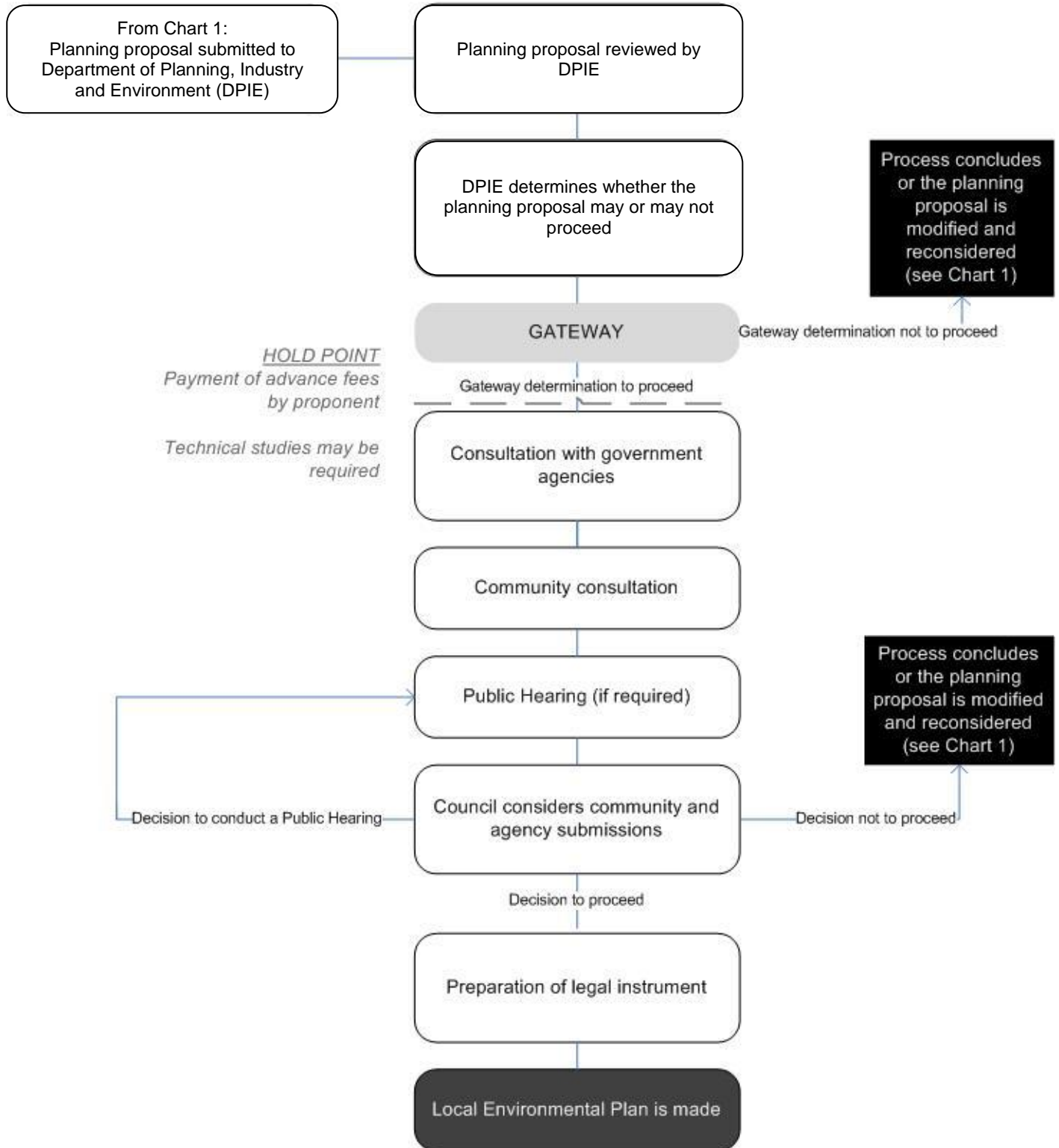
### 2.1 Process Overview

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
<b>LEP Amendment Initiation</b>	
Proponent discusses LEP amendment with Council staff	This is the first step in the process and will result in advice being provided on the amendments feasibility and the likely nature of the procedural steps involved. For example where an LEP amendment proposal relates to the correction of an error or anomaly these will be processed by Council at no cost. Minor non urgent amendments may be suitable for incorporation within an annual housekeeping LEP amendment process which attracts a lower fixed fee.
Council advised of concept for LEP amendment and is requested to consider the matter	The second 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 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.  <b>A report is only prepared after Council has received payment of the applicable amendment commencement fee.</b>
<b>Planning Proposal</b>	
Council prepares a planning proposal	Council or its agent 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 may be submitted to the Department of Planning, Industry and Environment (DPIE).  <b>A planning proposal is only prepared after Council has received payment of applicable planning proposal preparation fee and third party costs.</b>
Planning proposal submitted to the Department of Planning, Industry and Environment (DPIE)	Based on a Council resolution, a planning proposal is submitted to the Department of Planning, Industry and Environment with a request for the matter to be considered via the Gateway process.
Planning proposal assessed by DPIE	DPIE undertakes a review of the proposal.
Gateway determination	DPIE determines whether the matter may proceed, must cease or should be reconsidered and modified.  This is the Gateway determination and this step is administered by the State Government.

Step	Overview
<b>Engagement and Plan Making</b>	
Consultation	<p>Following a Gateway determination enabling a proposal to proceed, Government agencies and the community are engaged with respect to the planning proposal and feedback and comment is sought.</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><b>A planning proposal and LEP amendment is only processed after the applicable fee has been paid to Council. Council's Fees and Charges document specifies the nature and amount of fees applicable.</b></p>
Public Hearing	Council may be required to, or 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.
Preparation of legal instrument	<p>Where a planning proposal proceeds following the review of submissions, the proposal is finalised by either:</p> <ul style="list-style-type: none"> <li>- the DPIE based on a review of the planning proposal; or</li> <li>- Council directly in liaison with Parliamentary Counsel.</li> </ul> <p>The process of finalisation depends on whether plan making functions for an amendment have been delegated to Council by the Minister for Planning and Public Spaces.</p> <p>Only the Minister for Planning and Public Spaces or the Minister's delegate can make an LEP amendment.</p>
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 Decision Review

There are two formal opportunities for the review of decisions in the LEP amendment process, being pre-gateway and post-gateway. The review processes are administered by the DPIE.

Details of the circumstances where a review can be sought and the applicable processes are contained in the DPIE's [A guide to preparing local environmental plans](#).

## 2.3 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. Where

applicable in the case of major amendments or where independent assessment or specialised studies are required all Council staff costs associated with a planning proposal after submission of the planning proposal to the DPIE 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. Where an amendment is considered suitable for the annual housekeeping amendment process then Council may also resolve that an amendment proposal be processed via this typically annual process.
- 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.

## 2.4 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 preparation of any specialised studies that may be required.

Advance payments are required for third party fees and to meet Council staff costs associated with the preparation of specialised studies. Depending on the complexity of the proposal a payment system based on phased progress payments may be agreed.

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.

## 2.5 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.

### Stage 1: LEP Amendment Commencement

**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.

LEP amendments which seek to correct an error or anomaly are exempt from fees.



Minor LEP amendments considered suitable for the annual housekeeping process are subject to a set lump sum fee as specified in Council's *Fees and Charges* document. This fee is 50% refundable pre-Gateway if the amendment proposal is not supported by Council. No refund provisions exist post-Gateway.

## **Stage 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 DPIE (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.

## **Stage 3: Post Gateway Finalisation Fees**

Prior to the commencement of the engagement and plan making phase, Council requires payment of applicable fees. Fees vary depending on whether the LEP amendment is minor or major. In the case of minor amendments, or major amendments which are consistent with the strategic planning framework and applicable s9.1 Directions and where all required studies have been prepared and no independent review is required, a fixed fee is applicable as specified in Council's *Fees and Charges* document. In the case of major amendments which involve multiple sites or where independent assessment or specialised studies are required to be completed by Council a fixed fee component plus costs fee structure is applicable.

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.

Work will not commence on the engagement and plan making phase of an LEP amendment until the fee specified in Council's *Fees and Charges* document 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:**

Where the cost estimate is less than \$25,000 for Stage 3, fees may be levied as a single payment.

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 stage, payment for the service will be required from the proponent prior to the commencement of the required work.

Fees are subject to change each financial year. Council's adopted fees and 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 stage is commenced.