

Lismore City Council

Guidelines for Local Environmental Plan Amendments (Planning Proposals)



1.0 Background Information

1.1 Guideline objective

To provide a summary of the process in which Lismore City Council satisfies its statutory responsibilities under the *Environmental Planning and Assessment Act 1979* (EP&A Act) regarding planning proposals/Local Environmental Plan (LEP) amendments.

1.2 What is a Local Environmental Plan?

A Local Environmental Plan (LEP) is prepared by Council to guide planning decisions for the local government area and is made up of a written instrument and associated maps. The LEP allows Council to supervise the ways in which land is used through zoning, development standards and general provisions. Specifically, the LEP states whether development:

- is permissible on the land;
- is subject to specific restrictions, including controls on height, minimum land area and floor space ratio;
- requires consent of Council.

A LEP is prepared in accordance with the *EP&A Act 1979*, and the *Environmental Planning & Assessment Regulation 2000* and is approved by the Minister for Planning and Infrastructure.

LEPs apply to a particular area, generally the whole, or sometimes part of a local government area (LGA).

1.3 What is zoning?

Zoning is used to manage the different land uses and development types throughout the Lismore LGA. Zones used in the Lismore LGA include various types of rural, residential, business, industrial, special purpose, recreation, environmental protection and waterways.

The LEP specifies the types of development that may be carried out (with or without development consent) and the types of development that are prohibited in zones.

1.4 Rezoning and other LEP amendments

A rezoning is a change to the zone of an area of land. This can increase or decrease the range of permissible uses for the land or change the development controls that are applicable. Land can only be rezoned through a formal amendment to the LEP.

A LEP can also be amended to change and/or include additional development standards and general provisions (e.g. building heights), provided such standards or provisions are not mandated parts of the Standard Instrument LEP. Rezoning and other amendments to the LEP are referred to as Planning Proposals.

2.0 Preparing a LEP Amendment

2.1 What is a planning proposal?

The preparation of a planning proposal is the first step in making an amendment to a LEP. A planning proposal is a document that explains the intended effect of, and justification for, a proposed LEP. Under the part 3 of the *EP&A Act 1979*, Council must prepare and submit a planning proposal to the Department of Planning and Infrastructure for consideration.

A planning proposal must include the following:

- A statement of objectives and intended outcomes of the proposal,
- An explanation of the provisions that are to be included in the proposal,
- A justification of the objectives and outcomes, including the process of how these are to be implemented,
- Maps containing the appropriate details, including land use zones, heritage areas, flood prone areas and other constraints where applicable, and
- Details of the community consultation that will be undertaken.

The Department of Planning and Infrastructure's "*A guide to preparing planning proposals*" and "*A guide to preparing local environmental plans*" should be read in conjunction with this guide.

It should be noted that applications to rezone land are generally not encouraged by Council unless:

- The land is identified for more intensive zoning (such as residential) in a Council or State government strategy,
- The land cannot be reasonably developed or used under the existing zoning, or
- Development of land in accordance with the existing zone would not be in the public interest.

Preliminary discussions with a strategic planning officer from Council's Strategic Planning Unit are recommended prior to preparing an application to amend the LEP. These officers can be contacted on 1300 878 387 and can explain the process and discuss any issues that may be relevant to the specific proposal.

2.2 Reporting the planning proposal to Council

A planning proposal must be formally considered at a Council meeting. Council officers will make a report to Council on the merits of the proposal. Council does not have to support planning proposal applications. Similarly, a Council resolution to prepare a planning proposal does not necessarily guarantee that the proposal will proceed.

If Council agrees to proceed with the planning proposal, it must resolve to support the proposal and forward it to the Minister for Planning and Infrastructure for a "gateway determination".

2.3 Gateway determination

The gateway determination is a State government checkpoint for planning proposals before significant resources are committed to carrying out technical studies and investigations. The Department of Planning and Infrastructure's LEP Review Panel will review the proposal against set criteria and make a recommendation to the Minister whether or not to proceed. At the gateway determination, the Minister (or delegate) will decide:

- Whether the proposal is justified on planning grounds;
- Whether the planning proposal should proceed (with or without variation);
- Whether the planning proposal should be resubmitted for any reason (including for further studies or other information, or for the revision of the planning proposal);
- The community consultation required;
- Any consultation required with State or Commonwealth Public Authorities;
- Whether a public hearing by the Panel Assessment Commission or other specified person or body is required;
- The time-frames for the various stages of the planning proposal;
- Whether the function of making the LEP is exercised by the Minister for Planning and Infrastructure or delegated to Council.

2.4 Public exhibition

Council will be advised through the gateway determination of the appropriate community consultation process and the referral requirements regarding State or Commonwealth Public Authorities. This will involve public exhibition of the proposal for either 14 days (for low impact proposals) or 28 days (for other proposals). Council may choose to have a longer exhibition period if in its view additional consultation is warranted. During the exhibition period any person can make a submission concerning the proposal. A public hearing may also be arranged, if the issues raised in submissions are considered by Council to justify a hearing, and a report will be prepared and made public.

Please note that under section 73A of the *EP&A Act 1979* some minor changes (such as misdescriptions of property or incorrect map references) to the LEP can be made without public exhibition if the Minister agrees. The Minister may also issue a gateway determination without the need for public exhibition for very minor amendments deemed not to have any significant adverse impacts in accordance with section 56(2)(c) of the *EP&A Act 1979*.

2.5 What information needs to be submitted with a planning proposal application?

The information needed to be submitted with a planning proposal is detailed in the Department of Planning and Infrastructure's "*A guide to planning proposals*". A request for a planning proposal must also be accompanied by a covering letter. Four hard copies and one electronic copy of the planning proposal documentation are required by Council.

Planning proposal applications will require external planning expertise on behalf of the applicant. It is recommended that a town planning consultant be engaged for the preparation of planning proposal applications regardless of whether the proposal is of a minor or major nature. Other specialist consultants may also be needed to provide technical input to the proposal.

2.6 What are the costs involved with a planning proposal?

Under Section 54(3) of the *EP&A Act 1979*, Council may require the applicant to carry out studies or provide other information concerning the proposal, and to pay the associated costs involved in the process of preparing a Planning Proposal. In accordance with the clause 11 of the *EP&A Regulation 2000* and clause 608 of the *Local Government Act 1993*, Council may enter into an agreement with the applicant of a planning proposal for the costs and expenses associated with the preparation of the proposal.

In accordance with Council's Schedule of Fees and Charges 2012/13, a professional service fee of \$185 per hour per staff member and a commencement fee of \$2865 is charged for a privately initiated planning proposal. These charges may change and applicants should refer to Council's Schedule of Fees and Charges to confirm.

Any unused fees will be refunded. There is no refund of fees for an unsuccessful rezoning. The fees provide a cost recovery for the assessment of proposals.

2.7 What matters does Council consider when assessing a planning proposal?

The range of matters considered by Council in the assessment of a planning proposal includes, but is not limited to, the following:

- The objectives of the *EP&A Act 1979*,
- Any relevant State Environmental Planning Policies (SEPPs), deemed SEPPs, Departmental Circulars or Ministerial Directions under s117 of the *EP&A Act 1979*,
- The relevant objectives and provisions of the Lismore LEP,
- The provisions of Lismore Development Control Plan,
- Any relevant non-statutory planning document adopted or exhibited by Council (strategic plans, codes, concept plans and the like),
- The Far North Coast Regional Strategy,
- Whether the proposed rezoning is consistent with both the State Government and Council's long-term strategic directions for the area,
- The environmental impacts of the proposal,
- Public infrastructure capacity,
- Whether site contamination, flood, agricultural status, slope, bushfire risk, ecological values or other constraint may restrict the proposed land use,
- Any precedent that may be set as the result of the rezoning,
- Any submissions from the public, public authorities and/or advice obtained from other Departments within Council.

2.8 How long does it take for a planning proposal to be approved?

The process for the preparation and assessment of a planning proposal/LEP amendment differs for each proposal, with varying degrees of complexity. The Department of Planning and Infrastructure has released benchmark timeframes following a gateway determination for the following types of LEPs where they are consistent with the State's strategic planning framework:

- 12 - 18 months for major land release and urban renewal
- 6 months for minor spot rezonings
- 3 months for administrative changes and errors

The timeframe can be longer for complex or controversial issues, or for proposals that are not consistent with the State planning framework. Through experience Council has found that the vast majority of LEP amendments take more than a year. Council may also choose to bundle planning proposals into a single LEP amendment to allow for more efficient processing.

2.9 What is the role of the public in the planning proposal process?

Once a proposal has been passed through the Gateway, Council will be advised of the relevant community consultation that is to occur. A proposal will be publicly exhibited for a period of either 14 or 28 days, depending on the type of proposal, during which the public can make written submissions in response to the proposal.

In addition to placing an advertisement in the local press and on Council's website advising the community of the exhibition, Council will also notify in writing property owners who may be affected by the planning proposal. A public hearing may also be arranged at the discretion of Council or the Minister in response to any issue.

Council must take into consideration submissions from the public when it makes a decision whether or not to proceed with the planning proposal.

2.10 Finalisation

Once Council has considered the draft LEP and all submissions made during the exhibition, any variations considered necessary will be made by Council. The Minister may permit Council in the gateway determination to exercise its delegations regarding finalisation of the plan. Otherwise, the plan will be forwarded to the Department of Planning and Infrastructure where the legal instrument will be drafted for the Minister.

With the Minister's approval the plan becomes law and is published on the NSW Legislation website. The Minister may:

- Make the full plan
- Vary the plan
- Decide not to proceed with the plan
- Defer certain matters from the plan
- Delegate the making of the plan to the Director General

2.11 Online tracking of a draft LEP

An online tracking system is available for any person to follow the process of a planning proposal once it has been submitted to the Department of Planning and Infrastructure.

2.12 Disclosure of political donations

All planning proposals and draft LEPs must comply with NSW legislative requirements regarding political donations. Under s147 of the *EP&A Act 1979*, all relevant political donations and gifts must be disclosed by individuals or entities with a relevant financial interest when a planning application is made. A planning application includes a formal request to Council to initiate the making of a LEP.

Further information on the disclosure of political donations and gifts can be downloaded from Councils' website, www.lismore.nsw.gov.au

2.13 For further information

Further information about preparing a LEP or a planning proposal can be found on the Department of Planning and Infrastructure website, www.planning.nsw.gov.au Council's Strategic Planning Unit can also be contacted on 1300 878 387.