

## KEMPSEY SHIRE COUNCIL

### REZONING APPLICATIONS

### Procedure 1.1.9

Policy No. and Title	1.1	Development Control Policy
Procedure	1.1.9	Rezoning Applications
Version	3	
Date Adopted	29 March 2021	

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## 1. INTRODUCTION

### 1.1 Objectives

The objective of this policy is to provide clarity to proponents regarding planning proposals and Council's expectations as to the:

- a) level of information and documentation to accompany a planning proposal.
- b) processes and pathways undertaken for a typical planning proposal.
- c) responsibilities of the proponent in commencing and completing a planning proposal.
- d) Justification for the LEP amendment proposed and ensuring the expectations of the community and State agencies are not compromised.

### 1.2 What is a Planning Proposal?

What is referred to as a Planning Proposal is the amendment of a council's Local Environmental Plan (LEP). The amendment of an LEP would usually be undertaken through one of the following means:

- a) Section 3.22 submission: An expedited service to address specific minor errors in the LEP, as identified in section 3.22 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). This amendment is prepared and undertaken by Council.
- b) Minor Amendment: Identified in Council's Schedule of Fees and Charges, includes a minor enabling clause, or minor zoning change where no significant additional studies are required to be arranged or likely to be required.
- c) Major Amendment: This is the standard planning proposal type, where the proponent proposes the amendment of the LEP land zone, Floor Space Ratio, heritage, height or lot size mapping; a schedule amendment; or clause

amendments within the LEP – to enable development not currently provided for.

- d) Administrative ‘housekeeping’ Amendment: Undertaken by Council, housekeeping amendments are commenced periodically to correct identified errors in the LEP; Council instigated amendments to the LEP arising from the findings of planning investigations/strategies undertaken; or resulting from the periodic review of the LEP.

**Note:** For clarity, this policy is principally focused on *Major Amendments* which are overwhelmingly the main planning proposal type where a landowner/developer seeks to amend Council’s LEP. [Council may initiate its own major amendments to the LEP where the proposal is beyond the scope of an administrative ‘housekeeping’ amendment].

## **2. PRELODGEEMENT MEETING**

### **2.1 Purpose**

An interested party will contact Council to discuss the feasibility of a future development scenario that would require an amendment to the Kempsey Local Environmental Plan 2013 (KLEP2013). If the proposal has potential merit, Council provides a free service – being the pre-lodgement meeting, where Council officers will:

- a) seek a better understanding of the proposal and the planning need/justifications/viability for the amendments proposed to KLEP2013
- b) discuss the economic, environmental and cultural/social opportunities and constraints of the proposal
- c) identify potential hazards and infrastructure/servicing considerations that would need to be addressed
- d) specify the matters/legislative requirements that would need to be addressed by specialist reports, and
- e) outline the planning proposal processes and timelines.

**Note:** The *Information Checklist* (at Attachment B of this policy) will assist with identifying matters for consideration prior to attending the pre-lodgement meeting. A brief written summary of the planning proposal purpose, a site plan and/or any existing specialist reports that clarify the proposal are to be provided to Council at least 7 days prior to the pre-lodgement meeting.

### **2.2 Outcomes**

Council does not provide minutes of the pre-lodgement meeting; however, it will provide in writing, the planning proposal fees payable, a summary of any specific matters of significance, and the mapping and reports required to support the planning proposal. Council can confirm minutes furnished by the proponent.

### **2.3 Specialist Reports**

Specific reporting required in support of the planning proposal will be identified at the pre-lodgement meeting. Examples of the reports required in support of a planning proposal can include:

- a) A Bushfire report.
- b) On-site sewage management assessment.
- c) Aboriginal cultural heritage assessment.
- d) Heritage assessment.
- e) Traffic/transport studies.
- f) Flora and Fauna studies.

- g) Economic impact assessment.
- h) Site plan/ Indicative layout plans.

**Note:** Specialist reports are to be less than 12 months old, address current legislative requirements and have been prepared for the purposes of the planning proposal under consideration.

## **2.4 Planning Agreements**

Depending on the intention of the planning proposal, Council may identify that it is appropriate to consider the use of a planning agreement to deliver specific outcomes.

As identified in the EP&A Act, planning agreements are a voluntary agreement between a developer and a planning authority (council) - where the developer will deliver a public benefit to manage the impacts of development. Examples include the:

- a) Dedication of land free of cost
- b) Payment of a monetary contribution
- c) Provision of public infrastructure, community facilities or other material public good, or a
- d) Combination of the above.

Planning agreements are separate arrangements to Council's section 64 and section 7.11 contributions.

## **3. PLANNING PROPOSAL**

### **3.1 Planning Proposal Preparation**

While there are no legislative requirements as to who can prepare a planning proposal, Council recommends that the proponent employs the services of a planning consultant in the preparation of the planning proposal (and for any subsequent amendments that may be required through the assessment process). Due to the complexities of formulating a comprehensive planning proposal, incomplete applications will not be supported. Please note that all costs regarding the preparation and amendment of the planning proposal will be borne by the applicant.

The layout of the planning proposal report is to be consistent with Section 2 – *The parts of a planning proposal* in the NSW Government publication *A guide to preparing planning proposals October 2012* and clause 3.33(2) of the EP&A Act.

Reports and studies requested through the pre-lodgement meeting are be attachments to the planning proposal. Survey plans are to be accompanied by the respective DWG files supplied in MGA2020 Zone 56 format.

### **3.2 Lodgement**

Lodgement is to comprise of:

- a) the application fee

- b) a paper copy of the planning proposal and attachments, and
- c) a completed *Application to Amend Kempsey LEP 2013*.

A digital copy of the lodgement is to include the planning proposal in Word Document (docx) format, while specialist reports are to be itemised in pdf format. The digital files are to be provided on a CD or a USB stick.

#### **4. DECISION PROCESS**

##### **4.1 Initial Review**

Assessment of the planning proposal will commence when:

- a) The correct application fees and a complete lodgement package are provided.
- b) the lodged planning proposal is consistent with Section 2 – *The parts of a planning proposal* in the NSW Government publication *A guide to preparing planning proposals October 2012* and clause 3.33(2) of the EP&A Act.
- c) All specialist reports requested in the pre-lodgement meeting have been provided (unless otherwise authorised by Council). Old, draft or incomplete reports will not be accepted.

##### **4.2 Stage 1 – Obtaining a Gateway Determination**

Council officers will assess the purpose of the planning proposal, ensuring that it demonstrates:

- a) planning need and strategic merit
- b) consistency with a relevant land use strategy and Council policy
- c) a necessary community public benefit
- d) efficient use of Council's infrastructure
- e) alignment with the *North Coast Regional Plan 2036*, and
- f) consistency with legislative requirements including State Environmental Planning Policies and Section 9.1 Directions (EP&A Act).

Council officers will then prepare a report with recommendations to an Ordinary Council meeting. This meeting will determine if the planning proposal will be submitted to the Department of Planning, Industry and Environment (DPIE) for Gateway consideration or is refused. A planning proposal that is refused will not receive a refund of application fees paid and the proposal becomes void.

A successful planning proposal will be forwarded to DPIE to obtain a Gateway determination. If approved, DPIE will issue Council with a Gateway determination (which includes conditions of approval and a timeframe for completion). Alternatively, DPIE may recommend amendments to the planning proposal before a

Gateway determination can be granted. Council officers will advise the proponent the outcome of the Gateway process.

**Note:** The planning proposal can be tracked (through to completion) on the NSW Government's *LEPs Online* website (<http://leptracking.planning.nsw.gov.au/>), once the Gateway determination has been issued.

#### **4.3 Stage 2 – Community Consultation**

When a Gateway determination has been issued, Council officers will request the proponent to lodge payment of the stage 2 application fee. When this application fee is received Council will then commence the community consultation process.

After the proponent has made any amendments to the planning proposal (in consultation with Council), as may be required by the conditions of the Gateway determination, Council will make all necessary arrangements for the public notification of the planning proposal.

As required by legislation, public notification includes a public notice being placed in the local newspaper and a copy of the planning proposal being placed on Council's website. Separate letters may also be sent to landowners adjoining the planning proposal site (as appropriate). Public notification of a housekeeping or major amendment will be for a minimum period of 28 days.

The Gateway determination also identifies State agencies that are to be notified (by Council) during the consultation period.

#### **4.4 Stage 3 – Assessment**

Following completion of the exhibition period, Council will collate the submission responses received and provide copies to the proponent (with identifying details redacted).

In response, the proponent will prepare and provide Council with a report that:

- a) Identifies and groups the separate issues raised in the submissions.
- b) Provides a comprehensive response to each of the issues identified.
- c) If necessary, suggests potential amendments to the planning proposal.

Council officers will review the submission report provided and discuss potential solutions including recommended amendments to the planning proposal.

When the assessment has been completed, a report will be prepared by Council officers for a future Ordinary Council meeting. This report will include a discussion of the submissions received from the public and State agencies and the recommended way forward for the planning proposal.

#### **4.5 Stage 4 – Making of the LEP Amendment**

With a resolution of support in the planning proposal proceeding, Council officers will prepare any LEP map amendments required and forward a drafting request to DPIE.

DPIE will then review any mapping changes and Parliamentary Counsel will issue a revised instrument and opinion.

The next stage is the making of the LEP amendment. On completion of the necessary processes, Council will use its delegation under the Gateway determination (or seek the sign-off from the Minister) recommending that the LEP amendment be made. The notification of the 'making of the LEP amendment' is advised to Council and formally gazetted. The proponent will be informed of the outcome and that the process is complete.

#### **4.6 Timeframes**

Unlike the development application process, planning proposals do not have statutory timeframes for each stage of the process. The exception is the timeframe stipulated for completion of the LEP amendment (as identified in the Gateway determination). The proponent can request Council seeks an extension (from DPIE) to the Gateway timeframe, if it is apparent that the planning proposal will not be completed within the nominated period.

Expectations as to the processing time for a planning proposal can vary significantly – depending on a range of factors. However, a straightforward major planning proposal may be completed in 9 - 12 months, comprising:

- a) Initial assessment – up to 90 days.
- b) Gateway determination timeframe for completion – 6 to 9 months.

Equally, Council has timeframe expectations regarding the provision of requested material from the proponent. Council requests for further information including submissions reports, amended planning proposals or additional supporting material will be provided within 60 days.

Failure by the proponent to provide requested information to Council within this 60-day timeframe may result in the discontinuing or reprioritising of the planning proposal – unless prior written agreement to the delay has been granted.

#### **4.7 Administrative review processes**

The NSW Government's *Planning Circular PS 18-012* identifies two administrative review processes for planning proposals:

- a) Rezoning reviews, and
- b) Gateway reviews.

##### Rezoning review

A proponent can request a rezoning review If:

- a) a council advises a proponent that it will not support their planning proposal progressing to the Gateway determination stage, or
- b) a council takes more than 90 days to confirm its support for a planning proposal.

Upon lodgement of a written request by the proponent to DPIE, the department will commence the rezoning review process.

#### Gateway review

A council or a proponent may request a Gateway determination review where DPIE advise the planning proposal should:

- a) not proceed
- b) be resubmitted, or
- c) have certain contested conditions imposed.

There are timeframe restrictions as to when a Gateway review can be lodged. The NSW Government's *A guide to preparing local environmental plans* provides additional information on these administrative review processes.

### **4.8 Council responsibilities**

The EP&A Act conveys certain rights and responsibilities available to councils in regard to the determination process for planning proposals. A planning proposal becomes Council's proposal when a resolution to proceed to Gateway determination has been obtained through the Ordinary General Meeting process.

Council authority extends to:

- a) having ownership of any materials provided in support of the proposal
- b) the ability to modify any part of the proposal, and
- c) at any stage determining not to proceed further with the planning proposal.

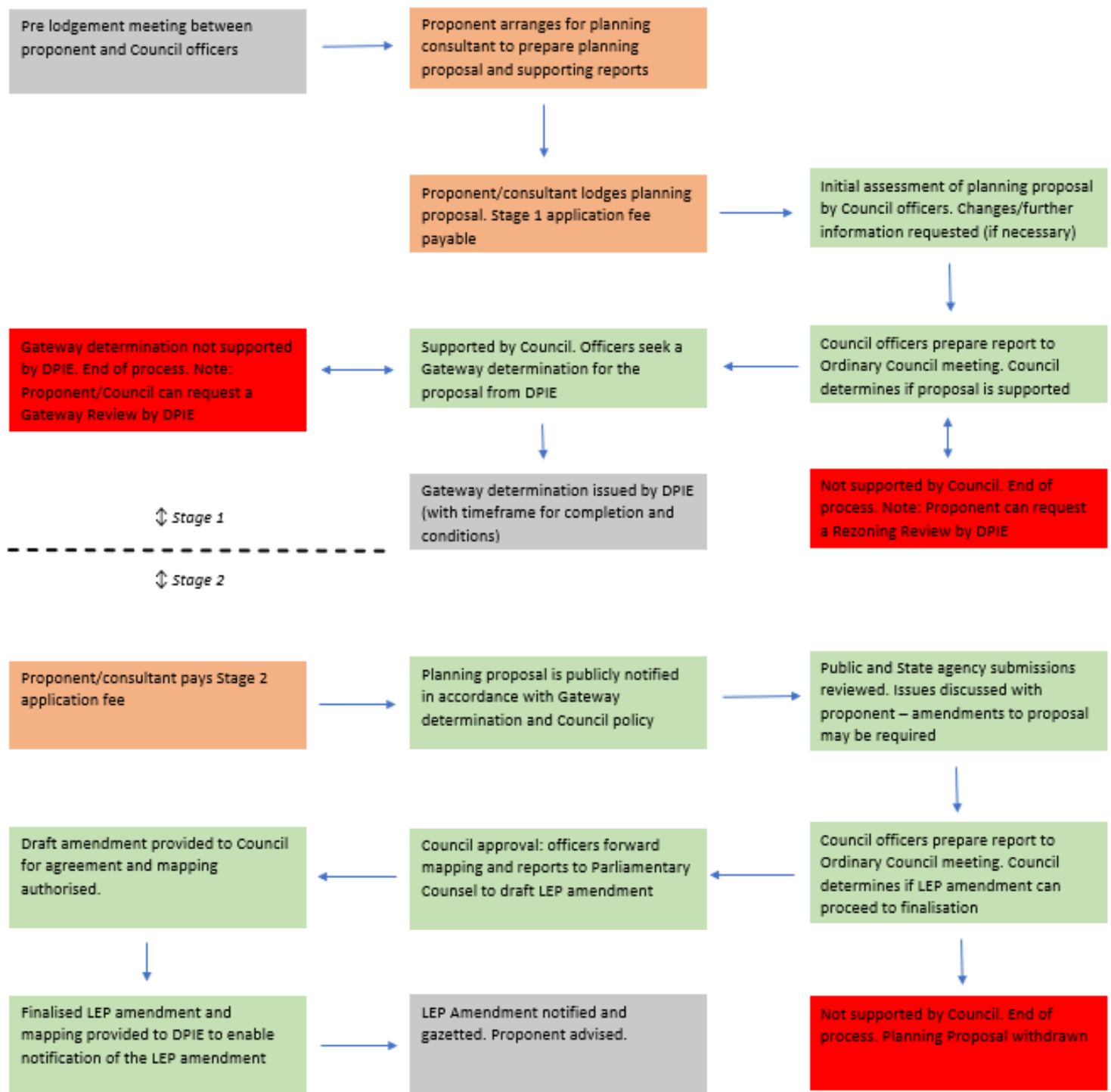
### **4.9 Further Information**

For further information Council's planning proposal processes, please contact the Strategic & Environmental Planning section:

- Telephone - 02 6566 3200.
- Email - [ksc@kempsey.nsw.gov.au](mailto:ksc@kempsey.nsw.gov.au)
- Postal - P.O. Box 3078, West Kempsey NSW 2440.



**PLANNING PROPOSAL PROCESS – MAJOR LEP AMENDMENTS\***



\* The steps and stages identified are specific to Kempsey Shire Council and may differ for other Local Government Areas

Appendix B – NSW Government *Information Checklist*

**STEP 1: REQUIRED FOR ALL PROPOSALS**

(under s3.33(2)(a-e) of the EP&A Act)

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li>• Objectives and intended outcome</li> <li>• Mapping (including current and proposed zones)</li> <li>• Community consultation (agencies to be consulted)</li> </ul> | <ul style="list-style-type: none"> <li>• Explanation of provisions</li> <li>• Justification and process for implementation (including compliance assessment against relevant section 9.1 direction/s)</li> </ul> |
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**STEP 2: MATTERS – CONSIDERED ON A CASE BY CASE BASIS**

(Depending on complexity of planning proposal and nature of issues)

Planning Matters or Issues	to be considered	N/A	Planning Matters or Issues	to be considered	N/A
<b>Strategic Planning Context</b>			<b>Environmental Considerations</b>		
Consistent with the relevant regional, district or corridor/precinct plans applying to the site, including any draft regional/district or corridor/precinct plans released or public comment; or	<input type="checkbox"/>	<input type="checkbox"/>	Flooding	<input type="checkbox"/>	<input type="checkbox"/>
Consistent with a relevant local council strategy that has been endorsed by the Department; or	<input type="checkbox"/>	<input type="checkbox"/>	Land/site contamination (SEPP55)	<input type="checkbox"/>	<input type="checkbox"/>
Responding to a change in circumstances, such as the investment in new infrastructure or changing demographic trends that have not been recognised by existing planning controls; or	<input type="checkbox"/>	<input type="checkbox"/>	Resources (including drinking water, minerals, oysters, agricultural lands, fisheries, mining)	<input type="checkbox"/>	<input type="checkbox"/>
Seeking to update the current planning controls if they have not been amended in the last 5 years	<input type="checkbox"/>	<input type="checkbox"/>	Sea level rise	<input type="checkbox"/>	<input type="checkbox"/>
<b>Site Description / Context</b>			<b>Urban design Considerations</b>		
Aerial photographs	<input type="checkbox"/>	<input type="checkbox"/>	Existing site plan (buildings, vegetation, roads, etc)	<input type="checkbox"/>	<input type="checkbox"/>
Site photos / photomontage	<input type="checkbox"/>	<input type="checkbox"/>	Building mass/block diagram study (changes in building height and FSR)	<input type="checkbox"/>	<input type="checkbox"/>
<b>Traffic and Transport Considerations</b>			Lighting impact	<input type="checkbox"/>	<input type="checkbox"/>
Local traffic and transport	<input type="checkbox"/>	<input type="checkbox"/>	Development yield analysis (potential yield of lots, houses, employment generation)	<input type="checkbox"/>	<input type="checkbox"/>
TMAP	<input type="checkbox"/>	<input type="checkbox"/>	<b>Economic Considerations</b>		
Public transport	<input type="checkbox"/>	<input type="checkbox"/>	Economic impact assessment	<input type="checkbox"/>	<input type="checkbox"/>
Cycle and pedestrian movement	<input type="checkbox"/>	<input type="checkbox"/>	Retail centres hierarchy	<input type="checkbox"/>	<input type="checkbox"/>
<b>Environmental Considerations</b>			Employment land	<input type="checkbox"/>	<input type="checkbox"/>
Bushfire Hazard	<input type="checkbox"/>	<input type="checkbox"/>	<b>Social and Cultural Considerations</b>		
Acid sulphate Soil	<input type="checkbox"/>	<input type="checkbox"/>	Heritage impact	<input type="checkbox"/>	<input type="checkbox"/>
Noise impact	<input type="checkbox"/>	<input type="checkbox"/>	Aboriginal archaeology	<input type="checkbox"/>	<input type="checkbox"/>
Flora and/or fauna	<input type="checkbox"/>	<input type="checkbox"/>	Open space management	<input type="checkbox"/>	<input type="checkbox"/>
Soil stability, erosion, sediment, landslip assessment and subsidence	<input type="checkbox"/>	<input type="checkbox"/>	European archaeology	<input type="checkbox"/>	<input type="checkbox"/>
Water quality	<input type="checkbox"/>	<input type="checkbox"/>	Social and cultural impacts	<input type="checkbox"/>	<input type="checkbox"/>
Stormwater management	<input type="checkbox"/>	<input type="checkbox"/>	Stakeholder engagement	<input type="checkbox"/>	<input type="checkbox"/>
			<b>Infrastructure Considerations</b>		
			Infrastructure servicing and potential funding arrangements	<input type="checkbox"/>	<input type="checkbox"/>
			<b>Miscellaneous / Additional Considerations</b>		
			List any additional studies that should be undertaken post Gateway determination	<input type="checkbox"/>	<input type="checkbox"/>