

Guideline – Planning Proposal Process & Procedure

Amending a Local Environmental Plan

VERSION 1.5

Amendments

Version	Effective	Description	Authorised
1.1	01.07.2009	Amendment to reflect changes to Part 3 of the EPAA relating to the 2008 amending legislation which introduced 'planning proposals'	CPR
1.2	20.10.2010	Up-date and clarification of process requirements and amendments to fees and charges.	CPR
1.3	25.01.2011	Up-date of process flow charts clarifying transition between Stage 1 and 2 of the planning proposal process; clarifying role and purpose of MOUs.	CPR
1.4	14.09.2011	(1) Up-date on process diagrams; clarification on costs recoupment / forward funding associated with the preparation of a planning proposal; formatting; change in document title. (2) Up-date process requirements – clarification on requirement for and procedural referral requirements of an Aboriginal Cultural Heritage Due Diligence Assessment.	Item 1 – CPR Item 2 – EMT, 14.09.2011
1.5	20.09.13	Update of general process and procedure requirements, inclusion of new Parts 1.1A, 1.1B, 1.4A & Dictionary, and to reflect the amendments to the 2013-14 fees and charges "fee for service" structure.	CPR

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1 Guideline Background and Application

1.1 Background

The purpose of this guideline is to ensure that anyone considering a request for an amendment to the Tweed's Local Environmental Plan (LEP) is not taken by surprise at the often long timeframes and high costs associated with doing so.

It is also our opportunity to make it clear to you that amending the Council's LEP, which is the principal legal instrument, is not taken lightly by the Council, the Department of Planning and Infrastructure and the Minister administering the *Environmental Planning and Assessment Act 1979* (EPAA).

As a proponent, you will be required to cover the Council's costs associated with preparing the planning proposal and any required studies.

We have aimed to provide you with as much relevant information as possible to ensure that your expectations are balanced with the Council's ability and willingness to undertake your project in light of our finite resourcing capability and the competing demands on those resources for many and varied project proposals.

It is important to us and you that the opportunity for informed dialog and decision making exists through guidelines such as this. To achieve this we may at times appear to be communicating frankly and in strong terms. This is not designed to frustrate the process or you but to ensure that any veil of complacency is lifted and any misapprehension about the complexities, cost and timeframes are clearly communicated and understood at the outset.

We want to promote an open and meaningful line of communication with prospective proponents and the community about the process. We also want to ensure that proponents of planning proposals understand their role and commitments in this process, in particular the requirement to freely enter into legally enforceable (contractual) agreements and/or a memorandum of understanding.

The Planning Reform Unit staff are available to assist with information on every aspect of the plan making process and should be consulted in the event of uncertainty or doubt about any aspect of the process.

1.1A Statutory Context

The authority and procedure for preparing delegated or subordinate¹ statutory instruments and regulations is established through the parent legislation. The EPAA is the parent legislation for environmental planning instruments (EPI). These are legislative instruments delegated to the Minister (for Planning and Infrastructure) by the Parliament. Their preparation has the oversight of the Minister and their Department, as well as requiring the drafting approval of the Parliamentary Counsel (the Parliament's legal department).

Statutory instruments, such as EPIs, are published in the Government Gazette or on the NSW Legislation website. A notice providing details of the instrument and gazette number is then tabled in both Houses of Parliament. These instruments are not debated in the Parliament unless a member of either House lodges a motion to disallow part or all of that

¹ Parliament of New South Wales: Legislative Council Fact Sheets [July 2013] <
[http://www.parliament.nsw.gov.au/prod/parliament/publications.nsf/key/Factsheet31-Delegatedlegislation/\\$File/Fact+sheet+31+Delegated+legislation.pdf](http://www.parliament.nsw.gov.au/prod/parliament/publications.nsf/key/Factsheet31-Delegatedlegislation/$File/Fact+sheet+31+Delegated+legislation.pdf)>

rule or instrument within 15 sitting days of the tabling of the notice.² The process is to free-up the Parliament to deal with matters of greater importance to the State through the overarching policy and law (e.g. the parent statute/legislation) and leaving the detail of how that legislative policy will be implemented and achieved through the regulations and rules. This is often referred to as the 'machinery' element of the policy and is left to the technical expertise of specialised government departments rather than the politicians.

For the purposes of the Tweed LEP it is the EPAA which is the parent legislation and which sets out the drafting procedures and requirements for any new or amending LEP.

1.1B Consultation with the General Public

A public consultation requirement is provided as a condition of the Minister's consent to prepare and make a draft LEP, if it is deemed to be appropriate. This occurs through a process known as the Gateway Determination. This is a procedural system that details the Minister's specific requirements, including public consultation. It establishes checkpoints or milestones for each stage of the process and may also prescribe time limits for completion and studies to be prepared.

The "gateway" is the point at which the Minister's Department takes a participatory and determinative role in the process and is the signal about whether the progression of a proposed LEP is supported at the State level. This is a critical milestone for a council because it is only the Minister who is empowered to commence or refuse to commence a draft instrument (LEP) under the EPAA.

The nature of this planning procedure and importantly the point at which a draft LEP comes into being means that there can be no formal pre-Gateway Determination consultation of a draft LEP. To put it another way, a council cannot publicly consult on a draft LEP prior to one actually coming into existence.

There is nothing in the planning legislation that prevents a council from consulting on a concept proposal, but there are several potential issues that do however elevate the risk or ineffectiveness of a council doing so. This includes cost and resourcing, and the need to preserve the commercial confidentiality of the proponent and their intellectual property rights to the materials. These issues are typically overcome once the draft LEP comes into being as those limitations are, to varying degrees, suspended or 'lifted' by the statutory rules and to a lesser extent by contractual agreement where that exists between the proponent and council.

The ability to reproduce and publicise the proponent's information, as well as having the proper resources available, is essential for meaningful public consultation. In our experience consulting without an adequate level of information or the ability to answer specific queries about a concept can unnecessarily elevate the cause for concern or increase the speculation within the community about what may or may not occur.

For these reasons Tweed Council strongly encourages the proponent of a concept proposal to consult with anyone likely to be affected by it, but it is not a requirement.

Early consultation between a proponent and the community may nonetheless be invaluable to the proponent. Our experience indicates that genuine consultation typically leads to early

² Parliament of New South Wales [July 2013] <
<http://www.parliament.nsw.gov.au/prod/web/common.nsf/key/LegislativeProcessExplained>>

identification of issues and helps maintain a consultative and meaningful dialogue with those most affected. It is also likely to be more cost effective.

In some cases identifying the risk or impact on others is not always obvious and consequently it may be difficult to ascertain whether someone might be affected. The precautionary and neighbourly response is to act positively and consult.

There is a far greater likelihood of delay and higher costs for a proponent who willingly chooses to avoid early consultation with those who might reasonably be seen to be affected by their proposal. Notably, anecdotal evidence suggests a correlation between proposals that fail to achieve expected targets and those with a poor approach to consultation.

1.2 Application of this Guideline

This guideline applies to:

- Any amendment to the Council's LEP.

1.3 Who Should Use this Guideline

This Guideline has been prepared to provide guidance on the planning proposal process requirements and is to be used by anyone requesting the Council under cl 54(3) of the EPAA to exercise its functions under Part 3, to facilitate a new or amending LEP.

1.4 Legislative Changes Effective 1 July 2009

The EPAA came into effect on 1 September 1980 and has been the subject of many amendments since. The current NSW Government is presently undertaking a comprehensive review and re-writing of the EPAA, which to-date has culminated in a White Paper (April 2013) and Planning Bill 2013 - Exposure Draft. It is scheduled to be completed in 2013/14 and may have further consequential changes for the planning proposal (plan making) practice and procedure.

On 1 July 2009 the *Environmental Planning and Assessment Amendment Act 2008* and *Environmental Planning and Assessment Amendment (Plan Making) Regulation 2009* implemented procedural changes to the way local environmental plans are prepared. They also broadened the Minister's power to delegate plan making functions to authorities other than councils. This guideline is based on the current plan making legislation incorporating those amendments.

This Guideline may add to those published by the DP&I from time to time, by including specific and more detailed requirements of the Council. It is recommended that the Department's guidelines are consulted prior to reducing a proposal into written form and on which the Council will be requested to assess the proposal's strategic justification.

1.4A Pre-Gateway Reviews

As of 2 November 2012 the Department of Planning and Infrastructure has been operating an additional procedure of review. If a request has been made of the council to prepare a planning proposal the proponent may now seek a pre-Gateway review when:

- a) the council has notified the proponent that the request to prepare a planning proposal is not supported, or
- b) the council has failed to indicate its support 90 days after the proponent submitted a request, accompanied by the required information.

Reference to the Department's Planning Circular (PS12-006) of 29 October 2012 should be consulted for further information. This is available at:

http://www.planning.nsw.gov.au/LinkClick.aspx?fileticket=zNQJdA_JTdg%3d&tabid=291&language=en-US

1.5 Approval Function (Council)

The 1997 amendment to the Local Government Act (LGA) 1993 requires a council determining any application, to take into consideration the principles of ecologically sustainable development (ESD) (Section 89(1)(c)). When considering the public interest the matters the Council is to consider include the principles of ESD (Section 89(2)(a)).

Whilst a planning proposal is not an application for the purposes of either the LGA 1993 or the EPAA, the principles of ESD are an object of the EPAA (s 5) and a consideration adopted by Tweed Shire Council.

1.6 Aboriginal Cultural Heritage Due Diligence Assessment

It is an established practice of Tweed Council that an Aboriginal Cultural Heritage 'Due Diligence' Assessment ("an ACHA") be prepared with a planning proposal. This was reaffirmed by Council's Executive Management Team at their Meeting of 14 September 2011.

In addition to the bare requirement to prepare an ACHA it was resolved that the landowner is to prepare an assessment report, including consultation with the local Aboriginal Advisory Committee (AAC) and a response to any matters that arise, prior to a request for a planning proposal being made.

The purpose of this additional requirement is to ensure that Aboriginal community knowledge and considerations are incorporated within that assessment and to enable Council's Heritage Consultant to include in their peer review access to any matters raised by the AAC.

This process will increase opportunity for early identification of potential issues. It will also avoid Council attending to matters at a stage in the process that it does not otherwise need or is required to engage in. It should also limit the need for reassessment by Council's Heritage Consultant.

Aboriginal Cultural Heritage Due Diligence Assessments must be prepared having regard to the provisions of the [former] Department of Environment, Climate Change and Water (DECCW) guideline "*Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales.*"

2 Overview

2.1 What is a Planning Proposal?

Under cl 55 of the EPAA the RPA is required to prepare a document that provides the justification for and explains the intended effect and purpose of a proposed instrument (LEP). This document is referred to as the "Planning Proposal."

For reference, the term 'planning proposal' replaces the previous and generally accepted term of 'rezoning application.'

Clause 55(2) specifies what the planning proposal is to include, this is addressed in more detail below.

2.2 What is an LEP Amendment?

For the purposes of this Guideline an LEP 'amendment' is:

Any new or comprehensive LEP or amendment, whether in substance and or form, to the Tweed Local Environmental Plan written instrument and/or maps resulting in an alteration, variation, addition, or repeal.

An amendment may be caused by a 'spot rezoning' proposal, an amendment to one or more of the LEP's schedules or an amendment arising through a cl 72 combined development and 'spot-rezoning' application, but, does not include an amendment under cl 73A of the EPAA.

In simple terms planning proposals may take two very different forms:

- those that deal with the whole of a local government area (LGA), or a significant part of it, and
- those that adjust the zoning, permitted land uses or development standards of a particular site to allow a previously prohibited development to go ahead (also referred to as 'spot-rezoning')

An LEP that deals with the whole of a LGA or significant part of it (comprehensive LEP) is generally more representative of true forward planning as typically it does not respond to a specific site and site proposal (spot rezoning) but to the broader existing and future needs of the present communities and future generations by attempting to reconcile competing demands for different land-uses.

In practice, most LEPs are of the second kind and are not so concerned with forward planning but with making adjustments to the principle LEP (Tweed Local Environmental Plan) to take account of circumstances not envisaged at the time of its preparation. It is a tool for project review and control.

3 Procedural Aspects

There are several key points to consider prior to submitting a cl 54(3) request to the RPA to exercise its functions in respect of preparing a planning proposal pursuant to Part 3, Division 4 of the EPAA.

3.1 Relevant Factors to Consider

Council staff may:

- i. Refuse to accept a request and any accompanying draft LEP proposal (over the counter or at a meeting).

Reason: A proposal may be lacking the necessary information and detail or missing one or more of the constituent elements required to support consideration of a draft LEP proposal, it may be premature, provide no strategic context, or cannot be accommodated within the Planning and Regulation (Planning Reforms) Directorate's current work program.

The main elements used to form the basis of an LEP amendment proposal relied on by the RPA in drafting any planning proposal are referred to in the Department of Planning's; *Guide to Preparing a Planning Proposal*.

Anyone considering whether to request that a planning proposal be prepared is encouraged to consult with the Director Planning and Regulation or the Coordinator Planning Reform Unit.

Note: Unlike a 'development application' there is generally no statutory requirement for a council to 'accept' a planning proposal nor is it at the behest of a landowner in respect of exercising its plan making functions under the EPAA.

Councils have a responsibility to act responsibly in the administration of its roles and functions arising under relevant statute. The achievement of those delegated functions in respect of 'plan-making' necessitates a clear, fair and transparent process that enables the council to balance the interests of the broader community against those of an individual landowner and these guidelines are designed to assist in that process.

- ii. Should a request for a planning proposal be submitted and later returned for any reason without any work being undertaken on it a fee based on Council's hourly rate (refer Fees and Charges Schedule), will apply.

Reason: Landowners or their agents may not always accept preliminary advice from or contact Council's Director Planning and Regulation or his delegate (Planning Reforms) prior to submitting a planning proposal. Once received, a proposal may be deemed to be premature, to have no demonstrated strategic context, cannot be accommodated within the Planning Reforms current work program, is not considered a priority project, or is not supported by the appropriate fee and executed costs agreement.

An administration fee is retained by Council to cover the associated staff costs of receipting, filing and return postage.

- iii. Accept a request and undertake a preliminary desktop assessment and determine on the information submitted that the proposal is not satisfactory and should not proceed to Council. A fee based on Council's hourly rate (refer Fees and Charges Schedule), will apply.

Reason: Initial review of the information reveals that the proposal is inconsistent with local and or state policy or is subject to, in the opinion of Council's Director Planning and Regulation, insurmountable environmental constraint and or any other necessary post investigation work that is not likely to be addressed within a reasonable time and that may unnecessarily delay the progress of another priority LEP proposal or unreasonably impact on the Council's resources.

- iv. Accept the request and proceed in accordance with the process assessment procedure outlined in this guideline.

Once accepted, a request will be allocated to a strategic planning officer within the Planning Reform Unit in accordance with the Unit's adopted work program. The Planning Reform Unit Coordinator is responsible for the management of the Unit's work program and resource allocation.

Prior to evaluating a request and embarking on the planning proposal process the proponent will be required to enter into a costs agreement (a contract enforceable at law) with the Council and to pay any applicable fees and charges.

A costs agreement is prepared by Council and is subject to a fee (refer to Council's Fees and Charges Schedule)

3.2 LEP Requests (Generally)

A general request for an amendment to the Tweed LEP that fails to accord with the practice and procedure guidelines provided within this Guideline will be taken as a general request for information only and a response will be provided on the information submitted. No fees will apply.

No report to Council will arise from a general request.

There is currently no fee associated with general LEP enquiries (written or verbal) or preliminary discussions with landowners. This would generally include answering enquiries about the provisions of Council's LEP or any other strategic policy administered by Council.

3.3 Prioritising Planning Proposals

Council generally receives more requests for LEP amendments each year than can be processed. It is necessary therefore to prioritise proposals to ensure those providing the greatest public benefit are given preference over those serving individual interest or are of limited benefit to the greater Tweed community. While there is no fixed or defined criteria the following may serve as a guide:

- contributes to the Tweed's economic growth and promotes sustainable practice
- significant employment generating development

- provision of high quality, appropriately located, housing accessible to the broader and lower income community
- education, medical and or community facilities and services
- commercial or retail development identified or in accordance with an adopted Council or state government strategy
- preservation and conservation of the environment
- improving efficiency or viability of agriculture and horticulture
- reducing an identified conflict between incompatible land-uses
- improving tourism opportunities

3.4 How the Process Works

Once the landowner has received confirmation that their request has been accepted for submission the relevant documentation and fee is to be submitted within the agreed timeframe. See section 1.6 and 4.1 about the need for an Aboriginal Cultural Heritage Due Diligence Report and Costs Agreement.

Upon satisfactorily proceeding through the Stage 1 initial project evaluation a recommendation about whether to proceed with preparing a planning proposal is reported to Council. Proceeding to the next stage in the process requires an affirmative resolution of the Council to proceed. The proponent will be notified of Council's decision. This process is repeated on to the final Stage 3.

The Planning proposal process can occur over many years, depending on the nature and complexity of a proposal, and there are several key milestones that need to be achieved along the way. With each one there is a risk and/or an opportunity for the process to cease.

Fees for assessing and processing a request are on a fee for service basis under the costs agreement.

Note: Any fees that are paid under a Costs Agreement which are not expended will be refunded.

Postponing or deferring the processing of any planning proposal owing to changes in the Planning Reform Unit's resourcing or prioritising of work commitments is at the discretion of Council's Director Planning and Regulation. A landowner may be notified in writing of any postponement or deferral and of the proposed course of action to reprogram the processing of the planning proposal.

The Minister will be notified of any potential significant delay and if appropriate the proposal will be resubmitted to the Gateway for a redetermination.

3.5 Landowner's Risk

Once Council has resolved to prepare a planning proposal it will take all reasonable steps to give effect to that commitment, however, Tweed Council gives no undertaking to any landowner that the processing of the proposal will be successful, that is, that it will be accepted by Council at each Stage of the process or by the Minister for Planning, their delegate or their Department.

Council does not accept responsibility for delay in the preparation and processing of a planning proposal where that delay originates from a source beyond its control or where it is otherwise affected by delays in the processes owing to commitments on competing higher order priority proposals.

4 RPA's Three Staged Process

The process of considering a request to prepare a planning proposal is often complex and occurs intermittently. To assist in managing the process and clarifying the key milestones the overall process has been broken down to three key stages.

Refer to Figure 1 - *Tweed Shire Council – Planning Proposal (General) Process and Procedure Plan*, below.

4.1 Stage 1 - Preliminary Assessment

The plan making process commences when the *owner of any land* (s 54(3)) makes a request of the relevant planning authority *to exercise its functions in relation to the land*.

When acting on a request the council, as a condition of doing so, will require the owner to enter into a costs agreement. This is consistent with cl 11 of the EPAR relating to a council's ability to recoup costs.

Tweed Council operates on a forward funding model whereby the council will not fund the project proposal directly from its own resources but requires instead that the proponent maintains a minimum account balance with Council for the funding of the project. These costs are detailed in the costs agreement.

Costs are all those arising on Council in pursuing the proponent's request. It may include external resource costs such as engaging professional consultancies', media advertising, travel and the like, but does not include any costs arising externally to the pursuit of the proponent's request.

Generally, the first stage of the process involves a desktop review of the content of the proposal to ascertain whether the proposed LEP amendment has the requisite justification and supporting information to enable the Council to determine whether it should resolve to prepare a planning proposal.

The extent and scope of studies and investigations that may be identified at this stage will depend on the nature, and often the scale, of the development that the LEP amendment seeks to facilitate, relative to the identifiable opportunities and constraints of the land.

Any study that is deemed necessary to assess the suitability of the proposal because of its relevance to a matter that may have a significant bearing on the Council's decision making about whether to proceed with preparing a planning proposal will be required prior to any report making a recommendation to Council for that purpose.

Stage 1 tasks generally include:

- Assessment of the landowner's Aboriginal Cultural Heritage Due Diligence Assessment.
- Review of the basis for and strategic justification of the request.
- Site inspection.
- Background (records) research and investigation of the land and local area.
- Identification of any outstanding or required additional information.
- Preliminary consultation with other relevant Council Divisions, e.g. Engineering, Natural Resource Management, Recreation Services, Environmental Health.
- Identification of required studies and or investigations, where able. The need for some studies may not be identified until a later stage and/or may be contingent on the findings / recommendations of others.
- Evaluate on the information available whether a planning agreement (s 93F) is likely to be required.
- Assess options for preparing required studies/ other documentation and cost.
- Identify the likelihood of requiring a memorandum of understanding between the landowner and Council.
- Report to Council. A resolution concerning Council's willingness to prepare a planning proposal (LEP amendment) will be sought. This will identify whether the first key milestone has been achieved and the proposal can proceed to the Stage 2 process.

It is important to note that planning requests are often unique and require a process plan tailored to their specific needs. For this reason the process must be flexible and variable and not static. Council will endeavour to limit the cost and time involved in assessing requests and preparing planning proposals by employing whatever process or technique it considers appropriate to efficiently and economically complete the task.

4.2 Stage 2 - Preparing Studies & Planning Proposal, Referral to the 'Gateway' and Community Consultation & Review

The second stage commences once the landowner has progressed through Stage 1.

It is in this stage that the planning proposal may be forwarded to the Gateway Determination (s 56). This is designed to provide the Minister or their delegate with the opportunity to identify any additional or supplementary studies or investigations required to be prepared by the RPA to inform the planning proposal and among others to define the consultation requirements.

The landowner may be required to enter into a Memorandum of Understanding (MOU)³ if requested and they agree to prepare additional studies or the like. An Intellectual Property Agreement (IPA) may also be required depending on the nature and likely use of the work.

The final process component of Stage 2 is a report to Council on the progress and status of the planning proposal and typically includes an assessment of any public submissions

³ For a description of what an MOU is see the Dictionary.

received. It is not unusual for amendments to be made to the planning proposal at this stage and in some cases this may be significant.

Stage 2 tasks generally include:

- Establish memorandum of understanding between parties to the planning proposal, were required.
- Identify the parameters of any required planning agreement and engage Council's solicitors.
- Council will proceed to engage external resources and proceed to assess the cost of preparing studies and documentation. This will be notified to the landowner in accordance with the executed costs agreement.
- Studies and documentation will be prepared and the proposal evaluated and firmed-up.
- Once the planning proposal is finalised it may be referred to the Minister for a Gateway Determination.
- Assess any additional supporting or requested information.
- Drafting of any planning agreement.
- Conclude with receipt of Gateway Determination notice and execution of all agreements.

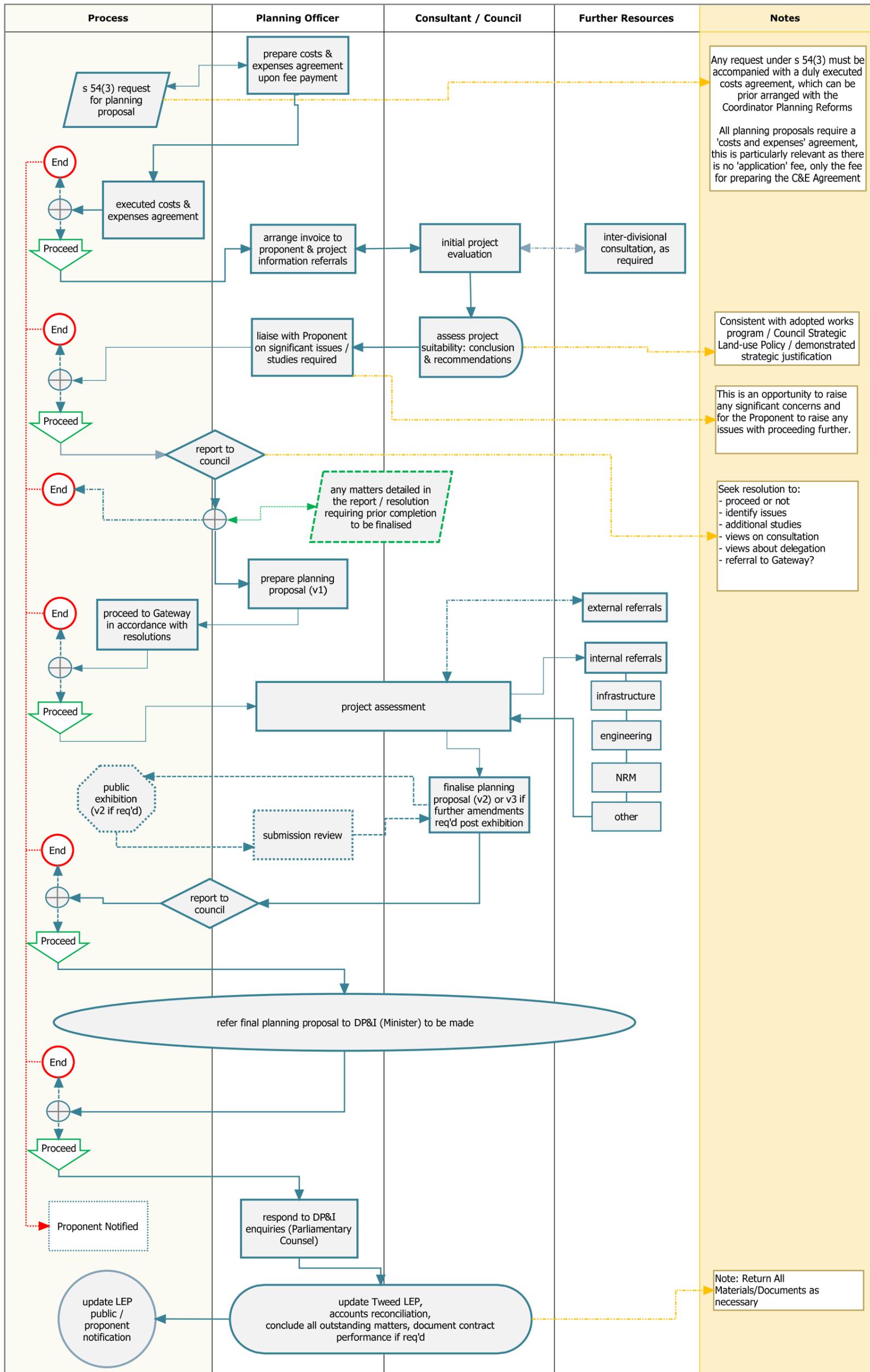
4.3 Stage 3 – Final Planning Proposal to be Made

The final stage commences once the landowner has progressed through Stage 2 and a Gateway Determination has been received.. In previous iterations of the legislative requirements this stage was arguably the least intensive, comprising mainly of administrative tasks. Nowadays it is representative of that stage in the overall process were the majority of detail investigation, community consultation and procedural tasks are completed.

Stage 3 tasks generally include:

- Undertake any studies, matter or thing directed by the Minister to completion.
- Public exhibition and finalisation of any planning agreement including registration on the land Title.
- Complete all studies and documentation for public exhibition.
- Public exhibition and State Agency consultation.
- Public submission review.
- Amend planning proposal, were appropriate.
- Report to Council.
- Refer to Minister for Plan to be made.
- Make the 'Plan;' this component is principally carried on by the staff of the Department of Planning and Infrastructure and Parliamentary Counsel.
- Publication on the NSW Government web-site.
- Up-date Tweed LEP.

Refer to Figure 1 - *Tweed Shire Council – Planning Proposal (General) Process and Procedure Plan*, below.



Tweed Shire Council – Planning Proposal (General) Process and Procedure Plan

5 RPA & Professional Service Providers

Council resolved on 21 April 2009 to amend its fees and charges to broaden its ability for cost recovery and to progressively move toward a contract based system. This was completed in June 2013. The aim is to limit the financial impact on public funds through greater and more accountable cost recovery for the public services provided. It will enable Council to employ external consultancies to provide expert advice and services that the Council either does not possess or that is otherwise committed to other areas of Council's business.

This system was intended and implemented to enable flexibility in the progression of important private sector planning proposals that might otherwise be delayed by resourcing limitations, which sometimes occur where there is a competing priority commitment.

Note: It is not intended to provide a mechanism for increasing the quantum of applications processed by the Council each year or as a means of encouraging landowners to apply on the basis of being prepared to pay to be prioritised or to 'queue-jump.'

Under the resourcing system from 1 July 2013 all costs arising in connection with the preparation of a planning proposal will be the subject of a legally enforceable agreement between the Proponent and the Council.

6 Requisite Process Requirements & Considerations

6.1 Legislative Framework – the Requirement for Facilitating Strategies

One of the principal objects of the *Environmental Planning and Assessment Act 1979* is to promote and co-ordinate the orderly and economic development of land.

In our Region (far north coast), co-ordination of the orderly and economic development of land is achieved primarily through provisions of the North Coast SEPP (formerly REP) and the Far North Coast Regional Strategy.

Under these State Government strategies a council cannot prepare a draft LEP to permit rural residential development or significant urban development unless it has prepared a rural and/or urban (residential / employment) land release strategy for the whole Local Government Area and the LEP proposal is consistent with that strategy.

Tweed Shire Council does not currently have a Rural Lands Strategy (RLS) to support the rezoning of rural lands (permitting residential development) to reduce the minimum subdivision lot size. An RLS is currently being prepared and its progress should be confirmed with the Council at the time of preparing a planning request.

State Environmental Planning Policy (Rural Lands) may provide some further flexibility and any enquiries about its operation in relation to reducing lot sizes in rural zoned land should be directed to the Department of Planning and Infrastructure's Regional Office, located in Grafton, at first instance.

In addition to planning legislation there are additional legislation, policies, directions and guidelines that will determine the potential for rezoning and future development of a site. These 'other' policy considerations would include such matters as; environment

conservation and protection, infrastructure and site engineering, social, health, heritage, amenity and other like matters.

6.2 Pre-Consultation for an LEP Proposal

Preliminary consultation with Council's Planning Reform Unit to determine if a request and/or LEP proposal can either be accepted or has a basis for support is encouraged. Early consultation provides both the opportunity to identify/discuss any issues not known to the landowner as well as avoiding unnecessary costs.

6.3 Prerequisite Approval & Adopted Report Format

If a landowner decides to pursue a draft LEP it is essential that the following 'critical' elements are met. A failure to meet any one or combination may result in a financial penalty cost and/or delay.

6.3.1 Critical Elements

- i. The agreement of the Director Planning and Regulation or his delegate to accept an LEP proposal (a request pursuant to 54(3)).
- ii. The prior completion and submission with a request of an Aboriginal Cultural Heritage Due Diligence Assessment Report; see Section 1.6.
- iii. A planning proposal request in the format provided in this Guideline. It need not be limited or restricted to that format in its entirety however, the structure and headings provided is seen to be sufficient to capture all relevant material.
- iv. The submission of all documentation in electronic and **editable** format.
- v. Two hard copies of the request and all documentation.
- vi. All data must have ANZLIC Metadata. All source data information is to be provided. Data is to be supplied in a format compatible with GIS, e.g. AutoCAD DWG or ESRI. The coordinate system to be used is MGA Zone 56 (GDA 94).

6.4 Content of an LEP Proposal

6.4.1 General

The following is a guideline on the requisite level of information required to form the basis of a request for a planning proposal.

- i. Landowners un-limited consent authorising the making of a draft LEP over the subject land(s).
- ii. Legal property description in full.
- iii. A justification based upon the Local Government Amendment (Ecologically Sustainable Development) Act 1997, on environmental, economic and social considerations.

7 The “4 Part” Format

For the purposes of this part the requisite headings are colour coded

Part 1 A Statement of the Objectives or Intended Outcomes of the Proposed Local Environmental Plan

This is intended to be a concise statement of what is planned to be achieved, and will eventually form the basis for the drafting of the LEP.

The planning proposal describes its intended outcomes – an example would be:

‘The objective of this planning proposal and any Draft Local Environmental Plan is to enable part of Lot 123 DP123987 to be subdivided to create a low density residential estate of a similar character to the approved adjoining Wallaby Park subdivision.’

The NSW Department of Planning’s ‘A Guide To Preparing Planning Proposals’ states that the objectives or intended outcomes constitute the actual ‘proposal’ and if at any stage they are varied during the course of the planning proposal, the entire amended planning proposal will need to be resubmitted for a revised gateway determination.

Part 2 Explanation of the Provisions

This part details the provisions proposed to be amended to enable achievement of the prescribed objective / outcomes. It may, by way of example, require a basic summary of the preferred changes sought (tabular) as well as an illustrative map:

(Example) Table 1 – Preferred Draft LEP

Property (Lot/Sec/DP)	Tweed LEP 2000 Zoning	Draft Tweed LEP Zoning (were relevant)	Proposed Zoning
123//123457	R1 General Residential	RU1 Primary Production	1(b2) – Agricultural Protection

Current LEP zoning map

Insert an appropriately scaled image under both headings. Council can prepare these on request and at cost.

Proposed zoning map

Part 3 Justification for the Proposal

Section A – Need for a Planning Proposal

Is the planning proposal a result of any strategic study or report?

EXAMPLE: Far North Coast Regional Strategy (FNCRS), Tweed Urban and Employment Land Release Strategy 2009, Locality Plan, or Local Growth Management Plan.

Is the planning proposal the best means of achieving the objectives or intended outcomes or is there a better way?

Is there a net community benefit?

EXAMPLE: To establish net community benefit the Department of Planning Guidelines (July 2009) includes the following advice in relation to the net community benefit assessment:

- *The Assessment should only evaluate the external costs and benefits of the proposal (ie. the externalities).*
- *Consideration must be given to changes that reflect a higher community benefit.*
- *The proposal should be assessed against the matters specified in the justification. The Assessment should evaluate the proposal against a base case or base cases including retaining the existing zoning on the land.*
- *The Draft Centres Policy includes guidance on conducting a Net Community Benefit Test that should be followed when assessing the net community benefit of a Planning Proposal. This guidance has been reproduced in the Department of Planning's Guidelines but adapted to suit all types of Planning Proposals.*
- *Because of the difficulty in assigning values to certain costs and benefits associated with Planning Proposals, the Net Community Benefit Test will not be a purely quantitative test.*

Table xx identifies the key external costs and benefits of the Planning Proposal:

Table xx External costs and benefits

External Costs and Benefits		
Element	Cost	Benefit
Change of land use and zoning		
Infrastructure		
Access		

Assessment of Net Community Benefit as guided by the Department of Planning and Infrastructure's Guide to Preparing Planning Proposals (July 2009) and found in the NSW Government's publication Draft Centres Policy – Planning for Retail and Commercial Development is addressed in Table xx, following:

Table xx Assessment of Net Community Benefit

Criteria	Response
<i>Will the LEP be compatible with agreed State and regional strategic direction for development in the area (eg land release, strategic corridors, development within 800 metres of a transit node)?</i>	
<i>Is the LEP located in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/sub-regional strategy?</i>	

Criteria	Response
<i>Is the LEP likely to create a precedent or create or change the expectations of the landowner or other landholders?</i>	
<i>Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these considerations?</i>	
<i>Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands?</i>	
<i>Will the LEP impact upon the supply of residential land and therefore housing supply and affordability?</i>	
<i>Is the existing public infrastructure (roads, rail, utilities) capable of servicing the proposed site? Is there good pedestrian and cycling access? Is public transport currently available or is there infrastructure capacity to support future public transport?</i>	
<i>Will the proposal result in changes to the car distances travelled by customers, employees and suppliers? If so, what are the likely impacts in terms of greenhouse gas emissions, operating costs and road safety?</i>	
<i>Are there significant Government investments in infrastructure or services in the area whose patronage will be affected by the proposal? If so, what is the expected impact?</i>	
<i>Will the proposal impact on land that the Government has identified a need to protect (e.g. land with high biodiversity values) or have other environmental impacts? Is the land constrained by environmental factors such as flooding?</i>	
<i>Will the LEP be compatible/ complementary with surrounding land uses? What is the impact on amenity in the location and wider community? Will the public domain improve?</i>	
<i>Will the proposal increase choice and competition by increasing the number of retail and commercial premises operating in the area?</i>	
<i>If a stand-alone proposal and not a centre, does the proposal have the potential to develop into a centre in the future?</i>	
<i>What are the public interest reasons for preparing the draft plan? What are the implications of not proceeding at that time?</i>	

Section B - Relationship to Strategic Planning Framework

EXAMPLE: *The Far North Coast Regional Strategy 2006-2031 (Regional Strategy) is the overarching framework that manages growth within the Far North Coast area, including the Tweed local government area.*

The Regional Strategy identifies and promotes a settlement pattern that protects environmental values and natural resources while utilising and developing the existing network of major urban centres, reinforcing village character and requiring efficient use of existing services and major transport routes.

Among other things, the Regional Strategy aims to manage the region's projected population growth sustainably and protect the region's unique environmental assets, cultural values and natural resources.

Is the Proposal Consistent with the Objectives and Actions Contained Within the Applicable Regional or Subregional Strategy (including the Sydney Metropolitan Strategy and Exhibited Draft Strategies)?

EXAMPLE: Tabulating the key criteria and response may provide the best means for addressing this section in addition to any other commentary.

Table 5 Assessment against Regional Strategy Sustainability Criteria

Criteria	Measurable explanation of criteria	Response
<p>1. Infrastructure Provision Mechanisms in place to ensure utilities, transport, open space and communication are provided in a timely and efficient way</p>	<ul style="list-style-type: none"> • Development is consistent with the outcomes of the Far North Coast Regional Strategy, any subregional strategy, regional infrastructure plan and relevant section 117 direction/s. • The provision of infrastructure (utilities, transport, open space, and communications) is costed and economically feasible based on Government methodology for determining infrastructure development contributions. • Preparedness to enter into development agreement. 	
<p>2. Access Accessible transport options for efficient and sustainable travel between homes, jobs, services and recreation to be existing or provided</p>	<ul style="list-style-type: none"> • Accessibility of the area by public transport and/or appropriate road access in terms of: <ul style="list-style-type: none"> - Location/land use – to existing networks and related activity centres. - Network – the area’s potential to be serviced by economically efficient transport services. - Catchment – the area’s ability to contain, or form part of the larger urban area which contains adequate transport services. Capacity for land use/ transport patterns to make a positive contribution to achievement of travel and vehicle use goals. • No net negative impact on performance of existing subregional road, bus, rail, ferry and freight network. 	
<p>3. Housing Diversity Provide a range of housing choices to ensure a broad population can be housed</p>	<ul style="list-style-type: none"> • Contributes to the geographic market spread of housing supply, including any government targets established for aged, disabled or affordable housing. 	
<p>4. Employment Lands Provide regional/local employment opportunities to support the Far North Coast’s expanding role in the wider regional and NSW economies</p>	<ul style="list-style-type: none"> • Maintain or improve the existing level of sub-regional employment self-containment. • Meets subregional employment projections. • Employment-related land is provided in appropriately zoned areas. 	
<p>5. Avoidance of Risk</p>	<ul style="list-style-type: none"> • No residential development within 1:100 floodplain. 	

Criteria	Measurable explanation of criteria	Response
Land use conflicts, and risk to human health and life, avoided	<ul style="list-style-type: none"> • Avoidance of physically constrained land, e.g. <ul style="list-style-type: none"> - High slope - Highly erodible. • Avoidance of land use conflicts with adjacent existing or future land use as planned under relevant subregional or regional strategy. • Where relevant available safe evacuation route (flood and bushfire). 	
		<p>Bushfire hazard assessment</p> <p>A small area of the north-eastern corner of the site is within the 100 metre buffer zone as defined by Council's Bushfire Prone Land map; however bushfire hazard is not considered to be a prohibitive issue for this proposal. In the event of a bushfire from the north-eastern direction the site can be evacuated to the north and south via Minjungbal Drive, away from the identified area of risk.</p>
<p>6. Natural Resources</p> <p>Natural resource limits not exceeded / environmental footprint minimised</p>	<ul style="list-style-type: none"> • Demand for water within infrastructure capacity to supply water and does not place unacceptable pressure • Demonstrates most efficient / suitable use of land <ul style="list-style-type: none"> - Avoids identified significant agricultural land - Avoids productive resource lands – extractive industries, coal, gas and other 	

Criteria	Measurable explanation of criteria	Response
	<p>mining, and quarrying.</p> <ul style="list-style-type: none"> • Demand for energy does not place unacceptable pressure on infrastructure capacity to supply energy-requires demonstration of efficient and sustainable supply solution. 	
<p>7. Environmental Protection Protect and enhance biodiversity, air quality, heritage, and waterway health</p>	<ul style="list-style-type: none"> • Consistent with government-approved Regional Conservation Plan (if available). • Maintains or improves areas of regionally significant terrestrial and aquatic biodiversity (as mapped and agreed by DEC). This includes regionally significant vegetation communities, critical habitat, threatened species, populations, ecological communities and their habitats. • Maintain or improve existing environmental condition for water quality: <ul style="list-style-type: none"> - Consistent with community water quality objectives for recreational water use and river health (DEC and CMA). - Consistent with catchment and stormwater management planning (Catchment Management Authority and council). • Protects areas of Aboriginal cultural heritage value (as agreed by DEC). 	
<p>8. Quality and Equity in Services Quality health, education, legal, recreational, cultural and community development and other government services are accessible</p>	<ul style="list-style-type: none"> • Available and accessible services. <ul style="list-style-type: none"> - Do adequate services exist? - Are they at capacity or is some capacity available? - Has Government planned and budgeted for further service provision? - Developer funding for required service upgrade/access is available. 	

Is the Planning Proposal Consistent with Applicable State Environmental Planning Policies?

EXAMPLE: Here it is essential that the **applicable** SEPPs need to be properly identified and their relevant clauses, aims and objectives responded to. A Tabular format may assist:

Table XX Assessment against State Environmental Planning Policy

State Environmental Planning Policy Assessment	
State Environmental Planning Policy	Comments / Assessment
State Environmental Planning Policy (North Coast Regional Environmental Plan) 1988	
Clause 32A – Coastal Lands	
State Environmental Planning Policy No. 44 – Koala Habitat	
State Environmental Planning Policy No. 55 – Remediation of Land	
State Environmental Planning Policy (Major Development) 2005	
State Environmental Planning Policy (Infrastructure) 2007 – Schedule 3	

Is the Planning Proposal Consistent with Applicable Ministerial Directions (Section 117 Directions)?

The Ministerial Directions are available from the Department of Planning and Infrastructure's web site. A tabular approach to displaying the information would be an appropriate approach.

Section C - Environmental, Social and Economic Impacts

Is there any Likelihood that Critical Habitat, Threatened Species, Populations or Ecological Communities, or their Habitats, will be Adversely Affected as a Result of the Proposal?

A landowner is required to submit a flora and fauna assessment prepared by an appropriately qualified person, the qualifications and experience of whom must be clearly stated along with the dates and times of site inspections.

Are there any Other Likely Environmental Affects as a Result of the Planning Proposal and How Are they Proposed to be Managed?

How Has the Planning Proposal Adequately Addressed Any Social and Economic Effects?

Section D – State and Commonwealth Interests

Is there Adequate Public Infrastructure for the Planning Proposal?

EXAMPLE: *Roads and Traffic*

Engineering and infrastructure

Flooding

Stormwater

What are the Views of State and Commonwealth Public Authorities Consulted In Accordance With the Gateway Determination

Part 4 – Community Consultation

The Department of Planning's guide to preparing planning proposals addresses the process requirements for determining the level of community consultation which should be specified when seeking a Gateway Determination. It can, in theory, be specifically tailored however the general guide is a 14 day exhibition for a low impact proposal and a 28 day exhibition for all other proposals.

The preferred approach is a minimum 28 day exhibition period for all but the most minor draft LEPs (e.g. anomaly not giving rise to any external impact or increased demand for public utility services).

Synopsis

This is a requirement for a concise (brief) summary of the project.

8 Fees and Charges

The cost of preparing a planning proposal will be managed through a Cost Agreement. This will need to be finalised and executed prior to any assessment occurring on the planning request. The agreement is in a standard form and provides a fair and consistent approach to the performance obligations and expectations required by the Council of the proponent.

In addition, Council's Fees and Charges Schedule may specify other applicable charges.

Fees and Charges can be accessed on Council's website:

<http://www.tweed.nsw.gov.au/DoBusiness/FeesAndCharges.aspx>

Dictionary

Unless the context otherwise requires then in construing this guideline the following definition of terms applies:

Act: means the *Environmental Planning and Assessment Act 1979* and any Regulations (EPAR) or Directions made in accordance with it.

Agreement: means an instrument that records an agreement between two or more parties and which includes matters to be performed, including refraining from doing something, by one or more of the parties to it, e.g. agreement as to costs ('costs agreement').

Applicant: means for the purposes of a cost agreement the Proponent and anyone acting with their approval or on their behalf as their Agent; Consultant, Lawyer, or the like, and this term is to be used synonymously with the ordinary meaning of the terms: Proponent; Applicant; 'Person Who Requests', or similar.

Council: means Tweed Shire Council.

Landowner: means the person(s) with legal Title to the land.

LEP: means the Local Environmental Plan for the Tweed Local Government Area.

Minister: means the New South Wales Minister for Planning and Infrastructure, or their delegate.

MOU: means 'memorandum of understanding'. For the Council's purposes an MOU is like a contract in that it details the obligations of each party (Council and Applicant). They typically spell out the things that need to be done and who is responsible for doing them, for example; preparing a study that evaluates the traffic impact of the proposal. It also documents the parties' agreement to work together and in good faith.

Unlike a contract, an MOU used by the Council when preparing a Planning Proposal is not intended to create legal relations. In other words, neither party can initiate a legal proceeding against the other for not doing what they had earlier agreed to do. An aggrieved party can typically seek redress for the other party's nonperformance in other ways without resorting to litigation.

Person: means a company, a natural person(s) or firm (partnership) named in the agreement. It includes any other person taken into partnership by that person or firm during this Agreement and includes the surviving members of a partnership.

Planning Proposal: means the planning proposal required by Section 55 of the Act in relation to the preparation of an environment planning instrument (EPI) up to and including all matters, works and processes necessary to enable the making of the EPI by the Minister in accordance with Section 59 of the Act.

Planning Request: means the Proponent's written request of the Council asking it to exercise its statutory functions in relation to preparing a 'planning proposal' with the intent of amending the local environmental planning instrument.

Project Officer: means the Council Officer responsible for the day to day management of the Council's file pertaining to the request for a planning proposal and all matters incidental to it.

Proponent: means the person requesting the Council to exercise its statutory functions and who will be liable for the costs incurred by the Council in acting on the request, irrespective of whether they are the Landowner.

RPA: means "Relevant Planning Authority" being the Tweed Shire Council.

Study: means a body of work, usually manifesting in a written document such as a report, describing the methodology and scope of an investigation, assessment, analysis or recommendations, of a particular matter or issue.

The services: means the professional and non-professional services employed in the preparation of a planning proposal, including studies and other matters required in relation to the planning proposal.

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