

City of Newcastle

Procedure

Newcastle Local Environmental Plan - Amendment Procedure

July 2021

PO Box 489, Newcastle NSW 2300
Ph: 4974 2000 Fax: 4974 2222
Email: mail@ncc.nsw.gov.au
www.newcastle.nsw.gov.au



Table of Contents

Preliminary	1
1 Purpose	1
2 Scope	1
Amendment of LEP	1
3 Stage A – Initiation, Enquiry and Formal Request	1
4 Stage B - Assessment, LEP Advisory Panel meeting and reporting	2
5 Stage C – Gateway determination and finalisation	3
6 Fees and Charges	4
Annexure A - Definitions	5

Preliminary

1 Purpose

- 1.1 The purpose of this Procedure is to:
 - 1.1.1 Define **City of Newcastle's** (CN) process for considering **Local Environmental Plan (LEP)** Amendment Requests.
 - 1.1.2 Establish a framework for an internal **LEP Advisory Panel** to consider all formal requests to amend the LEP, including CN requests to reclassify land.
 - 1.1.3 Outline the fee structure as it relates to the three stages of the **LEP Amendment Request** process.

2 Scope

- 2.1 This Procedure applies to all requests to amend CN's LEP, whether made by CN, private property owners or public agencies.
- 2.2 This Procedure does not cover minor LEP amendments made under Section 3.22 of the Environmental Planning and Assessment Act, 1979 (the Act).

Amendment of LEP

3 Stage A – Initiation, Enquiry and Formal Request

Initiation

- 3.1 An amendment to the LEP is initiated by the relevant **Planning Proposal Authority**.

Enquiry

- 3.2 **Applicants** are advised to contact CN's Regulatory, Planning and Assessment (RPA) team for a preliminary discussion about a proposed Newcastle LEP amendment, prior to submitting a formal request to amend the LEP. RPA can provide advice on the proposed amendment and identify studies that may be required to support a formal request.
- 3.3 Where a complex LEP Amendment is being considered, a formal Panel Meeting is recommended, prior to an Applicant lodging an LEP Amendment Request. This will allow for feedback detailing advice on the likely issues to be addressed in preparing a formal LEP Amendment Request. Relevant fees as per CN's adopted fees and charges for a “pre-planning proposal meeting with LEP panel” may be applied.

LEP amendment request

- 3.4 An Applicant may submit a **LEP Amendment request** to initiate an amendment to the LEP. The request should be accompanied by a completed *Request to amend the Newcastle LEP* application form which is available on CN's website, and the draft **Planning Proposal** prepared in accordance with the Department of Planning, Industry and Environment's (DPIE) *Planning Proposals – a guide to preparing planning proposals*.
- 3.5 Following a preliminary assessment, if the RPA team is satisfied that the amendment request provides sufficient detail for an initial assessment and has merit to proceed, the Applicant will be invoiced Stage A fees.

Note: This Procedure details internal CN practices and does not describe all steps in the LEP amendment process established by NSW Department of Planning, Industry and Environment (DPIE). Refer to the DPIE website for a full explanation of the LEP amendment process.

- 3.6 Stage A fees must be paid before the LEP Amendment Request is accepted and further assessment commences. Current fees associated with the LEP amendment process are available in CN's schedule of Fees and Charges, on CN's website.

4 Stage B - Assessment, LEP Advisory Panel meeting and reporting

Assessment by CN officers

- 4.1 The RPA team will complete an initial assessment of the LEP Amendment Request against the relevant State and local planning strategies, policies and guidelines.
- 4.2 Once the RPA team is satisfied that sufficient information has been submitted to support the LEP Amendment Request, an **LEP Advisory Panel** meeting will be arranged.

LEP Advisory Panel Meeting

- 4.3 The LEP Advisory Panel (the Panel) provides advice to the RPA on matters related to Panel members' area of expertise to:
 - 4.3.2 Identify any potential concerns or risks associated with the proposed amendment to the LEP.
 - 4.3.3 Identify information gaps in the supporting documents to the LEP Amendment Request.
- 4.4 Relevant CN Officers will be invited to attend the meeting by the Manager RPA or nominated delegate (Chair), to provide information and advice in relation to their area of expertise.
- 4.5 The LEP Advisory Panel is not a decision-making body. It will not determine whether CN proceeds with a planning proposal.
- 4.6 The Applicant can attend the initial part of the Panel Meeting to present their proposal and be available for questions from the Panel to clarify any matters relating to their LEP Amendment Request.
- 4.7 Panel Meetings are closed to the public and the Applicant does not attend post panel discussion (as referred to above).
- 4.8 The Panel will:
 - 4.8.2 Consider any reports or information provided by CN's RPA team prior to the meeting.
 - 4.8.3 Assess the LEP Amendment Request against existing land use planning strategies and/or other relevant policies.
 - 4.8.4 Identify any outstanding information or matters that should be addressed in the LEP Amendment Request.
- 4.9 A summary of the outcomes of the Panel meeting will be made available to the Applicant.
- 4.10 The Panel or the Applicant may request a further Panel Meeting be scheduled where there are unresolved matters or to further consider issues where additional information has been supplied. The Panel Chair/Manager RPA is to approve any additional Panel Meetings. Fees as per CN's adopted Fees and Charges may be applied.

Report to Council

- 4.11 If CN's RPA team supports an LEP Amendment Request, it will finalise the Draft Planning Proposal using Council's template and prepare a report to Council seeking a resolution that the LEP Amendment Request be submitted to Department of Planning Industry and Environment (DPIE) for a **Gateway determination**.
- 4.12 If the LEP Amendment Request is not supported by the RPA team, the Applicant will be provided with written advice outlining the reasons for the decision.
- 4.13 In the event that the RPA team does not support an LEP Amendment Request, an Applicant may nonetheless request it be reported to the Council. A request should be made in writing, outlining the reasons for the LEP Amendment Request to progress and be submitted for a Gateway determination.
- 4.14 Applicants must pay Stage B fees before a report can proceed to the Council.

Pre-Gateway Review

- 4.15 In accordance with DPIE's Pre-Gateway Review process, an Applicant may request a review of CN's decision to not support a Draft Planning Proposal. Should it be determined that the Draft Planning Proposal has merit and should be submitted for a Gateway determination, a decision on whether to accept the role of Planning Proposal Authority will be made by resolution of Council. If Council does not accept, an alternative Planning Proposal Authority is appointed.

5 Stage C – Gateway determination and finalisation

Council acceptance of plan making delegations

- 5.1 When Council resolves to progress a Planning proposal and seek a gateway determination under Section 3.34 of the Act, it will confirm if delegation is being sought under Section 3.36 *Making of local environmental plan by local plan-making authority* of the Act for the proposed amendment to Newcastle LEP 2012.

Gateway determination

- 5.2 If the Draft Planning Proposal proceeds with a Gateway determination, Applicants will be required to pay Stage C fees, prior to CN's RPA team progressing the amendment in accordance with DPIE's Gateway determination.

Post-Gateway review

- 5.3 Council or an applicant may lodge a request for a Gateway review with the Department following a Gateway determination, before community consultation on the proposal has commenced and within the timeframes established by DPIE.

Sub-delegation of plan making

- 5.4 Where CN has sought to exercise its delegations under Section 3.36 of the Act and this is provided within the gateway determination, CN will sub-delegate this function to the **CEO and Manager RPA**.
- 5.5 The Manager RPA will exercise the delegations through:
 - 5.5.2 The RPA team arranging the drafting of the Planning Instrument and Maps
 - 5.5.3 The RPA team consulting with the DPIE and Parliamentary Counsel on the final draft Instrument.
 - 5.5.4 The Manager RPA signing (making) the legal instrument and a notification is published on the NSW legislation website.
 - 5.5.5 Providing Council a memo advising of the amendment being made.

Finalisation by DPIE

- 5.5 Where CN is not exercising the **Plan Making Function** to finalise the request CN will forward the resolution to DPIE with a request that it finalise the Draft Planning Proposal and Maps in accordance with CN's resolution to make the requested amendments to the LEP.

6 Fees and Charges

- 6.1 The *Environmental Planning and Assessment Regulation 2000* allows CN to recover the costs and expenses incurred in amending the LEP. Applicable fees for each stage of the LEP amendment process must be paid prior to proceeding to the next stage. These fees are prescribed in CN's Delivery Program and Operational Plan and include:
- 6.1.2 Stage A fee – Initial assessment and LEP Advisory Panel
 - 6.1.3 Stage B fee – Reporting to Council seeking Gateway Determination
 - 6.1.4 Stage C fee – Post-Gateway consultation and finalisation
- 6.2 Fees will apply to the following LEP Amendment Requests:
- 6.2.2 External (private landowners) requests including:
 - a) Amendments to all planning controls (other than identifying minor anomalies)
 - b) Amendments to schedule 1 of the LEP to list an additional permitted use on a specified property that would otherwise not be permitted in the zone; or
 - c) Other requests that incur costs to CN.
 - 6.2.3 External (public agencies) requests of a commercial nature. That is, any amendment to enable development of land for use other than those defined as an 'Infrastructure Facility' under State Environmental Planning Policy (Infrastructure) 2007.
 - 6.2.4 Internal (CN) requests of a commercial nature, including rezoning and/or reclassification of community land to operational. That is, any amendment to enable the sale, or lease of CN owned land, improve land values, or undertaking of development other than for the provision of infrastructure or community facilities.
- 6.3 Fees will only be reduced or waived when facilitated by relevant CN policy.

Annexure A - Definitions

Applicant means the person or company who completes and signs the LEP amendment request application form and is the contact for all matters and correspondence relating to the LEP Amendment Request. An **External Applicant** can be either a private landowner or State agency or someone nominated by the landowner to act on their behalf. An External Applicant can also include CN when the Draft Planning Proposal is of a commercial nature.

CEO means Chief Executive Officer of the City of Newcastle and includes their delegate or authorised representative. References to the Chief Executive Officer are references to the General Manager appointed under the *Local Government Act 1993* (NSW).

City of Newcastle (CN) means Newcastle City Council.

Council means the elected Council.

A **Gateway determination** is issued by the Minister or their delegate in relation to a Draft Planning Proposal. This specifies whether a planning proposal is to proceed and if so, in what form, the level of consultation required and appropriate timeframes for the various stages of the process.

Local Environmental Plan (LEP) means the legal document that determines which land uses within zones are permissible with or without development consent and those which are prohibited. It can apply to the whole of the local government area or to a particular area. The written document is accompanied by maps, such as zoning maps, lot size maps, building height maps and heritage maps. An LEP is a Planning Instrument under the Environmental Planning and Assessment Act.

LEP Advisory Panel (Panel) means the internal panel set up by CN to make recommendations about Draft Planning Proposals. The Panel consists of:

- a) Manager RPA or delegate (Chair);
- b) Representative/s from CN invited by the Chair;
- c) Representative/s from State agencies with specialist knowledge, skills, qualifications or experience depending upon LEPs the issues relating to planning proposals.

LEP Amendment Request means a formal application to amend CN's Local Environmental Plan (Newcastle LEP 2012) and includes:

- a) a completed LEP Amendment Request Application Form;
- b) a written submission in the form of a Draft Planning Proposal, and
- c) any other supporting documentation and payment of the prescribed fees.

Minister means the Minister for Planning and Public Spaces

Manager RPA means the Manager of Regulatory, Planning and Assessment.

Panel Meeting means a meeting of the LEP Advisory Panel held on an as needs basis to consider LEP Amendment Request Applications.

Plan Making Function means:

- a) The decision whether to make or not make a plan
- b) Deferring a matter from a plan
- c) The ability to identify which matters must be considered and which stages of the plan making process must be carried out again prior to resubmission if the council decides not to make an LEP or if a matter is deferred from the LEP.

Planning Proposal means the document described in clauses 3.4.

Planning Proposal Authority (PPA)—the body responsible for carrying out the LEP making process set out in the Act. For council initiated LEPs, the PPA will generally be the council. Where the Minister has initiated the process, the Minister will direct the Planning Secretary, a Planning Panel or some other person or body prescribed by the regulations to be the PPA.

RPA means the Regulatory, Planning and Assessment Team.

Document Control

Procedure title	Newcastle Local Environmental Plan - Amendment Procedure
Procedure owner	Regulatory, Planning and Assessment
Prepared by	Regulatory, Planning and Assessment
Approved by	Manager, Regulatory Planning and Assessment
Date approved	13 July 2021
Commencement Date	13 July 2021