

**GR2 – Update on Draft Planning Proposal Policy**

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TRIM 8039-3

**EXECUTIVE SUMMARY**

- This report provides an update on the progress of the draft Planning Proposal Policy. It documents the outcome of the public exhibition and identifies a number of new considerations which require changes to the draft policy.
- The changes are considered to require further consultation with key stakeholders.
- Under legislation, a person who makes a relevant planning application or public submission is required to disclose any reportable political donations. The disclosure requirements extends to any person with a financial interest in the application or any associate of the person making a public submission. No disclosure of political donation has been made in association with this draft policy.
- It is recommended that Council supports the changes to the draft Planning Proposal Policy and publicly exhibit the amended policy.

**REPORT**

**1.1 INTRODUCTION**

In April 2017, Council considered a report on the Draft Planning Proposal and resolved to publicly exhibit the Draft Planning Proposal Policy with amendments. Council's resolution included a number of points to be considered during the exhibition process. A copy of the Minutes and report are provided at Attachment 1.

The draft policy was exhibited in June/July 2017 and a number of submissions were received predominantly from public agencies which require some minor amendments to the draft policy. A copy of the draft Planning Proposal Policy as exhibited is provided at Attachment 4.

Since the draft policy was prepared there have been a number of new considerations which require additional changes to the policy. These new considerations include:

- The need for upfront studies required by NSW Department of Planning & Environment to meet Gateway Determination timeframes
- Proposed changes to Council's Fees & Charges
- Introduction of Local Planning Panels.

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These additional changes are not considered to be minor and it is recommended that the draft policy is re-exhibited.

A copy of the amended draft Planning Proposal Policy recommended for further consultation is provided at Attachment 5.

Please note that clauses referred to throughout this report refer to requirements within the version of the draft policy which was publicly exhibited (i.e. Attachment 4) and not the amended version (i.e. Attachment 5).

**1.2 CONSIDERATIONS REQUIRING CHANGES TO THE DRAFT POLICY**

**Council Resolution 55/2017 from 18 April 2017**

When Council endorsed the Draft Planning Proposal Policy for public exhibition a number of points were identified for consideration during the exhibition process:

- a. *That pursuant to Clause (5)(b) of Ministerial Direction 1.2 (Rural Zones), Council require relevant Planning Proposals include a justification report which gives consideration to the objectives of this direction. This requirement shall be highlighted in Section 4.9 of the Draft Planning Proposal Policy.*

In response to this resolution a clause was included in the draft planning proposal (see clause 4.9.6 in Attachment 4).

It is now proposed that specialist studies typically required to inform planning proposals are submitted up front at the start of the process. The rationale for this change is discussed later in this report.

To facilitate this change it is proposed to include a clause in the draft policy which lists 'typical' studies that are to be submitted with a draft planning proposal.

With this in mind, it is now proposed to implement the Council's resolution by including a requirement for this investigation as part of the list of 'typical' studies. This is considered to be a more consistent approach which fits better with the style of the draft policy.

- b. *That community consultation for Major Planning Proposals outlined in Section 4.4.5 of the Draft Planning Proposal Policy, include a requirement to write to all land owners within a 2km radius of the subject site.*

In response to this resolution a requirement to consult with all landowners within a 2km radius was included as a minimum requirement for consultation in the Draft Planning Proposal Policy (see the table at clause 4.4.5 in Attachment 4). The requirement was extended to also write to occupants.

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This requirement has a resource implication as it has involved a significant increase in the extent of consultation. An increase in the Fees & Charges for planning proposals is proposed, in part, to accommodate this change.

The amended Draft Planning Proposal Policy includes more detail to differentiate between planning proposal types and it is proposed to apply the 2km radius requirement to 'Planning Proposals (significant)'. These are proposals where the rezoning will result in more than 50 lots.

- c. *That when reporting Planning Proposals to Council at Pre-Gateway stage, the agricultural potential of the site and the impacts or limitations the proposal is likely to have on surrounding agricultural enterprises, land use and viability shall be a key assessment consideration.*

In response to this Resolution a clause was included in the Draft Planning Proposal Policy (see clause 4.4.8 in Attachment 4).

The draft Policy does not identify any other matters, other than agricultural potential, which are required to be addressed when reporting a draft planning proposal to Council at pre-gateway stage.

For this reason it is out place with the style of the policy. The draft planning proposal policy is intended to be a procedural document rather than an assessment document. Assessment criteria is already set out in a number of documents, for example the Ministerial Directions, Region and District Plan, Wollondilly Growth Management Strategy, the Department's guidelines, and the Wollondilly Community Strategic Plan.

Remove clause 4.4.8 does not prevent reports to Council at pre-gateway stage from addressing this matter and it is proposed that the report template can be updated to include this matter as an alternative to a clause in the policy.

It is also noted that, under the amended policy proposed by this report, draft planning proposals will now be required to submit an agricultural land capability/land use conflict study upfront. This will ensure this issue is considered in greater detail early in the rezoning process.

The resolution also provides useful detail that can be included in a study brief template developed to establish the requirements of typical specialist studies.

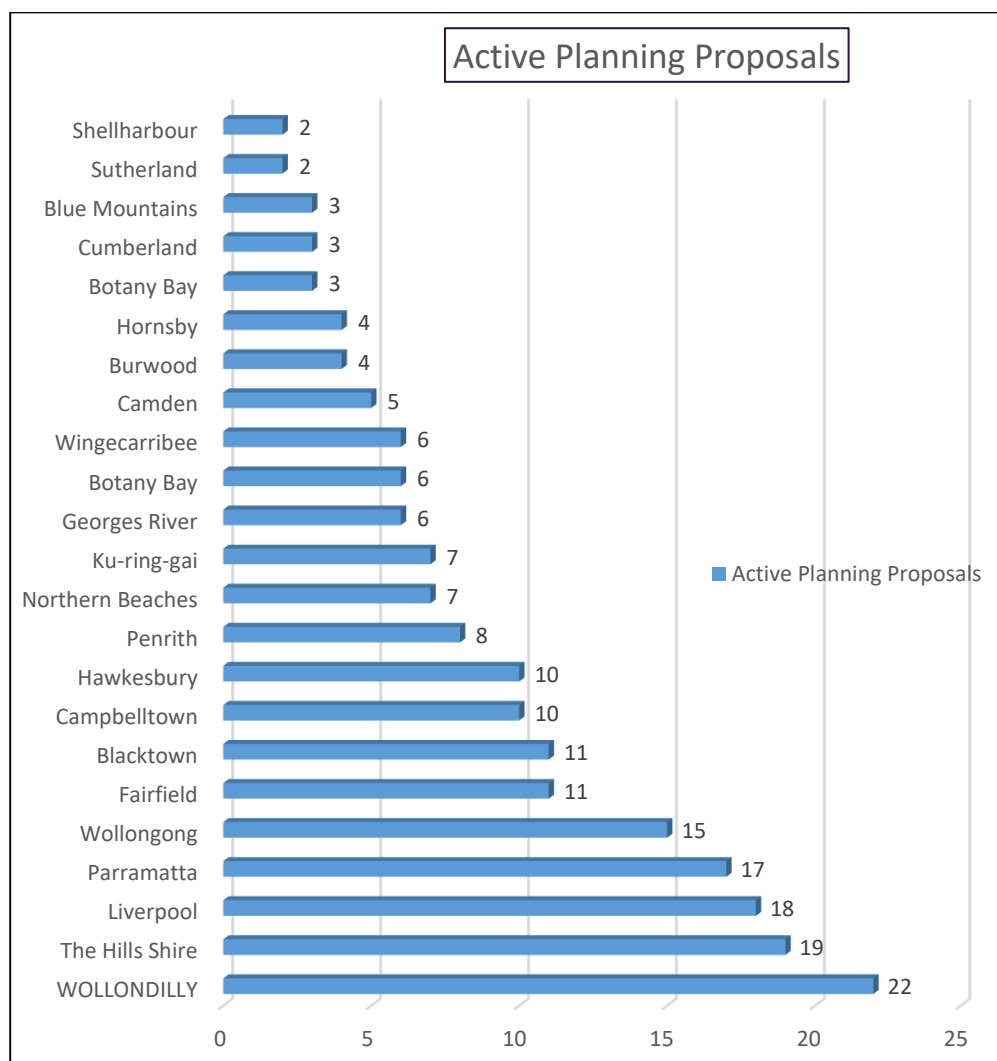
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**Recent Discussions with NSW Department of Planning & Environment regarding meeting Gateway timeframes**

Council has experienced unprecedented growth in recent years and one indicator of this has been the significant number of planning proposals submitted for consideration to rezone land.

Compared with other Councils in NSW, Wollondilly is currently considering the highest number of planning proposals with Gateway determinations (see graph below). In addition, Council has a large number of planning proposals at pre Gateway stage that are not reflected in the statistics below. This has placed a considerable strain on Council's resources and our ability to meet the necessary statutory timeframes.

Growth



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The Sustainable Growth section has held a number of discussions with the Sydney Region West team from the NSW Department of Planning & Environment (the Department) to progress some of Council's older planning proposals and also to identify opportunities to reduce timeframes for planning proposals in Wollondilly.

To facilitate the progression of some of Council's older planning proposals, assistance has been provided by the Department's specialist Accelerated Rezoning Team. The specialist team have provided assistance in the preparation of reports, resolving issues with public agencies, summarising community submissions. At all times, though, decision making has remained with Council.

In terms of timeframes, it has been recognised that a key issue, in the Wollondilly context, is the need to consider a complex range of matters that constrain the capability of land for development. The combination of constraints such as bushfire risk, flooding, threatened species, slope, mining, heritage and limited infrastructure has often meant that the timeframe for progressing planning proposals takes longer than the benchmark timeframes.

To address this, more information is required around site specific constraints earlier in the process so that relevant considerations can be identified. This would significantly assist with determining the relevant lot size and appropriate land use zones for sites up front as these often require changes to the planning proposal and delay timeframes.

As a result, it is recommended that the 'typical' studies or investigation usually required to inform planning proposals in Wollondilly should be provided when the draft planning proposal is initially submitted to Council for consideration and not after a Gateway Determination has been issued. A number of changes have been made throughout the draft policy to deliver this outcome.

Typical studies are considered to include:

- Traffic
- Flora & fauna
- Preliminary contamination assessment
- Bushfire prone land
- Stormwater management
- Wastewater and servicing study
- Aboriginal archaeological & cultural heritage assessment
- European heritage assessment
- Agricultural land capability/land use conflict
- Any other study required by a Ministerial Direction.

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However, the change in approach will increase the timeframe pre-Gateway for Council and this may increase the opportunity for proponents seeking a Rezoning Review. The Rezoning Review mechanism allows proponents to make request that an independent body review a request for a planning proposal prior to a Gateway determination being issued. A Rezoning Review can be requested if Council has failed to indicate its support 90 days after the proponent has submitted a draft planning proposal. On balance, however, requiring studies up front is anticipated to reduce the overall timeframe for the rezoning process and this is considered more beneficial in terms of providing certainty and delivering houses than the risk of some proponents seeking a Rezoning Review.

In any case, Wollondilly's commitment to upfront community consultation and the introduction of local planning panels already mean that 90 days is not a realistic timeframe to complete a preliminary assessment and report to Council.

This change to the draft planning Proposal Policy is considered to be a change to Council's approach and would require the re-exhibition of the draft policy.

**Proposed changes to Council's Fees & Charges**

A number of changes are proposed to Council's Fees & Charges for 2018/19 as they apply to Planning Proposals. These will be included in the fees and charges that form part of the draft Wollondilly Operational Plan 2018/19.

In summary the changes involve:

- Changing the name for planning proposal types and the associated fee
- Introducing a new planning proposal type for employment generating proposals
- Formalising and introducing partial refunds for draft planning proposal withdrawn at an early stage.

The draft Planning Proposal Policy has been updated to reflect these changes where relevant.

**Introduction of Local Planning Panel**

In March 2018, Local Planning Panels became mandatory for all Sydney Metropolitan Councils.

The *Local Planning Panels Direction - Planning Proposals* issued by the Minister for Planning identifies the types of planning proposals that are to be referred to local planning panels. A copy of the Direction is provided at Attachment 6.

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From 1 June 2018 all planning proposals without a Gateway determination are required to be referred to the local planning panel for advice before being forwarded to the Minister. There are some exceptions to this but only for planning proposals which are inconsequential.

It is considered logical to refer planning proposals to the local planning panel ahead of a report to Council so that Council has the benefit of considering the panel's advice before making a decision.

It is proposed to include this requirement within the planning proposal policy to provide clarity on the process.

At this stage there is no intention to impose requirements to refer planning proposals to the panel beyond those stated in the Direction.

There is some uncertainty at present around whether the Direction is also intended to apply to a request for an alteration to a Gateway determination. The Direction is not clear in this regard.

At this stage no provisions are proposed within the policy for gateway alterations. It is anticipated that more clarity will be available before the policy is finalised and an additional clause could easily be inserted to address this if necessary. In any case, the Direction would supersede the draft Planning Proposal Policy.

**Minor Housekeeping Changes**

A number of minor amendments have been made throughout the draft policy to ensure the terminology and approach is consistent throughout the document.

In some cases the format of the document has also been changed to improve the readers understanding of the document. For example, a change in the table style, the introduction of a diagram, use of text rather than an attachment.

These housekeeping changes do not change the intent of any clauses and are considered minor.

All housekeeping changes have been included on the table summarising changes to the draft Planning Proposal Policy provided at Attachment 3.

**Flexibility for Discretion in Extenuating Circumstances**

It is considered an element of flexibility should be included within the draft policy to facilitate a departure from requirements within the policy where there are extenuating circumstances.

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A departure should only be allowed with approval from the Director Planning.

A clause has been included to accommodate this.

**1.3 CONSULTATION**

The Draft Planning Proposal Policy was exhibited for 43 days from 7 June 2017 to 19 July 2017.

During the exhibition information was available on Council's website and through Council's online community engagement portal "engage.wollondilly". Hardcopies were available at Council's office and Wollondilly Library.

Letters were also sent to identify key stakeholders inviting their feedback. These included:

- Public agencies who we are commonly required to consult as part of the Gateway Process and who provide advice on the requirements for the preparation of specialist studies or critical threshold issues
- NSW Department of Planning & Environment
- Proponents of any current Planning Proposal submitted with Council.

During the exhibition eight (8) submissions were received. Of these one (1) was from a private organisation and seven (7) from public agencies. None of the submissions objected to the draft policy and a number of submissions sought clarification on aspects of the draft policy or suggested minor changes.

A table providing a summary of submissions, a response and whether any changes are required is provided at Attachment 2.

Most of the comments received relate to three (3) sections within the policy. In summary these sections and the key issues raised include:

- Planning Proposal categories (section 4.2)
  - Criteria for categorisation is unclear
- Minimum consultation requirements (section 4.4)
  - Requirements for Council should be the same as those for other proponents
- Consultation with public agencies (section 4.7)
  - A desire to consult with public agencies early in the process
  - Consistency with Ministerial Directions
  - Clarity required for 'potential critical threshold issue'.

**1.4 CONSULTATION WITH COUNCIL STAFF**

The following comments on the Draft Planning Proposal Policy were received from Council staff:



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**GIS/Property Team**

Council's GIS/Property team have requested that an amendment be made to the wording in section 4.3.2. This section sets out at what point any of the applicable fees will be determined.

An amendment to the wording has been requested so that mapping fees are not determined on the basis of the date the planning proposal was submitted but the date of the public exhibition which is closer to the point at which mapping work is undertaken.

At present there are two (2) mapping fees to partially recover partial costs associated with preparing the statutory maps that are required for changes to the local environmental plan.

Amendments have been made to the draft policy to implement the suggested change. However, these have been extended to refer to both the public exhibition and the finalisation stage which is when the relevant fees are charged.

In addition it is proposed to replace the table at Attachment 1 to the policy which deals with the applicability of mapping fees, and instead include a note within the policy. This is considered to be a cleaner way to present this information.

These amendments are considered to be minor.

**Environmental Services**

The Environmental Services team supported the policy and no changes have been requested.

**FINANCIAL IMPLICATIONS**

This matter has no financial impact on Council's adopted budget or forward estimates.

**ATTACHMENTS INCLUDED IN A SEPARATE BOOKLET**

1. Minutes and Report to Council on 18 April 2017; PE2 - Draft Planning Proposal Policy
2. Table summarising submissions to draft Planning Proposal Policy
3. Table summarising changes to draft Planning Proposal Policy
4. Draft Planning Proposal Policy - version previously exhibited
5. Amended draft Planning Proposal Policy
6. Local Planning Panels Direction - Planning Proposals.

Sustainable and Balanced Growth  
Report to the Ordinary Meeting of Council held on Monday 21 May 2018

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**RECOMMENDATION**

1. That Council support the changes to the draft Planning Proposal Policy detailed in this report and supporting attachments.
2. That the amendments to the draft Planning Proposal Policy be publicly exhibited.
3. That the outcome of the exhibition process be reported back to Council.