



Planning circular

PLANNING SYSTEM

Planning systems; Plan-making reviews

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| Circular | PS 22-001 |
| Issued | 26 January 2022 ¹ |
| Related | PS 22-003, replaces PS19-003 (dated 6 February 2019) |

Independent review of planning proposals for identified Aboriginal land

The purpose of this circular is to advise councils and the public about the independent review process for plan-making decisions under Part 3 of the *Environmental Planning and Assessment Act 1979* for land identified in Chapter 3: Aboriginal land of *State Environmental Planning Policy (Planning Systems) 2021*.

Introduction

Chapter 3: Aboriginal land of *State Environmental Planning Policy (Planning Systems) 2021* (Planning Systems SEPP) applies to land owned by an Aboriginal Land Council (ALC).

The SEPP provides for the preparation and publication of development delivery plans which are approved by the Minister. Development delivery plans promote strategic and independent planning decisions for ALCs, and consider regional strategic plans as well as the ALC's community, land and business priorities.

ALCs are encouraged to work with councils to progress planning proposals for their land before going through a review process.

There are two administrative review processes available for plan-making on land subject to a development delivery plan:

- rezoning review
- independent proposal review.

The option for a rezoning review is still retained for ALCs. This process is as outlined in Planning Circular PS 22-003. Alternatively, ALCs may request an independent proposal review.

For both review processes, a new strategic merit test and site-specific merit test outlined in this circular will

apply to land subject to a development delivery plan or an interim development delivery plan.

Independent proposal review

An independent proposal review is an administrative review process closely aligned with the rezoning review process as outlined in Planning Circular PS22-003.

This review will give ALCs an opportunity for an independent body to give advice on planning proposals for land subject to a development delivery plan or an interim development delivery plan, approved under Chapter 3 of the Planning Systems SEPP.

Requesting a review

An independent proposal review may be requested by a ALC before a planning proposal has been submitted to the Department for a Gateway determination. These reviews are carried out by a regional or Sydney planning panel or the Independent Planning Commission for land in the City of Sydney (the Commission).

A ALC can request an independent proposal review if:

- the land is subject to a development delivery plan made under the SEPP; or
- no development delivery plan has been published, the interim development delivery

¹ Revised 10 August 2023 to include updated references to address consolidated State Environmental Planning Policies

plan for the land, published on the Department's website.

Review and determination

When the Department receives a request for an independent proposal review, it is referred to the relevant council for comment. The comments made by the council must be taken into consideration by the planning panel or the Commission where they have been provided to the Department within 28 days from the date the request was made.

The relevant planning panel or the Commission will undertake a strategic and site-specific merit assessment of the proposal.

The planning panel or the Commission will determine whether or not to recommend that the proposal be submitted for a Gateway determination under section 3.34 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Strategic merit test

The key factor in determining whether a proposal should proceed to a Gateway determination should be its strategic merit. The strategic merit test involves assessing the proposal to determine if they are:

- consistent with the relevant development delivery plan or interim development delivery plan for the land to which the proposal applies, or
- where no development delivery plan has been published, consistent with any relevant interim development delivery plan, published on the Department's website, or
- give effect to the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the Greater Sydney Region, or corridor/precinct plans applying to the site, including any draft regional, district or corridor/precinct plans released for public comment, or
- demonstrate consistency with the relevant local strategic planning statement or strategy that has been endorsed by the Department or required as part of a regional or district plan or local strategic planning statement; or
- respond to a change in circumstances that has not been recognised by the existing planning framework.

Site-specific merit test

Having passed the strategic merit test, the relevant planning panel or the Commission must then determine if the proposal has site-specific merit, having regard to:

- the social and economic benefit to the Aboriginal community facilitated by the proposal;
- the natural environment (including known significant environmental values, resources or hazards);

- the existing uses, approved uses and likely future uses of land in the vicinity of the land subject to the proposal, and
- the services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangement for infrastructure provision.

Proposals that, in the opinion of the planning panel or the Commission, do not meet the above assessment criteria will not be able to proceed to a Gateway determination.

If the Planning Panel or Commission determines that the proposal should proceed to a Gateway determination, councils will be provided the opportunity to accept the planning proposal authority role. If the council does not accept the role within the first 42 days, an alternate planning proposal authority will be appointed.

Regional planning panels have delegated authority to direct themselves to be the planning proposal authority where a proposal has been subject to a rezoning review and the council has not accepted the role of planning proposal authority.

For proposals that are to proceed to a Gateway determination, further work may still be required by the ALC or the planning proposal authority before a planning proposal can be submitted for a Gateway determination.

Where a council accepts the role of planning proposal authority, it will have 42 days to submit a planning proposal to the Department for a Gateway determination or an alternate planning proposal authority will be appointed.

Further information

Planning Circular PS 22-003 provides advice on the rezoning review process related to plan-making decisions under Part 3 of the EP&A Act.

The **Local Environmental Plan-Making Guideline**, issued under section 3.33(3) of the EP&A Act, provides advice on the various stages in the plan-making process, including details of the stages and application requirements for rezoning reviews and the review of Gateway determinations

Copies of the guides are available on the Department's website: <http://www.planning.nsw.gov.au>

The Department has developed a number of template documents to assist councils preparing delegated local environmental plans. Councils will be able to access these templates and use them to ensure that the key 3 statutory requirements of the plan-making process have been complied with. These templates are available for download from the Department's website at <https://www.planning.nsw.gov.au/plans-for-your-area/local-planning-and-zoning/making-and-amending-leps>

For further information please contact Service NSW on 13 77 88.

Department of Planning and Environment circulars are available at <https://www.planning.nsw.gov.au/plans-for-your-area/local-planning-and-zoning/strategic-planning-toolkit>.

Authorised by:

Marcus Ray

Group Deputy Secretary Planning and Assessment

Department of Planning and Environment

Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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