



Planning circular

PLANNING SYSTEM

Plan making reviews and delegations

Circular	PS 22-002
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Related	Replaces PS21-004 (dated 8 June 2021)

Delegation of plan making decisions

The purpose of this circular is to update councils and the public about delegations of plan making functions under Part 3 of the Environmental Planning and Assessment Act 1979 for the Rezoning Review process.

Introduction

This circular replaces Planning Circular PS21-004 and provides updates and advice in relation to delegations for the making of local environmental plans (LEPs).

The Minister for Planning has delegated certain decision-making powers under the local environmental plans (LEPs) making process to the Department of Planning, Industry and Environment and Sydney and Regional Planning Panels.

Requirement for only one second stage development application

The following plan making delegations have previously been issued.

Planning Secretary and senior officers of the Department of Planning and Environment:

- Directing the Planning Secretary (or any other person or body prescribed by the regulations) to be the planning proposal authority under section 3.32(2) of the Environmental Planning and Assessment Act 1979 (EP&A Act);
- Making a gateway determination under section 3.34(2) of the EP&A Act;
- Arranging for the review of a planning proposal by the Independent Planning Commission or a planning panel under section 3.34(5) of the EP&A Act;
- Altering a gateway determination under section 3.34(7) of the EP&A Act;
- Determining that a planning proposal not proceed, at the request of the planning proposal authority, under section 3.35(4) of the EP&A Act;
- Plan making powers under section 3.36 of the EP&A Act; and
- Forming an opinion under section 3.22(1)(c) of the EP&A Act that a LEP amendment does not

warrant compliance with the plan making requirements under Division 3.4 of the EP&A Act because the amendment will not have a significant adverse impact on the environment or adjoining land.

Authorisation to local councils:

- Section 3.34(2)(g) of the EP&A Act provides that if the planning proposal authority is a council, the Gateway determination may authorise the council to make the proposed instrument and set out any conditions the council is required to comply with before the instrument is made. When this authorisation is given, the council becomes the local plan-making authority.

Delegations to Planning Panels

The following delegations are in place for the Rezoning Review process.

Sydney and Regional Planning Panels:

- Direct itself to be the planning proposal authority under section 3.32(2) of the EP&A Act, for a proposal that has been subject to a Rezoning Review.

Greater Sydney Commission

The Planning Legislation Amendment (Greater Sydney Commission) Act 2018 removed the plan making powers previously transferred to the Greater Sydney Commission (GSC).

However, the GSC must still be consulted before a gateway determination is issued, if the planning proposal is for land within the Greater Sydney Region and is likely to significantly affect the implementation of a strategic plan affecting that Region.

Department of Planning and Environment

A broad range of decision and plan making functions have been delegated to the department by the Minister for Planning.

Within the department, the regional offices generally manage the plan making process for draft LEPs, including the issuing of gateway determinations under section 3.34 of the Act, authorising local councils to exercise plan making functions, altering gateway determinations and making LEPs.

By working closely with councils, the department's regional teams are able to bring a much stronger local perspective to the process of plan making in regional areas.

The types of issues that require referral to the Executive are:

- if the proposal to rezone land or change planning controls is not supported, or a condition is being sought to impose a significant change to the proposal; or
- if the proposal is contentious because it is not consistent with strategic planning for the area or has been the subject of community discussion. Plan making functions are to be exercised by regions where:
- the matter is of a minor nature or local level of significance; and
- the matter is consistent with the position of the relevant council or any relevant department strategy.
- The Planning Secretary has also been delegated the function to direct the Secretary of the department to be the planning proposal authority.

Further information and guidance regarding the matters that the Secretary, as delegate of the Minister, will consider when determining to direct the Secretary to be the planning proposal authority is described in LEP Planning Circular PS 09-004.

Planning Panels

Sydney and Regional Planning Panels will determine rezoning review requests for all matters outside of the City of Sydney. Sydney district planning panels undertake all rezoning reviews that relate to matters within the Greater Sydney Region but outside of the City of Sydney.

To implement the new Rezoning Review process the Minister for Planning and Public Spaces has delegated the authority for a regional planning panel to direct itself to be the planning proposal authority. This would be undertaken where a proposal had been subject to a rezoning review and a council had not accepted this role.

Planning panels have not been delegated functions to issue or alter a gateway determination or make a LEP. Planning panels will continue to provide advice to the Minister (or delegate) regarding the suitability for issuing and altering a gateway determination and

making a LEP through the plan making process. Further information and guidance regarding the rezoning review and Gateway review processes is described in Planning Circular PS22-003.

Independent Planning Commission

The Independent Planning Commission (the Commission) will determine rezoning review requests for all matters within the City of Sydney.

Similar to the planning panels, the Commission has not been delegated functions to issue or alter a gateway determination or make a LEP.

The Commission will continue to provide advice to the Minister (or delegate) the suitability for issuing and altering a Gateway determination and making a LEP through the plan making process for all matters within the Greater Sydney Region.

Local councils

Section 3.31(3)(b) of the EP&A Act provides that a council can be the local plan-making authority and finalise a LEP where it is authorised by a gateway determination. The information below provides guidance on the process and procedure for making local councils the local plan-making authority. This information was previously outlined under Planning Circular PS 21-004.

A council becomes the local plan-making authority in respect of a draft LEP where the gateway determination relating to the draft LEP includes a condition which authorises council to make the LEP. The gateway determination may also set out any conditions the council is required to comply with before the LEP is made.

If a council is authorised to make an LEP, it may delegate its plan-making function to an officer within council (usually the general manager or planning director). When submitting a planning proposal to the gateway a council should advise the department whether the council or an officer will exercise the plan-making functions.

Section 381 of the *Local Government Act 1993* requires that such functions cannot be delegated to:

- a. the general manager, except with the approval of the council, or
- b. an employee of the council, except with the approval of the council and the general manager.

Councils must comply with any conditions of the gateway determination before exercising the plan making function. This includes obtaining the agreement of the department's Secretary for any noncompliance with a direction issued under section 9.1 of the EP&A Act.

If a condition of the gateway determination cannot be complied with, council must not exercise the plan making function and must advise the department immediately.

Councils to be routinely authorised as local plan making authority for LEPs

Councils will be authorised to prepare and make the following types of draft LEPs following a gateway determination that the planning proposal can proceed:

- mapping alterations
- section 3.22 matters (e.g. amending references to documents/agencies, minor errors and anomalies)
- reclassifications of land where the Governor's approval is not required • heritage LEPs related to specific local heritage items supported by an Office of Environment and Heritage endorsed study
- spot rezoning consistent with an endorsed strategy and/or surrounding zones, and
- other matters of local significance as determined by the Gateway.

When submitting a planning proposal, councils will be required to identify whether they wish to be authorised to make the plan (and therefore become the local plan-making authority) for each planning proposal.

Drafting and notifying LEPs for which council is the local plan-making authority

Under section 3.36(1) of the Act the department requests the Parliamentary Counsel's Office (PCO) to draft the legal instrument to give effect to a planning proposal. However, when a council has been made the local plan-making authority, council will deliver its instructions directly to PCO.

The council will concurrently copy the instructions to the department for monitoring and reporting only. Council will then deal directly with PCO to negotiate and agree the final wording of the instrument, prior to making the LEP.

When a planning proposal relates to changes to LEP maps only (i.e. where there are no changes to the written instrument), council will deliver its instructions to the department (instead of PCO). The department will draft the legal instrument to give effect to a planning proposal.

When a plan is made, the department currently requests PCO to 'notify' the plan on the NSW Legislation webpage. The day the plan is notified on that webpage is the day the LEP becomes effective. This process will continue.

When a council has made an LEP it will be forwarded to the department. The department will request notification through PCO and will record the dates of making by the council and notification on the NSW Legislation web page. Changes to LEP maps resulting from this notification will be reflected on the planning portal.

Reporting requirements for local councils

Councils will be required to report to the department on processing times for LEPs in respect of which they are the local plan-making authority (e.g. exhibition dates, dates of council resolution and/or delegated decisions

to proceed with the planning proposal after exhibition, request for drafting, making of plan, and forwarding to department to arrange notification).

A template for the reporting of this information has been prepared and is provided on the department's website.

Councils will be required to submit this completed template with each LEP at the time a request is made to the department to notify the plan. Councils are also required to provide written advice to the relevant regional office of the dates as they occur to ensure that the department's publicly accessible LEP tracking system, LEPs Online, remains up to date.

Further information

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 plan making function to councils.

Copies of the EP&A Act 1979 and Environmental Planning and Assessment Regulation 2000 are available online at <http://www.legislation.nsw.gov.au>.

A copy of the Local Environmental Plan -Making Guidelines is available on the Department's website <https://www.planning.nsw.gov.au/Plans-for-your-area/Local-Planning-and-Zoning>

The department has developed a number of template documents to assist councils preparing delegated LEPs.

Councils will be able to access these templates and use them to ensure that the key 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, Industry and Environment circulars are available at: <https://www.planning.nsw.gov.au/Plans-for-your-area/Local-Planning-and-Zoning/Strategic-Planning-Toolkit>

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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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