

Circular	PS 18-012
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Replaces	PS 16-004 (dated 30 August 2016)

Independent reviews of plan making decisions

The purpose of this circular is to advise councils and the public about the independent review processes related to plan-making decisions under Part 3 of the *Environmental Planning and Assessment Act 1979*.

Introduction

This circular replaces Planning Circular PS 16-004 and provides updates and advice in relation to changes to the *Environmental Planning and Assessment Act 1979* (the EP&A Act).

Independent Reviews

There are two administrative review processes available in the plan making process:

- **Rezoning reviews** – which may be requested by a proponent before a planning proposal has been submitted to the Department for a Gateway determination. These reviews are carried out by Planning Panels or the Independent Planning Commission (the Commission) for the City of Sydney; and
- **Gateway reviews** – which may be requested by a council or proponent following a Gateway determination. These reviews are informed by advice from the Commission.

These reviews will allow councils and proponents to have decisions in relation to proposed amendments to LEPs reconsidered, by providing an opportunity for an independent body to give advice on such proposals.

Rezoning Review

If a proponent (e.g. developer, landowner) has requested that a council prepare a planning proposal for a proposed instrument, the proponent may ask for a rezoning review if:

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

determination within a reasonable time after the council has indicated its support.

The Regulation requires councils to notify a proponent when the council determines that it will not support a request to prepare a planning proposal. The proponent of the proposed instrument then has 42 days to request that the relevant Planning Panel or the Commission review the proposal.

Where a council has not made a determination after 90 days, the proponent may request a review any time after the 90 days has lapsed. Where a council has made a decision to prepare a planning proposal or subsequently does so after the 90 days, there is an expectation that a planning proposal would be submitted for a Gateway determination no more than 42 days after this decision.

A proponent should contact the Department's regional office to discuss the opportunity for seeking a rezoning review if there are significant delays between a council making a determination and submitting a planning proposal for a Gateway determination.

A guide to preparing local environmental plans sets out lodgement requirements, including fees and information a proponent must provide to the Department in order for a review to be undertaken. Only the same application that was initially presented to the council by the proponent will be reviewed by the Planning Panel or the Commission.

Review and determination

The relevant Planning Panel or the Commission will undertake a strategic and site-specific merit assessment of rezoning review proposals.

The Planning Panel or the Commission will determine whether or not to recommend that a proposal should be submitted for a determination under section 3.34 of the Act (Gateway determination).

The key factor in determining whether a proposal should proceed to a Gateway determination should be its strategic merit. The Department has strengthened the Strategic Merit Test and proposals will now be assessed

to determine if they are:

- consistent with 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
- consistent with a relevant local strategy that has been endorsed by the Department; or
- responding to a change in circumstances, such as the investment in new infrastructure or changing demographic trends that have not been recognized by existing planning controls.

A proposal that seeks to amend controls that are less than 5 years old will only be considered where it clearly meets the Strategic Merit Test.

Note: A draft regional plan outside of the Greater Sydney Region, draft district plan within the Greater Sydney Region or draft corridor/precinct plan that has been released for public comment by the Minister for Planning, Greater Sydney Commission or Department of Planning and Environment does not form the basis for the Strategic Merit Test where the Minister for Planning, Greater Sydney Commission or Department of Planning and Environment announces that there is to be another exhibition of, or it is not proposed to finalise, that draft regional, district or corridor/precinct plan.

Having met 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 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 arrangements for infrastructure provision.

Proposals that do not reasonably meet the assessment criteria above in the opinion of the Planning Panel or the Commission will not be able to proceed to a Gateway determination.

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

Planning Panels have delegated authority to direct itself to be the planning proposal authority where a proposal has been subject to a rezoning review and the council has not accepted this role.

For proposals that are to proceed to a Gateway determination, further work may still be required by the proponent 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 and guidance regarding the delegations for Planning Panels and the Commission is described in Planning Circular PS 18-013.

Gateway Review

A council, when it is the planning proposal authority for a proposal, or proponent may request the Minister (or delegate) to alter a Gateway determination, when a Gateway determination is made that:

- a) the planning proposal should not proceed
- b) the planning proposal should be resubmitted to the Gateway, or
- c) imposes requirements (other than consultation requirements) or makes variations to the proposal that the council or proponent thinks should be reconsidered.

If the Gateway determination is either to not proceed or to resubmit the planning proposal, the council or proponent has 42 days from being notified by the Department to request a review.

If the Gateway determination is to proceed with the planning proposal but imposes conditions that the council or proponent considers inappropriate, the council or proponent has 14 days from being notified by the Department to indicate their intent to request a review. The council or proponent would then have 42 days to formally apply for a Gateway review.

A guide to preparing local environmental plans sets out lodgement requirements, including information the council or proponent must provide for a Gateway review to be undertaken.

Separate to the formal Gateway review process outlined above, a council, when it is the planning proposal authority for a proposal, may at any time request that the Gateway determination be reconsidered and reissued. Councils should contact the Department's regional team to discuss any concerns about the Gateway determination before deciding to request a formal review. For some routine matters, a Gateway determination may be altered without the need for a formal review.

Review and determination

The Planning Panels or the Commission will provide advice on whether the original Gateway determination should be altered, giving consideration to the council or proponent's submission and the reasons given for the original Gateway determination.

The Minister's final decision on whether to alter the Gateway determination will be informed by this advice, and the views of the council and proponent.

Further information

A guide to preparing local environmental plans 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.

A guide to preparing planning proposals, issued under section 3.33(3) of the Act, provides advice on the preparation and content of planning proposals.

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

Copies of *A guide to preparing local environmental plans* and *A guide to preparing planning proposals* 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 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

<http://www.planning.nsw.gov.au/Plans-for-Your-Area/Local-Planning-and-Zoning/The-Gateway-Process>

For further information please contact the Department of Planning & Environment's information centre on 1300 305 695. Department of Planning & Environment circulars are available from <http://www.planning.nsw.gov.au/circulars>

Authorised by:

Carolyn McNally
Secretary

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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