

Rezoning Reviews

***Final Review
Report***



**Planning &
Environment**

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Introduction

This report describes a comprehensive review of the NSW Government's Rezoning Review process. The review has been undertaken by the Department of Planning and Environment (the Department).

The report provides:

- the background to the review;
- the findings and recommendations that were exhibited for public comment;
- the key policy issues arising from submissions;
- recommendations for finalising the policy position; and
- the next steps.

Recommendations

The recommendations of this final review report are

- i. Update the Department's *Guide to preparing local environmental plans* and *Guide to preparing planning proposals*.
- ii. Prepare a Planning Circular, to be released upon Ministerial approval, advising councils and stakeholders of the Government's final decision regarding Rezoning Reviews and detailing the new arrangements and processes.
- iii. Update the Department's internal procedures guide and templates related to Rezoning Reviews.
- iv. Prepare and/or update delegations regarding the proposed relevant planning authority role for Joint Regional Planning Panels and, once established, Sydney Planning Panels under the Greater Sydney Commission Act.
- v. Update the Regional Planning Panel procedures manual.
- vi. Update the Regional Planning Panels Code of Conduct to avoid conflicts of interest or apprehension of bias for councilor Panel members where they previously voted on the proposal.

Background

Pre-Gateway reviews were introduced in 2012 as part of a package of reforms aimed at improving the plan making process under Part 3 of the *Environmental Planning and Assessment Act 1979* (the Act).

In 2015 the Department undertook a review of the pre-Gateway process. The scope of the review was to consider:

- whether the pre-Gateway review is achieving the following objectives for which it was established:
 - provide a mechanism for applicants to have council rezoning decisions reviewed
 - ensure decisions on planning proposals that are well located, planned, and assist housing and job supply can be independently reviewed
 - increase transparency and provide greater certainty in plan making
- the efficiency and effectiveness of the pre-Gateway review to date; and
- the role and performance of the Department and Regional Panels.

The review was informed by targeted consultation with the local government sector and key community and industry stakeholders.

In July 2015 the Department released its *Pre-Gateway Review Findings and Recommendations Report* (Recommendations Report)

Key findings and recommendations of the July 2015 report

Findings

Findings were related to the key questions raised in the scope of the review.

Is the pre-gateway review achieving its objectives?

The review found that the pre-Gateway review was generally achieving its original objectives to:

- provide a mechanism for applicants to have council rezoning decisions reviewed;
- ensure decisions on planning proposals that are well located, planned, and assist housing and job supply can be independently reviewed; and
- increase transparency and provide greater certainty in plan making.

Prior to introduction of pre-Gateway reviews there was no mechanism to allow applicants to seek a merit-based review from an independent expert body of council decisions on requests to amend local environmental plans.

In the 32 months from October 2012 to June 2015 the independent pre-Gateway review process led to approval of 29 applications delivering a potential 4,737 homes and 4,585 jobs.

However, the Department's review also found a number of issues in the way the pre-Gateway review process operates that do not result in greater transparency and certainty in plan making. These issues include:

- the respective roles of the Department and the Planning Panels in the process, and the multiple roles of the Department;
- time delays at different stages of the process;
- lack of community awareness of review applications;
- the scope of the reviews;
- the need for a greater focus on strategic consistency; and
- inadequate weight given to the currency of strategic planning applying to the land.

These issues also impact adversely on the efficiency and effectiveness of the pre-Gateway review process as it currently operates.

The role and performance of the Department and Planning Panels

Delays and community awareness

The Department's review identified delays in processing review applications, the average time from lodgment of a proposal with the Department to recommendation by the Regional Panel being 167 days. This was considered unacceptable.

Delays were attributed to the current three-step process and requests for additional information.

In particular the initial strategic and site-specific merit assessment by the Department was seen as a duplication of the assessment undertaken by the Regional Panel. The Recommendations Report recommended deleting this first step, with all eligible review requests being forwarded directly to the relevant Planning Panel for consideration.

To ensure councils and communities are aware of pre-Gateway review requests the Recommendations Report recommended requests be uploaded to the public application tracking system by the Planning Panel within 3 working days of receipt.

Role of the Planning Panel

To further streamline the process the Recommendations Report recommended that the Regional Panel no longer pass its review back to the Department for final decision. The Regional Panel would make the final decision on whether the pre-gateway review should be supported and proceed to gateway. To facilitate this, the Recommendations Report recommended that Minister delegate the power to direct that an alternate relevant planning authority be appointed to the Planning Panels and the Commission (for the City of Sydney).

The Department would then only become involved when a relevant planning authority submitted the planning proposal to the Department for a Gateway determination.

Role of relevant planning authority

During the Department's review, industry representatives raised concern regarding the current practice of the Department to offer councils the role of relevant planning authority although a council may have previously resolved to not support the planning proposal. The practice can add considerable time to the pre-Gateway review process.

The Recommendations Report recommended that this practice continue, so that local matters can continue to be dealt with at the local level where appropriate. However, it concurrently recommended that a 42 day time-frame be adopted for councils to accept the role of relevant planning authority. This allows sufficient time for a resolution of council to be made if necessary.

Should the 42 day time-frame not be met the relevant Planning Panel would automatically be authorised to appoint itself as the relevant planning authority for that proposal.

Making LEPs following a review

The Recommendations Report recommended that the Minister delegate his plan making powers to Planning Panels. This would be consistent with the Government's policy of delegating plan making powers to councils.

The issuing of delegations to the Planning Panels to make LEPs will be further considered once the rezoning review process is established and reviewed in 6-12 months. Until then, the making of LEPs will remain with the Minister or Greater Sydney

Commission or delegates. This approach will enable the rezoning review process to be reviewed and improved if necessary prior to further consideration of delegating plan making functions to the Planning Panels.

Is the pre-Gateway review process efficient and effective?

Volume of applications

The Recommendations Report found that the volume of requests for pre-Gateway review was not a factor in efficiency. The number of requests received during the study period was 75, approximately 2 proposals every month.

Scope of reviews

Significantly, however, the Recommendations Report found that the scope of the review being undertaken was leading to inefficiencies and to a lack of transparency. The report found that the pre-Gateway review process had evolved from its original purpose and intent, and that this had contributed to delays in the process.

The Recommendations Report recommended that the pre-Gateway review should be refocussed to be a review of the proposal as submitted to and considered by council. If the Department forwarded a review request to the Regional Panel, it would concurrently notify the council and request that any comments, additional information and confirmation that the proposal is consistent with the original submission be forwarded to the relevant Regional Panel within 21 days. The role of the Department will be administrative only.

Thresholds for reviews

The Recommendations Report considered the potential of introducing thresholds, such as a capital investment value dwelling yield, as a means of ensuring that only genuinely significant proposals would be eligible for review.

However, it recommended against the approach because:

- it is considered that a review mechanism should be available for all proposals, regardless of their size as the review was designed to increase transparency and certainty in the plan making process;
- there is no such threshold for proposals when they are submitted to the relevant planning authority by proponents in the first instance; and
- eligibility for progress of a planning proposal to the Gateway should be assessed solely on its strategic and site-specific merit, tested against relevant regional and local planning strategies, and not against an arbitrary capital investment value or dwelling yield.

Strategic focus of reviews

The Recommendations Report found that, rather than arbitrary thresholds, the key consideration for whether a proposal should proceed to the Gateway was its strategic merit. This view was strongly supported by stakeholders during consultation.

The Recommendations Report recommended a strengthened strategic merit test, better linked to adopted draft regional, subregional (district) or local planning strategies and to the currency of the planning controls (LEP) applying to the land.

The strengthened test was intended to place increased emphasis on whether existing LEPs reflect the current strategic direction for planning in the area, the length of time that has elapsed since the community was consulted about the planning controls applying to the land, and changing circumstances in the area.

Site-specific merit test

Under the new arrangements proposed by the Recommendations Report, the Regional Panel would also undertake the site-specific merit test. The Recommendations Report made no recommendations to change the matters for consideration under the site-specific merit test.

Exhibited Recommendations

The key recommendations for change set out in the Recommendations Report were:

1. The Department will no longer undertake an initial assessment.
2. All review requests should be automatically referred to the relevant Regional Panel/the Commission within 3 days of receipt.
3. The Council will be notified upon receipt of an application and requested to provide any comments, additional information and confirmation that the proposal is consistent with that considered by Council to the Regional Panel.
4. A revised strategic merit test will be applied by the Regional Panel/the Commission to clarify in more detail the basis upon which a review will be considered, including taking into account the time that has elapsed since the last zoning of the land took place.
5. Proposals that do not meet the strategic merit test will not be able to proceed to Gateway.
6. Those that do meet the new strategic merit test will also have to meet the existing site-specific merit test before they can be recommended for a Gateway by the Regional Panel/the Commission.
7. The power to appoint an alternative relevant planning authority will be delegated to the Regional Panels or the Commission (in the case of the City of Sydney).
8. Plan making powers will be delegated to the Regional Panels and the Commission. This is consistent with the delegations to councils, as relevant planning authorities, to make plans.
9. Requests for review will be uploaded to the Regional Panels or the Commissions public application tracking system within five working days of receipt.
10. If the Regional Panel recommends that a proposal should proceed to Gateway, it will concurrently notify the relevant council and ask if it will accept the role of relevant planning authority to take the proposal to the Gateway and then finalise the proposal.
11. Councils will have 42 days to accept the relevant planning authority role; otherwise the relevant Regional Panel/the Commission will appoint itself as relevant planning authority.
12. The Department's Guide to Preparing Planning Proposals and the Guide to Preparing LEPs will be amended to note that in specified circumstances councils consider the benefit of community participation at an early stage prior to making a decision on the merits of a spot rezoning or LEP amendment.

Attachment A sets out the revised steps in the process as proposed in the Recommendations Report.

Consultation and submissions

The Recommendations Report was placed on the Department's web page for consideration and comment from 2 September until 14 October 2015.

63 submissions were received, 36 from councils, 1 from state agencies, 15 from consultants and industry stakeholders and 11 from community/environmental groups and individual submitters.

Key issues raised in submissions were:

1. That the Regional Panels are inadequately resourced and do not understand their role and responsibilities in pre-Gateway reviews given the panels were originally set up to assess development applications.
2. The Department should still be involved in doing an initial assessment to ensure that only meritorious proposals proceed with a review.
3. Council should not be appointed as the relevant planning authority when it has indicated it is opposed to or has refused the planning proposal.
4. The 42 day timeframe for acceptance of the relevant planning authority role was supported, but should be extended to accommodate council meeting cycles.
5. Consideration of section 117 directions should form part of the strategic merit test.
6. Clarification around the strengthened strategic merit test was sought:
 - What does "contemporary nature of LEPs mean" (i.e. timeframe – last 5 years)?
 - Current strategic plans are too high level and district (subregional) plans not yet been made. Local planning policies should be given most weight and the test should include policies endorsed by Council (not just the Department).
7. Clarification was sought around implementation of recommendation 12 regarding early consultation with the community before a decision is made and there should be an extension of the 90 day timeframe or stop the clock if undertaken by Council.
8. The application considered by the Regional Panel at pre-Gateway review should be "the same" as that initially considered by the council and not changed throughout the process.
9. Avoidance of conflicts of interest when the Regional Panels review council determinations, where councilors on the Planning Panel voted on an application at council.

Attachment B provides details of submitters by issue.

Response to submissions

The Department has considered the submissions received and makes the following recommendations to finalise the review:

1. In the interest of community awareness about what a 'pre-Gateway' review is, and to refocus the reviews on early assessment of the strategic merit of rezoning proposals, the Department recommends that pre-Gateway reviews now be known as Rezoning Reviews.

The two review mechanisms available to proponents and councils with regard to decisions made at different stages of the rezoning process will be Rezoning Reviews and Gateway Reviews.

This name change will be reflected in updated guidelines, procedures, templates, and delegations.

2. The Department will ensure that Regional Panels or Sydney Planning Panels once they are established are adequately resourced to undertake an augmented role in Rezoning Reviews. The Regional Panels procedures manual will be updated. When State-appointed panel members are replaced the Government will ensure a suitable spread of skills exists across members to undertake strategic merit assessments in addition to the development assessment functions of the panels. This approach will extend to the new Sydney Planning Panels under the Greater Sydney Commission when they are established. Regional Panels and Sydney Planning Panels are now referred to as 'Planning Panels'.

A new benchmark that aims to achieve 85% of all Rezoning Reviews will be processed within 90 days has been set. This 90 day timeframe includes the period between the Department receiving the initial Rezoning Review request and the Planning Panel or Commission issuing its determination and written request to a council that it accepts the role of relevant planning authority to process the planning proposal.

3. The key factor in determining whether a proposal should proceed to the Gateway should be its strategic merit. The Department believes the Planning Panels or the Commission should independently assess eligibility, against a strengthened strategic merit test. The Department will no longer undertake an initial assessment.
4. The Department believes councils should continue to be given 'first right of refusal' on whether it wishes to be the relevant planning authority for a particular proposal, before the Planning Panel automatically assumes the role.
5. The Department has previously issued multiple extensions of time for a council to accept the role of relevant planning authority. The Department believes that 42 days (or 6 weeks) is sufficient time for relevant planning authority appointment reports to be considered at a council meeting, where this is required, but that no further extensions of time should be permitted.
6. In accordance with Section 55(2)(c) of the Act a planning proposal must justify its consistency or inconsistency with all relevant section 117

directions. A RPA will need to ensure that any unresolved inconsistency with a direction is addressed and agreed to by the Secretary prior to the LEP being made

It is not expected that an initial planning proposal request would contain all of the necessary information to justify inconsistencies with the relevant Section 117 directions. An initial planning proposal should identify any potential inconsistencies and outline the requirement for additional information to be prepared post Gateway to demonstrate consistency or enable the Secretary to agree to an unresolved inconsistency.

It is not necessary in this regard to mandate consideration of section 117 directions as part of the strategic and / or site specific merit tests for Rezoning Reviews.

If a panel was of the view that a proposal had not yet justified its site specific merit or an inconsistency with a direction, it could make a recommendation that additional studies be prepared to demonstrate this consistency. The relevant planning authority may then outline this requirement for additional information within the initial planning proposal. The Gateway determination would then confirm what additional studies are to be completed.

7. The Department recommends a revised Strategic Merit Test that:

- clearly identifies the strategies and plans to be taken into account; and
- clarifies and simplifies what 'changed circumstances' means.

The draft Strategic Merit Test under the Recommendations Report indicated that the contemporary nature of the relevant LEP will

be considered when reviewing proposals. The submissions raised concern regarding what 'contemporary nature' entails.

The Department's Guidelines will be updated to confirm that there will be a presumption against a Rezoning Review request that seeks to amend a contemporary control, unless the proposal can clearly justify that it meets the revised Strategic Merit Test at Attachment C.

The planning controls for a site will be considered contemporary if they have been in force for less than 5 years. This aligns with the requirements of the new Part 3B of the *Environmental Planning and Assessment Act 1979*, which requires a review of *strategic plans* in the Greater Sydney Region every 5 years.

8. The Recommendations Report (5.23 Community awareness of review requests, p.13) provides clarity around the circumstances under which a council may consider it beneficial to undertake early community engagement regarding a rezoning proposal (i.e. prior to any engagement specified in a Gateway determination). However, the Department maintains the view that the principal place for community consultation for planning proposals is after a Gateway determination is issued and all relevant studies and reports have been completed. This ensures the community has clear and evidence based information available to assist the community to make informed comment on the proposal.

It is not recommended that the 90 day time-frame for councils to make a determination about a planning proposal be extended, or that 'stop-the-clock' mechanisms be introduced should councils decide to undertake community engagement on a proposal prior to a Gateway determination.

9. The Department agrees that the Planning Panel should consider the same application that was initially presented to the council by the proponent. Councils will be requested, when notified of receipt of a Rezoning Review request, to confirm that the proposal is consistent with that initially considered by the council. In this regard, the Department considers that 'consistent' means the same planning proposal and documentation as lodged with council.

10. The Department agrees that any conflict of interest or apprehension of bias should be avoided and recommends updating the Regional Planning Panels Code of Conduct to reflect this change. A similar approach will be applied for Sydney Planning Panels, once established. Councillor representatives who participated in the initial council determination of a planning proposal request should not be able to participate as Planning Panel representatives for a Rezoning Review request that relates to the same matter. This will remove any risk of any apprehension of bias by those councillors and / or the Planning Panel.

11. The Department will update *A guide to preparing local environmental plans* and *A guide to preparing planning proposals* to

- Recognise the Greater Sydney Commission and its role in the plan making process
- Outline the new 'rezoning review' process
- Confirm that a 'rezoning review' can be initiated where a Council has indicated its support for a planning proposal but has not submitted a planning proposal for a Gateway determination within a timely manner

- Include additional guidance regarding the information which is required to be included in planning proposals, particularly prior to and post Gateway determination
- Provide clarity around the circumstances under which a council may consider it beneficial to undertake early community engagement regarding a rezoning proposal
- Include additional guidance regarding the plan making process and how and when to address the relevant requirements of the Act
- update general references, websites and email addresses, etc.

Following consideration of the submissions on the July 2015 Pre-Gateway Review Findings and Recommendations report, the Department considers that the recommendations in the Recommendations Report generally stand, but with a revised and clarified Strategic Merit Test as set out in **Attachment C**.

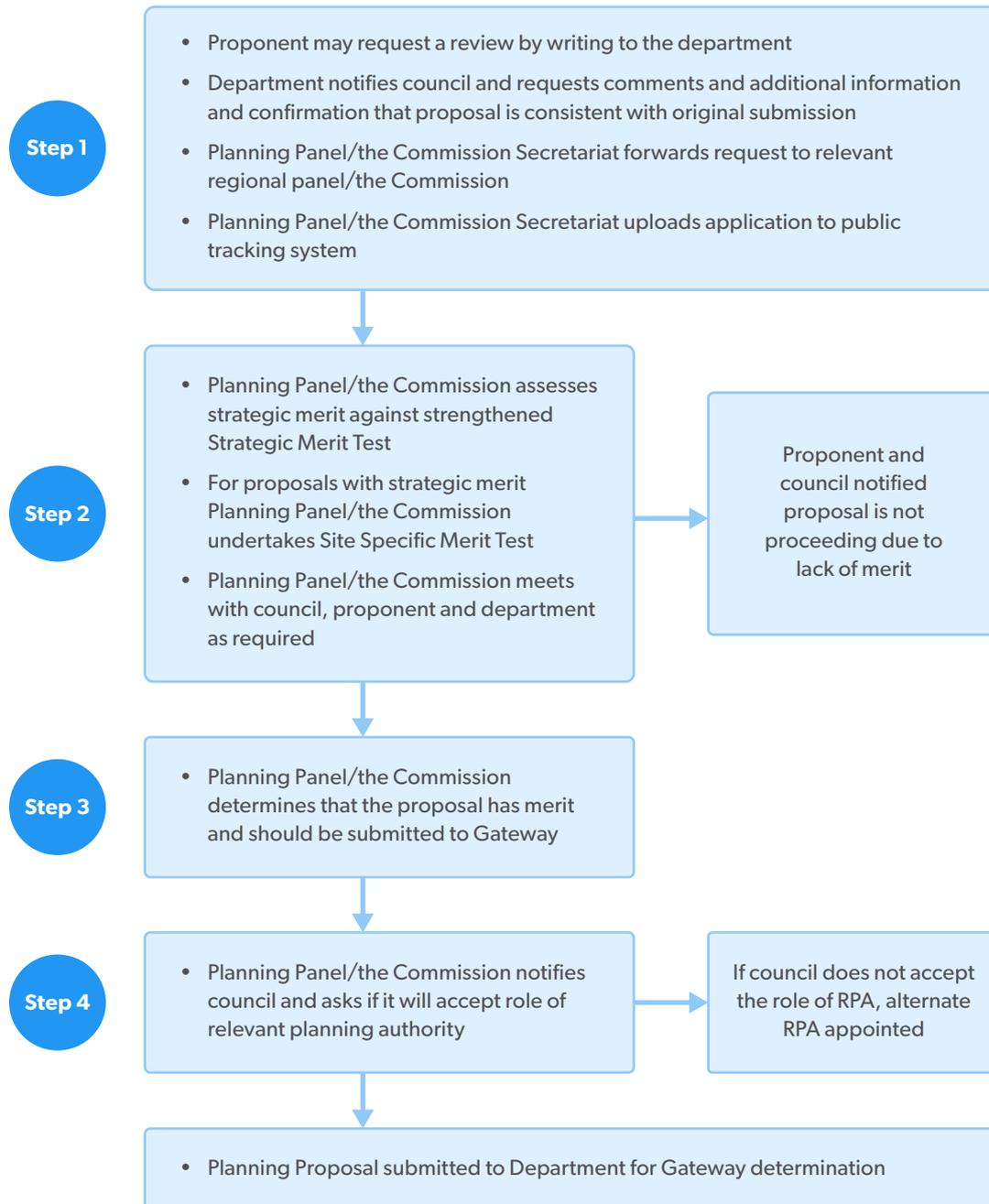
Next steps and recommendations

The next steps in finalising the Department's review of Rezoning Reviews are:

- i. Update the Department's *Guide to preparing local environmental plans* and *Guide to preparing planning proposals*.
- ii. Prepare a Planning Circular, to be released upon Ministerial approval, advising councils and stakeholders of the Government's final decision regarding Rezoning Reviews and detailing the new arrangements and processes.
- iii. Update the Department's internal procedures guide and templates related to Rezoning Reviews.
- iv. Prepare and/or update delegations regarding the proposed relevant planning authority role for Joint Regional Planning Panels and, once commenced, Sydney Planning Panels under the Greater Sydney Commission Act.
- v. Update the Regional Planning Panels procedures manual.
- vi. Update the Regional Planning Panels Code of Conduct to avoid conflicts of interest or apprehension of bias for councilor Panel members where they previously voted on the proposal.

Attachment A

Revised Rezoning Review process flow-chart from Findings and Recommendations report.



Attachment B – Key Policy Issues from Submissions

Key Issue	Raised by
<p>1 That Regional Panels are adequately resourced and understand their role and responsibilities given that they were originally set up to assess DAs.</p>	<p>Individual submitters, UDIA, Maitland, Parramatta, Auburn, SSROC, Shellharbour, Gosford (recommends a Charter), Mosman, Ryde, Urbis, NSW Ports, Holroyd, Newcastle, Fairfield, Urban Taskforce, Newcastle, Property Council, OEH, Parramatta, Willoughby</p>
<p>2 DPE should still be involved in doing an initial assessment to ensure that only meritorious proposals proceed with a review.</p>	<p>Leichhardt, Camden, Parramatta, Shellharbour, Higgins Planning, Holroyd, Fairfield, individual submitters (only material being considered is that prepared by proponent), NSW Ports</p> <p>North Sydney, Auburn, Hornsby, PIA all supported removal of DPE from process and taking on more administrative role</p>
<p>3 Council should not be appointed RPA when they have opposed/refused planning proposal.</p>	<p>Auburn, Campbelltown, Pascoe Planning, Urban Taskforce, PIA, Shellharbour, Gosford, Urbis (obo Scentre Group), Higgins Planning, UDIA, Property Council, Individual submitters, Gosford</p> <p>Parramatta, North Sydney, Clarence Valley, Willoughby, Fairfield – supports council continuing to be asked if want to be RPA</p>
<p>4 42 day timeframe for appointment of RPA supported should be extended to accommodate the council meeting cycle.</p>	<p>Camden, individual submitter, Leichhardt, Clarence Valley, Cessnock, Ryde (policy not to accept but date should be extended), Willoughby, Warringah, Hornsby</p> <p>Urbis – suggested that request to be RPA be made at the same time as referral to council.</p>
<p>5 Consideration of s117 Directions should form part of the strategic merit test.</p>	<p>Individual submitters, Urbis (obo Scentre Group), NSW Ports, Port Stephens, OEH</p> <p>Parramatta agreed with removal of s117 from strategic merit test</p>

Key Issue	Raised by
<p>6 Clarification of strategic merit test:</p> <p>a. What does “contemporary nature of LEPs mean” (i.e. timeframe – last 5 years)?</p> <p>b. Current strategic plans are too high level/ district plans not yet made. Local planning policies should be given most weight and test should include policies endorsed by Council (not just DPE).</p>	<p>Newcastle, Urbis (obo Scentre Group), KMC, Wollondilly, Willoughby, Design Collaborative, Individual submitters, Ryde, Urban Taskforce, OEH</p> <p>CoS, Lane Cove, Property Council, Urban Taskforce, Liverpool, Maitland, Camden, Port Macquarie-Hastings, Fairfield, SSROC, Design Collaborative, Bathurst, EPS, Mosman, KMC, Urbis, Port Stephens, Holroyd, Property Council</p>
<p>7 Clarification around implementation of recommendation 12 regarding early consultation with the community before a decision is made and should be an extension of 90 day timeframe or stop the clock if undertaken by Council.</p>	<p>Urbis, Ballina, SSROC, Port Stephens, Ryde, Camden, Willoughby, KMC (stop the clock), Urban Taskforce, Parramatta (stop the clock), North Sydney (stop the clock)</p>
<p>8 Application considered by Regional Panel should be “the same” and not changed throughout the process.</p>	<p>Auburn, SSROC, Shellharbour, Mosman, KMC, Lane Cove, Willoughby, Newcastle, OEH</p> <p>OEH and Ryde – requested clarification on requests for further info and “consistency”</p> <p>Design Collaborative, EPS, Urban Taskforce, UDIA – should be able to amend/request further information throughout the process</p>
<p>9 Avoidance of conflicts of interest when the Regional Panels review council determinations, where councilors on the Regional Panel voted on an application at council.</p> <p>Councils are requesting information to support a planning proposal to similar levels as a development application.</p>	<p>SPP Services Pty Ltd</p>

Attachment C – Revised Strategic Merit test

Is the proposal:

1. 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

2. Consistent with a relevant local council strategy that has been endorsed by the Department;

or

3. Responding to a change in circumstances, such as the investment in new infrastructure or changing demographic trends that have not been recognised by existing planning controls;

There will be a presumption against a Rezoning Review request that seeks to amend LEP controls that are less than 5 years old, unless the proposal can clearly justify that it meets the Strategic Merit Test.

Note: A draft regional plan outside of the Greater Sydney Region, district plan within the Greater Sydney Region or 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.

Note: Before lodging a request for review, it is recommended that you consult the Department's '*A guide to preparing local environmental plans*' and '*A guide to preparing planning proposals*', which can be found on the Department's website www.planning.nsw.gov.au/Plans-for-Your-Area/Local-Planning-and-Zoning/The-Gateway-Process. These guides give a step-by-step explanation of the review procedure and merit test requirements.





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