



Planning circular

PLANNING SYSTEM

Plan making reviews

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Related	

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

There are two administrative review processes available in the plan-making process under Part 3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act):

- **Rezoning reviews** – which may be requested by a proponent before a planning proposal has been submitted to the Department of Planning and Environment (Department) for a Gateway determination. These reviews are carried out by the relevant regional or Sydney planning panels (Planning Panel) 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 allow councils and proponents to have decisions in relation to proposed amendments to local environmental plans (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 or third party) has requested that a council prepare a planning proposal for a proposed instrument, the proponent may ask for a rezoning review if:

- a) the council has notified the proponent that its request to prepare a planning proposal is not supported, or
- b) the council has failed to indicate its decision after 90 calendar days for a basic and standard and 115 calendar days for a complex proposal after the proponent submitted the request, accompanied by the required information, or
- c) the council has failed to submit a planning proposal to the Department for a Gateway determination within 28 calendar days after the council has indicated its support.

The timeframe for lodgement of a rezoning review is calculated from the day the planning proposal is lodged on the NSW Planning Portal with council. This timeframe resets if a proponent alters a planning proposal (beyond providing further information in response to a council request) and council accepts the alteration in writing.

The *Environmental Planning and Assessment Regulation 2021* (EP&A 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 calendar days to request that the relevant Planning Panel or the Commission review the proposal.

Where a council has not made a determination within the relevant timeframe associated with the planning

¹ Revised 10 August 2023 to include reference to the *Environmental Planning and Assessment Regulation 2021*

proposal category, the proponent may request a review any time after the relevant number of days has lapsed. Where a council has made a decision to prepare a planning proposal, there is an expectation that a planning proposal would be forwarded to the Minister for a Gateway determination no more than 42 days after this decision.

A proponent should contact the Department's relevant Regional or Place office to discuss a rezoning review if there are significant delays between a council making a resolution and submitting a planning proposal for a Gateway determination.

The Local Environmental Plan Making Guideline sets out the information, fees and lodgement requirements that a proponent must provide to the Department for a rezoning review to be undertaken. Only the final planning proposal application submitted by the proponent and accepted by council will be reviewed by the Planning Panel or the Commission.

Review and determination

The Department notifies the relevant council when it receives an application and requests that council provide within 21 days:

- any comments and any additional information on the planning proposal.
- confirmation that the proposal is consistent with what was finally submitted and accepted by council.
- whether, in the case that the council has not determined the matter, the council wishes to nominate itself as the planning proposal authority (PPA). The council has up until 4 days before the relevant Planning Panel or Commission briefing to inform the Department of its nomination in writing.

It should be noted that even where a council does nominate itself, this does not preclude the Minister from appointing an alternate PPA under s3.32(2) of the EP&A Act.

Should council refuse to support a planning proposal, the Planning Panel or the Commission will appoint itself as the PPA to ensure the efficient resolution of matters.

The Planning Panel or the Commission will undertake a strategic and site-specific merit assessment of the planning proposal. The Planning Panel or the Commission will determine whether or not to recommend that a proposal should be submitted for a Gateway determination under s3.34 of the EP&A Act.

The key factor in deciding whether a proposal should proceed to a Gateway determination should be its strategic merit. Under the 'Strategic Merit Test' proposals will be assessed to determine if they:

- 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 strategic planning framework. Note: A draft regional plan outside of the Greater Sydney Region, draft district plan within the Greater

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 draft plan is not finalised. Having met the Strategic Merit Test, the Planning Panel or the Commission must then determine if the proposal has site-specific merit, having regard to:

- the natural environment on the site to which the proposal relates and other affected land (including known significant environmental areas, resources or hazards)
- existing uses, approved uses, and likely future uses of land in the vicinity of the land to which the proposal relates, 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.

Should the Planning Panel or the Commission find that a planning proposal has strategic merit but is of the view that changes to the planning proposal are required to achieve site-specific merit it may recommend conditions be included in the Gateway determination or changes to the planning proposal based on site-specific matters that will result in substantially the same proposal.

In this case, the Planning Panel or the Commission may seek the council and/or proponent's feedback on the proposed amendments. If the Planning Panel or the Commission becomes the PPA, it can then vary the planning proposal provided the proposal is substantially the same, does not increase the scale and intensity, or results in a reduced environmental impact (e.g. reducing floor area, height or number of dwellings).

The Planning Panel or the Commission will outline the reasons for its recommendations, including its assessment of strategic and site-specific merits.

A Planning Panel or the Commission has delegated authority to direct itself to be the PPA where a

proposal has been subject to a rezoning review. For proposals that are to proceed to a Gateway determination, further work may be required by the proponent or the PPA before a planning proposal can be submitted for a Gateway determination. The PPA will have 28 days following the briefing to submit a planning proposal to the Department for a Gateway determination.

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 PPA for a proposal) or a proponent (developer, landowner or third party) may request the Minister (or delegate) to alter a Gateway determination where the Gateway determination:

- a) determines the planning proposal should not proceed;
- b) determines the planning proposal should be resubmitted to the Gateway; or
- c) 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 determines that a planning proposal should not proceed, the council or proponent has a total of 42 calendar days from being notified by the Department to request a review.

If the Gateway determination is to proceed 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 then have a total of 42 days to formally apply for a Gateway review.

The Local Environmental Plan Making Guideline sets out information and lodgement requirements that a 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 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 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

The Department's *Local Environmental Plan Making Guideline* provides advice on the various stages in the LEP making process, including details of the stages, application requirements and process for rezoning reviews and the review of Gateway determinations.

The *Local Environmental Plan Making Guideline* also provides advice on the preparation and content of planning proposals.

Copies of these guidelines are available on the Department's website at:

<https://www.planning.nsw.gov.au/Plans-for-your-area/Local-Planning-and-Zoning>

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>

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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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