

Circular	PS 16-002
Issued	30 August 2016
Replaces	PS 12-006

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* to implement the Rezoning Review process.

Introduction

This circular replaces Planning Circular PS 12-006 and provides updates and advice in relation to delegations for the making of local environmental plans (LEPs).

The Minister for Planning and the Greater Sydney Commission have delegated certain decision making powers under the local environmental plans (LEPs) making process to the Department of Planning and Environment, Regional Planning Panels, Sydney Planning Panels (once they are established), the Planning Assessment Commission (the Commission) and local councils.

The new delegations for plan making decisions have been prepared to implement the Rezoning Review process. Details regarding this review process is described in Planning Circular PS 16-001, and in updated versions of the Department's *A guide to preparing local environmental plans* and *A guide to preparing planning proposals*.

Existing delegations

The following plan making delegations have previously been issued.

Local councils:

- Plan making powers under section 59 of the EP&A Act.

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

- Directing the Secretary (or any other person or body prescribed by the regulations) to be the relevant planning authority under section 54(2) of the EP&A Act;
- Making a Gateway determination under section 56(2) of the EP&A Act;
- Arranging for the review of a planning proposal the Planning Assessment Commission or a joint regional planning panel under section 56(5) of the EP&A Act;
- Altering a Gateway determination under section 56(7) of the EP&A Act;
- Determining that a planning proposal not proceed,

at the request of the relevant planning authority, under section 58(4) of the EP&A Act;

- Plan making powers under section 59 of the EP&A Act; and
- Forming an opinion under section 73A(1)(c) of the EP&A Act that a LEP amendment does not warrant compliance with the plan making requirements under Division 4 of the EP&A Act.

New delegations

The following delegations have been issued to implement the Rezoning Review process.

Joint Regional Planning Panels:

- Direct itself to be the relevant planning authority under section 54(2) of the EP&A Act, for a proposal that has been subject to a Rezoning Review

Sydney Planning Panels:

- Will have the same delegation as Joint Regional Planning Panels once established.

Greater Sydney Commission

The *Greater Sydney Commission Act 2015* (the GSC Act) when it commenced on 27 January 2016 transferred certain plan making powers under Part 3 of the *Environmental Planning and Assessment Act 1979* (the EP&A Act) from the Minister to the Greater Sydney Commission and made provision for the establishment of Sydney Planning Panels to replace Joint Regional Planning Panels in the Greater Sydney Region.

The GSC Act amended section 24(2)(b) of the EP&A Act to provide that LEPs may be made by the Minister, or for the Greater Sydney Region, by the Greater Sydney Commission.

Savings and transitional provisions in Part 11 of Schedule 7 to the *Environmental Planning and Assessment Regulation 2000* (the Regulation) save existing Ministerial delegations to local councils, senior staff of the Department of Planning and Environment and the Commission relating to the LEP making processes for the Greater Sydney Region. Accordingly, a reference to the Minister in the instrument of any delegation immediately in force before 27 January 2016 is taken to be a reference to the Greater Sydney Commission.

Further details regarding these operational and transitional arrangements are provided in the Department's fact sheet "Commencement of the *Greater Sydney Commission Act 2015* and what it means for councils". This fact sheet is available online at <http://www.gsc.nsw.gov.au>.

Department of Planning and Environment

A broad range of decision and plan making functions have been delegated to the Department of Planning and Environment by the Minister for Planning and Greater Sydney Commission to ensure the timely delivery of LEPs.

Within the Department, the regional offices generally manage the plan making process for draft LEPs, including the issuing of Gateway determinations under section 56 of the Act, the issuing of an authorisation to 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.

Under the Department's delegations, the regional teams issued 85% of Gateway determinations in 2014-2015. The remaining 15% of decisions were made by another delegate within the Department outside of the regional teams. 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.

Approximately 65% of all LEPs made in 2014-2015 that were not made by a local Council under delegation were finalised by the Department's regional teams. 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 Secretary has also been delegated the function to direct the Secretary of the Department to be the relevant planning authority. Further information and guidance regarding the matters that the Secretary, as delegate of the Minister or GSC, will consider when determining to direct the Secretary to be the relevant planning authority is described in LEP Planning Circular PN09-004.

Planning Panels

Joint Regional Planning Panels and, once established, the Sydney Planning Panels (Planning Panels) will determine rezoning review requests for all matters outside of the City of Sydney. Sydney Planning Panels, once operational, will 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 has delegated the authority for a Joint Regional Planning Panel to direct itself to be a relevant planning authority. This would be undertaken where a proposal had been subject to a rezoning review and a council had not accepted this role.

It is intended that the GSC will issue the same delegated authority to Sydney Planning Panels, once established.

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 GSC (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 PS 16-001.

Planning Assessment Commission

The Planning Assessment Commission (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.

Further information and guidance regarding the rezoning review and Gateway review processes is described in Planning Circular PS 16-001.

Local councils

Plan making functions remain delegated to local councils to ensure local government involvement in the plan making process. Approximately 68% of all LEPs made in 2014-2015 were finalised by local councils.

The information below provides guidance regarding the issuing of delegations to local councils and procedural requirements. This information was previously outlined under Planning Circular PS 12-006.

Issue of delegations to local councils

The delegations operate in respect of a draft LEP on receipt by council of a written authorisation to exercise delegation (the authorisation). The authorisation will be issued to councils as part of a Gateway determination.

A council must have formally accepted the delegation before the Department will issue an authorisation in respect of any individual draft LEP.

If a council chooses to accept the delegation, it may sub-delegate the function to an officer within council (usually the general manager or planning director) who will exercise the delegation. If a council chooses to sub-delegate the function, the council should advise the

Department at the same time it accepts the delegation. When submitting a planning proposal to the gateway a council should advise the Department whether the council or an officer will be exercising the delegated function.

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 the conditions of the Authorisation in exercising their delegation. This includes obtaining the agreement of the Department's Secretary for any unresolved Section 117 Directions. If a condition of the Authorisation cannot be complied with council must not exercise the delegation and must advise the Department immediately.

LEPs to be routinely delegated to local councils

The following types of draft LEPs will continue to be delegated to councils to prepare and make following a Gateway determination that the planning proposal can proceed:

- mapping alterations
- section 73A 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.

Matters that will be routinely delegated to a Council under administration are confirmed on the Department's website <http://www.planning.nsw.gov.au/Plans-for-Your-Area/Local-Planning-and-Zoning/>.

When submitting a planning proposal, councils will be required to identify whether they wish to exercise the authorisation for each planning proposal.

Drafting and notifying delegated LEPs for local councils

Under section 59(1) of the Act the Department requests the Office of the Parliamentary Counsel (PCO) to draft the legal instrument to give effect to a planning proposal. However, when an authorisation to finalise the LEP has been issued, 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 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.

Reporting requirements for local councils

Councils will be required to report to the Department on processing times for delegated LEPs (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 at <http://www.planning.nsw.gov.au/Plans-for-Your-Area/Local-Planning-and-Zoning/Resources>

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 remains up to date.

Further information

A guide to preparing local environmental plans provides advice on the various stages in the plan making process including details plan-making functions to councils.

A guide to preparing planning proposals, issued under section 55(3) of the Act, provides advice on the preparation and content of planning proposals.

Copies of the *Environmental Planning and Assessment Act 1979*, *Greater Sydney Commission Act 2015*, 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's fact sheet, "Commencement of the *Greater Sydney Commission Act 2015* and what it means for councils is available on the Greater Sydney Commission's website <http://www.gsc.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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