



Planning &
Environment

Local Environmental Plans

*A guide to preparing local
environmental plans*



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It should be noted that the guidelines may be affected by changes to legislation at any time and/or be subject to revision without notice.

It is recommended that independent advice be sought in respect of the operation of the guidelines and the statutory requirements applying to plan making under the *Environmental Planning and Assessment Act 1979*.

A guide to preparing local environmental plans

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1 Introduction

This guideline provides guidance and information on the process for making local environmental plans (LEPs) under Part 3 of the *Environmental Planning & Assessment Act, 1979* (the Act).

The process as set out in the Act enables the preparation and assessment of proposed LEPs to be tailored to their complexity and likely impact. Early consideration of assessment requirements through the issuing of a Gateway determination and the incremental preparation of supporting documents ensures effort is invested at appropriate stages of the process and community consultation is informed and meaningful.

Any person proposing an amendment to an existing LEP should initially discuss the matter with the relevant council. Councils are able to provide advice on the matters that should be included in a planning proposal and any other specific procedural matters that must be completed by a proponent when preparing a planning proposal to support an amendment to a LEP. If further advice is required, the initial point of contact with the Department of Planning and Environment (the Department) should be via its regional offices.

This guideline also details the procedures for Rezoning Reviews and Gateway Reviews. A proponent can request a Rezoning Review when a council fails to support the preparation of a planning proposal and / or submit the proposal for a Gateway determination within a reasonable timeframe, or when a council resolves not to support a planning proposal.

A review of a Gateway determination can be requested by either a proponent or a relevant planning authority. The request to review the Gateway determination may be based on the conditions imposed by the Gateway, the decision (ie. whether or not to proceed) or the requirement to resubmit the planning proposal to the Gateway for further consideration.

To streamline the plan making process, plan making powers have been delegated to councils for routine matters (eg reclassifications that do not require the Governor's approval, minor map amendments and strategy consistent rezonings) and other matters that the Gateway determines are of local planning significance. Councils will be issued with an authorisation to finalise and make the plan at the time a Gateway determination is issued. Procedures and general guidance on how to progress a delegated plan are also included in this guide.

This guide should also be read in conjunction with '*A guide to preparing planning proposals*'. That guide provides more detailed advice about what is required in a planning proposal document, which is a pre-cursor to a LEP. It also sets out specific requirements that the Secretary has issued in accordance with s55(3) of the Act concerning the matters that must be addressed when preparing planning proposals.

2 What is a local environmental plan?

A LEP is a legal instrument that zones land, imposes standards to control development, or implements a state or local policy outcome. A LEP may also be used to reserve land for open space, as well as protecting trees and vegetation and items and areas of cultural heritage significance. The purpose of a LEP is to achieve the objects of the Act. It is a means to implement strategies, giving legal effect to where and under what circumstances places should be developed or particular environmental controls imposed. A LEP generally comprises a written document and accompanying maps.

A LEP applies to a particular area, generally the whole or part of a local government area (LGA). A LEP applying to the whole of a LGA is referred to as the principal LEP. The process for making a **principal LEP** and for amending a principal LEP is the same. That is, in order to amend a principal LEP it is necessary to make another LEP. For convenience, a LEP being made to amend a principal LEP is referred to as an **amending LEP**.

Most LEPs remain in force until they are amended or repealed by an amending LEP. This is important to provide certainty in the planning system. Where appropriate it is possible to specify that a LEP will have effect only for a specified period or in specified circumstances. The occasions when this is appropriate, however, will be limited [EP&A Act s. 26(3A)].

All principal LEPs must be made in a standard form prescribed in the Standard Instrument (Local Environmental Plans) Order 2006. LEP maps must also conform to the '*Standard Technical Requirements for Spatial Datasets and Maps*'. The Standard Instrument and standard technical requirements for spatial datasets and maps provide consistency in the appearance of LEPs and assist users interpreting planning controls across different LGAs. Complying with the standard technical requirements will also assist in the provision of an e-mapping platform and enable all LEP maps to be made available online after the plan is made.

3 Who can initiate and make a LEP?

The Minister for Planning (or delegate) for all land outside of the Greater Sydney Region or the Greater Sydney Commission (GSC) (or delegate) for all land within the Greater Sydney Region can make a LEP following a process set out in the Act and described in section 5 of this guideline [EP&A Act s. 53].

In some limited circumstances, however, the process can be dispensed with. These circumstances relate only to amending LEPs and are described later in section 5.5.9 of these guidelines [EP&A Act s. 73A].

A LEP can be initiated by either the council for the LGA to which the LEP is to apply or by an authority appointed by the Minister or GSC [EP&A Act ss. 54-55].

Whether it is a council that has initiated a LEP or an authority appointed by the Minister or GSC, the body responsible for carrying out the process is known as the relevant planning authority (RPA). For council initiated LEPs the RPA will generally be the council. Where the Minister or GSC has initiated the process, the Minister or GSC will direct the Secretary or some other person or body prescribed by the regulations, such as a Planning Panel, to be the RPA.

Circumstances when Minister (or GSC) can initiate a LEP

The Minister (for all land outside of the Greater Sydney Region) or the GSC (for all land within the Greater Sydney Region) may direct that the Secretary of the Department of Planning and Environment (or any other person or body prescribed by the regulations) is the relevant planning authority for a proposed instrument in the following cases [EP&A Act s. 54(2)]:

- the proposed instrument relates to a matter that, in the opinion of the Minister or GSC, is of state or regional environmental planning significance or of environmental planning significance to a district within the meaning of Part 3B
- the proposed instrument makes provision that, in the opinion of the Minister, is consequential on:
 - the approval of the concept plan for a project under Part 3A
 - the making of another environmental planning or other instrument
 - changes made to a standard instrument under section 33A
- the Planning Assessment Commission or a Planning Panel has recommended to the Minister or GSC that the proposed instrument should be submitted for a determination under section 56 (Gateway determination) or that the proposed instrument should be made
- a recommendation has been provided under section 15 (b) by the Secretary of the Department of Planning and Environment that the proposed instrument should be submitted for a determination under section 56 or that the proposed instrument should be made
- the council for the local government area concerned has, in the opinion of the Minister or GSC, failed to comply with its obligations with respect to the making of the proposed instrument or has not carried out those obligations in a satisfactory manner
- the proposed instrument is to apply to an area that is not within a local government area.

Further information and guidance regarding the matters the Minister (or GSC) will consider when deciding how to deal with a request to initiate a LEP, and how to make such requests, is described in LEP Practice Note PN 09-004 available on the Department's website at www.planning.nsw.gov.au.

4 What is the process for preparing a LEP?

The plan making process normally involves the following key components:

- the preparation of a planning proposal
- the issuing of a Gateway determination
- community and other consultation on the planning proposal (as required)
- finalising the planning proposal
- drafting of the LEP (legal instrument)
- making the plan
- notifying the LEP on the NSW Government Legislation website.

Two administrative review mechanisms exist within the plan making process – ‘Rezoning Review’ and ‘Gateway Review’. These review mechanisms allow councils, relevant planning authorities and proponents to seek a review of decisions in relation to proposed amendments to LEPs.

To increase the involvement of councils in the plan making process and streamline the processing and making of draft LEPs, certain plan making powers are delegated to councils.

A flowchart detailing the LEP plan making process is provided at **Attachment 1**.

4.1 Delegation of plan making functions to local councils

Local plan making functions are now largely carried out by councils. Types of proposed instruments that are routinely delegated to councils to make include¹:

- mapping corrections
- LEPs which will result in a relaxation of a development standard on a site to promote development including potential increases to FSR and height of building controls and, reduced minimum lot sizes
- Section 73A matters e.g. amending references to documents/agencies, minor errors and anomalies
- reclassification proposals where the Governor’s approval is not required in relation to the removal of covenants, trusts etc relating to the land
- heritage LEPs related to specific items (whether adding or removing an item from a Heritage Schedule) supported by an Office of Environment and Heritage endorsed local strategy or where the Office of Environment and Heritage provides preliminary support to the proposal
- spot rezonings consistent with a Regional Strategy or a local strategy endorsed by the Secretary
- spot rezonings that will result in an upzoning of land in existing areas zoned for residential, business, and industrial purposes, and
- any other matter that the Gateway determines is a matter of local planning significance.

Other types of LEPs not identified above may be delegated to councils if the Gateway agrees that the matter is of local significance.

¹ Matters that will be routinely delegated to a Council under administration are confirmed on the Department’s website www.planning.nsw.gov.au/Plans-for-Your-Area/Local-Planning-and-Zoning

Proposed instruments which would 'down zone' a parcel of land (ie reduce a site's development potential) or which propose to introduce more restrictive development standards or controls will be considered on a case-by-case basis.

A planning proposal which relates to a 'suspension of covenants clause' under section 28 of the Act or that discharges interests in public land under section 30 of the *Local Government Act 1993* will not be delegated to councils. These types of plans require the Minister or GSC to make a recommendation directly to the Governor who must approve the provisions before the plan can be made.

The following plan making functions of the Act will be delegated to councils:

- the decision whether to make or decide not to make a plan [EP&A Act s. 59(2)].
- deferring a matter from a plan [EP&A Act s. 59(3)].
- the ability to identify which matters must be considered and which stages of the plan making process must be carried out again prior to resubmission [EP&A Act s. 59(4)] if the council determines not to proceed with a proposal or if a matter is deferred from the LEP.

Plan making delegation operates in respect of a draft LEP on receipt by council of a written authorisation to exercise delegation (the authorisation). The authorisation is issued to councils as part of the Gateway determination. When submitting a planning proposal, councils are required to identify whether they will, or will not be seeking an authorisation to make the plan for each planning proposal.

Section 23 of the Act allows the Minister and the Secretary to delegate functions to a council and/or an officer or employee of a council. Similarly, Section 11 of the *Greater Sydney Commission Act 2015* saves existing Ministerial delegations and also allows the GSC to delegate plan making functions to certain bodies. A council is to formally accept 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.

An authorisation for a RPA to exercise plan making delegation may be withdrawn by the Minister, GSC or delegate. This may occur, for example, if:

- the planning proposal is not being processed consistent with the Gateway determination;
- there are inconsistencies with Section 117 Directions that have not been adequately addressed; or
- there is an unresolved objection from a public agency that has been consulted in accordance with the Gateway determination.

5 The stages in the plan making process

5.1 Rezoning Reviews

The Rezoning Review mechanism allows proponents to make a request that an independent body review a request for a planning proposal prior to a Gateway determination being issued.

Rezoning Reviews are determined by Planning Panels² or the Planning Assessment Commission (the Commission).

Attachment 2 sets out the steps in the Rezoning Review process undertaken by Planning Panels and the Commission. Those steps are explained further below.

Proponents will not be able to rely on a submission made during the exhibition of a council's comprehensive LEP to form the basis of a request under the Rezoning Review mechanism. A proponent must lodge a request to prepare a planning proposal with a council before a review request can be made. For more information, see the Department's publication '*A guide to preparing planning proposals*'.

Step 1 – Proponent seeks review

If a proponent (eg. developer, landowner) has requested that a council prepare a planning proposal for a proposed instrument³, it may ask for a Rezoning Review if:

- a) the council has notified the proponent that the request to prepare a planning proposal is not supported; or
- b) the council has failed to indicate its support 90 days after the proponent submitted a request, accompanied by the required information⁴ or has failed to submit a planning proposal for a Gateway determination within a reasonable time after the council has indicated its support.

Councils currently process requests to prepare planning proposals in a number of different ways. In general terms, the 90 day assessment period may commence in a number of ways including:

- when council formally acknowledges the proponent has lodged sufficient information to support their request; or
- when council accepts a fee for the assessment of the initial request to prepare a planning proposal; or
- when council accepts a fee (staged or lump sum) to progress the planning proposal; or
- when a request has been lodged in accordance with an existing council policy.

The *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) requires councils to notify a proponent when the council decides not to prepare a planning proposal. The proponent then has 42 days⁵ from notification to request a review of the council's decision.

² Planning Panel is a Joint Regional Planning Panel or a Sydney Planning Panel.

³ A proposed instrument may be a rezoning proposal to change a land use zone, or a proposal to change the development standards, land use table, local provisions or additional permitted uses (ie. Schedule 1) in LEPs.

⁴ '*A guide to preparing planning proposals*' sets out what information a proponent may provide when requesting council to prepare a planning proposal. Information requirements will depend on the complexity of the planning proposal. Section 55 of the Act sets out what information a planning proposal is to include when submitted for a Gateway determination.

⁵ Periods will be extended over the Christmas and New Year periods.

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. There is an expectation that a planning proposal would be submitted for a Gateway determination no more than 42 days after Council has determined to support a proponents rezoning request. A proponent should contact the Department's regional office to discuss the opportunity for seeking a Rezoning Review if there are significant delays between council making a determination and submitting a planning proposal for a Gateway determination.

A proponent may request a review by writing to the Department and providing the following:

- a completed application form;
- a copy of the proponent's request for the council to prepare and submit a planning proposal for Gateway determination, including all supporting material and information that was submitted to Council (**Note:** A planning proposal request which has been amended after Council has resolved to not support the matter is not eligible for a Rezoning Review. The revised planning proposal request would need to be submitted to Council as a new planning proposal request);
- all correspondence from the council in relation to the proposed instrument, including (if relevant) a copy of the council's advice detailing why the council did not proceed with preparing a planning proposal;
- all correspondence from other Government agencies, if available, about the proposed instrument;
- proponent's justification to the Strategic and Site Specific Merit tests (Refer to Step 2), to confirm why a review is warranted;
- disclosure of reportable political donations under section 147 of the Act, if relevant; and
- administration and assessment fee⁶.

The Department will forward Rezoning Review requests to the relevant Planning Panel or Commission within 3 business days of receipt.

The council will be notified upon receipt of an application and requested to provide any comments, additional information and confirmation that the proposal which has been submitted to the Planning Panel or Commission is consistent with what was considered by the council.

The council will have 21 days to provide its response to the Planning Panel or Commission.

Step 2 – Assessment by Planning Panel or Commission

The Planning Panel or Commission will undertake an assessment to determine whether the proposal:

- a) has strategic merit as it is:
 - 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

⁶ The relevant administration and assessment fee is confirmed on the Department's website www.planning.nsw.gov.au/Plans-for-Your-Area/Local-Planning-and-Zoning

- 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.

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, 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.

- b) having met the strategic merit test, 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 a proposal
 - 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 will not be able to proceed to the Gateway.

The Planning Panel or Commission may meet with the Department, council and proponent to clarify any issues before completing its review.

The Planning Panel or Commission will determine whether the proposal has merit and should be submitted for a determination under section 56 of the Act (Gateway determination).

Communication of this determination will be made to the proponent and the council within 90 days of the Department receiving the initial Rezoning Review request.

Step 3 – Appointment of relevant planning authority

If the Planning Panel or Commission determines that a proposal should proceed to the Gateway, it will concurrently notify the relevant council and ask if it will accept the role of relevant RPA to take the proposal to the Gateway and then finalise the proposal.

Councils will have 42 days to accept the role RPA otherwise an alternative RPA will be appointed. Where a Council accepts the role of RPA it will then have 42 days to submit a planning proposal to the Department for a Gateway determination.

Step 4 – Planning proposal submitted to Department for gateway determination.

Once the RPA is appointed the planning proposal is to be submitted to the Department for a Gateway determination in the normal manner.

In instances where a RPA is appointed, other than the Council, the proponent will need to pay a fee⁷, plus additional charges to cover costs on a proposal-specific basis.

⁷ The relevant fee is confirmed on the Department's website www.planning.nsw.gov.au/Plans-for-Your-Area/Local-Planning-and-Zoning

The Department will monitor progress of Rezoning Review requests and ensure that documents (review requests, Planning Panel or Commission reports and decisions) are published on the web within 3 business days of the completion of each step.

5.2 The planning proposal

A planning proposal is a document that explains the intended effect of the proposed LEP and provides the justification for making it [EP&A Act s. 55(1)].

A guide to preparing planning proposals provides detailed advice on the preparation of a planning proposal. As detailed in that guide, the planning proposal can be prepared by the RPA, or by a proponent for the proposed LEP and should initially contain enough information for the Gateway to determine whether there is merit in the proposed amendment proceeding to the next stage of the plan-making process.

The level of detail required in a planning proposal should be proportionate to the complexity of the proposed amendment. The planning proposal should contain enough information to identify relevant environmental, social, economic and other site specific considerations.

The scope of any key issues should be identified in the initial planning proposal that is submitted for a Gateway determination, while the actual information/investigation may be undertaken after a Gateway determination is issued and included in the planning proposal, where appropriate.

When preparing and considering a planning proposal councils should consider whether they will be seeking an Authorisation to make the plan under delegation.

Section 55(2) of the Act outlines that a planning proposal must include the following components:

- **Part 1** – A statement of the objectives and intended outcomes of the proposed instrument
- **Part 2** – An explanation of the provisions that are to be included in the proposed instrument
- **Part 3** – The justification for those objectives, outcomes and the process for their implementation
- **Part 4** – Maps, where relevant, to identify the intent of the planning proposal and the area to which it applies
- **Part 5** – Details of the community consultation that is to be undertaken on the planning proposal.

Section 55(3) of the Act allows the Secretary to issue requirements with respect to the preparation of a planning proposal. The Secretary's requirements include:

- specific matters that must be addressed in the justification (Part 3) of the planning proposal
- a project timeline to detail the anticipated timeframe for the plan making process for each planning proposal.

The project timeline forms **Part 6** of a planning proposal.

Parts 1 and 2 – Objectives and intended outcomes and explanation of provisions

It is important that the first two parts of the planning proposal, the 'objectives and outcomes' and the 'explanation of provisions' are expressed clearly. They will ultimately provide the basis for the drafting of the legal instrument (the LEP) and must accurately convey the intended effect of the planning proposal for the purpose of community consultation.

Part 3 – Justification

For the purpose of preparing the justification (the third part of the planning proposal), the Secretary has issued requirements about the specific matters that must be addressed in planning proposals (other than those which solely intend to classify or reclassify public land – see section 5.5.4).

When preparing the justification:

- it is important that the level of justification for each planning proposal is proportionate to the impact the planning proposal will have. This is particularly the case for planning proposals that may be inconsistent with the local and/or regional strategic planning framework
- a response to each of the Secretary’s criteria will not always be necessary depending on the nature and the scale of the planning proposal. If a matter is not considered relevant, the reasons why should be briefly explained
- it is appropriate in the early stages of preparing a planning proposal to identify issues that will require detailed investigation if the planning proposal is to proceed. These detailed investigations, studies, or material will be prepared by the proponent or the RPA following the initial Gateway determination. The Gateway determination will confirm the expected level of information required to form part of the exhibition material.

Part 4 – Mapping

If the proposed LEP is to include maps (such as maps for proposed land use zones, heritage areas, flood prone land and the like), they must also be included with the planning proposal. The maps need to contain sufficient information to explain the substantive effect of the proposed LEP. This means that the maps must clearly and accurately identify the land affected by the planning proposal and the relationship of that land to neighbouring properties [EP&A Act s. 55(2)(d)]. The Department’s *Standard Technical Requirements for Spatial Datasets and Maps* provide guidance regarding Standard Instrument LEP mapping requirements. Where appropriate, planning proposals should also include aerial photographs, figures, and graphic information to identify the subject site and explain the current zones and development standards that apply to the land and intended outcome of the planning proposal.

Part 5 – Community consultation

A planning proposal must also outline the proposed community consultation that will be undertaken in relation to the proposal. Consultation includes public exhibition (typically 14 or 28 days) as well as details relating to any agencies that will be consulted. In the case of a large or complex planning proposal it may also be appropriate to include details of a community consultation strategy in the planning proposal. If any pre-lodgement consultation has been undertaken with agencies, an overview of the outcomes of this consultation including any agreements that may have been reached (e.g. scope of a technical study, agreement that an offset agreement is needed) should also be provided.

Part 6 – Project timeline

The Secretary has determined that a planning proposal must include a project timeline. The timeline is to clearly articulate the principal steps associated with finalising the plan together with anticipated start and completion dates. The timeline will be used by the Department and others to manage workloads associated with finalising the plan, especially where the plan is to be delegated to council to complete. The project timeline must clearly identify:

- anticipated commencement date (date of Gateway determination)

- anticipated timeframe for the completion of required studies
- timeframe for government agency consultation (pre and post exhibition as required by Gateway determination)
- commencement and completion dates for public exhibition period
- dates for public hearing (if required)
- timeframe for consideration of submissions
- timeframe for the consideration of a proposal post exhibition
- anticipated date RPA will make the plan (if delegated), and
- anticipated date RPA will forward to the Department for notification (if delegated) or for finalisation (if not delegated).

A primary goal of the plan making process is to facilitate the technical process to produce LEPs once the strategic decision of the issue of a Gateway determination has been taken. To meet this goal the Minister or GSC may consider taking action to finalise the LEP if the timeframes approved for the completion of the planning proposal are significantly or unreasonably delayed.

5.3 The Gateway determination

Once the document is prepared, it must be forwarded to the Minister or GSC by the RPA for Gateway consideration.

A Gateway determination is issued by the Minister, GSC or delegate. It specifies whether a planning proposal is to proceed and, if so, in what circumstances [EP&A Act s.56]. The Gateway determination will also include an Authorisation for the delegation of plan making functions to council where it has been requested or where the matters are determined to be of local planning significance by the Gateway.

The purpose of the Gateway determination is to ensure there is sufficient justification early in the process to proceed with a planning proposal. The Gateway determination is a checkpoint for planning proposals before resources are committed to carrying out investigative research, preparatory work and consultation with agencies and the community. It enables planning proposals that lack strategic planning merit to be stopped early in the process before time and resources are committed.

Once a planning proposal is forwarded to the Minister, GSC or delegate by the RPA for a Gateway determination, it is entered into the Department's online register of planning proposals where the progress of the proposed LEP is monitored, based on the submitted project timeline. It is then assessed by the Department's regional team. The Department's regional team will make a recommendation to the Minister, GSC or delegate regarding the progression of the planning proposal. The regional team may refer the planning proposal and its recommendation to the LEP Review Panel if it is considered that the proposal is contentious or not suitable for progression. The LEP Review Panel will consider the planning proposal and the recommendation of the Department's regional office before providing its own recommendation to the Minister, GSC or delegate.

The Minister, GSC or delegate will consider any recommendation of the Department's regional office and LEP Review Panel, where relevant, and decide whether to give a Gateway determination to allow the proposal to proceed. The Gateway determination will indicate the following [EP&A Act s.56(2)]:

- whether the planning proposal should proceed (with or without variation)
- whether any studies are required and if necessary the scope of these additional studies
- whether the planning proposal should be resubmitted for any reason (including for further studies or other information, or for the revision of the planning proposal)

- the community consultation required before consideration is given to the making of the proposed instrument (the community consultation requirements)
- any consultation required with state or Commonwealth authorities
- whether a public hearing is to be held into the matter by the Commission or other specified person or body
- the times within which the various stages of the process for making of the proposed LEP are to be completed, and
- whether the function of making the LEP is to be exercised by the Minister, GSC or delegated to the RPA.

Not all planning proposals that have received a Gateway determination will be finalised.

Examples for when a planning proposal would not be suitable for finalisation include:

- the planning proposal is not consistent with the requirements of the Gateway determination; or
- the planning proposal cannot demonstrate consistency with relevant Section 117 Directions or the Secretary has not agreed that any inconsistencies are justified, or minor in nature; or
- the proposed change of planning controls is not supported following consideration of studies, agency input or consultation; or
- the planning proposal has been withdrawn.

5.4 Review of Gateway determination

A proponent or a council, when it is the relevant planning authority for a proposal, may request the Minister, GSC or delegate alter a Gateway determination in certain circumstances.

Attachment 3 sets out the steps in the Gateway review process.

Separate to the formal Gateway review process outlined below, a council, as the relevant planning authority, may at any time request that the Gateway determination be reconsidered and re- issued. 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 at any time without the need for a formal review.

Step 1 – Proponent or council seeks review

A council, when it is the relevant planning authority, or proponent may request the Minister, GSC or delegate 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 proponent or council thinks should be reconsidered.

These post-Gateway reviews apply only if the original Gateway determination was made by a delegate of the Minister or GSC. If the Gateway determination is either to not proceed or to resubmit the planning proposal, the relevant planning authority 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 then has 42 days to formally apply for a Gateway review. The initial 14 day period is intended to prevent any unnecessary delay in proceeding to community consultation on the planning proposal.

The council or proponent requesting a Gateway review must provide the Department with the following within the 42 days:

- a completed application form
- a copy of the planning proposal and supporting information as submitted to the Gateway
- justification for why an alteration of the Gateway determination is warranted, including, where relevant, responses to issues raised by the original Gateway decision maker, and
- if relevant, disclosure of reportable political donations under section 147 of the Act

Step 2 – Department prepares preliminary report

The Department will check whether the request is eligible for review and is accompanied by all the required information. The Department will contact the council or proponent to obtain further details if required. If the Gateway review is proponent-initiated, the Department will notify the council of the proponent's request and the council will have 21 days to provide a response.

The Department will prepare a report outlining the planning proposal, the reason(s) why the review request has been made, the reasons why the original Gateway determination was made, and the views of the council (if the review was proponent-initiated).

Step 3 – Planning Panel or Commission advice

The Department's report and accompanying information will be forwarded to the Planning Panel or Commission for its advice.

The reviews will be provided to the Commission where they relate to land within the Greater Sydney Region or if the planning proposal was subject to a pre Gateway review that was considered by a Planning Panel. In all other cases these reviews will be provided to the relevant Planning Panel.

The Planning Panel or Commission will review the planning proposal, giving consideration to the council or proponent's submission and the reasons given for the original determination in the Department's report.

The Planning Panel or Commission will then determine whether or not the original Gateway determination should be altered and whether the planning proposal should proceed to public consultation.

Step 4 – Ministerial determination

The Minister, GSC or delegate will make the final decision with respect to the proposal giving consideration to:

- Gateway delegate's reasons for its original Gateway determination
- submissions from the council or proponent including why the Gateway determination should be altered
- views of the council (when the review has been initiated by the proponent)
- the Commission's advice in relation to the planning proposal, and

- other matters not considered by the original decision maker including strategic planning considerations (eg emerging state or regional policies relevant to the planning proposal).

The Minister, GSC or delegate may alter the Gateway determination and decide the planning proposal should proceed (in accordance with any revised conditions) at which point the council and proponent (if relevant) will be notified by the Department of the altered determination and post-Gateway consultation on the planning proposal can commence.

Alternatively, if the Minister, GSC or delegate considers that the planning proposal should not proceed past the Gateway, the council and proponent (if relevant) will be notified by the Department.

Following a Gateway review where the Minister, GSC or delegate alters the determination, the necessary processes and work to progress a planning proposal after a Gateway determination has been issued commence. This includes undertaking community consultation on the planning proposal.

The Department will monitor the progress of the Gateway review and will ensure that documents (review requests, Department, Planning Panel, and Commission reports and determinations) are published on the web within 3 business days of the completion of each step.

5.5 Finalising the planning proposal

The statutory process for making a plan following the issuing of a Gateway determination is the same regardless of whether the matter is delegated to council to finalise or whether the plan will be made by the Minister or GSC. The principal difference between the two processes is who has responsibility for undertaking the various statutory steps in the plan making process.

Attachment 6 provides an overview of the steps involved with the plan making process for delegated and non delegated matters. If, at Gateway, the plan making power of the Act is delegated to the RPA, then the RPA takes responsibility for all remaining steps in the plan making process. This includes both:

- requesting that the legal instrument (the LEP) is drafted by Parliamentary Counsel's Office (PCO), and
- the actual making of the LEP once an Opinion has been issued by PCO that the plan can be legally made.

Further advice about key aspects of the plan making process is provided in the sections below.

When a planning proposal is delegated to a RPA to finalise and make, the Department's primary function will be administrative in nature. The Department will continue to provide support and advice to a RPA throughout the course of the process if requested to do so.

5.5.1 Secretary's approval before community consultation

If required, the Secretary (or delegate) must approve the form of planning proposals, as revised, to comply with the Gateway determination, before community consultation is undertaken [EP&A Act s. 57(2)].

Wherever possible this approval will be granted at the same time as issuing the Gateway determination. In instances where it is likely the planning proposal will need to be revised as a consequence of the Gateway determination, or subsequent consultation with public authorities, the Secretary's approval may be withheld. If the Secretary's approval is withheld, the RPA must obtain approval before any community consultation takes place.

A planning proposal should be a concise document which justifies the proposal's merit. If there are circumstances in which it is appropriate to summarise the detailed provisions of a planning proposal for the purpose of community consultation, the Act provides that the Secretary (or delegate) can approve such a

summary if satisfied that it provides sufficient details for community consultation. The RPA should indicate in section 5 of the planning proposal (details of the community consultation that is to be undertaken) that it intends seeking the Secretary’s approval to issue a summary of the planning proposal for the purpose of community consultation.

A copy of the summary must be submitted for the approval of the Secretary prior to commencing community consultation. Even in circumstances where a summary is issued for community consultation, the complete planning proposal and supporting studies should also be available for interested members of the public to inspect [EP&A Act s. 57(2)].

5.5.2 Community consultation

The gateway determination will specify the community consultation that must be undertaken on the planning proposal. The consultation will be tailored to specific proposals.

Planning proposal type	Exhibition period
Low impact proposals*	14 days
All other planning proposals (including any proposal to reclassify land)	28 days

* A ‘low’ impact planning proposal is a planning proposal that, in the opinion of the person making the Gateway determination is:

- consistent with the pattern of surrounding land use zones and/or land uses
- consistent with the strategic planning framework
- presents no issues with regard to infrastructure servicing
- not a principal LEP
- does not reclassify public land.

Public exhibition of the planning proposal is generally undertaken in the following manner:

- notification in a newspaper that circulates in the area affected by the planning proposal
- notification on the website of the RPA
- notification in writing to affected and adjoining landowners, unless the planning authority is of the opinion that the number of landowners makes it impractical to notify them.

The RPA can undertake additional consultation if this is deemed appropriate or necessary. This may include, but is not limited to broad consultation by letter, open days or public forum.

The written notice must:

- give a brief description of the objectives or intended outcomes of the planning proposal
- indicate the land affected by the planning proposal
- state where and when the planning proposal can be inspected
- give the name and address of the RPA for the receipt of submissions
- indicate the last date for submissions
- confirm whether delegation for making the LEP has been issued to the RPA.

During the exhibition period, the following material must be made available for inspection:

- the planning proposal in the form approved for community consultation by the Gateway determination
- the Gateway determination
- any information or technical information relied upon by the planning proposal.

The community consultation is complete only when the RPA has considered any submissions made concerning the proposed LEP and the report of any public hearing into the proposed LEP [EP&A Act s. 57(8)].

Many RPAs have adopted policies for the exhibition of planning proposals and broader community consultation activities. If a RPA is recommending that consultation in addition to that recommended in this guideline is undertaken, an overview of that additional consultation should be provided in the planning proposal for consideration by the Gateway.

The plan making process does not require community consultation to be undertaken prior to a proponent lodging a request with a RPA to prepare a planning proposal. 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.

Depending on the nature of the proposal, a RPA may consider that it is appropriate to seek the general views of the community to assist in further defining the intent of the planning proposal prior to submitting it to Gateway. Alternatively, a proponent may consider it best practice to undertake pre-lodgement consultation if the proposal relates to a significant or large site. If this approach is adopted, the consultation will form part of the initial 90 day period between Council receiving a planning proposal request and indicating its support to preparing a planning proposal.

The initial planning proposal request should relate primarily to the underlying proposed amendment to the LEP. Issues associated with the potential future development of the site should be given secondary consideration and may not be suitable for pre-lodgement consultation.

As noted in '*A guide to preparing planning proposals*', a planning proposal relates to a change in a LEP control. While a variation to a control may be pursued to secure a particular development outcome for a site, that outcome will itself be subject to a separate assessment via the Development Application process. The principal focus of any pre-lodgement consultation should therefore be to seek the community's views on whether the proposed alternate zone or development standard is an appropriate outcome for that particular site. Matters associated with the design of a potential building, a subdivision layout, or other detailed matters are more appropriately addressed via the development assessment process and the public exhibition of any subsequent Development Application.

5.5.3 Public hearings

The RPA can decide to conduct a public hearing into any issue associated with a planning proposal [EP&A Act s. 57(6)]. Where the planning proposal is to reclassify community land, the RPA is obliged by the *Local Government Act 1993* to hold a public hearing.

A person making a submission during the public exhibition of a planning proposal can also request that the RPA conducts a public hearing into the issues raised in their submission. If the RPA considers that the issues raised in the submission are of such significance they should be the subject of a hearing, the RPA must arrange a public hearing [EP&A Act s. 57(5)].

Where a RPA decides to conduct a public hearing or is required to conduct a public hearing in the case of LEPs that propose to reclassify public land from 'community' to 'operational' under the *Local Government Act 1993*, it must:

- give notice of the arrangements for the public hearing in a local newspaper, and
- give notice in a letter to each of the persons who requested a public hearing when making a submission, at least 21 days before the date of the hearing.

Notice of the public hearing must not be given before the conclusion of the public exhibition of the planning proposal to ensure each person making a submission and requesting a public hearing is given the requisite 21 days notice.

5.5.4 Classification and reclassification of public land

In the case of proposed LEPs which are being prepared solely to classify or reclassify public land, the Secretary has issued the following requirements as to the specific matters that must be addressed in the justification for the planning proposal [EP&A Act s. 55(3)]:

For planning proposals that have been delegated, the council will be responsible for providing instructions to PCO to obtain the draft legal instrument. A central email address has been provided at the PCO for councils to forward their drafting instructions and requests to.

That email address is:

parliamentary.counsel@pco.nsw.gov.au

Secretary's requirements for planning proposals reclassifying land:

- a) Is the planning proposal the result of a strategic study or report?
- b) Is the planning proposal consistent with the local council's community plan, or other local strategic plan?
- c) If the provisions of the planning proposal include the extinguishment of any interests in the land, an explanation of the reasons why the interests are proposed to be extinguished should be provided.
- d) The concurrence of the landowner, where the land is not owned by the relevant planning authority.

5.5.5 Legal drafting of the LEP

The LEP is the legal instrument which gives effect to the planning proposal. The drafting of the LEP is undertaken by PCO upon receipt of instructions from the Department or from a RPA if the plan making process has been delegated to the RPA.

Where the Department is still responsible for drafting the LEP instrument it will consult the RPA on the terms of the LEP to ensure it is consistent with the objectives and outcomes and the explanation of provisions set out in parts 1 and 2 of the planning proposal.

Further information and details about the legal drafting process for delegated LEPs is provided at www.legislation.nsw.gov.au/lg_delegations_information.pdf

Council is to include the following details with the instructions to the Department's relevant regional office, for non-delegated planning proposals, or to PCO and the Department's relevant regional office, for delegated planning proposals:

- the planning proposal
- a copy of the Gateway determination and any subsequent determinations given with respect to the planning proposal
- details of exhibition (if applicable) and a report detailing how issues raised in any submissions made during exhibition have been addressed by council
- variations to the planning proposal after the Gateway determination was given and justification for these amendments
- details relating to the planning proposal's consistency with relevant Section 117 Directions, including where the Secretary has agreed that any inconsistencies are justified, or minor in nature
- any other relevant background or explanatory information that may assist the PCO with its drafting of the instrument eg council policy forming the basis of the amendment, council report(s) detailing the background and rationale for the draft LEP, any correspondence between the council and the Department which provides background to the approach adopted in the draft LEP, and
- completed template detailing dates for key steps of the process.
- draft maps and GIS data (where relevant) consistent with the *Standard Technical Requirements for Spatial Datasets and Maps* should be provided to the Department via the Planning Portal, at the same time as instructions are provided to PCO. No mapping should be sent from the RPA to PCO. The Department will review and forward all maps to PCO.

Note: All GIS and mapping data to be supplied in a single .ZIP file for ease of data via <https://www.planningportal.nsw.gov.au/planning-tools/online-submission-planning-data>.

Communications between PCO and the council may be subject to legal professional privilege and must be maintained in the strictest confidence. This privilege also extends to drafts of the instrument and drafting notes provided by PCO to the council. Councils should contact the Department and PCO before publishing these preliminary drafts on their websites or otherwise making them available to third parties, in order to avoid this privilege being waived. Legal professional privilege is also relevant in considering whether to disclose government information under the Government Information (Public Access) Act 2009.

PCO will produce a draft instrument (the LEP) and following any discussions with the RPA about the content of the instrument PCO will issue an Opinion that the draft instrument can be legally made. A LEP cannot be signed unless such an opinion has been issued.

5.5.6 Varying a proposal

An early dialogue between the Department and the RPA regarding the assessment requirements for a planning proposal is an important feature of the process of preparing a LEP. It is important, therefore, that planning proposals can be built upon, or evolve, as a consequence of more detailed studies and investigations in the period following the initial Gateway determination and leading up to community consultation.

The Act provides that if a RPA varies its proposal following the initial Gateway determination, it must inform the Minister, GSC or delegate, who may issue a revised Gateway determination, depending on the nature of the variations.

A RPA is taken to have varied its proposals when it changes the statement of the objectives or intended outcomes of the proposed LEP required by s. 55(2)(a) of the Act (Part 1 of the planning proposal), or the explanation of the provisions that are to be included in the proposed LEP required by s. 55(2)(b) (Part 2 of the planning proposal).

Changes to the justification for those objectives, outcomes and provisions and the process for their implementation required by s. 55(2)(c) of the Act are not regarded as variations to the proposals and therefore do not require the revised planning proposal to be forwarded to the Minister, GSC or delegate.

It should be noted that resubmission of the planning proposal following the completion of studies may be included as a requirement in the Gateway determination.

5.5.7 Benchmark timeframes for preparing LEPs

LEPs take different forms and degrees of complexity. It is important, that the state planning system responds to changing circumstances and emerging opportunities and that planning proposals are given proper consideration within a reasonable timeframe.

Benchmark timeframes have been set for the following types of LEPs where they are consistent with the state's strategic planning framework:

- administrative changes and errors **3 months**
- minor spot rezoning **6 months**
- major land release and urban renewal **12-18 months**
- principal LEPs **24 months**.

Delegating plan making to local councils is intended to fast track the delivery of LEPs.

The progress of LEPs from the initial submission of a planning proposal through to the finalisation of a LEP can also be monitored on the Department's LEP Tracking System which can be accessed via www.leptracking.planning.nsw.gov.au/. The Tracking System provides details of all planning proposals that have been lodged with the Department and their status.

5.5.8 Tracking and reporting on the plan making process

The process for tracking the status of a planning proposal and draft LEP through the plan making stages continues to be the Department's LEP Tracking System. The community will continue to be able to log onto the tracking system to check the status of a plan.

To ensure that information on the status of delegated LEPs is current, councils are required to advise the relevant regional office in writing when each stage of the plan making process (ie dates for exhibition, date reported to council etc) is completed. This will enable the Department to update the data in the tracking system which will then be available for the public to review via the publicly available site.

Councils will be provided with a template at the same time as the Authorisation is issued. The template (see **Attachment 5**) lists the key dates that council will be required to report on in relation to each LEP. Councils must provide a copy of the completed template with its request that the plan be notified.

No additional reporting on the progress of LEPs will be required from councils.

If any issues related to the plan making process are identified at any stage and council is uncertain how to proceed, council should consult with the relevant regional team of the Department.

The Department will continue to monitor the progress of LEPs against the timeframes identified in the original Gateway determination notice. Council is still accountable to the timeframe requirements identified in the Gateway determination. Where council cannot demonstrate a commitment to completing the LEP within a satisfactory timeframe, consideration will be given to discontinuing the planning proposal in accordance with section 56(7) of the Act or appointing an alternative RPA under section 54(2) of the Act.

5.5.9 Circumstances in which it is not necessary to follow this process

In the following circumstances, the Minister, GSC or delegate may dispense with all or part of the plan-making process described within this section, including community consultation, in the making of an amending LEP but not the processes set out in section 5.5.5 of this guide:

- if the purpose of the proposed LEP is to implement the Standard Instrument (Local Environmental Plans) Order 2006 and the Minister is of the opinion that the proposed LEP does not make any substantial changes to the general effect of the existing instrument or instruments [EP&A Act s. 33A(8A)]
- if the purpose of the proposed LEP is to correct an obvious error in the principal LEP, or address other matters that are of a minor nature [EP&A Act s.73A(1)(a) and (b)], or
- if in the opinion of the Minister or GSC, the matters dealt with by the amending LEP will not have any significant adverse impact on the environment or adjoining land [EP&A Act s. 73A(1)(c)].

A RPA wishing to seek the Minister's dispensation of all or part of the process must, in the first instance, write to the Secretary setting out the reasons why in the context of the criteria described above (sections 33A(8A) or 73A as applicable). The Minister, GSC or delegate will advise which, if any, parts of the process can be dispensed with when the initial Gateway determination is issued.

5.5.10 Additional assistance

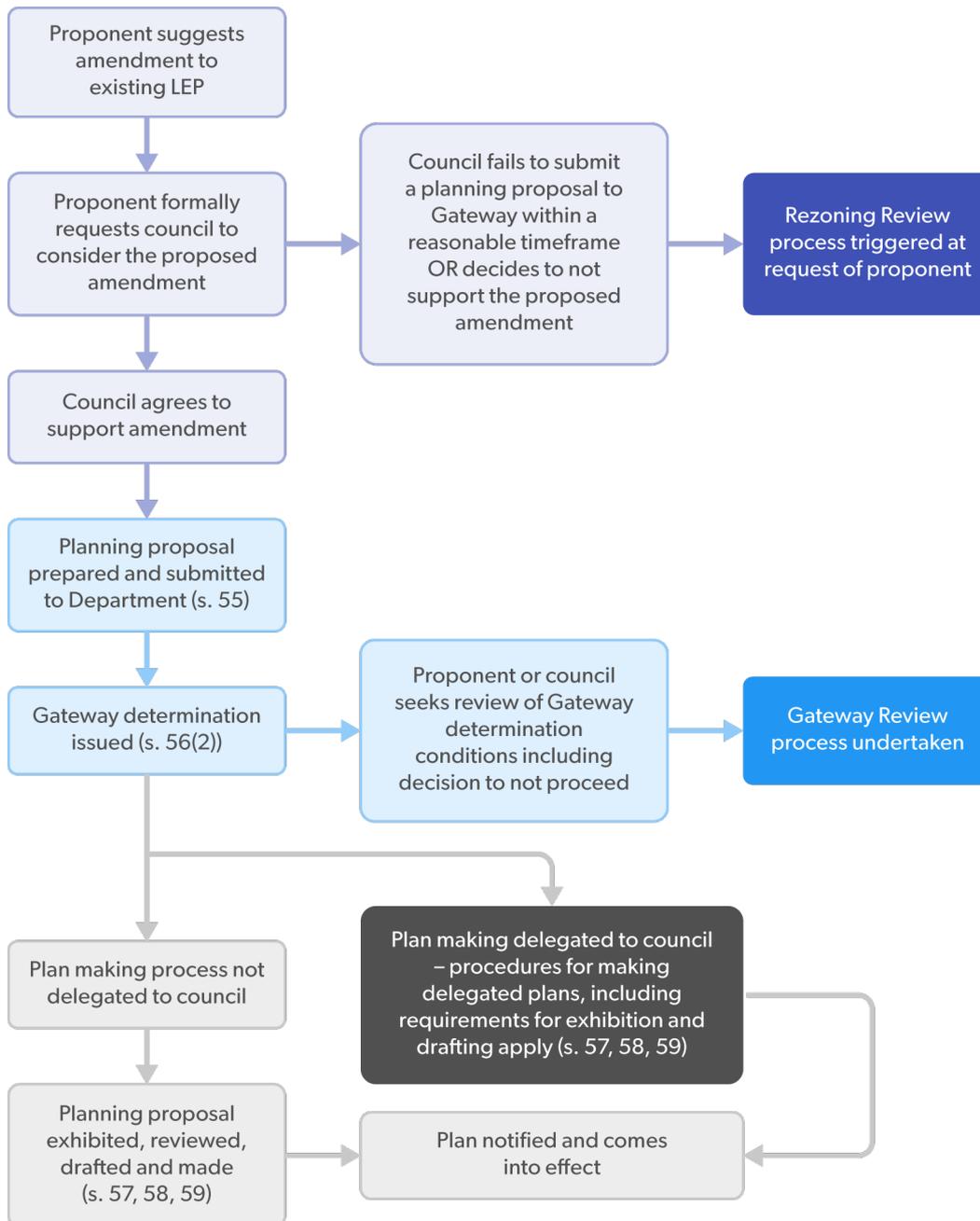
The Department will continue to provide assistance to any council that requests it at any stage of the plan making process. This assistance may include:

- preparation of and assistance with supporting LEP maps
- liaison with agencies where an objection or issue is raised during exhibition or as a result of consultation required under the Gateway determination
- advice on appropriate matters for inclusion in draft LEP provisions, and
- discussions with PCO on drafting matters.

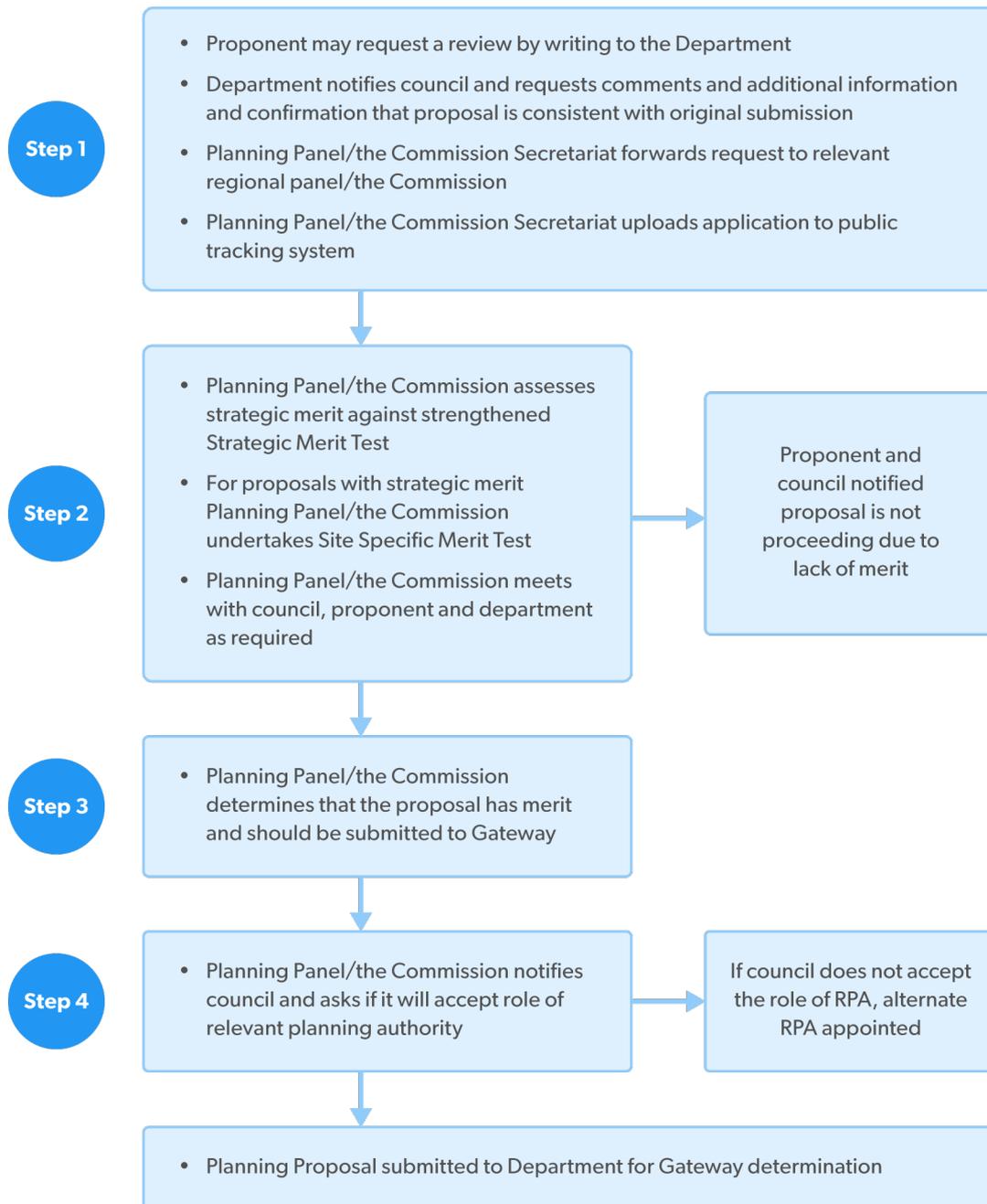
Councils should initially contact the relevant regional office for this assistance.

6 Attachments

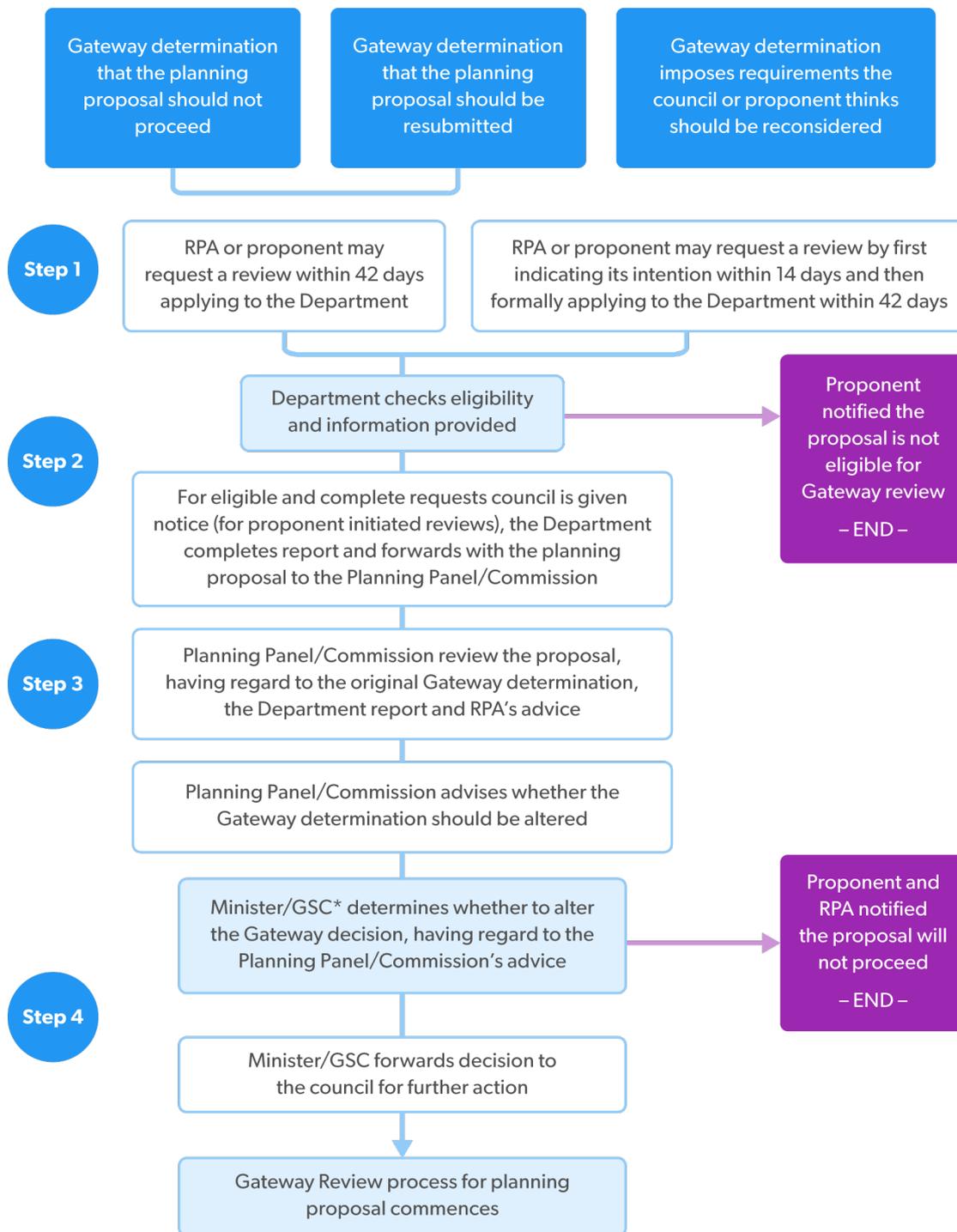
Attachment 1 – LEP plan making process



Attachment 2 – Rezoning review process



Attachment 3 – Gateway determination review process



* Reference to Minister/GSC in this diagram is also a reference to the Secretary if the Gateway decision being reviewed was originally made by a delegate of the Minister/GSC that was not the Secretary

Attachment 4 – Evaluation criteria for the delegation of plan making functions

Checklist for the review of a request for delegation of plan making functions to councils

Local Government Area:

Name of draft LEP:

Address of Land (if applicable):

Intent of draft LEP:

Additional Supporting Points/Information:

Evaluation criteria for the issuing of an Authorisation

(NOTE – where the matter is identified as relevant and the requirement has not been met, council is attach information to explain why the matter has not been addressed)	Council response		Department assessment	
	Y/N	Not Relevant	Agree	Disagree
Is the planning proposal consistent with the Standard Instrument Order, 2006?				
Does the planning proposal contain an adequate explanation of the intent, objectives, and intended outcome of the proposed amendment?				
Are appropriate maps included to identify the location of the site and the intent of the amendment?				
Does the planning proposal contain details related to proposed consultation?				
Is the planning proposal compatible with an endorsed regional or sub-regional planning strategy or a local strategy endorsed by the Secretary?				
Does the planning proposal adequately address any consistency with all relevant S117 Planning Directions?				
Is the planning proposal consistent with all relevant State Environmental Planning Policies (SEPPs)?				
Minor Mapping Error Amendments				
Does the planning proposal seek to address a minor mapping error and contain all appropriate maps that clearly identify the error and the manner in which the error will be addressed?				
Heritage LEPs				
Does the planning proposal seek to add or remove a local heritage item and is it supported by a strategy/study endorsed by the Heritage Office?				
Does the planning proposal include another form of endorsement or support from the Heritage Office if there is no supporting strategy/study?				
Does the planning proposal potentially impact on an item of State Heritage Significance and if so, have the views of the Heritage Office been obtained?				

Reclassifications				
Is there an associated spot rezoning with the reclassification?				
If yes to the above, is the rezoning consistent with an endorsed Plan of Management (POM) or strategy?				
Is the planning proposal proposed to rectify an anomaly in a classification?				
Will the planning proposal be consistent with an adopted POM or other strategy related to the site?				
Has Council confirmed whether there are any trusts, estates, interests, dedications, conditions, restrictions or covenants on the public land and included a copy of the title with the planning proposal?				
Has council confirmed that there will be no change or extinguishment of interests and that the proposal does not require the Governor's approval ?				
Has the council identified that it will exhibit the planning proposal in accordance with the Department's Practice Note regarding <i>classification and reclassification of public land through a local environmental plan and Best Practice Guideline for LEPs and Council Land?</i>				
Has council acknowledged in its planning proposal that a Public Hearing will be required and agreed to hold one as part of its documentation?				
Spot Rezonings				
Will the proposal result in a loss of development potential for the site (ie reduced FSR or building height) that is not supported by an endorsed strategy?				
Is the rezoning intended to address an anomaly that has been identified following the conversion of a principal LEP into a Standard Instrument LEP format?				
Will the planning proposal deal with a previously deferred matter in an existing LEP and if so, does it provide enough information to explain how the issue that lead to the deferral has been addressed?				
If yes, does the planning proposal contain sufficient documented justification to enable the matter to proceed?				
Does the planning proposal create an exception to a mapped development standard?				

Section 73A matters

Does the proposed instrument

- a) correct an obvious error in the principal instrument consisting of a misdescription, the inconsistent numbering of provisions, a wrong cross-reference, a spelling error, a grammatical mistake, the insertion of obviously missing words, the removal of obviously unnecessary words or a formatting error?;
- b) address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature?; or
- c) deal with matters that do not warrant compliance with the conditions precedent for the making of the instrument because they will not have any significant adverse impact on the environment or adjoining land?

(Note – the Minister / GSC (or Delegate) will need to form an Opinion under section 73(A)(1)(c) of the Act in order for a matter in this category to proceed).

Notes

- Where a council responds 'yes' or can demonstrate that the matter is 'not relevant', in most cases, the planning proposal will routinely be delegated to council to finalise as a matter of local planning significance.
- Endorsed strategy means a regional strategy, sub-regional strategy, or any other local strategic planning document that is endorsed by the Secretary of the Department.
- Matters that will be routinely delegated to a Council under administration are confirmed on the Department's website www.planning.nsw.gov.au/Plans-for-Your-Area/Local-Planning-and-Zoning/

Attachment 5 – Delegated plan making reporting template

Reporting Template for Delegated LEP Amendments

Notes:

- Planning proposal number will be provided by the Department following receipt of the planning proposal
- The Department will fill in the details of **Tables 1 and 3**
- RPA is to fill in details for **Table 2**
- If the planning proposal is exhibited more than once, the RPA should add additional rows to **Table 2** to include this information
- The RPA must notify the relevant contact officer in the regional office in writing of the dates as they occur to ensure the Department’s publicly accessible LEP Tracking System is kept up to date
- A copy of this completed report must be provided to the Department with the RPA’s request to have the LEP notified

Table 1 – To be completed by the Department

Stage	Date/Details
Planning Proposal Number	
Date Sent to Department under s56	
Date considered at LEP Review Panel (if relevant)	
Gateway determination date	

Table 2 – To be completed by the RPA

Stage	Date/Details	Notified Reg Off
Dates draft LEP exhibited		
Date of public hearing (if held)		
Date sent to PCO seeking Opinion		
Date Opinion received		
Date Council Resolved to Adopt LEP		
Date LEP made by GM (or other) under delegation		
Date sent to Department requesting notification		

Table 3 – To be completed by the Department

Stage	Date/Details
Notification Date and details	
Additional Relevant Information:	

Attachment 6 – Comparative plan making process

Planning proposals

Non Delegated Matters

- A planning proposal can be initiated by council or proponent.
- A planning proposal to be prepared in accordance with the Department's *A guide to preparing planning proposals*.
- Council to identify that it is not requesting an authorisation to exercise delegation to finalise the Plan.

Delegated Matters

- A planning proposal can be initiated by council or proponent.
- A planning proposal to be prepared in accordance with the Department's *A guide to preparing planning proposals*.
- Council to identify that it seeks authorisation to exercise delegation and provide responses to relevant matters in 'Evaluation criteria for the issuing of authorisation' (see **Attachment 4**).
- Council to identify whether the plan will be made by council or by sub-delegation to relevant officer (usually General Manager or planning director).

Assessment of planning proposal

Non Delegated Matters

- Department's regional planning team undertakes assessment of planning proposal and prepares assessment report recommending Gateway determination conditions.

Delegated Matters

- Department's regional planning team undertakes assessment of planning proposal and prepares assessment report recommending Gateway determination conditions.
- Assessment report includes review of responses provided by council in 'Evaluation criteria for the issuing of authorisation' and a recommendation as to whether council's request for an authorisation should be supported.

LEP Review Panel (if relevant)

Non Delegated Matters

- Planning proposal considered by Department's independent LEP Review Panel.
- Recommendation made to the Minister, GSC or delegate including conditions for the finalisation of the planning proposal.

Delegated Matters

- Planning proposal considered by Department's independent LEP Review Panel.
- Recommendation made to Gateway including conditions for the finalisation of the planning proposal.

Gateway Determination

Non Delegated Matters

- Gateway considers planning proposal, recommendations from regional planning team assessment report, and LEP Review Panel regarding conditions for the finalisation of the planning proposal.
- Gateway determination notice issued with conditions related to:
 - requirements for community and agency consultation
 - whether additional supporting information is to be provided
 - the timeframe for the completion of the draft LEP
 - any other relevant matters.
- Once Gateway determination has been given the planning proposal is returned to council.

Delegated Matters

- Gateway considers planning proposal, recommendations from regional planning team assessment report, and LEP Review Panel regarding conditions for the finalisation of the planning proposal.
- Gateway determination notice issued with conditions related to:
 - requirements for community and agency consultation
 - whether additional supporting information is to be provided
 - the timeframe for the completion of the draft LEP, and
 - any other relevant matters.
- If the Gateway agrees with request from council to delegate plan making functions an Authorisation to exercise delegation is issued concurrently with the Gateway determination notice.
- Once Gateway determination has been given the planning proposal is returned to council.

- Delegation means the Department will generally no longer be involved in the plan making process unless:
 - the council fails to meet its obligations in progressing the proposal in accordance with the conditions of the Gateway
 - the council decides not to process the draft LEP and requests that the Minister / GSC determine the matter no longer proceed.
- The Department may still have a role in the finalisation of the Plan where:
 - required by the Gateway;
 - the agreement of the Secretary regarding S117 Directions is required; or
 - the RPA seeks to alter the Gateway, including any extension of timeframes.

Consultation

Non Delegated Matters

- Council is to undertake consultation in accordance with the conditions of the Gateway determination including:
 - consultation required under section 34A of the EP&A Act where the RPA is of the opinion that critical habitat or threatened species populations, ecological communities or their habitats will or may be adversely affected by the planning proposal
 - consultation required in accordance with Ministerial Direction under section 117 of the Act
 - consultation that is required because in the opinion of the Minister, GSC or delegate, a state or Commonwealth authority will or may be adversely affected by the proposed LEP.
- Public exhibition in accordance with the minimum timeframe established in the Gateway determination.

Delegated Matters

- Council is to undertake consultation in accordance with the conditions of the Gateway determination including:
 - consultation required under section 34A of the EP&A Act where the RPA is of the opinion that critical habitat or threatened species populations, ecological communities or their habitats will or may be adversely affected by the planning proposal
 - consultation required in accordance with a Ministerial Direction under section 117 of the Act
 - consultation that is required because in the opinion of the Minister, GSC or delegate, a state or Commonwealth authority will or may be adversely affected by the proposed LEP.
- Public exhibition in accordance with the minimum timeframe established in the Gateway determination.

Post exhibition review

Non Delegated Matters

- Council is to review the planning proposal following exhibition.
- Council should attempt to resolve any public agency objection.
- Council may, at any time, vary its proposal under section 58(1) of the Act as a consequence of its consideration of any submission or report during consultation, or for any other reason.
- If a planning proposal is revised council is to forward a copy of the revised proposal to the Department under section 58(2) of the Act.
- The Minister, GSC or delegate will consider the revised proposal and determine whether further consultation is required (including re-exhibition) and whether a revised Gateway determination should be issued.
- Changes to the planning proposal after exhibition may be so substantial that the planning proposal may no longer be authorised by the Gateway determination. In these circumstances a new Gateway determination will be required before the LEP is made (Refer to Section 5.5.6 of these Guidelines).
- Consequently councils are encouraged to contact the relevant regional office of the Department for advice where there have been major changes to a planning proposal after exhibition.
- Council is to obtain the agreement of the Department's Secretary regarding any unresolved S117 Directions.

Delegated Matters

- Council is to review the planning proposal following exhibition.
- Council should attempt to resolve any public agency objection.
- Council may, at any time, vary its proposal under section 58(1) of the Act as a consequence of its consideration of any submission or report during consultation, or for any other reason.
- If a planning proposal is revised council is to forward a copy of the revised proposal to the Department under section 58(2) of the Act.
- The Minister, GSC or delegate will consider the revised proposal and determine whether further consultation is required (including re-exhibition) and whether a revised Gateway determination should be issued.
- Changes to the planning proposal after exhibition may be so substantial that the planning proposal may no longer be authorised by the Gateway determination. In these circumstances a new Gateway determination will be required before the LEP is made (Refer to Section 5.5.6 of these Guidelines).
- Consequently councils are encouraged to contact the relevant regional office of the Department where there have been major changes to a planning proposal after exhibition. Councils should seek advice in this instance before finalising the LEP under delegation.
- Council is to obtain the agreement of the Department's Secretary regarding any unresolved S117 Directions.

Legal Drafting of the LEP

Non Delegated Matters

- Council forwards a copy of the planning proposal and relevant supporting information to the Department requesting that a draft LEP is prepared.
- Council will upload the maps, map cover sheet and GIS data directly to the Department's Planning Portal site (www.planningportal.nsw.gov.au/planning-tools/online-submission-planning-data). Council should advise the regional offices of the Department once this mapping has been uploaded to the Department's Planning Portal.
- The Secretary makes arrangements for the drafting of the instrument to PCO under section 59(1) of the Act.
- Once a draft of the instrument has been prepared the Secretary consults with the RPA on the content of the LEP.
- Content of the LEP finalised and an Opinion issued by PCO that the plan can be made.

Delegated Matters

- Council requests that a draft instrument be prepared under section 59(1) of the Act by emailing PCO directly at parliamentary.counsel@pco.nsw.gov.au.
- Council will upload the maps, map cover sheet and GIS data directly to the Department's Planning Portal site (www.planningportal.nsw.gov.au/planning-tools/online-submission-planning-data).
- No maps or mapping/GIS data is to be sent directly to PCO.
- Council is to email a copy of the request to draft the instrument together with confirmation that the plans and mapping data that have been submitted to the Planning Portal to the Department's regional office for administrative purposes immediately after making its request to PCO.
- The Department will undertake a technical review only of any maps required to implement the LEP to ensure they comply with the mapping technical guidelines and liaise with PCO to finalise maps.
- Council and PCO liaise directly about the content of the draft LEP.
- Content of the LEP finalised and an Opinion issued by PCO that the plan can be made.

Making of the draft LEP

Non Delegated Matters

- Council resolves to adopt the draft LEP and forwards a request to the Department to request that the Minister or GSC make the plan together with all relevant supporting information.
- The Minister or GSC may, under sections 59(2) and (3) of the Act:
 - Make the plan with or without variation
 - Decide to not make the plan
 - Decide to defer a matter from the plan.
- If the Minister or GSC decides not to make a plan or defers a matter under section 59(4) of the Act he may specify whether or not he is prepared to reconsider the plan or deferred matter and if so, which plan making procedures must be complied with before he will do so.

Delegated Matters

- Council resolves to adopt and make the draft LEP.
- Council may, under sections 59(2) and (3) of the Act:
 - Decide to **make** the plan with or without any variation. In most instances this will be the expected outcome of the plan making process. If council resolves to make the plan it should forward a copy of all relevant documentation, including a copy of council's assessment report (ie details of community consultation, responses to submissions, Secretary's agreement to S117 Directions, maps, a copy of the Opinion from PCO, any other relevant material, and the completed delegation reporting template) to the Department together with the plan. The Department will then arrange for the plan to be notified on the NSW Government legislation website
 - Decide to **not make** the plan in accordance with section 59(2)(b) of the Act. If council proposes to not make the plan, assistance from the relevant regional planning team should be sought prior to council's resolution to not make the plan. If council resolves to not make the plan its assessment report is to clearly identify the reasons behind this decision including whether the decision to not proceed was based on submissions received during public exhibition, an agency submission, or some other matter that was raised during the plan making process
 - **Defer a matter** from the plan in accordance with section 59(3) of the Act. If the draft LEP relates to a number of items or sites, or if it addresses a number of housekeeping amendments for example, and one or more of these matters cannot be resolved satisfactorily, council may decided to defer that matter from the final plan prior to the plan being made. If council chooses to defer a matter, it should liaise with the relevant regional team of the Department for assistance especially if the decision is the result of an agency submission. There are technical and legal requirements that are to be met when deferring a matter and the Department will assist council to ensure the matter is properly addressed.
- If council decides not to make a plan or defers a matter under section 59(4) of the Act it may specify whether or not it is prepared to reconsider the plan or deferred matter and if so, which plan making procedures must be complied with before it will do so.
- Council must also notify PCO if the plan is not proceeding or if it will not be made.

- A council must not use its delegation under section 59 of the Act where there is an unresolved agency objection to the draft LEP. If there are unresolved objections, council is to contact the relevant regional office of the Department to seek assistance in resolving the matter so that the LEP may proceed under delegation. Where it is not possible to resolve the objection, the delegation may be withdrawn, and the Department may proceed with finalising the plan, or the Minister, GSC or delegate may determine that the planning proposal no longer proceeds.

Notification of the LEP

Non Delegated Matters

- Once the plan is made the Department requests PCO that the plan be notified on the NSW Legislation website.
- The plan comes into force on the day the LEP is published on the legislation website.

Delegated Matters

- Council advises the Department that the plan has been made.
 - The council requests the Department to notify the plan. The following documents must be provided for notification with the request by council:
 - signed front page of the LEP – complete with full name of the LEP and PCO’s file reference;
 - complete signed map cover sheet (in the case of changes to maps of instruments containing the standard map clause);
 - the maps that relate to the signed map cover sheet; and
 - the name/position of the delegate who signed the LEP.
 - It is anticipated that the LEP will generally be notified on a Friday. However, urgent or delayed notification can be arranged.
 - For normal notification on a Friday the request along with all required information should be sent to the Department by 5.00pm on the Tuesday of that week.
 - Requests for notification should be sent via email to the relevant regional office of the Department.
 - The Department requests PCO that the plan be notified on the NSW Legislation website.
 - The plan comes into force on the day the LEP is published on the legislation website.
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