

# A guide to preparing local environmental plans



Planning &  
Infrastructure



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The guidelines do not affect or replace relevant statutory requirements. Where an inconsistency arises between the provisions of the guidelines and relevant statutory provisions, the statutory requirements prevail.

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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 for 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.

Further advice and assistance regarding the preparation of LEPs is available from the regional offices of the Department of Planning and Infrastructure (the department). 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 an LEP. If further advice is required, the initial point of contact with the department should be via its regional offices.

This guideline also details the procedures for pre and post-Gateway reviews. A proponent can request a pre-Gateway review when a council fails to make a decision on whether to support the preparation of a planning proposal within 90 days, or when a council resolves not to support a planning proposal. A

proponent must be able to demonstrate that there is strategic merit in the matter proceeding. A review of a Gateway determination can be requested by either a proponent or a council. 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, 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 the '*A Guide to preparing planning proposals*'. That guide provides more detailed advice about preparing a planning proposal, which is a pre-cursor to an LEP. It also sets out specific requirements the Director-General has issued in accordance with s 55(3) of the Act concerning the matters that must be addressed when preparing planning proposals.

# 2

## What is a local environmental plan?

An LEP is a legal instrument that zones land, imposes standards to control development, or implements a state or local policy outcome. An 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 an 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. An LEP generally comprises a written document and accompanying maps.

An LEP applies to a particular area, generally the whole or part of a local government area (LGA). An LEP applying to the whole of an 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, an 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 an 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 LEP maps*'. The Standard Instrument and standard technical requirements for LEP 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 creation of an e-mapping platform and will enable all LEP maps to be made available online after the plan is made.

# 3

## Who can initiate and make an LEP?

Only the Minister for Planning and Infrastructure (or delegate) can make an 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].

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

Whether it is a council that has initiated an LEP or an authority appointed by the Minister, 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 has initiated the process, the Minister will appoint the Director-General or some other person or body prescribed by the regulations, including a Joint Regional Planning Panel (regional panel), to be the RPA.

### Circumstances when Minister can initiate an LEP

The Minister may direct that the Director-General (or any other person or body prescribed by the regulations) is the relevant planning authority for a proposed instrument in the following cases [Act s. 54(2)]:

- the proposed instrument relates to a matter that, in the opinion of the Minister, is of state or regional environmental planning significance
- 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 regional panel has recommended to the Minister that the proposed instrument should be submitted for a determination under section 56 (Gateway determination) or that the proposed instrument should be made
- the council for the local government area concerned has, in the opinion of the Minister, 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 will consider when deciding how to deal with a request to initiate an 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](http://www.planning.nsw.gov.au).

# 4

## What is the process for preparing an 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 – ‘pre-Gateway’ review and ‘post-Gateway’ review. These review mechanisms allow councils 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 include:

- 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 Director-General
- 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 routinely be delegated to councils if the Gateway agrees that the matter is of local significance.

Delegation of proposed instruments that have been subject to a pre-Gateway review will be considered on a case by case basis.

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 also 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 to personally 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 under section 59(2)
- deferring a matter from a plan under section 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 (section 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 be seeking an Authorisation to make the plan for each planning proposal.

Section 23 of the Act allows the Minister and the Director-General to delegate functions to a council and/or an officer or employee of a council. 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.

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
- b. an employee of the council, except with the approval of the council and the general manager



# 5

## The stages in the plan making process

### 5.1 Pre-Gateway reviews

The pre-Gateway review mechanism allows proponents to request an independent body review decisions in relation to proposed amendments to LEPs.

Pre-Gateway reviews:

- may be requested by a proponent before a planning proposal has been submitted to the department for the issuing of a Gateway determination, and
- are informed by advice from regional panels or the Planning Assessment Commission (PAC)

**Attachment 2** sets out the steps in the pre-Gateway review process undertaken by regional panels and the PAC. 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 pre-Gateway 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 instrument<sup>1</sup>, it may ask for a pre-Gateway review if:

<sup>1</sup> 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.

- 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 information<sup>2</sup>

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 of the proposed instrument then has 40 days<sup>3</sup> from notification to request a review of the council's decision.

<sup>2</sup> The '**A guide to preparing planning proposals**' sets out what information a proponent may provide when requesting that council 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.

<sup>3</sup> Periods will be extended over the Christmas and the New Year period.

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, along with any additional information (including site plan, zoning map or location plan) provided to council
- 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 for why a review is warranted
- any supporting information to address the assessment criteria
- disclosure of reportable political donations under section 147 of the Act, if relevant and
- \$5000 initial fee for the department's administration and eligibility assessment.

On receipt of a proponent's request for pre-Gateway review, the department will check whether the request is eligible for review and accompanied by all the required information and fees. The department will contact the proponent to obtain further details if required.

The request should be accompanied by up-to-date supporting information to allow for appropriate consideration of the strategic and site-specific merits. Requests accompanied by out-of-date studies and other information will generally not be

considered eligible for review (depending on the currency, status and necessity of the information).

The department will notify the relevant council of a proponent's request if it is confirmed to be eligible and complete. The council will have 21 days to provide a response in relation to why the original request to council was not progressed.

Please note, for pre-Gateway reviews:

- a proponent who has made a request in writing for council to prepare a planning proposal prior to November 2012 may seek a review if the supporting information accompanying the request is still less than two years old, and
- a review request accompanied by information that is more than two years old will not normally be considered.

## Step 2 - Department Assessment

The department will undertake an assessment to determine whether the proposal:

- a. has strategic merit as it:
  - is consistent with a relevant local strategy endorsed by the Director-General or
  - is consistent with the relevant regional strategy or Metropolitan Plan or
  - can otherwise demonstrate strategic merit, giving consideration to the relevant section 117 Directions applying to the site and other strategic considerations (eg proximity to existing urban areas, public transport and infrastructure accessibility, providing jobs closer to home etc)

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b. has site-specific merit and is compatible with the surrounding land uses, having regard to the following:

- 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 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 generally not proceed to review by the regional panel or the PAC.

The department will prepare a report outlining the following:

- a summary of the proposed instrument
- the outcomes of the assessment
- other considerations relevant to the merits of the proposal (case-by-case matters)
- the advice provided by council
- a recommendation about whether or not the proposed instrument should proceed to Gateway

If the Director-General determines that the proposed instrument does not qualify for review, the department will notify the proponent and council. The decision of the Director-General that a proposed instrument does not qualify for review is final and the assessment fee is not refundable.

For pre-Gateway review requests which progress, the proponent will be contacted

and a further \$15,000 fee for detailed assessment and regional panel or PAC costs will be payable prior to the proposal being forwarded to the regional panel/PAC.

Once the review fee is paid, the proposed instrument will be referred to the regional panel/PAC and the council will be notified that advice is being sought.

### **Step 3 – Regional panel or PAC review**

The regional panel/PAC may meet with the department, council and proponent to clarify any issues before completing its review.

In reviewing the proposed instrument and preparing its advice, the regional panel/PAC will consider the department's recommendation and report and advice provided by council and the proponent.

The regional panel/PAC's advice will be framed around the merits of the proposal and whether the regional panel/PAC would recommend to the Minister that the proposed instrument should be submitted for a determination under section 56 of the Act (Gateway determination).

### **Step 4 – Ministerial determination**

The Minister (or delegate) will make the final decision with respect to the proposed instrument. The final outcome may include:

- the regional panel/PAC considers that the proposed instrument should not proceed to Gateway, or
- the regional panel/PAC has recommended that the proposal has merit and that the proposed instrument be submitted for Gateway determination. The council may be requested to submit a planning proposal to the Gateway within 40 days, or

- the Minister may consult with the General Manager of the relevant council to discuss the possibility of changing the RPA to the Director-General of the department (or other body), or
- the Minister may retain his discretion to, or not to, proceed with the matter, notwithstanding the advice of the regional panel/PAC.

The department will contact the proponent and the council in respect of the outcome of the review.

In instances where the Director-General is appointed the RPA, the department will process the planning proposal and the proponent will need to pay a fee (\$25,000, plus additional charges to recover the department's costs on a proposal-specific basis).

The department will monitor progress of the pre-Gateway review requests and ensure that documents (review requests, department and regional panel/PAC reports, Minister/Director-General decisions) are published on the web within five days of the completion of each step.

## 5.2 The planning proposal

A planning proposal is to be prepared for consideration by the RPA and the department regardless of whether the matter has been subject to a pre-Gateway review. 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.

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 Director-General to issue requirements with respect to the preparation of a planning proposal. The Director-General'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

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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 Director-General 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 Director-General'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 more detailed investigation if the planning proposal is to proceed. These more 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. For planning proposals that amend a Standard Instrument LEP, all mapping should be prepared in accordance with the presentation requirements of '*Standard technical requirements for preparing LEP maps*'. 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)]. Where appropriate, planning proposals should also include aerial photographs, figures, and graphic information to identify the subject site and explain the 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 Director-General 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).

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 may consider taking action to finalise the LEP if the timeframes approved for the completion of the planning proposal are significantly or unreasonably delayed.

The planning proposal can be prepared by the RPA, or by a proponent for the proposed LEP. In either case, the RPA is responsible for the planning proposal and must be satisfied that it addresses the requirements of the Act and that enough information is provided to support the proposed amendment prior to forwarding it to the Minister to issue a Gateway determination.

### 5.3 The Gateway determination

A Gateway determination is issued by the Minister (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 (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 initially by the department's

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regional team. Both the planning proposal and the recommendation of the department are forwarded to the LEP Review Panel. The LEP Review Panel considers the planning proposal and the recommendation of the department's regional office before providing its own recommendation to the Minister (or delegate).

The Minister (or delegate) will consider the recommendation of the LEP Review Panel 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 PAC 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 or delegated to the RPA.

## 5.4 Review of Gateway determination

A council or proponent may request the Minister (or delegate) alter a Gateway determination in certain circumstances.

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

[**Note:** Separate to the formal Gateway review process outlined below, a council 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 without the need for a formal review.]

### Step 1 – Proponent or council seeks review

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A council or proponent may request the Minister (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.

If the Gateway determination is either to not proceed or to resubmit the planning proposal, the council or proponent has 40 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 40 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 department will notify the council and the proponent (if relevant) of the original Gateway determination and the periods in which they can request a review of the determination.

The council or proponent requesting a Gateway review must provide the department with the following within the 40 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 relevant 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 - Regional panel/PAC advice**

The department's report and accompanying information will be forwarded to the regional panel/PAC for its advice.

The regional panel/PAC 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 regional panel/PAC will then provide advice on whether or not the original Gateway determination should be altered and whether the planning proposal should proceed to public consultation.



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#### Step 4 - Ministerial determination

The Minister (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 PAC'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 (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 (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 or Director-General alters the determination, the standard process post-Gateway determination commences, including community consultation on the planning proposal.

The department will monitor progress of the Gateway review requests and ensure that documents (review requests, department and PAC reports, Minister/Director-General decisions) are published on the web within five 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. The principal difference between the two processes is who has responsibility for undertaking the various statutory steps in the plan making process.

**Table 5.1** 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 PCO, and
- the actual making of the LEP once an Opinion has been issued by Parliamentary Counsel's Office (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 an 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 an RPA throughout the course of the process if requested to do so.

Table 5.1 – Comparative plan making process

Pre-Gateway and planning proposals	
Non Delegated Matters	<ul style="list-style-type: none"> <li>• A planning proposal can be initiated by council or proponent.</li> <li>• A planning proposal to be prepared in accordance with the department's <i>A guide to preparing planning proposals</i>.</li> </ul>
Delegated Matters	<ul style="list-style-type: none"> <li>• A planning proposal can be initiated by council or proponent.</li> <li>• A planning proposal to be prepared in accordance with the department's <i>A guide to preparing planning proposals</i>.</li> <li>• Council to identify whether it is going to request an Authorisation to exercise delegation and provide responses to relevant matters in 'Evaluation criteria for the issuing of Authorisation' (see <b>Attachment 4</b>).</li> <li>• Council to identify whether the plan will be made by council or by sub-delegation to relevant officer (usually General Manager or planning director).</li> </ul>
Assessment of planning proposal	
Non Delegated Matters	<ul style="list-style-type: none"> <li>• Department's regional planning team undertakes assessment of planning proposal and prepares assessment report recommending Gateway determination conditions.</li> </ul>
Delegated Matters	<ul style="list-style-type: none"> <li>• Department's regional planning team undertakes assessment of planning proposal and prepares assessment report recommending Gateway determination conditions.</li> <li>• 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.</li> </ul>

LEP Review Panel	
Non Delegated Matters	<ul style="list-style-type: none"> <li>• Planning proposal considered by department's independent LEP Review Panel.</li> <li>• Recommendation made to Gateway including conditions for the finalisation of the planning proposal.</li> </ul>
Delegated Matters	<ul style="list-style-type: none"> <li>• Planning proposal considered by department's independent LEP Review Panel.</li> <li>• Recommendation made to Gateway including conditions for the finalisation of the planning proposal.</li> </ul>
Gateway Determination	
Non Delegated Matters	<ul style="list-style-type: none"> <li>• Gateway considers planning proposal, recommendations from regional planning team assessment report, and LEP Review Panel regarding conditions for the finalisation of the planning proposal.</li> <li>• Gateway determination notice issued with conditions related to: <ul style="list-style-type: none"> <li>» requirements for community and agency consultation</li> <li>» whether additional supporting information is to be provided</li> <li>» the timeframe for the completion of the draft LEP</li> <li>» any other relevant matters.</li> </ul> </li> <li>• Once Gateway determination has been given the planning proposal is returned to council.</li> </ul>
Delegated Matters	<ul style="list-style-type: none"> <li>• Gateway considers planning proposal, recommendations from regional planning team assessment report, and LEP Review Panel regarding conditions for the finalisation of the planning proposal.</li> <li>• Gateway determination notice issued with conditions related to: <ul style="list-style-type: none"> <li>» requirements for community and agency consultation</li> <li>» whether additional supporting information is to be provided</li> <li>» the timeframe for the completion of the draft LEP, and</li> <li>» any other relevant matters.</li> </ul> </li> <li>• If Gateway agrees with request from council to delegate plan making functions an Authorisation to exercise delegation is issued concurrently with the Gateway determination notice.</li> <li>• Once Gateway determination has been given the planning proposal is returned to council.</li> <li>• Delegation means the department will generally no longer be involved in the plan making process unless: <ul style="list-style-type: none"> <li>» the council fails to meet its obligations in progressing the proposal in accordance with the conditions of the Gateway</li> <li>» the council decides not to process the draft LEP and requests that the Minister determine the matter no longer proceed.</li> </ul> </li> </ul>

## 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 (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 (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

<b>Non Delegated Matters</b>	<ul style="list-style-type: none"> <li>• Council is to review the planning proposal following exhibition.</li> <li>• 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.</li> <li>• 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.</li> <li>• The Minister will consider the revised proposal and determine whether further consultation is required and whether a revised Gateway determination should be issued.</li> </ul>
<b>Delegated Matters</b>	<ul style="list-style-type: none"> <li>• Council is to review the planning proposal following exhibition.</li> <li>• 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.</li> <li>• 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.</li> <li>• 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.</li> <li>• 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 whether as a result of community or agency comments. Councils should seek advice in this instance before finalising the LEP under delegation.</li> </ul>
Legal Drafting of the LEP	
<b>Non Delegated Matters</b>	<ul style="list-style-type: none"> <li>• Council forwards a copy of the planning proposal and relevant supporting information to the department requesting that a draft LEP is prepared.</li> <li>• The Director-General makes arrangements for the drafting of the instrument PCO under section 59(1) of the Act.</li> <li>• Once a draft of the instrument has been prepared the Director-General consults with the RPA on the content of the LEP.</li> <li>• Content of the LEP finalised and an Opinion issued by PCO that the plan can be made.</li> </ul>
<b>Delegated Matters</b>	<ul style="list-style-type: none"> <li>• Council requests that a draft instrument be prepared under section 59(1) of the Act by emailing PCO directly at <a href="mailto:parliamentary.counsel@pco.nsw.gov.au">parliamentary.counsel@pco.nsw.gov.au</a>.</li> <li>• Council will upload the maps and GIS data directly to the department's FTP site (<a href="ftp://lepup:lep_upload@203.3.194.247/">ftp://lepup:lep_upload@203.3.194.247/</a>).</li> <li>• Council will then provide a link only to this site in their email to PCO and copied to the department.</li> <li>• No maps or mapping/GIS data is to be sent directly to PCO.</li> <li>• A copy of the request to draft the instrument is sent to the department concurrently with the request to PCO for administrative purposes only.</li> <li>• The department will undertake a technical review only of any maps required to implement the LEP to ensure they comply with the LEP mapping technical guidelines and liaise with PCO to finalise maps.</li> <li>• Council and PCO liaise directly about the content of the draft LEP.</li> <li>• Content of the LEP finalised and an Opinion issued by PCO that the plan can be made.</li> </ul>

## 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 make the plan together with all relevant supporting information.
- The Minister 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 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, 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. In this instance, 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 (or delegate) may determine that the planning proposal no longer proceeds.

## Notification of the LEP

Non Delegated Matters	<ul style="list-style-type: none"> <li>• Once the plan is made the department requests PCO that the plan be notified on the NSW Legislation website.</li> <li>• The plan comes into force on the day the LEP is published on the legislation website.</li> </ul>
Delegated Matters	<ul style="list-style-type: none"> <li>• Council advises the department that the plan has been made.</li> <li>• The council requests the department to notify the plan. The following documents must be provided for notification with the request by council:             <ul style="list-style-type: none"> <li>» signed front page of the LEP – complete with full name of the LEP and PCO’s file reference;</li> <li>» complete signed map cover sheet (in the case of changes to maps of instruments containing the standard map clause);</li> <li>» the maps that relate to the signed map cover sheet; and</li> <li>» the name/position of the delegate who signed the LEP.</li> </ul> </li> <li>• It is anticipated that the LEP will generally be notified on a Friday. However, urgent or delayed notification can be arranged.</li> <li>• 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.</li> <li>• Requests for notification should be sent to <a href="mailto:planmaking.monitoring@planning.nsw.gov.au">planmaking.monitoring@planning.nsw.gov.au</a>.</li> <li>• The department requests PCO that the plan be notified on the NSW Legislation website.</li> <li>• The plan comes into force on the day the LEP is published on the legislation website.</li> </ul>

### 5.5.1 Director-General's approval before community consultation

If required, the Director-General (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 Director-General's approval may be withheld. If the Director-General's approval is withheld, the RPA must obtain approval

before any community consultation takes place.

A planning proposal should be a **concise** document supported, if necessary, by technical studies and investigations. 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 Director-General (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 Director-General'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 Director-General 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*	<b>14 days</b>
All other planning proposals (including any proposal to reclassify land)	<b>28 days</b>

\* 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 the Minister has chosen to delegate the making of the LEP 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)].



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Many RPAs have adopted policies for the exhibition of planning proposals and broader community consultation activities. If an 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 an RPA to prepare a planning proposal. Depending on the nature of the proposal, an 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, it is recommended that consultation relate primarily to the underlying proposed amendment to the LEP and that issues associated with the potential future development of the site be given secondary consideration.

As noted in *A guide to preparing planning proposals*, a planning proposal relates to a change in an 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 obligated 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 an 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 Director-General 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)]:

**Director-General's requirements regarding matters that must be addressed in the justification of all planning proposals to reclassify public 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 an RPA if the plan making process has been delegated to the RPA at Gateway determination stage.

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.

For planning proposals that have been delegated, the council will be responsible for providing instructions to PCO to obtain the draft legal instrument. The request to draft the instrument will be provided to the PCO directly in an electronic format. Council must concurrently copy the instructions to the department for monitoring and reporting purposes. 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](mailto:parliamentary.counsel@pco.nsw.gov.au)

Further information and details about the legal drafting process for delegated LEPs is provided at the website of the PCO (<http://www.pco.nsw.gov.au>)

Council must concurrently copy the instructions to the department for monitoring and reporting purposes. This information is to be forwarded to the following email address:  
[planmaking.monitoring@planning.nsw.gov.au](mailto:planmaking.monitoring@planning.nsw.gov.au)

Council is to include the following details with the instructions to PCO:

- the planning proposal
- a copy of the Gateway determination and any subsequent determinations given with respect to the planning proposal
- draft maps (where relevant) consistent with the Standard Instrument Technical Mapping requirements should be provided to the department via a link to an FTP portal, at the same time as instructions are provided to PCO. The department will forward maps to PCO
- a copy of the GIS data relevant to any map amendment associated with the planning proposal\*

\* Note: All GIS and mapping data to be supplied in a single .ZIP or .RAR file for ease of data transfer. Any questions related to mapping and GIS data should be directed to the departments POC GIS team at [pocgis@planning.nsw.gov.au](mailto:pocgis@planning.nsw.gov.au)

- 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 Director-General 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.

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. An 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 EP&A Act provides that if an RPA varies its proposal following the initial Gateway determination, it must inform the Minister, who may issue a revised Gateway determination, depending on the nature of the variations.

An 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 EP&A Act are not regarded as variations to the proposals and therefore do not require the revised planning proposal to be forwarded to the Minister for Planning and Infrastructure.

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 an LEP can also be monitored on the department's LEP Tracking System which can be accessed via the department's website. The Tracking System provides details of all planning proposals that have been lodged with the department. The Tracking System ([www.planning.nsw.gov.au/local-planning](http://www.planning.nsw.gov.au/local-planning)) can be searched by local government area and provides a status update for each LEP.

#### **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.

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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 (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, 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)].

An RPA wishing to seek the Minister's dispensation of all or part of the process must, in the first instance, write to the Director-General setting out the reasons why in the context of the criteria described above (sections 33A(8A) or 73A as applicable). The Minister (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**

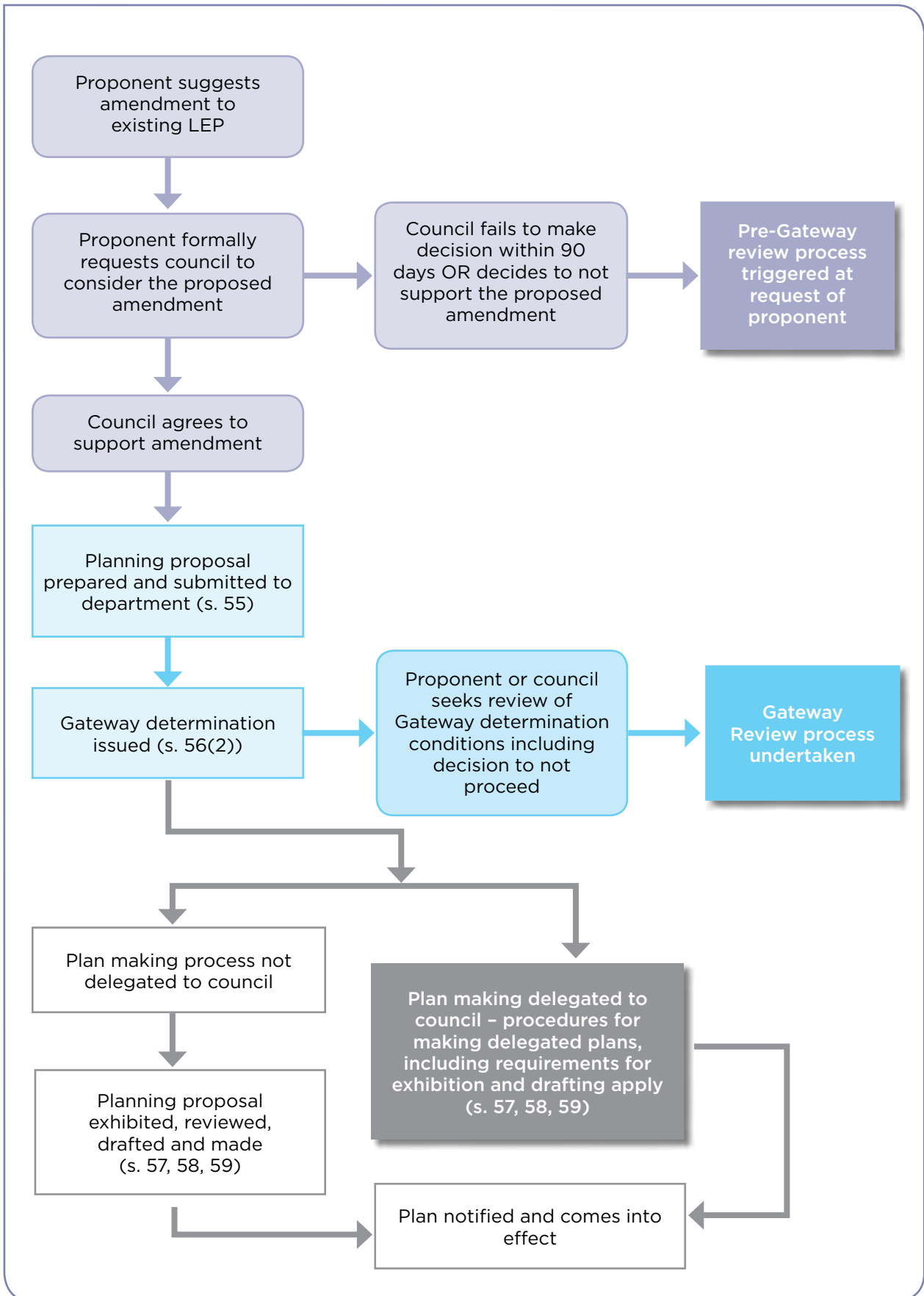
The department will continue to provide assistance to any council that requests it at any stage of the plan making process. This assistance may include:

- 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.

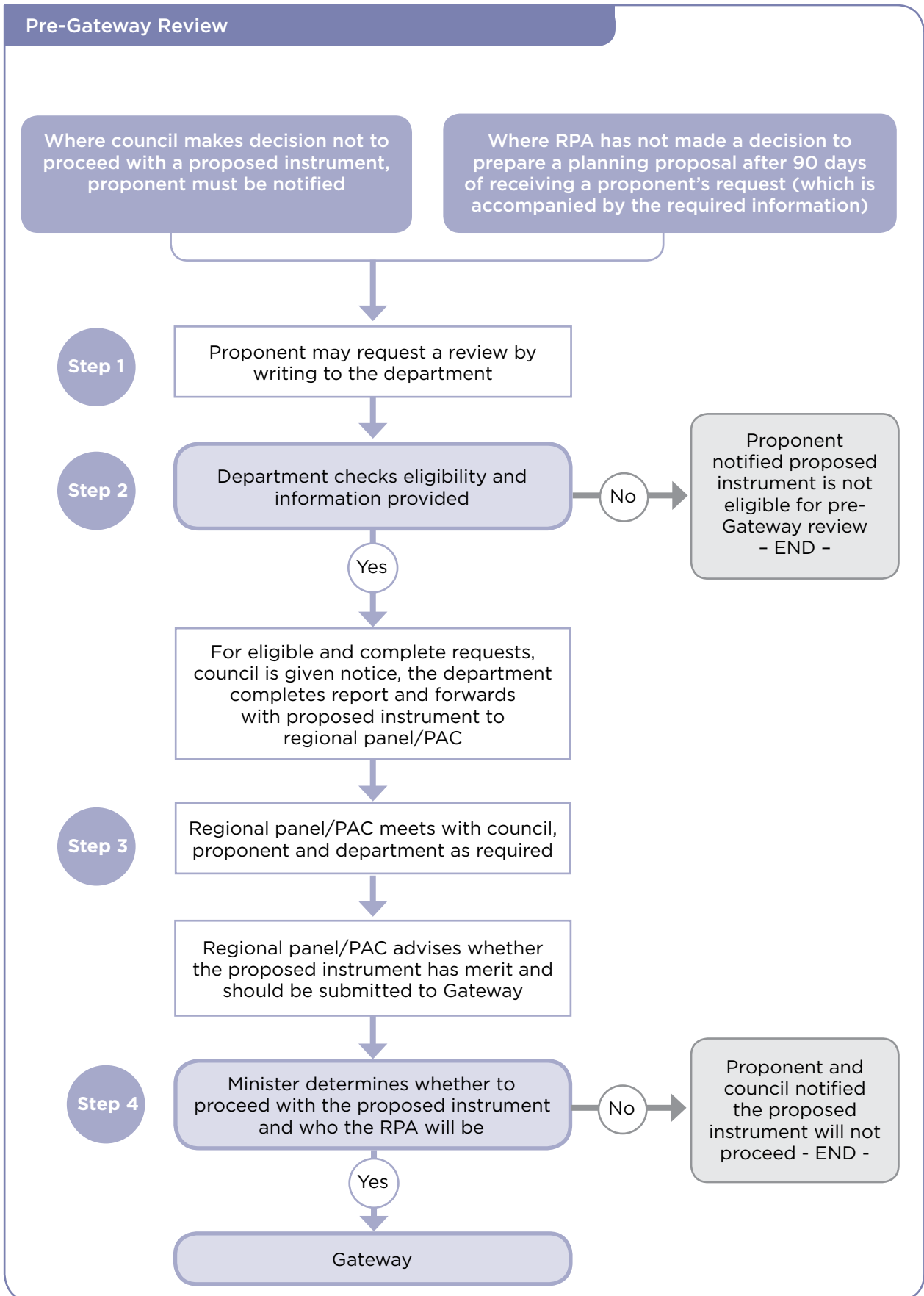
Councils should initially contact the relevant regional office for this assistance.



### Attachment 1 - LEP plan making process

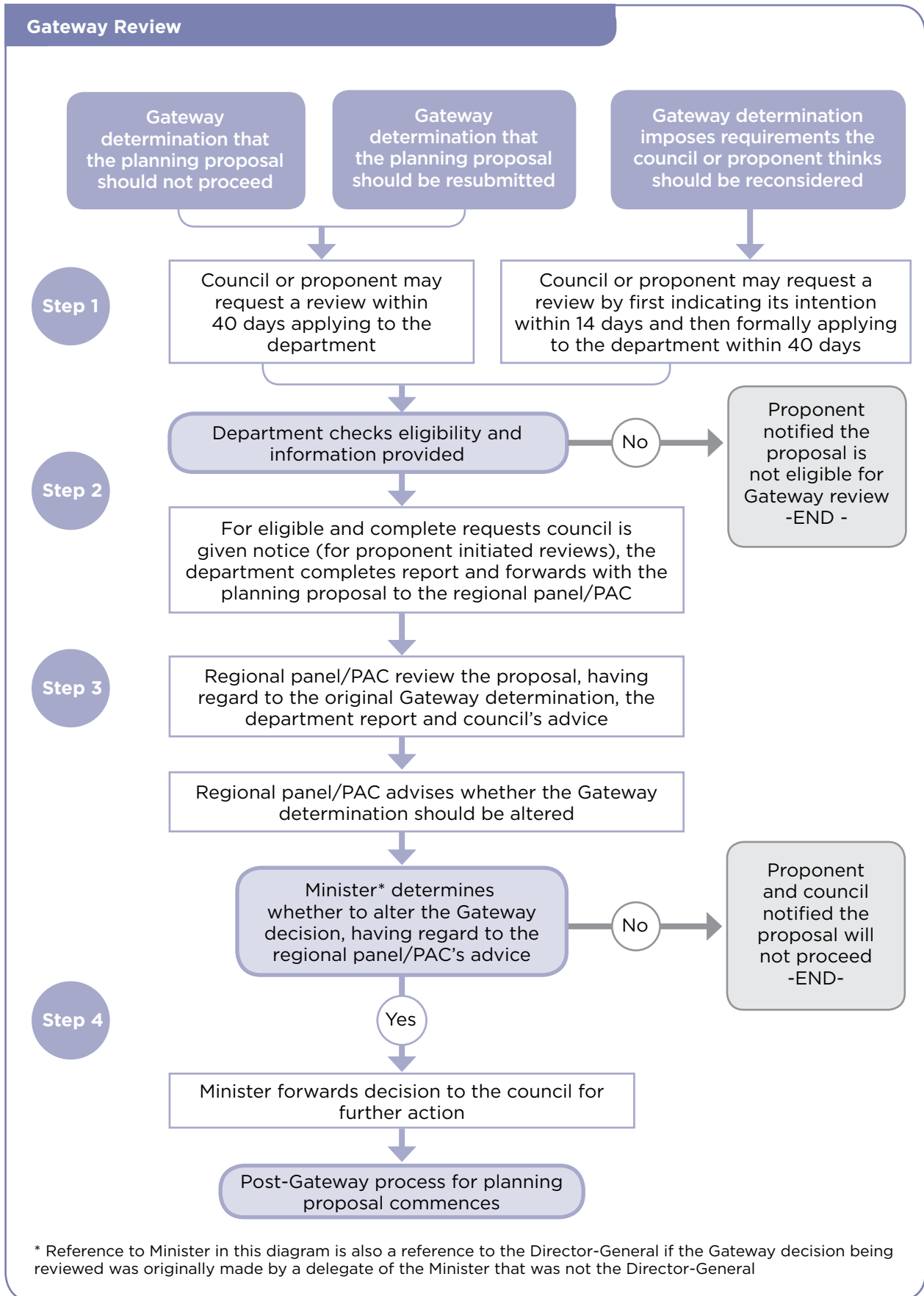


## Attachment 2 - Pre-Gateway review process





### Attachment 3 – Gateway determination review process





**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:

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Name of draft LEP:

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Address of Land (if applicable):

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Intent of draft LEP:

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Additional Supporting Points/Information:

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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	Not agree
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 Director-General?				
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)?				
<b>Minor Mapping Error Amendments</b>	Y/N			
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?				
<b>Heritage LEPs</b>	Y/N			
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?				
<b>Reclassifications</b>	Y/N			
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?				
Will the draft LEP discharge any interests in public land under section 30 of the <i>Local Government Act, 1993</i> ?				

If so, has council identified all interests; whether any rights or interests will be extinguished; any trusts and covenants relevant to the site; and, included a copy of the title with the planning proposal?				
Has the council identified that it will exhibit the planning proposal in accordance with the department's Practice Note (PN 09-003) <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?				
<b>Spot Rezoning</b>	Y/N			
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?				
<b>Section 73A matters</b>				
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? <b>(NOTE - the Minister (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).</b>				
<b>NOTES</b> <ul style="list-style-type: none"> <li>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.</li> <li>Endorsed strategy means a regional strategy, sub-regional strategy, or any other local strategic planning document that is endorsed by the Director-General of the department.</li> </ul>				



## 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	
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 DP&I requesting notification		

**Table 3 – To be completed by the department**

Stage	Date/Details
Notification Date and details	

**Additional Relevant Information:**

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