



New South Wales Government
Independent Planning Commission

SCOPE OF GATEWAY DETERMINATION REVIEWS

BACKGROUND: PLAN-MAKING DECISIONS

One of the Commission's functions is to provide independent advice on 'plan-making decisions' regarding local environmental plans (LEP). The (simplified) process for making an LEP (including an amendment to an LEP) is as follows:

1. A proponent will request the relevant Council to prepare a **planning proposal**.
2. The Council will indicate whether it will support the request to prepare a planning proposal. If the Council does not support the request (or does not respond within 90 days), the proponent can seek a **rezoning review**.
3. If the planning proposal proceeds, it goes to the Minister for a **Gateway determination**.
4. The Gateway determination may determine to proceed with the planning proposal, proceed subject to changes or conditions, or not to proceed at all.
5. If the proponent or Council is unhappy with the Gateway determination they can seek a **Gateway review**.
6. If, after the Gateway review, the Minister still proceeds with issuing the Gateway determination, the Council then must make the LEP (or amendment to an LEP) in accordance with the planning proposal as amended by the Gateway determination.

Under Planning Circular PS 18-012 there are two types of plan-making decisions that the Commission can be requested by the Department of Planning, Industry & Environment (**Department**) to advise upon, being:

- Rezoning reviews which may be requested by a proponent **before** a planning proposal has been submitted to the Department for a Gateway determination; and
- Gateway reviews which may be requested by a Council or a proponent **following** a Gateway determination by the Department.

In both cases, the Commission is exercising an advisory role only and is making recommendations to the Minister or the Department. The Commission does not make any determinations in respect of plan making decisions and any advice it provides is not binding.

Rezoning reviews

A rezoning review is only carried out by the Commission in respect of rezonings in the City of Sydney. For all rezoning reviews outside of the City of Sydney, the relevant Planning Panel undertakes the review.

If a proponent (e.g. developer, landowner) has requested that a Council prepare a planning proposal for a proposed instrument, the proponent may ask for a rezoning review if:

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

The relevant Planning Panel or the Commission will then undertake a strategic and site-specific merit assessment of the planning proposal, and recommend whether or not the proposal should be submitted for a Gateway determination under section 3.34 of the EP&A Act.

GATEWAY REVIEWS

When a request for a Gateway review is duly made by a proponent or a Council, the Commission will provide advice on whether the Minister's original Gateway determination should be altered, giving consideration to the council or proponent's submission and the reasons given by the Minister for the original Gateway determination.

The Minister's final decision on whether to alter the Gateway determination will be informed by this advice, and the views of the council and proponent.

COMMISSION PROCEDURES FOR REZONING AND GATEWAY REVIEWS

In the Minister's Statement of Expectations, the Commission is required to provide its advice on plan-making decisions within 5 weeks (35 calendar days) of receiving the request from the Minister or Department.

Given the short timeframe set by the Minister and that the Commission's role is purely an advisory one, the

Commission endeavours to provide its advice based on the information provided to it at the time of referral. The Chair of the Panel appointed to consider the matter may exercise his or her discretion to hold stakeholder meetings or allow for public submissions in respect of a request for advice regarding a plan-making decision.

Factors that the Panel Chair may consider when exercising their discretion to:

- meet with the Department, the relevant Council or the proponent; or
- to accept public submissions,

include:

- whether and how the community's views have already been taken into account by the Department, relevant Council or the proponent (noting that formal public exhibition may occur later in the plan-making process as well);
- the complexity of the plan-making decision under review including its strategic context; and
- how contentious the plan-making decision under review may and/or the broader community implications of the planning proposal.

FOR MORE INFORMATION

Office of the Independent Planning Commission NSW

Level 15, 135 King Street SYDNEY NSW 2000

Phone (02) 9383 2100 | Fax (02) 9383 2133

Email: ipcn@ipcn.nsw.gov.au

Web: www.ipcn.nsw.gov.au

Last updated: 10 November 2021

Date for review: 9 November 2022