

Kate Singleton

in reply please quote

Planning Reform EP&A Act - Plan Making and Delegations (592)



4 May 2012

Director, Planning Operations Coordination  
NSW Department of Planning & Infrastructure  
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Dear Sir

**Re: Draft Policy Statement - Plan-Making and Delegations**

I refer to the discussion paper released by the Department in relation to plan-making and delegations titled "More local, more accountable plan making".

The proposed delegation of plan making powers to councils in certain circumstances was first flagged with the introduction of the 'Gateway Process'. With respect to the current discussion paper, it is noted that the LEPs proposed to be routinely delegated to councils to make (in certain circumstances) include:

- Spot rezonings consistent with an endorsed strategy;
- Reclassifications of land supported by an open space study;
- Heritage LEPs supported by an endorsed study;
- Section 73A matters (amending references to documents/agencies, minor errors and anomalies); and
- Mapping alterations/corrections.

The proposed delegations outlined above are consistent with those outlined at the introduction of the 'Gateway Process' and are supported in-principle, subject to review of the detailed provisions. In relation to the proposed 'Gateway' reviews, the review process outlined is not opposed in-principle, although the comments provided below in relation to resourcing and the review of the planning system are relevant to consideration of these provisions.

However, the proposed introduction of provisions to enable independent reviews of council decisions or 'Pre-Gateway' reviews raises a number of issues and concerns. The discussion paper states that there are two situations where a proponent may ask for a regional panel review, as follows:

- the council has decided not to prepare a planning proposal; or
- the council has not made a decision after 60 days of receiving the proponent's request.

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While the current legislation enables the Minister to consider and make LEPs, the proposed pre-gateway review introduces a new process in circumstances where council determines not to proceed with the preparation of a planning proposal for referral to gateway determination. Aside from the existing Ministerial powers under the EP&A Act, it is not considered appropriate to introduce a formal process for review in circumstances where a council decides not to prepare a planning proposal. The proposed approach relating to pre-gateway review is not consistent with the return of planning powers to local government and local communities.

There are numerous informal requests made to councils regarding the rezoning of land that are not consistent with the adopted strategic planning framework or established character relating to an area. At present, the number of requests for the preparation of planning proposals is somewhat contained by the understanding that if a council does not support a request it will not proceed to gateway determination. The introduction of the proposed review process may result in a significant increase in requests to rezone land not identified in the strategic planning framework or in a manner inconsistent with established character of an area on a purely speculative basis.

While the discussion paper refers to a requirement for each proposal to pass a “strict assessment” by the Department to determine whether it is eligible for a regional panel review, the criteria contained in the discussion paper are not considered to be adequately robust. For example, the criteria include the following:

- b) *is consistent with or supports the outcomes and actions of:*
  - *an endorsed local strategy; or*
  - *the relevant regional or sub-regional strategy; or*
  - *strategic plans or policies*

It is considered that the proposal should be required to be consistent with all of the planning policy documents referred to above, that is, the wording should be “and” not “or”. Proposals that are inconsistent with endorsed local strategies should not be able to seek a review in the event that a council decides not to proceed with the preparation of a planning proposal.

The process whereby a review can be requested in the event that the council has not made a decision after 60 days of receiving the proponent’s request fails to take into account the complexity of many proposals and the timeframes for reporting requests to council. Eight weeks is not a substantial period of time for requests to be thoroughly considered and reported to council. It is likely that the imposition of the time restriction will result in proponents not being provided with the opportunity to submit additional information in circumstances where the material forwarded to councils is identified as being inadequate. The time restriction may also unduly limit the opportunity for necessary and comprehensive evaluation of technical information.

The proposed review process also presents particular problems in the case of Ballina Shire Council given the delegates nominated on the regional planning panel operating in this area include the Mayor and Council staff at present.

Further, the review processes identified will add another level of reporting to the process and will likely require the allocation of additional council resources to requests for the preparation of planning proposals.

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Given that a comprehensive review of the planning system is currently underway and that the review includes consideration of the rezoning process, it is submitted that it is premature to introduce the proposed review processes. Any change to the present circumstances should await the outcomes of the overall system review.

It is also noted that due to Council meeting cycles this submission has not been endorsed by the elected Council. A report will be prepared for Council's Ordinary Meeting to be held on 24 May 2012 and the Department will be immediately advised of the outcome of Council's consideration of the matter.

If you have any enquiries in regard to the above please contact Kate Singleton on telephone 6686 1284.

Yours faithfully



Matthew Wood

**Manager Strategic Planning  
Strategic and Community Services Group**