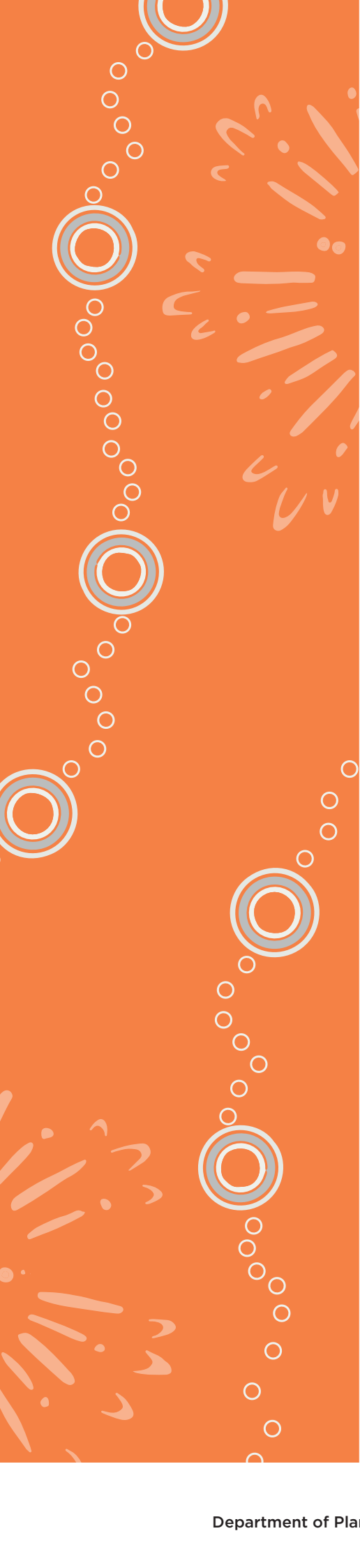


# Local Environmental Plan Making Guideline

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December 2021





# Acknowledgement of Country

The NSW Department of Planning, Industry and Environment acknowledges the Traditional Custodians of the land and pays respect to Elders past, present and future. We recognise First Nations peoples' unique cultural and spiritual relationships to place and their rich contribution to society.

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**Left:** Artwork by Nikita Ridgeway

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## Abbreviations

| Abbreviation | Definition                                                                                                                                                    |
|--------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Department   | NSW Department of Planning, Industry and Environment                                                                                                          |
| EP&A Act     | Environmental Planning and Assessment Act (1979)<br><a href="https://legislation.nsw.gov.au/browse/inforce">https://legislation.nsw.gov.au/browse/inforce</a> |
| GSC          | Greater Sydney Commission                                                                                                                                     |
| IPC          | Independent Planning Commission                                                                                                                               |
| LEP          | Local Environmental Plan                                                                                                                                      |
| LHS          | Local Housing Strategy                                                                                                                                        |
| LPMA         | Local Plan-Making Authority                                                                                                                                   |
| LPP          | Local Planning Panel                                                                                                                                          |
| LSPS         | Local Strategic Planning Statement                                                                                                                            |
| PCO          | Parliamentary Counsel's Office                                                                                                                                |
| PPA          | Planning Proposal Authority                                                                                                                                   |
| SEPP         | State Environmental Planning Policy                                                                                                                           |

## Guideline language

This guideline uses terms and language that refer to specific roles and functions of the NSW Department of Planning, Industry and Environment (the Department) and legislative processes.

**Table 1** clarifies what these terms mean within the context of this guideline.

**Table 1. Terms used in this guideline**

| Term                  | Meaning for the purposes of this Guideline                                                                                                                                                                                                                                                                                                    |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Days                  | Days referenced in this guideline are in working days, with the exception of Rezoning Review and Gateway Review which are calculated in calendar days.<br><br>Working days means Monday through Friday excluding Saturday and Sunday, public holidays, and the Christmas/New Year period between 20 December and 10 January (inclusive).      |
| Gateway               | Critical stage of the planning proposal for the Department to review strategic and site-specific merit and whether the planning proposal should proceed to public exhibition and any conditions to be satisfied before the LEP is made.                                                                                                       |
| Gateway determination | In accordance with section 3.34 of the EP&A Act, the Minister or delegate must issue a Gateway determination (with or without conditions) when it receives a planning proposal from the PPA.<br><br>The Gateway determination will determine (among other things) whether the planning proposal may proceed to the next stage of the process. |

| Term                                  | Meaning for the purposes of this Guideline                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|---------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Independent Planning Commission (IPC) | Established under Division 2.3 of the EP&A Act, the IPC is independent from the Department and in relation to the LEP making process provides advice on rezoning reviews of City of Sydney planning proposals and all Gateway review requests.                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| Independent Planning Panel            | A regional or district planning panel or the Independent Planning Commission (IPC)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Local Plan-Making Authority (LPMA)    | Authority responsible for making the LEP as identified by the Gateway determination. This may be the Minister (or delegate) or the relevant council                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Minister                              | Minister administering the EP&A Act, being the Minister for Planning and Public Spaces                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Minister's delegate                   | <p>The person to whom the Minister has delegated his/her authority in accordance with section 2.4 of the EP&amp;A Act.</p> <p>For LEP making, this authority is generally delegated to the Planning Secretary and Departmental staff.</p> <p>The instrument of delegation can be found on the Department's website. <a href="https://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Planning-Approval-Pathways/Delegated-Decisions">https://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Planning-Approval-Pathways/Delegated-Decisions</a></p> <p>Any reference to 'the Minister' in this guideline should be read as reference to the Minister or their delegate.</p> |
| Planning Proposal                     | A document and supporting information that explains the intended effect and justification of a proposed LEP or amendment to an LEP.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Planning Proposal Authority (PPA)     | Authority responsible for the governance of a planning proposal, including its preparation and submission to the Department for a Gateway determination, satisfying the conditions of a Gateway determination, public exhibition and its finalisation (including submission to the Department for finalisation, where required)                                                                                                                                                                                                                                                                                                                                                                                   |
| Planning Secretary                    | The Secretary of the Department                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Proponent                             | A developer, landowner or third party who initiates a proposal, prepares a planning proposal and submits it to the relevant council.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Site-specific merit                   | <p>A proposal's demonstrated environmental, social and economic impact on the site and surrounds and ability to be accommodated within the capacity of the current and/or future infrastructure and services</p> <p>When an LEP is made or amended through the planning proposal, it must demonstrate site-specific merit by having regard to the criteria in <b>Section 2</b> of this guideline</p>                                                                                                                                                                                                                                                                                                              |
| Strategic merit                       | <p>A proposal's demonstrated alignment with the NSW strategic planning framework.</p> <p>When an LEP is made or amended through the planning proposal, it must demonstrate strategic merit having regard to the criteria in <b>Section 2</b> of this guideline.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                               |

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# Introduction

**This guideline provides a detailed explanation of the steps of the NSW Local Environmental Plan (LEP) making process to assist and guide councils, communities, State agencies, proponents, and practitioners.**

LEPs provide the local statutory framework that guides development and land use decisions throughout NSW. They do this through zoning and development standards, which provide a framework for the way land can be developed and used.

As changes to planning zones or controls to permit new development and land uses are proposed, this often requires an amendment to the LEP applying to that land. Amendments to LEPs are generally undertaken through the preparation and assessment of planning proposals.

A planning proposal is the document that sets out the justification and supporting information to allow an LEP to be made.

Division 3.4 of the EP&A Act prescribes the LEP making process. This guideline supplements this to outline the practical steps to amend or create a new LEP.

## The guideline aims to:

- help streamline the LEP making process to reduce delays while also ensuring that strategic led and quality place-based planning outcomes are achieved
- explain each of the steps to efficiently progress and obtain appropriate amendments to a LEP
- ensure that planning proposals provide adequate information to explain the proposal and explain the likely impacts of the amendment when assessed against government legislation, strategic plans, council policies and other guidelines
- explain the roles and responsibilities of each user and stakeholder in the making of a LEP
- outline best practice and encourage genuine consultation and collaboration at the initial stages of a planning proposal
- provide benchmark timeframes for different categories of planning proposals
- provide recommendations for suitable community engagement and participation throughout the LEP making process
- set benchmarks for decisions on planning proposals to ensure an efficient planning system

The guideline sets out specific requirements for the preparation of a planning proposal as issued by the Planning Secretary under section 3.33(3) of the EP&A Act. These requirements are outlined in **Section 2** of this Guideline.



# How to use this Guideline

The guideline is divided into two sections:

## SECTION

# 1

### The LEP Making Process

Provides a step by step guide to the process and identifies the roles and responsibilities for stakeholders involved in each stage.

## SECTION

# 2

### The Planning Proposal

Outlines the requirements to prepare and submit a planning proposal.

## NSW Planning Portal

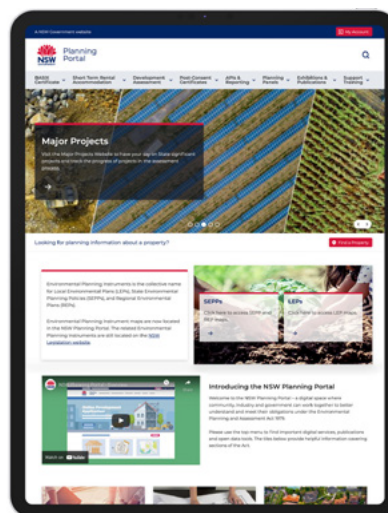
The Department's NSW Planning Portal (the Planning Portal) registers and catalogues planning proposals for online assessment and determination. It provides transparency of the planning system and ensures greater accountability of all stakeholders involved in the process.

Planning proposals are submitted, assessed, and determined with real time updates via the Planning Portal.

This Planning Portal supports all the key actions and steps associated with the LEP making process, including:

- lodging planning proposals with councils
- submitting planning proposals for Gateway determination by the Department
- submitting planning proposals for Rezoning Review by the relevant Planning Panel
- submitting planning proposals for Gateway Review by the Independent Planning Commission (IPC)
- making all supporting information on planning proposals publicly available
- requiring and receiving additional information
- publishing all decisions

As of July 2021, all planning proposals are to be submitted and processed through the Planning Portal. More information about the system is on the [Planning Portal](#) website.



## Supporting material

The Strategic Planning Toolkit on the Department's website contains a number other guides and resources to support local councils and planning professionals in the LEP making process.

Refer to the Department's [Local Planning and Zoning Resources – Strategic Planning Toolkit and Resources webpage](#) for more information.



# Strategic Planning Framework

An effective planning system looks to the future, led by long-term, evidence-based strategic planning that is inclusive, democratic, responsive to climate change and injects predictability into decision-making. Its purpose is to provide for the needs of people and the environment now and into the future.

The NSW planning system is based on a strategic-led planning framework<sup>1</sup> as shown in **Figure 1**.

This strategic planning framework establishes the vision for NSW into the future with alignment between planning priorities identified at a state, regional or district level with finer-grained placed-based planning at the local level.

The framework sets out the principles and outcomes for meeting the needs of communities and the environment now and plans for the needs of the future. It enables communities to assess the broader implications and consequences of identifying locations for growth and change.

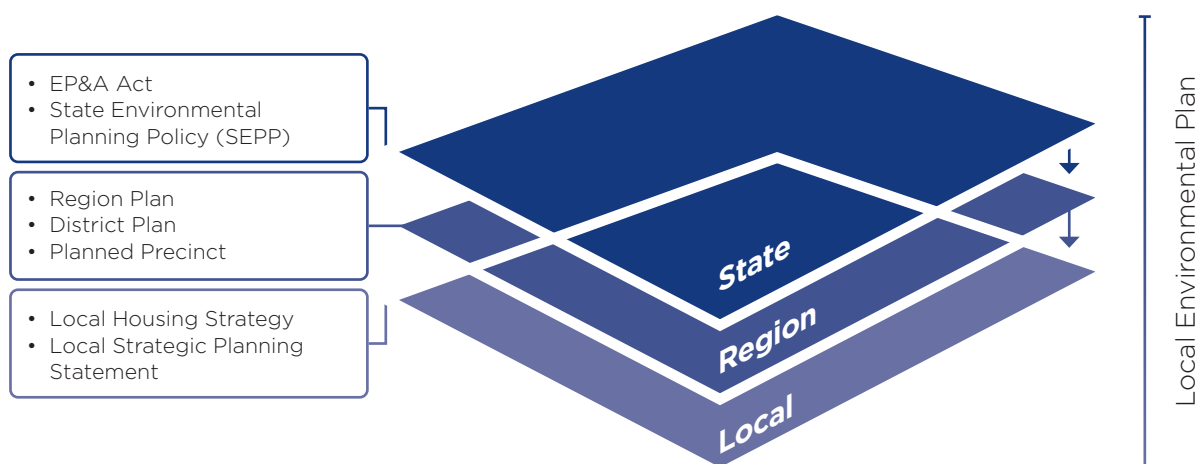
Alignment across state and local strategic planning sets up a streamlined process for amending LEPs by having planning matters resolved early and setting a clear sequence for how communities will grow and change over time.

Investment made into a stronger strategic planning framework enables decision making on LEP amendments consistent with the agreed state and local framework to be prioritised and expedited. All this provides greater certainty for industry, local government and communities that strategic plans will be translated into changes to planning controls and zoning.

All levels of government have an interest in seeing their strategic planning realised into outcomes for the community.

The strategic planning framework, along with infrastructure provision, should be the major consideration when starting, or thinking about, an LEP amendment. Having the right vision and alignment to the strategic planning framework upfront is critical for the LEP making process.

**Figure 1. Strategic planning framework**



1. See Division 3.1 of the EP&A Act

## Regional plans

Regional Plans are State-led strategic planning documents that set out the vision and direction for strategic planning and land use within a region and planning for the future needs for housing, jobs, infrastructure, a healthy environment and connected communities across NSW.

There are 10 regional plans across NSW:

- Central Coast
- Central West and Orana
- Hunter
- Illawarra-Shoalhaven
- Metropolitan Sydney (A Metropolis of Three Cities – The Greater Sydney Region Plan)
- New England-North West
- Riverina-Murray
- South East and Tablelands
- Far West
- North Coast

<https://www.planning.nsw.gov.au/Plans-for-your-area/Regional-Plans>

## District plans

Five district plans implement the vision and objectives of the Greater Sydney Region Plan at a district level.

These 20-year plans provide a bridge between regional and local planning to inform LEPs, local strategic planning statements (LSPS), community strategic plans and the assessment of planning proposals.

<https://www.greater.sydney/district-plans>

## State-led rezoning

Precincts provide a place-based strategic planning approach to growth in Sydney and set specific actions and objectives for specific areas, based on the vision outlined in the region or district plan.

There are four pathways to progress precincts in Greater Sydney. State-led rezonings are focussed on where there is a strategic imperative for the Department to lead, including places with current or future city-shaping infrastructure and investment and where the state has the opportunity to create great public spaces.

These precincts provide a coordinated approach by State and local government which helps ensure infrastructure such as schools, parks, community facilities, public transport and road upgrades are delivered to support housing and jobs to meet community needs.

<https://www.planning.nsw.gov.au/Plans-for-your-area/A-new-approach-to-precincts>

## Metropolitan Plans and Special Activation Precincts

There are a number of other strategic planning documents including the Greater Newcastle Metropolitan Plan 2036 and special activation precincts (SAPs) in regional NSW. These documents set out strategies and actions for a particular LGA or precinct to create jobs, attract businesses and investors, support local industries and fuel economic development.

<https://www.planning.nsw.gov.au/Plans-for-your-area/Greater-Newcastle-metropolitan-planning>

<https://www.nsw.gov.au/snowy-hydro-legacy-fund/special-activation-precincts>

## Local strategic planning statements

A LSPS<sup>2</sup> sets out the strategic planning ambitions for a LGA as a whole and for specific areas. The LSPS allows councils to translate regional and district planning into local priorities and actions and identifies the need for further local strategic planning work (e.g. precinct planning, local housing, employment areas, and infrastructure strategies).

<https://www.planning.nsw.gov.au/policy-and-legislation/environmental-planning-and-assessment-act-updated/guide-to-the-updated-environmental-planning-and-assessment-act-1979/part-3-strategic-planning>

The NSW Government has placed significant focus on the strategic planning framework, strategic place-based planning, connection to Country, green infrastructure and sustainability outcomes.

The above documents form the strategic planning framework which guides the assessment of planning proposals under the strategic merit test, as explained in **Part 3 of Section 2: The Planning Proposal**. Planning proposals should demonstrate consistency with applicable strategic plans.



2. See section 3.9 on the EP&A Act

# Local Environmental Plan Making

## What is a LEP?

LEPs guide planning decisions for LGAs through zoning and development controls. They provide a local framework for the way land can be developed and used. LEPs are the main planning tool to shape the future of communities by ensuring local development is carried out appropriately.

An LEP is an environmental planning instrument (EPI) and statutory plan. LEPs must comply with the common format and content of LEPs as outlined in the *Standard Instrument (Local Environmental Plans) Order 2006* (Standard Instrument) <https://legislation.nsw.gov.au/browse/inforce>.

If an LEP is to be amended or a new one created, the change is made through the preparation of a planning proposal. The planning proposal explains the intent of the proposed change(s) and the justification for the LEP amendments.

In some cases, a site may be zoned under another and separate EPI, such as a State Environmental Planning Policy (SEPP) or an Interim Development Order (IDO).

To determine which EPI applies to certain land, liaise with the relevant council and refer to the NSW Spatial Viewer - <https://www.planningportal.nsw.gov.au/spatialviewer/#/find-a-property/address>

If an amendment is required under another EPI not being a LEP, contact the relevant Regional or Place team in the Department.

## Is there a need to amend a LEP?

The NSW planning system provides flexibility in the application of LEP development standards allowing consent authorities (such as council) to approve a variation to development standards through clause 4.6 of an LEP.

Where the proposal is minor in nature or consequence, an expedited amendment process under section 3.22 of the EP&A Act to an LEP may be adopted. For more guidance see the **Special cases and exceptional circumstances** of this guideline.

Where changes are required outside of these development standards or where a clause 4.6 variation cannot be supported, an amendment to the LEP is required.

The creation of a new LEP or an amendment to an existing LEP is required for the following:

- To implement and align an LEP with the State government Regional and District Plans to support good growth
- Update to incorporate vision and outcomes from the council's LSPS or other changes to the strategic planning framework
- Comprehensive changes to a LEP, for example when a council has endorsed and seeks to implement and give effect to its local housing or employment land strategy
- Amendments relating to changes to the current zones, zone objectives, permitted land uses and/or development standards, specific clauses, reclassification of land or the inclusion of a local heritage item listing
- When directed or otherwise required by the Minister

Amendments can affect any land to which an LEP applies, including a single allotment, a whole zone, or an entire LGA.



## What is a planning proposal?

A planning proposal is a document (including supporting information) that explains the intended effect of a proposed LEP or proposed amendments to an LEP. It describes the intended outcomes, identifies and assesses the potential impacts that the changes to the LEP may have and provides justifications for making the LEP<sup>3</sup>.

The planning proposal is a key part of the LEP making process because it describes how a proposed LEP, or amendments to an LEP 'give effect' to strategic and site-specific planning outcomes. The planning proposal is therefore the first step in making the statutory link with strategic plans and preparing or amending an LEP.

The planning proposal should be structured in accordance with **Section 2: The Planning Proposal** of this guideline.

## Who can initiate and prepare a planning proposal?

A planning proposal can be initiated by either a proponent or the relevant council. In certain circumstances, particularly when it is of State significance, the Minister may initiate an amendment to an EPI via a SEPP.

A planning proposal can only be prepared and submitted to the Department for Gateway determination by either the council for the LGA to which the LEP applies, or a person or body directed by the Minister<sup>4</sup>.

The body responsible for preparing and progressing a planning proposal is known as the planning proposal authority (PPA).

## Council-initiated planning proposals

A council may initiate an LEP amendment or new LEP by drafting a planning proposal and submitting it to the Department for Gateway determination.

Council is responsible for preparing the information and supporting documentation for any council-initiated proposal.

## Proponent-initiated planning proposals

A landowner, developer or an individual seeking to amend the zoning or development standards that apply to land they own or have an interest in may initiate a planning proposal.

The information required to support the proposal is generally prepared with the assistance of specialist consultants and submitted to the relevant council for consideration and assessment through the Planning Portal.

The relevant council (or PPA) must support the planning proposal before it is submitted to the Department via the Planning Portal for a Gateway determination (Stage 3).

## Planning proposal categories

Planning proposals are classified into four different categories, see **page 14**.

Determination of which category applies is based on the strategic consistency and complexity of the planning proposal. Each planning proposal category has associated target timeframes for the proposal to be assessed and determined, and minimum information requirements as outlined in each stage of this guideline.

Council should identify the planning proposal category when submitting a planning proposal to the Department for Gateway determination. The Department will confirm the category during its review of the planning proposal.

3. See section 3.33(1) of the EP&A Act

4. See section 3.32 of the EP&A Act

## Planning Proposal Categories

Note: Categories of planning proposals are for administrative purposes only and not set out in the EP&A Act.

|                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Basic</b>     | <p>A basic planning proposal refers to any one or more of the following proposed LEP amendment types, including an amendment:</p> <ul style="list-style-type: none"> <li>• To correct an administrative error</li> <li>• For a few minor 'housekeeping' amendments</li> <li>• To list a local heritage item, that is supported by an Office of Environment and Heritage endorsed study</li> <li>• To reclassify land where the Governor's approval is not required</li> <li>• That is consistent with a Department endorsed/approved local strategy, such as a Local Housing Strategy</li> <li>• That is consistent with section 3.22 Expedited amendments of environmental planning instruments of the EP&amp;A Act to:               <ol style="list-style-type: none"> <li>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</li> <li>b. address matters in the principal instrument that are of a consequential, transitional, machinery or other minor nature, and/or</li> <li>c. deal with matters that the Minister considers 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</li> </ol> </li> </ul> |
| <b>Standard</b>  | <p>A standard planning proposal refers to any one or more of the following proposed LEP amendment types, including an amendment:</p> <ul style="list-style-type: none"> <li>• To change the land use zone where the proposal is consistent with the objectives identified in the LEP for that proposed zone</li> <li>• That relates to altering the principal development standards of the LEP</li> <li>• That relates to the addition of a permissible land use or uses and/or any conditional arrangements under Schedule 1 Additional Permitted Uses of the LEP</li> <li>• That is consistent with an endorsed District/Regional Strategic Plan and/or LSPS</li> <li>• Relating to classification or reclassification of public land through the LEP</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Complex</b>   | <p>A complex planning proposal refers to any one or more of the following proposed LEP amendment types, including an amendment:</p> <ul style="list-style-type: none"> <li>• To change in the land use zone and/or the principal development standards of the LEP, which would result in a significant increase in demand for supporting local, regional or State infrastructure and would require infrastructure funding</li> <li>• To respond to a new policy e.g. local character or new provision not in the standard instrument template</li> <li>• That is inconsistent with a District/Regional Plan or council's endorsed LSPS</li> <li>• Responding to a change in circumstances, such as the investment in new infrastructure or changing demographic trends</li> <li>• That is progressed under the Aboriginal Land SEPP</li> <li>• Any other amendment or amendments that are not categorised as a principal LEP, standard or basic planning proposal</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Principal</b> | <p>A principal LEP planning proposal refers to any one or more of the following proposed LEP amendment types, including an amendment:</p> <ul style="list-style-type: none"> <li>• To create a new LEP that applies to the whole LGA</li> <li>• To implement a change in local policy that effects the LGA</li> <li>• To consolidate one or more LEPs into a new comprehensive LEP</li> <li>• That includes multiple 'housekeeping' amendments or a combination of a number of planning proposals</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |



# The LEP Making Process



# LEP Making Process Overview

There are six key stages related to the making of an LEP as shown in **Figure 2**.

**Figure 2. LEP making process overview**



## Benchmark Timeframes

Proponents, councils, government agencies and the Department are all stakeholders in the process and share the timeline to prepare, progress, and determine a planning proposal.

The time required to undertake each stage in the LEP making process is expected to vary depending on the nature, scale and complexity of a proposal, issues that need to be resolved, and level of community interest.

Benchmark timeframes for councils and the Department ensure that the LEP making process is efficient, transparent, accountable, and outcomes focused – avoiding delays to development and setting clear expectations on decision making.

Working within these timeframes often relies on effective and early consultation with councils, authorities and government agencies and other stakeholders including the local community. This includes gauging indicative support from council (or the relevant PPA) on whether the proposal has strategic merit and confirming what depth of investigations and studies may be required to underpin a suitably justified proposal. The resolution of key issues early in the process will ensure planning proposal are efficiently progressed through the system.

The benchmark timeframes are the maximum length of time each stage of the process is

The NSW Government is implementing a range of planning reforms that will make it easier to navigate the planning system, reduce assessment times, and make it easier to invest in NSW. The Department has a target of achieving a 33% reduction in average planning proposal assessment timeframes to 380 working days by June 2023, measured from referral of a planning proposal to the Department for Gateway to finalisation.

expected to take (**Table 2**). Active management of each planning proposal, ongoing improvements to processes, procedures and the systems required to support the assessment of proposals, and more open and upfront engagement with agencies and key stakeholders will result in more expedient timeframes.

The timeframes for which an LEP is made will be determined by the Department and set out in the Gateway determination. Any request to extend the timeframes outlined above or timeframes specified in a Gateway determination must be supported by sufficient justification and include clear revised milestones for completion.

The Minister may alter a Gateway determination to not proceed where there has been significant delay in progressing the planning proposal and/or insufficient justification has been provided to the Department.

**Table 2.** Planning Proposal Benchmark Timeframes

| Stage                                               | Maximum Benchmark Timeframes (working days) |                  |                  |                  |
|-----------------------------------------------------|---------------------------------------------|------------------|------------------|------------------|
|                                                     | Basic                                       | Standard         | Complex          | Principal        |
| <b>Stage 1 – Pre-lodgement</b>                      | 30 days                                     | 50 days          | 60 days          | 20-30 days       |
| <b>Stage 2 – Planning Proposal</b>                  | 80 days                                     | 95 days          | 120 days         | 40 days          |
| <b>Stage 3 – Gateway determination</b>              | 25 days                                     | 25 days          | 45 days          | 45 days          |
| <b>Stage 4 – Post-Gateway</b>                       | 20 days                                     | 50 days          | 70 days          | 160 days         |
| <b>Stage 5 – Public Exhibition &amp; Assessment</b> | 70 days                                     | 95 days          | 115 days         | 95 days          |
| <b>Stage 6 – Finalisation</b>                       | 25 days                                     | 55 days          | 70 days          | 80 days          |
| <b>Sub-total (Department target)</b>                | 140 working days                            | 225 working days | 300 working days | 380 working days |
| <b>Total (end to end)</b>                           | 220 days                                    | 320 days         | 420 days         | 420 days         |

Note: Department target of 380 working days is measured from Stage 3 – Stage 6 (inclusive).

# Overview of roles and responsibilities

## Planning Proposal Authority (PPA)

The PPA is the body responsible for governance, content and quality of information contained within a planning proposal. It should manage the proposal as it progresses through the LEP making process.

### Council

Council is generally the PPA for all planning proposals, unless otherwise determined by the Minister.

### Alternative PPA

In circumstances where council has not initiated or progressed a planning proposal, the Minister may direct the Planning Secretary (the Department) or an independent planning panel to be the PPA.

The **Special cases and exceptional circumstances - Appointment of an alternative PPA** section details the circumstances in which this may occur.

## Local Plan-Making Authority (LPMA)

The LPMA undertakes the statutory functions in making the LEP.

Under the EP&A Act the Minister is the LPMA. If authorised under a Gateway determination, council may exercise LPMA functions.

### Council

Council will generally be authorised as the LPMA for basic and standard LEP amendments.

### Minister for Planning and Public Spaces

The Minister will typically be the LPMA for all other LEPs. This role is delegated to the Department and only exercised by the Minister in exceptional circumstances.

## The Department

The Department assesses and guides planning proposals through the LEP making process. This includes active management of the planning proposal through the LEP making process, issue resolution, and finalising the LEP (if the Minister is the LPMA).

Under the Minister's delegation the Department is the assessment authority for planning proposals.

## Proponent

May seek to amend an existing LEP to change the zoning of the land and/or development standards applying to a site, an area or location, or to the whole LGA.

A proponent may be a developer or landowner (or a third party on their behalf) or council who is seeking an amendment to an existing LEP.

## Council

May seek to amend an existing LEP or create a new LEP relating to its LGA by preparing a planning proposal and submitting it to the Department for Gateway determination.

Council is the relevant local government to which the LEP applies.

## Community

The community reviews, provides comments and feedback on planning proposals at key steps in the LEP making process. The matters raised by the community during exhibition and consultation associated with the proposal are considered by the PPA.

Anyone affected by, or interested in, a planning proposal.

## Independent Planning Commission (IPC)

The IPC acts as the independent planning panel in Gateway reviews and rezoning reviews for the City of Sydney LGA.

The IPC is a standalone agency under Part 2, Division 2.3 of the EP&A Act. It is independent of other government departments, including the Department.

## Sydney & Regional Planning Panels

Sydney and Regional Planning Panels act as the independent body in rezoning reviews.

There are five Sydney Planning Panels and four Regional Planning Panels across NSW under sections 2.12 and 3.2 and Part 3 of schedule 2 of the EP&A Act. Each panel is an independent body that is not subject to the direction of the Minister.

## Authorities & Government Agencies

A planning proposal may be referred to an authority or government agency by council or the Department based on referral criteria (**Attachment C**) at pre-lodgement or post-Gateway as recommended by the Gateway determination.

Public authorities and government agencies may be a public service agency, a Minister, public authority, public office or other.

# Pre-lodgement

STAGE 1

STAGE 2

R-REVIEW

STAGE 3

G-REVIEW

STAGE 4

STAGE 5

STAGE 6

**The pre-lodgement stage of a planning proposal is the important first step of the LEP making process. A proposal's early alignment with the strategic planning framework can reduce time and cost later in preparing the planning proposal and making the LEP.**

Pre-lodgement is not a legislative requirement (or supported by the Planning Portal) but is highly recommended as the first stage in the process for standard and complex planning proposals.

The purpose of the pre-lodgement stage is to:

- provide early feedback to proponents and councils, in particular about the strategic and site-specific merits of a proposal
- understand the expectations for what justification and key supporting studies are required to support a planning proposal
- facilitate early consultation with key authorities and government agencies to understand and resolve agency issues earlier in the process, which is expected to facilitate a quicker consultation during exhibition
- identify infrastructure needs and determine what form of infrastructure funding may be needed to support the proposal
- resolve planning issues upfront to enable a streamlined LEP making process

The recommended steps for this stage are outlined in **Figure 3**.

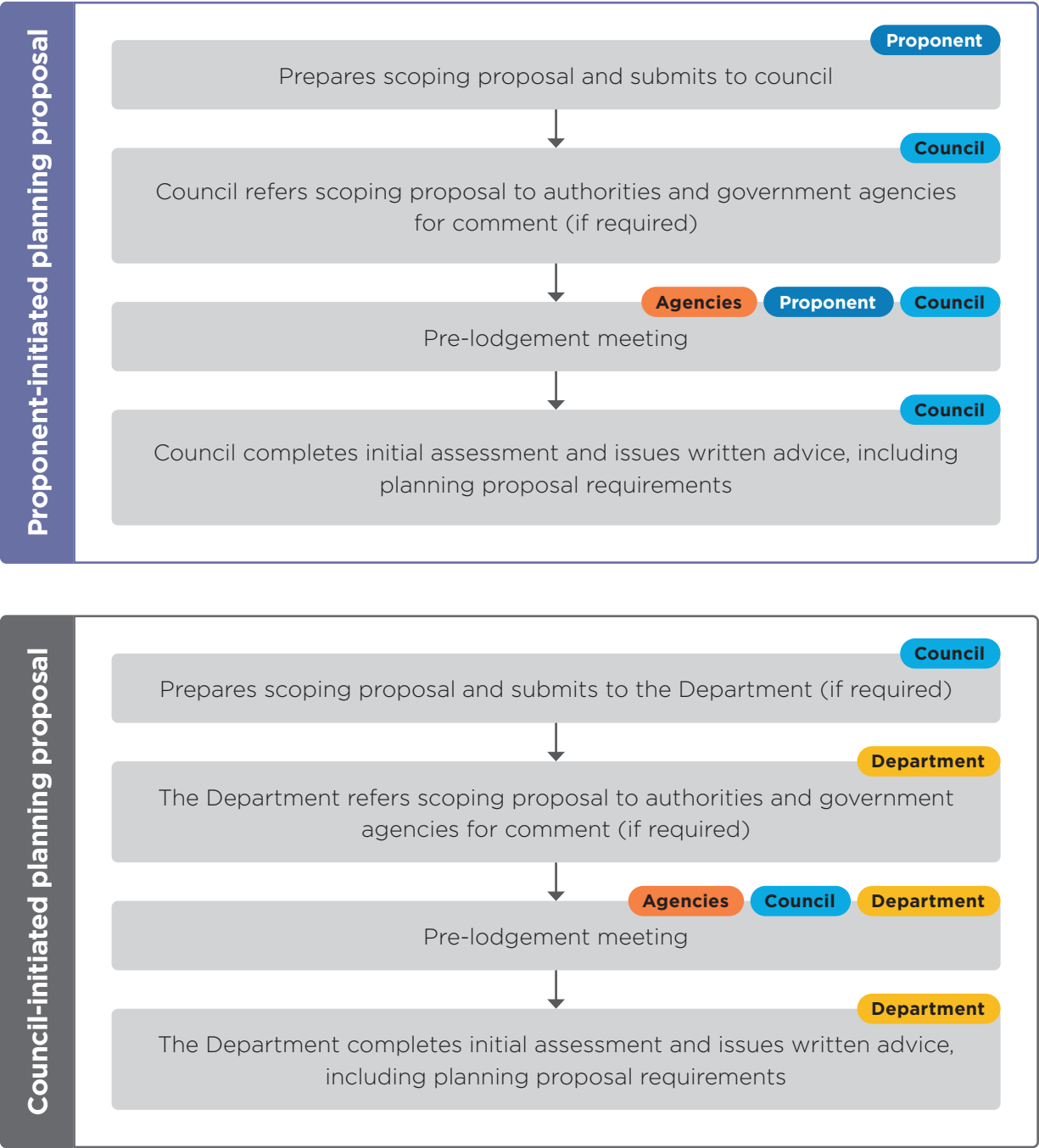
## Timeline

|           |                    |
|-----------|--------------------|
| Basic     | 30 working days    |
| Standard  | 50 working days    |
| Complex   | 60 working days    |
| Principal | 20-30 working days |

This stage is measured from lodgement of scoping proposal to issue of planning proposal requirements.



Figure 3. Pre-lodgement stage overview



## Scoping proposal and meeting

Early due diligence should be undertaken to scope a proposal and before preparation of any planning proposal. This may include high-level desktop studies, review of the site setting and context, identification of objectives of the proposal and development of any concepts and feasibility.

These investigations should also include review of the strategic directions and expectations set down in a council's local strategies and LSPS, and more broadly the relevant district and/or regional plans (see **Strategic Planning Framework**).

### Preparing and submitting a scoping proposal

To assist in the pre-lodgement stage of the process and before engaging with council or the PPA, it is recommended that a scoping proposal be prepared to outline the proposal, key matters, and expected consultation with agencies that may be needed.

The level of information required within the scoping proposal is dependent on the nature, scale, complexity, and predicted environmental impacts of the proposal. Guidance for what should be included within a scoping proposal is included at **Attachment A**.

For proponent-initiated proposals, the proponent is to submit the scoping proposal to council (or alternative PPA) and request a pre-lodgement meeting. Council is responsible for managing and coordinating this process with the proponent.

For council-initiated planning proposals, council should submit the scoping report to the Department's relevant Place or Regional team and request a meeting, if deemed necessary. The Department is responsible for managing and coordinating this process with council.

## Referral to authorities and government agencies

On receipt of the scoping proposal, council is encouraged to consult with external authorities and government agencies for initial comment and identification of requirements necessary to progress the proposal. The Department will refer the scoping proposal for complex council-initiated and principal LEP planning proposals to the relevant agencies.

Relevant authorities and government agencies are encouraged to provide feedback to:

- identify potential key issues that need addressing as part of the planning proposal
- gauge agency in principle view/support for the proposal
- provide direction on information and/or studies required for the planning proposal
- seek early engagement if resolution of issues is needed before the planning proposal is lodged

Referral criteria for authorities and government agencies (including when a council may refer a proponent scoping proposal to the Department) is provided at **Attachment B**.

Note: Referral to authorities and government agencies is encouraged but not mandatory. The Department is currently collaborating with authorities and government agencies and council in finalising this referral process – in the interim, referral and feedback is not a requirement but is a desirable outcome.

If a proposal satisfies one or more of the referral criteria for a specific authority or agency, then pre-lodgement referral occurs. Authorities and government agencies are encouraged to provide a response within 20 working days of referral.

## Pre-lodgement meeting

Following a review of the scoping proposal, a pre-lodgement meeting should be held between the proponent, council officers and other relevant parties (which may include authorities/agencies and the Department, if required) to discuss the proposal and provide preliminary feedback.

Council should proceed with the pre-lodgement meeting if the authority/agency comments are not received.

This pre-lodgement meeting should:

- explain the proposal
- discuss what matters need to be addressed to justify the proposal
- ascertain whether the council identifies that the proposal has potential for strategic and site-specific merit
- ascertain whether the proposal is ready to be submitted or if there are other matters that may need to be addressed before a planning proposal can be progressed

For a council-initiated planning proposal, it is recommended that council officers consult with the Department to confirm what supporting information is needed to justify the proposal. The Department will liaise with council and the authorities/agencies on the planning proposal requirements.

The pre-lodgement process is not a full merit assessment of the proposal. Proponents and councils should consider the advice in proceeding with and preparing a planning proposal.

## Written advice and planning proposal requirements

Within 10 working days of the pre-lodgement meeting, council is to provide the proponent with minutes of the meeting and written advice. This will include:

- any recommended changes to the scope of the proposal, where considered appropriate
- nomination of the planning proposal category (basic, standard, complex or principal LEP)
- confirmation of council assessment fees, likely consultation requirements, and assessment timeframes and milestones
- recommended investigations and studies to support and justify the proposal, including the requirements in **Attachment C** of this guideline
- preliminary advice as to whether the proposal has strategic and site-specific merit
- a copy of authority/agency comments

The Department will provide this same guidance to a council where it has sought to initiate a council complex or principal LEP planning proposal.

The pre-lodgement advice and planning proposal requirements will not be coordinated through the planning proposal online portal.

Planning proposal requirements are to be proportionate to the type of proposal. Where a proponent does not respond to a specific requirement, justification should be provided in the planning proposal submitted to council.

Proponents and councils should determine what matters associated with the design of buildings, subdivision layout, or other detailed matters are more appropriately addressed at the development application stage.

Note: a proponent may still lodge a planning proposal with council, despite any views expressed by council during the pre-lodgement stage.

## Infrastructure needs

The need and capacity for local and regional infrastructure to support the future development resulting from the proposal should be considered upfront in the LEP making process.

Council should work with proponents and provide advice on existing and any planned local infrastructure as part of the initial concept proposal. It is the responsibility of the proponent to investigate infrastructure requirements and associated funding for the proposal.

## Early engagement

The LEP making process does not require formal community consultation prior to a proponent submitting a planning proposal to council.

The most appropriate time for community consultation for planning proposals is after a Gateway determination is issued and all relevant studies and reports have been completed. This ensures the community has clear and evidence-based information available to help them make informed comments on the proposal.





## Key Actions

### ✓ Proponent



- ☐ Develop the proposal scope (where the planning proposal is to be initiated by the proponent)
- ☐ Draft and submit scoping proposal to council
- ☐ Attend pre-lodgement meeting to discuss the proposal
- ☐ Review advice from council and undertake identified technical studies to inform the preparation of the planning proposal

### ✓ Council



- ☐ Accept the scoping report and hold a pre-lodgement meeting with the proponent
- ☐ Refer the scoping report to relevant authorities and government agencies
- ☐ Undertake a high-level assessment and collate comments
- ☐ Nominate the planning proposal category (basic, standard, complex or principal LEP)
- ☐ Meet with proponent and issue advice identifying any significant barriers and if a proposal should proceed including planning proposal requirements government agencies, as required
- ☐ For council-initiated planning proposals, consult with the Department and other government agencies, as required

### ✓ Department



- ☐ Attend pre-lodgement meeting at the request of council
- ☐ For council-initiated proposals, accept the scoping proposal and undertake the referral to agencies and authorities
- ☐ For council-initiated proposals, accept the scoping proposal, meet with council and issue preliminary advice, including planning proposal requirements
- ☐ Confirm the planning proposal category (basic, standard, complex or principal LEP)

### ✓ Government Agencies



- ☐ Review scoping report
- ☐ Submit written comments to council (or Department for council-initiated proposals) together with specific planning proposal requirements

# Planning Proposal

**The preparation and lodgement of the planning proposal is a key step in the LEP making process. The following should be read in conjunction with Section 2: The Planning Proposal.**

**The steps in preparing, lodging and initial council assessment of a planning proposal are outlined in Figure 4.**

## Timeline

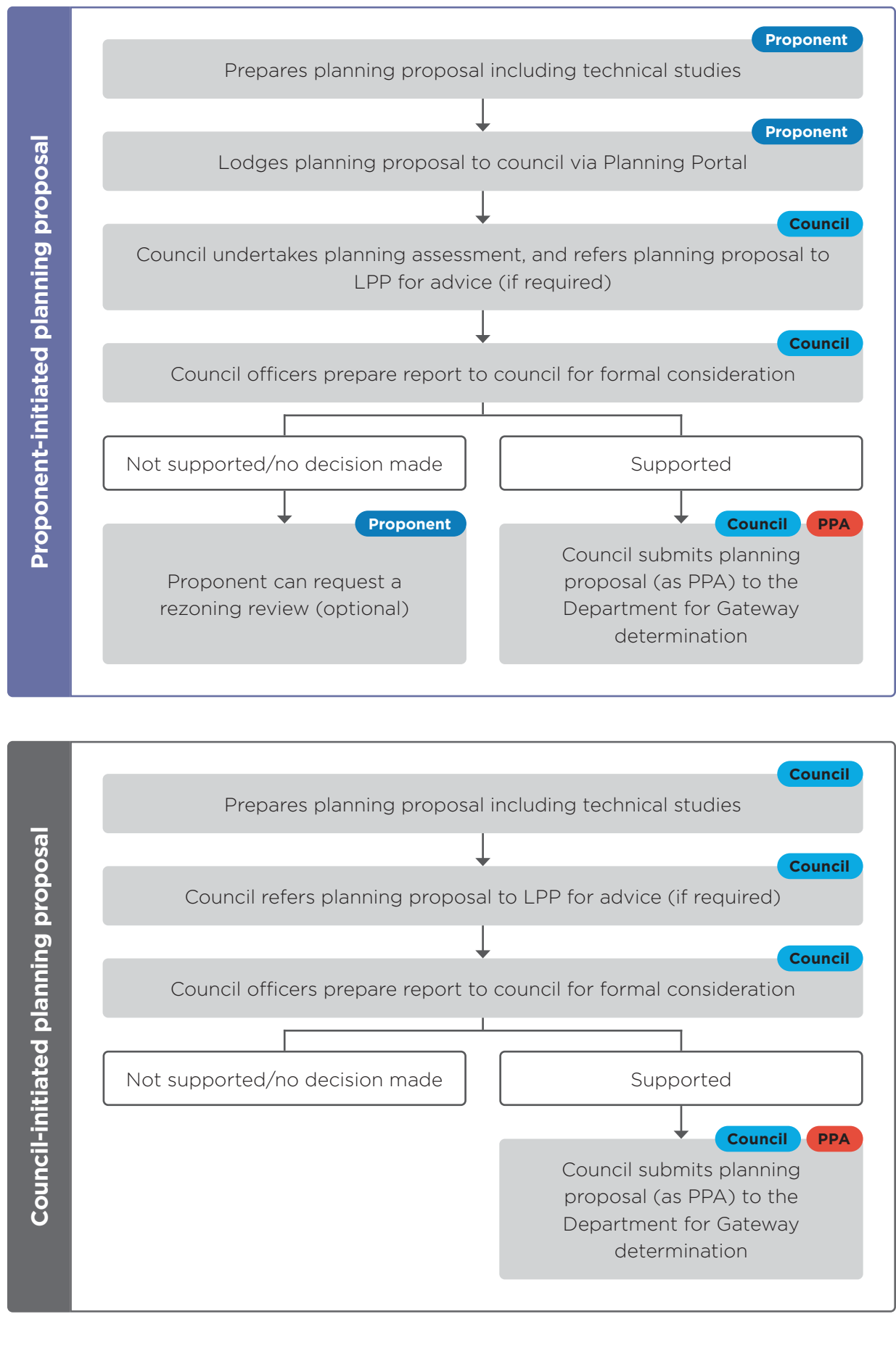
|                  |                  |
|------------------|------------------|
| <b>Basic</b>     | 80 working days  |
| <b>Standard</b>  | 95 working days  |
| <b>Complex</b>   | 120 working days |
| <b>Principal</b> | 40 working days  |

This stage is measured from lodgement of the planning proposal with council via the Planning Portal to council decision on whether the proposal should proceed and be referred to the Department for a Gateway determination.

Note: the timeframe for principal LEPs amendment is less as generally it is a result of an action or commitment within a LSPS or because of the findings of a strategic study for an area (i.e. a housing or rural study) has already been prepared. The planning proposal may also indicate that these studies are to be undertaken post Gateway.



**Figure 4. Planning proposal stage overview**



## Preparing a planning proposal

Based on advice provided in the pre-lodgement stage of the process a planning proposal should identify the likely environmental, social, economic and other site-specific considerations of the proposal.

The planning proposal should be drafted to ensure that a wide audience including departmental staff, authorities and government agencies, councils, stakeholders and the community, can clearly understand the scope and impacts of the proposal.

A planning proposal must include the following components<sup>5</sup>:

- **Part 1 – Objectives and intended outcomes** – a statement of the objectives of the proposed LEP
- **Part 2 – Explanation of provisions** – an explanation of the provisions that are to be included in the proposed LEP
- **Part 3 – Justification of strategic and site-specific merit** – justification of strategic and potential site-specific merit, outcomes, and the process for implementation
- **Part 4 – Maps** – maps, where relevant, to identify the effect of the planning proposal and the area to which it applies
- **Part 5 – Community consultation** – details of the community consultation that is to be undertaken on the planning proposal
- **Part 6 – Project timeline** – project timeline to detail the anticipated timeframe for the LEP making process in accordance with the benchmarks in this guideline

These components ensure the planning proposal addresses all issues and contains enough information to determine whether there is merit to proceed to the next stage of the LEP making process.

A detailed description of the matters that must be addressed in a planning proposal is outlined in **Section 2: The Planning Proposal** of this guideline.

Potential technical information to support the preparation of a planning proposal is outlined in **Attachment C** and will be confirmed in council's or the Departments written advice following the pre-lodgement stage.

## Lodging a proponent-initiated planning proposal

A proponent is required to lodge a planning proposal online via the Planning Portal. The proponent is to pay the necessary planning proposal fee.

The Planning Portal enables the planning proposal and all associated documents to be viewed and reviewed by the public.

5. See section 3.33(2) of the EP&A Act



## Planning assessment by council

Once a proponent-initiated planning proposal is formally lodged (i.e. lodged on the Planning Portal and fees paid) the council undertakes an initial evaluation of the planning proposal to check that:

- the scope of the proposal is clearly articulated
- the planning proposal addresses any comments and/or study requirements sought by council, authorities and government agencies
- that all studies and supporting documentation is included with the planning proposal
- all section 9.1 Directions and SEPPs have been adequately addressed
- relevant regional/district plans and LSPS (if relevant) have been addressed

Note: If the planning proposal is illegible or unclear, Council may reject the planning proposal within 14 days of lodgement.

Council then undertakes an assessment of the planning proposal and forms a view as to whether the proposal has strategic and site-specific merit. The planning assessment forms part of the planning proposal report to council on whether the planning proposal should be supported or not.

Note: A planning proposal can be changed prior to a council decision or during the council meeting.

If this occurs, the planning proposal should be updated following the council decision and prior to referral of the planning proposal to the Department for a Gateway determination. If a significant amendment is undertaken post-Gateway because of a technical study or consultation, it may be necessary to obtain a further council resolution and an amendment to the Gateway determination.

## Local planning panel advice

Local Planning Panels (LPP) are in place for all councils in Sydney, Wollongong City Council, Wingecarribee, and the Central Coast. A planning proposal must be referred to the relevant LPP in accordance with the referral criteria of LPP Ministerial direction<sup>6</sup>.

The relevant LPP will undertake an assessment of the proposal and provide advice to the council as PPA.

The LPP Ministerial Direction requires the council to provide a full (strategic and site-specific merit) assessment of the proposal to the LPP to assist its members prepare their advice to the council. The council should also provide a copy of the planning proposal, and if relevant the technical reports, to the LPP.

## Council resolution

Council staff will prepare and submit an assessment report to a council meeting for formal consideration. If there is a relevant LPP, the report would include the guidance from the panel.

If the council determines that the planning proposal has strategic and site-specific merit, and is to be supported, it should submit the planning proposal to the Department for a Gateway determination. It is at this point that council formally becomes the PPA.

Only the PPA, which is in most cases the council, can submit a planning proposal for Gateway determination.

If the planning proposal is not supported, council will advise both the proponent and the Department.

6. See section 9.1 Direction – Local Planning Panels Direction – Planning Proposals - [IHAPS ministerial directions proposal \(nsw.gov.au\)](https://www.dpi.nsw.gov.au)



## Council authorised as LPMA

When submitting a planning proposal for a Gateway determination, councils must identify whether they will or will not be seeking to be authorised as the LPMA.

When a council is the LPMA, it may delegate this plan making function to an officer within council (usually the general manager or planning director) who will then exercise the function. If a council chooses to delegate the function, the council should advise the Department at the same time it seeks to be the LPMA.

The Minister may withdraw an authorisation for a council to make a LEP if the conditions set out in the Gateway determination are not met. This can occur if:

- the PPA has not satisfied all the conditions of the Gateway determination
- the planning proposal is inconsistent with the relevant section 9.1 Directions or the Planning Secretary has not agreed that the inconsistencies are justified
- there are outstanding written objections from authorities and government agencies



Key Actions

☒
**Proponent**


☐ Prepare a planning proposal in accordance with any pre-lodgement advice
 ☐ Formally lodge the planning proposal with the relevant council on the Planning Portal
 ☐ Attend and present the proposal to a LPP meeting, if requested
 ☐ Attend and present the proposal at a council meeting, if required

☒
**Department**


☐ No action

☒
**Council/PPA**



**For proponent-initiated planning proposals:**

☐ Evaluate whether the planning proposal is suitable for assessment
 ☐ Assess the planning proposal for strategic and site-specific merit, whether preliminary issues have been addressed and determine whether it should be progressed

**For council-initiated planning proposals:**

☐ Prepare a planning proposal consistent with the requirements in Section 2: The Planning Proposal

**For all planning proposals:**

☐ Following the above steps, prepare and submit assessment report with recommendations to LPP
 ☐ Prepare and submit assessment report with recommendations to Council meeting
 ☐ If proposal is supported by Council, submit the planning proposal to Department for Gateway determination and identify whether council seeks the authority to be LPMA
 ☐ Ensure all information is correct and up to date on the Planning Portal

# Rezoning Review

**A rezoning review allows a proponent to request an independent planning panel evaluate and recommend to the Minister whether a proposal should progress to Gateway determination.**

This can only occur after the lodgement of the planning proposal with council, and council has:

- notified the proponent in writing that it does not support the proposal
- failed to indicate its support for the planning proposal within 90 or 115 calendar days (depending on the planning proposal category) of the proponent lodging the planning proposal
- failed to submit the planning proposal for Gateway determination within 28 calendar days after it has indicated support

The steps in this process are outlined in **Figure 5**.

Rezoning reviews are carried out by:

- Regional Planning Panels for:
  - o Northern NSW
  - o Hunter and Central Coast regions
  - o Western NSW
  - o Southern NSW
- a Sydney district planning panel for proposals that relate to land within the Greater Sydney region
- the IPC for proposals that relate to land within the LGA for the City of Sydney

## Timeline

All rezoning review requests have a target timeframe from lodgement of the review until the planning panel recommendation of 100 calendar days.

For the purposes of explaining this rezoning review process in this chapter, 'planning panel' means all the above forms of panels and the IPC.

The Department will monitor the progress of rezoning review requests and ensure that documents (review requests, planning panel reports and decisions) are published on the Planning Portal.

Refer to [Planning Circular: PS18-012 Independent reviews of plan making decision](#) for more information.

## Fees/Costs

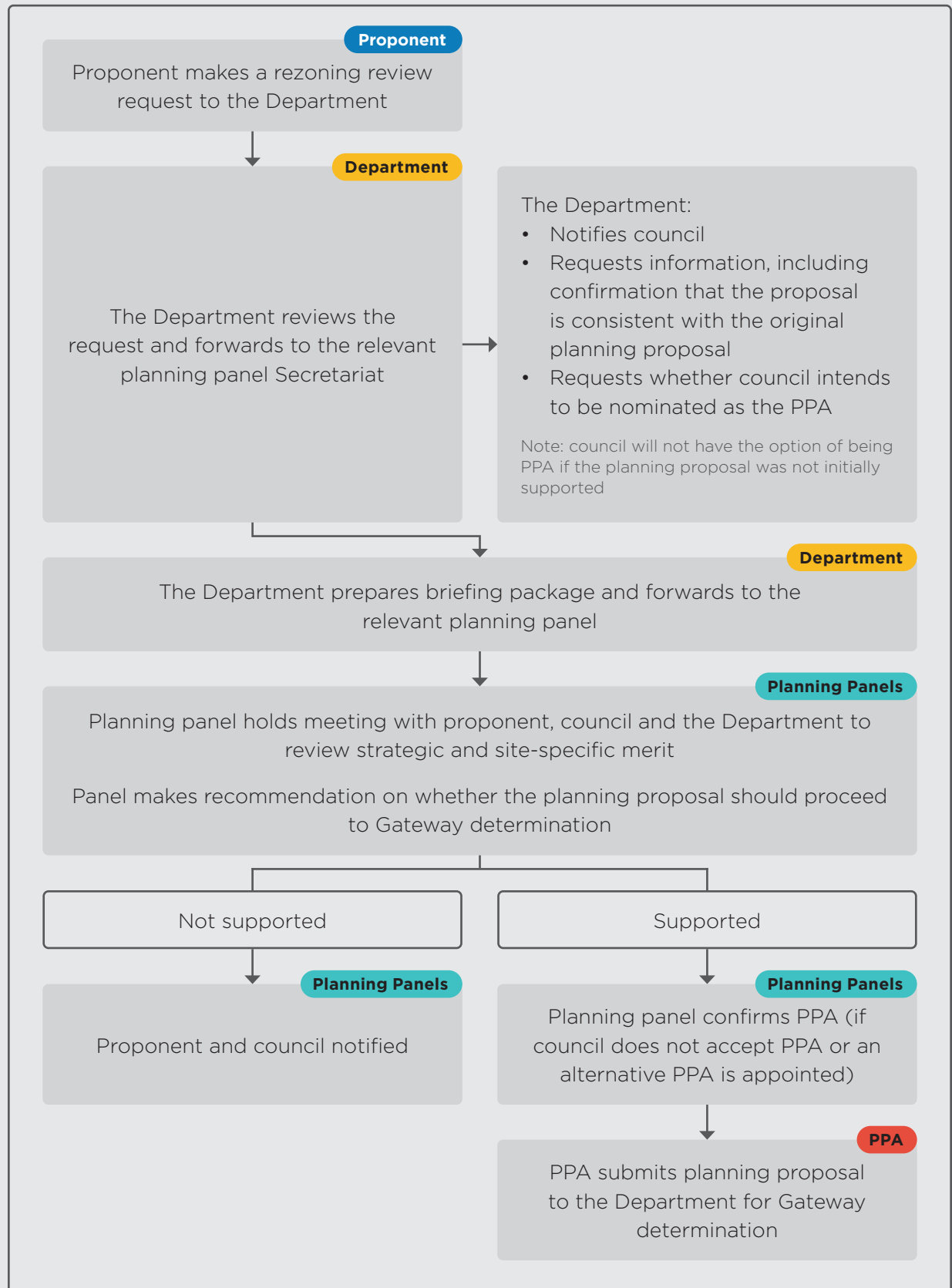
A fee for a rezoning review request applies.

Where a rezoning review is recommended to proceed to Gateway and the planning panel or Planning Secretary is appointed as the PPA, an additional fee applies.

Fees are paid directly to the Department.

Information on fees and payment can be found on the Department's webpage <https://www.planning.nsw.gov.au/Plans-for-your-area/Local-Planning-and-Zoning/Making-and-Amending-LEPs>.

**Figure 5. Rezoning review overview**





## Proponent requests rezoning review

### Council acceptance of planning proposal

For the purposes of triggering a rezoning review request, the timeframe begins from the day the planning proposal is lodged with council on the Planning Portal and fees are paid.

Note: the timeframe for lodgement of a rezoning review will restart if a planning proposal is amended and received by council when under assessment by council.

A planning proposal that has been amended after council has resolved to not support the matter is not eligible for a rezoning review. The revised planning proposal would need to be submitted to council as a new planning proposal.

### Rezoning review request triggers

A proponent for a planning proposal can seek a rezoning review request:

- within 42 calendar days of council notifying the proponent that it does not support the planning proposal request, or
- if council has failed to make a decision on the planning proposal after:
  - 90 calendar days from the date the proposal was lodged with council if this is a basic and standard planning proposal
  - 115 calendar days from the date the proposal was lodged with council if this is a complex planning proposal
- if council has supported the planning proposal but has not submitted the planning proposal to the Department within 28 calendar days

### Rezoning review request requirements

A rezoning review request must be made by a proponent via the Planning Portal and contain:

- a copy of the proponent's latest version of the planning proposal, including all supporting material and information that was submitted to council
- all correspondence that the proponent has received from the council in relation to the planning proposal request, including (if relevant) any copies of the council's written advice to the proponent and/or the Council resolution not proceed with the proposal
- all correspondence and written advice from other public authorities and government agencies, if available
- the proponent's written justification of the strategic and site-specific merit to confirm why a review is warranted
- disclosure of reportable political donations under section 10.4 of the EP&A Act, if relevant
- the rezoning review fee to the Department

If the reason for the rezoning review is based on the circumstance that council has not had the opportunity to review or not make a decision on the planning proposal, the proponent should demonstrate that there has been an attempt to collaborate with council to obtain a decision relating to the planning proposal. This evidence should be included within the rezoning review application.

The Department will only accept rezoning review requests that include all of the above items.

[Planning Portal Quick Reference Guide: Initiating a Rezoning Review](#)



## Departmental notification and briefing

Upon receipt of the rezoning review request the Department will notify the relevant council and request that council respond within 21 calendar days with the following:

- any comments and additional information on the planning proposal
- confirmation that the proposal is consistent with what was submitted as the accepted proposal by council
- confirmation whether council wishes to nominate itself as the PPA, but only where the council has failed to determine the proposal prior to the rezoning request application being submitted to the Department. If this nomination by council is not clearly provided, then council has up until 4 days before the planning panel meeting to inform the Department of their nomination in writing. The Department will forward rezoning review requests to the relevant planning panel within 3 days of the lodgement of the rezoning review application

The Department prepares and submits to the panel a short briefing report summarising the proposal and background information for the panel. The report does not include an assessment, opinion or recommendation on whether the planning proposal should proceed. This enables the planning panel to form an independent view of the planning proposal.

The Department will compile a package of the planning proposal, council's information and the Department's summary report and forward to the planning panel secretariat.

## Planning panel recommendation

### Planning panel review

The planning panel will review the planning proposal and associated documentation.

As part of this review, the planning panel members may attend a site visit with representatives from the Department.

### Planning panel assessment and recommendation

After the planning panel has reviewed the planning proposal, it will:

- schedule a meeting between the proponent and council for a briefing, have an opportunity to ask questions and gain clarification on the proposal, and
- assess and determine the proposal

The planning panel will assess the planning proposal and determine whether it has strategic merit and site-specific merit, having regard to the matters outlined in **Part 3 of Section 2: The Planning Proposal** of these guidelines. The panel should first and foremost form the view whether the planning proposal has 'strategic merit'.

Having met the strategic merit test, the relevant planning panel must then determine if the proposal has site-specific merit, having regard to:

- the natural environment on the site to which the proposal relates and other affected land (including known significant environmental areas, resources or hazards)
- the built environment, social and economic conditions
- existing, approved and likely future uses of land in the vicinity of the land to which the proposal relates; and/or
- 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 strategic and site-specific merit assessment criteria are unlikely to proceed. After the hearing, the panel will advise the Department, council and the proponent of its recommendation on whether the planning proposal should or should not proceed to Gateway within 5 calendar days of the panel meeting date.

The planning panel will outline the reasons for its decision, including its assessment on strategic and site-specific merit.

### Panel recommendations to alter the proposal and/or additional Gateway conditions

Should the planning panel find that a planning proposal has strategic merit, they may recommend requirements to be included in the Gateway determination or minor changes to the planning proposal based on site specific matters. The planning panel can recommend qualifying minor changes to the planning proposal for the proposal to proceed to Gateway.

Before the panel makes this type of recommendation it should seek the council's and proponent's view at the panel meeting. If the panel only comes to the view that it should make recommendations for minor changes post the panel hearing, it may ask the panel Secretariat to reconvene a panel meeting.

Alternatively, if the panel appoints itself in the PPA role for the proposal, it can vary the planning proposal but only if it is substantially the same as the proposal or provides a reduced impact (e.g. a reduction in built form, floor space ratio or height)

## Appointing the PPA

If the planning panel recommends that the planning proposal should proceed to Gateway determination, it will:

- notify the relevant council that the planning panel will assume PPA role, if in the circumstance the council change to has refused to support the planning proposal, or
- identify the PPA (either council or itself) where council has not made a determination on a planning proposal but has informed the panel in writing prior to the panel meeting of its nomination

Note: if a planning proposal request has been refused by council, the planning panel may appoint itself as the PPA to avoid any conflicts that may arise between the proponent and council and ensure efficiency and resolution of matters.

## Submitting the planning proposal to the Department for Gateway determination

Where the council is nominated as the PPA, it will have 28 calendar days to submit the planning proposal. Before it is submitted for Gateway determination, the planning proposal may need to be altered to action any recommended changes by the panel.

If the planning panel appoints itself as the PPA, then it must submit the planning proposal to the Department for Gateway determination prior to this. The proposal may need to be altered by the proponent to accommodate for any recommended changes to the proposal.

## Key Actions

### ☒ Proponent



- ☐ Submit request for rezoning review application via the Planning Portal
- ☐ Pay the relevant fee to the Department
- ☐ Attend and present at planning panel meeting

### ☒ Council



- ☐ Within 21 days of being notified of rezoning review application council is to provide to the Department:
  - o Confirmation that the proposal for the rezoning review is consistent with the planning proposal submitted to council
  - o confirmation whether council wishes to be PPA for the subject proposal
  - o any additional information and commentary
- ☐ Attend and present at planning panel meeting

### ☒ Department



- ☐ Take receipt of the rezoning review application and fees
- ☐ Prepare briefing package and forward to the relevant planning panel
- ☐ Brief planning panel and attend meeting
- ☐ Monitor the progress of the rezoning review to achieve an outcome within a target of 100 days

### ☒ Planning Panel/IPC



- ☐ Review briefing package and planning proposal
- ☐ Attend site visit, as required
- ☐ Hold panel meeting with council, the proponent and relevant Department staff
- ☐ Assess planning proposal and make recommendation whether the planning proposal should proceed, or not proceed, to Gateway determination
- ☐ If council is not to be the PPA, then appoint itself as PPA or recommend an alternative PPA

### ☒ Community



- ☐ There is no formal role for community in this stage of the planning proposal process. If representations were made to a council meeting, then the Chairperson of the planning panel has the discretion to invite those members to the panel hearing

# Gateway Determination

The Gateway determination is a key assessment point for the planning proposal. It allows for review of the strategic and site-specific merits or a proposal and determines whether the planning proposal should proceed<sup>7</sup>.

The steps in this process are outlined in [Figure 6](#).

7. See section 3.34 of the EP&A Act

## Timeline

**Basic** 25 working days

**Standard** 25 working days

**Complex** 45 working days

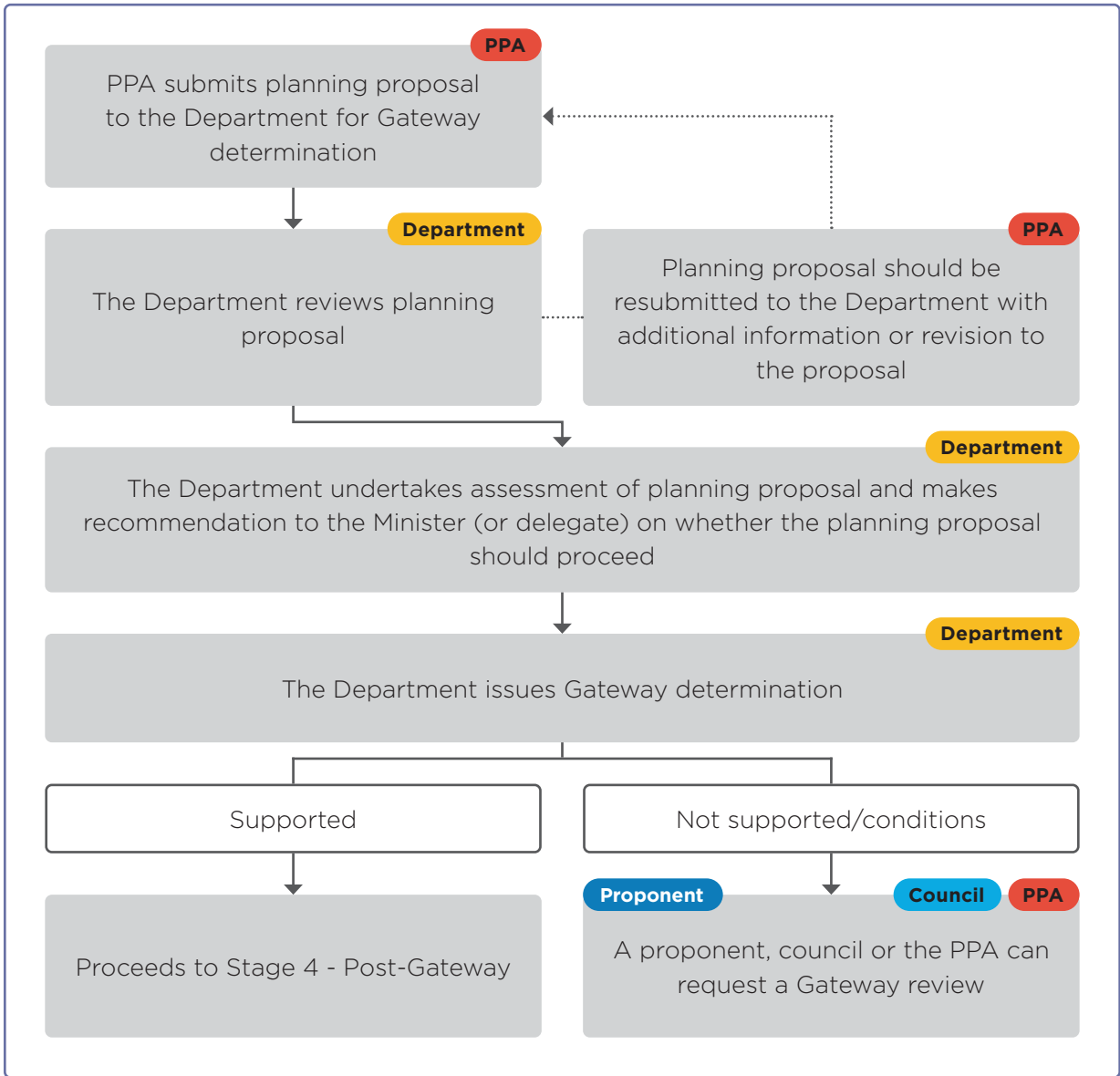
**Principal** 45 working days

This stage is measured from referral of the planning proposal to the Department for a Gateway determination to the issuing of a Gateway determination. It is estimated that it can take council up to two weeks to forward the planning proposal to the Department and this is included in the above time.





Figure 6. Gateway determination stage overview



## Submitting a planning proposal for Gateway determination

The PPA is to submit the planning proposal to the Department for Gateway determination via the Planning Portal.

[NSW Planning Portal Quick Reference Guide: Submitting a Planning Proposal](#)

The PPA should use the unique planning proposal number (e.g. PP-2021-0278) generated by the Planning Portal as the identifier for the planning proposal from initiation through public exhibition and finalisation stages. The LEP amendment number is not required to be provided by the council.

The actual amendment number to the LEP is automatically generated when the draft LEP is submitted to Parliamentary Counsel's Office (PCO) for final opinion. The planning proposal number and LEP amendment number will also be included in mapping and making of the LEP.

## Department review

The Department undertakes a review of the planning proposal<sup>8</sup>. In completing this review, the Department will typically:

- undertake a high-level check of the planning proposal to ensure the package meets the minimum administrative requirements in this guideline. This check is generally undertaken within 5 days of the proposal being submitted
- undertake a strategic merit assessment of the proposal against relevant district plan, regional plan, LSPS, section 9.1 Directions, SEPPs and any Department endorsed local strategy

- undertake an assessment of potential environmental, social, economic, and infrastructure impacts of the proposal
- obtain high level advice and guidance from the Department's legal team or PCO (where required)
- seek agency advice and/or comments, where required or where an authority or government agency has not consulted at the pre-lodgement stage
- review proposed community consultation and the expected timeframe for the proposal

Department officers then prepare an assessment report and provide a recommendation to the Minister (or delegate) on whether the planning proposal should proceed.

## Additional information

While completing the review of the planning proposal, the Department may require the PPA to provide additional information to address any outstanding matters or issues. The information will be published on the Planning Portal. Additional information should be provided within 20 working days.

Where significant additional information is sought or where the information cannot be provided within a reasonable timeframe, the Department will request that the planning proposal be withdrawn from the Gateway and resubmitted when the additional information is available.

8. See section 3.34(2) of the EP&A Act

## Issuing a Gateway determination

The Minister (or delegate) decides whether the planning proposal can proceed, either with or without variation.

The Gateway determination will specify<sup>9</sup>:

- whether the planning proposal is supported to proceed or not
- any necessary technical studies or supporting studies
- whether the planning proposal needs to be amended (and possibly resubmitted to the Department) prior to exhibition
- the duration and extent of community consultation
- whether consultation with State or federal authorities (if required)
- whether a local contributions plan is to be exhibited at the same time as the planning proposal
- whether a public hearing is needed
- the timeframes within which the various stages of the process for making of the proposed LEP are to be completed
- whether the council is to be authorised to make the proposed instrument as the LPMA
- any other conditions

The purpose of the Gateway determination is to ensure early in the process that there is sufficient strategic and site-specific merit for the planning proposal to progress.

A Gateway determination that specifies the proposal should proceed, does not guarantee that the proposed LEP will be made.

The Gateway determination may identify the requirement for any additional information, revisions, studies, or targeted consultation to occur with authorities or government agencies and other stakeholders prior to public exhibition. It may also identify that a revision needs to be considered by the Department prior to exhibition.

9. See section 3.34(2) of the EP&A Act

10. See section 3.34(3A) of the EP&A Act

The PPA is responsible for ensuring the required matters are completed prior to the public exhibition of the planning proposal.

Prior to issuing a Gateway determination, the Minister (or delegate) must refer a planning proposal to the Greater Sydney Commission (GSC), if the proposal relates to land within the Greater Sydney Region and is likely to significantly affect the implementation of a strategic plan in the region<sup>10</sup>.

## Altering a Gateway determination

An alteration to a Gateway determination may be required if:

- the relevant conditions have not been satisfactorily completed within the timeframes set in the Gateway determination, and additional time is required to progress the planning proposal
- There has or needs to be alteration to the scope of the proposal (see further detail below regarding **Varying a planning proposal**), and/or
- If the PPA/council/proponent seek to alter the Gateway determination conditions

The Department will determine whether to grant approval to alter the Gateway determination. It will only grant extensions in exceptional circumstance to ensure timely determination of proposals.

Alternatively, a proponent or the PPA may request a Gateway review to alter the Gateway determination within a certain timeframe after the Gateway determination is issued (see **Gateway Review** in this guideline).



## Varying a planning proposal

The PPA may vary a proposal at any time during the LEP making process or request the Minister (or delegate) to determine that the matter not proceed<sup>11</sup>. Variations may be necessary to:

- improve the intended outcome of the proposal
- respond to issues raised in submissions by the local community, an authority or a government agency
- further mitigate the impacts of the proposal

For proponent-initiated planning proposals, the proponent in seeking to vary or modify a planning proposal should work with and seek agreement from council as the PPA to progress any variation.

Any variations to a planning proposal must be forwarded to the Department for consideration<sup>12</sup>.

The Minister (or delegate) will consider a revised planning proposal and determine whether further consultation is required<sup>13</sup> (including re-exhibition) and whether an alteration to the Gateway determination is needed.

11. See section 3.35(4) of the EP&A Act

12. See section 3.35 of the EP&A Act

13. See section 3.35(3) of the EP&A Act





Key Actions

|                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <div> <div>✓</div> <div>Proponent</div> <div></div> </div> <div> <div><input type="checkbox"/></div> <div>No action, unless additional information has been sought by the Department to assist in the Gateway determination assessment</div> </div>                                                                | <div> <div>✓</div> <div>Department</div> <div></div> </div> <div> <div><input type="checkbox"/></div> <div>Review and undertake Gateway determination assessment of planning proposal</div> </div> <div> <div><input type="checkbox"/></div> <div>Prepare assessment report recommending Gateway determination with conditions, amendments or whether the proposal shall not proceed</div> </div> <div> <div><input type="checkbox"/></div> <div>Issue Gateway determination with conditions to PPA – Gateway determination is uploaded via the Planning Portal</div> </div> <div> <div><input type="checkbox"/></div> <div>Consider alterations to a Gateway determination</div> </div> |
| <div> <div>✓</div> <div>Council</div> <div></div> </div> <div> <div><input type="checkbox"/></div> <div>Submit planning proposal on the Planning Portal for Gateway determination</div> </div> <div> <div><input type="checkbox"/></div> <div>Respond to additional information requests, as required</div> </div> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

# Gateway Review

**A proponent or council (only when it is the PPA) may request that the Minister (or delegate) alter a Gateway determination where the proponent and/or council disagrees with the determination or conditions of the determination and seeks to alter this decision.**

Specifically, this review may be requested when a Gateway determination:

- States the planning proposal should not proceed
- Requires that the planning proposal should be altered and re-submitted to which the proponent or council thinks this should be reconsidered, or
- Imposes conditions (other than consultation requirements) in the Gateway determination or imposes conditions that requires variation to the proposal, for which a proponent and/or council thinks should be reconsidered

The steps in this process are shown in **Figure 7**.

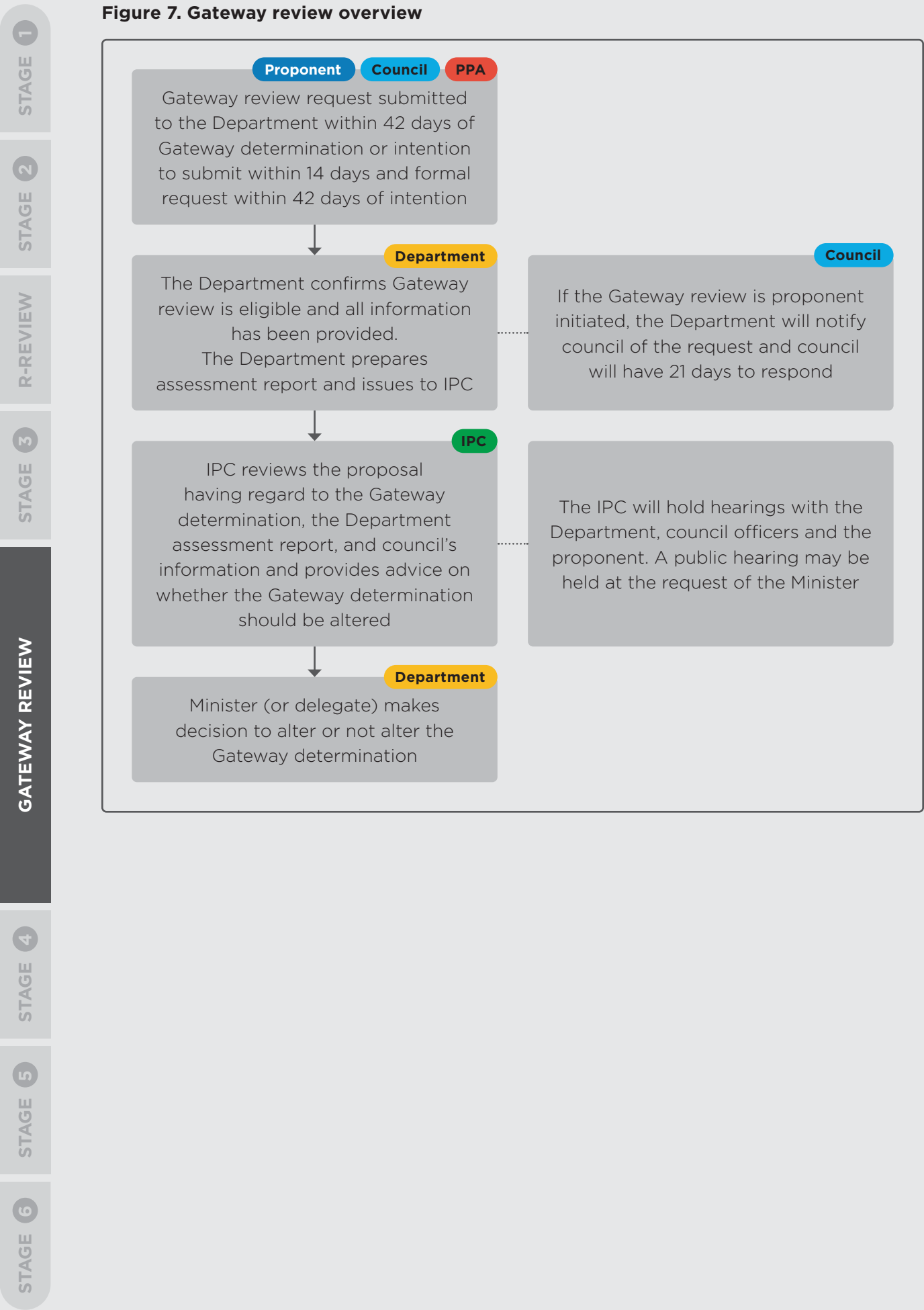
A Gateway review can only be made if the original Gateway determination was made by a delegate of the Minister.

Note. A Gateway review cannot be sought of the Gateway if it is issued by the Minister

The proponent or council is recommended to first contact the Department 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 Gateway review (see **page 40**).



Figure 7. Gateway review overview



## Proponent or PPA seeks Gateway review

### Gateway review request

If the Gateway determination is either to not proceed or to resubmit the planning proposal, the proponent or council has 42 calendar days from notification to request a review of this determination.

If the Gateway determination permits the planning proposal to proceed but includes conditions that the proponent and/or council considers inappropriate, they have 14 days from notification to indicate to Department of their intent to request a Gateway review.

The proponent or council then has 42 calendar days to formally apply for a Gateway review. The initial 14 calendar day period is intended to prevent any unnecessary action in proceeding to public exhibition on the planning proposal.

### Gateway review requirements

The proponent or council (as PPA) requesting a Gateway review must provide the Department with:

- 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
- if relevant, disclosure of reportable political donations<sup>14</sup>

The Gateway review is submitted on the Planning Portal.

## Departmental notification and briefing

The Department will check whether the request is eligible for review and is accompanied by all the required information. The Department will contact the proponent or council if further information is needed.

If the Gateway review is proponent-initiated, the Department will notify the council of the proponent's request and the council will have 21 calendar days to respond. If Gateway review is council-initiated, then the Department will notify the proponent.

The Department will prepare an assessment report to be issued to the IPC that will include:

- the reason(s) why the review request has been made
- the reasons why the original Gateway determination was made
- the views of the council (if the review was proponent-initiated)
- consideration of whether there is merit in revising the Gateway determination or conditions of the Gateway in response to the issues and justification provided by the council or the proponent

14. See section 10.4 of the EP&A Act



## IPC advice

The Department will forward the review request, assessment report and accompanying information to the IPC for its advice. The IPC will review this alongside the planning proposal and consider the council’s and/or proponent’s submission and the reasons given for the original determination in the Department’s report.

The IPC will hold a meeting to obtain a briefing with the Department, council officers and the proponent. The IPC will hold a public hearing, if required or directed by the Minister (or delegate). Transcripts of these meetings are published on the [IPC website](#).

The IPC will then consider all the information and provide a report with a recommendation to the Department and Minister as to whether the original Gateway determination should be altered and whether the planning proposal should proceed. The report is published on the IPC website.

IPC has 35 calendar days from receiving the request from the Minister or Department to provide its recommendation.

## Determination

The Minister (or delegate) will consider the recommendations of the IPC and determine whether to alter Gateway determination, considering:

- the IPC’s advice in relation to the planning proposal
- reasons for original Gateway determination
- submissions from the proponent or council as to why the Gateway determination should be altered
- views of the council (when the review has been initiated by the proponent)
- other matters not considered by the original decision maker including strategic planning considerations (e.g. emerging state or regional policies relevant to the planning proposal)

The Minister (or delegate) may alter the Gateway determination and decide whether the planning proposal should or should not proceed (including in accordance with any revised conditions).

The Department will notify the proponent and council of any altered Gateway determination and relevant requirements for the planning proposal to proceed or not to proceed. It will ensure that all documents (review requests, departmental and IPC advice and determinations) are published on the IPC website within 3 calendar days of the completion of each step.

## Key Actions

### ☒ Proponent



- ☐ Submit a Gateway review request to the Department within 42 calendar days of Gateway determination, or intention within 14 calendar days, and submit a formal request within 42 calendar days of intention
- ☐ Attend IPC hearing (if proponent initiates review)

### ☒ Council/PPA



- ☐ Submit a Gateway review request to the Department within 42 calendar days of Gateway determination, or intention within 14 calendar days, and submit a formal request within 42 calendar days (if council initiates review)
- ☐ Respond to any proponent-initiated Gateway review within 21 calendar days
- ☐ Attend IPC public hearing, if directed by the Minister
- ☐ Attend hearing with IPC, if requested

### ☒ IPC



- ☐ Review Gateway review information
- ☐ Hold hearing with invited members of council, proponent and the Department
- ☐ Hold a public hearing, if directed by the Minister
- ☐ Provide advice to the Minister (or delegate) as to whether the planning proposal should be altered

### ☒ Department



- ☐ Confirm eligibility of Gateway review and that it is accompanied by all required information
- ☐ Notify council of Gateway review request, if submitted by a proponent
- ☐ Prepare assessment report and recommendations on whether it agrees to changes to the Gateway determination
- ☐ Forward assessment report and accompanying information to IPC for advice
- ☐ Attend IPC public hearing, if directed by the Minister
- ☐ Attends meeting with IPC, if requested
- ☐ Decide whether to alter the Gateway determination based on the IPC's advice
- ☐ Notify the proponent and council of the decision to alter the Gateway determination (or not)
- ☐ Publish all documentation and notification on the Planning Portal

### ☒ Community



- ☐ There is no formal role for community in this stage of the planning proposal process. It is at the sole discretion of the IPC if they meet with the community

# Post-Gateway

**This stage is the opportunity for the PPA to review the planning proposal and action conditions of the Gateway determination prior to public exhibition.**

**The steps in this process are shown in [Figure 8](#).**

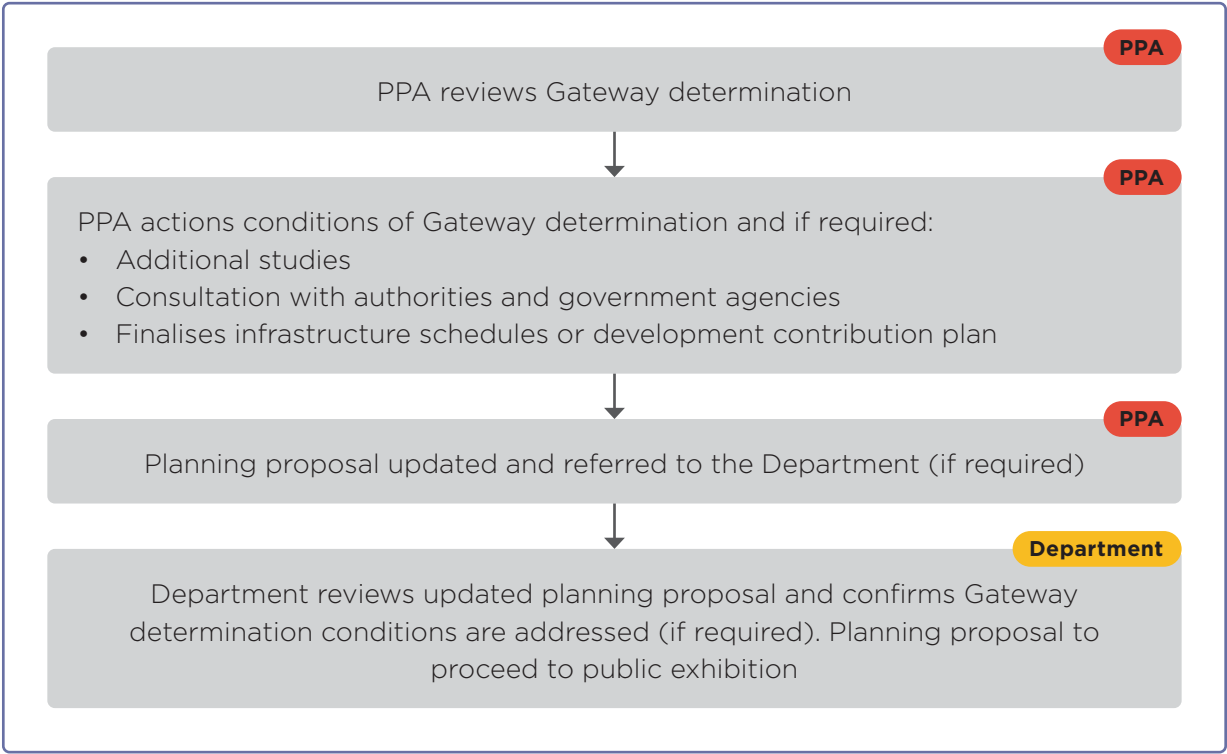
## Timeline

|                  |                  |
|------------------|------------------|
| <b>Basic</b>     | 20 working days  |
| <b>Standard</b>  | 50 working days  |
| <b>Complex</b>   | 70 working days  |
| <b>Principal</b> | 160 working days |

This stage is measured from when the PPA receives the Gateway determination from the Department to public exhibition of the planning proposal. This stage includes time to satisfy any Gateway conditions, undertake technical studies (if required) and consult with authorities and government agencies (if required before public exhibition).



Figure 8. Post-Gateway stage overview





## Post-Gateway determination review

The Gateway determination may identify the need to undertake additional studies, require consultation with authorities and government agencies prior to public exhibition and/or require amendments to the planning proposal to address a specific matter prior to public exhibition.

Whilst investment in the pre-lodgement stage in terms of time and resources will result in most planning proposals being ‘public exhibition’ ready, there will be circumstances where additional work post-Gateway is required.

The PPA is responsible for ensuring that any Gateway conditions are actioned prior to the public exhibition of the planning proposal.

For Principal LEPs, councils will generally undertake supporting technical studies post-Gateway in accordance with any Gateway determination. Hence, a 160 working day benchmark timeframe allows council to engage specialists and undertake the necessary studies, update the planning proposal and issue to the Department for review prior to public exhibition (if required).

For some planning proposals, a schedule of infrastructure items required to support the proposal may be required. It is expected that infrastructure arrangements will be finalised at this stage to allow for concurrent exhibition with the planning proposal.

Key Actions

| <div> <input checked="" type="checkbox"/> <b>Proponent</b>  </div>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <div> <input checked="" type="checkbox"/> <b>Department</b>  </div>                                                                                                                                                                            |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <div> <input type="checkbox"/> Review Gateway determination and conditions                 </div> <div> <input type="checkbox"/> If requested, provide additional information and support the PPA to assist in satisfying a Gateway condition                 </div> <div> <input type="checkbox"/> Undertake consultation with authorities and government agencies (if required)                 </div>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | <div> <input type="checkbox"/> Review updated planning proposal (if relevant)                 </div> <div> <input type="checkbox"/> Provide advice / guidance (as required)                 </div> <div> <input type="checkbox"/> Draft mapping and instrument preparation (Principal LEP amendments only)                 </div> |
| <div> <input checked="" type="checkbox"/> <b>Council</b>  </div>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                   |
| <div> <input type="checkbox"/> Review Gateway determination and conditions.                     </div> <div> <p>Note: where council is not the PPA, the roles and responsibilities of council will be carried out by the Department</p> </div> <div> <input type="checkbox"/> Provide additional information and/or update planning proposal and provide to the Department for review (if required)                 </div> <div> <input type="checkbox"/> Undertake consultation with authorities and government agencies (if required)                 </div> <div> <input type="checkbox"/> Finalise infrastructure schedules or development contributions plan                 </div> <div> <input type="checkbox"/> Liaise with the Department regarding mapping and instrument (Principal LEP amendments only)                 </div> <div> <input type="checkbox"/> Undertake pre-exhibition administrative tasks                 </div> |                                                                                                                                                                                                                                                                                                                                   |

# Public Exhibition and Assessment

Community participation and public exhibition is integral in the LEP making process.

Consultation gives the community and government agencies a say on the merits of proposals prior to any final decision being made.

Once consultation is completed, the PPA should evaluate and assess these comments and address any concerns, to then determine whether the LEP should be made in accordance with the planning proposal.

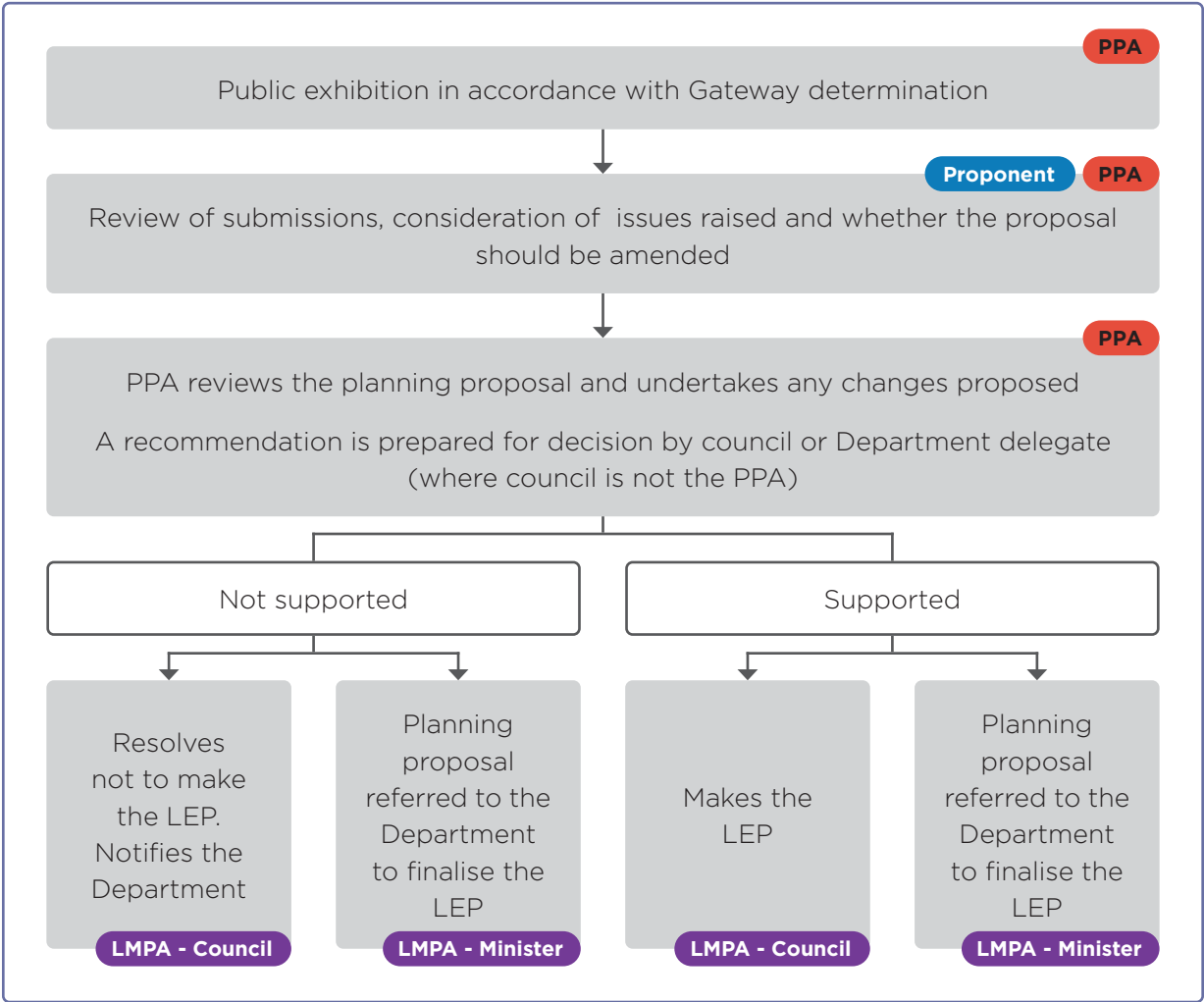
The steps in this process are shown in [Figure 9](#).

| Timeline  |                  |
|-----------|------------------|
| Basic     | 70 working days  |
| Standard  | 95 working days  |
| Complex   | 115 working days |
| Principal | 95 working days  |

This stage is measured from exhibition to assessment and endorsement of the planning proposal by council (or PPA) on whether to proceed, includes exhibition, consultation with authorities and government agencies (if required), and consideration and assessment of any submissions received.



Figure 9. Public exhibition and assessment stage overview





## Public Exhibition

The Gateway determination will specify the duration and extent of public exhibition required<sup>15</sup>, including whether no public exhibition is required due to the minor nature of the proposal.

The recommended maximum period of public exhibition, based on the category of planning proposal, are as follows:

|           |                 |
|-----------|-----------------|
| Basic     | 10 working days |
| Standard  | 20 working days |
| Complex   | 30 working days |
| Principal | 20 working days |

The council may refer to their Community Participation Plans for other consultation activities.

The period between 20 December and 10 January (inclusive) is excluded from the calculation of a period of public exhibition<sup>16</sup>.

The Gateway determination may also identify the need for the planning proposal to be referred to one or more authorities and government agencies for comment. Authorities and government agencies are expected to provide comments within 30-40 days depending on the planning proposal category.

## Notification

Notification of the planning proposal at the public exhibition stage should occur:

- on the relevant council's website
- on the Planning Portal
- in writing to affected and adjoining landowners unless this is impractical and therefore not required as part of the Gateway determination

These notices must describe or identify:

- the objectives or intended outcomes of the planning proposal
- the land affected by the planning proposal
- where people can view the proposal
- contact details for submissions
- whether council is the designated LPMA

The following material must be made available for inspection:

- the planning proposal in the form approved for public exhibition by the Gateway determination
- the Gateway determination
- all relevant additional information relied upon by the planning proposal

Additional consultation may include community information sessions, public forums and/or online engagement. However, this is at the discretion of the PPA.

## Public hearing

The PPA can conduct a public hearing into any issue associated with a planning proposal, including in response to requests made by a member of the public during the public exhibition period.

A public hearing must be held if the planning proposal is to reclassify community land<sup>17</sup> – refer to the **Special cases and exceptional circumstances** section of this guideline.

15. See section 3.34(2)(c) of the EP&A Act  
 16. See cl. 16 Schedule 1 of the EP&A Act  
 17. In accordance with the *Local Government Act 1993*

The Gateway determination may require council to additionally conduct a public hearing, and whether this is to be held by the IPC or other specified person or body.

Where a PPA has decided to conduct or is required to undertake a public hearing, it must:

- give notice of the arrangements for the public hearing on its website
- 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 21 days' notice.

## Response to submissions

If the planning proposal is proponent-initiated, the proponent should have the option to respond to council (or PPA) on any issues raised in submissions received. The council should provide a copy of submissions to the proponent. This gives the proponent the opportunity to address or redress issues raised in submissions, including amendments to the proposal.

Depending on the level of stakeholder interest and number of submissions received, proponents should be given between 5-25 working days to provide a response to the issues raised in submissions.

The PPA should discuss any recommended changes with the proponent prior to progressing the planning proposal.

The PPA must consider all submissions and the proponent's response, and report this in finalising the plan or submitting to the Department for finalisation.

## Post-exhibition evaluation

The PPA reviews the planning proposal following public exhibition and addresses any community, agency or other objections and responses by the proponent.

If the planning proposal is modified which results in a significant change to the proposal or an increase in impact, the planning proposal may need to be re-exhibited<sup>18</sup>. The PPA should consult with the Department as this may require variation to the Gateway determination (in particular if additional time is required to finalise the proposal).

Refer to the **Varying a planning proposal** in section **Stage 3: Gateway Determination** of these guidelines for more information.

## Resolution for finalisation

Once the PPA has reviewed the planning proposal, the public authority and agency submissions and all other submissions, and undertaken any changes, a recommendation is prepared for decision by the council (or the Departmental delegate or Panel, where council is not the PPA).

Council is encouraged to liaise or meet with authorities and government agencies to resolve any key issues.

If council is the LPMA, it may decide to make the plan as described in the role of the LPMA above and in section **Stage 6: Finalisation** of these guidelines.

If council is not the LPMA, then the proposal is sent to the Department for finalisation. A copy of the council report and resolution should be included in the finalisation package. Council may also request that the Minister (or delegate) determine that the matter does not proceed<sup>19</sup>.

18. See section 3.35(1) of the EP&A Act

19. See section 3.35(4) of the EP&A Act

## Key Actions

### ☒ Proponent



- ☐ Support PPA in public exhibition activities
- ☐ Respond to any issues raised in submissions received – potentially in the form of a ‘response to submissions’ report
- ☐ Consider alterations to the proposal and/or additional studies to address issues raised

### ☒ Department



- ☐ If a planning proposal is revised, the Minister (or delegate) will consider the revised proposal and determine whether further consultation is required (including re-exhibition) and whether a revised Gateway determination should be issued
- ☐ Communicate and liaise with the PPA as required

### ☒ Council/PPA



- ☐ Undertake consultation in accordance with the conditions of Gateway determination, including consultation required under sections 3.25 and 9.1 of the EP&A Act
- ☐ Review planning proposal following public exhibition
- ☐ Provide a copy of the submissions (whether redacted or not) to the proponent for review
- ☐ Advertise and hold a public hearing (if required)
- ☐ Undertake to resolve any public agency objection
- ☐ If a planning proposal is revised, forward a copy of the revised proposal to the Department
- ☐ Liaise with the proponent where required to resolve issues or make updates/changes to the planning proposal due to submissions/comments including submissions received from the local community
- ☐ If changes to the proposal from exhibition are substantial, a new Gateway determination may be required or the Gateway determination may need to be altered
- ☐ If further studies are required, consult with the Department
- ☐ Obtain agreement from Planning Secretary regarding any inconsistencies with application section 9.1 Directions
- ☐ Make a decision about the planning proposal and refer the planning proposal to the Department for finalisation (if council is not the LPMA) proposal to the Department for a Gateway determination



# Finalisation

This is the last stage in the LEP making process and generally leads to making of the LEP amendment(s) unless the proposal is not supported.

There are minor differences in process for this stage where council is the LPMA and where the Minister (or delegate) is the LPMA.

The steps for this stage in the process are shown in [Figure 10](#).

## Timeline

**Basic** 25 working days

**Standard** 55 working days

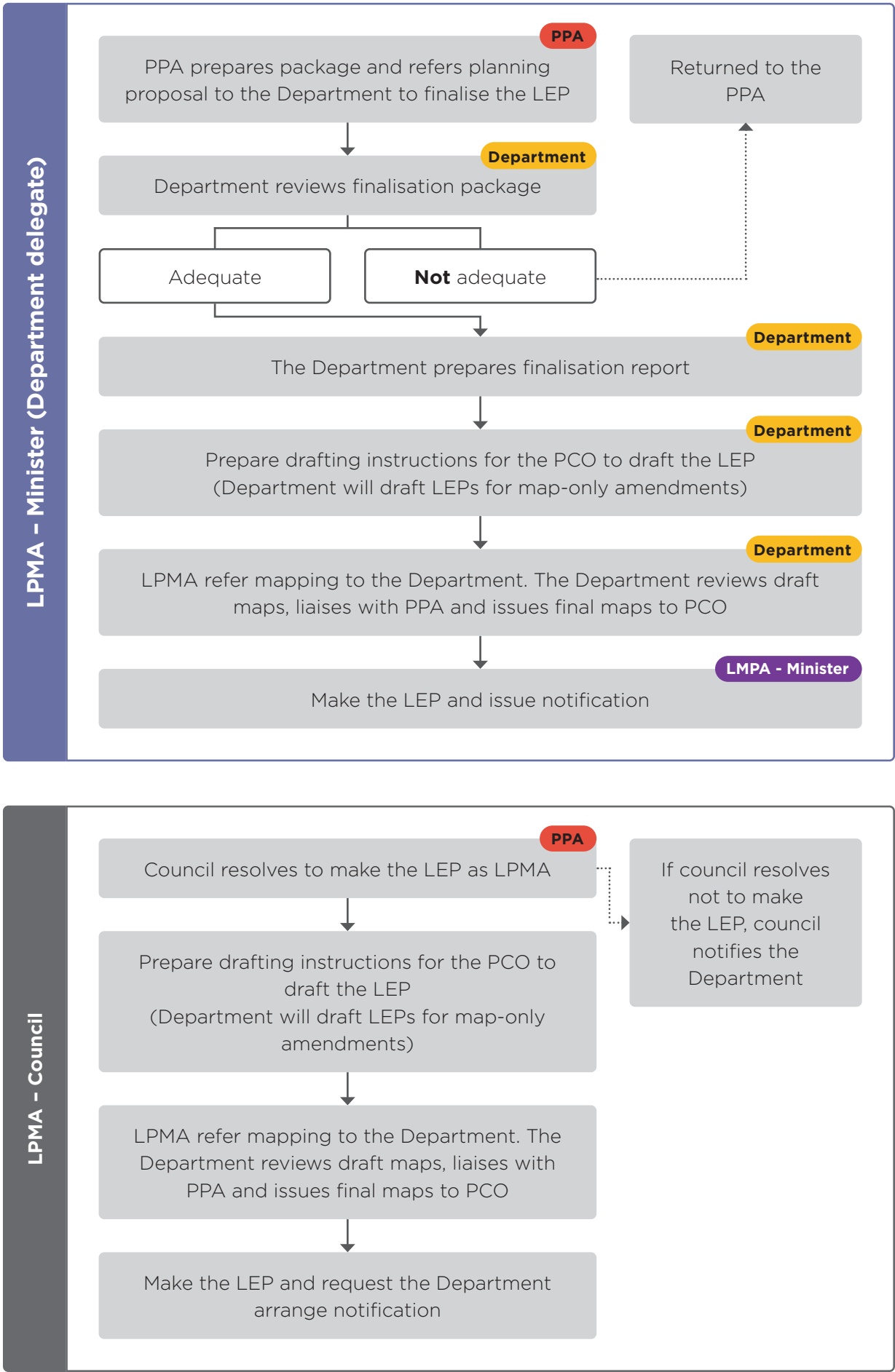
**Complex** 70 working days

**Principal** 80 working days

This stage includes finalisation of the LEP, final GIS mapping, legal drafting and the LEP being made (if the proposal is supported).



Figure 10. Finalisation stage overview





## Finalisation as LPMA

The process for assessing and finalising the planning proposal is similar regardless of whether council or the Minister (or delegate) is the LPMA. The LPMA is responsible for:

- Completing the assessment, ensuring compliance with Gateway conditions (if relevant) and ensuring the relevant section 9.1 Directions have been appropriately addressed
- arranging the drafting of any required LEP to give effect to the proposal of the PPA
- making the LEP

Where a council is the LPMA, the Department's primary function is to provide support and advice throughout the course of the process, if requested to do so. The Department will undertake a technical review of any maps required to implement the LEP to ensure compliance with the mapping guidelines and alignment with the LEP.

The Department will finalise the planning proposal when:

- council is not the LPMA
- council is the LPMA but there is an unresolved agency objection, restricting council from exercising LPMA functions or
- council no longer wishes to exercise LPMA functions

Note: The reasons the Minister (or its delegate) may withdraw an authorisation for a council to make an LEP are outlined on [page 29](#).

## Finalisation package requirements

When the Minister (or delegate) is the LPMA, the following information must be provided to the Department to enable the finalisation of the LEP:

- evidence all Gateway conditions have been satisfied
- evidence relevant section 9.1 Directions have been addressed
- evidence that public exhibition occurred for the required period and all agencies were consulted in accordance with the Gateway determination
- a copy of the council report, including details of public exhibition and a summary of submissions received including the proponent's response to submissions (if provided) and discussion of agency submissions and how they were addressed
- a copy of submissions received from authorities and government agencies
- a copy of the council resolution endorsing the proposal for finalisation
- any recommendation by an independent planning panel
- details of any changes made to the planning proposal post-exhibition, or a statement that no changes have been made
- the final planning proposal
- draft maps, cover sheets and GIS data (where relevant)<sup>20</sup> and confirmation that they have been uploaded to the Planning Portal

## Checking the finalisation package

The Department will check the finalisation package to ensure it is complete and includes all required documentation within 5 days of submission for finalisation.

If inadequate, the Department will return the package to the PPA with advice on requirements for re-submission.

20. Consistent with the *Standard Technical Requirements for Spatial Datasets and Maps*

# Making the LEP

## Preparing the draft LEP

The LPMA prepares instructions for the PCO to draft the LEP. The Department will draft LEPs for map only amendments, and PCO will draft any LEP that involves written amendments, including an LEP that involves written and map amendments.

In some circumstances, preparation of the draft LEP may commence at the post-exhibition stage if the planning proposal is unlikely to change through resolution for finalisation. The PPA should liaise with the Department to confirm drafting at this point.

Communication with PCO or the Department may be subject to legal professional privilege and must be maintained in the strictest confidence. This extends to drafts of the LEP and drafting notes provided to the council. Councils should contact the Department and PCO before making draft LEPs available to third parties.

Where council is the PPA but not the LPMA, the Department will consult with council on the terms of the draft LEP to ensure it is consistent with the objectives and outcomes and does not cause any unintended impacts before making a decision on the final form of the LEP amendment. The Department will obtain legal guidance as early as possible in order to streamline the finalisation process.

PCO (or the Department) will produce the LEP. Following any consultation with the PPA, the LPMA will request a final LEP.

For instruments drafted by PCO, the Parliamentary Counsel will also issue an Opinion that the LEP can be legally made. An LEP drafted by PCO cannot be made by the LPMA unless such an Opinion has been issued.

PCO has provided a central email address ([parliamentary.counsel@pco.nsw.gov.au](mailto:parliamentary.counsel@pco.nsw.gov.au)) for councils to forward their drafting instructions and requests.

## Mapping

The Department reviews draft maps and technical requirements and confirms they are consistent with the planning proposal. Any mapping changes should be discussed between the PPA and the Department.

Once supported, the Department issue final maps to PCO.

## Finalisation report

Where the Minister (or delegate) is the LPMA, the Department will prepare a finalisation report for the Minister or delegate consideration. This report will:

- summarise the final planning proposal
- summarise public exhibition and post-exhibition changes, including advice from authorities and government agencies
- review that the planning proposal is consistent with the Gateway determination and assessment, including strategic and site-specific assessment and re-assessment of section 9.1 Directions, SEPPs, regional and district plans and council's LSPS, where necessary
- assess impacts where the proposal is different from the scope of the proposal at Gateway stage
- make post-exhibition amendments to respond to a matter or issue raised during public exhibition
- make a recommendation to the Minister (or delegate) to make the LEP or not

## Making the decision

The LPMA may<sup>21</sup>:

- Make the LEP with or without variation in the terms the LPMA considers appropriate
- Not make the LEP
- Defer the inclusion of a matter in the proposed LEP

When the LPMA decides not to make a proposed LEP or defers the inclusion of a matter in an LEP, the LPMA may specify procedures the PPA must comply with before the matter is reconsidered by the LPMA.

21. See section 3.36(2)-(4) of the EP&A Act

## Map-only LEP amendments

The Department is responsible for the legal drafting of all map-only LEP amendments.

Where council is the LPMA, a request for legal drafting of a map-only amendment should be submitted to the Department at [mapinstrument.drafting@dpie.nsw.gov.au](mailto:mapinstrument.drafting@dpie.nsw.gov.au). The relevant Department Place or Regional team should be copied for administrative purposes only (monitoring and reporting).

Drafting requests should include all relevant finalisation package requirements, including proposed map data and proposal information.

The Department will prepare the instrument and liaise with the council to finalise. Once finalised, council as the LPMA can formally make the instrument and provide to the Department for notification.

Where the Department is the LPMA, council will request finalisation and the Department will review the finalisation and prepare the instrument without requiring PCO involvement. PCO is not required to issue an Opinion for map-only amendments and the instrument can legally be made by either council or the Department as LPMA.

## Notification requirements

Once the plan is made, the Department requests that PCO notify the plan on the NSW Legislation website.

The following documents must be provided for notification with the request:

- signed front page of the LEP (including full name of the LEP and PCO's file reference)
- where the LEP has been prepared by PCO, signed map cover sheet (in the case of changes to maps of instruments containing the standard map clause)
- the maps that relate to the LEP
- the name/position of the delegate, date and who signed the LEP

Where the council is the LPMA, it must request the Department notify the plan.

The plan comes into force on the day the LEP is published on the NSW Legislation website, or a later date specified in the LEP.

## Key Actions

### ☒ Proponent



- ☐ No action

### ☒ Council/PPA



- ☐ Forward a copy of the planning proposal and relevant supporting information to the Department via the Planning Portal and request that a draft LEP is prepared – this includes uploading maps, map cover sheet and GIS data
- ☐ Review draft LEP and liaise with the Department

### ☒ Council as LPMA



- ☐ Prepare drafting instructions and arrange for the drafting of the LEP to PCO
- ☐ Issue relevant mapping to the Department for technical review, and once confirmed, liaise with PCO to finalise maps
- ☐ If a map-only LEP amendment, liaise with the Department to finalise
- ☐ Liaise with PCO and confirm content of LEP – PCO issues Opinion that the plan can be made
- ☐ Make the LEP and issue to the Department for notification
- ☐ Request the Department to notify the plan

### ☒ Minister (Department delegate) as LPMA



- ☐ Undertake technical review of maps required to implement the LEP to ensure they comply with the mapping technical guidelines and liaise with PCO to finalise maps
- ☐ Meet with state agencies, if required, to resolve outstanding agency issues
- ☐ Prepare drafting instructions and arrange for the drafting of the LEP to PCO
- ☐ Consult with PPA on the content of the draft LEP
- ☐ Content of the LEP finalised and an opinion issued by PCO that the plan can be made
- ☐ Prepare finalisation report and package including recommendation for Minister (or delegate) to make the LEP
- ☐ If resolved to make the plan, issue for notification
- ☐ Request PCO notify the plan



# Special cases and exceptional circumstances

**This section identifies alternative pathways and unique considerations for specific planning proposals**

## Varying a development standard instead of amending a LEP

The NSW planning system provides flexibility in planning controls by providing the ability for a council to vary development standards<sup>22</sup> via clause 4.6 of all Standard Instrument LEPs in NSW to achieve better planning outcomes and where the objectives of the LEP are achieved.

In situations where the existing zoning permits a proposed development, it may be possible to seek a variation of the development standards to enable a development that would otherwise be incapable of satisfying those standards.

Clause 4.6 variations apply to LEP controls deemed to be a development standard (e.g. height of building, floor space ratio, minimum lot size). If the proposed development is consistent with the objectives of the development standard and strict compliance with the development standard is deemed 'unreasonable and unnecessary', it is open to the council or LPP to approve the variation aspect of a development application (DA).

To seek a variation to a development standard or standards, an applicant may submit a written clause 4.6 variation to council with the corresponding development application (DA) seeking approval for that development. In some circumstances, this can be an alternative pathway to requiring a planning proposal to amend a LEP.

If an applicant wishes to vary a development standard in a LEP, it is recommended that the proponent for the DA discuss the proposed variation(s) with the relevant consent authority or council.

Further considerations on relying upon clause 4.6 can be found on the [Local Planning and Zoning Resources page](#) of the Department's website. This includes:

- Varying development standards: A Guide
- Planning Circular – PS 20-002 – Variations to development standards

22. As defined under section 1.4(1) of the EP&A Act



## Appointment of an alternative PPA

The Minister may direct that the Planning Secretary, a Sydney district or regional planning panel or any other person or body prescribed by the regulations to be the PPA for a planning proposal. This only occurs when<sup>23</sup>:

- the proposed instrument relates to a matter that, in the opinion of the Minister, is of State or regional environmental planning significance or environmental planning significance to a district under Division 3.1 of the EP&A Act
- the proposed instrument makes provision that, in the opinion of the Minister, is consequential on:
  - the making of another environmental planning or other instrument, or
  - changes made to a standard instrument under section 3.20 of the EP&A Act
- the Planning Secretary, the IPC or a Sydney district and regional planning panel has recommended to the Minister that the proposed instrument should be submitted for a Gateway determination or that the proposed instrument should be made
- council for the local government area 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<sup>24</sup>; or

- proposed instrument is to apply to an area that is not within an LGA

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.

Council or a proponent can request an alternative PPA be appointed. It is the responsibility of the party that requested an alternative PPA be appointed to provide adequate justification in writing to assist the Minister (or delegate) in forming the opinion that an alternative PPA should be appointed. In these instances, the Department should be contacted to seek early advice on whether this pathway is suitable.

In cases where the PPA is not the council, the panel, person or body appointed will be assisted in processing the planning proposal (including public authorities and government agencies and community consultation, liaison with the proponent, responding to submissions and drafting recommendations) by Departmental staff.

Any public meeting that may be required will be convened by the relevant panel. The Minister (or delegate) will be the LPMA when the PPA is not the relevant council.

23. See section 3.32(2) of the EP&A Act

24. See section 3.32(2)(d) of the EP&A Act

## Classification and re-classification of public land

In the case of LEP amendments that seek to classify or reclassify public land, the Planning Secretary has issued requirements as to the specific matters that must be addressed in the justification of the planning proposal. This should be provided in addition to the requirements detailed in **Section 2: The Planning Proposal** of this guideline and in accordance with [LEP Practice Note PN 19-001](#).

This practice note explains the classification and reclassification of public land process and identifies a number of matters that need to be addressed in a planning proposal.

In cases where the reclassification involves significant open space (either currently zoned or used as public open space) or will result in a reduction in public open space, councils may be required to demonstrate that an assessment of the current and future open space needs of the local community have been considered. In cases where the reclassification involves significant open space, the Department will be the LPMA.

Where council is the LPMA, the council will be responsible for providing instructions to PCO to obtain the draft legal instrument.

Planning Secretary's requirements for reclassifying land are as follows:

- Is the planning proposal the result of a strategic study or report?
- Is the planning proposal consistent with the council's community plan, or other local strategic plan?
- 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
- The concurrence of the landowner must be obtained, where the land is not owned by the PPA
- The effect of the reclassification, including loss of open space, any discharge of interests, and/or removal of public reserve status
- The strategic and site-specific merits of the reclassification and evidence to support this
- Does the planning proposal deliver a public benefit?
- Have the implications for open space in the LGA in relation to current and future open space needs been considered and will there be a net gain to open space?
- How funds obtained from any future sale of the land will be used
- How council will ensure funds remain available to fund proposed open space sites or improvement referred to in justifying the reclassification, if relevant





## Expedited amendments of environmental planning instruments (section 3.22)

This Minister may dispense with all or part of the LEP making process in expediting an amendment of an LEP, if the purpose of the amendment is to:

- correct an obvious error in the principal LEP
- address matters that are minor in nature
- deal with matters that the Minister considers do not warrant compliance LEP making process because they will not have any significant adverse impact on the environment or adjoining land

Usually, these types of amendments are initiated by council but can also be initiated by the Department at the request of an authority or government agency. The request must be made in writing to the Planning Secretary and provide reasons for the need for the expedited amendment under the criteria above. The Minister (or delegate) will advise which, if any, parts of the process can be dispensed.

This is a basic LEP amendment and should be made in an accelerated timeframe.

The following steps should be undertaken in progressing a section 3.22 amendment and in accordance with [planning circular PS 21-014](#):

- Council to advise the Department of the proposed amendment via the Planning Portal via completion of the Section 3.22 EP&A Act Submission template included in planning circular PS 21-014
- Department undertakes a check on information provided and confirms matter is considered appropriate for amendment under section 3.22
- Department's legal team arranges preparation of a draft LEP to give effect to the amendment and confirms with council
- Once finalised, the Department forwards the LEP to the Minister (or delegate)
- The Minister (or delegate) will decide whether to make the amending LEP. If supported, the amending LEP will be notified on the NSW Government Legislation website





# Concurrent Development Application and Planning Proposal

Concurrent lodgement of a DA and a planning proposal may be permitted, where a proposed development would require an amendment to a LEP<sup>25</sup>.

The EP&A Act does not prevent a proponent from lodging, nor a consent authority considering a concurrent DA.

Public exhibition of the planning proposal and the DA should ideally occur at the same time, or as close together as is practicable. If the public exhibition time periods are different, the longer period is to apply to both.

A potential benefit of this provision is a reduction in the total timeframe for amending both an LEP and obtaining approval for a development application, rather than if the process occurred consecutively.

The Department recommends that the proponent discuss this pathway option with the relevant PPA and consent authority before lodging any concurrent applications.

25. See Division 3.5 of the EP&A Act





# The Planning Proposal



Manly Bike Tours, Manly  
Credit: Destination NSW

# Planning Proposal Preparation

## Content of a planning proposal

The proponent or PPA must prepare the planning proposal to a high standard and comply with the following general requirements.

### Structure and form

The planning proposal should be divided as follows:

- the main report, which clearly addresses the components as described in content of the proposal below. This should demonstrate strategic and site-specific merit of the proposal and include an executive summary table with site address, Lot DP, existing planning controls, proposed amendments and technical studies relied upon
- the appendices to the main report, which may include (if applicable):
  - o studies and investigations to support the planning proposal
  - o stakeholder engagement report
  - o scoping proposal report and study requirements provided during pre-lodgement stage
  - o draft development control plan or local contributions plan
  - o draft voluntary planning agreement

The level of detail required in a planning proposal should be proportional to the complexity of the proposed amendment as defined under the planning proposal categories (page 14) and be of sufficient quality to allow it to be completed within the relevant benchmark timeframe.

The Department has developed a supporting technical information guide to assist both proponents and councils to identify and inform what technical studies and information may be required when a planning proposal is being prepared – refer to **Attachment C**.

The planning proposal must contain the following components in the main report<sup>26</sup>:

- **Part 1 – Objectives and intended outcomes** – a statement of the objectives of the proposed instrument
- **Part 2 – Explanation of provisions** – an explanation of the provisions that are to be included in the proposed instrument
- **Part 3 – Justification of strategic and site-specific merit** – justification of strategic and potential site-specific merit, outcomes, and the process for implementation
- **Part 4 – Maps** – existing and proposed maps, where relevant, to identify the effect of the planning proposal and the area to which it applies
- **Part 5 – Community consultation** – details of consultation undertaken with Government agencies, council or other authorities, and community consultation that is to be undertaken on the planning proposal post-Gateway and during exhibition
- **Part 6 – Project timeline** – project timeline to detail the anticipated timeframe for the LEP making process

The Planning Secretary has also issued requirements with respect to the preparation of a planning proposal<sup>27</sup>.

These include:

- specific matters that must be addressed in the justification of the planning proposal, included in **Part 3** of a planning proposal
- a project timeline to detail the anticipated timeframe for the LEP making process for each planning proposal, included in **Part 6** of a planning proposal

26. See section 3.33(2) of the EP&A Act

27. See section 3.33(3) of the EP&A Act



## Part 1 – Objectives and intended outcomes

This section must provide a clear and concise description of the planning proposal and be written in plain English, so it is easily understood by the community.

The objectives or intended outcomes, when read with **Part 2 - Explanation of provisions**, constitute the core of the planning proposal and will be the basis for drafting the LEP. They must be specific enough to reflect the objective of the proposal yet flexible enough to allow for alternatives.

This section in a planning proposal is a statement of what is planned, not how it is to be achieved.

Example 1 below demonstrates how an 'objectives and intent' may be described.

### Example 1

#### Objective

To amend the Burnham LEP 2013 to provide for the urban renewal of the subject site at "address" to accommodate a mixed-use development and introduce specific additional 'Local Provisions' in Part 6 of LEP 2013, to encourage large lot amalgamation.

#### Intended outcomes

- Contribute to the site's role as a strategic centre providing housing, jobs and services in a mixed-use development.
- To facilitate delivery of public domain improvements including active street frontages, pedestrian linkages and improved connectivity to Burnham train station.
- To permit a mixed-use development with an appropriate balance of commercial office, retail, residential and community uses to contribute to the existing vibrant and active community in Burnham.
- Contribute to the rejuvenation of Burnham by encouraging and supporting development activity in the commercial core and supporting the diverse mixed-use nature of the area.

## Part 2 – Explanation of provisions

This section must provide a detailed statement of how the objectives or intended outcomes will be achieved by amending an existing LEP.

The explanation of provisions should be clearly stated and contain enough information on the proposal to assist legal drafting of the LEP. Proposed zones and/or development standards may be stated if known at this stage in the planning proposal.

The following may be included within the explanation of provisions:

- amend LEP mapping to change land zoning, maximum permissible building height, floor space ratio controls, introduce special provisions etc
- new local provisions and confirming objectives of the clause and where the clause applies (e.g. residential, business zones) and key considerations
- thumbnail mapping to indicate intended provisions

Example 2 demonstrates how the explanation of provisions may be described.

### Example 2

#### Intended Provisions

- Amend the Burnham LEP 2013 Height of Buildings Map from 32 m to a maximum building height of 61 m.
- Amend the Burnham LEP 2013 Floor Space Ratio Map from 3.5:1 to provide a maximum Floor Space Ratio of 6.1:1.
- Amend the Burnham LEP 2013 Special Provisions Map to show the site as Area A.
- Amend Part 6 Additional Local Provisions to include the following site-specific provisions to Area A on the Special Provisions Map:
  1. If all lots within 'Area A' are amalgamated, the consent authority may grant development consent to the erection of a building on land to which this clause applies, if the building:
    - a. Will not exceed a height of 65m; and
    - b. Will not exceed a floor space ratio of 6.1:1.
  2. Despite clause (1), development to which this clause applies must not result in a net increase in overshadowing to Bourke Park between 12pm – 2pm June 21.

The intent of the additional local provision is to incentivise amalgamation of all lots within the site. All other planning controls applying to the site will remain unchanged.

Thumbnail mapping may be used to clearly indicate the intended provisions:





## Part 3 – Justification of strategic and site-specific merit

This section must provide a detailed assessment of the proposal's strategic and site-specific merit to determine whether the planning proposal should be supported.

This is the most important section of the planning proposal and should integrate findings from supporting studies and investigations and provide justification for the proposed amendments to the LEP. It must also consider the interaction between these findings and whether the proposal will align with the strategic planning framework and have any environmental, social, or economic impacts.

### Strategic and site-specific merit

For a planning proposal to proceed through Gateway determination, the Minister (or delegate) must be satisfied that the proposal has strategic and site-specific merit and that identified potential impacts can be readily addressed during the subsequent LEP making stages.

The following illustrates the assessment criteria and how justification of strategic and site-specific merit in the planning proposal should be addressed. This should be considered in conjunction with the listed matters for consideration (see below **Table 3**).

### Strategic merit

**Strategic merit** means a proposal has alignment with the NSW strategic planning framework.

Sections A and B in **Table 3** must be included in the planning proposal. The planning proposal must demonstrate how the proposed amended or principal LEP will give effect to the strategic planning framework to then ensure that the proposal has strategic merit.

The achievement of strategic merit is not a yes/no response. The planning proposal should include reasonable justification explaining how and why strategic merit is achieved and needs to address all relevant principles, objectives, and actions in the relevant strategic plans.

### Assessment criteria

Does the proposal:

- Give effect to the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the Greater Sydney Region, and/or corridor/precinct plans applying to the site. This includes any draft regional, district or corridor/precinct plans released for public comment or a place strategy for a strategic precinct including any draft place strategy; or
- Demonstrate consistency with the relevant LSPS or strategy that has been endorsed by the Department or required as part of a regional or district plan; or
- Respond to a change in circumstances that has not been recognised by the existing planning framework

Factors that lead to responding to a change in circumstances may include, but not exclusively relate to:

- Key infrastructure investment or opportunity to plan for future infrastructure unanticipated by the existing strategic planning framework
- Response to key Government priorities – Premier's Priorities, climate change, or a shift in government policy (e.g. NSW Government's Net Zero Plan)
- Changes to population and demographic trends

Any planning proposal that seeks to address this criteria needs to be supported with clear and appropriate technical studies and justification.

It is encouraged that where a planning proposal fails to adequately demonstrate strategic merit the relevant PPA is unlikely to progress the proposal, despite any site-specific merit it may have.

Note: A draft regional plan outside of the Greater Sydney Region, draft district plan within the Greater Sydney Region or draft corridor/precinct plan that has been released for public comment by the Minister, GSC or the Department does not form the basis for the strategic merit test where the Minister, GSC or the Department announces that there is to be another exhibition of, or it is not proposed to finalise that draft regional, district or corridor/precinct plan.

## Site-specific merit

Sections C, D, and E in **Table 3** must be included in the planning proposal and identify the potential environmental, social, and economic impacts of the proposal and outline proposed mitigation measures and justification. In this way the planning proposal is to demonstrate that the proposal is suitable for the site and the site is (or can be made) suitable for the resultant development.

## Assessment criteria

Does the proposal give regard and assess impacts to:

- the natural environment on the site to which the proposal relates and other affected land (including known significant environmental areas, resources or hazards)
- existing uses, approved uses, and likely future uses of land in the vicinity of the land to which the proposal relates
- 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



The Goods Line, Ultimo  
Credit: Destination NSW

## Questions to consider when demonstrating the justification

**Table 3** outlines the matters for consideration when describing, evaluating and justifying a proposal.

**Table 3. Matters for consideration**

| #                                                 | Question                                                                                                                   | Considerations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|---------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Section A – need for the planning proposal</b> |                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>1</b>                                          | <b>Is the planning proposal a result of an endorsed LSPS, strategic study or report?</b>                                   | <ul style="list-style-type: none"> <li>• Explain the context of the planning proposal</li> <li>• If the proposal aims to give effect to, or is the product of, a local planning priority or action in a LSPS endorsed by the Planning Secretary or delegate and/or assured by the GSC, or Department endorsed or approved local strategy (such as a Local Housing Strategy), this should be clearly outlined and described to justify the proposal</li> <li>• If the proposal implements the outcomes of a strategic study or report of some kind, the nature of the study and its key findings should be briefly explained to justify the proposal. A copy of the study or report (or relevant parts) should be submitted with the planning proposal and ultimately form part of the public exhibition material</li> </ul> |
| <b>2</b>                                          | <b>Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?</b> | <ul style="list-style-type: none"> <li>• Review alternative approaches to achieve or give effect to the objectives or intended outcomes. This may include seeking to vary applicable development standards via clause 4.6 of the relevant LEP, waiting for council to finalise a study and/or separate planning proposal or whether the outcome could be achieved through an amendment to a development control plan</li> <li>• It should be evident from this assessment that the proposed approach is the best, most efficient and most time-effective approach to delivering the desired outcome</li> </ul>                                                                                                                                                                                                              |

| #                                                                   | Question                                                                                                                                                                                 | Considerations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|---------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Section B – relationship to the strategic planning framework</b> |                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>3</b>                                                            | <b>Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including any exhibited draft plans or strategies)?</b> | <ul style="list-style-type: none"> <li>Regional and district plans and strategies include objectives, directions, planning priorities and specific actions for a range of different matters relevant to that region, district and LGA. These plans and strategies may include specific housing and employment targets and/or identify regionally important natural resources, transport networks and social infrastructure. A planning proposal should provide an explanation and justification of how the planning proposal is consistent with the applicable directions, priorities and actions. If a planning proposal is inconsistent with an objective and/or action within these documents, sufficient justification should be also included in the planning proposal</li> <li>The relationship between the planning proposal and strategic plan or strategy needs to be outlined and whether the proposal will give effect to the plans and/or strategies. Mapping may be provided to demonstrate how a proposal will give effect to the priorities or actions under a regional or district plan</li> <li>At a minimum, the planning proposal should address the assessment criteria for strategic merit</li> </ul> |
| <b>4</b>                                                            | <b>Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?</b>            | <ul style="list-style-type: none"> <li>Demonstrate how the planning proposal is consistent with the relevant council's LSPS that has been endorsed by the Planning Secretary (or assured by the GSC). Relevant matters should be identified and the relationship of the planning proposal to those matters discussed</li> <li>Where there is no endorsed LSPS, another local strategy or local strategic plan may be considered</li> <li>The status of any strategy, plan or LSPS should be considered in the planning proposal – draft, adopted by council, endorsed by the Planning Secretary, etc. An example is an approved local housing strategy. A planning proposal that gives effect to a local strategy that has been endorsed/approved by the Planning Secretary would be expected to be supported</li> <li>Local strategies or local strategic plans endorsed by the Planning Secretary or delegate also provide the opportunity to justify or detail how environmental issues (such as those set out in section 9.1 Directions) may be addressed</li> </ul>                                                                                                                                                   |
| <b>5</b>                                                            | <b>Is the planning proposal consistent with any other applicable State and regional studies or strategies?</b>                                                                           | <ul style="list-style-type: none"> <li>Demonstrate how the proposal is consistent with any other relevant State or regional study or strategy – for example. Future Transport Strategy 2056, Cumberland Conservation Plan, Net Zero Plan, Water Resource Plan, State Infrastructure Strategy, A 20 Year Economic Vision for Regional NSW</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |



| #                                                                   | Question                                                                                                    | Considerations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|---------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Section B – relationship to the strategic planning framework</b> |                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>6</b>                                                            | <b>Is the planning proposal consistent with applicable SEPPs?</b>                                           | <ul style="list-style-type: none"> <li>• Provide an assessment of the proposal against relevant SEPPs</li> <li>• It may be necessary to provide preliminary advice in relation to how the proposal can satisfy the requirements of a SEPP <ul style="list-style-type: none"> <li>◦ For example, <i>State Environmental Planning Policy (Infrastructure) 2007</i> requires that certain trip-generating proposals must be referred to Transport for NSW for advice</li> </ul> </li> <li>• Mapping may be provided in the planning proposal to identify SEPPs relevant to the proposal</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>7</b>                                                            | <b>Is the planning proposal consistent with applicable Ministerial Directions (section 9.1 Directions)?</b> | <ul style="list-style-type: none"> <li>• The Minister may issue directions regarding the content of LEPs, to the extent that the content must achieve or give effect to particular principles, aims, objectives or policies set out in those directions<sup>28</sup></li> <li>• Assess against relevant <a href="#">section 9.1 Directions</a><sup>29</sup></li> <li>• Where the planning proposal is inconsistent with any of the relevant directions, those inconsistencies must be specifically explained and justified in the planning proposal. There may need to be technical or evidence provided as part of the justification</li> <li>• Additional information may be required after a Gateway determination has been issued to demonstrate consistency with a direction or enable the Planning Secretary to agree to an unresolved inconsistency</li> <li>• A PPA will need to ensure that any unresolved inconsistency with a direction is addressed and agreed to by the Planning Secretary prior to the LEP being made</li> <li>• Certain directions require consultation with government agencies to demonstrate consistency with the direction's desired outcome. This should be identified with council and the Department. Pre-lodgement discussions are encouraged to identify key matters that can be addressed early in the process. Formal consultation with the agencies will occur during exhibition</li> </ul> |

28. See section 9.1 of the EP&A Act

29. From 1 March 2022, the section 9.1 Directions will include a direction that states a planning authority must have regard to the Minister's Planning Principles and give consideration to specific planning principles that are relevant to the preparation of the planning proposal (Direction 1.1 – Implementation of the Minister's Planning Principles).

| #                                                            | Question                                                                                                                                                                                  | Considerations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|--------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Section C – environmental, social and economic impact</b> |                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 8                                                            | <b>Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected because of the proposal?</b> | <ul style="list-style-type: none"> <li>Identify if the land subject to the proposal has the potential to contain critical habitat or threatened species, populations or ecological communities, or their habitats</li> <li>If yes, undertake studies that are necessary to confirm the presence of these species or habitats and their significance. An assessment of its significance and/or consultation should place to inform the Gateway determination</li> <li>Mapping may be provided in the proposal to identify known vegetation communities located within or near the site</li> <li>An assessment of significance in accordance with Part 7A of the <i>Fisheries Management Act 1994</i> and the 'Threatened Species Assessment Guidelines', may be required prior to Gateway determination</li> <li>Identify any approvals required under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth) and <i>Biodiversity Conservation Act 2016</i></li> <li>Any adverse impacts will trigger the requirement for the PPA to consult on the planning proposal with relevant authorities and government agencies</li> </ul> |
| 9                                                            | <b>Are there any other likely environmental effects of the planning proposal and how are they proposed to be managed?</b>                                                                 | <ul style="list-style-type: none"> <li>Environmental effects unique to a planning proposal may not be addressed in the strategic planning framework. These matters may be identified in informal guidelines, codes or policies prepared by other public authorities and government agencies. Environmental effects may include natural hazards such as flooding, land slip, bushfire hazard, etc</li> <li>The planning proposal should identify any other environmental effects and prepare information or undertake investigations to address an identified matter</li> <li>Scope of these investigations may be identified in the planning proposal and may need to be undertaken to inform the Gateway determination</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                        |
| 10                                                           | <b>Has the planning proposal adequately addressed any social and economic effects?</b>                                                                                                    | <ul style="list-style-type: none"> <li>Identify effects on items or places of non-Aboriginal or Aboriginal cultural heritage not already addressed elsewhere</li> <li>Estimate the number of jobs or housing growth (e.g. construction/post-construction and housing diversity)</li> <li>Identify the impact on existing social infrastructure, such as schools and hospitals</li> <li>Identify the need for public open space or impacts on green infrastructure</li> <li>Identify the impact on existing retail centers</li> <li>Identify measures to mitigate any adverse social or economic impacts, where necessary, and whether additional studies are required</li> <li>Identify any proposed public benefits</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                           |

| #                                                                 | Question                                                                                                                                          | Considerations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
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| <b>Section D – Infrastructure (Local, State and Commonwealth)</b> |                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 11                                                                | <b>Is there adequate public infrastructure for the planning proposal?</b>                                                                         | <ul style="list-style-type: none"> <li>• Generally, this applies where the planning proposal includes development that will, or is likely to, require the provision of, or increase the demand for, public facilities and services</li> <li>• Address whether existing infrastructure is adequate to serve or meet the needs of the proposal and how any predicted shortfall in infrastructure provision could be met</li> <li>• Undertake studies required to identify the extent of any infrastructure shortfall, potential mechanisms or strategies to address any shortfall and which agencies have been consulted as part of that process</li> <li>• The proponent/PPA is to identify what local and regional infrastructure may be needed</li> <li>• For planning proposals likely to place additional demands on public infrastructure, it is important to undertake consultation with the public authorities and government agencies responsible for the provision of that infrastructure. The Gateway determination will confirm whether a local contributions plan is required to be exhibited with the planning proposal and require regular feedback on the progress of finalizing an infrastructure strategy and high-level costs</li> <li>• For planning proposals, a local contributions plan may be required. Liaison with the council is necessary</li> </ul> |
| #                                                                 | Question                                                                                                                                          | Considerations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Section E – State and Commonwealth Interests</b>               |                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 12                                                                | <b>What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway determination?</b> | <ul style="list-style-type: none"> <li>• One of the aims of the LEP making process is to reduce the number of unnecessary referrals to government agencies. The planning proposal should nominate the state and federal agencies to be consulted and outline the matters that have triggered the need for the referral. Consultation will be confirmed by the Gateway determination</li> <li>• The proponent or PPA should get preliminary views of any state or federal agency prior to submitting a planning proposal and include them in this section including any preliminary issues raised. This should include any scope of additional information/ investigations, evidence of consultation and any agreement in relation to the progression of the planning proposal</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

## Part 4 – Maps

Mapping must be consistent with the Department's *Standard Technical Requirements for Spatial Datasets and Maps* using the same format, symbology, labelling and appropriate map scale.

All existing and proposed mapping submitted to the Department as part of a planning proposal should be accompanied by GIS data. All LEP mapping should commence as early as possible in GIS, particularly with complex planning proposals or Principal LEPs.

Mapping may include:

- the subject site and immediate surrounds
- current zoning
- current development standards
- any alternative zone(s), if a change is proposed

Other relevant maps or figures may include:

- maps illustrating changes of development standards if a change is proposed
- extent of a proposed heritage conservation area
- location of a specific heritage item
- extent of native vegetation and validated regionally important environmental values
- proposed extent of an environmental conservation area
- area to which a local provision will apply

Additional material such as aerial photographs clearly identifying the subject site should also be included where appropriate.

If these requirements cannot be met at planning proposal stage, the Gateway determination may require technically compliant mapping to ensure consistency with any current LEP maps.

## Part 5 – Community consultation

This section of the planning proposal must describe:

- Consultation and outcomes undertaken with council, state agencies or authorities during the pre-lodgement stage
- Any community consultation undertaken, or consultation with other key stakeholders

It should set out the extent of consultation having regard for the public exhibition requirements in Section 1 of this guideline. The Gateway determination will also outline the required public exhibition period based on the different planning proposal categories.

Community consultation will be considered at the Gateway stage, with the Gateway determination confirming the requirements.

The Gateway determination may also specify additional information or studies to be finalised before any consultation commences, often to make sure that everyone can make an informed opinion. In some cases, the Gateway determination may require the PPA to submit studies to the Department for review prior to public exhibition.



## Part 6 – Project timeline

This section must outline the project timeline as a tool for the PPA, the Department and PCO to monitor the progress of the planning proposal through the LEP making process and manage resources accordingly.

The timeframe for the completion of the planning proposal will depend on the planning proposal category, the complexity of the matter, the nature of any additional information that may be required and the need for agency and community consultation. The timeframes for which an LEP is made will be determined by the Department at the Gateway stage and set out in the Gateway determination.

For proponent-initiated planning proposals, consultation with council on the timeframe for completion is recommended.

Refer to **Benchmark Timeframes in Section 1 (page 17)** of this guideline to inform what are maximum overall timeframes afforded for different types of planning proposals.

**Table 4** gives an example of an indicative project timeline and milestones.

At a minimum, the project timeline should include:

- anticipated commencement date (date of Gateway determination)
- anticipated timeframe to finalise the infrastructure studies/plan
- anticipated timeframe for completion of any additional technical studies, not completed prior to Gateway
- timeframe for public agency consultation
- anticipated dates of public exhibition and, if required, a public hearing
- timeframe for submissions to be considered
- timeframe for the consideration of a proposal after the exhibition
- date the plan will be made (where council is the LPMA) or date of submission to the Department to finalise the LEP
- date of notification

We note that timeframes are estimates and may change over the life of the proposal. The project timeline may be amended in the Gateway determination to provide the necessary level of confidence that the LEP will be finalised within a reasonable timeframe.

**Table 4. Indicative project timeline**

| Stage                                                            | Timeframe and/or date |
|------------------------------------------------------------------|-----------------------|
| Consideration by council                                         |                       |
| Council decision                                                 |                       |
| Gateway determination                                            |                       |
| Pre-exhibition                                                   |                       |
| Commencement and completion of public exhibition period          |                       |
| Consideration of submissions                                     |                       |
| Post-exhibition review and additional studies                    |                       |
| Submission to the Department for finalisation (where applicable) |                       |
| Gazettal of LEP amendment                                        |                       |



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