

QUESTION ON NOTICE**INQUIRY INTO THE NSW PLANNING FRAMEWORK****QUESTION ON NOTICE: IMPLEMENTATION ADVISORY COMMITTEE**

On 30 March 2009, the Hon Christine Robertson MLC asked a question of the Director General, during the Inquiry into the NSW Planning Framework which was taken on notice.

Question:

The Hon. CHRISTINE ROBERTSON: Who is on the implementation advisory committee? What sort of persons?

Mr HADDAD: I can give you, if you like, a list of everything, but we have representatives from all stakeholders, the Local Government and Shires Association, the General Managers Association, the Property Council, architects, certifiers, the Law Society. So it has representatives from a number of others—

The Hon. CHRISTINE ROBERTSON: Can you take that question on notice?

Mr HADDAD: Yes, I can give you this detail. It is quite representative. We also have, as importantly, a group of planning directors. I really value the participation of this group because they are the practitioners in the field. We meet monthly and probably will expand their activities beyond the planning reforms. It has been a good exercise to involve them. That is an outside implementation advisory committee.

CHAIR: Would you supply those details?

Mr HADDAD: Yes, we will give you the details.

Answer:

The Implementation Advisory Committee consists of:

Name	Position	Organisation
The Hon Kristina Keneally	Minister for Planning	NSW Government
Sam Haddad	Director General	NSW Department of Planning
Greg Woodhams	Vice President	Planning Institute of Australia Committee
Deborah Dearing	NSW President	Institute of Architects
Cr Genia McCaffery	President	Local Government Association of NSW
Cr Paul Braybrooks	Treasurer	Shires Association of NSW
Mark Ferguson	President	Local Government General Managers Association
Jeff Angel	Executive Director	Total Environment Centre Inc
James Ryan	Hon Treasurer	Nature Conservation Council
Mary Macken	Senior Vice President	Law Society of NSW
Ken Morrison	NSW Executive Director	Property Council of Australia
Judy McKittrick	President	Urban Development Institute of Australia

Name	Position	Organisation
Graham Wolfe	Executive Director	Housing Industry Association
Christian Payne	Deputy President	Real Estate Institute of NSW
Aaron Gadiel	Chief Executive Officer	Urban Taskforce Australia
Allan Harriman		Australian Institute of Building Surveyors
Craig Hardy	President	Association of Accredited Certifiers
Peter Merideth	Executive Director	Master Builders Association
Terry Wetherill	Chief Executive Officer	NSW Business Chamber

The Local Government Planning Directors Group consists of:

Name	Organisation
David Broyd	Port Stephens Council
Alison McGaffin	Tamworth Council
Catherine Van Laeren	Midwestern Regional Council
Elizabeth Stoneman	Leeton Council
Glennys James	Blacktown City Council
John Brunton	Sutherland Shire Council
Tim Fletcher	Shoalhaven Council
Malcolm Ryan	Warringah Council

QUESTION ON NOTICE: INTERNAL PART 3A GUIDELINES

On 30 March 2009, the Hon Matthew Mason-Cox MLC asked a question of the Director General, during the Inquiry into the NSW Planning Framework which was taken on notice.

Question:

The Hon. MATTHEW MASON-COX: Would you release to the Committee the internal guidelines for assessing part 3A applications?

Mr HADDAD: Yes.

The Hon. MATTHEW MASON-COX: That would be most appreciated.

Mr HADDAD: Yes, we will do that.

Answer: The Guidelines the Department uses are publicly available on the Department's website, under "Development Assessments – Register of Development Assessment Guidelines".

The Register provides a comprehensive list of the guidelines to be utilised by councils, developers, consultants and the general public for the purposes of development assessment. This important resource tool also includes guidelines that can assist councils when developing local environmental plans, development control plans and local policies.

Please see attached list of guidelines, fact sheets and policies.

Fact Sheets, Guidelines and Policies

Fact Sheets

Fact Sheet 1: Why the major projects assessment system was introduced
Fact Sheet 2: What is considered a major project?
Fact Sheet 3: Steps in the major project assessment process
Fact Sheet 4: State significant sites
Fact Sheet 5: Independent hearing and assessment panels
Fact Sheet 6: Merit appeal rights
Fact Sheet 7: Critical infrastructure
Fact Sheet 8: Debunking the myths

Guidelines

Guidelines For Major Project Community Consultation

Criteria for declaring development to be a Major Project under Clause 13 of Schedule 1 of the Major Projects SEPP.

Guideline for State significant sites under the Major Projects SEPP.

Updated assessment fees for major projects and State significant sites.

Environmental assessment policies

There are a number of regional and State statutory planning policies and Departmental guidelines on the Department's website. These policies are used in the assessment of development proposals and thus integral in the drafting of adequate Environmental Assessments by proponents. The areas covered are:

Aboriginal Heritage
Acid Sulfate Soils
Advertising and signage
Agriculture
Air Quality
Aquaculture
Biodiversity
Bushfire protection
Climate Change
Coastal Management
Community Consultation
Contamination
Erosion & Sediment Control
Fish, Aquatic & Riparian Habitat
Flooding
Greenhouse Gas Emissions
Hazard Management
Heritage
Housing & Residential Development
Industrial
Infrastructure
Major hazards
Marinas
Mining, petroleum and extractive industries

National Parks
Noise & Vibration
Odour
Part 3A Major Projects
Primary Industries
Seniors living
Rail
Retail & Commercial
Rivers & Estuaries
Roads
Sewerage
Social Issues
Soils
Stormwater & Wastewater
Subsidence
Threatened Species
Urban Centres
Urban Design
Vegetation Management
Waste Management
Water Quality
Wetlands

QUESTION ON NOTICE INQUIRY INTO THE NSW PLANNING FRAMEWORK

QUESTION ON NOTICE: DEPARTMENTAL STAFFING NUMBERS

On 30 March 2009, the Hon. Melinda Pavey MLC asked a question of the Director General, during the Inquiry into the NSW Planning Framework which was taken on notice.

Question:

The Hon MELINDA PAVEY: The Department of Planning has been through a major overhaul in terms of the State planning laws. In relation to resourcing, how many people do you have in the department now compared to 2004? Are you able to provide those details?

Mr HADDAD: I am happy to provide you with that. Obviously those numbers change over time. I am happy to provide you with a comparative with what we have. Resources are a challenge for us. It has always been a challenge. If I tell you for example, that we have 350 people employed in the planning proper and we have supplemented that by people coming from the then Growth Centres Commission, 20 or so people. The challenges that we have are always to be able to use those resources to reprioritise outcomes and improve service delivery in certain areas. That is an ongoing challenge that we have. When I say planning reform implementation is a major challenge for us, it means that a lot of our resources will have to go into that. By doing this, obviously other areas of service delivery will have to readjust to this. I am more than happy to give you the details. We publish them in our annual report. I am happy to give you a more precise breakdown, if you like.

Answer:

The Department of Planning (DoP) records commence from August 2005, after the abolition of the Department of Infrastructure, Planning & Natural Resources (DIPNR).

The permanent EFT (Equivalent Full Time) count for DoP as at 1 December 2005 was 323.2.

Currently, DoP has 373.9 staff. (including 24 EFT staff that have transferred to DoP from Growth Centres Commission).

QUESTION ON NOTICE

INQUIRY INTO THE NSW PLANNING FRAMEWORK

QUESTION ON NOTICE: PACSTAFFING NUMBERS

On 30 March 2009, the Hon. Melinda Pavey MLC asked a question of the Director General, during the Inquiry into the NSW Planning Framework which was taken on notice.

Question:

The Hon MELINDA PAVEY: Thank you. In relation to the structures under the new legislation – the Office of the Coordinator-General, the Minister for Planning and the Planning Assessment Commission-could you give us a breakdown of staff working in each of those areas, as well as how they will work together in assessing major projects?

Mr HADDAD: I am unable to give you right now the staffing in the Office of the Coordinator-General. I am happy to explore whether I can because obviously they report separately. I am more than happy to give you the details of people working in the Planning Assessment Commission.

Answer:

There are two planners and two administration staff currently working in the Planning Assessment Commission secretariat.

QUESTION ON NOTICE: STAFF HOURS

On 30 March 2009, the Hon Matthew Mason-Cox MLC asked a question of the Director General, during the Inquiry into the NSW Planning Framework which was taken on notice.

Question:

The Hon. MATTHEW MASON-COX: How many hours of officers' time does it take to undertake a part 3A assessment for something like Catherine Hill Bay?

Mr HADDAD: I am more than happy to give you the breakdown on all this. Obviously Catherine Hill Bay took a long time but I cannot remember offhand now but I am happy to give you the timing if you like.

Answer:

The Department records and reports on timeframes based on key milestones in the Part 3A assessment process, rather than keeping a record of the hours spent by individual officers to assess these projects .

With respect to Catherine Hill Bay, the revised concept plan, which was approved by the former Minister for Planning (subject to modifications) on 2 September 2008, was submitted to the Department for assessment in February 2008, equating with 159 days.

However, it is noted that the Department was involved in multiple facets of Rose Property Group's proposals at Catherine Hill Bay between December 2006 and September 2008, including the Part 3A assessment, two exhibition periods, provision of support to the Independent Hearing and Assessment Panel and a rezoning.

Sam Haddad, Director General

QUESTION ON NOTICE: STREAMLINING THE REZONING PROCESS

On 30 March 2009, the Hon Fred Nile MLC asked a question of the Director General, during the Inquiry into the NSW Planning Framework which was taken on notice.

Question:

Reverend the Hon. FRED NILE: There have been suggestions by some of the stakeholders that there should be a development of two Acts to replace the Environmental Planning and Assessment Act: one Act dealing with planning and one Act to deal with all development controls that apply to land. But I noticed in your submission in your recommendations you have said you are very busy putting into place all the reforms in the new legislation from 2008 and you have said here, "Major legislative changes in the medium to mid-term will divert resources from the much-needed focus" on what you are seeking to do. Then you say in the mid to longer term consideration could be given to a board of review to consider certain things. I take it from that that because the reforms were so major you are not enthusiastic about any major legislative changes in the immediate future?

Mr HADDAD: Just coming very briefly to the other issue: do we need two Acts, one to deal with the planning aspects and one to deal with the development control? My submission is, and it is my view, that this will be completely counter-productive in terms of trying to integrate and to streamline and to look at planning outcomes. One of the main difficulties that we have now is that we have strategies; we work very hard on strategies and we have spent a lot of time and resources, as I said, over the past three years working on those strategies. We need to do much better in translating those strategies in a much more efficient and streamlined process in dealing with development applications because the purpose of us doing strategies is to say where development could occur, under what conditions and where it could not.

That is basically why we are doing that. If we come to this point and again revisit, under a separate piece of legislation, the same issues, I think that is going to cause a lot of uncertainty for everybody. **On the contrary, I think any legislative reform in the future, whether by way of a new Act or not, would have to bring together more the strategic aspects with the development context. We need to do better in streamlining the rezoning processes when we have set up the strategic context, and spend more time and effort. I am happy to provide more information in that regard because that is a fundamental future direction for the planning system.**

Answer:

Over the decades there have been a number of strategies for Metropolitan Sydney and other Regions in NSW. They have helped to guide decisions on how to manage growth, including what controls to place on development in different places and where to provide infrastructure and services.

In recent years the Department of Planning has invested substantial effort in developing a robust framework of strategic plans for metropolitan Sydney and other

regions of the State: Illawarra; Central Coast, Sydney Canberra Corridor, Lower Hunter; Mid North Coast; and Far North Coast. This provides the most comprehensive framework of strategic plans in the history of the State, with further strategies being developed for other parts of the State.

The preparation of robust strategic plans provides a solid platform for decisions on what controls to place on development – which is essentially the role of the zoning process. A zoning process informed by robust strategic plans is more likely to deliver the outcomes sought by the community including the protection of environmental and community values and the nurturing of a strong and competitive economy.

In order to place controls on development and in effect, focus what people can do on their land, a legislative framework is required, in NSW delivered through environmental planning instruments. Strategic planning, however, can take place at any time without the need for legislation. As such, only one Act is required.

The planning reforms contained within the *Environmental Planning and Assessment Amendment Act, 2008* are being implemented as this inquiry takes place. They strengthen the role of the strategic planning framework while also streamlining the rezoning process. They do this firstly by clarifying the information required to support rezoning proposals by requiring the submission of *planning proposals*. A planning proposal sets out the intended outcomes and effect of the rezoning. Second, the reforms have introduced a gateway process early in the rezoning. The *gateway determination* gives early consideration to the justification for the proposed rezoning and the assessment requirements to finalise the proposal. Importantly, the justification must address the relationship of the proposal to the strategic planning framework. These reforms will ensure the plan making process is more robust, more timely and delivers strategic planning outcomes

QUESTION ON NOTICE: SPOT REZONINGS

On 30 March 2009, the Hon Michael Veitch MLC asked a question of the Director General, during the Inquiry into the NSW Planning Framework which was taken on notice.

Question:

The Hon. MICHAEL VEITCH: We were also told on the first hearing day that you could not do spot rezonings in New South Wales. Is that correct?

Mr HADDAD: That is incorrect. I am happy to provide the Committee with the number of circulars that I have issued over the past three years to clarify that, and direct letters to councils and all the rest of it.

Answer:

The Department has a policy of assessing spot rezonings on a purely merit basis.

Please find attached:

Planning Circular PS 06-005 – 16th February 2006

Planning Circular PS 06-015 – 15th June 2006

Director General's letter to all Councils – 25th November 2008

Statistics relating to LEPs were published in the Department of Planning - NSW Major Development Monitor 2007-08.

In the period 2007-08 the Panel reviewed 230 LEPs of which 176 were recommended to proceed.

By far the biggest category was Spot Rezonings which accounted for 67% (or 155) of all LEPs considered. Of the 155 Spot Rezonings considered, 75% (or 116) were recommended to proceed.



PLANNING circular

PLANNING SYSTEM

Local planning

Circular	PS 06-005
Issued	16 February 2006
Related	PS 05-005 19 Aug 05; letter 23 Dec 05

Local environmental plan review panel

This Circular explains the role of the Department's new LEP Review Panel. It provides advice on new procedures, including the information the Director-General requires from council in notifying the Department (under section 54(4) of the *Environmental Planning and Assessment Act 1979*) of council's decision to prepare a draft local environmental plan. The new procedures come into effect on 22 February 2006.

Introduction

The Department of Planning has established a panel review process to streamline the local environmental plan (LEP) making system. The panel will review notifications from councils under section 54(4) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The panel may also reconvene at later stages of the LEP preparation process, e.g. to review a draft plan at section 68(4) stage to ensure that it is consistent with any advice previously given at section 54 stage.

The new process comes into effect on Wednesday 22 February 2006 and applies to both new LEP proposals and those that are currently in the system.

This is the next step in the reform of the NSW planning system that is delivering a more modern, effective and easy-to-use system.

Why the need for an LEP Review Panel?

Under section 54 of the EP&A Act, a council may decide to prepare a draft LEP in respect of the whole or any part of the land within its area.

Section 54(4) provides that a council shall inform the Director-General of a decision to prepare a draft LEP, including the land to which it is intended to apply.

Clause 9 of the EP&A Regulation sets out how a council is to notify the Director-General of a resolution to prepare a draft LEP.

The notice, to be given as soon as practicable after the relevant council resolution, is to contain:

- the terms of the council's resolution

- sufficient information about the proposed LEP for the Director-General to determine the:
 - the effect of the proposed plan in relation to matters of State or regional significance
 - adequacy of council's proposed consultation procedures
 - adequacy of any environmental study to be prepared.

The objectives of establishing a departmental LEP Review Panel are to:

- move to a more thorough upfront assessment of LEP proposals as soon as the Department is notified of a council's decision to prepare a draft LEP
- strengthen the strategic and policy consideration of LEP proposals
- provide a consistent framework across councils and the Department to evaluate the context and justification for an LEP and the outcomes it is intended to produce
- reduce the number of draft LEPs in the system.

This Circular provides an overview of the key operational aspects of the LEP Review Panel. Attached to this Circular is a pro-forma evaluation criteria sheet to be forwarded to the Department at section 54(4) stage. It provides a checklist of matters to be considered for particular categories of LEPs.

Attention is also drawn to Circular PS05-005 of the 19 August 2005, which sets out the requirements for reporting to the Minister under section 69, and the Director-General's letter of 23 December 2005 concerning the need to improve the quality of information provided with section 69 reports.

Revocation of delegations

Councils are advised that the Instrument of Delegation (dated 14 February 1997), which delegated the Director-General's functions under section 65(1) and section 69 of the EP&A Act will be revoked on 22 February 2006. A new Instrument of Delegation has been issued, which takes effect on 22 February 2006.

An important difference with this new system of delegation is that it only operates in respect to an individual draft LEP on receipt by council of a 'Written Authorisation to Exercise Delegation' signed by the Director-General of the Department. Exercise of functions under the Instrument of Delegation is subject to any terms and conditions specified in the Written Authorisation.

There are no specific saving and transitional provisions for the old delegations in respect to draft LEPs that are already in the system, i.e. where a section 54 notification has already been received but the LEP has not yet been made. However, those draft LEPs will still be able to proceed under the new delegations, subject to the council receiving a 'Written Authorisation to Exercise Delegation' in respect to those draft LEPs.

In relation to any steps that have been taken under the old delegations prior to the commencement of the new delegations on 22 February 2006, those steps will not need to be done again, i.e. they will have been validly undertaken under the old delegations, assuming they were undertaken in compliance with the terms of the 1997 Delegation.

The following are examples of the arrangements to apply to those draft LEPs already in the system.

Example 1—Where section 54 notification has been given but section 65 certificate has not been issued

- Where council has notified the Director-General under section 54 prior to 22 February 2006, but has not yet issued a section 65 certificate, the council would have to receive a 'Written Authorisation to Exercise Delegation' authorising the use of this power before a section 65 certificate can be issued.
- It would be up to councils to notify the Department that this is the stage it is up to with respect to its draft LEP, and to request that the Written Authorisation be issued confirming its powers of delegation with respect to future stages in the LEP-making process.

Example 2—Where section 65 has already been issued by council

- Where council has issued a section 65 certificate under the old delegations prior to 22 February 2006, it may be able to prepare a section 69 report under the new delegations but only on receipt of a 'Written Authorisation to Exercise Delegation'. In this example, the trigger for the written authorisation to be issued will be receipt by the Department of the council's draft LEP at the section 68(4) stage.

In the case of the examples outlined above, it will be at the Director-General's discretion whether the council should be granted the power to use the new delegations for the remaining stages in the LEP-making process. The LEP Review Panel may be asked to make recommendations to the Director-General in this regard.

What is the role of the LEP Review Panel?

The role of the panel is to:

in respect to all draft LEPs:

- provide advice to councils about proposed draft LEPs
- provide advice to the Director-General and/or Minister for Planning about proposed draft LEPs
- review section 54(4) notifications against the relevant set of evaluation criteria

and, in respect to certain draft LEPs:

- review draft LEPs submitted at the section 64 stage to determine whether a section 65 certificate should be issued (optional)
- review draft LEPs when submitted to the Department at section 68(4) stage (optional)
- review section 69 reports to the Minister (optional).

Refer to Attachment 1 for an outline of the above.

What types of LEPs are subject to review by the Panel?

All LEPs will be subject to review by the panel at section 54 notification stage. Six categories of LEP have been identified, as follows, and each draft LEP will need to fall within at least one of these categories:

1. **Spot Rezoning LEPs**—Usually involving a change of zoning for a single site or additional permitted uses and/or development controls that relate to the development of that site.
2. **Reclassification LEPs**—LEPs to reclassify council land from community to operational uses under the Local Government Act.

3. **Precinct LEPs**—Involving part of a local government area (LGA), e.g. the city centre, and includes a review of general and specific planning policy and provisions.
4. **Policy LEPs**—Involving a change in general and specific planning policy and provisions across the LGA or part of it, e.g. adding prohibited uses to a number of zones, changing development standards, introducing heritage items, introducing provisions inconsistent with SEPPs, Ministerial directions or other policies.
5. **Comprehensive LEPs**—LGA wide LEPs.
6. **Surplus Government Land LEPs**—Involving the rezoning of surplus State and local government sites.

A set of pro-forma evaluation criteria for each LEP category has been developed. The panel will be guided by these criteria for each category of LEP.

Councils are requested to avoid, where possible, resolving to prepare spot rezonings and other amendments to existing plans. A compelling reason must be provided demonstrating the need to prepare such a plan. Spot rezoning LEPs should be comprehensively justified.

In particular, the proposed plan must be considered in the context of State and regional policy direction, as well as the site context in terms of compatibility with neighbouring uses and the potential to create an undesirable precedent in terms of other rezoning requests.

Examples of changes to existing plans by way of spot rezonings that the Department would be unlikely to support include:

- The rezoning of existing industrial land for medium-high density residential development where analysis indicates a shortage of industrial land or a need to supply additional industrial land within the next 25 years in the local government area; where there would be an impact on the viability of existing businesses in the industrial area; where there is the potential for cumulative loss of industrial land; and, where there is the potential for land use conflict from new residential development.
- The rezoning of a site for residential uses ahead of other lands that are identified in a strategic urban settlement strategy.
- The rezoning of a pocket of open space to residential/other land uses without full justification.
- The rezoning of rural land to industrial purposes inconsistent with a section 117 Direction.
- A proposed plan that is inconsistent with the Metropolitan Strategy or a draft regional or sub-regional strategy.
- A land rezoning or change in development controls in isolation and in the absence of a

context and where such a rezoning would be more appropriately included in the preparation of a comprehensive LEP.

- The reclassification of sites from community to operational land to reflect existing uses and/or potential uses, which is essentially a housekeeping exercise that can be undertaken as part of the preparation of a comprehensive LEP.
- The introduction of new heritage conservation areas in close proximity to major public transport nodes without compelling justification.
- The introduction of additional uses to specific zones or to specific sites with no broader economic/employment imperative.
- The introduction of alternate clauses for variation of development standards (SEPP 1).

Who is on the LEP Review Panel?

The panel comprises senior departmental officers. The Local Government and Shires Associations will also be invited to nominate a representative to sit on the panel. The panel will deal with both metropolitan and non-metropolitan LEPs, and it is envisaged that it will meet on a weekly basis.

The panel may organise a tele-conference with relevant council officers to assist it in its considerations.

What will the council have to do?

In notifying the Director-General under section 54(4) of the EP&A Act of a decision to prepare a draft LEP, a council will need to complete the pro-forma evaluation sheet for the relevant category of LEP.

The evaluation sheet, advice in accordance with the EP&A Regulation and any supporting information will need to be referred to the relevant regional office of the Department.

How will the LEP Review Panel consider section 54 notifications?

The panel will be guided by the evaluation criteria pro-forma and supporting documentation provided with the section 54(4) notification.

The panel will consider whether section 65 and section 69 functions are to be delegated to councils and what conditions should apply to the exercise of that delegation. Consideration of the delegation of functions will be assessed on a case-by-case basis. Options may include:

- no delegation
- delegation subject to conditions, or
- full delegation.

After considering all the information presented to it, the council will be provided with written notification of the panels' deliberations and whether the proposed LEP can proceed under a 'Written Authorisation to Exercise Delegation' issued by the Director-General (including

specification of the conditions on which the delegation can be exercised).

The panel will also consider and make recommendations on whether a council should be directed pursuant to section 74(2)(b) of the EP&A Act to prepare and have regard to an environmental study prior to preparing its draft LEP, any specifications under section 57(2) of the Act as to the form, content and preparation of the study and/or any other general issues to be considered when preparing the draft LEP.

Councils will need to obtain the Department's advice before proceeding with further stages of the LEP-preparation process.

Panel decisions will be recorded and forwarded after each meeting to the Director-General.

What further role would the LEP Review Panel have in the process?

For draft LEPs where section 65(1) and/or section 69 functions have been delegated to the council pursuant to the Written Authorisation, the panel may reconvene to review the draft plan submitted under section 68(4) of the EP&A Act prior to preparation of the section 69 report.

For draft LEPs where no delegation has been provided, the panel may reconvene at section 64 stage and again at section 68(4) stage.

Will the LEP Review Panel process apply retrospectively?

Any draft LEPs where a section 54 notification has been received by the Department prior to 22 February 2006, will be subject to the new process.

If council has already forwarded a section 54(4) notification that has not been acted upon by the Department, the Department will review the notification against the pro-forma evaluation criteria and may contact the council to seek additional information if required.

Further information

Any further inquiries can be directed to the Department of Planning regional office nearest to you.

Authorised by:

Sam Haddad
Director General

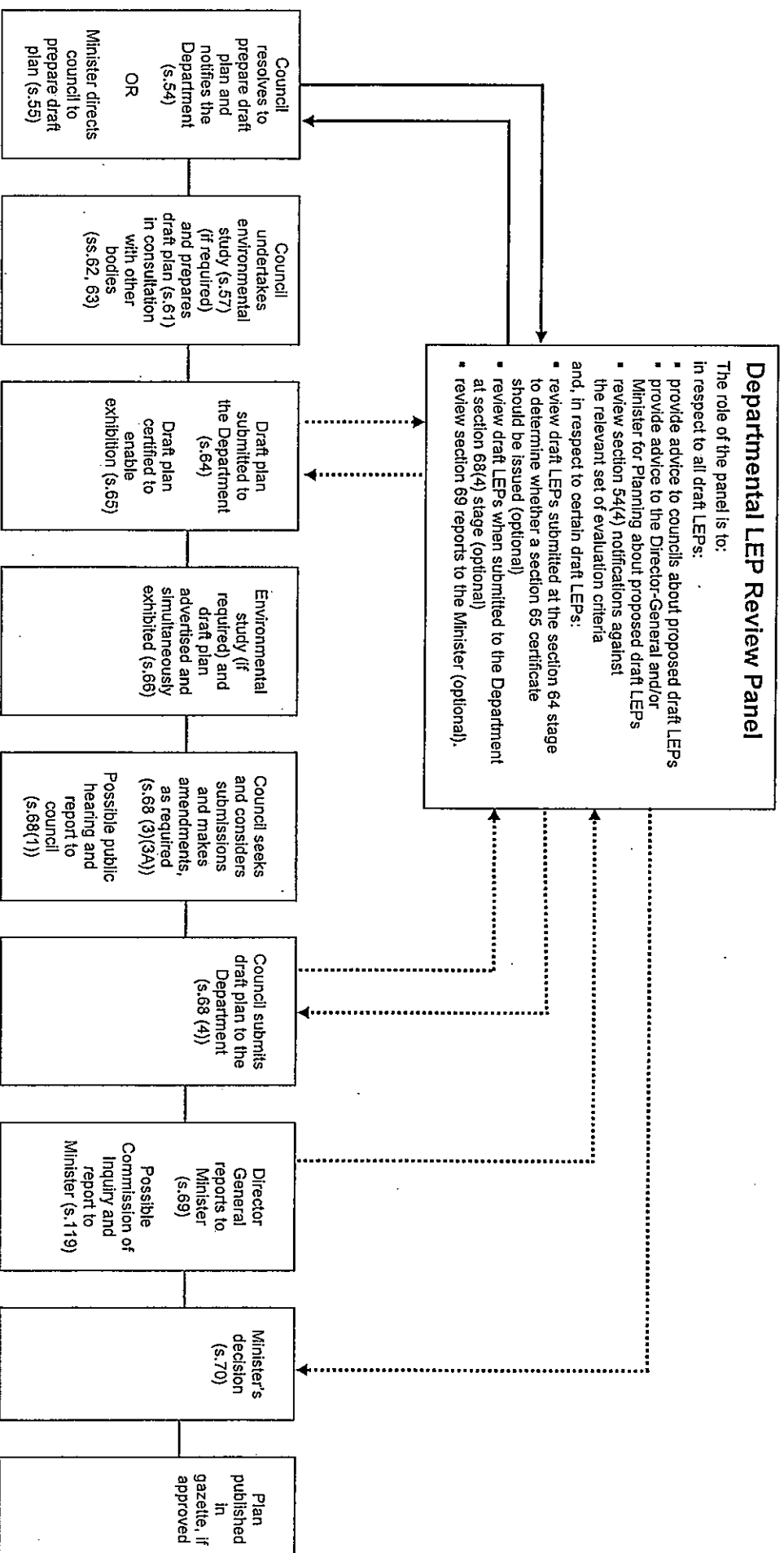
Important note

This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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Local Environmental Plan Process





NSW GOVERNMENT
Department of Planning

Instructions to Users

When notifying the Director-General under section 54(4) of the EP&A Act of a decision to prepare a draft local environmental plan, a council will need to complete the 'Section 54(4) Notification Advice' cover sheet and relevant 'LEP Pro-forma Evaluation Criteria' sheet depending on the category of LEP that is the subject of the section 54(4) notification.

Section 54(4) Notification Advice Cover Sheet

LOCAL GOVERNMENT AREA:

NAME OF DRAFT LEP:

ADDRESS OF LAND (if applicable):

MAPS (if applicable):

- Location map showing the land affected by the proposed draft plan in the context of the LGA (tagged 'location map')
- Existing zoning map showing the existing zoning of the site and surrounding land and proposed zoning change for the site/s (tagged 'comparative existing/proposed zoning')

PHOTOS and other visual material (if applicable):

- Aerial photos of land affected by the proposed draft plan
- Photos or plans showing relationship of land to which the plan will apply and surrounding land uses

PURPOSE OF LEP:

- Describe the **current** zoning / controls and **changes** proposed by the draft plan. For complex plans, a table or maps to explain changes should be attached
- Explain **why** it has been resolved to prepare the draft plan, i.e. what is triggering the need for the plan
- Provide compelling reasons, clearly stating the reasons for the proposed changes
- Details of any environmental study to be prepared
- Details of consultation procedures to be adopted in preparation of the plan

JUSTIFICATION FOR LEP:

This should cover matters such as:

1. Policy and strategic context
 - Consistency with State policy / council strategy
 - Public interest reasons for preparing the draft plan
 - Reference to studies and reports
2. Location context
 - Compatibility with surrounding zoning and land use patterns
3. Implications of not proceeding at that time

EVALUATION AGAINST CRITERIA:

- Provide evaluation against criteria in the relevant pro-forma as applicable to the LEP category

LEP Pro-forma Evaluation Criteria

Category 1: Spot Rezoning LEP

1.	Will the LEP be compatible with agreed State and regional strategic direction for development in the area (eg land release, strategic corridors, development within 800m of a transit node)? <i>Explain:</i>	Y/N
2.	Will the LEP implement studies and strategic work consistent with State and regional policies and Ministerial (s.117) directions? <i>Explain:</i>	Y/N
3.	Is the LEP located in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/sub-regional strategy? <i>Explain:</i>	Y/N
4.	Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands? <i>Explain:</i>	Y/N
5.	Will the LEP be compatible/complementary with surrounding land uses? <i>Explain:</i>	Y/N
6.	Is the LEP likely to create a precedent; or create or change the expectations of the landowner or other landholders? <i>Explain:</i>	Y/N
7.	Will the LEP deal with a deferred matter in an existing LEP? <i>Explain:</i>	Y/N
8.	Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these considerations? <i>Explain:</i>	Y/N

LEP Pro-forma Evaluation Criteria

Category 2: Reclassification (Community & Operational Uses) LEP

1.	Is an associated spot rezoning occurring? <i>Explain:</i>	Y/N
2.	Is the LEP to rectify an anomaly in classification? <i>Explain:</i>	Y/N
3.	Will the LEP accord with the classification of adjoining land? <i>Explain:</i>	Y/N
4.	Will the LEP be consistent with a plan of management (applicable to open space zonings)? <i>Explain:</i>	Y/N/NA
5.	Will the ownership of the land change within five years? <i>Explain:</i>	Y/N
6.	Has a public hearing been held pursuant to the Local Government Act? <i>Explain:</i>	Y/N
7.	Will open space be relinquished? <i>Explain:</i>	Y/N

LEP Pro-forma Evaluation Criteria

Category 3- Precinct LEP

1.	Will the LEP be compatible with agreed State and regional strategic direction for development in the area (eg land release, strategic corridors, development within 800m of a transit node)? <i>Explain:</i>	Y/N
2.	Will the LEP be consistent with agreed centres and sub-regional planning policy for development in the area? <i>Explain:</i>	Y/N
3.	Is the LEP located in a regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/sub-regional strategy? <i>Explain:</i>	Y/N
4.	Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands? <i>Explain:</i>	Y/N
5.	Will the LEP facilitate the provision of public transport? <i>Explain:</i>	Y/N
6.	Will the LEP implement studies and strategic work consistent with State and regional policies? <i>Explain:</i>	Y/N

LEP Pro-forma Evaluation Criteria

Category 4: Policy LEP

1.	Will the LEP be consistent with agreed State Government strategic direction or policy for development (eg land release, industrial lands, strategic corridors, development within 800m of a transit node)? <i>Explain:</i>	Y/N
2.	Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands? <i>Explain:</i>	Y/N
3.	Will the LEP implement studies and strategic work consistent with State and regional policies? <i>Explain:</i>	Y/N

LEP Pro-forma Evaluation Criteria

Category 5: Comprehensive LEP

1.	Will the LEP be consistent with and implement the Metropolitan Strategy or other approved regional and/or sub-regional strategies? <i>Explain:</i>	Y/N
2.	Will the LEP implement the Standard Instrument LEP Order 2006? <i>Explain:</i>	Y/N
3.	Does the anticipated timeframe for the LEP accord with the Department's advice to council on when a new principal LEP needs to be in place? <i>Explain:</i>	Y/N
4.	What are the unique or new policies to be contained in the draft LEP? <i>Explain:</i>	Y/N

LEP Pro-forma Evaluation Criteria

Category 6: Surplus Government Lands (State or Local) LEP

1.	Is the land still in State or local government ownership? <i>Explain:</i>	Y/N
2.	Has the land been declared surplus? <i>Explain:</i>	Y/N
3.	Will the LEP be consistent with and implement approved State and/or regional strategies? <i>Explain:</i>	Y/N
4.	Is the LEP located in a regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/sub-regional strategy? <i>Explain:</i>	Y/N
5.	Does the LEP (and subsequent development) have the ability to be used as a demonstration project to showcase the Metropolitan Strategy (or other regional strategy) environmental, urban design or sustainability objectives? <i>Explain:</i>	Y/N
6.	Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands? <i>Explain:</i>	Y/N



PLANNING circular

PLANNING SYSTEM

Local planning

Circular	PS 06-015
Issued	15 June 2006
Related	PS 06-005

Spot rezoning

This circular states the Department of Planning's current position on spot rezoning.

Introduction

Approximately half of the section 54 notifications received by the Department over the past three months have been for spot rezonings. These proposed spot rezonings have been considered by the Department, including the LEP Review Panel, on the basis of the pro forma for spot rezonings submitted by councils. The evaluation criteria set out in the pro forma make it clear that there are circumstances in which spot rezonings can be justified, and may in fact be necessary.

The LEP Pro-forma Evaluation Criteria for council submissions were included in Planning Circular PS 06-005 issued 16 February 2006.

Criteria to be addressed when considering a spot rezoning

When considering whether to resolve to prepare a draft LEP which would constitute a spot rezoning, councils should address the questions outlined in the pro forma:

- Will the LEP be compatible with agreed State and regional strategic direction for development in the area (eg land release, strategic corridors, development within 800 metres of a transit node)?
- Will the LEP implement studies and strategic work consistent with State and regional policies and Ministerial (section 117) directions?
- Is the LEP located in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional/subregional strategy?
- Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands?
- Will the LEP be compatible/complementary with surrounding land uses?

- Is the LEP likely to create a precedent; or create or change the expectations of the landowner or other landholders?
- Will the LEP deal with a deferred matter in an existing LEP?
- Have the cumulative effects of other spot rezoning proposals in the locality been considered? What was the outcome of these considerations?

Having considered these questions, a council may decide either to proceed with the proposed draft plan as a spot rezoning and to notify the Department, or to deal with the proposal as part of a broader plan. For example, council may decide to plan for the site in conjunction with other similar sites or uses, or by changing the permissible uses in a zone. In the case of reclassification of council land, a council may decide that reclassifying several sites together is the proper approach to enable the strategic direction for council's land management to be understood and scrutinised.

Reducing the overall number of amending LEPs

The Department does have an objective to reduce the number of spot rezonings. There are two main reasons for encouraging this practice. Firstly, the aim is to encourage a planning approach which is fair and transparent, deals with all like cases consistently, and provides for planning decisions with a clear strategic basis. Secondly, reducing the number of amending LEPs in the planning process reduces the administrative load for councils, the Department and the Parliamentary Counsel. The Department encourages councils to prepare only one amendment, or a limited number of amendments, to their existing instruments per year, incorporating the minor proposals for changes in development controls.

Spot rezoning proposals are considered on merit

The objective of reducing the number of draft plans in the system does not mean, however, that spot rezonings will not be considered by the Department. Councils which are satisfied that a spot rezoning needs to be advanced in that form can justify the proposal for consideration by the Department. Justification should take account of the public interest and explain the implications of not proceeding at that time.

The Department will continue to assess spot rezoning proposals on a merit basis.

Further information

For more information, please contact the relevant Department of Planning local planning team.

Regional NSW

Barwon	02 6764 6831
Central Coast	02 4323 7000
Central West/Far West	02 6884 2560
Hunter	02 4904 2700
Illawarra/South Coast	02 4224 9450
Murray/Murrumbidgee	02 6297 6477
North Coast	02 6640 2160

Sydney East

City/East	02 8374 5915
Inner North/Inner West	02 8374 5913

Sydney North West

North/North East	02 8374 5926
North West	02 8374 5925

Sydney South West

South West	02 9895 7633
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General enquiries

Information Centre	02 9228 6333
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Authorised by:

Sam Haddad
Director General

Important note

This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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NSW GOVERNMENT
Department of Planning

Office of the Director General

To: All councils in NSW

Contact: Regional planning team/office

Attention: General Manager

Our ref:
Your ref: DG letter 25 November 2008
File: le08_005_spotrezoning_dg.doc

25 November 2008

Dear Sir/Madam

SPOT REZONINGS

Despite a number of previous letters and circulars in relation to the Department's position on spot rezonings, I am still receiving complaints from both proponents and councils claiming that the Department has recently reviewed its policy on these matters and will not now allow spot rezonings to proceed.

I wish to make it absolutely clear that while the Department continues to have the objective of reducing the number of draft plans in the systems it has in the past and continues to have a policy of assessing spot rezonings on a purely merit basis.

The Department's Planning Circular PS06-015 of 15 June 2006 (copy attached) clearly outlines the criteria that councils should address when considering whether to seek a spot rezoning and the criteria have not changed. Within the context of the circular any justification should take account of the public interest and explain the consequences of not proceeding with the draft plan. In the present economic climate it may well be necessary to bring forward a spot rezoning which is consistent with an agreed regional or local strategic direction and which has positive benefits in terms of employment and/or housing supply and affordability.

I have advised all of the Department's staff of this reiteration of the spot rezoning policy. I encourage you to bring this to the attention of your councillors and senior planning staff so there can be no misunderstanding of the Department's position.

Should you have any further enquiries about this matter please contact the relevant Department of Planning regional planning team.

Yours sincerely

Sam Haddad
Director General

PLANNING circular

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Local planning

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Authorised by:

Sam Haddad
Director General

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QUESTION ON NOTICE: LEP REVIEW PANEL

On 30 March 2009, the Hon Melinda Pavey MLC asked a question of the Director General, during the Inquiry into the NSW Planning Framework which was taken on notice.

Question:

The Hon. MELINDA PAVEY: There was an appeals process too.

Mr HADDAD: There is no question that we have been saying, I suppose, that spot rezonings are allowed. We have been nevertheless saying that each council needs to come up with its own judgment whether, for instance, a small spot rezoning which is fixing something, not delivering a particular land use outcome, is necessary in terms of resources and all the rest of it. **But of late we have an LEP review panel. Again, contrary to what people are saying, I am happy to give you information about that panel.** We have received a number of spot rezonings. We have a gateway process and from the information that I have more than 90 per cent of the decisions are made within 15 days. **I am happy to make available all the statistics we have, particularly now in terms of the economic downturn.** Again, we have been telling councils that it must be consistent with the strategy and opportunities for employment, but in an orderly manner. Of course, we are not going to entertain councils coming in with rezonings if they are not consistent with an orderly development scheme.

Answer:

The LEP Advisory Panel was established in February 2006 as part of a move to a more upfront assessment of LEPs. The objectives of the Panel were to strengthen strategic and policy considerations, provide a consistent approach to plan making across the State and to reduce the number of LEPs in the system so that the system works more efficiently.

The role of the Panel is to provide advice to councils and the Director General and to review LEPs against a set of evaluation criteria.

Statistics relating to LEPs were published in the Department of Planning - NSW Major Development Monitor 2007-08.

In the period 2007-08 the Panel reviewed 230 LEPs of which 176 (or 77%) were recommended to proceed.

By far the biggest category was Spot Rezoning which accounted for 67% (or 155) of all LEPs considered by the Panel. Of these spot rezoning LEPs, 75% (or 116) were recommended to proceed.

QUESTION ON NOTICE: SPOT REZONING PROCESS

On 30 March 2009, the Hon Michael Veitch MLC asked a question of the Director General, during the Inquiry into the NSW Planning Framework which was taken on notice.

Question:

The Hon. MICHAEL VEITCH: Can you provide the process for conducting spot rezoning and for appealing?

CHAIR: And possibly a couple examples.

Mr RAY: We have the statistics here.

Mr HADDAD: We will make a submission to the Committee containing that information.

Answer:

The process for Spot Rezoning is the same as that for any amendment to an LEP throughout the State.

Basically, a council notifies the Department of Planning of its resolution to prepare a draft LEP. The proposal is referred to the LEP Review Panel which recommends to the Director General of Planning whether or not the draft plan should proceed. If the Director General determines that the draft plan should not proceed, the council is advised. They can request the LEP Review Panel and Director General reconsider the matter if dissatisfied with the decision but there is no formal legal right of appeal.

If the plan is to proceed the council is given permission to exhibit the proposal for public comment (minimum of 28 days). The council considers all submissions and makes its final recommendation to the Minister who is ultimately responsible for deciding whether the Plan is approved. The Minister's decision is final and no appeals are possible.

I have attached a more detailed flow chart of the LEP process. To streamline the process the current practice is for LEPs, once approved by the Minister, to be included on the Parliamentary Counsel's web site rather than being published in the Government Gazette.

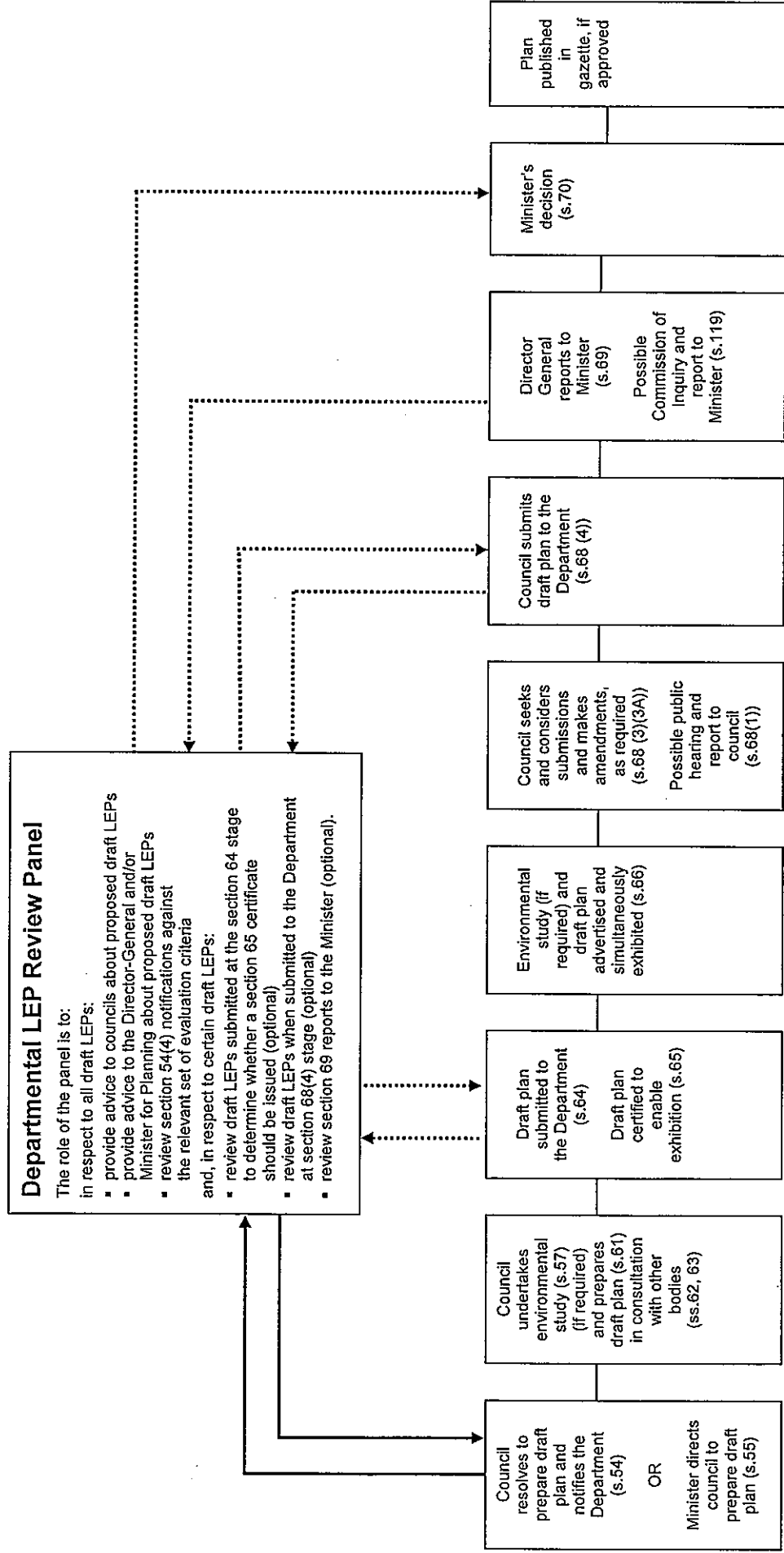
Examples of Spot Rezoning

LEP No. 109 Kempsey - rezone land from Rural to allow the development of the Slim Dusty Tourist Centre. LEP was supported on the basis that the land is identified in Council's Industrial Land Review.

LEP No. 220 Blacktown - rezone land at Meurants Lane and Old Northern Road, Glenwood from Private Recreation to Residential. LEP was supported as it is consistent with the Metropolitan Strategy as it locates new dwellings in existing urban areas and assists Council in achieving dwelling targets.

LEP No. 13 Byron – rezone land corner Lawson and Middleton Streets, Byron Bay to permit a community building, shops and commercial premises. LEP supported to facilitate community services in a suitable part of the town.

Local Environmental Plan Process



QUESTION ON NOTICE: OFFICE OF THE COORDINATOR GENERAL

On 30 March 2009, the Hon Christine Robertson MLC asked a question of the Director General, during the Inquiry into the NSW Planning Framework which was taken on notice.

Question:

The Hon. CHRISTINE ROBERTSON: We have heard that the Western Australian Planning Commission is an excellent model for involving all agencies in integrated planning and so on. Some people have suggested that we should have a State planning commission. How do our processes compare? Is there a necessity for us to introduce such a thing?

Mr HADDAD: We certainly do not have a planning commission doing the planning of the State. We have the Planning Assessment Commission, which is doing development approval processes, but not rezonings.

The Hon. MELINDA PAVEY: Is the Office of the Coordinator General doing it?

Mr HADDAD: I do not think it is doing the planning. To provide credible advice I will have to get back to you. The Western Australian commission is charged with making decisions about matters such as rezoning of land. It is much broader.

Answer:

In the development of the 2008 planning reforms the Government considered the Western Australian Planning Commission (WAPC) model. The WAPC is a forum comprised of government agencies, an independent Chair and other stakeholder representatives.

The Government was concerned that an added layer of bureaucracy and inflexibility might be generated by the introduction of a WAPC equivalent in NSW. The WAPC model also raises certain governance issues by the fusion of independent advisers, departmental CEOs and stakeholder or sectoral representatives into one forum.

With the 2008 reforms the Government opted for a model which maintained a clear distinction in the roles of Government agencies, stakeholders and independent technical experts, first by establishing the Planning Assessment Commission as a source of independent technical expertise, secondly by establishing the Implementation Advisory Committee of stakeholders, which meets monthly, and thirdly by maintaining a number of Government agency CEO groupings covering agencies with planning responsibilities.

QUESTION ON NOTICE: OUTSTANDING LEP'S

On 30 March 2009, the Hon Melinda Pavey MLC asked a question of the Director General, during the Inquiry into the NSW Planning Framework which was taken on notice.

Question:

The Hon. MELINDA PAVEY: I know that Warringah has lodged its template LEP and there is concern it is taking a long time.

Mr HADDAD: I fully appreciate the point you are making. It is taking too long, much longer than what is expected. It is a very frustrating exercise. It is taking longer than what is expected in terms of the design of the program itself for a number of reasons: first, people want to devise a strategic outcome, so you are rethinking your whole area from a strategy point of view. That takes time. Second, the legal complexities involved are very extensive, so people are trying to get all the legalities precise. Third, the resources of councils, the departments and Parliamentary counsel needed to reach a point. I fully agree with you in terms of some of the program itself. It has been hard work to get it and it is very unfortunate that it is not being delivered in accordance with timetables that have been promised before and without due thought about what had to be done. I am now looking at some sort of adjustment to the scheme, because you are right—councils are expressing concern about it. We will have to respond to that. For example, we have now learned enough through various legal mechanisms to be able to progress councils into, say, exhibition without going through Parliamentary Counsel. That will cut a lot of time. We are looking at a number of streamlining processes and hopefully we will be doing much better given that we have gone through all the difficult stuff we have been going through.

The Hon. MELINDA PAVEY: Can you take on notice to find out how many are outstanding?

Mr HADDAD: I am happy to do that, yes.

Answer:

118 Councils have formally resolved to prepare a Standard Instrument LEP pursuant to Section 54 of the *Environmental Planning and Assessment Act, 1979*. Of these:

- 4 Councils have had their LEPs gazetted following exhibition;
- 15 Councils have received a section 65 Certificate enabling them to exhibit their draft LEPs. Several of these Councils have exhibited or are currently exhibiting their draft plans; and
- the Department is currently assessing 16 formal section 64 requests for issue of a section 65 Certificate. These requests are currently being considered based on the adequacy of the draft instruments, maps and supporting information.

Additionally, approximately another 20 draft LEPs are being actively worked on by the Department with formal section 64 requests expected shortly. The remainder are being worked on by the relevant local Council.

The Department is currently in the process of re-prioritising the Standard Instrument LEP program to establish a clear list of priority LEPs to be progressed to gazettal over the next two years.