

**ITEM 13. DELEGATION OF MINISTER'S PLAN-MAKING FUNCTIONS****FILE NO: S093891****SUMMARY**

To improve the local plan making process, the Minister for Planning and Infrastructure has delegated to councils all his plan-making functions under section 59 of the *Environmental Planning and Assessment Act 1979*. This section of the Act gives the Minister the power to make a local environmental plan to give effect to a planning proposal. By delegating this power to councils, the Minister is transferring to councils the responsibility for making minor local environmental plans. The Council must formally accept the delegations to be able to exercise them.

Although the Minister envisaged that councils may sub-delegate his plan-making powers, this report recommends that the delegation remain with the Council. This is because the *City of Sydney Act 1998* provides that the Central Sydney Planning Committee must approve a planning proposal / LEP for making. Since relevant reports will need to be submitted to the Central Sydney Planning Committee for consideration at the beginning and end of the plan making process, it is proposed that Council also continue to consider relevant reports at the beginning and end of the plan making process.

This report is to advise the Central Sydney Planning Committee that the report to the Planning and Development Committee on 3 December 2012 recommends that the Council formally accept the Minister's delegation of his plan-making functions.

**RECOMMENDATION**

It is resolved that the Central Sydney Planning Committee note that the report to the Planning and Development Committee on 3 December 2012 recommends that Council accept the delegation by the Minister for Planning and Infrastructure of all his functions under section 59 of the *Environmental Planning and Assessment Act 1979*.

**ATTACHMENTS**

**Attachment A:** Department of Planning and Infrastructure Planning Circular PS 12-006 *Delegations and independent review of plan-making decisions*

**Attachment B:** Letter received from the Hon Brad Hazzard MP, Minister for Planning and Infrastructure on 31 October 2012

**Attachment C:** Comparison of plan-making process for non-delegated matters and delegated matters

**BACKGROUND**

1. To improve the local plan making process, the Minister for Planning and Infrastructure has delegated the making of some local environmental plans to councils.
2. This change was foreshadowed in April 2012 in a draft Planning Circular which also proposed to allow for independent reviews of some council and departmental decisions in the plan making process. Both changes came into effect on 2 November 2011. Attachment A is a copy of Planning Circular PS 12-006, which outlines the new procedures.
3. Attachment B is a copy of a letter from the Minister advising that he has delegated to councils all his functions under section 59 of the *Environmental Planning and Assessment Act 1979*. They comprise the power:
  - (a) to make, and determine not to make, a local environmental plan;
  - (b) to defer inclusion of certain matters in a local environmental plan; and
  - (c) if the council defers the proposal or if a matter is deferred from the local environmental plan, to identify which matters must be considered and which stages of the plan-making process must be carried out again before resubmission.
4. The delegation may only be exercised in respect of local matters where council receives an authorisation following the Gateway determination. The Department of Planning and Infrastructure has advised that it will routinely delegate the following types of draft local environmental plans:
  - (a) mapping alterations;
  - (b) section 73A matters (eg, amending references to documents/agencies, minor errors and anomalies);
  - (c) reclassifications of land (eg, from community land to operational land);
  - (d) heritage local environmental plans related to specific local heritage items supported by an Office of Environment and Heritage endorsed study;
  - (e) spot rezoning consistent with an endorsed strategy and/or surrounding zones; and
  - (f) other matters deemed to be of local significance by the Gateway determination.
5. A table comparing the key steps in the plan-making process for non-delegated matters and delegated matters is at Attachment C. It shows that up until the stage of the Gateway determination, the plan-making process for a delegated matter is essentially the same as for a non-delegated matter, except that the council has to determine whether or not it will seek to make the plan under delegation. If the Gateway determination agrees that the plan may be made under delegation, then the Department generally has no further involvement in the process other than to ensure that the maps meet the technical guidelines.

6. In relation to a delegated matter, the council takes responsibility for completing the following steps of the plan-making process:
  - (a) consultation and public exhibition in accordance with Gateway determination;
  - (b) post exhibition review;
  - (c) legal drafting of the LEP by Parliamentary Counsel's Office;
  - (d) decision under sections 59(2) and (3) of the Environmental Planning and Assessment Act to:
    - (i) make the LEP with or without variation; or
    - (ii) not make the LEP; or
    - (iii) defer a matter from the LEP; and
  - (e) advise the Department that the LEP has been made so that it can be notified on the NSW Legislation website and take effect from the date of its publication.
7. A council is not permitted to exercise the plan-making delegation unless it has received an authorisation to do so at the Gateway stage. If there are major changes to a planning proposal after the exhibition, the council may need to seek a new Gateway determination and new authorisation to exercise delegation. A council is also not permitted to exercise the delegation if there is an unresolved agency objection to the draft LEP.
8. To be able to exercise these delegations, the Council must formally accept the Minister's delegation of his plan-making powers.
9. Under Section 381 of the *Local Government Act 1993*, such functions cannot be delegated to
  - (a) the Chief Executive Officer, except with the approval of Council; or
  - (b) an employee of the Council, except with the approval of the Council and the Chief Executive Officer.
10. The report to the Planning and Development Committee on 3 December 2012 recommends that Council accept the delegation. For reasons detailed below, it is not proposed that Council sub-delegate the Minister's plan-making functions.

## KEY IMPLICATIONS

### Organisational Impact

11. Under the *City of Sydney Act*, the Council must not approve a planning proposal or submit it to be made unless the Central Sydney Planning Committee (CSPC) has approved of the planning proposal. The procedure currently followed by the City in preparing a LEP is essentially as shown in Attachment C for non-delegated matters.

12. The new procedure will require reports submitted to the Council and the CSPC at the beginning of the plan-making process to include recommendations as to whether or not the matter should be delegated and, if so, to whom.
13. The Minister has not delegated his plan-making functions under the *Environmental Planning and Assessment Act* to the CSPC. Although the CSPC may not have an interest in the relatively minor LEPs that are likely to be delegated, it cannot circumvent its responsibility under the *City of Sydney Act* to approve a planning proposal / LEP for making. Further, the *City of Sydney Act* does not enable the Minister to direct the CSPC not to undertake this function.
14. Unless the *City of Sydney Act* is amended, delegated LEPs will still need to be reported back to the CSPC towards the end of the plan-making process. There may be some scope to address this matter in the current review of the *City of Sydney Act*. However, in the interim while the CSPC continues to have a role at the end of the plan-making process, it is proposed that all delegated matters be exercised by the Council rather than a sub-delegate. This means that for relatively minor LEPs both Council and the CSPC will continue to receive a report at the beginning and at the end of the plan-making process.
15. In exercising the delegation, the Council takes on the responsibility for carrying out various administrative procedures, including liaising with the Parliamentary Counsel's Office and reporting to the Department of Planning and Infrastructure on the processing times for delegated local environmental plans. While this has implications for staff resources, they are unlikely to be significant.

### **Economic**

16. Streamlining the plan making process for minor local environmental plans will reduce processing times which, in turn, should speed up development timeframes and reduce proponents' costs.

### **BUDGET IMPLICATIONS**

17. Nil.

### **RELEVANT LEGISLATION**

18. Section 59 of the *Environmental Planning and Assessment Act 1979*.
19. Section 381 of the *Local Government Act 1993*.
20. Section 39 of *City of Sydney Act 1998*.

### **CRITICAL DATES / TIME FRAMES**

21. The new plan-making procedures took effect on 2 November 2012.

### **OPTIONS**

22. Council may choose not to accept the Minister's delegation. However, this is not recommended as it would be inconsistent with the objectives of streamlining the processing of minor local environmental plans and retaining Council as the responsible authority for local planning matters.

**PUBLIC CONSULTATION**

23. The Department of Planning and Infrastructure invited and considered public submissions in respect of the proposal to delegate the Minister's plan-making functions to councils. This report implements the State Government's resultant new policy.

**GRAHAM JAHN**

Director City Planning, Development and Transport

(Glenda Goldberg, Senior Planner, City Plan Review)