

**ITEM 8. DELEGATION OF MINISTER'S PLAN MAKING FUNCTIONS TO CHIEF EXECUTIVE OFFICER****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* (the EP&A Act). This section of the Act gives the Minister the power to finalise a local environmental plan to give effect to a planning proposal. By delegating this power to councils, the Minister has transferred to councils the responsibility for finalising minor local environmental plans. In December 2012, the Council formally accepted the delegation.

It has since become evident that the intent of streamlining the planning process can only be achieved if the Council delegates this function to an officer of Council. Requiring Council to consider relevant local environmental plans at the section 59 stage is inefficient when the Council has already made a policy decision after considering submissions on the associated planning proposal. If Council does not authorise an officer of Council to implement that policy decision it will delay the making of relatively straightforward local environmental plans. This is because Council cannot resolve to make a plan until the legal drafting is finalised and to obtain such a resolution will most likely require a third report, rather than two Council reports as required for non-delegated plans.

This report is to inform the Central Sydney Planning Committee of a proposal to delegate to the Chief Executive Officer the Minister's functions under section 59 of the EP&A Act if Council and the Central Sydney Planning Committee have approved a planning proposal for making or if it relates to minor corrections under section 73A of the EP&A Act or minor mapping alterations. Section 381 of the *Local Government Act 1993* provides that functions under the EP&A Act or other Acts may not be delegated without the approval of the Council. If the proposal is approved by Council, the Chief Executive Officer will have the authority to finalise minor local environmental plans and ensure that the legal drafting by Parliamentary Counsel is consistent with the relevant resolutions of Council and the Central Sydney Planning Committee.

**RECOMMENDATION**

It is resolved that the subject report be received and noted.

**ATTACHMENTS**

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

**Attachment B:** Resolution of Council of 10 December 2012

**BACKGROUND**

1. In November 2012, the Minister for Planning and Infrastructure advised that he had delegated the making of some local environmental plans (LEPs) to councils to improve the local plan making process. In this context, the “making of an LEP” broadly means finalising the form of the LEP and signing the LEP written instrument and maps. It occurs after a planning proposal has been exhibited and any changes have been endorsed by the council.
2. Attachment A is a copy of the Minister’s letter advising that he has delegated 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, an LEP;
  - (b) to defer inclusion of certain matters in an LEP; and
  - (c) if the council defers the proposal or if a matter is deferred from the LEP, to identify which matters must be considered and which stages of the plan-making process must be carried out again before resubmission.
3. 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 LEPs:
  - (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 LEPs 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.
4. The Minister requested the Council to nominate the officers or employees who will be granted the proposed delegation. 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 the Council; or
  - (b) an employee of the Council, except with the approval of the Council and the Chief Executive Officer.

5. On 10 December 2012, Council resolved to accept the delegation. However, the relevant report did not recommend delegating the Minister's functions to an officer of the Council because, under the *City of Sydney Act*, the Central Sydney Planning Committee (CSPC) must approve the submission of a planning proposal to be made.
6. At that time it was thought that the procedure for dealing with a plan under delegation would involve preparing two Council reports:
  - (a) a report recommending approval of a planning proposal for forwarding to the Department for a Gateway determination; and
  - (b) a post-exhibition report identifying any changes arising from the exhibition and, where appropriate, recommending Council make the resultant LEP.
7. In recent months, the Department of Planning and Infrastructure has advised that the Council may exercise its section 59 delegation in respect of LEPs for specific planning proposals, including those for:
  - (a) 87 Bay Street, Glebe;
  - (b) Sydney Fish Market; and
  - (c) a section 73A amendment to *Sydney Local Environmental Plan 2012* to correct minor errors.
8. It is now evident that it is not practical to prepare a single report to Council that simultaneously reports on the outcomes of the exhibition of a planning proposal and recommends the making of the resultant LEP. If the post-exhibition report were to serve both functions, it would be delayed by the need for Parliamentary Counsel to prepare the LEP written instrument. Alternatively, after the LEP written instrument is prepared, the Council could consider a third report recommending it exercise its section 59 delegation. However, rather than streamlining the process for minor LEPs, these two options will cause unnecessary delay. This is likely to be of concern to proponents seeking certainty as to the Council and CSPC policy positions so they can proceed with the preparation of development applications or design competitions.
9. Once the policy position on a planning proposal has been established by Council and the CSPC, it should be able to be implemented without undue delay. Although the Council has the power to exercise the Minister's functions under section 59 of the Act, it cannot authorise the Chief Executive Officer or any other officer of Council to carry out those functions on an ad-hoc basis. This authority can only be granted by the Minister for Planning and Infrastructure and can only be exercised when the Minister has previously been advised.
10. Having regard to the Minister's intent of streamlining the process for dealing with minor LEPs, it is proposed to enable the Chief Executive Officer to exercise the section 59 functions for the following types of LEPs:
  - (a) LEPs where the Council and CSPC have resolved to submit a planning proposal for making;

- (b) minor amendments under section 73A of the EP&A Act (eg, amending references to documents/agencies, minor errors and anomalies); and
  - (c) minor mapping alterations (eg, boundary adjustments).
11. If approved by Council, it would mean notifying the Minister of the Council's decision to delegate its functions under section 59 of the EP&A Act. Once the Department has been notified of this decision, the Chief Executive Officer would be in a position to finalise the types of LEPs listed in paragraph 10 above.
  12. The process would reflect the current arrangements whereby Council and the CSPC consider planning proposals prior to Gateway determination and after exhibition. However, instead of referring the planning proposal to the Department to have an LEP prepared and made by the Minister, council planners would liaise directly with Parliamentary Counsel to prepare the LEP and the Chief Executive Officer would sign the LEP.

## KEY IMPLICATIONS

### Organisational Impact

13. Under the *City of Sydney Act*, the Council must not approve a planning proposal or submit it to be made unless the CSPC has approved of the planning proposal.
14. The Minister has not delegated his plan-making functions to the CSPC. Although the CSPC may not have an interest in some of the very minor LEPs that have been delegated to Council, it cannot circumvent its responsibility under the *City of Sydney Act* to approve a planning proposal / LEP for making. Unless the *City of Sydney Act* is amended, delegated LEPs will still need to be reported back to the CSPC post exhibition. As the *City of Sydney Act* is currently under review, there may be some scope to address this matter.
15. Subject to the Chief Executive Officer only making LEPs that have been approved for making by the CSPC, the proposal set out in this report is consistent with the scheme set out in the *City of Sydney Act*.
16. In exercising the section 59 delegation, the Council takes on the responsibility for carrying out various administrative procedures, including liaising with Parliamentary Counsel and reporting to the Department of Planning and Infrastructure on the processing times for delegated LEPs. While this has implications for staff resources, they are unlikely to be significant.

### Economic

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

## BUDGET IMPLICATIONS

18. Nil.

**RELEVANT LEGISLATION**

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

**CRITICAL DATES / TIME FRAMES**

22. The ability for a Council or delegate of Council to make plans in certain circumstances took effect on 2 November 2012.

**OPTIONS**

23. Council may choose not to delegate these functions to the Chief Executive Officer. However, this is not recommended as it would be inconsistent with the objectives of streamlining the processing of minor LEPs. Further, it would unnecessarily burden the Council with having to consider relatively minor operational matters that simply give effect to Council decisions in respect of the relevant planning proposals.

**PUBLIC CONSULTATION**

24. 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 policy.

**GRAHAM JAHN, AM**

Director City Planning, Development and Transport

(Glenda Goldberg, Acting Manager, Planning Policy)