

Draft Submission to the Pre-Gateway Review

26 October 2015

Opening:

Local Government NSW (LGNSW) is the peak body for councils in NSW. It represents all the 152 NSW general-purpose councils, the special-purpose county councils and the NSW Aboriginal Land Council.

In essence LGNSW is the ‘sword and shield’ of the NSW Local Government sector. LGNSW is a credible, professional organisation representing NSW councils and facilitating the development of an effective community-based system of Local Government in NSW. LGNSW represents the views of councils to NSW and Australian Governments; provides industrial relations and specialist services to councils; and promotes NSW councils to the community.

Purpose:

LGNSW welcomes the opportunity to provide feedback on the Pre-Gateway Review process. This submission is a response to the *Pre-Gateway Review: Findings and Recommendations Report*, September 2015.

1. Introduction

Oppose the process in principle

LGNSW opposes in principle the fundamental purpose of the Pre Gateway Review process which allows proponents to overturn a zoning decision of council.

This process enables proponents to make an application to a Joint Regional Planning Panel (JRPP), to alter key planning decisions that identify and manage the location and scale of housing and employment areas made by councils.

LGNSW considers that local plan making decisions are the domain of Local Government and should not be instigated or overtly influenced by the private sector, or arbitrated by an external planning panel.

LGNSW does not agree with the Department’s premise that the Pre- Gateway Review process provides greater transparency or greater certainty in plan making. The process, in our opinion undermines transparency and certainty for communities that have been involved in providing feedback on the recently adopted LEPs and encourages uncertainty, by allowing applications to be submitted to the JRPP on an ‘ad hoc’ basis.

In addition, we oppose a process that strengthens the plan making role of the JRPP. This panel was primarily established to determine Development Applications of regional significance. We do not consider this body as having the Local Government expertise or ‘on the ground’ experience to determine these plan making matters and that the emphasis, from past experience, is placed on expediency, rather than supporting a Local Government based delivery plan that releases or approves development sequentially to align with the delivery of local infrastructure.

2. Is the Pre- Gateway Test needed?

The pre –gateway process is not an effective process to deliver growth

The pre gateway process is lengthy and resource intensive, and over three years has received 75 applications of which only 52 have been finalised. The figures reveal that:

- only a quarter (24 applications) have been referred for a Gateway Determination – a decision to support a re-zoning by a delegate of the Minister; these have taken on average 167 days;
- only 5 have resulted in an amendment to an LEP . This represents a considerable amount of work for 5 LEPs.

LGNSW questions whether these outcomes are worth the investment of time and resources of both the State and Local Government to manage this process.

The Department asserts that a high level of housing and employment will be delivered through this process, but it is unclear what these figures are derived and given the above appears doubtful.

LGNSW suggests that it would be more effective for the Department to concentrate on strategic planning as a means of addressing housing supply, rather than encouraging developers to use a process that results in so few outcomes in a reasonable time period.

Current changes have made the reason for the process more questionable

The need for the Pre-Gateway mechanism is also based on an assumption that councils are either being too restrictive or slow in rezoning land, and that a process is needed to instigate change to deliver more housing supply and employment opportunities. The small number of successful applications seems to refute this assumption.

When the Pre-Gateway review process was introduced in October 2012, many councils had not yet finalised their comprehensive LEP. However this has substantially changed. By 2015 150 out of 152 councils have now completed their comprehensive LEP, resulting in the expansive up-zoning of land across the sector. Furthermore, LGNSW's recent survey of Sydney councils reveals that nearly 90% of councils have undertaken either a comprehensive strategic review or more targeted review of zonings during the preparation of the LEP, resulting in the substantive up-zoning of land to accommodate growth.

More recently, another key change to the planning process will be the introduction of the six District Plans under the Greater Sydney Commission (GSC). Consideration of the implications of these new plans on the Pre-Gateway Review process will be required, and whether these plans will make the Pre-Gateway Review process redundant or even potentially counter – productive, undermining the role of the District Plan.

Irrespective of above argument, the strategic merit test will need to be substantially up-dated to take into account the emerging place of the District Plan in Sydney.

3. The Department's proposed changes to the Pre- Gateway Process

The role of the Department and the JRPPs

LGNSW agrees with the Department that there is insufficient transparency and clarity in the process, especially in relation to the respective roles between the council, the Department and the JRPP.

We have covered some of these issues in our letter to the Minister for Planning, dated 22 July 2015 (as attached).

This section of the report will look at the role of councils and communities in relation to the revised process - as outlined Step by Step, in Attachment B of the Department's Report.

Overall a council's role in this revised process needs to be strengthened to ensure that a council's history and current work on developing a local strategic framework is well understood by the JRPP/GSC.

Councils are in the unique and best position as having most of the facts needed to undertake a strategic merits test/site specific test. The preparation and detail around the local strategic framework, local issues on the context of the application, are fundamental to the heads of consideration needed to be considered by the JRPP/ GSC. Hence the Pre-Gateway process needs to ensure that councils have enough time to make well prepared written submissions, as well be able to appear before the JRPP or the GSC.

The following changes are outlined Step by Step to improve the process from councils' perspective:

Step 1 – Getting and checking the application

The Department proposes to unnecessarily limit councils feedback to whether the application is consistent with the original planning proposal, whether additional information is needed and within a 21 day period.

It is suggested that this step of the process be extended to 42 days with less time allocated later for consultation with councils, allowing for councils to advertise and review application and re-assess their decision on the additional information. This allows for a more rigorous process at a critical time in the process.

Proposed changes:

That councils be given a more realistic time frame, of say 42 days, to re-consider the application for a Pre – Gateway review more fully, once it has been lodged at the Department for a review. This will enable a more appropriate level of assessment at a time at a critical time in the process. This would include:

- Checking that the application is consistent with the original proposal;
- Seeking any extra information;
- Enabling the application to be advertised (see later comments);
- Review councils decision; and
- Decide whether council intends to remain the 'relevant planning authority', where the matter is successful. This decision can be made at this stage, fast tracking the later referral process back to council envisaged currently at Step 3

Step 2 – The strategic merits test and the JRPP hearing

The Strategic Merits Test

Local Government supports the reliance on a 'strategic merits test' as the foundation for assessing an application for re-zoning.

LGNSW has outlined how this test may be strengthened in its letter to the Minister dated 22 July (see attached).

Most councils agree with the concept of the 'strategic merits test'. The difficulty is not so much in writing the test but rather how it is interpreted.

LGNSW suggested that the test be drafted and that councils be given an opportunity to review the wording before it is adopted in the Department's *Guide to Preparing Planning Proposals* and *Guide to Preparing LEPs*.

Council's right to appear before the JRPP/the Commission

At this stage it is considered the councils also be granted a right to appear before the JRPP/ the Commission, rather than the decision be the discretion of the JRPP/the Commission. Not until a council presents its case is it possible to assess whether the verbal material is relevant.

Community engagement

Currently communities do not have a right to make a submission to the application for Pre-Gateway Review, yet these applications by their very nature are seeking approval to 'break the zoning rules' that have been agreed by the community during the LEP process. The Department's recommendation to 'upload the application on the JRPP website' is considered inadequate and is unclear as to whether communities are able to make a submission or not. More importantly, the proposed changes fail to consider the greater issue as to whether the public should be given a right to make a submission to the JRPP. This needs to be rectified.

Proposed changes are:

1. The Strategic Merits test and the Site Specific Merit Test be distributed to councils for comment, given how critical this issue is in process. The wording then be adopted in the Department's *Guide to Preparing Planning Proposals* and *Guide to Preparing LEPs*.
2. All councils be given the right to appear before the JRPP or Commission.
3. That communities be involved in the process by:
 - all Planning Proposals be required to be advertised on lodgement by council;
 - all Requests for a Pre-Gateway Review be advertised by council when notified by the Department; and
 - communities be given a right to appear before the JRPP- where they have made a submission and subject to strict meeting rules.

Step 3 – Council notified whether it wants to be the relevant planning authority

If the Department agrees that more time should be granted for council to make a submission at Step 1 in the process, the time allowed to provide feedback from councils during Step 3 may be able to be shortened.

4. Conclusions

While LGNSW does not support the Pre- Gateway Review process in principle, we have suggested ways to improve the process to deliver better outcomes for communities.

Changes to the revised process are suggested to ensure that councils and communities are more appropriately engaged and heard so that relevant information and feedback is more directly provided to the JRPP/GSC.

How the strategic test is developed and implemented is challenging and how this will relate to the emerging District Plans is unclear.

LGNSW agrees that the role of the Department and JRPP is currently confusing and generally supports the proposed changes that seek to distinguish to the role of the Department and the JRPP/GSC.

To sum up, it is recommended that Department re-establish the Regional Panel User Group to provide guidance and feedback on the implementation of the revised process. This has been an effective way for councils to provide feedback to the Department on the work of the JRPPs in the past.