



Pre-Gateway Review

FINDINGS AND
RECOMMENDATIONS REPORT



Planning &
Environment



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Part 1 Introduction

1.1 Purpose

The Department of Planning and Environment (the Department) has undertaken a review of the pre-Gateway review process, introduced in 2012 as part of a package of reforms aimed at improving the plan-making process under Part 3 of the *Environmental Planning and Assessment Act 1979* (the Act) . The scope of this review is to consider:

- whether the pre-Gateway review is achieving the following objectives for which it was established:
 - provide a mechanism for applicants to have council rezoning decisions reviewed
 - ensure decisions on planning proposals that are well located, planned, and assist housing and job supply can be independently reviewed
 - increase transparency and provide greater certainty in plan making
- the efficiency and effectiveness of the pre-Gateway review to date
- the role and performance of the Department and Joint Regional Planning Panels. (JRPP)

The review has been informed by targeted consultation with the local government sector and key community and industry stakeholders.

This report provides the findings of the review, based on analysis of all pre-Gateway review requests to date and makes recommendations for improvements to the process to increase transparency and reduce time frames for decisions on review requests.



Part 2 Background to the Gateway

2.1 The Gateway

In 2009, Part 3 of the Act was amended to improve the process for making local environmental plans (LEPs). This included the introduction of the 'Gateway' which replaced the former 'one size fits all' system under which all LEPs were subject to the same approval steps.

The Gateway ensures there is sufficient justification early in the process to proceed with a planning proposal. The Gateway determination is a checkpoint for planning proposals before resources are committed to carrying out investigative research, preparatory work and consultation with agencies and the community. It enables planning proposals that lack strategic planning merit to be stopped early in the process before time and resources are committed. The Gateway also enables the Minister for Planning to amend or refuse planning proposals inconsistent with Ministerial directions and strategic planning.

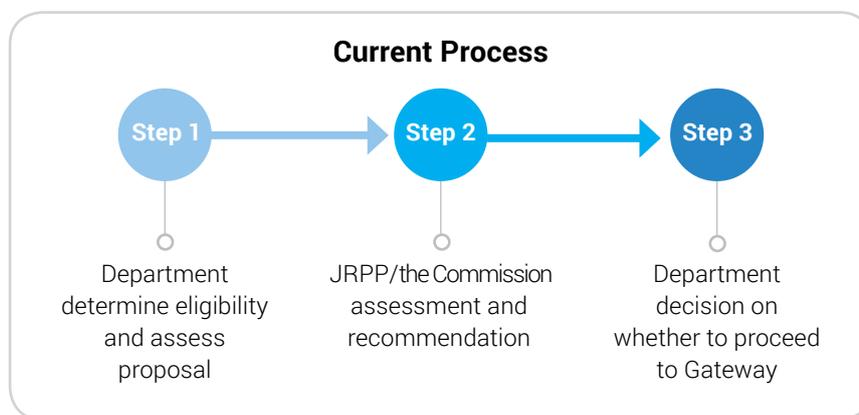
The Minister can appoint a body other than the council to prepare amendments to local environmental plans. Under the Act, every planning proposal requires a relevant planning authority to be appointed. Ordinarily this would be a council however the Minister can appoint an alternate relevant planning authority.





2.2 Introduction of pre-Gateway reviews

The pre-Gateway review was introduced in October 2012. The pre-Gateway review was introduced to increase transparency and provide greater certainty in plan making. Prior to the pre-Gateway review, there was no formal process for reviewing the merit of a planning proposal that a council refused to submit to the Gateway or delayed submitting to the Gateway. The pre-Gateway review meant that rezoning proposals which demonstrated strategic merit could be supported after being independently considered.



Under the policy for pre-Gateway reviews all eligible requests seeking a review are considered by an independent third party, either a Joint Regional Planning Panel (JRPP) or the Planning Assessment Commission (the Commission), if the proposal was in the City of Sydney. These bodies make a recommendation to the Department of Planning and Environment.

Introducing the policy for pre-Gateway reviews did not require an amendment to the Act and is administrative in nature. The pre-Gateway review is the only review mechanism of council decisions (or failure to make a decision in a reasonable time) about planning proposals.

2.3 The pre-Gateway review

A proponent may request a pre-Gateway review where the relevant local council has determined not to support the planning proposal or has failed to make a decision within 90 days of lodgement of a planning proposal.

Under the policy the Department makes the final decision on each pre-Gateway review request. This decision is informed by:

- material submitted from the applicant
- a council assessment report and/or any submission made during the review
- a report by the Department identifying whether the planning proposal has strategic merit
- independent advice from the JRPP or the Commission on the strategic merit and site-specific merit of the proposal.



Attachment A sets out the steps in the pre-Gateway review under the current policy.

Where a pre-Gateway review recommends that a proposal should proceed, either the council or the JRPP/the Commission can be appointed as the relevant planning authority and a Gateway determination issued. The Department offers councils the opportunity to be the relevant planning authority for the planning proposal that arises out of a successful pre-Gateway review request unless council has expressly indicated a preference not to.

The Gateway determines the level of community consultation including the length of time a proposal is to be publicly exhibited, relevant public authorities to be consulted and whether a public hearing is to be undertaken.

2.4 Role of the Joint Regional Planning Panels

The six JRPPs were established in 2009 to provide independent, merit-based advice and to determine regionally significant development applications. Schedule 4A of the Act identifies the classes of regional development considered by a JRPP, which includes development with a capital investment value over \$20 million.

Central to the pre-Gateway review is the expert independent advice provided by the JRPP on the strategic and site-specific merit of a planning proposal and whether it should proceed to Gateway. The role of JRPPs in considering pre-Gateway review requests does not extend to consideration of detailed development design.

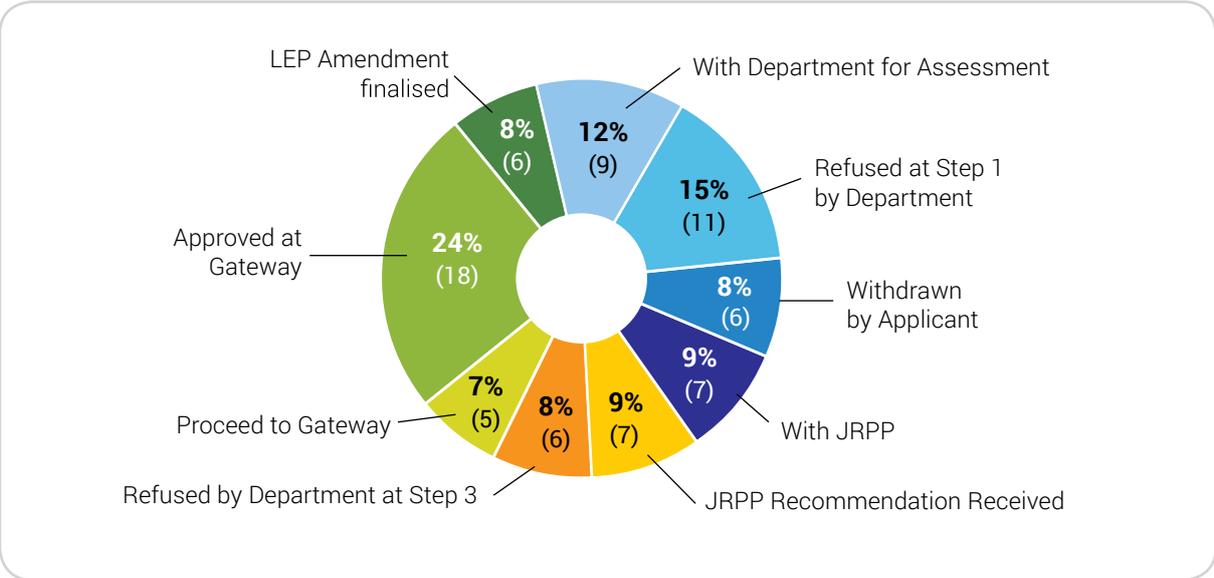
Like other functions performed by JRPPs pre-Gateway reviews are considered by a panel of five members comprising:

- two independent experts appointed by the Minister for Planning
- two nominees by the relevant local council (these can be councillors, council staff or independent appointments)
- an independent chairperson who is appointed by the Minister for Planning with the concurrence of the President of Local Government NSW.

The Commission performs the role of the JRPP in providing independent expert advice in the City of Sydney local government area as there is no JRPP. The Commission can also perform that role in other circumstances if required.

2.5 Summary of Pre-Gateway review requests 2012-2015

Since the commencement of the pre-Gateway review in October 2012, 75 pre-Gateway reviews have been lodged for consideration. As at 18 June 2015, the status of these review requests was as follows:



The JRPPs have considered requests for pre-Gateway reviews and provided independent advice to the Department on all except two occasions. These pre-Gateway reviews were referred to the Commission, in one case at council's request and in the other because the JRPP had previous involvement in the development application for the site.

Of the 75 pre-Gateway review requests, six (6) have been withdrawn and 46 have been determined. To date, 17 have been refused. This means that of the 52 reviews finalised, 56% of reviews have been successful and 44% have not.

Of the 29 reviews that have been determined to proceed to Gateway, 24 planning proposals have been issued with a Gateway determination. Six (6) of these 24 have been completed. Five (5) of the six (6) reviews have resulted in local environmental plans being made. One (1) of the 6 (six) was refused.

A relevant planning authority has been appointed for 25 of the 29 review requests determined to proceed. The relevant council agreed to be the relevant planning authority 15 times. The JRPP has been appointed as the relevant planning authority on 10 occasions.

2.6 Fees

To support the pre-Gateway reviews undertaken by the JRPPs and the Commission, fees were prescribed to recover costs and to establish required administrative arrangements so that the reviews operate effectively and provide proponents with certainty. Fees were introduced as follows:

- \$5,000 for the initial eligibility assessment stage
- \$15,000 for assessment of a pre-Gateway review by the relevant JRPP or the Commission
- A fee of \$25,000 for the processing of a planning proposal where the matter is supported and progressed to Gateway determination stage and where an alternative relevant planning authority (other than the council) is appointed.

Part 3 Key pre-Gateway review statistics

The following provides an outline of the key pre-Gateway statistics that have been used to inform this review and the recommendations for reforming the current process. A number of the statistics demonstrate a clear need for reform to improve efficiency.

Pre-Gateway Applications to date
<ul style="list-style-type: none"> • Since October 2012, 75 pre-Gateway review requests have been submitted to the Department.
<ul style="list-style-type: none"> • 29 pre-Gateway requests were considered to have strategic merit and have been determined to proceed to Gateway (39% of all review applications) – of which 21 were originally refused by council.
<ul style="list-style-type: none"> • 17 pre-Gateway review requests have been refused.
<ul style="list-style-type: none"> • 6 pre-Gateway review requests have been withdrawn by the applicant.
<ul style="list-style-type: none"> • 23 pre-Gateway review requests are under consideration as at 18 June 2015, of which 9 are awaiting referral to a JRPP, 7 with the JRPP for advice and the JRPP has provided its independent expert advice on 7.
<ul style="list-style-type: none"> • 24 (out of the 29 pre-Gateway review requests) have progressed and received a Gateway determination and planning proposals are progressing.
<ul style="list-style-type: none"> • 6 planning proposals have been finalised and 5 LEPs gazetted. 1 planning proposal was refused – the JRPP was the relevant planning authority for 2 of the planning proposals and the relevant council was the planning authority for 4.
<ul style="list-style-type: none"> • 50 pre-Gateway review requests have been in metropolitan Sydney.
<ul style="list-style-type: none"> • 56% of pre-Gateway review requests have been successful and 44% have not.
<ul style="list-style-type: none"> • 72% of planning proposals approved to proceed to Gateway after a pre-Gateway review request were initially refused by council.
<ul style="list-style-type: none"> • 28% of planning proposals approved to proceed to Gateway after a pre-Gateway review request were not determined by council in the first instance

Reason for Pre-Gateway Review Request
<ul style="list-style-type: none"> • Over two thirds of pre-Gateway review requests (55 out of 75) have been submitted following council refusal.
<ul style="list-style-type: none"> • Over 80% of pre-Gateway review requests in metropolitan Sydney (41 of 50) have been submitted following council refusal.
<ul style="list-style-type: none"> • Just under half (44%) of pre-Gateway review requests submitted from regional areas are in response to councils not determining within a reasonable time (90 days).



Pre-Gateway Average Timeframes

- average time to process proposals from lodgement to the date a decision is made on whether the proposal should proceed to Gateway determination or be refused is 167 days
- average time to determine if a pre-Gateway review requests is eligible for referral for independent expert advice is 87 days
- average time for JRPPs to provide independent expert advice is 56 days
- average time for the Department to make a determination following receipt of independent expert advice is 41 days.

Appointment of relevant planning authority

- a relevant planning authority has been appointed on 25 occasions following the completion of the pre-Gateway review (4 pre-Gateway reviews are awaiting the appointment of the relevant planning authority)
- the relevant council has accepted this role on 15 occasions
- the JRPP has been appointed as an alternate relevant planning authority on 10 occasions
- of the 25 reviews where a relevant planning authority has been appointed, 17 proposals were originally refused by council. Council has then accepted the role of relevant planning authority on 10 occasions.

Benefit of the Pre-Gateway Review

- the 29 pre-Gateway review requests determined to proceed to Gateway determination would deliver a combined capacity of approximately 4,737 homes and 4,585 jobs.
- the number of pre-Gateway review requests equates to approximately 7% of planning proposals submitted to Gateway annually.

Part 4 Results of targeted consultation

4.1 Consultation responses

Targeted consultation was undertaken with the local government sector and key community and industry stakeholders. As can be seen from the summary of responses below, opinion was divided about whether the pre-Gateway review process should continue at all, and what the respective roles of councils, the Department and the JRPPs and the Commission should be. However, there were some common suggestions from stakeholders, should the process be retained. These were to:

- strengthen consideration of strategic merit, having regard to the currency of LEPs and local, subregional and regional planning strategies, and the time that has elapsed since the community has been consulted about the zoning of land the subject of pre-Gateway review requests
- increase transparency of the process and decisions by clarifying the respective roles of the council, Department and the JRPPs, and the matters taken into consideration in making decisions
- reduce the time taken to make decisions about review requests
- establish an eligibility threshold for regional significance
- charge fees at each stage of the process, and that the fee structure was appropriate





Summary of Targeted Consultation Responses	
Issue	Comments
Should the pre-Gateway review process continue	<ul style="list-style-type: none">• Positions in relation to whether the pre-gateway process should continue were divided.• Responses were received stating that the pre-Gateway should be abolished and that local decisions should rest with local councils.• Responses were also received stating it is essential that a mechanism is available to review councils' decisions, but the Department and JRPP should not play an extended negotiating role in the process.• Concern some proponents manipulate the system preferring the pre-Gateway review over negotiating an outcome with Council.• The pre-Gateway has become a mechanism for developers to circumvent council decisions.• The process fails its own objectives to increase transparency when decisions are made behind closed doors.• Focus should be directed toward developing sound local strategic planning to inform council decisions.• The role of the Department and JRPP needs to be more clearly defined. The Department needs to support councils' strategic work and remove itself from a negotiator role between the proponent, council and JRPP.
Strategic focus	<ul style="list-style-type: none">• There should be a threshold to ensure matters subject to review are genuinely significant. The threshold should relate to strategic planning outcomes, which will also ensure up to date strategic plans are maintained, but numerical or monetary thresholds are considered to be practical to achieve the intent of the threshold.• A threshold to establish regional significance should be considered for proposals which are eligible for review in metropolitan areas.• If a Council's decision is consistent with an approved strategy, then the decision should not be reviewed.• Pre-Gateway review is opposed where the local environmental plan has been the subject of a recent strategic review and consultation process. Pre-Gateway review could only be justified where no up-to-date approved strategic local environmental plans are in place.• The JRPP needs to focus on strategic matters in its consideration of review requests. In doing so the members of the JRPP should have adequate strategic planning expertise for pre-Gateway reviews noting that the JRPP was initially set up to provide advice on development applications, not strategic planning.



Transparency, roles and matters for consideration	<ul style="list-style-type: none">• The Department should release an explanatory document so that the broad community understands the process.• Lack of skills and expertise on the JRPP to make significant planning decisions.• Oppose expanding the role of Panels on planning matters. In the event that Panels were to be given a limited role in the process, guidelines and procedures must be prepared for the JRPP to ensure a strategic focus and efficient operational process.• The role of councillors on the panel is unclear and is also considered to be a conflict having previously voted on a matter when considered by council (where review request is submitted on grounds of council refusal). The roles and constitution of the Panel needs to be communicated and clearly articulated.• The composition and operations of the JRPP should be reviewed, including ensuring appropriate strategic expertise for making land use planning decisions. In the interests of maintaining independence, if a council has rejected a proposal, it is not appropriate that it be represented on the JRPP.• The value in allowing the council to be the RPA for a matter it has previously refused is questioned. The Department or JRPP is a more suitable alternative.• The council should not be approached to be the RPA where a planning proposal has already been rejected by that council.• The community should be informed of when the Panel sits on a matter and should be able to make representations at this stage.
Reducing time frames	<ul style="list-style-type: none">• Setting of statutory time frames would improve efficiency of the process, particularly time periods for the Department's initial assessment and the independent body's advice.• The community should have input at an early stage to reduce delays later in the process.

Part 5 Findings of the Review

5.1 Is the pre-Gateway review achieving its objectives?

The original objectives for introduction of the pre-Gateway review were to:

- provide a mechanism for applicants to have council rezoning decisions reviewed;
- ensure decisions on planning proposals that are well located, planned, and assist housing and job supply can be independently reviewed; and
- increase transparency and provide greater certainty in plan making,

5.1.1 The provision of a review mechanism for rezoning applications

Prior to the pre-Gateway review, no mechanism existed to allow applicants to seek a merit-based review from an independent expert body of council decisions on requests to amend local environmental plans. The only other review mechanism available involves the review of the legality of a council decision or action by the Land and Environment Court (judicial review).

5.1.2 Planning proposals that assist housing and job supply

As of 18 June 2015, 29 pre-Gateway review applications determined to proceed to Gateway, of which 21 had previously been refused by the council. The 29 approved applications will deliver a total of 4,737 homes and 4,585 jobs. This includes a major pre-Gateway review request within a single local government area which is estimated to introduce approximately 1,500 homes and 2,500 jobs. The pre-Gateway review is assisting with the delivery of housing and jobs that may otherwise have not been realised.



5.1.3 Increasing transparency and certainty

This review has found a number of issues in the way the pre-Gateway review process operates that do not result in greater transparency and certainty in plan-making. These issues include:

- the respective roles of the Department and the JRPPs in the process, and the multiple roles of the Department
- time delays at different stages of the process
- lack of community awareness of review applications
- the scope of the review
- the need for a greater focus on strategic consistency
- inadequate weight given to the currency of strategic planning applying to the land

These issues also impact adversely on the efficiency and effectiveness of the pre-Gateway review process as it currently operates.



5.2 The role and performance of the Department and JRPPs

5.2.1 Delays in the process

The average total time from lodgement of a proposal with the Department for pre-Gateway review to recommendation by the JRPP is 167 days. This is more than the 90 days originally envisaged. The additional length of time can be attributed to the three-step process and requests for additional information to the proponent.

The average time for the Department to determine whether a proposal is eligible and should be referred to an independent panel for review is 87 days. This is often due to requests for additional information to the proponent. Once referred to a JRPP the average time for the panel to provide its independent advice is a further 56 days. Finally, the average time for the Department to make a decision on whether the matter should proceed to Gateway is 41 days.

5.2.2 Role of the Department in the initial eligibility assessment

The initial assessment by the Department comprises an assessment of the strategic merit to determine eligibility and also includes a site-specific merit analysis. It can duplicate subsequent consideration by the JRPP who also undertake a similar assessment exercise.

It is therefore recommended that the Department no longer undertake the initial assessment of strategic and site-specific merit, and that requests eligible for review be submitted instead directly to the relevant JRPP for consideration. This will reduce time-frames and avoid duplication, as the review process will now be undertaken by the independent expert panel.

The Department will forward all review requests to the JRPP, and concurrently notify the council.



5.2.3 Community awareness of review requests

Some stakeholders have suggested that there be an initial round of community consultation in connection with the pre-Gateway review process.

The principal place for community consultation for planning proposals is after a Gateway determination is issued. The Gateway determination specifies the level of information to be made available to the community during the exhibition process and who must be consulted. This includes additional expert studies that enable the community to make better informed submissions. Consultation twice on the same proposal may not provide additional insights on the impacts of the proposal. It would also introduce a further step to the process, potentially affecting the overall timeframe to assess a proposal.

For this reason it is not proposed to mandate pre-Gateway public consultation of planning proposals by councils or as part of the pre-Gateway review process. However to ensure that communities are aware of the pre-Gateway review requests all requests will be uploaded to the public application tracking system by the JRPP within 5 working days of receipt.

A council may consider informally consulting its community at any stage particularly in circumstances where a planning proposal would result in a significant departure from recently completed strategic planning.

It is recommended that the Department's Guide to Preparing Planning Proposals and the Guide to Preparing LEPs be amended to note that in specified circumstances councils can consider the benefit of community participation at an early stage prior to making a decision on the merits of a spot re-zoning or LEP amendment. This should be at the discretion of the local council, where a proposal has been sufficiently developed and some form of consultation at an early stage may assist council in formulating the planning proposal. This could be the case if the proposal is a significant departure from recent strategic planning involving the community and would not meet recently established community expectations, or if the planning proposal was complex and early consultation may assist council in determining the final scope of the proposal.

5.2.4 Role of the JRPP

Under the current policy, if the JRPP recommends a proposal be submitted to the Gateway, the Minister (or delegate) determines whether to proceed with the proposal and who the relevant planning authority will be. This requires the JRPP to pass the review back to the Department for the next steps in the process.

To streamline the process and reduce time delays, the JRPP will make the final decision on whether the pre-Gateway review should be supported and proceed to Gateway or not. It is recommended that the Minister delegate the power to appoint the relevant planning authority to the JRPPs and the Commission (for the City of Sydney).

This will save time and improve transparency, as the entire process will be managed by the relevant independent panel. The relevant planning authority (i.e. council or the JRPP) will submit the planning proposal to the Department for a Gateway determination, in the same way as all other planning proposals are submitted to the Gateway.



5.2.5 Role of relevant planning authority

Industry representatives raised concern regarding the current practice of the Department to offer councils the role of relevant planning authority notwithstanding that a council may have previously resolved to not support the planning proposal.

Of the 25 pre-Gateway reviews where a relevant planning authority has been appointed, 17 proposals were originally refused by council. Council has then accepted the role of relevant planning authority on 10 occasions: 6 times in metropolitan Sydney and 4 times in regional areas. On 48% of occasions where a council originally refused a planning proposal, the same council accepted the role as relevant planning authority.

As council officers ordinarily seek a resolution of council to determine whether council accepts the role of relevant planning authority, this request can add considerable time to the pre-Gateway review process. Extensions of time are regularly sought. In one instance it took a council more than four months to respond to the Department's request.

The Department recommends that councils continue to be given the option of accepting the relevant planning authority role, so that local matters can continue to be dealt with at the local level where appropriate.

Recognising council procedures, it is proposed that a 42 day time-frame for acceptance of the role will be introduced. After that the JRPP will automatically be authorised to appoint itself as the relevant planning authority for that proposal. This will remove the need for the Department to separately request the appointment of an alternative relevant planning authority.

5.2.6 Making LEPs following a review

Consistent with the Government's policy of delegating plan-making powers, it is proposed that the Minister also delegate plan-making powers to the JRPPs and the Commission.



5.3 Is the pre-Gateway review process efficient and effective?

5.3.1 Number of applications

To date, the Department has received 75 requests to review proposals under the pre-Gateway review since its introduction in October 2012. Of the 75 requests, 50 have been within metropolitan Sydney where 80% were originally refused by Council, and 25 have been in regional NSW where 44% were not considered within 90 days.

During this period, the Department has received 716 planning proposals from Councils seeking a Gateway determination. The number of pre-Gateway review requests received by the Department equates to approximately 7% of the total number of planning proposals received annually, which is an average of 2 proposals every month with two-thirds of applications being in metropolitan Sydney.

Given that Councils are supporting the vast majority of planning proposals and forwarding them to the Department for a Gateway determination, the number of proposals being considered under the pre-Gateway review is relatively minor. On this basis, it appears that the inefficiencies in the process are not a consequence of the volume of reviews.

5.3.2 The scope of the review

The pre-Gateway review was designed to deliver a focused review of council decisions by the Department informed by independent expert advice and with input by council and the proponent.

The pre-Gateway review has evolved in a way that has contributed to delays in finalising pre-Gateway review requests. Proposals as considered by councils are often amended through the pre-Gateway review resulting in an outcome that is different to that originally submitted to the council. This is partly due additional information being sought from the proponent or council at the request of the JRPP or another party. This was not intended under the policy and has resulted in delays in finalisation of proposals and created a lack of certainty and transparency about planning outcomes.

The pre-Gateway review should be refocussed to be a review of the proposal as submitted to and considered by council. When the Department forwards review requests to the JRPP, it will concurrently notify the council and request that any comments, additional information and confirmation that the proposal is consistent with the original submission be forwarded to the relevant JRPP within 21 days. The role of the Department will be administrative only.





5.3.3 Thresholds for reviews

During consultation some stakeholders suggested that a threshold could be imposed so that only genuinely significant proposals are eligible for review. A capital investment value threshold or a numerical threshold such as dwelling yield were identified as possible thresholds.

An analysis was undertaken of the 29 pre-Gateway reviews that have been determined to proceed to Gateway and the number of dwellings potentially delivered at various monetary thresholds.

Construction Value	Indicative number of dwellings	Number of reviews (of those determined to proceed to Gateway)
Less than \$20 million	>65 dwellings	16
\$20-30 million	65 – 100 dwellings	3
\$30-40 million	100 – 135 dwellings	1
\$40-50 million	135 – 165 dwellings	0
\$50+ million	<165 dwellings	9

Note: These numbers are indicative and have assumed an individual dwelling/unit construction cost of \$300,000. It is acknowledged construction costs will vary for each development.

The review shows that 16 of the 29 proposals that proceeded had a capital investment of less than \$20 million. Introducing a threshold, similar to that currently used to define regionally significant development applications referred to the JRPPs, would reduce the number of eligible review applications eligible for the review process.

The Department recommends against this approach because:

- it is considered that a review mechanism should be available for all proposals, regardless of their size as the review was designed to increase transparency and certainty in the plan making process;
- there is no such threshold for proposals when they are submitted to the relevant planning authority by proponents in the first instance; and
- eligibility for progress of a planning proposal to the Gateway should be assessed solely on its strategic and site-specific merit, tested against relevant regional and local planning strategies, and not against an arbitrary capital investment value or dwelling yield.



5.3.4 Strategic focus of reviews

Consultation with stakeholders through this review has identified strong support for strategic merit being a key consideration in whether a proposal should proceed to the Gateway. It is therefore considered that the strategic merit test be retained, but a more rigorous assessment of this key element be applied. It is proposed to do this by better linking it to adopted or draft regional, subregional or local planning strategies and to the currency of the planning controls (LEP) applying to the land.

The strengthened test places increased emphasis on whether existing LEPs reflect the current strategic direction for planning in the area, the length of time that has elapsed since the community was consulted about the planning controls applying to the land, and changing circumstances in the area.

Current strategic merit test	Proposed strategic merit test
<p>Is the proposal:</p> <ul style="list-style-type: none">• consistent with a relevant local strategy endorsed by the Department• consistent with the relevant regional strategy or Metropolitan Plan• otherwise able to demonstrate strategic merit, having regard to relevant section 117 directions, applying to the site and other strategic considerations (eg proximity to existing urban areas, public transport and infrastructure, accessibility, providing jobs closer to home etc)	<p>Is the proposal:</p> <ul style="list-style-type: none">• consistent with the relevant regional or subregional strategy. This would include all Regional Strategies (when in place) and A Plan for Growing Sydney;• consistent with a relevant local council strategy, endorsed by the Department;• the contemporary nature of the relevant LEP, measured by the time elapsed since the community has been consulted on the zoning of the subject area (including, for example, as part of the introduction of standard instrument LEPs); and• demonstrable reason for the rezoning or change in planning controls to occur, based on changed circumstances since the LEP was made, such as:<ul style="list-style-type: none">- new infrastructure;- a new or updated regional, subregional or local strategy to address an inconsistency between strategic planning and zoning and/or development standards; or- the public interest.

5.3.5 Site-specific merit test

The site-specific merit test will also be undertaken by the JRPP under the new arrangements. No adverse comment was received about the site-specific merit test during targeted consultation, and it has not changed from the current policy. It requires and assessment of site-specific merit and compatibility with surrounding land uses, having regard to:

- the natural environment (including known significant environmental values, resources or hazards)
- the existing uses, approved uses and likely future uses of land in the vicinity of the proposal
- the 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 JRPP will notify the council of its recommendations when it has completed the strategic and site-specific merit tests.



Part 6 Recommendations and revised process flow chart

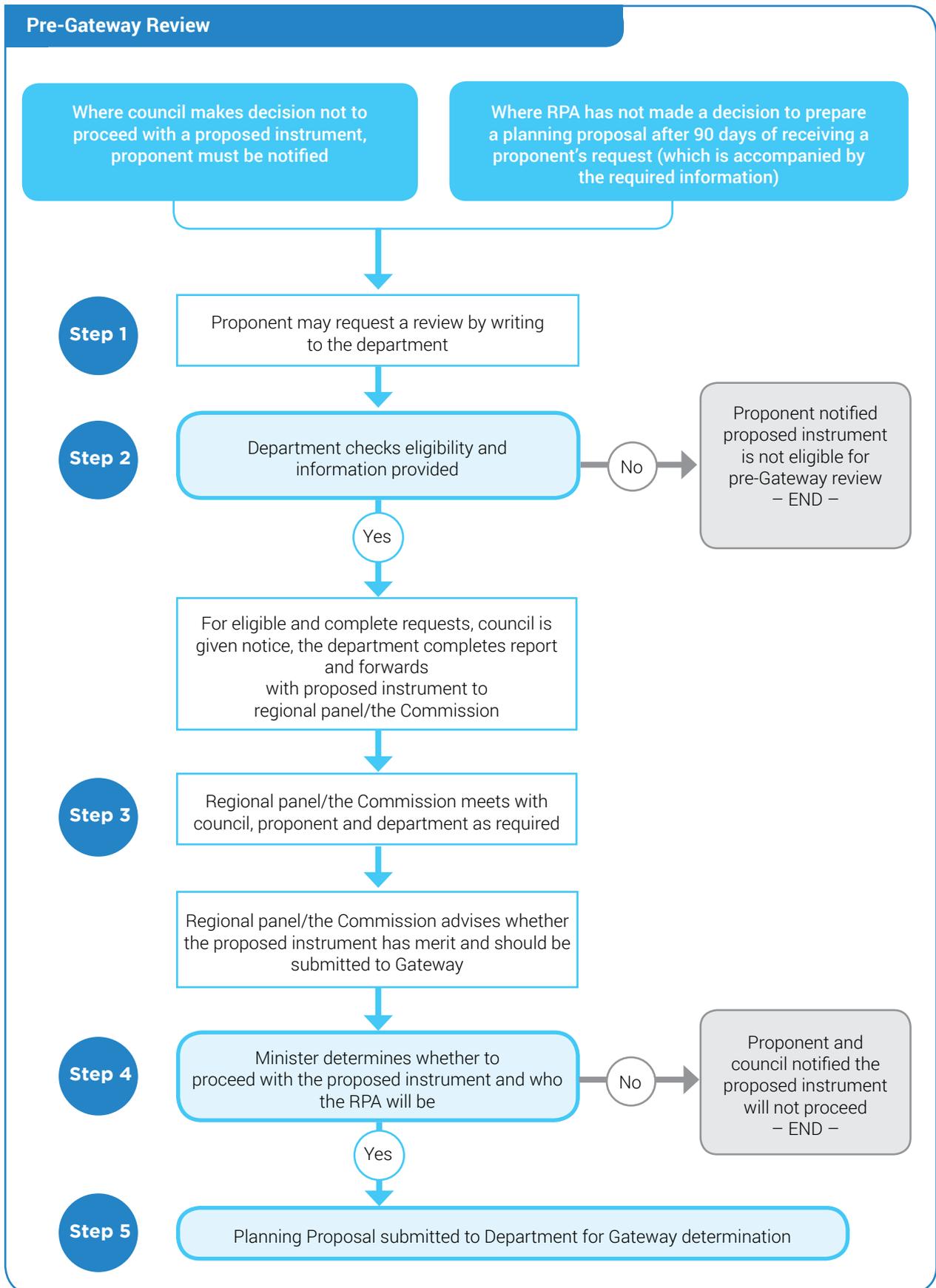
This Review recommends retaining the pre-Gateway process and for the Minister to adopt a suite of administrative and procedural changes that aim to improve transparency and certainty, reduce time-frames for decisions on review requests, and strengthen the requirement for proposals to be consistent with relevant planning strategies.

Attachment B sets out the proposed steps in the revised process.

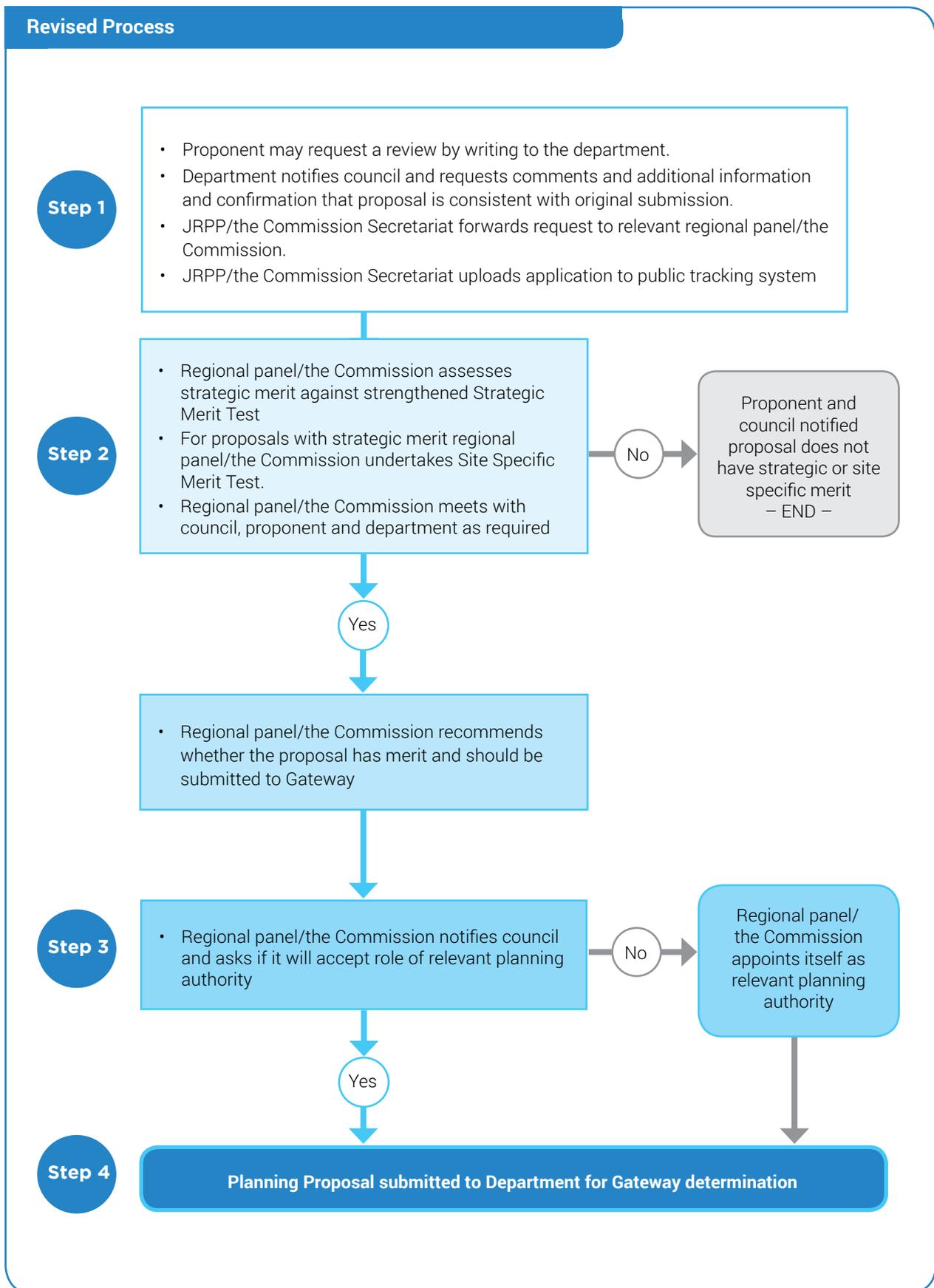
The key proposals for change are:

1. The Department will no longer undertake an initial assessment.
2. All review requests should be automatically referred to the relevant JRPP/the Commission within 3 days of receipt.
3. The Council will be notified upon receipt of an application and requested to provide any comments, additional information and confirmation that the proposal is consistent with that considered by Council to the JRPP.
4. A revised strategic merit test will be applied by the JRPP/the Commission to clarify in more detail the basis upon which a review will be considered, including taking into account the time that has elapsed since the last zoning of the land took place.
5. Proposals that do not meet the strategic merit test will not be able to proceed to Gateway.
6. Those that do meet the new strategic merit test will also have to meet the existing site-specific merit test before they can be recommended for a Gateway by the JRPP/the Commission.
7. The power to appoint an alternative relevant planning authority will be delegated to the JRPPs and the Commission (in the case of the City of Sydney).
8. Plan-making powers will be delegated to the JRPPs and the Commission. This is consistent with the delegations to councils, as relevant planning authorities, to make plans.
9. Requests for review will be uploaded to the JRPP or the Commission public application tracking system within five working days of receipt.
10. If the JRPP/the Commission recommends that a proposal should proceed to Gateway, it will concurrently notify the relevant council and ask if it will accept the role of relevant planning authority to take the proposal to the Gateway and then finalise the proposal.
11. Councils will have 42 days to accept the relevant planning authority role; otherwise the relevant JRPP/the Commission will appoint itself as relevant planning authority.
12. The Department's Guide to Preparing Planning Proposals and the Guide to Preparing LEPs will be amended to note that in specified circumstances councils consider the benefit of community participation at an early stage prior to making a decision on the merits of a spot rezoning or LEP amendment.

Attachment A – Current Pre-Gateway review process



Attachment B – Revised process



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