



14 February 2022

Department of Planning, Industry & Environment (DPIE)
[Sent by – Online submission www.planningportal.nsw.gov.au/rezoning-new-approach]

Draft Submission – Exhibition of *A new approach to rezoning Discussion Paper*

Thank you for the opportunity to provide feedback on the *A new approach to rezoning Discussion Paper*. This letter provides a submission which was endorsed by Council at its Ordinary Meeting of 21 February 2021.

Discussion points	Comments
General comments	
One of the aims of the Paper is to create a system that better aligns the rezoning process with strategic planning.	Support. There is a need for stronger processes that support and elevate strategic planning to inform and guide land use decisions and outcomes. This was the intention of council developing Local Strategic Planning Statements (LSPS).
DPIE plan on using the feedback from this exhibition to refine the rezoning approach with a view to implementing change in 2022.	Before implementation occurs, it will be critical that draft changes are forwarded to all stakeholders for further comment as part of this process. It is noted that the LEP Guideline has been released and includes some of the improvements proposed in this Paper (the categorisation of rezoning applications, benchmark timeframes, terminology, stages, promoting combined rezoning and development applications). This seems pre-emptive and councils are being asked to comment retrospectively.
The Paper suggests that aligning the rezoning process with the development application (DA) process may increase the number of combined rezoning and DA's. The Paper views this as being beneficial as it allows development to	It is acknowledged that a combined lodgement is a mechanism currently available under legislation and referenced in the LEP Guideline. Council disagree that this option should be encouraged especially if certainty, reduced



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<p>happen quickly and provides the community certainty as to the type and form of development that will end up on rezoned land.</p>	<p>time and cost improvements are being pursued. Rezoning timeframes do not align with DA timeframes, which is at odds with the recently released Minister's expectations.</p> <p>There is potential for this mechanism to be viewed as a means of achieving a spot rezoning, when as stated in the Paper, the NSW Productivity Commission recommended a policy to avoid spot rezoning.</p> <p>Support for the recommendation in the LEP Guideline that, the proponent discuss combined applications with councils before lodgement.</p>
<p>The need for reform</p>	
<p>The Paper outlines the feedback received from stakeholders to inform improvements to the rezoning process that reduces processing times, increase quality place-based outcomes and establish a workable appeals pathway. Issues identified included:</p> <ul style="list-style-type: none"> - Time and complexity of the current system, - Inconsistencies in documentation, consultation and how 'strategic merit' is interpreted, - Transparency and trust, with consultation, review processes and how decisions are made, - Recognition of proponents, - Engagement with State agency input 	<p>We agree with the issues identified.</p> <p>In addition, State agency input is critical up front. State wide strategic infrastructure planning is needed alongside local strategic planning. Many complex rezoning applications require infrastructure needs and requirements to be determined upfront. Timely delivery of this infrastructure is not always possible.</p>
<p>Terminology</p>	
<p>An application to make or amend a LEP will be referred to as a 'rezoning application'.</p> <p>The terms rezoning request and Planning Proposal will be no longer used.</p>	<p>There is a potential for this new term to be confusing to the public and landowners as it implies that the application will make changes to an existing zone.</p> <p>LEP amendments often involve changes that have no impact on existing zones.</p>



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	DPIE guidelines and information should provide clear explanation on this new term.
<p>The party responsible for assessing and determining the rezoning application will be referred to as the 'rezoning authority'.</p> <p>The terms LPMA (local plan making authority) will no longer be used.</p>	Support.
<p>It is proposed that the term Gateway and the Gateway stage of the rezoning process is to be removed.</p> <p>The rezoning authority will undertake this function. The rezoning authority, depending on the type of rezoning application can be council or the Minister.</p>	<p>Currently the Gateway stage of the rezoning process is undertaken by DPIE. It occurs following council endorsement of the Planning Proposal.</p> <p>Further discussion on the new rezoning approach without a Gateway stage is provided later in this report.</p>
New categories and timeframes	
<p>Four categories for rezoning applications have been developed and are applied in the new LEP Guideline.</p> <ul style="list-style-type: none"> - Category 1 Basic – administrative, housekeeping, minor local matters - Category 2 Standard – site specific applications consistent with strategic planning, - Category 3 Complex – applications not consistent with strategic planning, and not captured in Category 1 & 2 - Category 4 Principal LEP – comprehensive council led application proposing broadscale policy change to the LEP for the whole LGA. <p>The new approach assigns timeframes for each stage and category. The timeframes will apply to councils, DPIE, State agencies and private proponents.</p> <p>The categories aim to provide certainty and consistency on fees, timeframes and information requirements; and improves monitoring of inefficiencies.</p>	<p>Support for categorisation of rezoning applications and applying benchmark timeframes to create greater efficiencies. Noting that to understand the complexity of applications, our council already categorise applications.</p> <p>The timeframes provided in the Paper (especially Category 3) seem unreasonable and don't acknowledge council reporting, assessment, council resources and the role of the Local Planning Panel.</p> <p>For example, a release area rezoning, would fall under Category 3. These applications require time to prepare, negotiate and finalise Contribution Plans, voluntary planning agreements (VPA) and a development control plan (DCP) to support the rezoning. The timeframes proposed for Category 3 applications are not realistic.</p> <p>Council recommends:</p> <ul style="list-style-type: none"> - an additional category for new release area rezoning and realistic timeframes assigned, and - during the scoping stage, councils can amend DPIE's benchmark timeframes where necessary to align with the work



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	<p>required for more complex applications. These timeframes are shared with proponents alongside submission and study requirements for the rezoning application (Scoping stage).</p>
<p>New roles</p>	
<p><u>Council and DPIE</u></p> <p>The new approach aims to give councils greater responsibility and accountability. It also aims to allow DPIE to focus on state-led zonings, state significant DA's, rezoning to amend SEPP's, state and regionally significant rezoning.</p> <p>For Cat 1 and Cat 2 applications and Cat 3 applications (where there is a private proponent), Council will have full control including:</p> <ul style="list-style-type: none"> - give permission to exhibit (currently a Gateway determination DPIE function), - review changes after exhibition, - assess and determine final decision. DPIE would have limited or no involvement in these applications. <p>DPIE is given responsibility to assess and determine Category 3 and 4 applications, where Council is the proponent, and for public authority proponent rezoning applications.</p> <p>Planning Delivery Unit (PDU) will continue to progress priority development and rezoning applications,</p>	<p>Support for more autonomy and limited or no DPIE involvement where rezoning applications are consistent with strategic planning, Ministerial Directions and are straight forward.</p> <p>There is concern that DPIE would have a limited or 'hands-off' role in release area private proponent initiated rezoning applications. We envisage that in any rezoning process DPIE has a critical role, particularly with the coordination of agencies, and for council areas (like Penrith) that fall outside the Sydney Region Growth Centres.</p> <p>Recommend that for council-led rezoning, efficiencies would be made if DPIE (or another central body) undertake consultation and engagement with state agencies.</p> <p>The Paper does not include state-led rezoning, that are generally carried out through a SEPP process. Council request for the purpose of transparency and trust, further information to understand the justification and reasoning for this decision. Why are state led rezoning treated differently?</p>
<p><u>Proponent</u></p> <p>Currently for private proponent initiated rezoning applications responsibility to progress a proposal shifts to council. The private proponent is not considered the applicant, must cover any costs and fees,</p>	<p>Support for private proponents to be recognised as the applicant and given additional responsibilities. Their role is currently ambiguous.</p>



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<p>however, has limited control over the processes.</p> <p>With the new approach private proponents are recognised as applicants (similar to the development application process) and:</p> <ul style="list-style-type: none"> - can submit and have a rezoning application assessed and determined, - can appeal a decision made about a rezoning application, - is responsible for fees, meeting information requirements, consulting with state agencies, responding to consultation submissions. <p>A private proponent will require owners' consent to lodge a rezoning application.</p>	<p>Recommend that the new approach builds systems into the process where council and private proponents consult with State agencies together. Past experiences have shown conflicting advice from agencies.</p> <p>This will create confidence when councils undertake their assessment and determination of the application.</p> <p>Support for mandatory owners' consent for proponent initiated rezoning applications.</p>
<p><u>DPIE Secretary - Inconsistency with Section 9.1 Ministerial Directions</u></p> <p>Currently a planning proposal's inconsistency with a Ministerial Direction requires the approval of the DPIE Secretary.</p> <p>The new approach proposes, in some circumstances a council can approve an inconsistency rather than notifying DPIE and seeking approval from the Secretary. In other circumstances the department will be given the opportunity to comment and/or approve an inconsistency.</p>	<p>Ministerial directions relate to:</p> <ul style="list-style-type: none"> - employment and housing - environment and heritage - hazard and risk - regional and local and metropolitan planning. <p>For reasons including transparency, accountability to our community and issues around separation of duties we recommend that inconsistencies with Ministerial Directions continue to be approved by the Secretary.</p>
<p><u>Public authorities</u></p> <p>Changes to the agency referral process for rezoning applications are proposed.</p> <ul style="list-style-type: none"> - Clearer direction on when a referral is required. - Clearer directions for proponents on the information they must provide agencies, - Clarity to the agencies on the appropriate level of assessment they need to provide 	<p>Support for any changes to improve the agency referral process especially managing requests for more information and imposing strict timeframes on agencies.</p>

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<ul style="list-style-type: none"> - Requests for more information to be managed more closely. - Strict timeframes for agency responses. No response from an agency will allow the rezoning authority to continue to progress and determine an application. If the agency objects a rezoning application could still be approved but will need to consider the objection when assessing it. <p>Agencies would be involved at the scoping and exhibition phases</p> <p>The specifics of how these initiatives will be achieved have not been outlined in the Paper.</p> <p>The new approach allows a public authority to initiate and become the proponents of a rezoning application. These applications are lodged with and determined by the department rather than council.</p>	<p>There are concerns with progressing a determination of a rezoning application without a response from one or more agencies, especially around critical infrastructure. There is a potential that the best planning outcome or decision will not be made in this circumstance. Council will be accountable for these decisions to its community and be burdened with the risk.</p> <p>Council's experience has shown that agencies can change their minds and provide differing advice at various stages of the rezoning process. Agencies must be clear on their position and not be able to change this position later.</p> <p>Support.</p>
<p><u>Local Planning Panel (LPP)</u></p> <p>The Paper proposes that the LPP will have a role in the determining the rezoning application if there is a conflict of interest.</p>	<p>Currently rezoning applications must be referred to the LPP to undertake an assessment and provide advice. The current LPP Ministerial Direction requires council to provide a full (strategic and site-specific merit) assessment of the proposal to assist the LPP.</p> <p>Under the new approach more clarification is requested on the continuing role of the LPP and at what stage (under the new approach) a rezoning application should be referred to the LPP. Do proposed timeframes accommodate this step and the time required for a full assessment.</p>
<p>New steps</p>	
<p>Scoping and Lodgement</p> <p><i>Comment</i></p>	

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	<ul style="list-style-type: none"> • Support for a mandatory pre-lodgement (scoping) stage. Our council currently has a pre lodgement process for rezoning proposals. • It is recommended that the rezoning authority should be able to reject a rezoning application at the scoping stage and/or before exhibition if it is clearly inconsistent with strategic plans. • Allowing community engagement on a rezoning proposal that does not align with local and/or State strategic plans is confusing for the community and would erode their confidence in the process. For applications that are found to have strategic merit and aligned with LSPS, there should be no need for community engagement. This was the original intent of the LSPS. <p>The development of our Council's LSPS involved extensive community engagement. The LSPS sets the long-term land use vision for our LGA. If the objective of the new approach to rezoning is to elevate the role of strategic planning and develop a plan led system, rezoning applications that do not align with a Council's LSPS should not progress.</p> <ul style="list-style-type: none"> • Council and the community need to have confidence in the local and State strategic planning work (including community consultation) that has already been undertaken as part of the LSPS and other strategic documents (housing strategies, rural lands strategies, employment lands strategy and city centre strategies). • A submission to Council's periodic updates to the LSPS, would remain as a pathway option for proponents to pursue their proposals that are inconsistent with strategic plans. • Refusal to issue study requirements (as part of the written feedback) is one mechanism to refuse an application. We do not support study requirements remaining valid for 18 months as many changes to land use planning and planning legislation can occur over this time. • Recommend that the Department take steps to educate the community on the rezoning process. Exhibiting the application before any assessment by Council or DPIE, and without consideration of the elected Council may erode community confidence that the application is not yet decided and may still be rejected. • More detail is requested on how councils will be able to determine if the study requirements have or have not been met without full assessment of the application. • The Paper states that the scoping stage will help proponents to understand the nuances of certain issues and the concerns communities may have. No detail has been provided to outline how the community is involved at this stage. <p>The Paper provides limited detail on how the scoping meeting (that is to include agencies) is to be facilitated.</p>
<p>Exhibition and Post-Exhibition</p> <p><i>Comment:</i></p>	<ul style="list-style-type: none"> • Support for the exhibition process to allow the public to scrutinise rezoning applications in an open and transparent way.



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	<ul style="list-style-type: none">• Support for automation of exhibition process through the Planning Portal. Online community engagement tools and methods with links to council websites and social media should be considered to engage with community in a meaningful and accessible way.• Recommend that timeframes are flexible to accommodate work involved:<ul style="list-style-type: none">- complex applications can require many 100's of notification letters, the proposed timeframe of one additional week to coordinate this is not realistic.- to fully resolve agency and community submissions.- to accommodate Councillor briefings, council reporting and lead in times.- to enable adequate engagement with the elected Council on local matters.• Concern around the proponent given the role of addressing submissions and negotiating outcomes with agencies. We recommend council involvement in resolving and responding to agency and community submissions. Council will be required to report on agency and community submissions to council.• Concern that exhibition may be occurring too early as the exhibition information may have limited or unsatisfactory evidence base to enable informed community comments.• More detail is requested on the mechanism to officially start the clock on the assessment of the final version of the rezoning application.• Exhibition ahead of understanding the detail of studies which may deem the proposal not having site specific merit. For example, where significant transport infrastructure or connections are needed.• More clarification is requested on how the exhibition stage aligns with the reforms to the NSW infrastructure contributions system. Where a Contribution Plan and VPA is required, these finalised documents are informed by a full assessment of the rezoning application and need to be exhibited alongside the rezoning application.
<p>Assessment and finalisation</p> <p><i>Comment:</i></p>	<ul style="list-style-type: none">• Recommend that to streamline the process further, consequences for exceeding timeframes (without justification) have consequences including refusal of application• Roadblocks that can impact process include:<ul style="list-style-type: none">- Proponents exceeding timeframes with no consequences- State agencies changing their minds or their advice- Different rezoning outcomes or effects after exhibition and when amendments have been made to the rezoning application, requiring re-exhibition- Exhibition of draft state planning documents that coincides with this final stage of the process. The requirement to consider draft plans (and relevant matters not raised by agencies) may require additional information and lead to delays.• Public Interest should be a necessary consideration.



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	<ul style="list-style-type: none">• Support for the local planning panel determining a rezoning application where a conflict is identified. A peer review process to review a council decision could also be used. For example, this is the process used for reclassification of council land. Appointment of panel members should require experience, skills and knowledge of the rezoning process.• For rezoning application where there is a VPA, Council (as the signatory and often the beneficiary of the VPA) should continue to be involved in the assessment and approval of the VPA.• Rezoning applications involving the reclassification of public land require a public hearing, with notice post exhibition. More clarification is requested on whether benchmark timeframes account for these requirements.
New fee structure	
Fee structure <i>Comment:</i> Scoping fees should cover the rezoning authority's costs. Fixed fees at the scoping stage based on the category of rezoning application is supported. Variable assessment fees require tracking of actual costs, staff hours, meeting preparation, project management, overheads, administrative costs and others. This is time and cost consuming. There is potential for disagreements with private proponents on how time has been utilised and actual time charged. The fee structure currently used by Penrith Council provides: <ul style="list-style-type: none">- a balance of fixed assessment and pre-lodgement fees (based on the complexity of the application), and variable fees for associated costs including advertising and independent assessments, and- refunds when rezoning applications are withdrawn, calculated based the work undertaken prior to or after the LPP / council reporting stage. This fee structure provides certainty and could be adapted to accommodate the categories and stages of the new approach. We recommend that councils continue to be given autonomy over how fees are structured.	
Planning Guarantee <i>Comment:</i> We strongly oppose the introduction of a planning guarantee system for refund requests. There is potential that this scheme can lead to poor planning outcomes if decisions are rushed. The planning guarantee system seems punitive in nature and does not acknowledge the good outcomes councils are currently achieving. It shifts responsibility to the rezoning authority (councils), when both DPIE, the proponents and agencies have a role in	



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	<p>enabling the timely determination of rezoning applications. Clarification on the accountability of all key stakeholders in this process is needed.</p> <p>A planning guarantee system relies on quality information up front and an exhibition period informed by an assessment of the rezoning application. We recommend the new approach to rezoning incorporate the assessment of the rezoning application prior to public exhibition. This will allow council to refer technical studies to internal teams, amendments to the rezoning application prior to exhibition if needed, agency issues to be addressed, quality information available to the community in order to provide comment.</p>
Appeal pathways	<p><i>Comments:</i></p> <p>We agree that any proposed appeals pathway would add extra pressure and time. Strategic planning could be undermined, with the increase in costs, time and speculation.</p> <p>Public authorities (including councils) should have access to an appeal under strict circumstances.</p> <p>Between the LEC and IPC, the IPC would be the most appropriate to deal with appeals for rezoning applications.</p> <p>The use of the LEC in the appeals pathway could undermine strategic planning, with site related court decisions reshaping strategic plans. The courts involvement could compromise the separation of powers doctrine. The Land and Environment Court could be required to review its own decisions relating to Planning Proposal determinations where a planning appeal is made against a development application.</p> <p>It will be important that benchmark timeframes are appropriate and allow some flexibility especially with more complex rezoning applications.</p>
NSW Planning Portal improvements	<p>The new approach will rely heavily on the capability of the NSW Planning Portal (the Portal). The Portal is currently used as part of the DA process. Council's experience using the portal and feedback on ways to improve and support rezoning processes are provided below:</p> <ul style="list-style-type: none">• There has been a focus on expanding the Portal at the expense of maintenance and improvement. For example, deployment of new application types has been rushed, while early adopted application types (such as DA / CC / CDC) are still not functioning and the broader user experience is not improving.• A fully functioning Application Programming Interface (API), will be essential and prevent the Portal being simply an additional system to be maintained.• Council's will be required to invest in resources to manage the ongoing administration of the Portal, including resource investment to manage process and system changes in response to the Portal's expansion and development.• Our Development Services Admin teams currently manage 2-3 error and development requests to the ePlanning support team per week. While the volume of rezoning applications will be significantly less that the volume of DA's, DPIE technical support will be critical to ensure efficiencies in the rezoning process are achieved. For



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	<p>example, where the Portal will be utilised during the exhibition process, and, proponent support when using the Portal.</p> <ul style="list-style-type: none">• The governance framework for DPIE / Council engagement and feedback (for DA's) is inconsistent and poorly communicated.

Council appreciated the opportunity to provide feedback in relation to this matter. If you have any further questions on Council's submission, please contact Danielle Fox, Senior Planner by email at danielle.fox@penrith.city or by phone on 4732 8022.

Yours sincerely

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City Planning Manager

DRAFT SUBJECT TO COUNCIL ENDORSEMENT