

### Attachment 3 - Summary of Discussion Paper and submission comments

Discussion points	Comments
<b>General comments</b>	
<p>One of the aims of the Paper is to create a system that better aligns the rezoning process with strategic planning.</p>	<p>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).</p>
<p>DPIE plan on using the feedback from this exhibition to refine the rezoning approach with a view to implementing change in 2022.</p>	<p>Before implementation occurs, it will be critical that draft changes are forwarded to all stakeholders for further comment as part of this process.</p> <p>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.</p>
<p>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 happen quickly and provides the community certainty as to the type and form of development that will end up on rezoned land.</p>	<p>It is acknowledged that a combined lodgement is a mechanism currently available under legislation and referenced in the LEP Guideline.</p> <p>Council disagree that this option should be encouraged especially if certainty, reduced 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>
<b>The need for reform</b>	
<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"> <li>- Time and complexity of the current system,</li> <li>- Inconsistencies in documentation, consultation and how 'strategic merit' is interpreted,</li> </ul>	<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>

Discussion points	Comments
<ul style="list-style-type: none"> <li>- Transparency and trust, with consultation, review processes and how decisions are made,</li> <li>- Recognition of proponents,</li> <li>- Engagement with State agency input</li> <li>-</li> </ul>	
<b>Terminology</b>	
<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. DPIE guidelines and information should provide clear explanation on this new term.</p>
<p>The party responsible for assessing and determining the rezoning application will be referred to as the 'rezoning authority'. The terms LPMA (local plan making authority) will no longer be used.</p>	<p>Support.</p>
<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>
<b>New categories and timeframes</b>	
<p>Four categories for rezoning applications have been developed and are applied in the new LEP Guideline.</p> <ul style="list-style-type: none"> <li>- Category 1 Basic – administrative, housekeeping, minor local matters</li> <li>- Category 2 Standard – site specific applications consistent with strategic planning,</li> <li>- Category 3 Complex – applications not consistent with strategic planning, and not captured in Category 1 &amp; 2</li> <li>- Category 4 Principal LEP – comprehensive council led application proposing broadscale policy change to the LEP for the whole LGA.</li> </ul> <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>

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<p>See Attachment A for categories and timeframes.</p>	<ul style="list-style-type: none"> <li>- an additional category for new release area rezoning and realistic timeframes assigned, and</li> <li>- during the scoping stage, councils can amend DPIE's benchmark timeframes where necessary to align with the work required for more complex applications. These timeframes are shared with proponents alongside submission and study requirements for the rezoning application (Scoping stage).</li> </ul>
<b>New roles</b>	
<p><u>Council and DPIE</u>  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"> <li>- give permission to exhibit (currently a Gateway determination DPIE function),</li> <li>- review changes after exhibition,</li> <li>- assess and determine final decision. DPIE would have limited or no involvement in these applications.</li> </ul> <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>Attachment A shows the roles of councils and DPIE under the new approach.</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>Council's role where there is a conflict of interest, and the proposed new fee structure to better resource and compensate councils is discussed later in this report.</p>
<p><u>Proponent</u>  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, 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>	<p>Support for private proponents to be recognised as the applicant and given additional responsibilities. Their role is currently ambiguous.</p> <p>Recommend that the new approach builds systems into the process where council and private proponents consult with State agencies</p>

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<ul style="list-style-type: none"> <li>- can submit and have a rezoning application assessed and determined,</li> <li>- can appeal a decision made about a rezoning application,</li> <li>- is responsible for fees, meeting information requirements, consulting with state agencies, responding to consultation submissions.</li> </ul> <p>A private proponent will require owners' consent to lodge a rezoning application.</p>	<p>together. Past experiences have shown conflicting advice from agencies. 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"> <li>- employment and housing</li> <li>- environment and heritage</li> <li>- hazard and risk</li> <li>- regional and local and metropolitan planning.</li> </ul> <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"> <li>- Clearer direction on when a referral is required.</li> <li>- Clearer directions for proponents on the information they must provide agencies,</li> <li>- Clarity to the agencies on the appropriate level of assessment they need to provide</li> <li>- Requests for more information to be managed more closely.</li> <li>- 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.</li> </ul> <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>Support for any changes to improve the agency referral process especially managing requests for more information and imposing strict timeframes on agencies.</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>

Discussion points	Comments
<p data-bbox="193 232 539 264"><u>Local Planning Panel (LPP)</u></p> <p data-bbox="193 293 767 383">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 data-bbox="799 232 1394 412">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 data-bbox="799 450 1394 663">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>

# Attachment A – Proposed categories and benchmark timeframes and Proposed roles of councils and DPIE

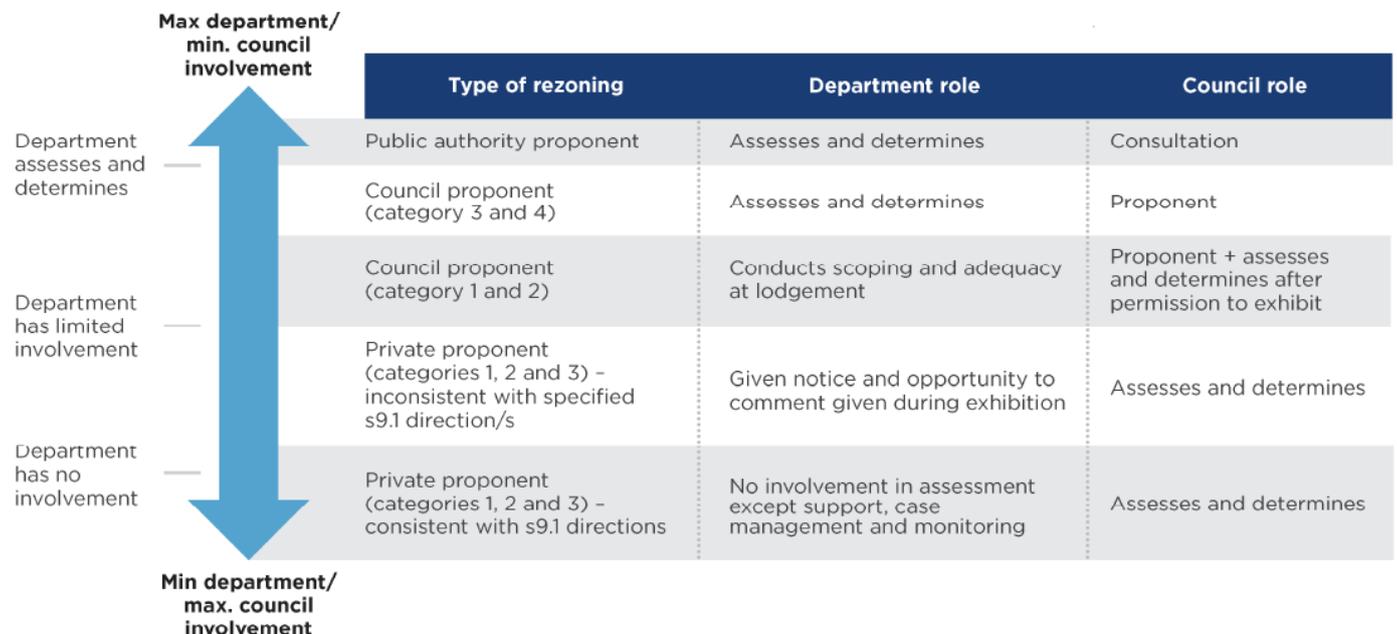
**Table 3. Proposed categories and benchmark timeframes**

Stage	Category 1 (Basic)	Category 2 (Standard)	Category 3 (Complex)	Category 4 (Principal LEP)
Scoping	6 weeks	10 weeks	12 weeks	10 weeks
Lodgement	1 week	1 week	1 week	1 week
Exhibition	4 weeks	6 weeks	8 weeks	6 weeks
Post-exhibition	10 weeks	13 weeks	15 weeks	17 weeks
Assessment and finalisation	11 weeks	17 weeks	24 weeks	26 weeks
<b>Total, excluding scoping*</b>	<b>26 weeks</b>	<b>37 weeks</b>	<b>48 weeks</b>	<b>50 weeks</b>

\*The total timeframe does not include the scoping stage, which occurs before lodgement.

## New roles

The new approach changes the roles of the various parties in the rezoning process. It acknowledges the proponent by giving them ownership of the application throughout the process. It gives councils greater responsibility and accountability and allows the department to focus on strategically significant proposals, such as state-led rezonings.



**Figure 4. The roles of councils and the department under the new approach**