

ITEM 3

PUBLIC EXHIBITION - DRAFT PLANNING PROPOSAL POLICY REVIEW AND REZONING
DISCUSSION PAPER SUBMISSION

The processing of Planning Proposals (including reclassification of Council land) resulting in the preparation of Local Environmental Plans is a core business activity for Council. On 7 May 2018, Council adopted a Planning Proposal Policy to guide the preparation and submission of Planning Proposal requests. Since the adoption of this Policy there have been a number of procedural changes introduced in the processing of Planning Proposals, including updated guidelines published by the NSW Department of Planning and Environment. This has required minor updates to Council's Planning Proposal Policy.

This report discusses the proposed updates to the current Policy and recommends that Council resolve to place an updated draft Planning Proposal Policy, Application Form and Checklist on public exhibition for community information and comment.

The Department of Planning and Environment is also exhibiting a Discussion Paper proposing to make significant changes to the processing of draft Planning Proposals. The report reviews the proposed changes and seeks Council's endorsement of a draft submission.

RECOMMENDATION

- 1 The updated draft Planning Proposal Policy, Application Form and Checklist (Attachment 1) be exhibited for a minimum period of 28 days for public comment.
- 2 A post exhibition report be prepared for Council's consideration.
- 3 The General Manager be authorised to finalise the draft submission on A New Approach to Rezoning - Discussion Paper (Attachment 2), to the NSW Department of Planning and Environment.

REPORT AUTHORISATIONS

Report of: Chris Stewart, Manager City Strategy

Authorised by: Linda Davis, Director Planning + Environment - Future City + Neighbourhoods

ATTACHMENTS

- 1 Proposed Updates to Planning Proposal Policy, Application Form and Checklist
- 2 Draft Submission on Discussion Paper

BACKGROUND

A Local Environmental Plan (LEP) is a legal document which guides development and land use within a particular Local Government Area. The LEP generally comprises a written document and accompanying maps and states whether development -

- Is permissible on the land.
- Is subject to specific restrictions, including controls on height, minimum land area, floor space, heritage, acid sulphate soils, flooding etc.
- Requires consent of Council.

LEPs are also used to reserve land for open space, schools, transport and other public purposes, as well as control advertising and protect vegetation. The *Environmental Planning and Assessment Act 1979* (EP&A Act), administered by the NSW Department of Planning and Environment (DPE), details the process for preparing, making and amending LEPs. All land, whether privately owned, leased or publicly owned, is subject to the controls set out in the relevant LEP (noting that some forms of development are guided by other policies). All principal LEPs are required to follow a standard template which is outlined in the Standard LEP Instrument.

Wollongong Local Environmental Plan 2009

The Wollongong Local Environmental Plan (LEP) 2009 applies to the majority of the City of Wollongong, with the exception of areas covered by the State Environmental Planning Policies (SEPPs). Land at McCauleys Beach at Thirroul and Calderwood is zoned under SEPP (State Significant Precincts) 2005 and development within the port of Port Kembla is controlled under the SEPP Policy (Three Ports) 2013.

The Wollongong LEP has been amended by Council through 49 amending LEPs and two map amendments. The LEP has also been amended 37 times by the DPE through changes to the Standard LEP instrument, SEPPs, Statute Law changes and by other Acts.

Planning Proposals

Council has the ability to amend the LEP as the need arises. The preferred approach is to prepare a draft Planning Proposal (LEP amendment) to implement the recommendations of an endorsed strategy. Council may also consider proponent requests for LEP amendments where such a change is warranted, via the Planning Proposal process.

Until October 2012 the consideration of a rezoning request was entirely at the discretion of Council, with no formal application process. In October 2012, the DPE introduced a "Pre-Gateway Review" process to enable proponents to appeal to the Department if Council refused their rezoning request or failed to make a decision within 90 days of lodgement of a Planning Proposal request.

A request to change the zoning, permitted land uses or development standards applicable to a parcel of land (height of buildings, minimum lot size for subdivision, floor space ratio etc) is a formal process that amends the statutory planning controls contained in the LEP. A request to amend the LEP is known as a Planning Proposal and is undertaken through the Gateway process under the NSW planning legislation. Council or a Government Agency can initiate a Planning Proposal based on a strategic direction or policy, or a land-owner may request Council to consider an amendment.

For non-Council initiated amendments to the LEP, an application needs to be made to Council in the form of a Planning Proposal Request which explains the intended effect of the proposed LEP amendment (change) and the reasons or justification for making it. The Planning Proposal request must include appropriate supporting material or investigations. Rezoning requests must be justified, having regard to Council's strategic plans and policies, regional policies and plans such as Illawarra Shoalhaven Regional Plan, Ministerial Directions and Orders, State Environmental Planning Policies and DPE's Plan Making Guidelines

A Planning Proposal request must be formally considered at a Council meeting and a Council resolution is required to prepare a draft Planning Proposal to change the zoning, permitted land uses or development standards applicable to a parcel of land. On 1 June 2018, the Local Planning Panels Direction under section 9.1 of the *Environmental Planning and Assessment Act 1979* came into force for Planning Proposals in the Greater Sydney Region and Wollongong. Subsequently Wingecarribee and the Central Coast Councils were added to the Direction. Prior to reporting to Council, the draft Planning Proposal must be referred to the Wollongong Local Planning Panel for independent advice on strategic and site-specific merit. The Panel's advice is reported to Council.

If supported by Council, the draft Planning Proposal is then referred to DPE to go through the Gateway Determination process. At the Gateway Determination stage, the Department will decide whether the proposal has merit and is justified on planning grounds, whether further technical studies must be undertaken, and the consultation required.

Any proposed amendment to the LEP requires community consultation, such as public exhibition or in the case of a reclassification of land, a public hearing. During the exhibition period relevant Council Reference Groups or Advisory Committees will be given the opportunity to provide comment on any Planning Proposal request. Following the exhibition, Council considers the issues raised in submissions and determines whether to finalise the Planning Proposal. If supported, the Planning Proposal is forwarded to the NSW Parliamentary Counsel Office for the preparation of the amending LEP, which is the legal instrument. With the Minister's or delegate's approval the amending LEP becomes law and is notified on the NSW Legislation website, and the Wollongong LEP 2009 is amended.

Council is currently processing 10 Planning Proposals, which are at different stages in the process –

Table 1: Current Planning Proposals

Stage (as per DPE's 2021 Guideline stages discussed later)	Number
1 Pre-lodgement	(not counted)
2 Lodgement, incorporating initial assessment, Wollongong Local Planning Panel and Council report	3
3 With DPE for a Gateway determination	1
4 Post Gateway / pre-exhibition (additional information or agency consultation)	3
5 Exhibition (minimum 28 days) Review of submissions / Assessment and post exhibition Council report	0 2
6 Finalisation (Review by DPE, LEP drafting by Parliamentary Counsel Office and final approval by the Minister or delegate (DPE officer or General Manager)	1

Planning Proposal Policy

On 7 May 2018 Council adopted a Planning Proposal Policy to inform the community about the Planning Proposal process, guide the preparation and submission of Planning Proposal requests and improve the efficiency of assessment.

The objectives of Council's Planning Proposal Policy are to -

- Explain the purpose of a Planning Proposal and the steps in the Planning Proposal process.
- Communicate that applications to rezone land or change development standards or permitted uses are generally not encouraged by Council and should only be submitted in certain circumstances.
- Prioritise the processing of Planning Proposal requests to ensure those providing the greatest public benefit are given preference over those serving individual interest or are of limited benefit to the greater Wollongong community.
- Make applicants aware that some areas in the local government area will have Council and/or State endorsed Strategies, Masterplans or Concept Plans requiring that a Planning Proposal request address certain criterion, for example, the demonstration of an improved environmental outcome associated with development.
- Ensure the Planning Proposal is prepared in accordance with the *Environmental Planning and Assessment Act 1979* and relevant DPE guidelines and specify the information to be submitted in a Planning Proposal request.
- Ensure transparency in Council's decision-making functions, by referring any application which is made by a Council employee/Councillor and/or their immediate relative/s, to an independent consultant for assessment.
- Clarify the role of Council Reference Groups or Advisory Committees.
- Advise the applicant of the fees applicable to an application and the risks of submitting a Planning Proposal request.

At the time of adoption, it was envisaged that the Policy would need to be updated periodically to reflect the outcome of studies and policy and strategy development.

PROPOSAL

Since the adoption of Council's Planning Proposal Policy there have been a number of procedural changes introduced in the processing of Planning Proposals, including updated guidelines published on 15 December 2021 by the DPE. These changes have resulted in the need to make revisions to Council's Planning Proposal Policy.

Following are the key changes that have occurred since Council adopted the Planning Proposal Policy on 7 May 2018 that now require updates to the Policy -

- 1 **Introduction of Wollongong Local Planning Panel requirement:** From 1 June 2018 the Local Planning Panels Direction under section 9.1 of the *Environmental Planning and Assessment Act 1979* came into force for Planning Proposals in the Greater Sydney Region and Wollongong. Prior to reporting to Council, all draft Planning Proposals must be referred to the Wollongong Local Planning Panel for independent advice on strategic and site-specific merit. The advice is reported to Council for consideration.
- 2 **Council adopted the Wollongong Local Strategic Planning Statement (LSPS) 2020:** In June 2020 Council adopted the LSPS to provide a 20-year land use planning vision for the LGA. The LSPS has drawn on the many existing strategies and plans developed, exhibited and adopted by Council, and additionally outlines how Council will continue to implement the actions contained in the Illawarra Shoalhaven Regional Plan and other State Government policy documents. Planning Proposals need to demonstrate strategic merit and consistency with Council's vision for the LGA. It is planned to review the LSPS in this term of Council.
- 3 **Introduction of Planning Portal requirement:** From July 2022, all proponent led Planning Proposal requests are to be submitted and processed through the DPE Planning Portal. The Planning Portal registers and tracks Planning Proposals. The Portal also standardises the referral process to State agencies.

Currently Council officers lodge the submitted Planning Proposal requests and accompanying reports and documents on the Planning Portal which is time consuming. The Planning Proposal Policy has been updated to include this requirement and pre-empts the July 2022 commencement. Proponents will also be required to lodge a digital copy of all documents with Council, for Council's record system.

- 4 **Minister's expectations / the Environmental Planning and Assessment (Statement of Expectations) Order 2021:** On 26 November 2021 the Minister for Planning signed an Order which commenced on 15 December 2021 outlining performance indicators for the assessment of Planning Proposals. It includes a requirement that Council has 90 days to make a decision as to whether to support or not support a proponent led Planning Proposal (rezoning) and submit it for a Gateway determination if supported. The implications of the Order are discussed below - assessment of Planning Proposal requests (stage 2).
- 5 **Ministerial Directions:** On 2 December 2021 the Minister for Planning released new section 9.1 Ministerial Directions, which commence on 1 March 2022. The Directions align with the Minister's Planning Principles and the new consolidated SEPP framework, also released on 2 December 2021. The Directions are a matter for proponents and Council to consider in the preparation and assessment of Planning Proposals. Similar to the current practice proponents will be required to address consistency with the Directions or justify inconsistency with supporting information.
- 6 **Environmental Planning and Assessment Regulations 2021.** On 1 March 2022, new Regulations to support the *Environmental Planning and Assessment Act 1979* commence. The Regulations are largely a tidy-up/re-ordering/re-numbering of the 2000 Regulations which was amended many times. The new Regulations does not change the Planning Proposal process.

7 **Draft Design and Place SEPP and draft Ministerial Direction:** On 10 December 2021 the draft Design and Place SEPP commenced exhibition. The draft SEPP is accompanied by a draft section 9.1 Ministerial Direction that requires Planning Proposals on land greater than 1 hectare in area and within -

- an existing or proposed residential, commercial, mixed use or industrial zone, or
- any other zone in which residential development is permitted or proposed to be permitted.

demonstrate consistency with the design principles and design considerations of the SEPP; be consistent with the objectives of the Urban Design Guide; demonstrate how it responds to Country; and be referred to a Design Review Panel for advice.

Currently there is no requirement to refer draft Planning Proposal requests to the Design Review Panel, although Council officers have referred certain draft Planning Proposals to Council's Design Review Panel. Referring additional draft Planning Proposals to the Panel will need to be incorporated into the process and fee structure. The draft SEPP is on exhibition until 28 February 2022 and Council officers will be making a submission.

8 **NSW DPE's Local Environmental Plan Making Guideline (2021):** On 15 December 2021 these Guidelines commenced as part of the Planning Reform Action Plan. The Guidelines replaced the "Guide to preparing planning proposals" and "Guide to making LEPs". The aim of the Guidelines is to support improved assessment, coordination, and engagement in the LEP making process and help reduce assessment time frames. The Guidelines classify Planning Proposals into the following four different categories, with benchmark assessment and determination timeframes and minimum information requirements established for each –

Table 2: Planning Proposal Benchmark Timeframes

Stage	Maximum Benchmark Timeframes (working days)			
	Basic	Standard	Complex	Principal
Stage 1 – Pre-lodgement	30 days	50 days	60 days	20-30 days
Stage 2 – Planning Proposal	80 days	95 days	120 days	40 days
Stage 3 – Gateway determination	25 days	25 days	45 days	45 days
Stage 4 – Post-Gateway	20 days	50 days	70 days	160 days
Stage 5 – Public Exhibition & Assessment	70 days	95 days	115 days	95 days
Stage 6 - Finalisation	25 days	55 days	70 days	80 days
Sub-total (Department target)	140 working days	225 working days	300 working days	380 working days
Total (end to end)	220 days	320 days	420 days	420 days

Note: Department target of 380 working days is measured from Stage 3 – Stage 6 (inclusive)

The Guideline's place a lot of emphasis on the pre-lodgement stage (stage 1) to discuss the request and complete supporting documentation prior to lodgement. Council's Planning Proposal Policy currently encourages pre-lodgement meetings (stage 1), and the majority of proponent led Planning Proposal requests currently have a pre-lodgement stage that occurs over 2-3 months. The Department's aim is that a focus on information provision and sharing upfront prior to lodgement, will speed up the rest of the assessment process. The Planning Portal allows Council officers to

reject a Planning Proposal request within 14 days if it is not accompanied by the required information. This is known as the adequacy assessment and determines if the information lodged is adequate to undertake an assessment. It is not a merit assessment of the request.

Currently the majority of Planning Proposal requests take 6 months between lodgement and reporting to Council (stage 2). This includes any preliminary notification to the community and relevant State agencies, requests for additional information, reporting to the Wollongong Local Planning Panel and Councillor briefing. The benchmark of 80-120 days, plus the Minister's expectations of a 90-day reporting timeframe and Statement of Expectations Order, necessitates significant change in how Council officers will manage future Planning Proposal requests, including -

- Council's assessment will be based upon the submitted information - Council officers may not request additional information or clarification in order to meet the reporting timeframes.
- Planning Proposal requests will be reported "as lodged" to both the Wollongong Local Planning Panel and subsequently Council. Requests will no longer have repeated opportunities to amend the form and content of a proposal to make it suitable for Council's consideration. It is likely that more requests will be recommended for refusal because they are incomplete or inconsistent with strategies or lack merit.
- Any preliminary community consultation will need to commence within a week of lodgement and a revised non-statutory consultation period may be required. This will not suit State Agency timeframes, or many community organisations that meet monthly. It could also occur over school holidays, which is inconsistency with Council's Community Participation Plan. The alternate option of removing preliminary consultation is not supported, as nearby residents and the community will not be informed of potential changes in their area or be enabled to provide early input, until a matter is reported to Council.

The Gateway Determination process (stage 3) is undertaken by DPE and the nominated benchmark timeframes are generally met.

The timeframes for the submission of Post-Gateway (stage 4) information from proponents can take longer than the nominated timeframes. Similarly, the requirement to consult with nominated State agencies prior to exhibition can take longer than the timeframes listed.

The Guidelines merge the exhibition and post exhibition assessment into stage 5. Council officers have previously considered these as separate steps in the process. In accordance with the Community Participation Plan, Council generally exhibits draft Planning Proposals for a minimum of 28 days, although typically exhibition periods are longer to account for complexity of the proposal, or school holidays. Council's Community Participation Plan indicates that exhibitions cannot commence or end during school holidays. Draft Planning Proposals involving the reclassification of Council land also require a public hearing to be held.

The post exhibition assessment of submissions, seeking additional information from the proponent to address issues raised in submissions and reporting to Council is typically longer than 3 months (stage 5).

If supported by Council, the finalisation of a Planning Proposal is either undertaken by Council under delegation or DPE. Regardless, the Planning Proposals, including required map changes, are reviewed by the DPE's mapping team, and the LEP instrument is drafted by the NSW Parliamentary Counsel's Office. Council has no control over the time taken by these organisations.

Other proposed changes to Council's Planning Proposal Policy -

- Any draft Planning Proposal seeking to rezone to residential or uplift the density of residential land, is to include a report detailing the residual land value of the site under both the existing and proposed planning controls. This is to assess the "uplift" to enable an Affordable Housing contribution to be determined if and when required.
- Council's Website – each Planning Proposal request has its own webpage on Council's website, for the life of the project. All submitted information will be available for the community to view,

throughout the Planning Proposal process. If additional information is lodged it will also be published. Recently there was a request to remove additional submitted information from the website because it was not mentioned in the Policy. The proposed amendment to the Policy will clarify this situation.

The proposed updates to the Planning Proposal Policy and accompanying Application Form and Checklist in recognition of the above changes are included as Attachment 1. It is proposed that the revised draft Planning Proposal Policy be exhibited for a minimum period of 28 days.

Further amendments to the Planning Proposal Policy may be required at a future time pending any legislative change prompted by the new approach to rezoning currently being considered by DPE.

A New Approach to Rezoning - Discussion Paper

In December 2021, the DPE also published a Discussion Paper proposing significant changes to how Planning Proposals are assessed and Council involvement. The Discussion Paper proposes to rename "Planning Proposals" to be "Rezoning Applications", as it is a general recognised term, even though some Planning Proposals don't involve rezoning of land. The proposed outlined process is similar to a Development Assessment process, where the Council's decision to support a Planning Proposal or not is made at the end, following exhibition and assessment. Council would no longer determine whether to support a draft Planning Proposal request for a Gateway determination and exhibition.

The suggested process is -

- 1 Scoping / pre-lodgement
- 2 Lodgement and adequacy assessment (not merit assessment)
- 3 Exhibition
- 4 Post exhibition
- 5 Assessment and finalisation, including Council report on whether the rezoning proposal should be supported.

Council officers have concerns regarding elements of the proposed new process including -

- The removal of Council's initial consideration of Planning Proposals is not supported. It is likely to lead to more speculative requests for changes to the LEP which would need to be processed, exhibited and then reported to Council at the end of the process. It will require the commitment of resources and community engagement before there is any indication of support and may also result in more appeals.
- The Discussion Paper discusses appeal options, including review by the Land & Environment Court or Independent Planning Commission. The Land & Environment Court's role is to assess appeals against the planning rules not to determine planning policy. Local Government has been able to determine local planning policy since 1945 when the *Local Government Act 1919* was amended by the *Town and Country Planning Amendment Act*. The introduction of Land and Environment Court Appeal rights is not supported.
- The Gateway step (DPE review) is proposed to be removed. While some review of the roles and responsibilities of DPE is appropriate, the removal of any oversight by the Department may result in inconsistency and uncertainty in the process.

The attached draft submission provides further detail on the Discussion Paper. It is recommended that Council endorse the draft submission for finalisation by the General Manager, incorporating any comments of Councillors.

CONSULTATION AND COMMUNICATION

Should Council resolve to endorse the updated draft Planning Proposal Policy it will be placed on public exhibition for a minimum period of 28 days to enable community input and feedback. All submissions will be reviewed, and any post exhibition amendments will be reported to a future Council meeting for adoption.

Over the last few months there has been a significant amount of planning policy reform finalised or exhibited by the DPE. Many members of the community would not be aware of the reforms that have been made or that are proposed by the State.

Council officers will continue to engage with DPE in relation to the proposed reforms included in *A New Approach to Rezoning – Discussion Paper*.

PLANNING AND POLICY IMPACT

This report contributes to the delivery of Wollongong 2028 Objective “*The Sustainability of our urban environment is improved*” under the Community Goal “*We value and protect our environment*”. It specifically delivers on the following -

Community Strategic Plan Strategy	Delivery Program 2018-2022 4 Year Action	Operational Plan 2021-22 Operational Plan Actions
Manage land uses to strengthen urban areas	1.3.1 Impacts from development on the environment are assessed, monitored and mitigated	1.3.1.2.3 Prepare for the introduction and implementation of the New South Wales State Government Planning Reforms

CONCLUSION

The Planning Proposal Policy is required to inform the community about the Planning Proposal process, guide applicants and improve the efficiency of assessment. It is recommended that Council resolve to endorse the draft updated Planning Proposal Policy and accompanying Application Form and Checklist for public exhibition for a minimum period of 28 days.

It is also recommended that Council resolve that the attached submission on the “A New Approach to Rezoning - Discussion Paper” be finalised and submitted to the NSW Department of Planning and Environment.

PLANNING PROPOSAL POLICY

COUNCIL POLICY



ADOPTED BY COUNCIL: XXX

DRAFT FEBRUARY 2022

BACKGROUND

This policy has been developed in order to guide the preparation and submission of Planning Proposal requests.

A Local Environmental Plan (LEP) is a legal document which guides development and land use within a particular Local Government Area. The LEP generally comprises a written document and accompanying maps and states whether development:

- Is permissible on the land;
- Is subject to specific restrictions, including controls on height, minimum land area, floor space, heritage, acid sulphate soils, flooding etc;
- Requires consent of Council.

LEPs are also used to reserve land for open space, schools, transport and other public purposes, as well as control advertising and protect vegetation. The law outlining the process for making a LEP is the *Environmental Planning and Assessment Act 1979 (the EP&A Act)*, administered by the NSW Department of Planning and Environment (DPE). The majority of land within the Wollongong Local Government Area, whether privately owned, leased or publicly owned, is subject to the controls set out in the relevant LEP, typically the Wollongong LEP 2009. Three precincts are controlled under State Environmental Planning Policies (SEPPs) - land at McCauleys Beach, Thirroul and Calderwood is zoned under State Environmental Planning Policy (State Significant Precincts) 2005 and development within the port of Port Kembla is controlled under the State Environmental Planning Policy (Three Ports) 2013.

Council has the ability to amend the Wollongong LEP 2009 as the need arises. Regular reviews of the LEP occur to implement policy changes that have been guided by the adoption of strategies which have been prepared and exhibited, and it the preferred approach. However, Council may also consider requests for LEP amendments where such a change is warranted, via the planning proposal process.

A request to change the zoning, permitted land uses or development standards applicable to a parcel of land (height of buildings, minimum lot size for subdivision, floor space ratio etc) is a formal process that amends the statutory planning controls contained in the Local Environmental Plan.

OBJECTIVES

The main objectives of this policy are to outline –

- What is a planning proposal and what is its purpose;
- The steps in the planning proposal process;
- Consideration of planning proposal requests;
- Information to be submitted in a planning proposal request; and
- The fees applicable to a planning proposal.

POLICY STATEMENT

This policy aims to inform the community about the Planning Proposal process, guide applicants and improve the efficiency of assessment.

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POLICY REVIEW AND VARIATION

- 1 Council is to have opportunity to review and adopt, at least once during its Term, each Council policy.
- 2 A resolution of Council is required to adopt any variations to this policy, with the exception of minor administrative changes, such as updates to legislative references, which may be endorsed by the Executive Management Committee (EMC). Endorsement of administrative changes made to this policy by EMC does not alter the requirement for it to be reviewed and adopted by each Term of Council.

STATEMENT OF PROCEDURES

Amending a LEP – Planning Proposal Request

A request to amend the zoning of land, the development standards applying to land, or the permitted land uses is known as a planning proposal and is undertaken through the Gateway process under the NSW planning legislation. Council or a Government agency can initiate a planning proposal based on a strategic direction or policy, or a land owner may request Council to consider the preparation of an amendment.

To amend an existing LEP, an application needs to be made to Council in the form of a **“Planning Proposal Request”**. The Planning Proposal Request explains the intended effect of the proposed LEP amendment (change) and the reasons or justification for making it. The planning proposal request must include appropriate supporting material or investigations. The preparation of a planning proposal is the first step in the process of amending a LEP.

Rezoning requests must be justified, having regard to Council’s strategic plans and policies, and the NSW Department of Planning and Environment’s Regional Strategy, the Illawarra Shoalhaven Regional Plan 2041. A draft Planning Proposal request must be referred to the Wollongong Local Planning Panel for advice prior to being formally considered at a Council meeting. Council officers prepare reports to the Wollongong Local Planning Panel and Council on the merits of the proposal, noting that the Environmental Planning and Assessment (Statement of Expectations) Order 2021 outlines performance indicators for the assessment of Planning Proposals, as well as strategic planning obligations.

Planning Proposal requests are also required to be lodged on the NSW Planning Portal. Council officers will undertake an adequacy assessment within 14 days. Requests that are inconsistent with endorsed strategies, are incomplete will not be accepted. This is not a merit assessment on the request.

Once lodged and accepted, preliminary consultation may be undertaken to inform the preparation of the report, depending on the complexity of the proposal. An exhibition webpage will be prepared for each Planning Proposal request. Any additional studies or supporting information lodged subsequently during the process, will be made available on the webpage.

A Council resolution is required to support an application to change the zoning, permitted land uses or development standards applicable to a parcel of land. It should be noted, however, that a Council resolution to prepare a planning proposal or an amendment to the LEP does not necessarily guarantee that the proposed amendment will proceed.

If supported by Council, the draft planning proposal is then referred to the NSW Department of Planning to go through the Gateway determination process. The “Gateway” process allows a planning proposal to be reviewed at an early stage to make a decision whether to proceed further. At the Gateway determination, the Department of Planning will decide whether the proposal has merit and is justified on planning grounds, whether further technical studies must be undertaken, and the consultation required. Any proposed amendment to the LEP requires community consultation, such as public exhibition or in the case of a reclassification of land, a public hearing. During the exhibition period, relevant Council Reference Groups or Advisory Committees will provide comment on relevant Planning Proposal requests.

Following exhibition, Council considers a report on submissions and should the resolution be to finalise the Planning Proposal, Parliamentary Counsel then prepares the amending LEP – the legal instrument. With the Minister’s (or delegates) approval the amending LEP becomes law and is notified on the NSW Legislation website.

It should be noted that an Independent Planning Panel may also act as the local planning authority when directed by the Minister.

The proponent and those making submissions are advised of Council report dates and resolutions through the process and given the opportunity to address Councillors at Council meetings through the Public Access Forum.

https://wollongong.nsw.gov.au/data/assets/pdf_file/0020/43409/Public-Access-Forum-Application.pdf

Should Council initially resolve not to support a planning proposal request, the proponent can request an independent review of Council’s decision through the “Rezoning Review” mechanism.

An online tracking system is available for any person to follow the progress of a Planning Proposal once it has been

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submitted to the Department of Planning Portal.

Consideration of Planning Proposal Requests

Applications to rezone land or change development standards or permitted uses are generally not encouraged by Council and should only be submitted in the following circumstances:

- Where land cannot be reasonably developed or used under the existing zoning or controls;
- Where it is necessary to correct an error or anomaly (eg mapping);
- Where there is a sound strategic argument for an amendment, based on consistency with Council's Strategic Plan, the Regional Strategy, Council's Local Strategic Planning Statement, or similar strategy or policy;
- Where the proposed amendment is considered to be minor in nature and has merit, and has been sufficiently justified;
- Where development of land in accordance with the existing zoning would not be in the public interest.

The following Planning Proposal requests will generally not be supported by Council:

- requests that are not supported by an endorsed local or regional strategy, plan or policy and are considered speculative;
- the rezoning of single properties to increase housing density;
- increasing housing in the Illawarra Escarpment, except where implementing an adopted strategy;
- permitting housing within **C2** Environmental Conservation and **C3** Environmental Management zoned land;
- increasing residential density in medium and high flood hazard areas (ie within the 1% AEP floodlevel);
- proposing the loss of employment land; and
- proposing the linear expansion of town centres.

It is necessary to prioritise the processing of planning proposal requests to ensure those providing the greatest public benefit are given preference over those serving individual interest or are of limited benefit to the greater Wollongong community. As a guide, the following would be given priority:

- Contributes to economic growth and promotes sustainable practice;
- Significant employment generating development;
- Provision of high quality, appropriately located housing accessible to the broader and lower income community;
- Education, medical or community facilities and services;
- Commercial or retail development in accordance with an adopted Council or State Government strategy;
- Preservation and conservation of the environment;
- Reducing an identified conflict between incompatible land uses;
- Improving tourism opportunities; and
- Implementing endorsed Council Strategies or Concept Plans (eg West Dapto Amendments).

Some areas will have Strategies, Masterplans or Concept Plans requiring that a Planning Proposal request to address certain criteria, for example the demonstration of an improved environmental outcome associated with proposed development.

Proponents are strongly advised to discuss any request with a Council officer from the Land Use Planning team prior to formally lodging a planning proposal and incurring the associated costs. It is also recommended that consultation with surrounding residents be undertaken to inform the preparation of the Planning Proposal request.

Planning Proposal Request: Information to be submitted

A Planning Proposal must be prepared in accordance with Section 3.33 of the *Environmental Planning and Assessment Act 1979* and relevant Department of Planning and Environment's guidelines including the "**Local Environmental Plan Making Guideline**" (2021).

Section 3.33 of the Act outlines that a planning proposal must include the following components:

- (a) A **statement** of objectives or intended outcomes of the proposal.

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- (b) An **explanation** of the provisions of the proposal.
- (c) A **justification** for those objectives and outcomes, including how it is to be implemented – details on why Council should support the change in zoning or development standards and compliance with relevant directions under Section 9.1
- (d) **Maps** containing the appropriate detail are to be submitted, including site map; land use zonings; land constraints such as flood risk, bushfire, heritage areas etc.
- (e) Details of the **community consultation** to be undertaken.

The Planning Proposal is structured as a number of statements and questions which must be responded to with accurate, current and sufficient information to allow assessment of the proposal by Council officers, Councillors and the Department of Planning and Environment.

The Planning Proposal must contain sufficient detail to demonstrate that relevant environmental, social, economic and other site specific matters have been identified and if necessary that any issues can be addressed with additional information and/or through consultation with agencies and the community. The level of detail required in a Planning Proposal should be proportionate to the complexity of the proposed amendment, recognising that a Planning Proposal must provide enough information to determine whether there is strategic merit in the proposed amendment and to demonstrate compliance with relevant statutory considerations.

A Planning Proposal request may be accompanied by a proposal to enter into a Planning Agreement under Section 7.4 of the EP&A Act under which a material public benefit will be provided. Council's policy on Planning Agreements sets out Council's approach to the use of Planning Agreements through negotiation when considering planning proposals.

In order for Council officers, Councillors and the Department of Planning and Environment to ascertain the appropriateness of the Planning Proposal, the constraints on site must be identified, and any proposed development on site will need to have consideration to these constraints. Any proposed intensification of land use will require identification of any environmental and physical constraints such as flood affectation, land stability, contamination, natural environment, bush fire, heritage and scenic landscape considerations. The proposed impacts on traffic and transport, town services and infrastructure also require consideration.

Where the Planning Proposal is seeking to rezone to residential or uplift the density of residential land, the application is to be accompanied by a residual land value of the site under both the existing and proposed planning controls. This is to assess the "uplift" to enable an Affordable Housing contribution to be determined.

The following is required to be lodged as part of any planning proposal request:

- 1 Justification for the planning proposal, including:
 - a The need for the Planning Proposal;
 - b Relationship to strategic framework – how is the planning proposal consistent with legislation and statutory requirements such as section 9.1 Directions and State Environmental Planning Policies (SEPPs), regional strategies and Council endorsed policies, strategies and locality Concept Plans (eg Council's Community Strategic Plan and Local Strategic Planning Statement);
 - c The context of the planning proposal – if the planning proposal implements the outcomes of a strategic study or report (a copy of the study or report to be submitted with the planning proposal request); and
 - d Potential economic, social and environmental impacts of the planning proposal and how they are proposed to be managed – positive and negative impacts should be identified, including proposed methods of amelioration where negative impacts are likely.
- 2 Appropriate supporting technical studies completed by suitably qualified experts to demonstrate the capacity of the land, concept diagrams, preliminary plans and illustrative maps. The level of detail will be proportionate to the impact the planning proposal is likely to have. This may include (but is not limited to) the following technical issues/considerations:
 - a Environmental – flora and fauna, bush fire, flooding, stormwater, riparian, geotechnical, coastal, contamination;
 - b Traffic and transport;
 - c Urban design;
 - d Aboriginal and Industrial Heritage;
 - e Consistency with Council Strategy or Concept Plan;

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- f Economic;
- g Social and cultural, including the preparation of an Aboriginal Cultural Heritage "Due Diligence" Assessment;
- h Infrastructure and servicing; and
- i Visual impact.

NB The Gateway determination may require additional information.

- 3 The completed Planning Proposal *Application Form and Checklist* (including the legal property description in full and land owner consent authorising the lodgment of the Planning Proposal request and the eventual making of a draft LEP over the subject land).
- 4 The submission of all documentation in electronic format (PDF). All documentation will need to be uploaded on Council's website for consultation and therefore should be kept under 50MB (noting that files over 10MB generally cannot be emailed). Wherever possible, a suite of documents should be combined into one file (while keeping under the 50MB guide).
- 5 Four hard copies of the request and all documentation.
- 6 Mapping data is to be supplied in a format compatible with ARC GIS.
- 7 Applicable Fees.

To ensure transparency in Council's decision making functions, any application which is made by a Council employee / Councillor and/or their immediate relative/s, will be referred to an independent consultant for assessment.

For more information proponents should refer to the Department of Planning and Environment's publication "**Local Environmental Plan Making Guideline 2021**".

Planning Proposal requests will require external planning expertise on behalf of the applicant. It is recommended that a town planning consultant be engaged for the preparation of planning proposal applications, and other specialist consultants may also be needed to provide technical input in support of the proposed changes. The application must include an accurate assessment of the likely impacts of the change in land use and identify any land constraints, supported by technical investigations. Any study that is deemed necessary to assess the suitability of the proposal and may have a significant bearing on Council's decision making about whether to proceed with preparing a planning proposal, will be required prior to a report being prepared for Council.

Council staff may refuse to accept the submission of a planning proposal request if the proposal is deemed to be lacking the necessary information and detail required of a planning proposal, as outlined in this section.

Fees

For applicable fees and charges, please refer to Wollongong City Council's *Schedule of Fees and Charges*. The proponent is required to pay the prescribed fee associated with preparing a planning proposal as outlined in Council's Fees and Charges. The proponent is also required to pay for any required technical studies.

What are the applicant's risks in applying for a Planning Proposal?

The following should be noted:

- Council, or an Independent Planning Panel, can request that the Minister for Planning terminates a Planning Proposal at any point of the process, including after all investigations, analysis and community engagement has been completed. However, proponents can request an independent review of decisions if Council has refused or failed to respond to a Planning Proposal;
- Council officers may seek an extension of time from the Department of Planning and Environment for the completion of a Planning Proposal should Council resources be required on other higher priority projects;
- The Planning Proposal process can occur over a number of years, depending on the nature and complexity of the proposal, and there are several key milestones that need to be achieved along the way. With each one there is a risk for the process to cease;
- Council officers may decline to accept the lodgment of a planning proposal request, where the application content is deemed inadequate;
- Council officers may, based on a preliminary desktop assessment of a submitted planning proposal request, determine that the information submitted is not satisfactory and should not be reported to the Local Planning Panel, or a Council meeting. This may arise where the initial review of the information submitted reveals that the

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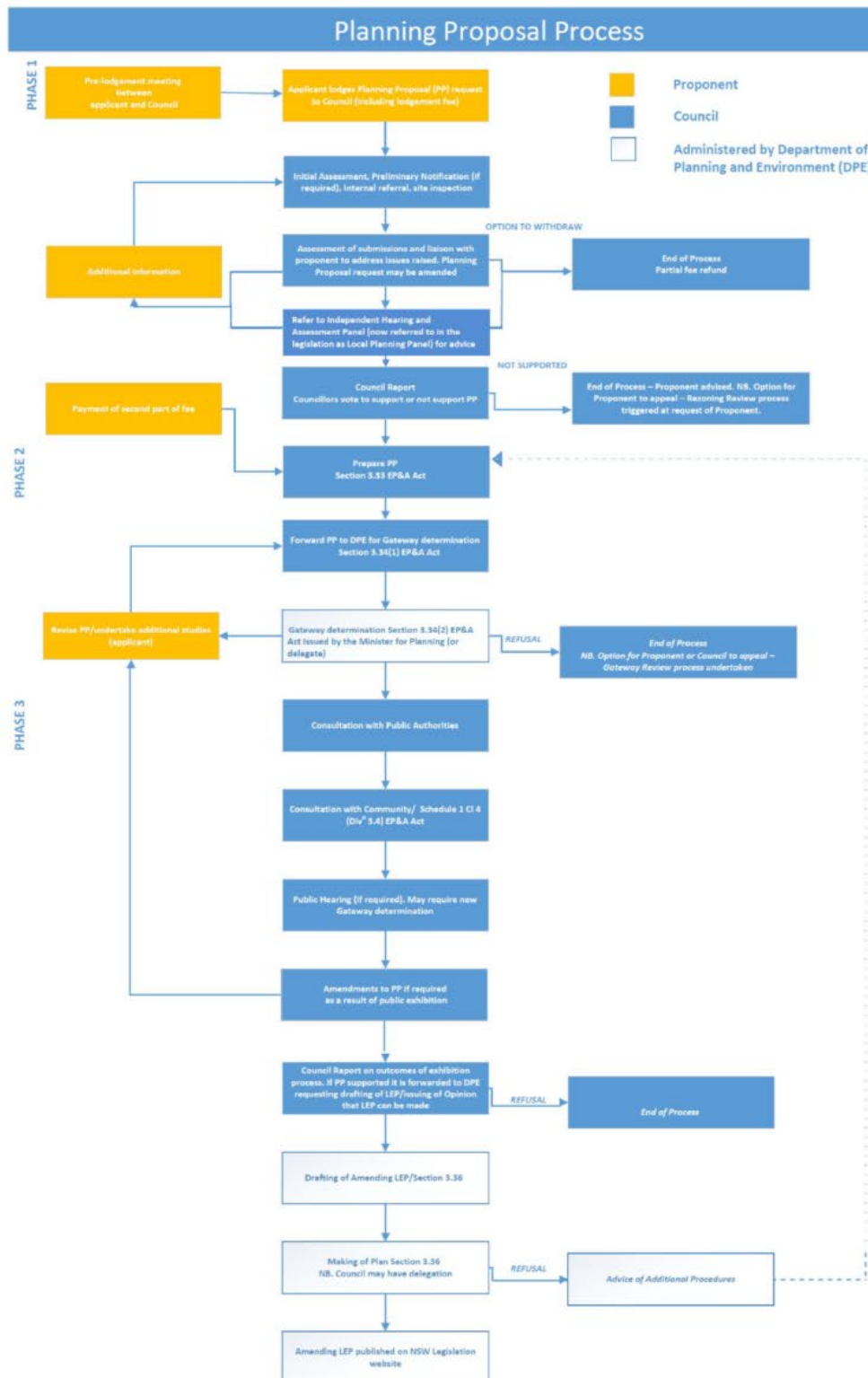
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proposal is inconsistent with local and/or state policy, or is subject to insurmountable environmental constraint etc;

- The proponent is responsible for the payment of any studies, specialist advice, or consultancies as required during the LEP amendment process;
- Time of lodgement does not determine the priority of processing and progressing of an amendment – it is necessary to prioritise proposals to ensure those providing the greatest public benefit are given preference over those servicing individual interest or are of limited benefit to the greater Wollongong community;
- The Planning Proposal request must be accompanied by the relevant fee. Part of the initial fee is refundable should the Planning Proposal process be terminated or be unsuccessful. The second part of the fee (if Council resolved to support the preparation of a Planning Proposal) is not refundable. If the Regional Planning Panel support a Planning Review and the Department of Planning and Environment issues a Gateway determination, the second fee is payable; and
- Council gives no undertaking that the processing of a Planning Proposal will result in the requested LEP amendment occurring. It is possible that all the steps in the process can be completed and an amendment declined by Council, the Independent Planning Panel, or the Minister for Planning.

PLANNING PROPOSAL POLICY To be removed – outlined in the Department's LEPMG

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SUMMARY SHEET	
Responsible Division	City Strategy
Date adopted by Council	
Date of previous adoptions	7 May 2018
Date of next review	May 2021
Responsible Manager	Manager City Strategy
Authorised by	Director Planning and Environment – Future City and Neighbourhoods

“New Approach to Rezoning” Discussion Paper, December 2021 Submission

The Discussion Paper describes the proposed new way of assessing rezoning proposals as a “plan led” system, though the proposed process outlined looks more to be a developer led system and there is little in the proposed new system to increase a plan-led approach.

The draft paper suggests that -

“This new approach aims to support a stronger strategic planning process so that, collectively, we will continue to see great outcomes for people, places, jobs, housing and public spaces by -

- *simplifying the rezoning process and minimising duplication*
- *improving transparency*
- *improving consultation processes*
- *reducing processing times*
- *creating more certainty and consistency*
- *empowering councils to make decisions on matters important to their communities while allowing the NSW Government to deal with matters where government intervention is beneficial*
- *giving private proponents control and responsibility for rezoning requests*
- *improving the quality of planning proposals.”*

While the idea of reducing the time and cost of assessing rezoning proposals has merit, it is unclear from the Discussion Paper how the other aims of certainty, consistency and improving the quality of proposals would be achieved.

The discussion paper also notes that -

- The NSW Productivity Commission found the NSW planning system has become too complex and inefficient. It has recommended the need to reduce red tape and complexity.
- The Federal Productivity Commission found that the rezoning process can be time consuming, costly and uncertain. It recommended shorter timeframes for planning proposals (while maintaining integrity) and a policy to avoid spot rezonings (the rezoning for a specific parcel of land), or to remove redundant requirements or apply statutory timeframes for decisions where they cannot be avoided.

It is noted that the Plan Making process is entirely governed by the State, and local government follows the rules established by the State. Over the years the Department has made a series of changes with the intention to simplify and improve timeframes for the plan-making process, however often they have had the opposite affect by increasing complexity, inefficiencies and timeframes.

For example -

- The removal of section 65 delegations to Council to exhibit LEP amendments.
- The introduction of the Gateway Determination, which initially was an adequacy assessment against regional plans, but has evolved to a merit assessment of the proposal.
- The introduction of Rezoning Reviews, which has allowed proponents to appeal against Council not supporting or progressing their request. Prior to this change, Councils could reject inappropriate Planning Proposal requests without challenge. The Rezoning Review process and subsequent review by DPE can add up to 6 months to the process and result in proposals progressing that do not have the support of the Council.

- The DPE has introduced various Guidelines, SEPPs, Directions, Orders all of which add to the complexity of the rezoning process. Similarly other State Agencies have published their own Guidelines and requirements, many of which are non-statutory but are expected to be followed, otherwise there are un-resolved objections.
- The DPE has removed Council officer's ability to draft amending LEPs, and all amendments are drafted by the Parliamentary Counsel Office.
- The DPE mapping team reviews and comments on all map amendments. Often comments have nothing to do with the amendment, but on drafting details such as a line thickness, colours or labels.
- The introduction of Local Planning Panels to provide advice on Planning Proposal requests, while having merit in some circumstances, has added time to the process.
- The proposed introduction of Planning Proposal reviews by Design Review Panels through the Design and Place SEPP package, also has merit but will add further time to the process.

Council suggests that the implications arising from these previous process changes be critically considered through the rezoning reform process.

Spot Rezoning

Council supports the intent for a plan-led local planning process that moves away from "spot rezonings". However, Council is of the view that the suggested process for developer-initiated rezonings will in fact encourage more spot rezonings.

- The requirement to secure landholder consent will be a limitation for larger precinct based planning reviews that involve multiple property owners. Noting that currently owner(s) consent is not required.
- The ability for a developer to lodge, effectively exhibit and seek determination of a rezoning proposal without an initial assessment or support from the Council is likely to be attractive to land speculators.
- The ability for proponents to appeal against a negative Council decision at the end of the process will be a further incentive for speculative developers to "roll the dice" with a rezoning proposal.

The removal of a strategic and site specific merit assessment as the first step in the rezoning process is of particular concern. DPE placed considerable focus on the development of Local Strategic Planning Statements and Regional Plans as the strategic framework to guide land use planning decisions. The process being considered turns its back on this approach and would enable strategy inconsistent proposal to substantially progress through the rezoning process.

The investment of time and resources into exhibiting and assessing potentially strategy inconsistent proposals will reduce efficiency in the system and create unnecessary anxiety in the community. While an early decision to not support a Planning Proposal request may not be popular with the proponent, it saves them, the community and Council time and resources.

Council is of the view that the proposed new system puts consistency, integrity, transparency, and community trust at risk.

Public exhibition process

Council is concerned that the community may feel there is reduced transparency and trust with a public exhibition and response to submission that is essentially led by the developer at the start of the process.

The early exhibition envisaged in the new process also relies on the documentation being correct and supportable. There will be an increased likelihood that re-exhibitions will be required where proposals have to be amended to address issues raised by the community and/or through the assessment process. This raises a number of questions, for example:

- What process will be in place if an applicant amends the proposal post exhibition to determine whether the changes warrant re-exhibition?
- If the proposal needs to be re-exhibited, is this done by the proponent or council?
- Are exhibitions allowed to take place over Christmas/school holidays?

Department and agency involvement

It is unclear how the proposed new process increases consistency by removing the NSW Department of Planning and Environment from much of the process.

While it is appropriate to explore the roles and responsibilities of the Department at various steps in the rezoning process, the Department's involvement, especially at Gateway Determination phase does help to maintain consistency, transparency and integrity in the system.

The proposed use of submission requirements, including agency comments is a good idea. However, it is not clear in the process chart who is coordinating the Council and agency pre-lodgement meetings. Once again, questions to consider include:

- Is this coordinated by the proponent or Council?
- What will become of the traditional role of DPE to coordinate stage agencies?
- Will the agencies have the resources to attend pre-lodgement meetings?
- Who will prepare study / submission requirements?
- Will Councils have to draft new scoping requirements for each rezoning application or look to preparing a standardised set of requirements (similar to the Secretary's Environmental Assessment Requirements for State Significant Development Applications). If issues are not resolved at the rezoning stage, they are deferred to the DA stage and cause delays and increased contestability in that process.

Section 9.1 Directions will need to be updated to reflect the new system and the process timeframes envisaged. The Directions are not formed or controlled by Council, yet the responsibility for ensuring "consistency" is being shifted to Council. In the present system, Council forms an opinion, that is then agreed to/or disagreed with consistently by the Department. The new system reduces oversight, with potential for reduced consistency of assessment and less transparency.

Process and Timeframes

The Department should be aware that achieving the reduced benchmark timeframes at phases through the process will likely result in more refusals of rezoning proposals and the need for re-lodgement. The tight timeframes do not factor in the reality that additional information is often required to support rezoning proposals.

While on paper this may reduce timeframes on an application-by-application basis, will it result in overall inefficiencies and waste of time and resources.

The concept of moving assessment to the end-of-process will not necessarily save time or money but will merely transfer the merit debate to the end of the process, after the expenditure of significant resources has already occurred. Changes are also easier to accommodate at the start of the process.

New appeals pathway

Council does not support the introduction of Land and Environment Court appeal rights for rezoning proposals. Council has already seen its autonomy to set the strategic land use planning outcomes for the City eroded through the introduction of the “Gateway Review” process. Providing the opportunity for appeals through the courts will further reduce Council’s autonomy and encourage speculative rezoning proposals.

Once again, the lack of detail in the Discussion Paper raises questions:

- What level of rigour will need to go into the studies required by the Court?
- Will new documentation be able to be lodged with the Court, which hasn’t been reviewed by Council or the community?
- Will the community have appeal rights?
- Would objectors be able to have their views heard in such appeals?
- What resourcing will need to be made to allow for appeals to be processed?

The Department has not made the case for the failure in the current system that the introduction of appeal rights is designed to address. A review process is already in place using the Regional Planning Panels to provide independent review of Council decisions in relation to rezoning proposals. The use of Local Planning Panels or the Independent Planning Commission may be viable alternatives within the same general framework that is currently in place.

Introducing Land and Environment Court appeals will add to the cost and time to complete the review process. And as previously noted, tighter benchmark timeframes is likely to result in more refusals and therefore more appeals. Council envisages that more staff time and costs will be directed into defending appeals rather than investing into strategic planning.

Categories

The proposed Planning Proposal categories will need to be clearly defined in order to prevent debate on which category a proposal falls into. Whilst the categories seek to set out categories based on complexity levels, it is often site-specific constraints that can dictate complexity. It is also noted that for category 2 it is stated that a proposal falls into this category if it involves -

“changing the land-use zone if a proposal is consistent with the objectives identified in the LEP for that proposed zone”.

There is no reference in the criteria for Category 2 that a proposal needs to be consistent with the intended character for the area. This statement would make more sense if it referred to a consistency with a Local Strategic Planning Statement or other strategic document.

New fee structure

The section in the discussion paper talks about fee structures, without really giving detail on how much the fees would be at each stage, or how they would be calculated.

The following alternate provisions suggested in the Discussion Paper could benefit the process if supported with other policy and guidance material to assist developers, Councils, and the public.

- Amend Ministerial Directions to make assessment considerations more certain.
- Delegation for decision-makers.
- Create submission requirements to make application requirements clear.
- Amendments to the Standard Instrument to standardise common amendments.
- New regulations to provide more certainty in the agency engagement process.

We agree that improvements would need to be made to the NSW Planning Portal to make it more effective and useable.

While the objective of creating a greater “plan-led” approach and reduced timeframes is supported as an objective, the framework suggested is unlikely lead to the outcomes desired.

Council appreciates the opportunity to provide feedback to the *New Approach to Rezoning* Discussion Paper and would welcome the opportunity to discuss our concerns in more detail as the reform process progresses.