



OUT22/1735

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Dear Ms Wythes

### **Discussion Paper: A New Approach to Rezoning**

Thank you for the opportunity to provide comment on the 'Discussion Paper: A new approach to rezoning' (the Discussion Paper) that is on public exhibition until the 28th February 2022. The NSW Department of Primary Industries (NSW DPI) Agriculture supports the general initiative to simplify the rezoning system, cut timeframes, create investment certainty and create greater efficiencies.

It is understood that NSW Department of Planning and Environment (DPE) has developed the Discussion Paper, to enable comments to be received to further refine the rezoning process. The paper highlights many issues of relevance to DPI Agriculture and we have provided comments and suggestions that reflect DPI Agriculture's commitment to the protection and growth of agricultural industries, and the land and resources upon which these industries depend. Those comments should assist DPE to address the implications of the proposed system for rural planning and DPI Agriculture's engagement within the process generally. Those aspects are outlined below.

#### **Scoping**

The success of the scoping phase as proposed will depend on the quality of requirements issued by agencies. The scoping template provided in the LEP Guidelines document is useful but is not comprehensive. Relevant details of issues and matters to be considered for the four different types of rezoning applications proposed will need outlining to ensure a consistent and comprehensive approach for agencies to provide information requirements. This will assist with a better-quality application being submitted at the front end of the process and less chance of additional information requests later in the process or the lodgement of an appeal.

#### **Shift to Greater Council Responsibility**

The shift of responsibility to councils as the final determining authority even for more simple applications could result in councils approving a rezoning that an agency has objected to. Under the proposed system an agency's objection carries no specific weight, only a requirement that a council has to take it into consideration. A decision contrary to an agency's objection could be justified against broad regional planning documents, with no oversight from DPE in the decision. This issue needs to be given further consideration in development of the reforms to ensure the concerns of state agencies are addressed.

#### **More Robust Strategic Planning Framework**

The lack of DPE oversight for basic and standard rezoning applications will mean a greater emphasis will need to be placed on strengthening the strategic planning framework. Amendment to planning legislation will be required to ensure DPE endorsement of land use strategies such as

rural land use strategies, housing strategies and employment land strategies which sit under broader strategic planning documents, such as Local Strategic Planning Statements. Such strategies need to be robust enough to support a legal appeals process. DPE endorsement of land use strategies is necessary to ensure that regional objectives are met, and councils do not compromise rural lands in favour of inappropriate rural residential or other housing development.

### **Sunset Provisions**

The proposed reform of timeframes provides the opportunity to consider time limits on approved rezoning of land, similar to provisions in the development application process where a date is specified beyond which a consent lapses. This will mean that proponents have a 'use it or lose it' choice. This approach could have benefits by potentially stopping land banking that results in land sitting in waiting for the proposed land use. It will also assist land already rezoned for residential purposes to be brought to market earlier. As well, it is an opportunity to better align the rezoning and DA processes with a concurrent process under a single approval authority.

### **Fees**

A fee for agency referral to provide comprehensive information requirements, attend scoping meetings, and provide written feedback within specified timeframes would assist to resource the time commitment for agency responses to this new process. This is similar to the fee system applied in the current concurrence role for development applications. Adequately resourcing agencies to meet these requirements as proposed should include realistic costing of time with appropriate fees set.

### **Appeal Mechanism**

It is noted that the new appeals process that enables the decision on a rezoning application to be contested is only proposed to be available for proponents and not for third parties. However, elected councils can make inappropriate planning decisions in the face of a proponent's legal appeal, despite council staff recommendations. A third-party appeal for a poor decision will balance the ledger and encourage good planning decisions based on a sound strategic planning framework. This is similar to the third party appeals available for the designated development process under the current development application system.

Should you require clarification on any of the information contained in this response, please contact Wendy Goodburn, Agricultural Land Use Planning Officer, on [REDACTED] or by email at [REDACTED]

Yours sincerely

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**Warwick Dougherty**  
**A/Group Director, Agricultural Resources**