

16 March 2022

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Dear Paulina,

PIA Draft Submission to Rezoning Reform Discussion Paper

Thank you for the opportunity to comment on the Discussion Paper. The Planning Institute of Australia (PIA NSW) are the body representing the planning profession.

- **PIA does not support the direction of the discussion paper. The measures intended to elevate proponent-led Planning Proposals would not be in the public interest.**
- **Exhibition of Planning Proposals should not be automatic. Removing an early and definitive strategic alignment decision will cost time, waste scarce strategic planning resources and divert focus away from achieving valuable strategic planning outcomes.**
- **The strategic merit test should be broader to consider how the public value incorporated in an integrated package of aligned planning strategies would be achieved.**
- **A 'one-stop-shop' for consistent and timely agency planning inputs is recommended.**
- **PIA does not support judicial review of Planning Proposals as plan-making is a policy setting role for Government – and because of the inherent costs and delays of legalised process.**
- **PIA recommends streamlining existing review mechanisms, more focussed resourcing of comprehensive strategic planning and eliminating the need for some minor Planning Proposals.**
- **PIA looks forward to being constructively engaged on reform opportunities based on principles that reinforce sound strategic planning and which promote property industry investment overall.**

PIA is focussed on reinforcing the status of strategic planning (Regional Plans through to Local Strategic Planning Statements and ensuring that this is reflected / updated in comprehensive Local Environmental Plans. These plans reflect the interests (and include the trade-offs) of State Government and the community.

PIA support a range of measures that reasonably reduce delay and improve the efficiency of the planning system. Especially measures that promote faster and better interagency engagement on Planning Proposals.

PIA urge the Department to consider other measures to reduce the need for less significant Planning Proposals (PPs). This could involve removing some development standards (or their treatment) from the Standard Instrument Local Environmental Plan (SILEP) to enable them to be addressed in the assessment process according to a Development Control Plan (DCP).

However, PIA sees a distinct difference between Planning Proposals (PPs) which amend delegated legislation - and Development Applications (DAs) which result in decisions that give effect to the statutory instrument. LEPs are a spatial representation of a council's strategy for sustainable and aligned growth. While strategy evolves and its legal expression needs to be kept current - this a more nuanced public process than a DA. PIA does not support the Discussion Paper where it blurs these two distinct roles in the Planning System.

PIA would not be supporting a process that enables proponent led Planning Proposals going on exhibition without adjudication of strategic alignment. While PIA support engagement before lodgement, this will not replace the need for a clear decision. PPs being exhibited without strategic merit would not reduce 'duplication' but would raise expectations and potentially waste resources.

PIA has previously written to the Department regarding our concerns over potential judicial review of PP refusals (refer Attachment B). PIA has set out the reasons why plan making authorities are best placed to make a determination rather than panels or the Land Environment Court.

PIA would be pleased to continue to be engaged in the development of rezoning policy. If you have any queries about our draft submission, please don't hesitate to contact me on [REDACTED] or by email at [REDACTED].

Yours sincerely

[REDACTED]

John Brockhoff
National Policy Director, PIA

PIA submission to: 'A New Approach to Rezoning'

1. Need for Reform

The Problem is misconstrued – comprehensive strategic planning adds value and enables housing growth

Faster ad hoc site-based 'spot rezonings' will not deliver more (or quicker) supply than well-resourced comprehensive and integrated strategic planning. While a disproportionate focus on speculative proposals will erode community trust and reduce the value embodied in a sound planning strategy.

PIA finds the Discussion Paper is looking to solve the wrong problem by assuming measures (eg zones / development standards) to implement strategic plans for the community are barriers – rather than lane markers towards development in the public interest.

PIA made this point in our rebuttal ([link](#)) of the 'Continuing the Productivity Conversation Green Paper' in which we noted that kneejerk responses to Planning Proposals (PP) would neither significantly impact supply nor improve housing affordability. The big gains in value come from high quality and up-to-date strategic planning for growth.

Forward planning shapes our future in ways that boost productivity, sustain our environment and create great places to live. It does this by adopting a strategic approach to ensure the economic use of infrastructure and services alongside growth. The broader community engage in the trade-offs between competing priorities for places in ways that aren't available for site-by-site assessments.

Council's and state agencies adopt and implement the outcomes of strategic planning through delegated legislation (LEPs) which show how these outcomes would be achieved using tools such as zones, definitions, development standards and guides.

The broader community can then see a line-of-sight between what they value for a place, what is allowed and what is approved. The property industry can see the same and operate to best advantage within the rules – or seek demonstrate a better way that achieves the adopted strategic value.

The architecture of the Environmental Planning and Assessment Act deliberately separates the plan-making function (LEP) from the plan-conformance (DA) function to preserve public trust and encourage engagement in strategic planning. The separate nature of decisions setting land use controls (LEPs) versus determining conformance of development with those controls (DAs) – is not 'duplication'.

Elevating the status of proponent led PPs and mimicking the DA approach is a solution looking for a problem. It would however have significant side effects:

- Distracting scarce planner resources away from integrated strategic planning with greater potential to enable housing and other development to support growth

- Encouraging unnecessary ‘front loading’ of detail and raising expectations for a Planning Proposal that may not have merit
- Reduced public trust and engagement in comprehensive strategic planning
- Unravelling trade-offs made at a higher level that would contribute to a valuable place outcome
- Generating speculative gain at the public’s expense

PIA has recognised many ways in which the planning system can be improved, and plan making measures streamlined. PIA has recently collaborated with DPIE on a reform agenda. However, aspects of this Discussion Paper which weaken the effect of comprehensive strategic planning the existing Planning Proposal framework are not supported.

Principles

Based on PIA’s industry engagement and contribution to a DPE reform collaboration “*Opportunities to improve the NSW Planning System*”, PIA offer the following principles as a basis for considering reform in plan making:

- *Promote public trust in the integrity of strategic planning* - this involves prioritising comprehensive plan-making in the public interest (over ad hoc site consideration) including considering the wider context for trade-offs among strategic directions for a place.
- *Ensure strategic alignment from regional to local / precinct level* – and ensure that local strategic planning statements are well resourced, updated and align with current regional / district plans that have had community endorsement.
- *Proactively plan for growth and change* – ensure plans are current and use targets to tackle long term growth and change to build in capacity across the board for the supply of sufficient and diverse of housing and all other land needs.
- *Ensure planning strategy for places is accurately translated in planning instruments* – to achieve the value inherent in the strategy and give it effect via the right zones, development standards and guides.
- *Strengthen agency and stakeholder collaboration in integrated strategic plans for places* – ensure infrastructure and other agencies are cost-effectively and comprehensively engaged.
- *Do not sacrifice public value for windfall gains through ad hoc planning* – public trust in strategic planning suffers when speculative gains are created without broad public benefit.

PIA has considered strategic planning reform opportunities to reduce friction and the need for spot rezonings in **Attachment A**.

2. Proposed New Approach

3. New terminology

PIA disagrees to the term ‘rezoning application’ replacing more accurate current terminology – noting many planning proposals do not actually seek a rezoning (eg a change in a development

standard, eg height). Proponent-initiated Planning Proposal applications could be labelled as such.

4. New Categories and Timeframes

The four categories listed in Table 2 of the Discussion Paper assist in characterising different Planning Proposal types. The concept of guiding timeframes is supported rather than benchmarks.

- (Cat 1) Basic (admin changes)
- (Cat 2) Standard (site specific)
- (Cat 3) Complex (other than 1,2,4)
- (Cat 4) Principal LEP

While PIA support streamlining of the PP process, the proposed benchmark timeframes are unrealistic – both from a council and state agency perspective – noting the timing obligations this would place on DPE and State Agencies. The proposed process steps are not supported and the timetables not appropriate.

PIA note that delays originate from diverse sources that would confound strict interpretation of benchmarks – including poor proponent information, lack of rationale, slow proponent and responses, council processes, high community interest and slow Department and other agency engagement.

Achieving unrealistic timetables would not result in faster resolution of a planning proposal application nor in the achievement of the underlying quality objectives of the process. It would result in disjointed and poorly integrated outcomes with little broader stakeholder support. A legalistic appeals process would also add time and cost.

PIA note there are opportunities to significantly improve the timing and quality of Planning Proposal processes these are outlined later in the submission – and include integrated agency referrals processes, improved council initial engagement processes and resourcing, reduction in some unnecessary minor PPs by revision to the SILEP and continuing attention to aligning and updating comprehensive and precinct LEPs.

A critical way of improving timing and efficiency of PPs is to enable the early rejection of strategically unaligned and unmerited PPs before significant resources and time is expended by the proponent and Council. This early rejection would also save significant and valuable community time and resources by avoiding exhibition. The NSW framework of strategic plans aligned from Regional/District to Local Strategic Planning Statements increasingly enables early and clear recognition of strategic merit.

5. New Roles

PIA does not support proposed changes the proponent led PP process akin to a Development Application.

Because LEPs are delegated legislation intended to implement and achieve the public value inherent in strategic plans – it is not valid to distance the plan making authority from its core role.

There is an existing process to recognise and respond to private proponents seeking to change an LEP. It is appropriate that this continues to enable Council to control (and fund) how it considers changing its own 'rules' in the public interest. A legal appeals process is not supported for the same reason.

There will be circumstances where a Council refuses to consider a planning proposal with strong strategic merit – existing rezoning review processes are sufficient to address these situations.

In relation to Council and DPE roles – greater autonomy for councils (eg to resolve minor s9.1 inconsistencies) is supported especially now that much of the state has a clearer basis for establishing strategic alignment from Regional Plans through to LSPS.

There is significant potential for reform of State Agency engagement – especially via a one-stop-shop arrangement where inter-agency conflicts can be resolved upfront.

6. New Steps

Scoping

The scoping steps are supported to improve the quality of planning proposal applications and discourage speculative proposals - but the 'pre-PP submission' scoping phase should not replace a key decision point to refuse exhibition.

Under the potential new approach: *“the only opportunity to refuse a rezoning application if it lacks strategic merit is after exhibition, in the final assessment stage. This means that the initial assessment effort will go into deciding if all required information has been provided, ensuring quicker adequacy checks and an opportunity for the public to scrutinise rezoning applications in an open and transparent way.”* This approach is not supported because the scoping ('pre-lodgement') phase does not enable an early decision to firmly refuse exhibition – and save everyone's resources from prolonged assessment of unstrategic and inappropriate proposals.

NSW's comprehensive strategic planning framework should make it increasingly clear which proposals are strategically aligned. Councils and State Agencies have a responsibility to respect the broader community's involvement in the formulation of these plans and adjudicate alignment accordingly.

Note – 'pre-lodgement' is not the preferred word for the scoping stage – as it creates an unwelcome comparison with the distinct DA pre-lodgement process.

Lodgement

Even with a sound scoping process, 7 days is too short to determine adequacy of the contents of a typical proposal.

PIA does not support lodgement being an automatic trigger for exhibition of a proponent led PP. This is because resources and time will be wasted by proponents, assessors and the community

in considering some PPs that do not have strategic merit. The proposed approach will ultimately consume more resources and time by keeping proposals without merit alive longer. It would be inefficient, raise expectations and encouraging greater investment up front in speculative proposals.

Exhibition

Exhibition should only follow an explicit decision (not automatic) by the council or relevant authority that the proposal is strategically aligned and would potentially have strategic merit.

The timing of the exhibition period should respond to the issues arising from the proposal and the context rather than be rigidly set. That said the broad sequence of steps and timeframes are appropriate.

Information requests will arise throughout the process – but can be minimised by resourcing collaboration among council departments and especially by reform of way State Agencies provide input.

PIA supports a Queensland ‘SARA style’ model that acts as a one-stop-shop for early and consistent agency input. A coordinating central body for agency responses should be developed that not only ensures access to dedicated regional agency staff – but requires conflicts amongst different agency advice to be resolved upfront.

Assessment and Finalisation

The determination of strategic merit is critical because adopted strategic plans are formulated to deliver ‘value’ through outcomes for people and places. The case should be sufficiently compelling to warrant the council revisiting its own delegated legislation to consider whether there is a better way of achieving the outcomes sought in an adopted and collaborative planning strategy.

The strategic merit test should also consider *‘the extent to which a proposal would deliver the public value incorporated in the integrated package of planning strategies, infrastructure and other commitments.’* Demonstrating strategic merit can’t be removed from achieving the intended outcomes of an integrated planning framework.

The potential for additional housing supply by itself should not be a compelling factor in assessing strategic merit. This is because more / faster supply cannot be guaranteed from a spot rezoning – over a pipeline of supply from a comprehensive planning strategy integrated with the delivery of infrastructure and services.

The commercial assumptions on viability are only a public interest consideration when they invalidate a growth strategy.

7. New Fee Structure and “Planning Guarantee”

Fee structures vary among councils according to local needs and processes required for a city or regional council to prepare the planning instruments needed to implement a planning strategy on behalf the community. Ultimately, councils need to be able to fund and resource additional

strategic planning activity associated with planning proposals outside their comprehensive program.

The Planning Guarantee refund is not relevant or appropriate. Planning proposals are Councils delegated legislation to implement a planning strategy on behalf of their community. Their responsibility is to the community to achieve public value – unlike a DA - this is not closely linked to timetables and refund considerations should not impact council's discretion.

8. New Appeals Pathways - Opposed

PIA oppose the creation of a legalistic, time and resource consuming court appeal process. Ultimately it is the council's decision to establish a planning instrument to implement its adopted planning strategy – this is a policy making function and should not be considered by courts (separation of powers).

Existing review pathways (Rezoning Review (to panel) and Gateway Reviews (to IPC)) offer satisfactory recourse for circumstances where the decision-making body misjudges strategic and site-specific merit.

Where a council decision is overturned then the local panel would be an appropriate plan making authority. PIA is concerned that the plan making responsibility should not be far removed from other council responsibilities for related services and infrastructure delivery.

Attachment B outlines the basis of PIA's opposition to court review.

9. Implementation

The discussion paper proposes changes to the LEP making process akin to DAs. This fundamentally challenges the separate design and logic of the plan making component of the Environmental Planning and Assessment Act. Any change along the lines of the Discussion Paper should be legislated and subject to Parliamentary scrutiny.

10. Other potential reforms

PIA would appreciate the opportunity for our members to advise and collaborate on other reforms that would free up strategic planning resources and reduce reliance on ad hoc proponent led planning proposals. The following opportunities should be explored further:

- Prioritise investment in fast tracking comprehensive LEP preparation and updating rather than diverting resources to ad hoc proposals
- Invest in strengthening strategic plan alignment from Regional / District Plans through LSPS to LEPs and DCPs
- Streamline the steps in comprehensive LEP making
- Establish an interagency referral / engagement one-stop shop for plan making
- Strengthen the statutory basis of LSPS and ensure that next generation LSPS are more specific in the guidance they offer on strategic merit
- Reduce the range of development standards included in the SILEP (requiring a PP to alter). Investigate any circumstances where height, minimum lot size or FSR need not be a statutory development standard

- Reform the interpretation of Clause 4.6 variations along the lines of the reform proposal put forward by DPIE (2021) – see PIA submission (*link*). Potentially explore whether a different test might apply for variations with strategic merit.
- Review the use of PPs for some housekeeping and classification roles
- Consider how windfall gain from ad hoc rezoning should be shared by the public – as an incentive for more integrated planning

The Department are urged to undertake a review of which PPs could be avoided and addressed via alternative processes.

11. Conclusion

Plan making via delegated legislation (LEPs) is a responsibility of government to achieve the outcomes of strategic plans.

Reframing the plan making system to incentivise proponent led Planning Proposals does not represent good value nor efficient use of industry and assessment resources. PIA has challenged the assumption that proponent led Planning Proposals would deliver supply faster or in greater quantities than comprehensive planning pathways.

Achieving the value embedded in aligned and integrated comprehensive / precinct plans should be the priority as these will generate a greater and more orderly supply of housing and other development opportunities. This work also respects the significant engagement by the community and many industry and government stakeholders in a coherent process.

The NSW planning system is making great progress towards a well aligned strategic planning framework including a state-wide set of Regional Plans through to increasingly refined LSPS. There is now a clearer framework for the next generation of comprehensive LEPs to deliver the liveability, growth and resilience benefits of these plans more accurately.

Making up-to-date and aligned comprehensive strategic plans that enable resilient outcomes in the public interest should be the priority for scarce planning resources.

PIA would be pleased to engage on reforms that streamline the plan making process while strengthening its inherent value. PIA has highlighted measures that might reduce the need for some Planning Proposals, and we would be interested in developing these ideas further with the Department.

ATTACHMENT A

Opportunities to improve the NSW Planning System

Extract PIA Working Paper (2021)

Strategic Planning and Zoning

Strategic planning is the foundation of a planning system. Good strategic planning is an investment in reducing risk and uncertainty for all users of the system, including the community, developers and

infrastructure providers. It ensures decision-making throughout the entire planning system aligns with desired land-use and built-form outcomes. It also provides clear markers about the kind of change and development that can be anticipated in any given area.

A well-designed planning system should enable development proposals that are aligned with strategy to reduce their risk while providing the regulatory framework and tools to efficiently and effectively scrutinise and assess proposals. Strategic planning is important for ensuring the efficient and orderly delivery of infrastructure and services. Good strategic planning allows agencies to align the delivery of their capital programs to match future growth. This ensures the right infrastructure is delivered in the right place at the right time.

Strategic plans for regions, districts or localities should reflect community and stakeholder values (current and future) for how a place can grow and/or change. They must also look to the future. The various objectives and trade-offs are given spatial effect through land-use zones, along with other tools, criteria and codes. Planning strategy should offer a signpost to the range of pathways and possibilities for change. Strategic plans set lane markers for future growth and inform industry of the risks.

Planning strategy is not static and is expected to evolve with changing community and stakeholder values and expectations. Both strategy and its implementation tools and should be responsive to changing growth parameters and resilient to changing environmental and economic conditions and uncertainty.

Increasing the effectiveness of strategic planning will result in significant downstream efficiencies in areas of risk and uncertainty and reduce the need for spot rezoning. This can be achieved by providing clear and consistent strategic advice that supports the reinforcement of system-wide planning principles. It is also important that these are backed by a robust evidence base, including projections (such as population and employment) and forecasts. As the private sector, industry and homeowners are the ones delivering housing across all jurisdictions, it is beneficial for everyone to have clarity on strategic intent. There should be a focus across government on resourcing strategic planning activities that benefit downstream planning outcomes and development assessment processes.

Strengthen strategic planning to reduce the friction and need for spot rezonings

Reducing ad hoc spot rezoning is likely to improve public trust and stakeholder involvement in strategic land-use planning while avoiding additional costs. It is also likely to have other flow-on benefits including redistributing planning resources (including staff) towards holistic strategic planning.

The department is progressing work to streamline planning proposal (and review) pathways under the existing regulatory environment. However, opportunities for regulatory reform may emerge that simplify the planning proposal pathway. These include:

- investigating changes to the gateway process for very low-risk scheme amendments
- improving strategic planning to take a resilience approach. This means using scenarios and framing place outcomes for different circumstances and using strategic environmental assessment to address major risks up front.

Risk-weighted pathways for planning proposals

The planning proposal process is undertaken for a range of changes, from the correction of minor errors through to the adoption of comprehensive local environmental plans. Despite this variability, there is a single planning pathway that includes a gateway assessment. This provides an opportunity to develop risk-weighted pathways for minor changes that may include changes to the gateway process. Differential requirements could apply to basic versus complex (or strategically contested) proposals. This can build on existing internal processes that triage and assess the risk of planning proposals when they are submitted.

There is also an issue with the documentation needed to submit a planning proposal, with many applicants submitting design detail or renderings akin to a major development application. This has the perverse effect of raising expectations prior to any formal review process or strategic merit test. As a result, significant resources and time are consumed by industry and planning authorities that could be deployed on strategic planning for precinctwide initiatives and growth. There is an opportunity for a risk-weighted requirement for pre-lodgement engagement to clarify strategic intent, manage expectations and clarify the evidence needed to progress the proposal.

Precinct planning to reduce assessment risks

Precinct planning can provide opportunities to tailor outcomes by introducing flexibility in land use. Precinct structure planning (or master planning) provides an opportunity to make the trade-offs above the site scale and provide greater certainty through the assessment pathway. However, flexibility should not be disconnected from place outcomes. For example, resistance to earlier major projects reform allowed the bypassing of local land-use policies with approval at the state level on a discretionary basis.

Currently, the system does not discourage inappropriate planning proposals proceeding to gateway, nor does it expedite strategically important proposals. There are no criteria on whether a planning proposal should be considered based on the recency of strategic planning activities for the site. Also, there is no alternative pathway for very minor planning proposals (for example, corrections) to proceed on a streamlined path or to not require gateway assessment. These areas represent opportunities for reform.

Conducting structure planning for precincts provides an opportunity to program smaller-scale reviews to make the trade-offs above at the site scale and to 'de-risk' the assessment pathway. This could support a more targeted review of zoning and controls to reduce the need for spot rezoning and allow government to conduct strategic planning at more local and manageable scales.

Opportunities for master planning to frame assessment pathways could be explored under the proposed Design and Place SEPP and reference similar processes interstate.

In Tasmania, specific area plans (SAP), particular purpose zones (PPZ) and site-specific qualifications (SSQ) are used as means of tailoring zones and assessment pathways in precincts for desired development outcomes not anticipated under the state planning provisions suite of zones and codes. An SAP, PPZ or SSQ can be authorised by the Independent Planning Commission to suspend, modify or add to the permissible uses and forms of development in a way that overrides prevailing code and zone provisions, but only where there is a justifiable social, environmental or economic basis for that variation.

Improving the resilience of strategic planning

Strategic plans require regular updating or major review to remain relevant under changing environmental conditions and community needs. There is an opportunity to explore how planning strategies can adopt outcomes within a resilience framework (ie embedding adaptability, redundancy, modularity & subsidiarity) that is responsive to changing future scenarios. This would involve:

- undertaking strategic environmental assessment of potential risks
- identifying adaptive pathways towards achieving strategic outcome(s) under different scenarios. This needs to acknowledge uncertainty and embrace the potential for some pathways to become redundant without invalidating the entire strategy
- enabling subsidiarity, where local decisions can be delegated.

A more dynamic approach to planning for uncertainty has the potential to maintain the relevance of planning strategy and enable a more nuanced appreciation of whether strategic merit is achieved.

Snapshot on spot rezonings determined in 2021

Up to October 2021, there were over 100 spot rezonings, less than 10 principal LEPs, less than 20 precinct LEPs and some 70 other types of planning proposals determined (ie housekeeping / policy / reclassification).

A snapshot of planning proposals for the year shows that there is a significant volume of proposals for spot rezonings compared to planning proposals for principal LEPs and policy-related changes. The significantly greater proportion of spot rezonings demonstrates there is a bias towards site-by-site determination of zoning rather than a government-led principal LEP approach directed by strategic planning and consideration of sites in the context of a broader precinct or local government area.

Spot rezonings are used to achieve a different development outcome for a specific site than what is permitted through the current controls. Typically, this is to achieve a higher density of development. This may be due to a developer seeking a higher yield to generate a better return on investment or to achieve development outcomes that are better aligned with what is feasible for a specific site.

Spot rezonings are an inefficient way to deliver sites for housing development and can increase distrust in the planning system. Councils and the department have to deal with large a volume of planning proposals, all of which take up resources to process. The private sector also commits investment, resources and time to preparing planning proposals.

ATTACHMENT B

Comments on proposed new appeal pathway for Planning Proposals

PIA Information Paper 2020 (Extract)

PIA consulted leading planning system professionals in every state - and make the following observations on the efficacy of an appeals process for rezoning decisions:

- Because local council strategic planning processes are fallible (eg plans out of date / Councillors not engaged with strategy) - there is a role for some sort of review of a council decision not to proceed with a plan amendment. This exists as a rezoning review process.
- The separation of powers dictates that plan making be a responsibility of government not the courts. It also puts the courts in the territory of influencing infrastructure and flow on service delivery decisions.
- Review processes (or analogous) operate in several jurisdictions without requiring formal court involvement (eg WAPC, Panels)
- Where court review does occur (eg Qld) it does not offer clear improvements in speed or certainty.
- A court review process also carries the risk that agreements will be struck that parties can live with - rather than what is necessarily the 'best' (strategic) planning decision.
- Better planning instruments that are clear and concise in what they want to achieve and, to the extent possible, pre-empt and provide direction on where new development/market pressures are likely to arise - would make a difference in avoiding the need for legal appeals - as well as speeding up resolution.

In NSW, it seems that the Planning Proposal process has evolved beyond the original design. There is now a significantly different (and richer) policy environment in terms of strategic planning than we were a 10-15 years ago - when the only document we really needed to consider was the particular Council's Land Use Strategy. Introducing a new class of appeal and relying on the court to make policy is unlikely to address the

problem – nor speed up the process (if improving efficiency is also an objective). DPIE should be looking at a review of the entire planning proposal process - and not just rezoning appeals.

Observations from the NSW workshop presentation:

- There is a lack of clarity as to what the problem is that the government is seeking to solve.
- It is not the role of the Court to make policy – noting the separation of powers doctrine. The proposed appeal process would be a fundamental shift in approach;
- The ‘strategic planning alignment’ of planning proposals should not be appealable to Court. Planners are most appropriate for this assessment.
- It is not clear whether the Land and Environment Court has the right expertise, despite the appointment of specialist Commissioners. The IPC might have better expertise.
- There is the potential to undermine the focus of recent years to introduce District and Strategic Plans (& LSPS).
- A rezoning appeals process inevitably introduces an adversarial approach to the outcome. Councils may be tempted to settle to save costs which may result in poorer decisions.
- An appeal process may well result in longer timeframes - noting that the approach in Qld does not seem to have resulted in quicker outcomes.
- Noted frustration that inappropriate planning proposals are not extinguished - and instead require resources to deal with. This is particularly frustrating where a public strategic plan making process has recently been undertaken or updated which the planning proposal seeks to work around.
- Planning Proposals for spot rezonings already contain too much detail up front, going beyond for example - the justification for a change of use. The design detail considerations are often a source of ongoing delay.

The proposed court appeal pathway(s) could be ineffective in dealing with the problems, blockages, challenges and barriers experienced by councils and proponents with the current process. Involving the LEC in the process is expected to have negative impacts including increased timeframes, costs (to public and proponent) and promote speculation.

If a court appeal process does ever commence - the opportunity for an appeal to L&E Ct should only be:

- For proposals that are strategically aligned but which are held up on detail regarding merits. (However, other process reforms that could address these circumstances should also be considered.)
- On the development standards or relevant design details once strategic alignment has already been determined. Courts may be well placed to resolve these merit questions or act as a circuit breaker for convoluted negotiations or referral delays.