

Submission – Discussion Paper: New Approach to Rezoning's in NSW

March 2022



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Executive Summary

On 15 December 2021, the NSW Department of Planning and Environment (DPE) published a discussion paper 'A new approach to Rezoning's' (Discussion Paper) as an initiative of the Planning Reform Action Plan.

The Planning Reform Action Plan released in 2020, is a State-led program of initiatives to unlock productivity in NSW through improvements to the NSW planning system. This includes the aim to create a more timely, certain and transparent planning system. The action plan outlines six initiatives inclusive of planning proposals, whereby the department will focus on long term reforms that assist in improving the timeframes, transparency, and roadblocks within the existing framework.

The Discussion Paper seeks to improve the rezoning process through identifying weaknesses within the current planning proposal process. The Department held a variety of consultation and engagement sessions which included Councils, industry professionals and state agencies to identify the main concerns within the planning proposal process.

The Discussion Paper outlines a new approach that aims to create the following:

- A streamlined and efficient process for LEP / SEPP amendments that align with strategic planning objectives;
- Set clear matters for consideration, timeframes and a consistent fee regime to give greater certainty in the process;
- Allow councils to receive and determine proponent initiated LEP / SEPP amendments, with no or minimal DPE involvement in assessment;
- Allow the Minister to receive and determine, through the department, other LEP / SEPP amendments, including those prepared by councils and public authorities;
- Bolster DPE's role in supporting, monitoring and assisting councils in the process;
- Require LEP / SEPP amendments to go through a mandatory and upfront pre-lodgement process;
- Shift all merit assessment processes to after exhibition; and
- Give private proponents a right of appeal against the final decision.

DPE is yet to announce how its proposed amendments to the rezoning process will lead to amendments to the *Environmental Planning and Assessment Act 1979*. However, to assist with these changes, DPE has released on the 15 December 2021, the new Local Environmental Plan Making Guideline (LEP Guideline). The LEP Guideline replaces the former Local Environment Plans: A Guide to preparing local environmental Plans (2018) and Planning Proposals: A guide to preparing planning proposals (2018).

The intent of the LEP Guideline is to better equip consultants, councils and agencies of the expectations around the rezoning process timeframes and to provide a step by step guide to how Planning Proposals are to be processed.

This document forms Camden Council's submission to the Discussion Paper.

Council requests the considerations and recommendations contained in this submission be addressed prior to the finalisation of the new zoning process.

Introduction

The Discussion Paper is divided into the following sections:

- Part A: Background
- Part B: The New Approach
- Part C: New Appeals Pathways
- Part D: Implementation

Council officers support the intent of delivering a better planning system and the objectives of the Discussion Paper and can see merit in implementing particular aspects of the approach into the planning framework.

Council officers also support the NSW Government's intent to deliver a better planning system through the implementation of the NSW Government Planning Reform Action Plan, which aims to refine the current planning system to create transparency, efficiency and user-friendly processes. These aspects include;

- the requirement for mandatory pre-lodgement meetings;
- the introduction of categorisation of Planning Proposals;
- the need for early State Agency input; and
- reducing the overall timeframes for Planning Proposal assessment by a third.

However, Council officers believe there are some fundamental flaws with aspects of the approach that will impact upon the ability to deliver good planning outcomes for the Camden community. In particular, the proposed reduced timeframes do not account for the complexity precinct planning for land within the South West Growth Area (SWGA).

The key considerations that impact on the Camden LGA have been identified and are outlined in the 'Key Considerations' section of this submission.

Strategic Context

Relationship to Camden Community Strategic Plan (CSP)

The Camden Community Strategic Plan (CSP) is an organisation plan that identifies the communities' main priorities and aspirations for the future. The CSP also provides key directions and strategies to achieve these goals.

Council officers note the directions and the strategies within the CSP will not be impacted upon by the implementation of the proposed changes sought in the Discussion Paper. Rather, elements of the new rezoning process will support key objectives within the plan including the following:

- Objective 1 – Urban development is managed effectively.
- Objective 6.1 – Maintain strong and shared responsibilities with stakeholders
- Objective 6.2 – Community and stakeholders are kept informed.

Relationship to Camden Local Strategic Planning Statement (LSPS)

In March 2018, the Greater Sydney Commission required all councils in NSW to implement a 20-year planning vision to align with the strategic direction of the Greater Sydney Region Plan and the Western City District Plan. In April 2020, Council endorsed the Camden Local Strategic Planning Statement.

Any Planning Proposal lodged is required to be assessed against the Camden LSPS and demonstrate consistencies with the 21 local priorities. Where consistency is unachievable or justification is unsupported, a Planning Proposal will not meet the strategic merit test and therefore will not be supported.

Relationship to Camden Planning Proposal Policy

Council's Planning Proposal Policy was introduced to assist and establish the responsibilities of Council Officers in managing the Planning Proposal process. This Policy was updated and adopted by Council's Executive Leadership Group (ELG) in April 2021. This included the re-categorisation of Planning Proposal categories, in response to DPE announcing its new approach to Precinct Planning in November 2019.

The Policy also identifies the following as key features of the Planning Proposal process:

- Establishing categories for Planning Proposals (Housekeeping, Minor, Major or Significant).
- Requirement a mandatory pre-lodgement meeting
- Discretion of planning proposals to be initially notified to the community prior to Council undertaking an assessment (minimum period of 14 days).
- Requirements for consultation with Public Agencies prior to reporting to the Local Planning Panel and Council for Gateway Determination.

The Planning Policy has some similarities to the proposed rezoning process, which is explained in more detail in this submission.

Part A: Background and Need for Reform

1. Time and Complexity

Timeframes of Rezoning Applications

Council officers acknowledge and support DPE in trying to reduce the timeframes involved in the rezoning process by one-third by 2023. However, the Discussion Paper establishes timeframes take the opportunity to cut down this timeframe down even further.

The Discussion Paper identifies that the average end to end process of a Planning Proposal in 2019 was 114 weeks. From data obtained until 30 June 2021, it was reduced to 89 weeks (represents a reduction of 22%).

The DPE has proposed to reduce timeframes by more than one-third to 37 weeks (excluding scoping) for a Category 2 (Standard) rezoning application. This has serious implications for the integrity of the rezoning process and has the potential to place unrealistic expectations from proponents and add additional burden on Councils, particularly in terms of progressing complex/precinct-scale rezoning applications. The proposal to reduce the rezoning timeframes by over one-third is not supported by Council officers.

Recommendation:

1. Further consider the additional 'time-savings' placed upon Councils, as the Discussion Paper exceeds the proposed one third reduction.
2. Revisit timeframes for Category 2 (Standard) rezoning applications as the proposed timeframes are unrealistic and not achievable.

Discussion Paper does not account for precinct planning

In response to DPEs 'New Approach to Precinct Planning' in November 2019, Council has been directed by DPE to progress precinct planning through the planning proposal process. This role was previously led by DPE in conjunction with Council officers, with Council making a submission during public exhibition of a precinct plan by DPE.

In response to this shift in responsibility, Council has updated its Planning Proposal Policy. This includes a new definition of 'significant planning proposals', which includes proposals that seek to rezone land to deliver significant housing growth and/or precinct wide outcomes. This Policy also outlines the project and governance arrangements to manage proposals of this scale.

Council is currently assessing proponent led planning proposals for land in the SWGA, which collectively seeks to provide the capacity for approximately 9,200 dwellings. This is in addition to Leppington Town Centre, which is being progressed as a Council led planning proposal.

DPE has failed to have regard for the complexity of precinct planning in the Discussion Paper. Council officers raised serious concerns with the expectation that precinct scale rezoning applications could potentially have an end-to-end process of 48 weeks under a Category 3 (Complex) application. Council officers highlight that it is not appropriate to assume that precinct planning can be undertaken within this timeframe and provides unrealistic expectations for proponents and landowners that greenfield land precinct rezonings can occur within a year.

To support this position, **Table 1** identifies the shortest time DPE have taken to rezone a precinct (since 2015) in the SWGA was 4 years for Leppington Precinct Stage 1. Stages 2 and 5 of the Leppington Precinct were rezoned after 9.5 years with DPE yet to finalise the rezoning of Stages 3 and 4.

On this basis, Council officers question how DPE have determined the timeframes and do not support the reduction in rezoning timeframes for significant/precinct-scale applications. Council officers also recommend that DPE revisit the proposed categories, including precinct-scale applications, to include basic requirements/threshold triggers to ensure to provide better certainty for all parties involved in the rezoning process.

| Precinct | Date Completed | No. of Dwellings | Lead | Elapsed Timeframe (end-to-end) |
|------------------------------------|----------------|------------------|--|---------------------------------|
| Leppington Precinct - Stage 1 | Nov. 2015 | 2,500 | DPE | 4 years |
| Leppington Precinct - Stages 2 & 5 | Jul. 2021 | 2,500 | DPE | 9.5 years |
| Leppington Precinct - Stages 3 & 4 | Ongoing | 6,500 (approx.) | DPE | 9.5 years since DPE commenced |
| Lowes Creek Maryland | Jul. 2021 | 7,000 | DPE | 6.5 years |
| Leppington Town Centre Review | Ongoing | TBD | Council (formerly DPE) | 4.5 years since review announce |
| Pondicherry | Ongoing | 2,700 | Council via Planning Proposal pathway (formerly DPE under PAP process) | 5.5 years since DPE commenced |
| South Creek West | Ongoing | 30,000* | Council via Planning Proposal pathway (formerly DPE under PAP process) | 4 years since release by DPE |

* denotes figure from DPE upon announcement of release of Precinct in December 2017

Table 1: Summary of Major Rezoning

Recommendation:

- Precinct planning rezoning applications should be considered as a separate category, with appropriate timeframes that reflect the complexity of the process (i.e. 'Significant' as per Council's Planning Proposal Policy).
- The rezoning categories should be further investigated to include basic requirements/threshold triggers.

2. Inconsistencies with current process

Council officers recognise that there are inconsistencies with the current planning proposal process, from initial documentation to assessment requirements, including applying a consistent and standardised definition of 'strategic' merit. It is acknowledged that the current planning proposal process can be considered repetitive and inefficient.

Council officers support the opportunity to remove duplications of assessment, particularly within the touch points of the Gateway Determination (i.e. 're-badging proposals) and Finalisation. Council officers would still like to see the DPE involved through advisory and intermediary approaches.

Inconsistencies with broader NSW planning reforms and policies

The Discussion Paper appears to have several inconsistencies with broader planning reforms that have been placed on exhibition by DPE in late 2021, including the Design & Place SEPP and Local Contributions Reform, as discussed below:

- The Design and Place SEPP requires a report to a Design Review Panel (DRP) for all rezoning's above 1 hectare, which is considerably a large proportion of Camden's rezoning proposals. When reviewing the Discussion Paper, there is no consideration of what stage of the rezoning process the DRP would occur. There is also no consideration of the DRP roles in the timeframes.
- The Local Contributions Reform requires plans to be exhibited concurrently with a rezoning proposal. Since the exhibition stage has been moved to the early stages of the rezoning process, Council Officers question whether this has been considered. If so, then there are major concerns for ensuring that the infrastructure requirement and draft Contributions Plan or Voluntary Planning Agreements can be met for the proposed early exhibition.

In December 2021, DPE released a new Local Environmental Plan Making Guideline. The intent of the Guideline is to implement immediate changes to the rezoning process. These changes fundamentally include the categorisation of planning proposals, an optional scoping period and the benchmark timeframes.

There are various inconsistencies between the Discussion Paper and Guideline, most notably the target timeframes.

Recommendation:

5. **Review Discussion Paper to ensure that proposed requirements are consistent with broader NSW planning reforms and policies.**

3. Transparency and Trust

Role of Council and Local Planning Panels

The Discussion Paper proposes the potential removal of the Local Planning Panel and elected Council involvement from the early phases of the rezoning process.

It is unclear from the Discussion Paper how the elected Council will be involved with the rezoning process. Council officers understand that the finalisation of a rezoning application will still require Council endorsement. It is understood that the rezoning process still enables opportunities for Council officers to brief the elected Council on a rezoning application.

It is noted that the Local Planning Panel may become an independent body dealing with Conflict of Interest rezonings (i.e. rezoning applications involving Council owned land).

Any changes that are proposed to the planning proposal process that results in a reduced role for the elected Council is not supported. The Council has an important role in setting the strategic direction of Council and representing the interests of the local community. For this to occur, early engagement and direction from Council is critical. Equally, an independent assessment of a rezoning application by Local Planning Panels gives Council certainty to the strategic merit of an application. Council officers raise serious concern over the removal of elected Council's role in the early stages of a rezoning application.

Recommendation:

- 6. Reinstate the role of Council and Local Planning Panels early in the rezoning process.**
- 7. Clarify Council's role in a rezoning application prior to assessment and finalisation phase.**

Community Perception

The proposed rezoning changes could impact community engagement and the transparency of decision-making in the strategic planning process due to the removal of the Local Planning Panel and the additional responsibilities given to the proponent.

There is significant concern that the proposed changes to the public exhibition would limit the amount of community engagement within the rezoning process. Currently, Council provides an initial notification period upon lodgement of a Planning Proposal, as well as the exhibition required after the issuing of a Gateway Determination. It is noted that, the initial community notification would become redundant under the new rezoning process and would prevent the community from having further involvement post Council's detailed assessment.

Whilst it is acknowledged that the exhibition period has been moved to allow for early consultation, the Discussion Paper does not allow for a supplementary exhibition or final notification of the rezoning when minor amendments have been made. Any change to the planning proposal process that limits the opportunity for community engagement is not supported.

Recommendation:

8. **Allow for an initial notification period after lodgement of a rezoning application.**
9. **Ensure community engagement method and requirements are in-built to the rezoning process, particularly for complex/precinct-scale applications.**

4. Council Resourcing

Rezoning Resources

DPE Questions

What do you think about giving Councils greater autonomy over rezoning decisions?

What additional support could we give Councils to enable high-quality and efficient rezoning decisions?

What changes can be made to the department's role and processes to improve the assessment and determination of Council-led rezoning's?

Council officers agree that greater autonomy over local decision making is essential for ensuring good development outcomes in a timely and transparent manner. However, resourcing is an ongoing issue. The Discussion Paper will only further add to these issues, particularly around lack of consideration given to precinct planning and the introduction of appeal rights for the proponent.

Council has noted in the submission that the responsibility placed upon proponents is higher, however, there is also the underlying understanding that Council assumes more responsibilities as a decision maker and therefore, Council will utilise more of its resources (both human and financial) to deliver on rezoning applications.

In terms of additional support, Council officers would like to see further commitment from DPE to finalise out-of-date structure plans, resolving infrastructure deficiencies and prepare and implement all legislative mapping to ensure high-quality and efficient rezoning decisions. This will assist Council with its decision-making and not having to rely on assumptions or piecemeal approach to strategic planning, particularly in relation fragmented land in the SWGA.

Recommendation:

10. **DPE should be responsible for finalising all state-level plans (including the South West Growth Area Structure Plan Review) and all legislative mapping.**
11. **DPE should have similar role in the 'New Approach to Precinct Planning', where they collaborate with Council to resolve complex issues influencing the rezoning of land within the South West Growth Area.**

5. Recognition of Proponents

Proponent Responsibilities

The Discussion Paper proposes to give more responsibilities to the proponents within the planning proposal process. Council officers support, in principle, the requirement for proponents to amend and undertake consultations, as well as the requirement for owner's consent being made mandatory.

However, Council officers raise concern that the Discussion Paper does not reflect the underlying responsibilities still being held by Council throughout the rezoning process. Although there are increased responsibilities from the proponents, there is no accountability been given. For example, there is no guidance on the following matters:

- When proponents do not provide sufficient documentation;
- Meeting timeframes in the rezoning process; and
- Providing poor submission responses in relation to public exhibition period.

In these instances, the proponent should be held accountable.

Proponent Expectations

The timeframes provided within the discussion paper are geared to the benefit of the proponents. With regards to complex and/or precinct-scale proposals, Council officers do not believe they are realistic or achievable. This will create unrealistic expectations in the development industry that rezonings occur within the specified timeframes, without understanding factoring in the complexity of the proposal.

Recommendation:

12. Proponents should be accountable for timeframes within the Discussion Paper.

6. State Agency Input

DPE Questions

Is it enough to have agencies involved in scoping and to give them opportunity to make a submission during exhibition?

Do you think it would be beneficial to have a central body that co-ordinates agency involvement?

If a state agency has not responded in the required timeframe, are there any practical difficulties in

Resourcing and Co-ordination

Early engagement with state agencies is supported by Council officers if appropriate resources are provided to assist in this process. Council officers also support the concept of having a central body that co-ordinates agency involvement, and could be divided based upon the Metropolitan Areas (i.e. Western Parkland City, Central River City and Eastern Harbour City).

Timeframes

Council officers acknowledge the perception of state authorities in terms of timeliness of obtaining feedback or responses. Council officers emphasise the importance of timeframes for state agency responses, given that major concerns could inhibit progressing a rezoning application (i.e. availability of sewer infrastructure in a greenfield area).

Recommendation:

- 13. Support for a central body to coordinate public agencies to provide timely advice to Councils.**
- 14. Consider further support and funding to state agencies to ensure that timeframes prescribed in the Discussion Paper can be met.**

Part B: The New Approach

7. New Categories and Timeframes

DPE Question

Do you think the benchmark timeframes create greater efficiency and will lead to time savings?

Council officers support the approach in categorising all rezoning applications based on the complexity of the proposal as shown in **Table 2**. Similarly, Councils currently has categories for different types of proposals under the Planning Proposal Policy (refer **Attachment 1**) and as summarised in **Table 3**. Each proposal category has threshold triggers around the complexity, the scale (yield), level of consultation, and the impact to the land.

| Category | Requirements | Total Timeframes |
|----------------------------|---|------------------|
| Category 1 - Basic | Administrative, housekeeping, and minor local matters. | 26 weeks |
| Category 2 - Standard | Site-specific rezoning applications seeking a change in planning controls which are consistent with strategic plans and policies. | 37 weeks |
| Category 3 - Complex | Applications that are not consistent with strategic planning and policies, including any LEP amendment not captured in category 1 or 2. | 48 weeks |
| Category 4 - Principal LEP | A comprehensive or housekeeping rezoning application led by Council, proposing broadscale policy change to the LEP for the whole LGA. | 50 weeks |

Table 2: Proposed New Rezoning Categories and Requirements

However, the Discussion Paper doesn't provide enough differentiation between the standard and complex rezoning applications. Council officers recommend that DPE look to implement threshold requirements (similar to Council's approach in its Planning Proposal Policy) to achieve greater certainty for all parties involved in the rezoning process, particularly from a Precinct Planning perspective.

For example, Council has a separate category to process 'Significant' Planning Proposals, which include the parameters listed in **Table 3**.

Council officers would also like clarification on how proposed SEPP amendments within Growth Areas will fit within the outlined categories as the discussion paper states that the Minister through the department, will assess and determine rezoning applications that proposed to amend a SEPP. However, these rezonings are generally proponent-driven rezoning applications and are identified as the Department having limited involvement.

In term of the proposed benchmark timeframes, Council officers are supportive of identifying efficiencies and time savings that can be gained from the reform process. However, the proposed benchmark timeframes need to demonstrate flexibility and have regard for the complexity and established processes, particularly in relation to planning proposal on a precinct scale.

| Category | Requirements | Examples |
|-------------------------------|---|---|
| Minor Planning Proposal | <p>The following requirements meet the criteria of a minor planning proposal:</p> <ul style="list-style-type: none"> • Low complexity; • Small scale (typically involving a spot rezoning of one or two lots; and • Correcting a zoning anomaly or other minor error within the legislative framework; and • Requiring minimal environmental studies to be completed | Examples of minor planning proposals include spot rezoning's and housekeeping amendments. |
| Major Planning Proposal | <p>The following requirements meet the criteria of a major planning proposal:</p> <ul style="list-style-type: none"> • Medium complexity; • Medium scale (typically involving less than 500 additional lots, or equivalent dwellings; and • Requires multiple local environmental studies to be completed; and • Requires consultation with multiple stakeholders | Examples of major planning proposals include rezoning land to facilitate housing of a medium scale and or employment growth. |
| Significant Planning Proposal | <p>The following requirements meet the criteria of a significant planning proposal:</p> <ul style="list-style-type: none"> • High complexity; and • Large scale or consideration of precinct-wide outcomes (500 or more lots, or dwellings); and • major policy review and/or a variation to the strategic framework; and • multiple local environmental studies; and • coordination and consultation with a large range of stakeholders | Examples of significant planning proposals include rezoning's to deliver significant housing growth and/or precinct-wide outcomes |

Table 3: Planning Proposal Policy Categories and Requirements

Recommendation:

15. Review proposed rezoning categories to include clear and defined threshold triggers/requirements.
16. Review proposed timeframes for both Category 3 (Complex) and Category 4 (Principal LEP) rezoning applications
17. The proposed benchmark timeframes should demonstrate flexibility.
18. Identify a SEPP amendment and how it fits within the categories in the Discussion Paper.

8. New Roles

The Discussion Paper identifies the changes in roles for the various authorities and stakeholders within the rezoning process. Council understands that by identifying these roles it provides clarity towards the responsibilities required for proponents, councils, DPE and public authorities.

Proponent

The proposed rezoning approach will recognise private proponents as applicants, similar to the development application process. Proponents will have more responsibilities within the rezoning process, such as:

- opportunities to engage with state authorities;
- undertake the exhibitions;
- reviewing and responding to submission during consultation; and
- appeal a decision made about a rezoning application.

It has been noted through the submission that there appears that proponents have been given too much in terms of their roles and responsibilities in the new rezoning process, which could lead to perceptions of bias and lack of transparency in the planning process.

Councils

Council officers support the new rezoning approach to empower councils to make decision affecting their local areas. However, DPE need to support Council by ensuring the new rezoning processes is consistent with and addresses the requirement for precinct planning to having to go through the current planning proposal pathway.

DPE

DPE has identified their position within rezoning applications as a supportive role, but this is dependent on the type of rezoning at hand. DPE undertake an assessment and determining authority role when the rezoning is a public authority proponent or a Council proponent for Complex and Principal LEP amendments.

DPE have taken on a similar role under the New Approach to Precinct Planning but have been also responsible for co-ordinating and managing precinct updates through the Camden Precinct Collaboration Group.

Public Authorities

Council officer support providing public authorities with clear direction around the circumstances that an agency referral is required. This will allow for the referral process to be more efficient and timelier by focussing on specific issues of a rezoning application.

Recommendation:

19. Further consideration to the given to the proponent's roles and responsibilities in the rezoning process to ensure probity and transparency.

9. The New Rezoning Process

Scoping

DPE Question

Should a council or the department be able to refuse to issue study requirements at the scoping stage if a rezoning application is clearly inconsistent with strategic plans? Or should all proponents have the opportunity to submit a fully formed proposal for exhibition and assessment?

If a rezoning application is clearly inconsistent with the strategic planning framework and policies, Council and DPE should be able to refuse to issue study requirements at the scoping stage.

Council officers understand and support the mandating of a scoping phase to the rezoning process and has similarly, mandated pre-lodgement meetings. In our experience, scoping meetings, pre-lodgement meetings and pre lodgement advice does always resolve issues and constraints of a planning proposal. It should be noted that in some instances, poor supporting documentation is a reason for long delays in the planning proposal process.

The majority of rezonings within the South West Growth Area undertake several amendments / iterations prior to obtaining formal endorsement from Council and DPE.

There are also delays from inadequate documentation that is not sufficient at the lodgement stage. However, it is also noted in the Discussion Paper that there is nothing prohibiting proponents from lodging despite the quality of lodgement not being up to standard.

The Discussion Paper also highlights that all merit assessment will be conducted only after exhibition. However, there is also the expectation that Council officers will provide guidance to the proponents on the level of consistency with strategic planning. This is concerning as the level of assessment Council's require to ensure the rezoning meets strategic merit is extensive and therefore, imposes additional pressures on Councils to review this information within the benchmark scoping timeframes.

Recommendation:

- 20. The scoping phase should support additional meetings when required to resolve issues.**
- 21. Councils should be able to exclude proponents from lodging a rezoning application whereby, it does not meet the site and strategic merits. However, this could be reviewed when a strategic plan is reviewed (every 2-5 years).**
- 22. The Scoping Letter be a Department Template that has an advisory that it is subject to further detailed assessments, and that this does not constitute an approval.**
- 23. The scoping phase needs to be extended to enable Council's to address Strategic Merit, otherwise Strategic Merit should not be required within the Scoping Phase.**
- 24. Formal advice should be able to be referred to the Department to assist in scoping phase.**

Lodgement

The Discussion Paper notes that the rezoning authority has a period of 7 days to determine the lodgement of rezoning applications is adequate and that the relevant study requirements have been met.

However, Council officers do not believe that 7 days is a sufficient amount of time to ensure the quality of the studies and information has been provided, and if necessary, provide a rejection letter. It is also not enough time considering that the expectation is applications will commence public exhibition when the lodgement requirements are met.

Recommendation:

25. The rejection of a Rezoning Application should occur within the 14 days.

26. DPE should consider including an initial notification period (i.e. 14 days) instead of formal exhibition at this stage).

Exhibition

DPE Questions

What sort of material could we supply to assure community members that exhibition does not mean the rezoning authority supports the application and may still reject it?

What do you think of removing the opportunity for merit assessment before exhibition? Will it save time or money to move all assessment to the end of the process?

Should the public have the opportunity to comment on a rezoning application before it is assessed?

What other opportunities are there to engage the community in strategic planning in a meaningful and accessible way?

Council officers support the extension of timeframe allocated for the public exhibition period, and the process requiring an early exhibition. As noted previously, Councils Planning Proposal Policy requires that new Planning Proposal are placed on initial notification (informal exhibition) for a period of 14 days. Council officers consider this an important opportunity for the community to comment on an application before it is assessed.

It is important that the Planning Portal is clear on the process and assists the community in understanding how the new process is executed. There is potential for the Planning Portal to have a user-friendly timeline for all rezoning applications whereby the community can see where rezoning's are up to.

Council officers raise concern about the level of merit assessment assumed before exhibition. As noted in the scoping section, to provide an appropriate scoping letter there is a level of expectation that strategic merit needs to be assessed. Realistically, the strategic merit assessment may end up being assessed twice, once in scoping and again after exhibition, which in turn will not assist with the benchmark timeframes.

Recommendation:

- 27. Provide further clarification to determine what an 'extensive' amendment is and how a re-exhibition can occur within the relevant timeframe.**

Post Exhibition

DPE Question

Do you think the assessment clock should start sooner than final submission for assessment, or is the proposed approach streamlined enough to manage potential delays that may happen earlier?

Council officers believe that the assessment clock should start once final submission of the documentation (following exhibition). However, Council should only be able to accept the final amended documentation after they have been briefed or provided a report on the submissions from the Proponent. This will assist councils in understanding what the submissions were as well as ensuring adequate responses are provided from the proponents. It will also allow Council to be transparent whether they believe the proponent have addressed the submissions correctly or if further work needs to be undertaken.

It is recommended that the proponents should also include Council within the public authority discussions. If there are any unresolved submissions, these need to be addressed with a balanced approach against development, infrastructure and Council's plans and policies.

Recommendation:

- 28. Assessment Clock should start upon Council accepting final amendments from Proponent.**
- 29. A report to Council prior to final amendments being lodged for assessment identifying the submissions, responses and proposed amended changes.**
- 30. Proponents should have a timeframe to provide the submitters with a response.**
- 31. The proponents should include Council with the State Agency discussions as a result of any unresolved issues from the exhibition.**

Information Requests

DPE Question

Do you think requests for information should be allowed?

Acknowledging that further information requests can lead to delays, they are an important factor of rezoning proposals. Information requests demonstrate that there are unresolved concerns or inadequacies within the documentation that should be resolved prior to proceeding. In some cases, the additional information gives the Council the assurance to support and endorse the Planning Proposal.

Providing relevant information early in the Planning Proposal process can also prevent further time delays within the development application stage. Generally, delays occur as a result of poor supporting documentation. Councils must have the ability to request additional information and also request a deadline on when the additional information should be provided by utilising a 'stop the clock' mechanism similar to that used for development applications.

Recommendation:

- 32. Councils should be allowed to use Stop-the-clock and information requests when there are issues that are unresolved.**

Assessment and Finalisation

DPE Questions

*Are there any other changes that we could make to streamline the assessment and finalisation process more?
What roadblocks do you currently face at this stage of the process?*

Do you think the public interest is a necessary consideration, or is it covered by the other proposed considerations?

Are there any additional matters that are relevant to determining whether a plan should be made?

Council officers support the concept behind the finalisation process and having an approach that is consistent and standardised with all decision-makers. However, the kind of matters disclosed within the Discussion Paper are noted to also inform the scoping phase of the rezoning proposal. This reinforces Council officer concerns that these matters will be addressed in writing at an earlier stage and that Council's will need to utilise more resources prior to lodgement to ensure that the information provided in the letter is accurate.

Council officers also express concern regarding the rezoning authority and its decision whether or not to make the plan. If the rezoning application does not proceed, this triggers the proponents appeal rights. An application refusal this late in the process makes it extremely difficult and untimely, particularly when issues and concerns would have been raised at the scoping phase.

Council officers do not support this approach and would like to see an opportunity earlier within the rezoning process that enables refusals (i.e. scoping stage).

The public interest is a necessary consideration, and matters raised from the community in previous phases need to be considered in the assessment and finalisation phase. The public interest test should focus on the 'net community benefit' of the proposal, or what positive outcomes the proposal will provide back to the community.

Recommendation:

- 33. Councils should have an opportunity to refuse a rezoning application earlier within the rezoning process (i.e. scoping stage).**

Conflicts of interest

Do you think a body other than the council (such as a panel) should determine rezoning applications where there is a VPA?

Where a council has a conflict of interest, should a rezoning application be determined by the local planning panel (as proposed), or should the department take full responsibility for the assessment and determination of the rezoning application?

Councils are best placed to determine what infrastructure is needed to support the anticipated and future population and meet community expectations. Rezoning applications that include public infrastructure (i.e. open space, drainage, roads, community facilities) accompany an offer to enter into a planning agreement (PA) or require a contributions plan (CP) to support an incoming population.

In most cases, there are no conflicts of interests with PAs that are assessed concurrently with planning proposals. However, if Council owns developable land within the rezoning the determining authority should be DPE (or other equivalent independent determining authority).

Further to the above, Council requires requiring a PA or CP to be finalised and agreed to with a Council resolution in place and then placed on public exhibition. In the new process, it is unclear whether this is intended to occur prior to the assessment and finalisation phase. It is recommended that another mandatory exhibition period is included if this is the intent.

Recommendation:

- 34. DPE should be the determining authority when a rezoning application and Voluntary Planning Agreement is Council led.**
- 35. Confirmation of where a planning agreement or contributions plan fits into the new rezoning process and outline exhibition requirements.**

10. New Fee Structure

Do we need a consistent structure for rezoning authority fees for rezoning applications?

What cost components need to be incorporated into a fee structure to ensure councils can employ the right staff and apply the right systems to efficiently assess and determine applications?

Should the fee structure be limited to identifying for what, how and when rezoning authorities can charge fees, or should it extend to establishing a fee schedule?

What is your feedback about the 3 options presented above?

Should fee refunds be available if a proponent decides not to progress a rezoning application? If so, what refund terms should apply? What should not be refunded?

Options

The DPE has provided 3 options in relation to fee structures for rezoning applications:

- a fixed assessment fee,
- variable assessment fee and
- the combination of both.

Council currently has a fee structure for Planning Proposal applications. The fees are based on the level of complexity and required to be paid at key milestones as follows:

| Description | Total Fee |
|---|-----------------------|
| Pre-lodgement meeting and written advice | \$1,550.00 |
| Request to Council and Initial Report (not subject to refund) | \$4,950.00 |
| Processing Minor Planning Proposal following initial Council decision | \$10,450.00 |
| Processing Major Planning Proposal following initial Council decision | \$27,900.00 |
| Processing Significant Planning Proposal following initial Council decision | At Full Cost Recovery |
| Environmental Studies (Full cost to be borne by the applicant with no refund) | At Full Cost Recovery |

Table 4: Fee Structure

In terms of the options presented in the Discussion Paper, Council officers would prefer to use a combination of the fixed and variable fee structure. This ensures consistency with Councils current fees and charges. It is noted that precinct planning (Significant) rezoning applications should remain at full cost recovery to the proponent. Council does not support offering a refund for rezoning applications. The introduction of a refund option will not deter speculative rezoning applications being lodged.

Recommendation:

36. Scoping stage fees should be based upon a fixed cost and include a per meeting cost (if multiple meetings required).
37. A combination of fixed and variable assessment fees (Option 3) is supported. DPE should review the Camden Council Planning Proposal Policy to ensure a full cost recovery mechanism is included in the new rezoning process.

11. Planning Guarantees

Do we need a framework that enables proponents to request a fee refund if a rezoning authority takes too long to assess a rezoning application?

If so, what mitigation measures (for example, stop-the-clock provisions, or refusing applications to avoid giving refunds) would be necessary to prevent a rezoning authority from having to pay refunds for delays it can't control?

If not, what other measures could encourage authorities to process rezoning applications promptly?

The proposal to introduce a planning guarantee to the proponent is not supported by Council officers. The new rezoning process is already aimed at reducing timeframes and the introduction of planning guarantees could be seen as a way of penalising Councils for not achieving the specified timeframes, which is not always in their control.

Other measures that could assist council in processing applications in a timely manner could include:

- Early refusal of poorly submitted / background documented rezoning applications.
- DPE to provide more support to councils in an advisory role and / or an intermediary role.
- Utilising a 'Stop the Clock' mechanism when requesting further information
- Utilising a 'Stop the Clock' mechanism when State Agencies do not provide written advice in a timely manner

The proposed system does not need a financial disincentive to encourage councils to complete their assessment in a timely manner. The proposed system already allows the proponent to appeal to the LEC/ IPC on the basis of a 'deemed refusal' should Council unnecessarily delay an assessment.

Recommendation:

- 38. Remove the need to implement planning guarantees.**
- 39. Stop-the-clock should be considered along with the opportunity to refuse applications.**

Part C: New appeal pathways

12. Appeals

Do you think public authorities (including Councils) should have access to an appeal?

Which of these options – the Land and Environment Court or the Independent Planning Commission (or other non-judicial body) – do you believe would be most appropriate?

Process of Appeals

Council officers do not believe that public authorities should have access to the appeal process. In terms of the appeal options referenced in the Discussion Paper, Council officers have reviewed the advantages and disadvantages of each approach (refer **Table 5**).

Based on this review, it is considered that the Independent Planning Commission would be the preferred path to hear merit appeals for rezoning applications based on the following:

- less cost to both Council and the proponent;
- little or no involvement of lawyers;
- not as adversarial as the court process; and
- the commission may have access to various experts that can assist in reaching a decision.

Further to the above, Council officers would request the ability to be able to recover any associated costs if the appeals process is to be implemented.

| Land and Environment Court | | Independent Planning Commission | |
|---|---|---|---|
| Advantages | Disadvantages | Advantages | Disadvantages |
| Mechanism exists to obtain costs / have costs awarded to Council for defending appeals within current Class 1 appeals. It is expected that Planning Proposals would have similar mechanisms to award costs. | Court costs could be significant for Council to engage several experts to defend an appeal. | Ability to hold determination meetings monthly or scheduled dates to determine planning proposals faster. | Will the Panel have the expertise to consider all matters raised in a Planning Proposal? |
| Opportunity for conciliation allows parties to discuss and resolve issues. | Proponent has the ability to lodge amended information with reduced time for Council's to review and provide a considered response. | Determination times are quick and efficient | Unlikely to have provision to re-coup costs, which are considered to be significant, paid to external experts / consultants to defend a refusal recommendation. |
| Experts likely to be engaged to discuss issues / contentions raised. | Obtaining court dates and the duration of the appeal within the court system, | Likely to be cheaper to Council's. | Would be a significant shift in operations, |

| Land and Environment Court | | Independent Planning Commission | |
|---|---|--|--|
| Advantages | Disadvantages | Advantages | Disadvantages |
| | including the handing down of the decision is likely to be lengthy due to the extent of issues raised. | | requiring resourcing. |
| Eventual establishment of case law and planning principles. | No historical dealings with the merit of strategic planning decisions and may not currently have the expertise. | More flexible procedure and less adversarial, meaning we can tailor a new process to strategic planning decisions. | No opportunity for conciliation – to maintain an efficient process, may need to limit opportunities for changes to proposals and fresh information on review |
| | Capacity of the court to hold Class 1 Appeals and potentially Planning Proposal Appeals. | Appropriately independent from government to review government decisions. | |
| | Adversarial process may not be suited to rezonings. | | |
| | The court may have an issue intervening in the making of an LEP, being a form of delegated legislation (which is the role of the Minister for Planning and Public Spaces) | | |

Table 5: Appeal Options: Advantages and Disadvantages

Recommendation:

40. DPE to consider the Independent Planning Commission approach, with councils given the ability to recover costs (if appeals are to be implemented)

Part D: Implementation

13. Implementation

The Discussion Paper notes that the implementation phase has not been investigated. It is acknowledged that the paper provides more of an insight into preferred approaches from DPE and proponents.

Council officers express concern that there may be no additional engagement with councils prior to the finalisation of proposed rezoning process.

Recommendation:

- 41. Ensure that prior to finalisation, a response to submissions is publicly exhibited with a detailed implementation plan allowing Councils to provide further feedback.**

Conclusion

Council officers support the intent of the Discussion Paper, which aims to refine the current planning system to reduce proposal timeframes, streamline the assessment process, create greater accountability and transparency, and remove current inconsistencies with the existing process.

However, Council officers have identified some serious issues in the draft submission that need to be resolved or further clarified within the Discussion Paper. In particular, the new rezoning approach does not acknowledge the existing requirement for precinct planning having to go through the planning proposal pathway. This was mandated by DPE itself in its 'New Approach to Precinct Planning' in November 2019.

Council officers would also request for DPE to organise a workshop to discuss the issues raised in the draft submission. It is strongly recommended that a further exhibition period is undertaken following the review and assessment of submissions.

14. Recommendations Summary

The draft submission makes the following recommendations to DPE:

1. Further consider the additional 'time-savings' placed upon Councils, as the Discussion Paper exceeds the proposed one third reduction.
2. Revisit timeframes for Category 2 (Standard) rezoning applications as the proposed timeframes are unrealistic and not achievable.
3. Precinct planning rezoning applications should be considered as a separate category, with appropriate timeframes that reflect the complexity of the process (i.e. 'Significant' as per Council's Planning Proposal Policy).
4. The rezoning categories should be further investigated to include basic requirements/threshold triggers.
5. Review Discussion Paper to ensure that proposed requirements are consistent with broader NSW planning reforms and policies.
6. Reinstate the role of Council and Local Planning Panels early in the rezoning process.
7. Clarify Council's role in a rezoning application prior to assessment and finalisation phase.
8. Allow for an initial notification period after lodgement of a rezoning application.
9. Ensure community engagement method and requirements are in-built to the rezoning process, particularly for complex/precinct-scale applications.
10. DPE should be responsible for finalising all state-level plans (including the South West Growth Area Structure Plan Review) and all legislative mapping.
11. DPE should have similar role in the 'New Approach to Precinct Planning', where they collaborate with Council to resolve complex issues influencing the rezoning of land within the South West Growth Area.
12. Proponents should be accountable for timeframes within the Discussion Paper.
13. Support for a central body to coordinate public agencies to provide timely advice to Councils.
14. Consider further support and funding to state agencies to ensure that timeframes prescribed in the Discussion Paper can be met.
15. Review proposed rezoning categories to include clear and defined threshold triggers/requirements.
16. Review proposed timeframes for both Category 3 (Complex) and Category 4 (Principal LEP) rezoning applications
17. The proposed benchmark timeframes should demonstrate flexibility.
18. Identify a SEPP amendment and how it fits within the categories in the Discussion Paper.
19. Further consideration to the given to the proponent's roles and responsibilities in the rezoning process to ensure probity and transparency.
20. The scoping phase should support additional meetings when required to resolve issues.

21. Councils should be able to exclude proponents from lodging a rezoning application whereby, it does not meet the site and strategic merits. However, this could be reviewed when a strategic plan is reviewed (every 2-5 years).
22. The Scoping Letter be a Department Template that has an advisory that it is subject to further detailed assessments, and that this does not constitute an approval.
23. The scoping phase needs to be extended to enable Council's to address Strategic Merit, otherwise Strategic Merit should not be required within the Scoping Phase.
24. Formal advice should be able to be referred to the Department to assist in scoping phase.
25. The rejection of a Rezoning Application should occur within the 14 days.
26. DPE should consider including an initial notification period (i.e. 14 days) instead of formal exhibition at this stage).
27. Provide further clarification to determine what an 'extensive' amendment is and how a re-exhibition can occur within the relevant timeframe.
28. Assessment Clock should start upon Council accepting final amendments from Proponent.
29. A report to Council prior to final amendments being lodged for assessment identifying the submissions, responses and proposed amended changes.
30. Proponents should have a timeframe to provide the submitters with a response.
31. The proponents should include Council with the State Agency discussions as a result of any unresolved issues from the exhibition.
32. Councils should be allowed to use Stop-the-clock and information requests when there are issues that are unresolved.
33. Councils should have an opportunity to refuse a rezoning application earlier within the rezoning process (i.e. scoping stage).
34. DPE should be the determining authority when a rezoning application and Voluntary Planning Agreement is Council led.
35. Confirmation of where a planning agreement or contributions plan fits into the new rezoning process and outline exhibition requirements.
36. Scoping stage fees should be based upon a fixed cost and include a per meeting cost (if multiple meetings required).
37. A combination of fixed and variable assessment fees (Option 3) is supported. DPE should review the Camden Council Planning Proposal Policy to ensure a full cost recovery mechanism is included in the new rezoning process.
38. Remove the need to implement planning guarantees.
39. Stop-the-clock should be considered along with the opportunity to refuse applications.
40. DPE to consider the Independent Planning Commission approach, with councils given the ability to recover costs (if appeals are to be implemented).
41. Ensure that prior to finalisation, a response to submissions is publicly exhibited with a detailed implementation plan allowing Councils to provide further feedback.



PLANNING PROPOSAL POLICY P2.0268.2

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PLANNING PROPOSAL POLICY

DIVISION: PLANNING AND ENVIRONMENT

BRANCH: STRATEGIC PLANNING

CATEGORY: 3

PART 1 – PLANNING PROPOSAL POLICY

1. BACKGROUND

- 1.1 The Planning Proposal Policy sets out the procedures for the assessment and management of Planning Proposals. This will ensure that Council Officers progress the assessment of Planning Proposals efficiently, correctly and with transparency.

2. OBJECTIVE

2.1 The objectives of this policy are to:

- a. Guide Council Officers on the process of managing a Planning Proposal including the process for Initial Notification; and
- b. Document Council's requirements for the submission of Planning Proposals by Proponents.

3. SCOPE

- 3.1 This policy applies to all Planning Proposals. This includes proposals submitted to Council for consideration and proposals initiated by Council to amend *Camden Local Environmental Plan 2010* (Camden LEP) and/or *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* (Growth Centres SEPP).
- 3.2 If any part of this policy is inconsistent with statutory provisions or guidance documents prepared by the NSW Department of Planning, Industry and Environment (DPIE), those provisions prevail.

4. DEFINITIONS

In this policy words and phrases have the following meaning:

- 4.1 **Camden Local Planning Panel (CLPP)** Camden's Local Planning Panel is a panel of three independent expert members and a community member who provide advice to Council on Planning Proposals.
- 4.2 **Council Initiated Planning Proposal** means any Planning Proposal initiated by Council that is not a Housekeeping Amendment. This can include Planning Proposals involving the Reclassification of Land.
- 4.3 **Council Officers** means Council staff within Strategic Planning who are responsible for assessing and managing the Planning Proposal.

- 4.4 **EP&A Act** means *Environmental Planning and Assessment Act 1979*.
- 4.5 **Gateway Determination** means a document issued by the Minister for Planning and Public Spaces, the Minister (or delegate) which specifies whether a Planning Proposal is to proceed and, if so, in what conditions. This document is issued by the Minister for Planning and Public Spaces or a delegated authority to make such a determination.
- 4.6 **Housekeeping Amendments** means a Council Initiated Planning Proposal that seeks to correct an error or an anomaly in Camden LEP or Growth Centres SEPP.
- 4.7 **Initial Notification of Planning Proposal (Initial Notification)** means community consultation undertaken at the beginning of the planning process prior to a proposal being considered at a CLPP meeting and an Ordinary Council meeting.

Note: Initial notification of a planning proposal is not a statutory requirement.

- 4.8 **LG Act** means the *Local Government Act 1993*.
- 4.9 **Major Planning Proposal** means a Planning Proposal that Council assesses as meeting the following criteria:
- a. medium complexity; and
 - b. medium scale (typically involving less than 500 additional lots, or equivalent dwellings); and
 - c. requires multiple local environmental studies to be completed; and
 - d. requires consultation with multiple public agencies and infrastructure providers.

Examples of Major Planning Proposals include those that seek to rezone land to facilitate housing of a medium scale and/or employment growth.

- 4.10 **Minor Planning Proposal** means a Planning Proposal that Council assesses as meeting the following criteria:
- a. low complexity; and
 - b. small scale (typically involving a spot rezoning of one or two lots); and
 - c. correcting a zoning anomaly or other minor error within the legislative framework; and
 - d. unlikely to have significant impacts on the natural, built, social and economic environment; and
 - e. requiring minimal environmental studies to be completed.

Examples of Minor Planning Proposals include those that involve spot rezoning(s) and/or a Housekeeping Amendment.

- 4.11 **Planning Proposal** means a written document that explains the intended effects of a proposed Local Environmental Plan and/or State Environmental Planning Policy and sets out the justification for making that plan, prepared in accordance with *A guide to preparing planning proposals* (prepared by DPIE, December 2018).
- 4.12 **Proponent** means the person or organisation who initiates a Planning Proposal. Where a Planning Proposal is submitted to Council for consideration, the Proponent will most likely be a landowner, developer or consultant. If Council initiates a Planning Proposal, Council is the Proponent.
- 4.13 **Reclassification of Land** All public land must be classified as “community” or “operational” in accordance with the LG Act. Reclassification of public land occurs when its classification needs to be changed. Reclassification of Land may be undertaken through a Planning Proposal to amend the Camden LEP or by a resolution of Council under section 31, 32 and 33 of the LG Act.
- 4.14 **Significant Planning Proposal** means a Planning Proposal that Council assesses as meeting the following criteria:
- a. high complexity; and
 - b. involves large scale or consideration of precinct-wide outcomes (generally involves 500 or more lots, or equivalent dwellings); and
 - c. seeks to facilitate significant growth; and
 - d. involves major policy review and/or a variation to the strategic framework; and
 - e. involves multiple local environmental studies to be completed; and
 - f. requires coordination and consultation with a range of stakeholders including but not limited to multiple public agencies and infrastructure providers.

Examples of Significant Planning Proposals include those that seek to rezone land to deliver significant housing growth and/or precinct-wide outcomes.

Note 1: For Major and Significant Planning Proposals, the planning process will be guided through a project plan, communications plan and probity plan prepared by Council Officers. A Project Working Group maybe established by Council including Council Officers, DPIE officers and Proponent representatives. A Project Working Group may be governed by a probity plan that details each parties’ right, responsibility and additional resourcing.

Note 2: The categorisation of Planning Proposals as minor, major or significant is at the discretion of Council Officers.

5. FEES AND CHARGES

- 5.1 Planning Proposal fees will be determined based on Council’s [Schedule of Fee and Charges](#).

- 5.2 The Proponent is required to pay an initial Planning Proposal fee (not subject to refund) when submitting a Planning Proposal and a second processing fee following an initial Council decision on the Planning Proposal.
- 5.3 The Proponent is to bear the full costs of all specialist studies required for a Planning Proposal.
- 5.4 In accordance with Council's Schedule of Fee and Charges, fees for Significant Planning Proposals will be calculated at a full cost recovery rate. A cost agreement option (via a funding agreement between Council and the Proponent) will be required on a case by case basis at the initial stage of the process (i.e. pre-lodgement stage). The funding agreement will cover the costs of the following :
- a. administration involved in the process;
 - b. staff resourcing/salary for Council Officers managing the Planning Proposal;
 - c. preparation of specialist studies (including peer-review studies) required to progress the proposal;
 - d. preparation of a Contributions Plan and/or Voluntary Planning Agreement;
 - e. notification/ advertisement costs (includes translation costs when required); and
 - f. overhead costs.

Note: The type of costs to be included in the Cost Agreement will be at the discretion of Council Officers, and determined in negotiation with the Proponent. This will be assessed on a case by case basis, depending on the unique circumstances of each Planning Proposal.

6. SUBMIT A PLANNING PROPOSAL

- 6.1 The submission date for a Planning Proposal will be the date on which Council has received all of the following:
- a. Planning Proposal, and
 - b. Initial payment of relevant Planning Proposal fee, and
 - c. Completed Planning Proposal application form, and
 - d. Typical specialist studies (where required by Council Officers), and
 - e. Political disclosure and donation form; and
 - f. Planning Proposal checklist.

7. WITHDRAW A PLANNING PROPOSAL

- 7.1 A Planning Proposal can be withdrawn at the Proponent's request prior to the Gateway Determination stage. The Proponent will need to provide Council Officers with the withdrawal request in writing. Refund of the relevant fee is at the discretion of the Manager, Strategic Planning on a case-by-case basis.
- 7.2 Council Officers may request a Proponent to withdraw a Planning Proposal in the following circumstances:
- a. The Planning Proposal does not demonstrate strategic and/or site-specific planning merit; and/or
 - b. Both CLPP and Council Officers recommend refusal prior to reporting to Council for determination; and/or
 - c. The Proponent has failed to respond to Council's request for further information within a timeframe specified in the request. The required timeframe is at the discretion of Council Officers and will be determined on a case by case basis.

8. INITIAL NOTIFICATION OF A PLANNING PROPOSAL

- 8.1 Prior to reporting a Planning Proposal to the CLPP and Council, Council Officers may undertake Initial Notification with adjoining landowners.
- 8.2 The decision to proceed with Initial Notification of a Planning Proposal is at the discretion of the Director Planning and Environment and Manager Strategic Planning.
- 8.3 The Initial Notification requirements of a Planning Proposal include:
- a. Publicly notify for a minimum period of 14 days;
 - b. Notification letter with a copy of the Initial Notification fact sheet; and
 - c. Place a copy of the Planning Proposal package on Council's website.
- Initial Notification will be undertaken in accordance with Council's draft Community Participation Plan.
- 8.4 Submissions received during the Initial Notification period will be considered in a report to the CLPP and Council.
- 8.5 Submitters at the Initial Notification stage will be advised of any public exhibition required by Gateway Determination.
- 8.6 Submissions received during the Initial Notification period (if applicable) will not be counted as a submission to the formal public exhibition required by a Gateway Determination.

9. CONSULTATION WITH PUBLIC AGENCIES

- 9.1 Prior to reporting a Planning Proposal to the CLPP and Council for Gateway Determination, Council Officers may consult with public agencies if deemed necessary.

- 9.2 Further consultation with public agencies will be undertaken in accordance with the Gateway Determination

10. PUBLIC EXHIBITION

- 10.1 As a mandatory community participation requirement of the *Environmental Planning and Assessment Act 1979* (the EP&A Act), Planning Proposals must be placed on public exhibition for a minimum of 28 days, or as specified in a Gateway Determination:
- a. If a different public exhibition period is specified in the Gateway Determination for the proposal – the period so specified; or
 - b. If the Gateway Determination specifies that no public exhibition is required because of the minor nature of the proposal – no public exhibition.

11. CONSIDERATION OF SUBMISSIONS

- 11.1 Consideration of submissions must be consistent with the principles identified in Council's Community Participation Plan. For a submission to be counted it needs to be unique in substance, distinctive or unlike any other submission.
- 11.2 If more than one identical submission is received from the same address, the submission will be counted as one submission.
- 11.3 If a person submits more than one response those responses will be considered as one submission
- 11.4 Where a petition is received, this will be considered as one unique submission.
- 11.5 Council Officers will acknowledge the receipt of a submission and advise the date that Council will consider the relevant report on the Planning Proposal.

12. PLANNING PROPOSAL REGISTRATION

- 12.1 All key milestones of managing a Planning Proposal are required to be registered in Council's corporate document management system (EDMS and Authority). The purpose of registering a Planning Proposal in Authority is to promote accountability and consistency in managing a Planning Proposal.
- 12.2 The key milestones for managing a Planning Proposal include:
- a. Lodgement of a Planning Proposal;
 - b. Initial Notification of a Planning Proposal;
 - c. Report to the CLPP;
 - d. Report to Council;
 - e. Submit to DPIE for Gateway Determination;
 - f. Gateway Determination Received;
 - g. Public Exhibition;

- h. Post Exhibition Report to Council;
- i. Submit to DPIE to make LEP Amendment;
- j. LEP Notification.

13. LOCAL PLANNING PANEL

13.1 Under section 9.1 of the EP&A Act, all Planning Proposals are required to be reported to the CLPP for planning advice prior to Council Determination, unless the Planning Proposal relates to:

- a. The correction of an obvious error in a local environmental plan;
- b. Matters that are of a consequential, transitional, machinery or otherwise minor in nature; or
- c. Matters the General Manager considers will not have any significant adverse impact on the environment or adjoining land.

13.2 The report to the CLPP needs to include a recommendation on whether or not the Planning Proposal should be forwarded to the Minister for a Gateway Determination under section 3.34 of the EP&A Act.

13.3 If the CLPP's advice is that the Planning Proposal should not proceed to Gateway Determination, Council Officers can recommend the Proponent to:

- a. withdraw the Planning Proposal; or
- b. amend the Planning Proposal to address the Panel advice.

Council Officers can also report the Planning Proposal to Council as submitted.

13.4 The [Camden Local Planning Panel Operational Procedures](#) sets out further information in relation to meeting procedures and requirements.

14. REMOVE AND INCLUDE LAND IN A PLANNING PROPOSAL

14.1 Council may only add or remove land from a landowner, developer or consultant led Planning Proposal if:

- a. Council has consulted with the landowner of the land to be added or removed; and
- b. Council has consulted with the Proponent and obtained the consent to fund the likely studies to be required after the amendments; and
- c. Council is satisfied that the addition/removal of the land will achieve a better outcome based on the Council Officers' assessment of planning merit.

RELEVANT LEGISLATIVE INSTRUMENTS: *Camden Local Environmental Plan 2010*
Local Government Act 1993
Environmental Planning & Assessment Act 1979
Environmental Planning & Assessment Regulation 2000
State Environmental Planning Policy (Sydney Region Growth Centres) 2006

RELATED POLICIES, PLANS AND PROCEDURES: [A guide to preparing planning proposals](#)
[A guide to preparing local environmental plans](#)
[Camden Local Planning Panel Operational Procedures](#)

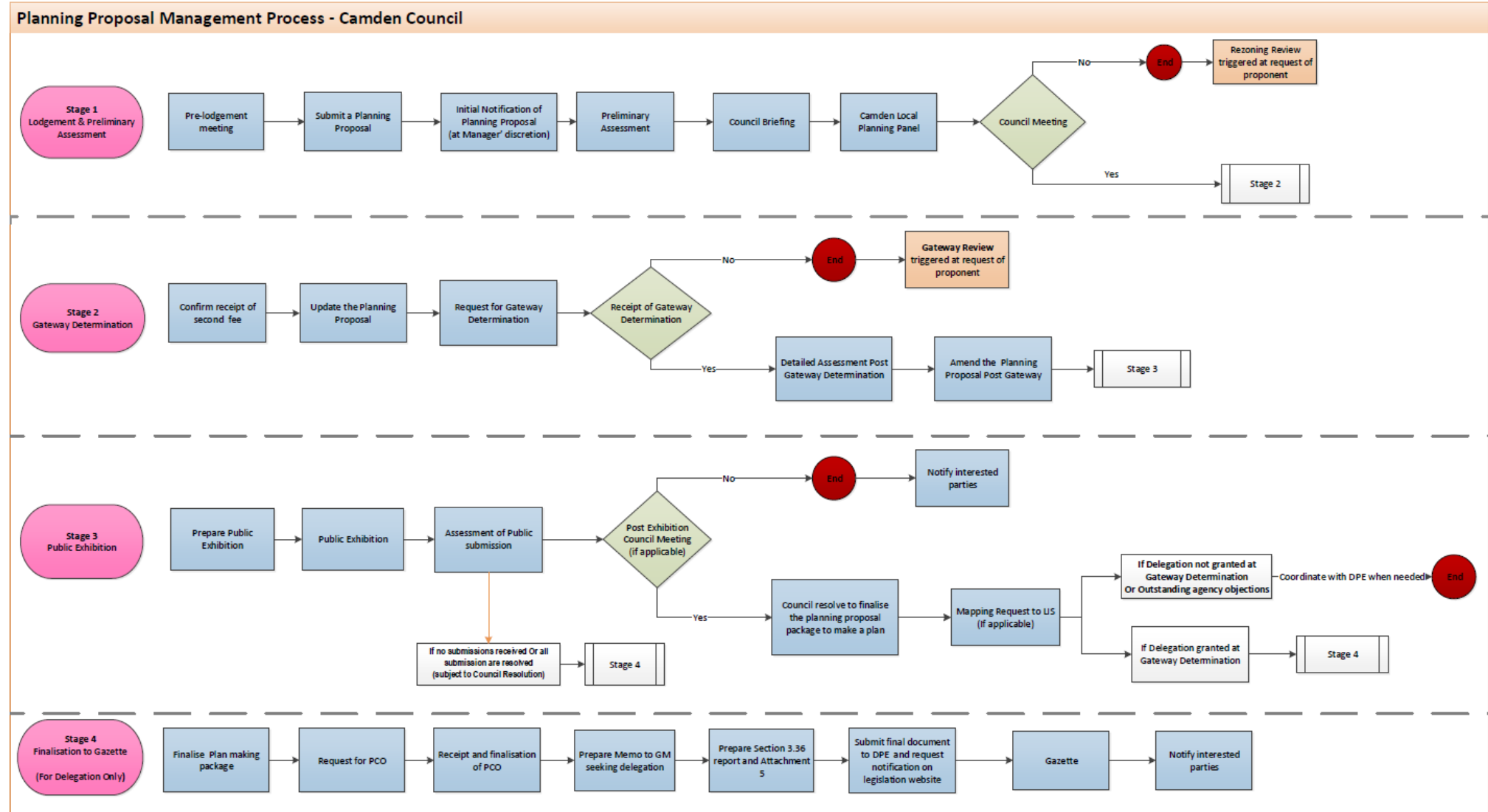
RESPONSIBLE DIRECTOR: Director Planning and Environment

APPROVAL: ELG

PART 2 - HISTORY

| Version | Approved by | Changes made | Date | EDMS Number |
|---------|-------------|--|------------|-------------|
| 1 | ELG | Original | 07/05/2020 | 20/152756 |
| 2 | ELG | New Provisions on Significant Planning Proposals | 22/04/2021 | 21/221356 |

PART 3 - PLANNING PROPOSAL PROCESS



ORDINARY COUNCIL

ORD01

SUBJECT: DRAFT SUBMISSION - 'A NEW APPROACH TO REZONINGS' DISCUSSION PAPER

FROM: Director Planning & Environment

TRIM #: 22/44299

PURPOSE OF REPORT

The purpose of this report is to inform Council of the exhibition of 'A New Approach to Rezonings' Discussion Paper (Discussion Paper) prepared by the Department of Planning and Environment (DPE) and to seek Council's endorsement of a draft submission.

The draft submission and exhibition documents are provided as **attachments** to this report.

BACKGROUND

In 2020, the DPE released a Planning Reform Action Plan that included a series of initiatives to reduce approval timeframes in the planning system, eliminate holdups and provide a transparent process for the community.

The Discussion Paper is a product of the Action Plan and focuses on the rezoning process (known as the planning proposal process). The aim is to reduce the overall time of the rezoning process by one third by 2023 and to introduce an appeals pathway and a new rezoning framework.

The Discussion Paper was placed on public exhibition until 28 February 2022 however the DPE has granted an extension until 25 March 2022 to allow the draft submission to be reported to Council.

MAIN REPORT

The Discussion Paper proposes significant changes to the current planning proposal process. The planning proposal process is the mechanism to change the zoning or development standards within the Camden LEP and Growth Centres SEPP.

The Discussion Paper is structured in four parts:

- Part A: The Background;
- Part B: The New Approach;
- Part C: The Appeals Pathway; and
- Part D: Implementation.

What is the aim of the new approach to rezonings?

The Discussion Paper outlines that a new approach to rezonings has been developed to:

- Create a streamlined and efficient process for LEP / SEPP amendments that align with strategic planning objectives;
- Set clear matters for consideration, timeframes and a consistent fee regime to give greater certainty in the process;
- Allow councils to receive and determine proponent initiated LEP / SEPP amendments, with no or minimal DPE involvement in assessment;
- Allow the Minister to receive and determine, through the department, other LEP / SEPP amendments, including those prepared by councils and public authorities;
- Bolster DPE's role in supporting, monitoring and assisting councils in the process;
- Require LEP / SEPP amendments to go through a mandatory and upfront pre-lodgement process;
- Shift all merit assessment processes to after exhibition; and
- Give private proponents a right of appeal against the final decision.

Draft Submission – Key Considerations

Council officers have reviewed the Discussion Paper and support the intent to deliver improvements to the planning system. However, the draft submission raises concerns with some of the proposed changes as they may impact on the ability to deliver good planning outcomes for the community. For example, the proposed timeframes do not account for the complexity of precinct planning within the South West Growth Area (SWGA).

The key considerations in the draft submission include:

1. Proposed Changes to the Rezoning Process

The Discussion Paper proposes numerous changes to the rezoning process including providing specific timeframes to complete each stage. **Figure 1** identifies the current (planning proposal) process alongside the new rezoning process.

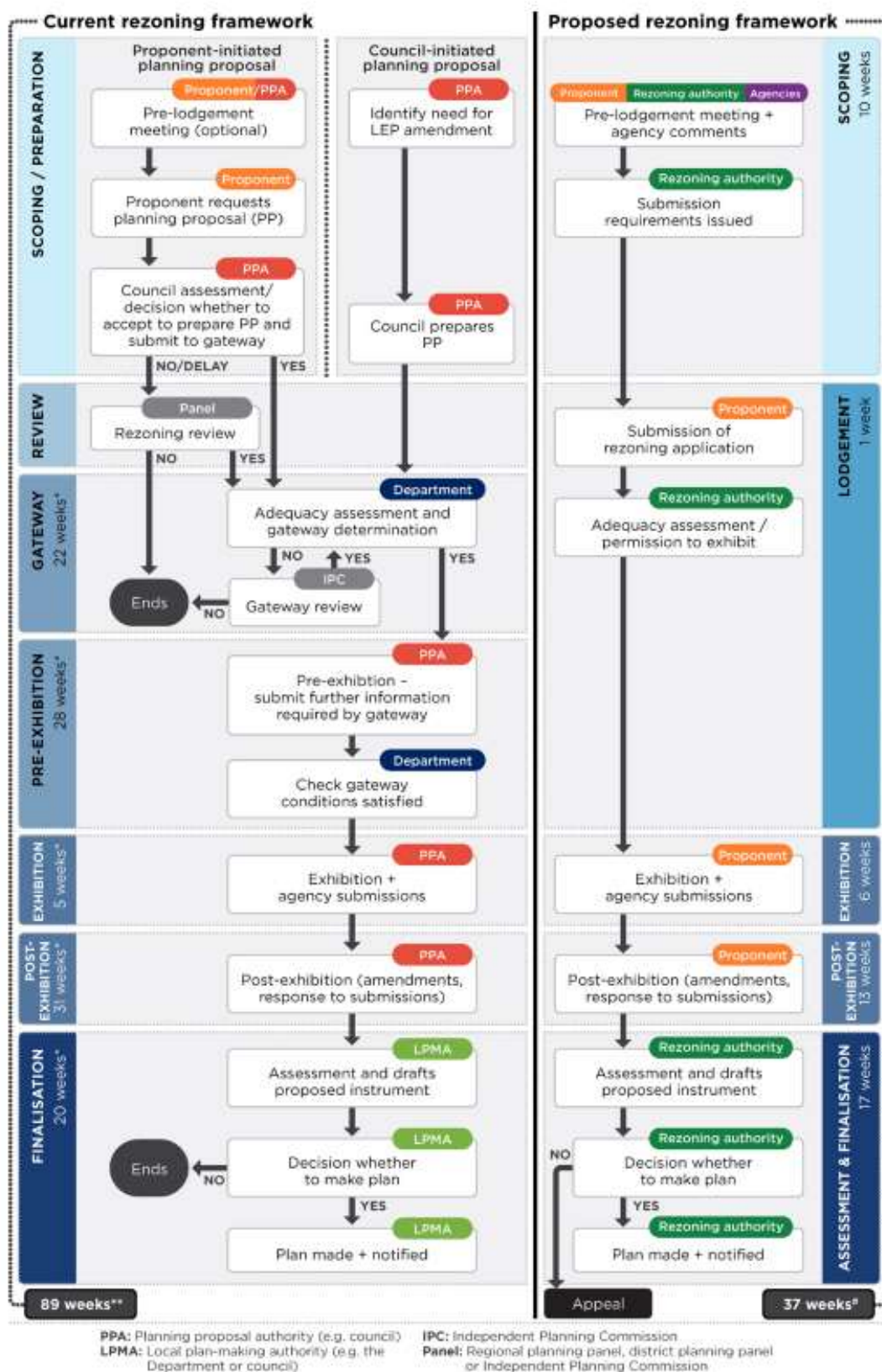


Figure 1: Current and proposed rezoning process

The new rezoning process includes:

- **Scoping Stage:** A mandatory pre-lodgement stage, requiring the rezoning authority (i.e. Council) and public agencies to meet and provide advice on requirements such as specialist studies to support a rezoning application. This stage has a benchmark timeframe of 10 weeks.
- **Review Stage:** Submission of rezoning application with the rezoning authority to undertake an adequacy assessment and provide permission to exhibit. This stage has a benchmark timeframe of 1 week.
- **Exhibition Phase:** An exhibition period for the community and public agencies to comment on a rezoning application. This stage has a benchmark timeframe of up to 6 weeks.
- **Post-exhibition phase:** Proponent to summarise and respond to submissions received, including work with public agencies to resolve objections. This stage has a benchmark timeframe of 13 weeks.
- **Assessment & Finalisation Stage:** Following receipt of a response to submissions and any amended rezoning application, the rezoning authority to assess, finalise and determine a rezoning application. This stage includes a merit assessment to ensure the proposal has strategic merit and aligns with key policies. This stage has a benchmark timeframe of 11 to 24 weeks, depending on the complexity of the application.
- **Appeal:** Removal of the rezoning review and gateway review process and replacing it with a new appeal process, to enable a proponent to appeal a decision of the rezoning authority to refuse a rezoning application at the finalisation stage or if assessment timeframes are not met.

The Discussion Paper includes the intention to align the rezoning process to the development application process. The similarities between the two processes are provided as an **attachment** to this report and discussed within the draft submission.

Officer Comment

The proposed rezoning process involves significant changes to how Council undertakes rezonings. Whilst the mandatory scoping stage is supported, there are concerns around the level of assessment and how Council can be satisfied that the rezoning is sufficient for lodgement.

It is proposed that the public exhibition phase will move to the early stage of the rezoning process and will be the responsibility of the proponent. There are concerns with this approach and it is recommended that submissions be coordinated through a central body (i.e. Council, DPE) to ensure probity, privacy and transparency is maintained throughout the process.

Under the new process, Council officers would undertake a comprehensive assessment of the rezoning application after the exhibition period. The limited timeframe imposed on this assessment is of concern as well as the proposal that a proponent can appeal if the timeframes are not met.

There is also significant concern on the proposed changes to the public exhibition process, which has the potential to limit the amount of community engagement in the rezoning process. For example, Council currently undertakes an initial community notification in addition to the formal exhibition period, in accordance with Council's Planning Proposal Policy.

The initial community notification would become redundant under the new rezoning process and would prevent the community from having further involvement post Council's detailed assessment. Any change to the planning proposal process that limits the opportunity for community engagement is not supported.

2. Proposed Rezoning Categories and Timeframes

As outlined in **Table 1**, the Discussion Paper proposes rezoning categories and timeframes based on the complexity and consistency with strategic plans and policies (e.g. District Plan, Local Strategic Planning Statement). These are intended to achieve the DPE's target to reduce the overall rezoning process.

| Category | Requirements | Total Timeframe* |
|----------------------------|---|------------------|
| Category 1 (Basic) | Administrative, housekeeping, and minor local matters. | 26 weeks |
| Category 2 (Standard) | Site-specific rezoning applications seeking a change in planning controls which are consistent with strategic plans and policies. | 37 weeks |
| Category 3 (Complex) | Applications that are not consistent with strategic planning and policies, including any LEP amendment not captured in category 1 or 2. | 48 weeks |
| Category 4 (Principal LEP) | A comprehensive or housekeeping rezoning application led by Council, proposing broadscale policy change to the LEP for the whole LGA. | 50 weeks |

** all timeframes exclude the proposed scoping phase of the new rezoning process*

Table 1: Proposed Rezoning Categories

According to the DPE, since 2019 rezoning timeframes have reduced on average from 114 weeks to 89 weeks. The Discussion Paper has committed to reducing the rezoning process to an average of 37 weeks for a Category 2 (Standard) rezoning application. It also proposes that Category 3 (Complex) applications would have a timeframe of 48 weeks, not including the scoping period of 12 weeks.

Officer Comment

Whilst the intent to reduce timeframes is supported, there is concern that the timeframes identified in the Discussion Paper depict a reduction larger than the anticipated one third by 2023. The proposed timeframes will require additional Council resourcing, funding and support to ensure these timeframes are achievable.

3. Discussion Paper does not account for precinct planning

The proposed rezoning categories and timeframes do not account for precinct planning within the SWGA. The DPE considers precinct planning to be a Category 3 (Complex) Category, which allows a timeframe of 48 weeks.

Officer Comment

In response to the DPE's new approach to precinct planning, since 2019 Council is required to progress precinct planning through the planning proposal process. This role was previously led by the DPE with Council making a submission during the public exhibition stage.

In response to this change, Council has updated its Planning Proposal Policy to account for 'significant planning proposals', which include proposals that seek to rezone land to deliver significant housing growth and/or precinct wide outcomes. Council's Planning Proposal Policy also outlines the project and governance arrangements to manage proposals of this scale.

Council is currently assessing proponent led planning proposals for land in the SWGA, which collectively seek to provide approximately 9,200 dwellings. This is in addition to the Leppington Town Centre, which is being led by Council.

The Discussion Paper fails to have regard for the complexity of precinct planning. There is concern with the expectation that precinct scale rezoning applications could potentially have an end-to-end process of 48 weeks under a Category 3 (Complex) application.

It is not realistic to complete precinct planning to rezone greenfield land within the SWGA within a year. For comparison, the shortest time DPE has taken to rezone a precinct (since 2015) in the SWGA was 4 years for Leppington Precinct Stage 1. Stages 2 and 5 of the Leppington Precinct were rezoned after 9.5 years with the DPE yet to finalise the rezoning of Stages 3 and 4. A full list of rezonings (since 2015) and their time taken to complete are provided in the draft submission.

The proposed timeframes for significant/precinct-scale applications are not supported. It is recommended that the DPE review the proposed categories to account for precinct scale rezoning applications, with realistic timeframes to provide better certainty for all stakeholders involved in the rezoning process.

4. The role of the elected Council and Local Planning Panels

The Discussion Paper makes note of the potential removal of Local Planning Panels and the elected Council from the early phases of the rezoning process e.g. rezoning applications would only be reported to Council once at the finalisation stage.

Local Planning Panels will maintain a role in the rezoning process where Council has a conflict of interest (e.g. the rezoning application involves Council owned land). In this instance, the Local Planning Panel will become the rezoning authority.

Officer Comment

It is unclear from the Discussion Paper how the elected Council will be appropriately engaged and involved with the rezoning process. Council officers understand that the finalisation of a rezoning application will still require Council endorsement and that the new process will still enable Council to be briefed on a rezoning application.

Any change to the planning proposal process that results in a reduced role for the elected Council is not supported. The Council has an important role in setting the strategic direction of Council and representing the interests of the local community. For this to occur, early engagement and direction from Council is critical.

5. Planning guarantees and appeal rights

The Discussion Paper seeks to introduce planning guarantees and appeal rights. The planning guarantee is a mechanism (from the UK) which allows the proponent to receive a full or partial refund where the established timeframes are not met.

The Discussion Paper also proposes two options for rezoning appeals, being an appeal to the NSW Land and Environment Court (L&E Court) or the Independent Planning Commission (IPC). Whilst the details are not confirmed, this would allow proponents to appeal to the L&E Court or the IPC where timeframes are not met or where a rezoning application is refused. These options would replace the existing Gateway and rezoning reviews.

Officer Comment

The Discussion Paper outlines the disadvantages and advantages of the proposed planning guarantee and appeal options.

The planning guarantee proposal is not supported. The opportunity to offer a partial or full refund may mean that, despite Council expending significant staff resources and time in assessing the rezoning application, the proponent may be entitled to a refund if the timeframes are exceeded.

As mentioned above, the Discussion Paper does not have regard for the complexity of precinct planning. The expectation that precinct scale rezoning applications could have an end-to-end process of 48 weeks under a Category 3 (Complex) application is unrealistic.

Rezoning appeals for rezoning applications will be costly for Council to defend. Of the two appeal options, appeal to the IPC is preferred as it is likely to be a quicker and cheaper process. Council officers recommend that cost recovery take place if an appeal is lost.

Other Matters and Unintended Consequences

The Discussion Paper raises other matters, as discussed below.

Refusals from Council

The Discussion Paper removes the opportunity for an early refusal of rezoning applications where they do not meet site or strategic merit. In the current process, there is a requirement for the rezoning application to be supported by Council to progress to a Gateway Determination. It is recommended that there is an opportunity for a refusal within the early stages of the rezoning application.

Meaningful community engagement is needed

The DPE undertook targeted engagement with the development industry and local government during 2021. However, the formal public exhibition period has occurred over the Christmas period, limiting the opportunity for meaningful community engagement. It is unclear if the community understands the Discussion Paper and its implications.

This is inconsistent with Council's Community Participation Plan (CPP) and the DPE's Community Guide to Planning (December 2020), which recognises early community participation in planning is vital to ensure strategic planning and planning rules are based on community knowledge and views.

Summary of Key Recommendations to the DPE

The draft submission makes the following recommendations to the DPE:

- Prior to finalisation, a response to submissions is publicly exhibited with a detailed implementation plan allowing Councils to provide further feedback;
- Demonstrate how the timeframes identified in the Discussion Paper are consistent with the intent of a one-third reduction by 2023;
- Reinstate the role of the elected Council and Local Planning Panels early in the rezoning process;
- Ensure the process allows for meaningful community engagement in the assessment of rezoning applications;
- Work with Council to define an appropriate category for precinct planning, with appropriate timeframes that reflect the complexity of this process;
- Review the Scoping Phase to allow for multiple meetings and cost recovery, fees, require strategic merit assessment, the scoping letter standards and whether these issues can be met within the proposed timeframes;
- Consider the scope of rejections, additional information requests and refusals within the rezoning process;
- Reassess DPE's involvement in the process and consider being an advisory and intermediary body;
- Reconsider the extent of the similarities between Rezoning Proposals and Development Applications to ensure that Strategic Planning is not completely omitted from the process;
- Consider the role and responsibilities of Proponents and look to implement corresponding timeframes and penalties; and
- Evaluate whether the appeals process will not lead to further adverse impacts upon Councils.

A full list of the recommendations is included in the draft submission.

FINANCIAL IMPLICATIONS

There are no direct financial implications for Council as a result of this report.

CONCLUSION

The DPE is inviting feedback on the Discussion Paper '*A New Approach to Rezoning's*' proposing significant changes to the current rezoning process.

While Council officers support the intent of the Discussion Paper, a draft submission has been prepared seeking further consideration on several issues within the recommendations provided.

RECOMMENDED

That Council:

- i. endorse the attached draft submission on the ‘New Approach to Rezoning’ Discussion Paper;**
- ii. forward a copy of the submission to the NSW Department of Planning and Environment for consideration;**
- iii. forward a copy of Council’s submission to Mr Peter Sidgreaves MP, Member for Camden, for consideration.**

ATTACHMENTS

- 1. Draft Submission - A New Approach to Rezoning**
- 2. Comparison of Rezoning and Development Application Process**
- 3. Discussion Paper - Rezoning Reform**

ORD01

Attachment 2

Comparison of Rezoning Process and Development Application Process

| Current Rezoning process | Proposed Rezoning Process | Development Application Process |
|---|--|---|
| Known as Planning Proposals | Rebranding to Rezoning Applications | Known as Development Applications |
| Exhibition after Gateway Determination | Exhibition after Lodgement | Notification after Lodgement |
| Council takes on the proponent led planning proposals as their own. | Proponents to lead their rezoning applications. | Applicants lead their own development applications. |
| Assessment prior to exhibition | Assessment post-exhibition | Assessment post-notification |
| No legislation for timeframes or appeals | Potential legislation for timeframes and appeals | Legislation prescribes timeframes and appeals processes. |
| No Rejection opportunities | Potential 7-day rejection of rezoning applications | Councils have 14 days to reject a Development Application |
| Council require the Department to determine whether the proposal is sufficient. | Council become the assessing and decision-making authority | Council are the assessing and decision-making authority. (In most cases) |
| Local Planning Panels are an advisory Panel | Local Planning Panels become a decision maker for conflict of interest applications. | Local Planning Panels are the decision makers for development applications. |
| No owners consent required | Owners consent required | Owners consent required |
| Deemed refusal 90 days | Deemed refusal 90-115 days | Deemed refusal 40 days |
| No right to appeals, however opportunity for rezoning or gateway reviews | Right to Appeal either through IPC or LEC | Right to Appeal through LEC |

ORD17/22 THE MOTION ON BEING PUT WAS **CARRIED**

(Councillors Symkowiak, Campbell, Fedeli, C Cagney, Farrow, Dommaraju, Zammit and McLean voted in favour of the Motion. No Councillors voted against the Motion.)

ORD01 DRAFT SUBMISSION - 'A NEW APPROACH TO REZONINGS' DISCUSSION PAPER

Resolution: Moved Councillor C Cagney, Seconded Councillor Campbell that Council:

- i. endorse the attached draft submission on the 'New Approach to Rezonings' Discussion Paper;
- ii. forward a copy of the submission to the NSW Department of Planning and Environment for consideration; and
- iii. forward a copy of Council's submission to Mr Peter Sidgreaves MP, Member for Camden, for consideration.

ORD18/22 THE MOTION ON BEING PUT WAS **CARRIED**

(Councillors Symkowiak, Campbell, Fedeli, C Cagney, Farrow, Dommaraju, Zammit and McLean voted in favour of the Motion. No Councillors voted against the Motion.)

ORD02 DRAFT SUBMISSION - DESIGN AND PLACE STATE ENVIRONMENTAL PLANNING POLICY

Resolution: Moved Councillor Zammit, Seconded Councillor C Cagney that Council:

- i. endorse the attached draft submission on the Design and Place State Environmental Planning Policy;
- ii. forward a copy of the submission to the NSW Department of Planning and Environment for consideration; and
- iii. forward a copy of Council's submission to Mr Peter Sidgreaves MP, Member for Camden, for consideration.

ORD19/22 THE MOTION ON BEING PUT WAS **CARRIED**

(Councillors Symkowiak, Campbell, Fedeli, C Cagney, Farrow, Dommaraju, Zammit and McLean voted in favour of the Motion. No Councillors voted against the Motion.)

ORD03 ADOPTION OF THE DRAFT CAMDEN CENTRES AND EMPLOYMENT LAND STRATEGY

Resolution: Moved Councillor C Cagney, Seconded Councillor McLean that Council:

- i. adopt the draft Camden Centres and Employment Land Strategy (as amended);
- ii. write to the Department of Planning and Environment seeking their formal endorsement of the adopted Camden Centres and Employment Land Strategy; and
- iii. notify submitters and public agencies of Council's decision.

ORD20/22 THE MOTION ON BEING PUT WAS **CARRIED**