

Council Reference: 31157E (D22/108406)

Your Reference:

17 March 2022

Department of Planning & Environment

By email only: planninglegislativereform@planning.nsw.gov.au

To Whom It May Concern

Endorsed Submission on Discussion Paper – A New Approach to Rezoning

I refer to Council's draft submission emailed to planninglegislativereform@planning.nsw.gov.au on 28 February 2022. Council considered this matter on 14 March 2022 and resolved that Council (MIN22.172):

- 1. Receive the report on the 'Discussion paper - A new approach to rezonings' (Attachment 1) released by the NSW Department of Planning & Environment (DPE), for information.*
- 2. Raise strong concerns with the proposed approach and endorse the attached submission (Attachment 2), with any adjustments resulting from the consideration of this report and advise DPE accordingly.*
- 3. Provide a copy of Council's submission to Local Government NSW and support them in any advocacy/representations they undertake associated with this matter.*
- 4. Strongly request that DPE undertakes further detailed and meaningful consultation and dialogue with Councils on the proposed changes to the rezoning process before they are finalised and implemented.*
- 5. Receive future reports, if required, to enable further consideration of or comment on the detail of the proposed reforms to the rezoning process.*

Before addressing the questions posed in the discussion paper, the following general comments are made.

Key changes and implications

- The current key Gateway step (which requires Council and DPE to decide whether a proposal has sufficient merit to progress) will be replaced by a mandatory pre-lodgement process that is coordinated by Council staff in consultation with relevant State Government agencies.
- The elected Council would only consider proponent-initiated proposals after exhibition by the proponent. Currently, Council decides early whether or not to forward a PP to DPE for a Gateway determination, and if the PP proceeds, considers the PP after public exhibition and decides whether or not to finalise the PP. (In some cases, the PP may currently need to be reported to the elected Council at additional points, e.g., to consider the outcome of a key study to help shape the proposal.)
- Similar to above, the community would generally not be aware of a proposal until it is exhibited on the Portal (which would automatically commence when a Council officer completes the adequacy checklist on the Portal). Currently Council initially notifies

adjoining landowners etc if a proponent rezoning/planning proposal application is received.

- Reduced timeframe for Council to notify community stakeholders, that is the formal exhibition would start as soon as the documentation is determined to be adequate (within 7 days of lodgement). It could then be one to two weeks before adjoining landowners etc. receive written notification. Council would potentially not have the discretion to extend exhibition periods. Currently, Council makes arrangements to notify affected landowners, prepares a public notice and other exhibition material (e.g., explanatory statement, frequently asked questions) prior to commencing an exhibition.
- Rezoning/PPs would only be exhibited on the NSW Planning Portal. Council would no longer exhibit proposals. Given the limitations and issues with the Planning Portal, it is questionable whether this will actually improve community engagement or be more problematic.
- Proponents would be responsible for:
 - Preparing all the supporting studies. Currently, Council has the ability to manage any key or sensitive studies that should be done at arm's length from proponents, e.g., independent peer reviews.
 - Preparing all exhibition material, including any proposed mapping changes (which requires a detailed understanding of the LEP, mapping conventions etc). Currently, Council has control over the exhibition material, and any proposed LEP map changes are prepared by Council using information supplied by the proponent. This ensures that the exhibited map changes are consistent with mandated conventions and the LEP and use correct mapping data.
 - Assessing and responding to submissions. This is currently managed by Council.
- DPE would generally not be directly involved anymore in proponent-led proposals (other than commenting on the proponent's scoping study).
- Council would assess the merit of the proposal **once only**; post-exhibition and this decision could be appealed by the proponent.

Staff responses to the questions posed in the discussion paper are provided below. Key background text has been provided for context. The information and questions from the Discussion Paper are italicised.

Part A: Background (pages 5 – 10 of the discussion paper)

Rezoning needs to be an effective planning tool that can meet the objectives of strategic plans in a certain and timely way. Uncertainty about rezoning timeframes and process can affect developer confidence and the overall viability of projects, or the timing of housing supply. Uncertainty can also cause community disengagement and less public participation in the planning system.

Stakeholders have identified various issues with the existing rezoning framework. In summary:

- *Process takes too long and is overly complex*
- *A lack of transparency of process with referral agencies and the department*

- *Planning system is too prescriptive and not responsive to the varying size and complexity of rezoning requests*
- *Lack of accountability and certainty around timeframes*
- *Lack of trust and legitimacy of process amongst the community*
- *Inconsistent approaches to assessment and documentation requirements.*

Is this a fair summary of the issues with the current framework?

Council response: The intention to make the process more efficient is supported but this should not be at the expense of achieving good outcomes for the community. Rezoning proposals can range from very straightforward/non-contentious to very complex/highly contentious, and not all are actually “rezonings”. The term “rezoning” is problematic if the land is not being “rezoned”.

Given the nature of the Standard Instrument (SI) LEP, a PP might be needed to alter a development standard. A recent example was Council’s PP to vary the maximum allowable height of buildings (HOB) in Ulladulla.

The process for highly complex proposals tends to be more iterative. For example, a complex proposal may require primary environmental and land constraint studies (e.g., biodiversity, Aboriginal cultural heritage, flooding etc) to be prepared to help define a suitable footprint, prior to undertaking secondary studies, infrastructure assessments etc. If key stakeholders have strongly opposing views on what is appropriate for the site (and with different interpretations of constraints), the process can get frustrated. It's a negotiation process.

The Government’s focus on “uniformity” ignores individual circumstances and diminishes local council autonomy. ***One size does not fit all.***

Are there any other problems that need to be addressed?

Council response: Several documents make up the strategic planning framework. The reality is that in a large, geographically diverse LGAs like the Shoalhaven, 'consistency with strategy' is open to interpretation. The Government’s intention to make the planning system “plan-led” (i.e., strategic rather than ad hoc) is strongly supported, but assessment of strategic merit needs to be more nuanced to achieve this.

Spot rezonings divert resources from doing strategic planning. An abundance of spot rezonings suggests the planning system is reactive rather than plan-led.

Any discussion on the rezoning process should consider opportunities to move some development standards out of the Standard Instrument Local Environmental Plan (SI LEP) back into development control plans (DCPs), while also reinstating the weight of DCPs in the DA assessment process.

Do you wish to make any other comments in relation to Part A of the discussion paper?

Council response: In relation to reasons for delays (p9 of discussion paper):

- A PP is not the same as a DA and is not as amenable to an imposed timeframe as it may deal with quite complex issues.

- Reporting a matter to Council twice may be very appropriate to consider the matter in principle up front, then to consider community input. This is NOT a “delay” but a result of due process.
- The Gateway process was good in principle, but the new LEP Making Guideline now effectively shifts all of the work to the pre-lodgement/pre-gateway stage.
- “Process” should not be the master of the outcome; the very nature of a PP (as opposed to a DA) should be expected to require different approaches between councils and between proposals.
- Transparency – this takes time, which the new LEP Making Guideline and proposed new approach seek to constrain.
- While it is important to recognise the role of proponents it is important that accountability and responsibility for LEPs remains with Councils.
- Poor response times from under-resourced agencies whose input is mandated by the Gateway is a common cause of delays. Agency responses are sometimes too detailed (i.e., treating a PP as if it is a DA).

Part B: The new approach (pages 11 to 34 of Discussion Paper)

New categories and timeframes

Clearer timeframes for completing each step in the rezoning process gives stakeholders certainty and encourages better performance. Our proposed timeframes will apply to councils, the department, state agencies and private proponents, depending on the category of the rezoning application.

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

Council response: The timeframes for the key steps in the process, for each category of proposal, need to be achievable. The categories described in the LEP Making Guideline should be reviewed to ensure they reflect the full spectrum of rezoning proposals/LEP amendments and the demands of resources which they generate.

The timeframes for the scoping stages are unrealistic given the number of variables (quality of proponent studies, delays with receiving state agency feedback etc.)

The post exhibition timeframes leave no room for revising the proposal to respond to competing submissions, negotiation with key stakeholders etc.

The risk of placing so much pressure on timeframes is that shortcuts will be taken, and result in compromised outcomes.

The overriding factor determining timeframes is availability of resources. If the planning system is overloaded with spot rezonings, resources (in private and government sectors) will be spread thin and timeframes will suffer, regardless of the benchmarks.

Proponent and Council Roles

Councils – rather than private proponents – usually make changes to LEPs to ensure that LEPs give effect to strategic plans. Councils are sometimes limited by financial and resourcing constraints, both at the planning and infrastructure servicing stages, especially in regional areas. We expect there will always be a need for private proponents to initiate rezoning applications.

The current rezoning request process shifts responsibility to council to progress a planning proposal, with costs covered by the private proponent. This means that although the private proponent has the cost burden, they are not considered the applicant. They have little control over the processes, or any changes to the proposal.

Our proposed approach aims to recognise private proponents as applicants, as they are in the development application process. This will give the private proponent the right to:

- meet with the rezoning authority to discuss a potential request*
- submit a rezoning application and have it assessed and determined after public exhibition*
- appeal a decision made about a rezoning application because of a delay or dissatisfaction with a decision (see Part C: New appeals pathways).*

Along with these rights, the private proponent will be responsible for all fees, meeting information requirements, consulting with state agencies, and reviewing and responding to any submissions received during consultation.

Council roles - For private proponent rezoning applications, councils will have full control of the process, including giving permission to exhibit, which is currently given by a gateway determination. Councils will review any changes after exhibition and make the final decision.

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

Council response: The proposed shift in roles for proponent-initiated proposal would mean that the Council is no longer the custodian of its LEP and is not supported. It would result in proposals being generated in an uncoordinated, random manner, and referred to agencies with no indication of public support or merit.

This proposed change in roles would likely result in an increase in demand for private consultancy services.

It's not clear how this proposed shift in roles would mean that Councils retain full control of the process (p19).

Removing DPE's decision-making role from all proponent-initiated rezoning proposals would come at a risk in relation to more contentious proposals, where DPE plays an important role, particularly in relation to assessing proposals against s9.1 Ministerial directions. Removing DPE's role would also create the temptation for unsuccessful proposals to be resubmitted each time the makeup of the elected council changes, creating further demands on limited council resources.

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

Council response:

- Clearer guidance on strategic merit.

- Support to councils to review their local strategic planning statements (LSPS's) specifically to provide a stronger framework for determining planning proposals/rezonings.

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

Council response: DPE should proactively facilitate government agency consultation, which is often a cause of delays in the rezoning process. The Warrah Road Planning Proposal at Bangalee (PP005) is an example where Council had to seek support from DPE's Planning and Delivery Unit (PDU) to help resolve concerns received post-exhibition from the NSW Rural Fire Service (RFS). The PDU facilitated a series of discussions with the relevant government agencies, Council and the proponent, resulting in a substantially improved outcome. This should be a core function of DPE.

What else could we do to minimise the risk of corruption and encourage good decision-making?

Council response: Making proponents solely responsible for their proposal will give them full control over the consultants they engage to complete the required technical studies. This will remove the ability for key studies to be managed by the Council, at arm's length from the proponent. This will inevitably reduce the public's faith in the independence of supporting studies.

DPE should continue to have role for proponent-initiated proposals where:

- A proposal is not minor and is not closely aligned with strategy OR
- There is a s9.1 inconsistency.

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

Council response: No. Early agency feedback is typically broad and reserved, pending seeing the full detail and supporting technical studies. It is unlikely that agencies will provide detailed comment on the proposal at scoping study stage. Detailed agency input is critical for assessing proposals against any relevant s9.1 Ministerial directions.

S9.1 Ministerial Direction 4.4 (Planning for Bushfire Protection) specifically requires the RFS to be consulted after the gateway determination is issued and prior to public exhibition. In other cases, agencies need to play a more active role and provide direction in relation to supporting studies, e.g., biodiversity.

The rezoning process will not be streamlined if government agency concerns are not drawn out until post exhibition. The proposal (and potentially supporting studies) might need to be revised and re-exhibited.

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

Council response: Council should remain responsible for coordinating agency consultation but there should be oversight by a central body so that referral response times can be monitored and addressed where necessary.

If there are conflicting agency responses, a coordinated, whole-of-government response should be considered. This approach was a key factor in progressing and finalising highly complex rezoning proposals for a number of paper subdivisions in the Jervis Bay area including Jerberra Estate, Verons Estate and the Heritage Estates.

If a state agency has not responded in the required timeframe, are there any practical difficulties in continuing to assess and determine a rezoning application?

Council response: Yes. Proposals may need to be revised and re-exhibited if agencies raise significant concerns post exhibition. Refer to the Warrah Road example referred to above.

Scoping

The new approach includes a mandatory pre-lodgement stage for the standard, complex and principal LEP rezoning applications (optional for the basic applications) called scoping. The scoping process is the same as that set out in the new LEP Guideline, except that under the new approach, we propose that scoping should be mandatory.

Scoping allows relevant parties to come together early in the process to discuss the project and provide feedback and direction before detailed work has progressed. Early feedback saves time and costs later in the process and leads to better quality and complete applications. It can also give a proponent an early indication of whether or not an application is likely to be supported before significant time and costs have been expended.

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?

Council response: Yes, if Council is of the view that the proposal is inconsistent with strategy and cannot be modified to address that inconsistency, it should not be required to issue study requirements. Doing otherwise would be disingenuous and potentially create false expectations.

Should all proponents have the opportunity to submit a fully formed proposal for exhibition and assessment?

Council response: No, not if the system is intended to be 'plan-led' as espoused in the Discussion Paper. If Council is of the view that the proposal is clearly inconsistent with strategy and cannot be modified to address that inconsistency, it would not make sense to allow the proposal to be lodged and exhibited anyway.

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?

Council response: This is a hypothetical question. The community may remain sceptical about this claim, especially given that the proposed system is untested. Ultimately, the community would judge this by the authority's record and political persuasion.

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

Council response: This should only be considered for very minor, straightforward proposals, such as where the proposal is strongly aligned with strategy and will have negligible impacts on surrounding property owners and/or the environment.

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

Council response: Community feedback should be considered as part of the assessment process, otherwise the public exhibition process is pointless. One round of community consultation (on the full planning proposal package) is sufficient unless the proposal has been substantially amended.

Public exhibition

There will be a standard public exhibition period of between 14 and 42 days, depending on the category of rezoning application (as is currently the case, there could be circumstances where no exhibition is required).

A key shift in the new approach is to exhibit the rezoning application as soon as possible after lodgement, allowing early public scrutiny and saving time. Currently, there can be a considerable lag between issuing a gateway determination that allows exhibition and the start of the exhibition.

Additionally, we see an opportunity to improve the level of community engagement in strategic planning and the rezoning process by making it more accessible and simpler to understand. Effective community engagement is key to developing trust and transparency in the planning system.

Council comments:

- In some circumstances the standard public exhibition timeframes may be insufficient, such as in respect of a city-wide LEP.
- The discussion paper does not demonstrate how the proposed approach will facilitate better community engagement in strategic planning. Making proponents responsible for community engagement as opposed to council is unlikely to improve public trust and transparency in the planning system.

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

Council response: There are multiple types of strategic planning documents including regional plans, local strategic planning statements, growth management plans / settlement strategies / structure plans. These generally deal with broader-scale planning issues that many people would not consider in their day-to-day lives.

Council is always looking at ways to engage more effectively with a broad cross section of the community when undertaking broader strategic planning exercises. This is challenging because people are generally time-poor, the planning system is complex, and unless people can see how they will be directly affected, they are understandably less likely to give up their time to participate and provide input.

The key is being able to explain how the strategic plan will impact on the individual. There is a limit to the amount of detail that can be provided through broader strategic planning processes, particularly in a large and geographically diverse LGAs like the Shoalhaven.

Do you have any suggestions on how we could streamline or automate the exhibition process further?

Council response: Not all people have ready access to the internet or are “digitally” able, particularly among the elderly and/or socially disadvantaged. These people, who can represent a significant proportion of the community, should not be disenfranchised. Councils are more connected and in touch with their local communities and are best placed to undertake community engagement.

The public exhibition process represents a relatively small proportion of the overall rezoning timeframe. The current system already allows a shorter, 14 day exhibition timeframe for minor matters. Further streamlining the public exhibition process would make little difference to overall timeframes, while reducing the opportunity for genuine community engagement.

Changes after exhibition

Following exhibition, a proponent must both summarise and respond to submissions received, including working with state agencies to resolve any objections. This will help the rezoning authority in its final assessment, while also giving the proponent the opportunity to respond to issues raised. Those who provided submissions will know the proponent’s response to their submissions.

As part of the response, the proponent will need to submit any changes or amendments to the rezoning application before final assessment.

Once the response to submissions and any amended rezoning application has been forwarded to the rezoning authority, assessment will begin. At this point, the assessment ‘clock’ will start. This is the time allowed for the rezoning authority to assess, finalise and determine a rezoning application before a proponent can:

- *appeal (based on a decision that is deemed to be refused, a ‘deemed refusal’) and/or*
- *access a fee refund through a planning guarantee.*

Council comments:

- The concept of a planning guarantee is not supported. It would create an incentive for proponents to not genuinely attempt to work with councils in a constructive manner.
- It is unclear how amendments to LEP map overlays are proposed to be prepared under this model. Council is the custodian of its LEP and supporting map overlays. LEP maps must be prepared in accordance with DPE’s strict rules and conventions, and any map changes must be carefully considered in context of the LEP as a whole (maps and written instrument). This is why the process has always been and needs to remain under the control of the Council (including liaison with DPE, Parliamentary Counsel and other agencies).

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 response: No, because the assessment cannot be completed unless the rezoning authority knows there are no unresolved agency objections. The concept of a clock is not supported because:

- Planning proposals/rezonings can vary greatly in complexity (which is not accurately reflected in the new categories and benchmark timeframes).
- Delays are usually caused by external factors such as agency consultation and/or the quality of consultant reports.
- It implies that the timeframe is more important than achieving the best outcome and/or that councils seek to deliberately slow the process.

Ongoing requests for more information cause delays throughout the rezoning application process and create uncertainty for all parties to the process.

Do you think requests for more information should be allowed?

Council response: Yes. Not allowing requests will ultimately result in incomplete/inadequate consultant studies and will discourage iterative improvements to proposals.

Assessment and finalisation

Following exhibition and any amendments, the rezoning authority will assess the rezoning application. The application may need to be exhibited again if changes made after the first exhibition are extensive – this will be determined by the rezoning authority. If re-exhibition is not required and a rezoning application is supported, the rezoning authority will engage with the Parliamentary Counsel's Office to draft the instrument and mapping can be prepared.

As is currently the case, the rezoning authority can vary or defer any aspect of an amended LEP, if appropriate.

In assessing a rezoning application, all decision-makers need to address the same considerations when determining if a plan should be made. Decisions will also need to be published on the NSW Planning Portal and with the reasons for the decision clearly communicated.

Rather than different assessment processes at gateway determination and finalisation, we will standardise matters of consideration, as relevant to the final decision made by the rezoning authority. These standard matters will also inform advice given during scoping.

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

Council response: Public interest should be a consideration and be supported by guidance on what is in the public interest in respect of rezoning/planning proposals.

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

Council response: Yes.

- Precedent – will the proposal create an undesirable precedent?
- Demonstrated need – are there more suitable sites?

A council with a conflict of interest should not assess and determine a proposal. Under the new approach, if a conflict of interest is unavoidable, the relevant local planning panel (or regional panel where no local panel exists) should determine the rezoning application.

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

Council response:

Councils have been able to manage this process well enough without interference for well over a decade. A VPA may have significant resource implications for a council and the council ought to be able to ‘determine its own destiny’ rather than have an outcome forced on it by an unaccountable external body.

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

Council response: A consistent fee structure would be helpful provided it is based on full cost recovery and flexible enough to account for different scenarios (such as public hearings, amendments, re-exhibitions etc).

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?

Council response: The fee structure should encompass all of the stages in the rezoning/LEP amendment process, including potential amendments, re-exhibitions, public hearings/reclassifications, preparation of maps, finalisation etc, so that councils are not left out of pocket.

If Council is required to commission consultant studies (e.g., peer reviews) the proponent should be required to pay Council for this upfront, plus a project management fee.

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?

Council response: Fees should be determined by individual councils to suit their particular circumstances, as the costs will vary across the State.

What is your feedback about the 3 options presented below?

- ***Option 1: Fixed assessment fees***
- ***Option 2: Variable assessment fees***
- ***Option 3: Fixed and variable assessment fees***

Council response:

Council’s current fee structure is more closely aligned with option 3, with separate fees for ‘minor’ and ‘major’ PPs that cover up to 40 hours and 80 hours of staff time

respectively, after which an 'excess time' hourly fee applies. However, recording and costing staff time across the organisation has proven to be a significant administrative burden and is not favoured.

A fee structure that is broken down into all the phases and possible scenarios in the process (see comments above) for the different categories of proposals (reflecting the demands on staff resources) is favoured.

Should fee refunds be available if a proponent decides not to progress a rezoning application?

Council response: Yes, provided the council is not left out of pocket for work done to date.

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?

Council response: No. This is an unnecessary punitive approach.

There are many stakeholders in the rezoning process. Under the current system, delays are usually caused by external factors associated with supporting studies (which are generally managed by the proponent) government agency consultation (especially where objections are raised post exhibition). The discussion paper implies that councils deliberately delay the process. What is the evidence for this?

DPE has only recently made fundamental changes to the PP process, moving much of the work involved in formulating and preparing a PP to the pre gateway phase. Prior to that, the PP process was deliberately designed to allow supporting studies to be completed post gateway, as stipulated in the gateway determination.

If no, what other measures could encourage authorities to process rezoning applications promptly?

Council response: DPE should monitor agency response timeframes and provide additional resources (e.g. 'embedded' officers) where necessary.

Part C: New Appeals Pathway (see pages 35 to 38 of discussion paper)

As part of these overall reforms, we are considering a new appeals pathway for planning proposals.

Our proposed approach will include a review opportunity for private proponents at the end of the process, if progress has been delayed or if the proponent is dissatisfied with the final decision. Proponents will have a certain timeframe within which to lodge an appeal, similar to the right to appeal a decision about the merit of a development application.

We do not propose allowing an appeal to public authorities such as councils or state-owned corporations. Premier's Memorandum M1997-26 Litigation Involving Government Authorities, although not strictly applying to all public authorities, discourages litigation between public authorities. Rather, other avenues, such as the Planning Delivery Unit, could resolve disputes between the department and other public authorities.

An appeal based on a delay would be available once set timeframes have passed, like a 'deemed refusal' of a development application. Under our proposed appeal pathway, the

deemed refusal period would begin once a proponent lodges their final rezoning application or confirms that no changes are required and responds to submissions after exhibition.

We are considering 2 options for an appeal or review - to the Land and Environment Court or a non-judicial body like the Independent Planning Commission.

A Land and Environment Court merit appeal could operate similarly to development application merit appeals, with an opportunity for conciliation and a final hearing if an agreement cannot be reached. The court would have powers to make any decisions required to finalise the proceedings.

Appeals to the Independent Planning Commission will require us to develop a new process, allowing various parties to present their position and new procedures relating to amendments to rezoning applications or hearing from the public. This process could be similar to the determination process for state-significant development with appropriate changes to account for it being a review function and to allow the commission to make the final decision on a rezoning application.

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

Council response:

The assumption here is that a rezoning/planning proposal is the same as a development application (DA). They are distinctly different. LEPs set the key statutory and strategic context under which most DAs are assessed. Amending the LEP is a more major step and should not be subject to arbitrary time frames or open-ended review mechanisms.

Agency issues should be resolved through consultation and negotiation as part of the rezoning/planning proposal process.

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?

Council response:

Both options have significant disadvantages. An unelected non-judicial body such as a panel or commission lacks accountability but would be timelier and more cost effective. A judicial body such as the LEC is accountable but would be costly and time consuming. Any such appeal mechanisms should be limited to procedural grounds.

Part D: Implementation (see pages 39 to 40 of discussion paper)

Our focus in the discussion paper is to seek feedback on the concepts or principles of the new approach, rather than the means of carrying it out. Once it is clear which of the proposed elements will have the greatest benefit, we will use what we've heard to determine how we will put the new approach into action.

Do you wish to make any comments in relation to Part D of the discussion paper?

Council response: Given the extent of proposed changes and implications on all stakeholders, further consultation is needed before DPE determines how to put the new approach into action.

The [Council report](https://www.shoalhaven.nsw.gov.au/Council/Meetings/Agendas-Minutes) and resolution can be viewed online at:
<https://www.shoalhaven.nsw.gov.au/Council/Meetings/Agendas-Minutes>

If you need further information about this matter, please contact Eric Hollinger, Coordinator, Special Projects Team on [REDACTED]. Please quote Council's reference 31157E (D22/108406).

Yours faithfully



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