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DISCUSSION PAPER: A NEW APPROACH TO REZONINGS

SUBMISSION BY THE BERRIGAN SHIRE COUNCIL

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Introduction

The Berrigan Shire Council appreciates the opportunity to provide feedback on the New South Wales Department of Planning, Industry and Environment Discussion Paper: A new approach to rezonings released for comment December 2021.

The Berrigan Shire is a small NSW/Victorian border LGA outside of the periurban growth zones of the Riverina Murray Planning Region's regional centres of Albury, Griffith and Wagga Wagga.

Economically and socially, local government area ties are to Victoria. Shire residents, businesses and visitors primarily access higher-order services in Melbourne, Shepparton (Victoria) and Albury (NSW).

The Berrigan Shire LGA (2020) forecast population was 8,774, the majority of whom live with the rural townships of Berrigan, Tocumwal, Finley and Barooga. Established on the NSW/Victorian border are Tocumwal and Barooga. Cobram-Barooga is the LGAs cross-border settlement with a combined population of 7,800. Located on the transport networks of the Newell Highway and the Riverina Highway are Berrigan and Finley. The average distance between Berrigan Shire LGA townships is 25 km – there are no local taxis or public transport links between the Shire's towns.

The Berrigan Shire LGA is also the most densely populated (4.16 people per square kilometre) rural LGA in the Murray Region. The next most densely populated rural LGA in the Murray Region is the Murray River Council (1.7 people per square kilometre). In the context of planning for and maintaining local public infrastructure, this settlement pattern requires the Council duplicate water and sewer treatment infrastructure, open space, and recreational infrastructure in each of its towns. While also maintaining the Council's network of roads that criss-cross the LGA; transport infrastructure connecting irrigated agricultural farms to regional, state, national and international markets.

The Berrigan Shire LGA, unlike many NSW rural LGA, continues to experience positive population growth (albeit from a low starting base), with the population of the LGA estimated to increase in the period 2020 – 2036 by 10.77% or 0.68% per annum. This growth trajectory is consistent with the NSW Dept of Planning data forecasting an annual population growth rate in 2021 – 2026 of 0.2%..

General comment on the Reform Program

The Council regards rezoning reform designed to expedite and support local decision-making as welcome reform. Moreso, because the experience of the Council and our community is political expedience and not the number of people impacted informs state-led centralised decision-making. This outcome is compounded in our diverse region Riverina Murray by applying a 'regional' lens instead of a sub-regional or LGA specific lens. Again, based on our experience of State-led and Riverina as opposed to Murray focused strategic policy and planning processes these are in our planning context unhelpful characteristics of the current process.

Rural Councils do not experience the same competing demands for land and conflicts of interests as experienced by metropolitan and regional growth centres that characterise and compromise the practice of strategic planning and reforms designed to strengthen the transition to a plan-led system. Rural Councils also do not have the resources – even if a full cost recovery model is adopted – to engage in multiple and site-specific rezoning's. Therefore, the practice of our Council has not been to congest the current system with multiple and spot rezoning; instead, it undertakes a comprehensive review every five to six years.

There is a sense with the rapidity and the timing of critical documents released for comment in an environment characterised by 'remote' work and an inability to get out on the ground, that it is political expedience rather than strategic planning which is driving an essential and needed reform agenda.

The Discussion Paper poses many questions this response will not formally address. This submission assumes the proposed model will, for the most part, resolve or at least not exacerbate further the complexity, inefficiencies and constraints imposed on proponents and Councils by the current system when rezoning land, proposing administrative Land and Environmental Plan (LEP) amendments or making an LEP. The comments in this submission relate to the questions posed by the introduction of timeframes, fees, change in exhibition requirements and appeal pathways.

Benchmarks and Timing

Proposed are categories and benchmark timeframes. The clarity of stages and the concept of benchmarks for timeframes are welcome. Particularly if the Department of Planning, Industry and Environment applies these benchmarks (even if not required) to its assessment and determination of Council proponent Category 3 and Category 4 rezoning applications. Per roles and responsibilities described pp18 of the Discussion Paper.

In response to the question posed pp 19, **What changes can be made to the department's role and processes to improve the assessment and determination of council-led rezonings?**

The changes that need to be made will be the changes local Councils will need to make – additional resources – human, financial and systemic to ensure that benchmarked timeframes are achievable and, more importantly, achieved.

Rural Councils already experience strategic and town planning workforce shortages –with many Rural Councils unable to attract, even with competitive salary packages, planning professionals with strategic and statutory planning skills, knowledge, and experience. It is also evident this shortage is experienced by the Department of Planning, Industry and Environment and may also be a catalyst for this reform agenda which appears to be designed to allow DPIE resources to concentrate on regional and State-led projects.

There will, therefore, need to be a review of the benchmarks and consideration given to the reasonableness of benchmarks, particularly in the face of the resource constraints that are endemic in Rural Councils; hence not likely to be overcome by fee for service or automation of processing.

Proposed categories and benchmark timeframes

Stage	Category 1 (Basic)	Category 2 (Standard)	Category 3 (Complex)	Category 4 (Principal LEP)
Scoping	6 weeks	10 weeks	12 weeks	10 weeks
Lodgement	1 week	1 week	1 week	1 week
Exhibition	4 weeks	6 weeks	8 weeks	6 weeks
Post-exhibition	10 weeks	13 weeks	15 weeks	17 weeks
Assessment and finalisation	11 weeks	17 weeks	24 weeks	26 weeks
Total, excluding scoping*	26 weeks	37 weeks	48 weeks	50 weeks

Proposed Fees

The Discussion Paper outlines three fee options citing the variability across the State in the setting of fees as a constraint and a contributor to the distrust between developers, Councils and the DPIE. However, a key element of our economic system is competition and variability in pricing, which reflects market forces applied to inputs (i.e., the resources needed to deliver a service). Therefore, in a market sense, variability in fees between Councils should not be represented as a catalyst for distrust.

The position outlined in the Discussion Paper suggests strategic planning is a government service (which it is); hence, the options presented reflects State-government expectation that fees, and the model will be centrally determined and or monitored.

Rural Councils have the choice of paying a premium for professional planning services – due to scarcity of planning and construction professionals or falling back on administratively simple and centrally determined fee structures. The outcome of which is that rural ratepayers subsidise planning functions arguably to a greater degree than regional and metropolitan ratepayers.

The submission of the Berrigan Shire Council is the fee options proposed need further scoping and discussion with Councils and that this is a conversation closely tied to Contributions Reform and the proposed Planning Guarantee, given the variability of costs and availability of the planning services – particularly in rural NSW.

Exhibition Requirements

The redesign of the planning proposal process, including rezoning application process, privileges the practice and the expertise of strategic planning and strategic planners. Councils, regional and State significant strategic planning priorities are determined by political processes and ‘planning professionals’. The current practice of exhibition prior to assessment and determination in our liberal-democratic system of government, is for those concerned with open government and democratisation of government services, a core value and one which, because it can impact social, economic, and environmental wellbeing, will mobilise communities to speak up.

On the other hand, the proposed changes using the professional lens of a strategic planner sensible if the scoping studies undertaken by proponents include engagement with affected parties. However, Rural Councils will experience more difficulty than regional and metropolitan counterparts with the commissioning of the scoping studies needed for rezoning proposals. As proponents rely, in rural areas, on Councils to provide LGA level social and economic data and advise engagement strategies.

Rural Council's that invest in collating this information at a local level do so for operational purposes. Rural Councils therefore, are by default the 'go to' source when nuanced planning information is needed. This scenario creates conflicts of interest requiring that Rural Councils manage the proponent's assumption that the Council, or an alternate planning authority, will favour the proponent; a political risk for Councils.

There is a real risk also that the exhibition of a rezoning application at the stage proposed is tokenistic. A view reinforced by the benchmark timeframes for proponents to respond to submissions and amend their rezoning application before determination.

The new LEP Plan Making Guidelines contain templates and tools to guide the scoping study requirements at the pre-lodgement stage. The democracy deficit created by the change in exhibition requirements and the political risk shifted to Councils by the proposed exhibition change would be alleviated by including in the pre-lodgement scoping resources, an engagement evaluation tool. Proponents could use this to evaluate the effectiveness and relevance of their engagement, hence, the credibility of their evidence of rezoning impacts and the utility of their options to resolve potential conflicts or objections.

Appeal Pathways

The Discussion Paper sets out a change in the planning proposal or rezoning application process, which shifts the decision making to the end of what is a lengthy and expensive process for the proponent.

Administratively Council and private proponents should have access to a review process. Because public authorities use public funds to develop, assess, and determine rezoning applications, a review mechanism should be in place. In comparison, the current model does give Councils and private proponents (if Councils submit a proposal on behalf of private developers) an opportunity for an early and independent merit assessment.

The cost involved in establishing an alternate review or appeal pathway will not necessarily improve trust or efficiency and the associated expenses. Nor the Council notes, did the Discussion Paper provide evidence (case studies) of how an alternate model, if the skills and resources were available, would result in 'administrative justice' for proponents, which should in fact be the purpose of an appeal pathway.

Of the appeal, pathway options proposed by the Discussion Paper the Land and Environment Court has merit. This Court has expertise in the application of the provisions of the Act. The Land and Environment Court also has an alternate conflict resolution process, a conciliation process. It is, therefore, not necessarily accurate to suggest that this pathway is wholly adversarial. Further investigation of this option is supported.