



14 February 2022

Ms Paulina Wythes
Director, Planning Legislative Reform
Department of Planning, Industry and Environment
Locked Bag 5022
Parramatta NSW 2124

Dear Ms Wythes

Discussion Paper – A New Approach to Rezoning

Thank you for giving Queanbeyan-Palerang Regional Council (QPRC) the opportunity to comment on the *Discussion Paper – A New Approach to Rezoning* currently being exhibited by the Department. Council has reviewed the draft documentation and provides the comments below as feedback.

Overall, it is QPRC's view that the proposed reforms as set in the accompanying explanatory papers are generally undesirable and not supported. The reforms appear to seek to reduce the control councils have over local decision making in respect of the planning and zoning of land and to instead transfer additional responsibility for decision making to the private sector and courts to determine. Such a proposal represents a fundamental shift in the manner by which land use planning has been undertaken in NSW since the introduction of the *Environmental Planning and Assessment Act 1979* ('the Act').

Unlike the provisions of Part 4 of the Act that regulate development assessment, there are no provisions in Part 3 of the Act that allow for applications to be made for planning proposals. Further there are no provisions that set out any prescribed assessment regime, fee structure or appeal process for such applications. This is consistent with the long-standing intent of the Act that government (local and State) is responsible for proposing and determining how land is zoned and subsequently developed in the future.

It does appear significant changes to the Act would be required to progress the proposed reforms, however it is understood no legislation has been drafted to support the proposed reforms to date.

The Department has recently had the opportunity to refine the manner in which rezonings are progressed in NSW as part of the new *Local Environmental Plan Making Guideline* issued in December 2021. However, the new guidelines appear to have focussed on reducing timeframes for the formal 'planning proposal' component of the LEP amendment process but have done little to actually reduce timeframes for amending LEPs. In reality, the new guidelines have potentially increased timeframes for amending planning instruments by creating additional unnecessary change and confusion for planners operating within the plan making system. These include the preparation of scoping proposals, pre-lodgement meetings and requiring councils to consult with external authorities.

OFFICES

144 Wallace St, Braidwood
10 Majara St, Bungendore
256 Crawford St, Queanbeyan

POSTAL

PO Box 348, Bungendore NSW 2621
PO Box 90, Queanbeyan NSW 2620

PHONE/FAX

Bungendore/Braidwood
P: 02 6238 8111
Queanbeyan
P: 02 6285 6000 F: 02 6285 6666

EMAIL/WEB

W: www.qprc.nsw.gov.au
E: council@qprc.nsw.gov.au

ABN 95 933 070 982

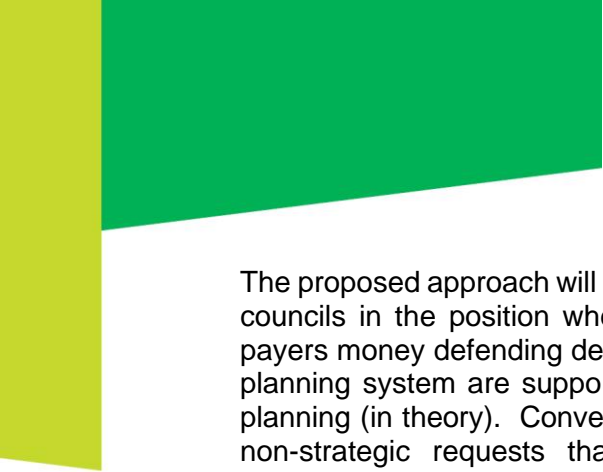
Much of the discussion outlining the justification for the proposed changes in this instance appears to be focussed on the premise that local councils are too slow in progressing planning proposals and provide no certainty to the development industry as to when plans will be made. None of the discussion recognises the significant time DPIE itself takes to progress and finalise planning proposals. As an example, QPRC submitted a draft Comprehensive LEP (draft *Queanbeyan-Palerang Local Environmental Plan 2022* (formally 2020) to the Department more than 12 months ago and that draft plan is yet to be finalised. That draft plan is an amalgamated LEP that brings together the existing provisions of LEPs in place prior to amalgamation, and as requested by DPIE at the time. DPIE has been extremely slow in progressing the draft plan regardless of the benefits a consolidated LEP offers the local community and development industry as well as to assessment staff.

It is QPRC's experience that the most significant factor impacting on the timely progression of planning proposals are referrals or consultation with State Government agencies, including DPIE. Council continues to receive inconsistent and uncertain advice from State Government and it not unusual for Council to be following up on correspondence three months after it has been sent. The availability, responsiveness and coordination of State Government input remains the single biggest constraint to reducing timeframes associated with LEP amendments.

Council does not support any new regime that recognises private proponents having the right to formally initiate a planning proposal under the Act. Private proponents have always had the opportunity to lobby a local council to amend a LEP and local councils consider those representations having regard to the benefits to the community. They also have a right to request a rezoning review conducted by an independent planning panel. The decision to initiate and progress an LEP amendment should be solely determined by the local council, or, the Minister if unsatisfied with a local council's decision (and in which case the subsequent planning proposal progressed and made by the Department).

Council supports suggested timeframes for LEP amendments, however notes existing timeframes in Gateway determinations have done little to speed up the system. For example, if seasonal biodiversity studies are required in spring, this could result in a study not being available for 12+ months from the time it is identified. These matters can't be processed out of the system just by putting in place maximum benchmark timeframes.

Probably of greatest concern to QPRC is the suggestion that private proponents be given formal appeal rights under the Act to challenge the outcome of planning proposals. Council fundamentally disagrees with this proposition. The Act should retain the requirements that only a local council can prepare an LEP amendment and there should be no appeal rights (though opportunities for proponents to request existing independent rezoning reviews should be retained). Planning needs to be undertaken in the best interests of its community and unfettered by the threat of legal action. LEP amendments have the potential to fundamentally increase the value of land and it would be a retrograde step to use the legal system to determine land use planning outcomes. To be clear, QPRC does not support any form of appeal rights for land use planning under Part 3 of the Act.



The proposed approach will likely encourage non-strategic spot-rezonings and put local councils in the position where they are forced to spend enormous amounts of rate payers money defending decisions in court. At this time, all planning proposals in the planning system are supported by a local council and consistent with local strategic planning (in theory). Conversely the proposed system will encourage speculative and non-strategic requests that will take up considerable local council and State Government resources. This will further distract councils from undertaking the necessary strategic planning required for their local areas and have the potential to undermine a council's Local Strategic Planning Statement.

To better improve timeframes around the amendment of LEPs, the Department should be taking on the responsibility of coordinating consultation with State agencies at the early stages of the LEP amendment process. QPRC's experience is that the Department is largely disengaged from most aspects of the plan making system after issuing a Gateway determination and sees little or no role for itself in addressing or resolving the issues of State Government (including inconsistency between agencies in the same Department). The Department needs to take on a greater role in coordinating and providing consistent and comprehensive advice to local government on behalf of the State.

To achieve this, there should be a single source of advice to a local council that addresses all State government agencies issues in respect of LEP amendments, and DPIE should be responsible for coordinating that advice, including, resolving inconsistent advice between agencies before that advice is provided to local councils. This should occur around both the scoping of Gateway requirements for a planning proposal, and, at that time a rezoning proposal is formally exhibited for comment.

Council does not agree with any proposal that allows a private proponent to lodge a prescribed rezoning application. It has never been the intent of the Act to allow for 'applications' under Part 3, as envisaged by the Department. Requiring a Council to formally review applications within 7 days of being lodged will further distract Council resources from undertaking strategic planning work, particularly given the large number of speculative spot-rezonings that would be lodged under the new system.

Whilst not completely clear, there also appears to be a suggestion in the discussion paper that LEP amendments lodged by proponents would potentially be exhibited prior to the Council having reviewed the merits of the proposal and having resolved to support the proposal or not. Also, that proponents may be responsible for coordinating subsequent community and agency consultation in respect of a proposal they have submitted. Again, neither of these proposals is supported. This will create significant confusion for the public by allowing speculative and non-strategic spot rezonings to be exhibited that are fundamentally not supported by a local council. This would unnecessarily agitate the community and it will be Council that inevitably receives representations that it has to respond to about proposals it potentially doesn't support.

Consistent with Council's view that there should be no inherent right for private proponents to make an application for spot-rezoning under the Act, it also shares the view that there should be no prescribed fees for progressing LEP amendments under the Act. There have never been prescribed fees under Part 3 of the Act as the Act has never intended there would be applications for LEP amendments by private proponents. Local council's should however be able to seek to be reimbursed for the costs of studies

and for any reasonable costs associated with staff working on LEP amendments proposed by the private sector and endorsed by a local council.

Further, QPRC considers the proposal to remove fees if LEP amendments are not progressed with a certain timeframe to be somewhat misinformed. The vast majority of delays the Council experiences in progressing LEP amendments are a direct consequence of the procedures and requirements of State Government. DPIE routinely takes many months to finalise draft plans, often longer than the entire LEP amendment process that has occurred beforehand. As noted, this Council has now been waiting over 12 months to have a largely settled Comprehensive Plan made by DPIE.

It is Council's view that proposed reforms would represent a poor outcome for land use planning in NSW if implemented. Accordingly, they are not supported.

Council would encourage the Department to reconsider most elements of the proposed discussion paper, and to instead focus its attention to improving processes around State Government and responsiveness.

If you have any enquiries in respect of this submission, please contact myself on [REDACTED] or by email at [REDACTED].

Yours sincerely

[REDACTED]

Martin Brown
Program Coordinator
Land Use Planning
Queanbeyan-Palerang Regional Council