The new approach to rezoning

Objection

1 I object to the failure to improve LEPs and to work around them instead.

2 If spot rezonings are to be made easier and are to be devolved to councils, I strongly object to the proposal to notify the public and receive submissions only when applications are submitted.

3 If spot rezonings are treated like DAs, applications will be followed by negotiations between applicants and the planning authority. It is possible that the parties will agree on a development and an amendment to the LEP that differs from the application, in which case it should be advertised. In any event, whenever the planning authority has assessed a rezoning application and has come to a decision about a possible LEP amendment, it should be advertised.

4 I strongly recommend that notifications and a period for submissions be included towards the end of the process, in addition to (or instead of) at the beginning.

5 I strongly recommend that the NSW Government reforms the writing of LEPs, instead of making them merely advisory documents for many forms of development, including those with the most impact on communities.

Analysis

Since the 1979 Act, the NSW statutory planning system has been too legalistic, too wordy, too ambitious, too idiosyncratic, and therefore too slow, expensive and uncertain. It's a big cost to the economy, and yet it is still responsible for some pretty bad outcomes.

It has needed reform for decades. **LEPs had to get better**: shorter, more explicit, place based, and concerned with the immediate impacts of development (mainly the negative externalities of land use and building form) not attempting to bring about a better community.

First wrong turn: the standard instrument of 2006.

It's not possible to write **better LEPs** for a specific place if it has to conform to a state-wide template. The development industry wanted uniformity but would have accepted place-based controls if they were short, direct, intelligible and designed by people with some knowledge of urban development realities as well as community values.

The bad fit between the need for local place-specific planning and a rigid process embodied in a single state-wide template exacerbated the problems. LEPS were still badly written, DCPs were still big and vague, and the system became even slower, more expensive and more uncertain.

Second-to-tenth wrong turns: every planning minister's attempt to make the system simpler and faster (for developers) did so not through **better LEPs** but by avoiding the mess of rules with work-arounds, waivers, short-cuts, patches, by-passes, call-ins and executive decisions – in other words, lots more discretion.

Current wrong turn: Minister Stokes believes he can succeed where all of his predecessors failed. He wants to make the NSW planning system "cheaper and simpler and quicker" through avoiding the rules and relying on planning decisions being made on the fly, DA by DA. He seems to believe that there is no need to talk about actual places and their future form. Instead, if there are good principles that won't restrict what people want to do, we'll have places that "just get more beautiful", one DA at a time.

This is supposed to come about by adopting the Design and Place SEPP – so that generic principles override the rules in the LEP – and by allowing decisions on DAs to amend the LEP. For certain classes of development this more-or-less completes the long process of making the LEP advisory rather than regulatory. My guess is that developers, once again, won't like the outcome of this reform. Nor will communities, or councils, or the various interest groups.

I object to the failure to reform the writing of LEPs and instead leaving them too long, too legalistic, too vague and too ambitious. I object to the chosen work-around, namely, don't be strategic, just make planning decisions on the run, DA by DA. It's not a reform. The failure to work towards **better LEPs** leaves real reform to a future Minister.

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