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Ms Paulina Wythes  
Director, Planning Legislative Reform  
Department of Planning and Environment  
Electronic Submission to Planning Legislative Reform

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Dear Ms Wythes

**SUBMISSION ON EXHIBITED DISCUSSION PAPER: A NEW APPROACH TO REZONINGS**

The City of Newcastle (CN) would like to thank the Department of Planning and Environment (DPE) for the opportunity to comment on the exhibited *Discussion Paper: A new approach to rezonings*. This submission includes an executive summary, with detailed comments provided under the headings in the discussion paper for clarity.

CN supports a strategic-led approach for all decisions about changing our citywide Local Environmental Plan (LEP). We commend early agency involvement, an embedded pre-lodgement scoping process and planning proposal categories to recognise the vast array of potential ways a citywide LEP can be altered. This submission also raises significant concerns, that warrant DPE's response prior to progressing the proposed reform.

CN looks forward to any further review, and continued collaboration with DPE on this important reform. We would be happy to elaborate on our submission. Should you have any questions, please contact Shane Cahill, Principal Planner on [REDACTED] or [REDACTED].

Yours faithfully

A large black rectangular redaction box covering the signature of Michelle Bisson.

**Michelle Bisson**  
**MANAGER REGULATORY, PLANNING AND ASSESSMENT**

## **Executive Summary**

CN welcomes regular review and continued improvements to the planning system for NSW. We support a process review for local environmental plans (LEPs) particularly for change that assists a strategy led process that supports quality outcomes and enables implementation of approved strategy such as our Community Strategic Plan (CSP).

## **Proposed framework**

- The rezoning process could be improved by being flexible enough to recognise planning proposals (PPs) vary significantly in type.
- Efficient PP processes that align with strategic plans including an outline of matters for consideration and early agency consultation is helpful.
- Extending councils' responsibilities to receive and determine select PPs, with no or minimal DPE involvement in assessment has merit but not enough detail is provided.
- CN supports upfront pre-lodgement discussion and assessment and the bolstering of DPE's role in supporting, monitoring and assisting councils in the process.
- CN does not support aligning the PP and development assessment (DA) processes. PPs vary significantly from DAs and comparing these processes is misleading. A DA applies for a legal use while a PP is a request to change long term local and strategic plans to enable a use that is not currently permissible.
- CN supports lodgement of a DA with a PP only where strategic merit established, it is not a controversial proposal, and limited chance for change throughout the process. DA assessment times would need to be put on hold if PP issues arise during the process.

## **Roles / Steps**

- CN does not support PP exhibition before strategic merit assessment, unless the PP is unlikely to change, or for preliminary consultation with later consultation for clarity. Progressing PPs without establishing strategic merit for 30 weeks sets up false expectations, including for the community.
- The community is unlikely to accept proponent led consultation. Councils and a range of stakeholders would inevitably be brought into the process resulting in considerable time spent on an exhibition process before strategic merit is established to determine the PP's chance of proceeding.
- Requiring all assessment information upfront means significant resource time and cost spent before strategic merit is established, and agency comment is confirmed.
- Giving responsibility for consultants to liaise with agencies directly is problematic as it will, it adds confusion about responsibilities and what advice is based on.

## **Appeals**

- CN is strongly opposed to a PP appeals process through the Land and Environment Court (LEC). This would provide significant financial incentive for developers of ad hoc, speculative schemes to test a PP in the LEC, seriously undermining the integrity of the planning system. This is likely to extend assessment times and costs significantly and it is not clear what the subject of such an appeal would be as PPs are a request to change a plan approved by the Minister or delegate.

## **Fees and Planning Guarantee**

- CN supports fixed planning proposal fees where the fee is set at a rate to cover the full cost of assessment. Payment of non-refundable fee encourages genuine PPs and compensates councils for significant costs incurred in the assessment.
- CN strongly objects to the proposed planning guarantee.

## **PART A - ISSUES WITH THE CURRENT FRAMEWORK**

This section provides discussion about current plan making processes. A citywide Local Environmental Plan (LEP) refers to CN's LEP 2012 or to the equivalent in other LGAs. A planning proposal (PP) is a request to change a citywide LEP. As a PP progresses and becomes more certain it is an amending LEP as it will change the citywide LEP.

### **Complexity**

The paper discusses PPs as a tool to meet strategic planning objectives in a certain and timely way, raising developers' uncertainty as a concern. This approach does not reflect the aim of strategy led decisions. For minor exceptions to the rule such as a new land use not previously considered, an anomaly in a LEP etc a different approach has merit.

### **Timeframes**

The paper compares timeframes for PPs with Development Applications (DAs). These two processes differ fundamentally and should not be compared or aligned. A DA can only be submitted for a legal land use while a PP is by nature a request to change a LEP to allow a purpose not currently legal.

Rigid assessment timeframes for a process that by nature is extremely varied is likely to be at the expense of good planning outcomes, or refusals for matters that could be negotiated. A PP categorised as standard may become complex during the process, once further information about the site or matter is clearer. Such situations are likely to create unrealistic expectations, creating unnecessary resistance to rigid timeframes attached to the categories.

### **Assessment duplication**

The paper states a PP is often 'assessed twice', reported to Councillors before Gateway Determination and before finalisation. This is not necessarily a duplication. Initial reporting is on whether a proposal to change the long-term plan for this purpose is justified. The second is about how a PP might recognise public comment after exhibition. A PP can change significantly between these two meetings.

### **Gateway process**

This process is to establish a PP's strategic merit; it has value in identifying early whether a proposal aligns with existing strategic plans. This helps manage expectations, minimise investment to undertake costly investigations and studies where there is no strategic merit. The paper does not recognise the expectations and pressures such investment adds to the process if an early assessment of strategic merit is not undertaken.

### **Issues with the Current Framework - Inconsistencies**

A citywide LEP must achieve the objects of the *Environmental Planning and Assessment Act 1979* (the Act) and put into effect adopted strategies. It is a legal instrument that gives effect to where and how places should be developed or protected. It includes a myriad of functions such as land zones, development standards, implementing state, regional and local policy outcomes, reserving land for open space, protect vegetation and heritage significance.

Changing an element of a citywide LEP is varied by nature. PPs address changes such as:

- Implementing long term strategy in a Local Housing Strategy, or Local Strategic Planning Statement.
- Putting into place an Affordable Housing Contributions Scheme, an incentives policy or similar, to better address objects of the Act.
- Applying new information such as better flooding information.
- Accommodating new uses such as 'manor house' or unintentionally excluded uses.

- Reducing lot size minimum or increasing height limits.
- Responding to a proponent's request to change the plan to accommodate a landowner who wants to add new possibilities to their land which is almost exclusively for financial gain to that proponent but can be beneficial to the broader community.

The paper discusses a need for PP process consistency. But a PP for one purpose, is not like another, and dictating consistency in assessment is unnecessary and problematic.

The new Local Environmental Plan Making Guideline December 2021 (LEP Guideline) categorises key PP types. This is refreshing and an effective way to recognise and cater for these differences. However, the categories could potentially recognise a PP's purpose.

### **Issues with the Current Framework – Transparency and trust**

CN agree there is room for greater accountability and transparency including ensuring the community understands the processes and roles involved. Terminology could improve by recognising the vast differences between the types of PPs with categories that recognise the intent and impact of the PP. A PP for the public interest that aligns with strategic planning directions and objectives is a very different request or intent than a request to change a long-term plan to accommodate the timing of a proponent's interests in speculation.

### **Issues with the Current Framework – Council Resourcing**

CN has minimal PPs initiated due to out-of-date strategy. This is supported by the strategy in the Greater Newcastle Metropolitan Plan, Hunter Regional Plan, and integrated regional planning framework. Council resources are best placed in keeping strategy up to date and ensuring plans reflect any change in strategic direction. Implementing state changes could be improved with forewarning that enables councils to include such change in workplans.

State agencies such as the Heritage Council of NSW or NSW Environment, amend councils' Standard Instrument LEPs as part of their projects when changing the listing of a heritage item from local to state (for example) or altering the boundaries of a national park.

### **Issues with the Current Framework – Recognition of proponents**

The paper states current legislation does not acknowledge private proponent initiated PPs. Legislation should not go into this detail. The paper states private proponents want:

- To have their role acknowledged
- Greater access to state agencies
- Clearer, more consistent timeframes
- Intervention if councils delay decisions or reject PPs consistent with strategic plans.

If a citywide LEP is unnecessarily restrictive and does not reflect the long-term strategic directions of the relevant regional and metropolitan plans, such expectations are justified. This should be identified as a special case and treated differently. Citywide LEPs should not be assumed to be incorrect, and so trigger a system change. Where citywide LEPs are outdated, the DPE could assist with the long-term strategy rather than limit all PP processes.

DPE's current guideline recognises proponent initiated PPs. Councils undertake PPs acknowledging the intent is to change a long-term environmental planning instrument which goes beyond the interests of a proponent. A private proponent led PP usually has a narrower focus to that of the council's strategic plans and community interests.

## Issues with the Current Framework – State agency input

The paper says State agencies prefer early involvement in the process. This is supported however in practice agencies are often reluctant to be involved prior to lodgement if it means there will need to be further consultation later. Early agency involvement can be problematic, as with a lack of certainty (particularly where there are multiple issues), it can often mean additional input which is timely and costly. For example, a transport study assessing traffic impacts needs a proposed residential population, but that might require clarity on other issues such as biodiversity or flooding. This is where the process becomes iterative.

Stakeholders reported engagement with agencies as a significant pain point and CN does experience this. Early consultation for a high-level assessment is not common practice for agencies. They would need to be resourced and involved in the proposed reforms to make positive change.

## PART B – THE PROPOSED NEW APPROACH TO REZONINGS

### New terminology

CN support the aims to remove duplication and clarify roles, with the following exceptions:

Changing the terminology for PP to 'rezonings application' is strongly opposed.

The term 'rezonings' was used when PPs were generally changes to zoning plans, before the [Standard Instrument \(Local Environmental Plans\) Order 2006](#) required councils to include controls such as height of buildings, lot size and floor space ratio into citywide LEPs.

In urbanised Local Government Areas (LGAs), rezonings are infrequent, and other controls are amended more often.

The term 'application' encourages misunderstanding and unrealistic expectations.

It is unusual to streamline 'applications' to adjust legal instruments. 'Rezoning application' is inappropriate and undermines strategic planning. CN supports current terminology of a PP as a 'request' to council to review whether their LEP is appropriately facilitating its adopted strategies or should be amended to achieve a better outcome as proposed.

The paper says it is confusing that a PP Authority (PPA) can be a local plan-making authority (LPMA). This is when a PP is of a minor or uncontroversial nature. It allows the PPA to finalise a PP if the Minister grants delegations. This seems straight forward. The discussion implies councils amending their own plans is confusing and questionable. We don't believe this is the case, as it is done under the objects of the Act and only possible with the Minister's consent.

Table 1 of the paper sets out new terms for new roles which elevate the proponent led PP. The paper states proponent led PPs are not recognised. The LEP making guideline refers to the proponent many times and the planning portal allows proponents to lodge PPs.

The new approach seeks to formalise the private proponent's role, presumably via the Act. This includes increased responsibility in the management of PPs by private proponents, such as direct consultation with agencies, excluding councils.

CN has significant concerns about the level of ownership provided to private proponents in the proposed new approach. These concerns are detailed throughout this submission. CN questions affording additional responsibility to private proponents who have the potential to gain significant benefit via the PP process, which may not include wider benefit to the community or be consistent with the community's vision for land use embodied in adopted local strategies. This is problematic if the PP is in advance of infrastructure planning and provision. Removing PP process responsibilities from local government and transferring these to private proponents undermines strategic planning decision making that represents the local community.

## **New categories**

Categories are an appreciated improvement and have potential for more application. They could determine different process paths rather than timeframes. For example, when there is minimal room for public input, or a decision is already made by state government. A special category with a highly streamlined process should be created for a PP that implements state decisions, such as the dedication of a national park, or to declare a state heritage item. PPs with no real potential for community input take unnecessary time and resources and are confusing to the public during exhibition periods. Ideally, state agencies responsible for a project requiring an LEP change, would take on the PPA role, notifying council of the change.

Categories should recognise intent, strategic outcome, likely local concern, and any state implications. For example, some site specific PPs are extremely complex with an array of interplaying legislation, and these should be in the complex category (not standard due to being site specific). Similarly, a highly contentious piece of land of importance to the community like a foreshore area, park, or land used for gathering should fall into the complex category rather than standard. New evidence or legislation coming into play should mean a PP's category can be revised.

## **New timeframes**

CN notes the new timeframes vary from the untested timeframes introduced in December 2021. The new approach changes the system by imposing rigid timeframes, and this is disappointing. It does not consider the often-iterative negotiation process that while working through a private proponent's request, also explores options for a PP to better balance competing issues or to better meet broader strategic direction. Private proponents may not be open to such discussion if councils have so little leverage in the management of their citywide LEPs.

Sufficiency of proposed scoping assessment timeframes relies on the initial adequacy of the information submitted. This should include a high-level strategic merit assessment that enables rejection of a PP or the potential to work with the private proponent to develop an outcome that could be more strategic and still meet their needs. The new approach will encourage little discussion and collaboration.

Issues may arise at different stages of the process (i.e., after a category is established) when a PP of a minor nature becomes more complex over time, such as where legislation changes, or unknown land characteristics add complexity to a matter (e.g., Biodiversity and Bushfire).

The paper states the introduction of categories "gives all parties certainty and consistent timeframes, fees and information requirements". The proposed timeframes may lead to time savings, but this may be at the cost of good strategic and site-specific planning outcomes that involve more community collaboration. The rigid nature of the proposed timeframes combined with the categories' limits, reduce the potential of the process. Councils currently work with proponents to form a PP that meets the private proponent's needs and meets local and State strategic direction.



## **New roles – Proponents**

The proposed new roles include new responsibilities given to private proponents. CN understands this approach aims to relieve councils of certain tasks. However, this will have significant impact on important parts of the assessment process that will be outsourced to proponents that may not be willing or able to complete the whole process.

It also ignores the broader local context that a citywide LEP operates within. In addition, CN raises the following:

- PP strategic alignment should be prioritised, particularly where the timing supports local and regional directions, and needs, regardless of who initiates them.
- Excluding councils from early agency input, and scoping prior to PP lodgement and exhibition excludes local knowledge and the context that citywide LEPs operate within.
- The new approach to exhibit PPs and notify councils via the planning portal, aligns with State significant development (SSD). CN found when providing comment on SSD applications that exhibition periods are insufficient for internal referrals and this would similarly hinder council in forming a position on major PPs. This could be addressed by involving councils in the scoping stage of all PPs, reducing potential future delays following public exhibition.
- When council is not the rezoning authority, it is unclear if DPE, private proponent, or council respond to PP exhibition enquiries. Councils are likely to bear the brunt of enquiries.
- Experience (via SSD process) found proponent-led consultation can result in reduced community reach or instances where community submissions are not properly addressed.
- The likely reduction of community input in the plan making processes due to confusion and inconsistency when PPs are exhibited without strategic merit.
- Likely disparity between assessments of a PP's consistency with endorsed strategic plans by private proponents and council.
- Proponents managing public exhibition of PPs creates the impression that the proposal is not a request to council to review whether the LEP is appropriately implementing a strategy, but rather an applicant applying to amend the LEP "as of right" in absence of consideration of the strategies that have shaped the LEP.

## **New roles – Councils**

CN supports greater autonomy for councils in certain situations. This needs to be reinforced by enabling early strategic merit assessment, otherwise it is likely to put unacceptable pressure on councils with potential appeals. The following points are offered:

- Removing DPE involvement for certain PPs has merit particularly if based on a PP's intent rather than the proponent.
- Support minimal DPE involvement in local matters, such as mapping alterations, listing local heritage items and strategically consistent 'site specific' (or clause specific) matters.
- Gateway determination removal is supported for some PPs as it allows councils to progress applications quickly but not all PPs. Gateway determination could be triggered at a certain scale, like that triggering the Joint Regional Planning Panel involvement.
- Councils should have the opportunity to call on DPE to assist when determining a PP's consistency with a district or regional plan for larger scale or more controversial issues with impacts beyond local boundaries e.g., a PP to establish a health services precinct.
- Councils have a role in scoping stages and meetings regardless of the rezoning authority.
- The exhibition period is insufficient for councils to provide comment on a PP, considering council reporting, and councillor briefings. A PP is reported to Council before it is lodged

on the Planning Portal. Timeframes should incorporate councils' reporting timeframes to provide comment on PPs where council is not the rezoning authority.

- The new approach is likely to lead to council receiving community enquiries on a PP without strategic merit, or before council has formed an opinion (where not the rezoning authority).
- Council has networks and processes (via Community Engagement Plans or similar) to consult, it is unclear how local communities will be involved in PPs (when not the rezoning authority).
- Unnecessary impacts on council resources due to exhibitions of speculative PPs without strategic merit via enquiries, media etc. and post exhibition.

### **New roles – Public Authorities**

A PP initiated by a public authority will be lodged with and determined by the DPE rather than council, with responsibilities to negotiate voluntary planning agreements (VPAs) taken from councils. This raises the following points:

- Councils should be included during the scoping stage for all PPs.
- Concern for a consultation role only for councils on large scale redevelopments by public authorities, such as Land and Housing Corporation renewing estates/ landholdings, state led projects inconsistent with council plans and council and community aspirations.
- The draft Design and Place SEPP Urban Design Guide discusses collaboration as a key to good planning outcomes, but the new approach reduces opportunities for collaboration between councils, State agencies, DPE, and the community.
- CN raises issue with the legislative and process uncertainty for VPA negotiations with public authority proponents. It is unclear how DPE as rezoning authority can negotiate VPAs on Council's behalf. Preference is to retain a decision-making role in the assessment of public authority PPs.
- Public authorities' involvement early in the process is a positive change but agencies need to be appropriately resourced and versed on the new approach.
- The paper asks if a central body to coordinate agency involvement would be beneficial. With a clear process this would help balance agency input for more complex projects.

### **New steps**

- CN strongly supports the new scoping step involving government agencies and clarifying that lodgment begins after the scoping report is also supported.
- The scoping stage should include a strategic merit assessment.
- Support early public scrutiny but exhibition prior to strategic merit assessment is likely to mislead expectations and encourage high levels of investment in a proposal that may not have merit. This is supported where exhibition is held after any changes to the PP.
- Categories based on the PP initiator to determine process is limiting. The process should recognise community benefit and strategic direction, over more singular gains. A private proponent's PP to increase height in line with strategic direction and introduce affordable housing differ significantly to a greenfield subdivision that is misaligned with strategic direction, may underutilise land and compete with infill housing. Similarly, a council initiated PP to enable infill, in line with council and State strategic direction, is very different from a council initiated PP to reclassify land from community to operational.
- Support the intent to cater for large PPs but requiring a new contributions plan with a PP is not always necessary as the additional demand and capturing can be more appropriately and adequately addressed through a VPA at times.



- Clarity is needed for 'a conflict of interest', for a major PP council would seek land/assets to be dedicated, potentially with a contribution to meet the needs of the added population.
- The new approach should be clear on when owners consent is required.

### **New steps - Lodging stage**

- One week for councils to undertake an adequacy review of a proposal is insufficient, particularly for Category 2 or 3.
- It is unclear if it is required in this stage to check whether the studies have been provided, or whether the required studies are of a quality suitable for exhibition/conduct a merit assessment based on the available documentation.
- CN suggest 10-15 business days as more appropriate, at a minimum. This stage should not be rushed with all appropriate documentation available and suitable for exhibition. This will reduce potential delays later in the process.
- Councils should have opportunity to refuse a PP at lodging/scoping stage if strategic merit is not shown, reducing speculative PPs, and unnecessary costs and community concern.
- Councils should have opportunity to seek a DPE review in the event council intends to refuse a PP proceeding to exhibition stage, particularly for impacts that extend beyond LGA boundaries. A one week lodging stage is insufficient for this.

### **New steps - Exhibition stage**

- The Discussion Paper states the new process will "improve the level of community engagement in strategic planning and the rezoning process by making it more accessible and simpler to understand". It is unclear how this will occur with councils not managing the exhibition stage or with a PP lacking strategic merit being placed on exhibition.
- Councils are best placed to manage exhibition and post-exhibition stages of planning PPs, as representatives for their community.
- Potential integration with the Planning Portal and the Service NSW app is supported – making it easier for the community to provide comment.
- Currently, community members and councillors request public briefings on complex or controversial PPs. Will DPE/private proponents hold such briefings and who will respond to enquiries during the exhibition period?

### **New steps - Assessment and finalisation**

- Local Planning Panel's and DPE's roles are unclear in this stage. This might work better prior to exhibition, with comments from the Panel attached for information, allowing the community and councils to make more informed decisions on PPs.
- Proponents may not address all community concerns, make minor amendments, and then rely on the new appeals pathway to get a proposal approved via the LEC.
- The process is unclear on whether amended PPs will need to be re-exhibited, and how the community would be kept up to date on any changes to PPs.

### **New steps - Information requests**

Enabling information requests only during the scoping stage does not consider emerging instruments, whether council led or by the NSW Government. Further information requests are a highly important part of a PP demonstrating strategic merit.

### **New fee structure – assessment fees**

The introduction of a fee for the scoping stage is supported. Success of the proposed new approach largely relies on the success of the scoping stage, so attracting fees for the level of input and coordination required by the rezoning authority is supported.

The proposed fee option 3: Fixed and variable assessment fees, offers the potential for actual cost recovery. This is supported; however, CN raises concern for how this will operate in practice, including administrative requirements to justify additional assessment fees.

The opportunity to recoup costs if a portion of the assessment is outsourced by the rezoning authority i.e., assessment of a technical aspect of a proposal. Regardless of which fee structure is pursued, it is critical that each Council can set appropriate fees based on their operational needs (whether fixed or hourly rates).

Clarity is sought on how public exhibition expenses are funded. CN recommend separate public exhibition fees be levied, based on the expected level of consultation for each PP Category. However, PPs frequently evolve and increase in complexity during the assessment process. Having no means to factor change into the process is likely to lead to difficult and time consuming negotiations between council and the proponent at the pre-lodgement stage.

### **New fee structure – planning guarantee**

The discussion paper offers little rationale for the inclusion of a UK style planning guarantee model. CN oppose a planning guarantee model for the following reasons:

- The intent appears to aim to incentivise quick assessment timeframes at the risk that rushed assessments may likely lead to PPs being finalised without proper assessment to avoid refunding of fees. If a council is unable to assess a PP application in a timely manner, the reasons for this should be examined and addressed prior to any further consideration of a planning guarantee model.
- A cost- benefit analysis of the UK model could be provided to better support this model.
- The UK model does not seem to apply to the equivalent of a PP when used in the UK and the application to a DA process is not a reasonable comparison.
- This model places the onus on councils to perform while failing to hold private proponents responsible for inadequate or insufficient PPs following the exhibition and stakeholder consultation stages.
- If work is completed by council on a stage, there will not be fees to refund, regardless of the timing. Various factors impact timeframes, and it is simplistic to assume it is entirely within a council's control such that it should pay a penalty and refund fees. In fairness, state agencies and proponents should also be required to pay penalties if they do not adhere to timeframes in providing comments or responses to information requests. These also impact timeframes.

## **PART C: NEW APPEALS PATHWAYS**

Locally elected councils are best placed to make planning decisions on amendments to our citywide LEPs. However, joining a discussion for change is appreciated and CN suggests an alternative to LEC appeals such as the LEP Planning Panel, Independent Planning Commission or similar. CN supports avoiding drawn out mediation and limiting PP amendments during the appeal process. An efficient process focusing on strategic merit and planning issues, should exclude opportunity for significant and ongoing amendments.

### **Private proponent appeals**

The new approach changes and relocates the existing appeals pathway to the end of the process. For some situations CN supports shifting the appeals pathway to the end, but strongly opposes using the LEC Court merit appeal process. This should be removed from the proposed process. It discourages councils from working with private proponents for a solution that will meet both an individual's interests and longer term community interests.

CN questions having a 'merit' appeal. It is not clear what the LEC would be considering. For example, determining whether an out of centre commercial development can be physically accommodated on a site, is not the primary consideration in determining whether the site should be rezoned to allow the development. The important consideration is whether the location and scale fits within the council's strategic planning for employment lands. CN has concerns the LEC may review councils' strategies to determine 'correct' legal interpretation of their intent. Councils have often spent many months developing local strategies with their communities, they are written in plain language and councils are best placed to determine whether a PP is consistent with their intent, it is not a matter for the Courts.

CN is concerned that councils' decision-making powers for PPs is removed to the LEC. If this appeals pathway is included, councils must be given access to the appeal process when not the rezoning authority. CN considers issues raised by councils would be better dealt through a system where council can raise any issue at the scoping stage, provide formal comments during the exhibition and work with DPE and or the proponent during the finalisation period (much like the current system).

Aligning the PP process with that of DAs is unreasonable. Appeal rights for a permissible land use is not comparable to those for an illegal development. Having appeal rights to an unfavourable decision or timing to change a citywide LEP is similar to allowing individuals change state policy for a favourable investment, with the option to challenge it in court. It encourages private proponents to take a gamble, costing councils significant public money, better spent on planning, infrastructure, and services for communities' longer term gains.

Enabling private proponents appeals due to lapsed timeframes, is like a deemed DA refusal. This is opposed, it does not recognise a private proponent failing to properly address exhibition or State agency concerns which can derail timeframes. If rezoning authorities are to be held accountable for processing times, private proponents should be held accountable for incomplete or speculative PPs that cannot be justified by strategic merit. Current DA LEC merit appeals allow applicants to amend DAs during the mediation process. While this might be appropriate for detailed design issues, the nature of PPs is different.

Defending decisions in the Court is costly and resource intensive. NSW Local Government approximate \$100,000 per appeal, for current appeals. This would divert needed planning resources to defending matters in court. The uncertainty of long protracted court appeals is also not ideal. Resolving complex matters inherent with some PP in the courts will stretch the resources of the courts and councils adding costs to the community, using much needed resources, and adding to timeframes. Similarly, is DPE sufficiently resourced to appear in the LEC for PP as the rezoning authority?

CN question whether the aim to reduce assessment time and costs for proponents would be achieved if it included costs and timeframes to appeal to the LEC. PPs referred to the LEC and the time taken should be monitored and reported.

### **Public authority appeals**

A disadvantage of removing the gateway determination process is losing the gateway review process, important to councils pursuing strategic planning outcomes where state-wide policies do not align with local strategic planning priorities. A public authority appeals pathway should be provided, preferably a non-judicial appeals pathway.

## **PART D: IMPLEMENTATION**

CN would need to amend the Newcastle LEP Amendment procedure and related practices to support the proposed new approach for PPs, requiring an implementation team to update our system including automatised events/steps, templates, finance aspects and filing.

The planning portal would also need significant change to support the approach and training. There are concerns around resourcing, training, and official filing (for GIPA requests/ potential appeals). Strategic planners will require training to learn how to provide evidence in court as DA / private planners do.

The number of changes to the Act and associated regulations anticipated, warrant a staged approach for councils to ensure the intent of those changes is achieved.

### **Relationship with other reforms**

CN maintains planning system reform to improve efficiencies must also achieve the best possible outcomes for our community. The numerous planning system reforms underway are interrelated making it difficult to grasp or comment on the true impacts or outcomes they will have collectively on the planning system, let alone the ability of councils to implement them.

CN has seen the following significant reforms, updates and amendments added to our year's work plan in the past 12 months:

- Draft Hunter Region Plan 2041
- Complying Development in Business and Industrial Zones reform
- Adding resilience to Local Strategic Planning Statements
- New Approach to Rezoning
- Consolidation of State Environmental Planning Policies (SEPP)
- New Local Environmental Plan Making Guideline
- Amendments to EP&A Regulation
- Employment Zone Reform
- Infrastructure Contributions Reform
- Conservation Zone name change
- Design and Place SEPP
- Fun
- Regional Housing taskforce
- Inquiry on the Integrity of the NSW Biodiversity Offsets Scheme
- National Climate Resilience and Adaptation Strategy
- New Housing SEPP and Reform
- Move to Planning Portal for development related applications and Planning Proposals

- Minister's Planning Principles
- New Floodplain Manual
- Revised SEPPs requiring changes to planning certificates and mapping clauses

CN would like to take this opportunity to request a more holistic approach for future reforms that considers the pacing, timing, and ongoing implementation.

For councils, industry, and community to provide insightful input individual reform should include explanation of how they will perform together, and implementation details. Reform could provide an implementation toolkit for councils to support the implementation phase. This will help to manage resources to ensure council's workplans do not suffer.