A new approach to rezonings

Discussion paper

December 2021

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Acknowledgment of Country

The Department of Planning, Industry and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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Introduction

Ongoing reforms to the NSW planning system aim for a 'plan-led' system – an approach that ensures strategic planning is the foundation for all decisions about potential land-use changes.

We will achieve this by strengthening the strategic planning framework within planning legislation, giving greater emphasis to place-based planning early in the process and by addressing specific issues within the administration of the planning system.

Changing the zoning of land or the controls applying to land – referred to in this paper as the **rezoning process** – translates strategic planning into statutory controls. However, the rezoning process has become unwieldy, resulting in weaker planning outcomes, unnecessary delays and higher costs.

We continue to see a large volume of rezonings or changes to land-use controls happening within a process that can be complex and time-consuming. These inefficiencies create opportunities for delays.

As we strengthen strategic planning and place-based planning through ongoing reforms, we expect to see fewer ad hoc, site-specific rezonings that are more likely to cause these inefficiencies. However, we know that we need to improve current processes to optimise the economic and environmental benefits of development within an efficient planning system.

The economic benefits of an efficient and consistent rezoning process should not be underestimated – especially as we recover from the impact of the COVID-19 pandemic. A more streamlined and predictable process will help encourage investment, improve supply and create jobs.

This discussion paper outlines options to reframe existing processes within a plan-led system – whether the rezoning process applies to a review of an entire local environmental plan (LEP) or the assessment of an ad hoc rezoning application.

Land-use zones or controls can be changed by making or amending an LEP or state environmental planning policy (SEPP). This discussion paper focuses solely on the rezoning processes that happen using planning proposals to make or amend LEPs or SEPPs.[1] It does not include state-led rezonings.

Our proposed approach balances the need for a responsive and flexible planning system with the robust processes that maintains good planning outcomes. This new approach aims to support a stronger strategic planning process so that, collectively, we will continue to see great outcomes for people, places, jobs, housing and public spaces by:

- simplifying the rezoning process and minimising duplication
- improving transparency
- improving consultation processes
- reducing processing times
- creating more certainty and consistency
- empowering councils to make decisions on matters important to their communities while allowing the NSW Government to deal with matters where government intervention is beneficial
- giving private proponents control and responsibility for rezoning requests
- improving the quality of planning proposals.

[1] LEPs are sometimes used to amend SEPPs where provisions are site-specific or are specific to a local government area, for example SEPP (Sydney Region Growth Centres) 2006.

The reframing of the rezoning process is part of the NSW Government's Planning Reform Action Plan – a set of structural reforms to create a planning system that is transparent, faster, more certain and easier to use. The reforms include initiatives to:

- improve the planning proposal system and reduce processing times by a third by 2023
- establish an appeals pathway for planning proposals to overcome delays and progress rezonings that are consistent with strategic planning.

As part of the action plan, we have consulted with industry, councils and the planning profession on how best to address the current backlog of planning proposals and set the direction for improvements. From this work, we've established several initiatives to optimise the existing system. This includes the release of the new Local Environmental Plan Making Guideline (LEP Guideline), which implements several process improvement actions including:

- best-practice process and procedures to assist in the timely assessment of planning proposals
- targeted pre-lodgement services
- clear benchmark timeframes for steps in the process
- categorisation of planning proposals to inform timeframes as well as information and public exhibition requirements
- clearer roles and responsibilities throughout the process.

Through the processes outlined in this discussion paper, we're looking to consolidate and expand on these initiatives into the future.

Getting involved

We encourage feedback on the new approach to rezoning and the policy responses and options set out in this paper.

We have set out a proposed new approach by giving information on:

- the background, case for change and opportunity for reforms (Part A)
- the proposed new approach (Part B)
- the proposed appeals process (Part C)
- implementation (Part D).

Get involved by visiting www.planningportal.nsw.gov.au/rezoning-new-approach and provide your feedback by **Monday, 28 February 2022**.

From the feedback we receive, we will refine the rezoning approach with a view to implementing change in 2022.

We will work with councils, the development industry and state agencies to support the transition to a new approach. We will also prepare guidance material and provide training and ongoing policy support.

Before we begin: key concepts and terms

One of the aims of this discussion paper is to create a system that better aligns the rezoning process with strategic planning. Strategic planning guides long-term planning for the state's regions, districts and local communities, using a longer-term view to clarify what might happen, when, why and where.

Strategic planning requires a broader consideration of how best to shape a sustainable future for a region, district or local government area (LGA). The process guides the decisions that planning

authorities make about land use and development, environmental sustainability and the integration of transport and infrastructure.

By going beyond individual development proposals, strategic planning can capture an agreed vision for the future of an area, drawing from evidence about the attributes that makes places unique, the characteristics to retain and enhance, economics, the changing climate and the aspirations that people have for their community.

Higher-level strategic plans apply to:

- the 10 regions of NSW, through regional plans
- Greater Sydney, through the Greater Sydney Region Plan
- the 5 districts of Greater Sydney, through district plans that align with the Greater Sydney Region Plan.

These plans inform councils' local strategic planning statements for each LGA. Councils also develop local housing strategies or other strategies to further focus on requirements for their area.

Strategic plans are implemented through environmental planning instruments such as SEPPs and LEPs (supported by development control plans – DCPs).

The Minister for Planning and Public Spaces recently released the Minister's Planning Principles which will guide strategic and land use planning and strengthen the place-based approach.

The NSW strategic planning hierarchy is shown in Figure 1.

Refer to the list of regularly used terms or find out more in the Community Guide to Planning.

Regularly used terms

- **Development control plans** (DCPs) provide more detailed guidance for development.
- ***Environmental Planning and Assessment Act 1979*** (EP&A Act) is the primary planning legislation in NSW.
- **Independent Planning Commission** (IPC) makes independent decisions on complex development proposals of state significance and provides advice.
- **Land and Environment Court** hears merit appeals and process challenges between planning authorities and individuals or organisations.
- **Local environmental plans** (LEPs) set out rules to regulate development and land use in local government areas (LGAs). They are made by the Minister for Planning and Public Spaces or a council.
- **Local Environmental Plan Making Guideline** (LEP Guideline) provides a detailed explanation of the steps of the LEP-making process to assist and guide councils, communities, state agencies, proponents, and practitioners.
- **Minister's Planning Principles** guide strategic and land use planning and inform the development of planning policies. The principles seek to achieve outcomes across nine policy focus areas: planning systems; design and place; biodiversity and conservation; resilience and hazards; transport and infrastructure; housing; industry and employment and resources and energy.
- **Section 7.11 Infrastructure Contributions Plan** sets out how councils will levy contributions towards the cost of providing local infrastructure and lists a schedule of that infrastructure.
- **Section 9.1 ministerial directions** (s. 9.1 directions) provide broad policy directions that guide plan-making in the broad categories of employment and resources; environment and

heritage; housing; infrastructure and urban development; hazard and risk; regional planning; local plan-making and metropolitan planning.

- **Standard Instrument** is the basis for preparing a new LEP using standard zones, definitions, clauses and format.
- **State environmental planning policies** (SEPPs) allow for a consistent, state-wide approach to development, infrastructure, industry or other environmental or social matters, or they may apply to state-significant development. They have a wide scope and can apply to the whole of the state or a particular area. The Governor of New South Wales makes them on advice from the Minister for Planning and Public Spaces.
- **State-led rezonings** focus on precincts where there is a strategic imperative for the Department of Planning, Industry and Environment to lead the process, including places that benefit from current or future city-shaping infrastructure or investment, and where we can create great public spaces in collaboration with councils and communities. These rezonings generally occur under a SEPP.

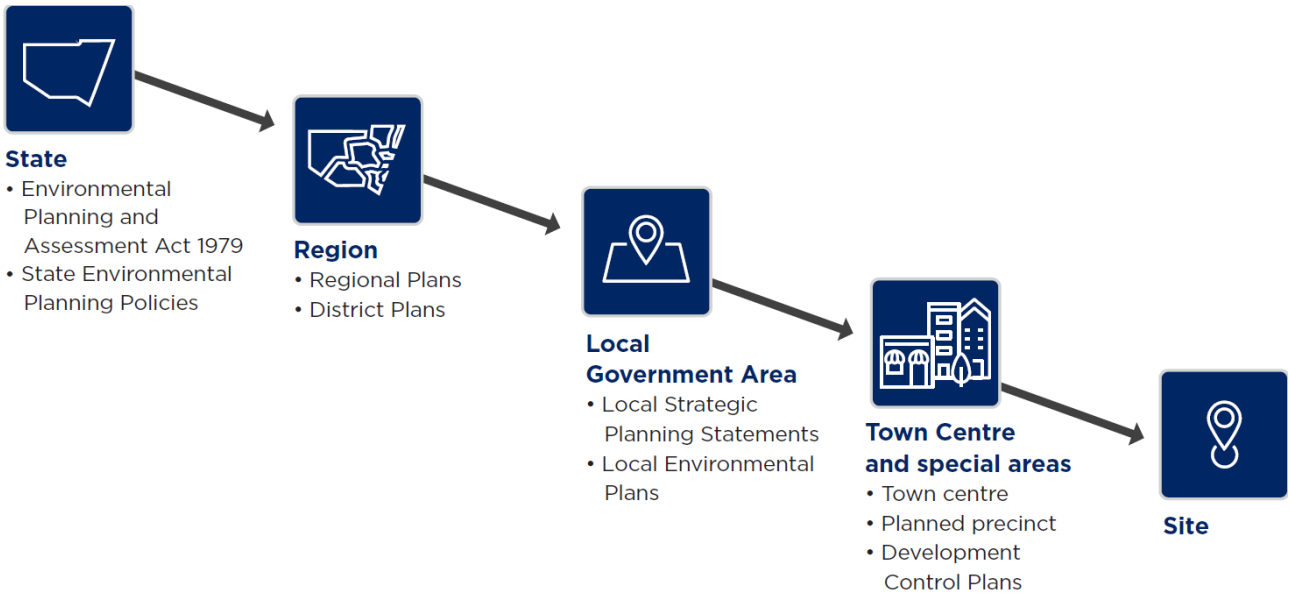


Figure 1. Strategic planning hierarchy

Part A: Background

The process today

Local environmental plans (LEPs) set out how land can be developed and used in a local government area through zoning and other development controls. They are the legal embodiment of planning controls necessary for strategic planning ambitions.

Land-use zones illustrate the objectives for that area – what land uses are allowed, and the approvals required. Zone types range from residential and commercial to those for industrial uses or open space.

Along with zoning, LEPs also contain development standards, specific considerations and site-specific controls such as additional permitted uses.

Rezoning and planning proposals

There are many reasons why land might need to be rezoned or other changes to a LEP might be needed. This might be to respond to strategic planning – for example, if new transport infrastructure is being developed, it makes sense for the area around the transport hub to include higher density housing or shops and services – or it could be to change a zoning to allow for new development envisaged in a local strategic planning statement.

Rezoning occurs when an LEP is made or amended – whether a zone and its objectives are amended, planning controls are amended or an LEP is reviewed. Rezoning occurs through a planning proposal that sets out the intended effect of the rezoning, or the new LEP, and the justification for the proposal.

A council or private landowner can initiate the rezoning process. Rezonings initiated by private landowners are often called ‘spot rezonings’ or ‘proponent-initiated planning proposals’ and must be supported by the council before they can progress further.

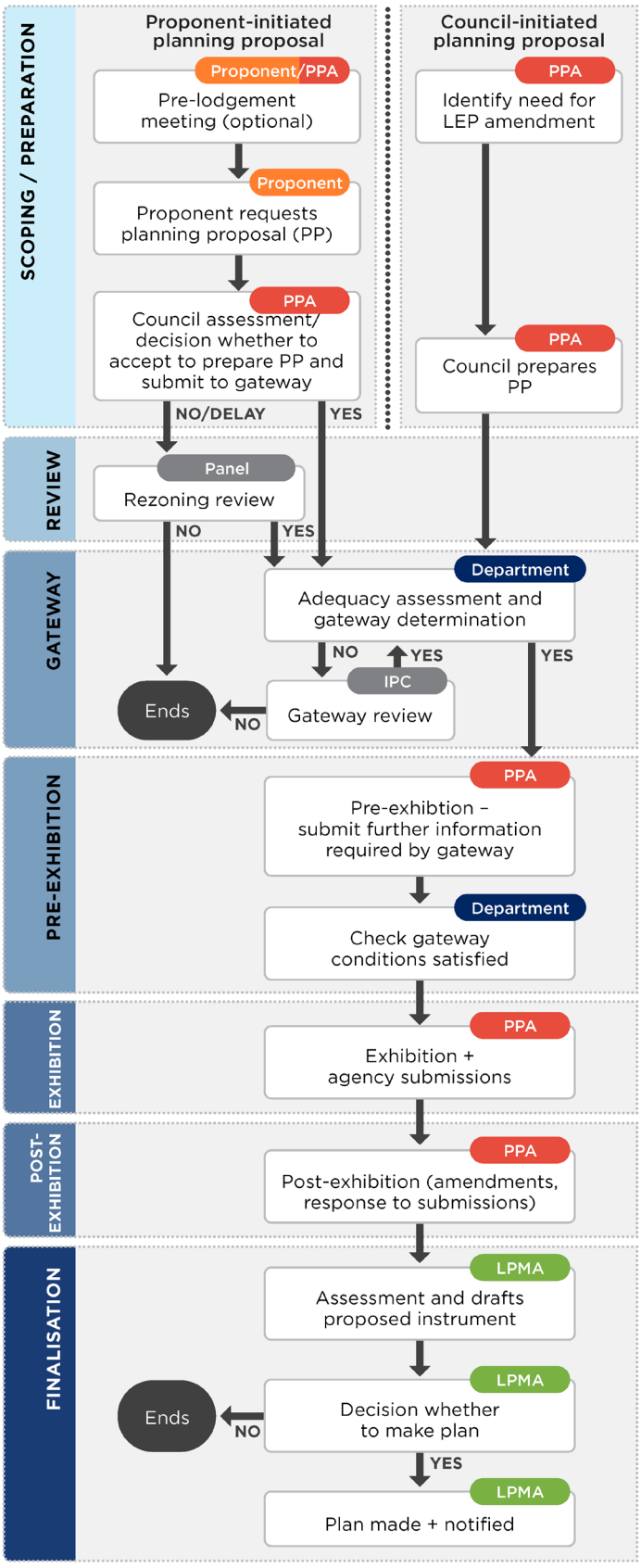
Councils, as the planning proposal authority (PPA), then submit planning proposals that they support to the department for gateway determination.

Gateway determination

The gateway determination ensures there is sufficient justification for a planning proposal to progress. It involves an early check on whether it is consistent with the strategic planning framework and relevant section 9.1 ministerial directions (s. 9.1 directions).

Gateway determinations are issued with conditions to guide the PPA for the next stage of the process: the exhibition of the planning proposal, community consultation and, if required, consultation with relevant state agencies. These conditions form the regulatory context for the preparation, exhibition and finalisation of the rezoning.

After council manages this process, the local plan-making authority (LPMA) – the minister, or a delegate, or the council – finalises the rezoning by drafting and publishing the new or amending LEP, along with maps, on the NSW Legislation website, www.legislation.nsw.gov.au.



PPA: Planning proposal authority (e.g. council)
LPMA: Local plan-making authority (e.g. the Department or council)
IPC: Independent Planning Commission
Panel: Regional planning panel, district planning panel or Independent Planning Commission

Figure 2. Current rezoning framework

The need for reform

As part of the Planning Reform Action Plan, we've talked to many stakeholders to understand how best we can reduce the processing time for planning proposals; increase quality, place-based outcomes; and establish a workable appeals pathway.

Rezonings need 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.

Engagement process

Our engagement process included:

- nine workshops, attended by 63 councils
- survey feedback from 75 councils
- internal workshops and meetings with state agencies
- presentations to industry representatives
- meetings with regional planning panel members
- one-on-one meetings with councils and industry, where required.

We also worked through working groups including councils, industry and Land and Environment Court users – as well as state agencies, and regional and district planning panels – on the initiative for a new appeals pathway.

Time and complexity

Stakeholders told us the planning proposal process takes too long, is overly complex, and needs more transparency and accountability. This is backed up by the recent work of both the NSW Productivity Commission and Australian Government's Productivity Commission:

- The NSW Productivity Commission found the NSW planning system has become too complex and inefficient. It has recommended the need to reduce red tape and complexity.
- The federal Productivity Commission found that the rezoning process can be time-consuming, costly and uncertain. It recommended shorter timeframes for planning proposals (while maintaining integrity) and a policy to avoid spot rezonings (the rezoning for a specific parcel of land), or to remove redundant requirements or apply statutory timeframes for decisions where they cannot be avoided.

This feedback is also backed up by the data: it can take several years to finalise a rezoning, with the average end-to-end processing times rising to an average of 114 weeks in 2019. Since 2019, the department has worked to clear the backlog of older planning proposals and reduce processing times, which was down to an average of 89 weeks as of 30 June 2021.

Delays and complexity can be attributed to:

- **Timeframes –** There is a lack of accountability and certainty about timeframes, including for the exhibition process and agency submissions. For example, legislation prescribes timeframes and appeal rights for the assessment of development applications, but there is no equivalent legislative requirement for planning proposals.
- **Duplication of assessment –** Planning proposals often go twice to a council meeting (before gateway and before finalisation), and twice to the department (at gateway and finalisation).
- **Gateway process –** The gateway process can be onerous and is sometimes unnecessary, resulting in delays and transparency issues, according to some councils. We heard an idea to remove the gateway process for regional areas to speed up the assessment of projects that can add immediate value.
- **Finalisation stage –** Delays in the finalisation stage, particularly for the drafting of the LEP changes and mapping stages, are a concern for councils.

Inconsistencies

There are inconsistencies in documentation requirements, the availability and rigour of pre-lodgement processes, and consultation requirements before the gateway determination. We also heard that stakeholders find inconsistencies in assessment requirements, how 'strategic merit' is interpreted, and the roles and responsibilities of different government authorities.

Early documentation can be inadequate, as the requirements or documentation that must be submitted when lodging a planning proposal are unclear – the existing planning proposal guidelines[2] are not interpreted consistently. This adds time as additional information is often required. Conversely, documentation requirements for the assessment process can be onerous, too detailed and should instead be tailored to the scale and complexity of the planning proposal.

These issues could be addressed at meetings before lodgement, yet these are not mandatory. When offered, they vary in formality. There is no obligation for proponents to ensure their proposal is consistent with pre-lodgement advice.

Advice may also differ, given the different interpretations of strategic merit. A planning proposal should have strategic merit, yet there are mixed views about how to justify this and how a council will measure it before the planning proposal goes to gateway determination. Some councils use their own guidelines, while others test for strategic and site-specific merit.

We also see varied approaches to community consultation before the planning proposal goes to gateway determination. While it is not required, some councils will consult multiple times throughout the process, which can keep the community informed but is duplicative and extends timeframes.

Roles and responsibilities are not clear, so there is uncertainty about who is accountable for updating mapping and other issues.

Transparency and trust

Greater accountability and transparency are required for all parties involved in the planning proposal process. The community must be engaged in the strategic planning process, including how planning authorities consider and interpret the drivers and need for change. There is a perception among the community that, with considerable work completed before the gateway

[2] Planning Proposals: A guide to preparing Planning Proposals (December 2018)

determination, decisions are already made. Councils also want better communication with the department, particularly before planning proposals are exhibited and finalised.

Review mechanisms, such as planning panels, are not widely known and not clearly defined in legislation.

Transparency and trust issues arise when communities see a council reject a planning proposal that is later approved through the review process.

Council resourcing

Some councils have told us they do not have adequate resourcing and funding for strategic planning, assessing and progressing planning proposals, or for taking part in court proceedings. This means strategic planning documents may not be as detailed nor as up to date as they could be. Spot rezonings are then used to fill the gaps to provide land for housing, jobs or public spaces.

Councils have varying human and financial resources, which can make processes longer and inconsistent. There is limited funding for council-led strategic studies or planning, or for any additional training, education sources or templates. Councils, particularly in regional NSW, would welcome more support from the department through the planning proposal process.

Local decision-making is essential – council autonomy is important to both councils and their communities. Councils want greater empowerment to reject planning proposals in early stages of the process before doing a full assessment, and they seek a greater decision-making role. This is especially the case when a proposal is inconsistent with local strategic planning.

Recognition of proponents

Existing legislation does not directly acknowledge proponent-initiated planning proposals – instead, councils undertake these proposals on behalf of proponents. Around 45% of all planning proposals finalised between July 2018 and June 2020 were proponent-initiated. Review processes for proponents where there is a delay or proposals are rejected are only available the early stages of the planning proposal process.

Proponents want reform that acknowledges their role, provides greater access to state agencies and gives clearer, more consistent timeframes. Industry groups have highlighted the need for a circuit breaker when councils delay decisions or reject proposals that are consistent with strategic plans.

State agency input

State agencies would prefer to be involved earlier in the rezoning process, and for the right level and scope of input required to be clearer. They support the need for reasonable timeframes.

Without this early involvement, and potentially because of the lack of clarity, stakeholders reported that engagement with state agencies is a significant pain point. This leads to perceptions within industry that contact with or feedback from state agencies is difficult and that the agencies themselves lack accountability when responding to or resolving issues.

There is a further perception that state agencies are either under-resourced or reluctant to get involved unless the issue directly affects their work. Referrals seem to get lost in the system.

What do you think?

Is this a fair summary of some of the issues within the current framework? Are there any other problems you think we need to address?

Part B: The new approach

Introduction

In response to feedback, we have developed a new approach for rezonings which, with other reforms, could significantly improve the plan-making process.

In summary, the proposed new approach:

- creates a streamlined and efficient process for LEP amendments that align with strategic planning objectives
- sets clear matters for consideration, timeframes and a consistent fee regime to give greater certainty in the process
- allows councils to receive and determine private proponent-initiated LEP amendments, with no or minimal department involvement in assessment
- allows the minister to receive and determine, through the department, other LEP amendments, including those prepared by councils and public authorities
- bolsters the department's role in supporting, monitoring and assisting councils in the process
- requires LEP amendments to go through a mandatory and upfront pre-lodgement process
- shifts all merit assessment processes to after exhibition
- gives private proponents a right of appeal against the final decision.

The new approach has been designed to align more closely with the development application process. In addition to other benefits, we believe making the processes more consistent may increase the number of combined rezoning and development applications, a mechanism which is underused. Concurrent applications bring about greater economic benefits as development can happen more quickly. This approach also gives the community greater certainty as to the type and form of development that will ultimately end up on the rezoned site.

We estimate that the new approach will build on existing timeframe improvements from the last year and result in more time savings, especially for simple rezoning applications that are consistent with strategic plans.

These time savings will mainly happen by removing duplication in who assesses the application and how often it is assessed throughout the process.

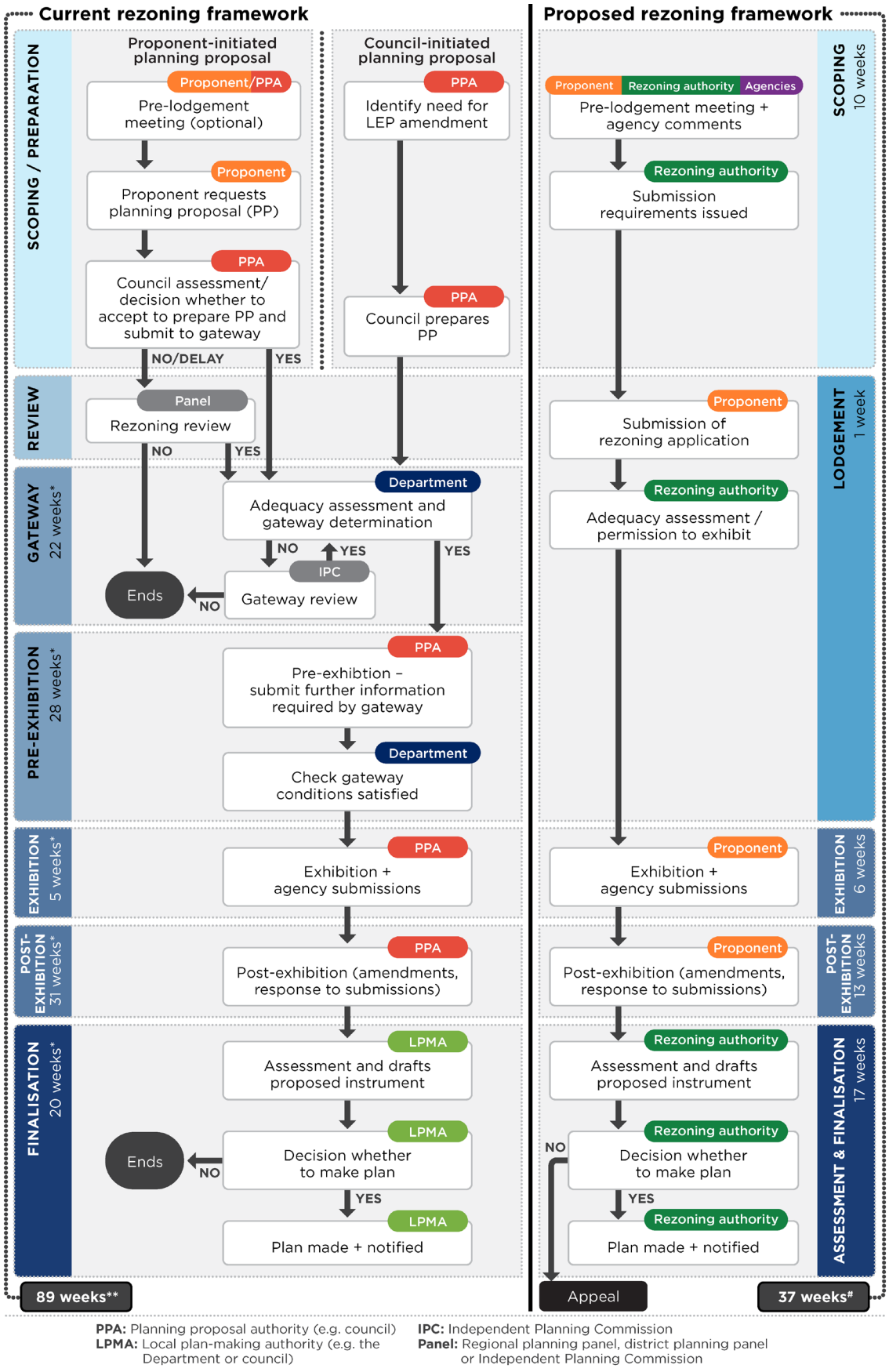


Figure 3. Comparing the current and proposed rezoning frameworks

Key for Figure 3

*Average assessment timeframe for each stage for the period of 1 January to 30 June 2021. There are no timeframes for the scoping/preparation stage (as these are not tracked) or rezoning review (which is optional).

**Reported end-to-end average assessment timeframe for planning proposals (between the gateway and finalisation stages) at 30 June 2021. The average assessment timeframes for each stage does not add up to the reported end-to-end average assessment timeframe.

#Proposed benchmark timeframes for each stage and end-to-end assessment timeframes are based on a standard rezoning application (total timeframe excludes scoping).

New terminology

The new approach begins by clarifying the terms used for planning proposals.

A proponent-initiated application to amend an LEP is currently known as a rezoning request. It is only known as a planning proposal once a council supports it. All council-led processes are called planning proposals.

Our new approach suggests that all these processes should simply be called rezoning applications.

Planning proposals are currently led by the planning proposal authority (PPA), which is usually the council. The PPA is the 'owner' of a planning proposal and ultimately responsible for its progression. The minister[3] is then responsible for making a gateway determination. The local plan-making authority or LPMA (the minister or the council, where authorised) is then responsible for the final assessment and making (or not making) the LEP.

However, the EP&A Act does not directly recognise private proponents or public authorities who can submit a rezoning request to a council and who will often undertake or pay for most of the work to prepare a request.

The interaction between these parties is complicated and leads to duplication. For example, both a council and the minister will assess the merit of proposal at the gateway determination and the finalisation stage. A council can be both the PPA and the LPMA, which can be confusing.

Our proposed new terminology is a shift to a more streamlined process that reflects the roles played in practice.

Table 1. Current and proposed terminology

Current	Proposed	Description of proposed role
Rezoning request/planning proposal	Rezoning application	An application to make or amend an LEP.
• Private proponent (not recognised) • Public authority proponent (not recognised) • PPA ('owner' of the planning proposal, usually council)	Proponent (private, public authority or council)	A rezoning application lodged by a: • private individual or corporation • public authority, including a state-owned corporation • council for changes to their LEP.
LPMA (makes the LEP)	Rezoning authority	The party responsible for assessing and determining the rezoning application. This could be a council or the minister, depending on the type of rezoning application.
Gateway	N/A	Included in the rezoning authority function.

[3] Throughout this paper, references to functions of the Minister for Planning and Public Spaces will often be carried out by the department, as the minister's delegate.

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.

Categorising all rezoning applications during a pre-lodgement process could inform timeframes, as well as information and public exhibition requirements, and fees.

We have developed 4 categories. These will first be applied in the existing process through the new LEP Guideline and, ultimately, as part of the new approach.

Table 2. New categories and descriptions

Category	Description
Category 1 (Basic)	Administrative, housekeeping and minor local matters such as: • listing a local heritage item, supported by a study endorsed by the department's Environment, Energy and Science group • reclassifying land where the Governor of NSW's approval is not required • attaining consistency with an endorsed local strategy, such as a local housing strategy • attaining consistency with section 3.22 (fast-tracked changes of environmental planning instruments of the EP&A Act).
Category 2 (Standard)	Site-specific rezoning applications seeking a change in planning controls consistent with strategic planning, such as: • changing the land-use zone if a proposal is consistent with the objectives identified in the LEP for that proposed zone • altering the principal development standards of the LEP • adding a permissible land use or uses and/or any conditional arrangements under Schedule 1 Additional Permitted Uses of the LEP • ensuring consistency with an endorsed strategic planning or local strategic planning statement • classifying or reclassifying public land through the LEP.
Category 3 (Complex)	Applications that may be not consistent with strategic planning, including any LEP amendment not captured under category 1 or 2. Examples include: • changing the land use zone and/or the principal development standards of the LEP, which would increase demand for infrastructure and require an amendment to or preparation of a development contribution plan • responding to a change in circumstances, such as the investment in new infrastructure or changing demographic trends • requiring a significant amendment to or preparation of a development contribution plan or a related infrastructure strategy • making amendments that aren't captured as principal LEP, standard or basic planning proposal categories.

Category	Description
Category 4 (Principal LEP)	A comprehensive or housekeeping rezoning application led by council, proposing broadscale policy change to the LEP for the whole LGA.

The introduction of categories:

- gives all parties certainty and consistent timeframes, fees and information requirements
- informs decisions about whether council can be the rezoning authority for straightforward rezoning applications where the council is also the proponent
- improves the department's ability to monitor the progress of different types of rezoning applications to identify common roadblocks or opportunities for greater efficiencies.

Table 3 sets out estimated benchmark timeframes for each stage and category of the new approach. This does not include scoping, nor the time between scoping and lodgement required to prepare the application. These are maximum timeframes; in most cases we anticipate a shorter timeframe.

The timeframes are based on analysis and stakeholder feedback. We may need to revisit them as councils, proponents and the department adapt to the new approach.

Table 3. 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**

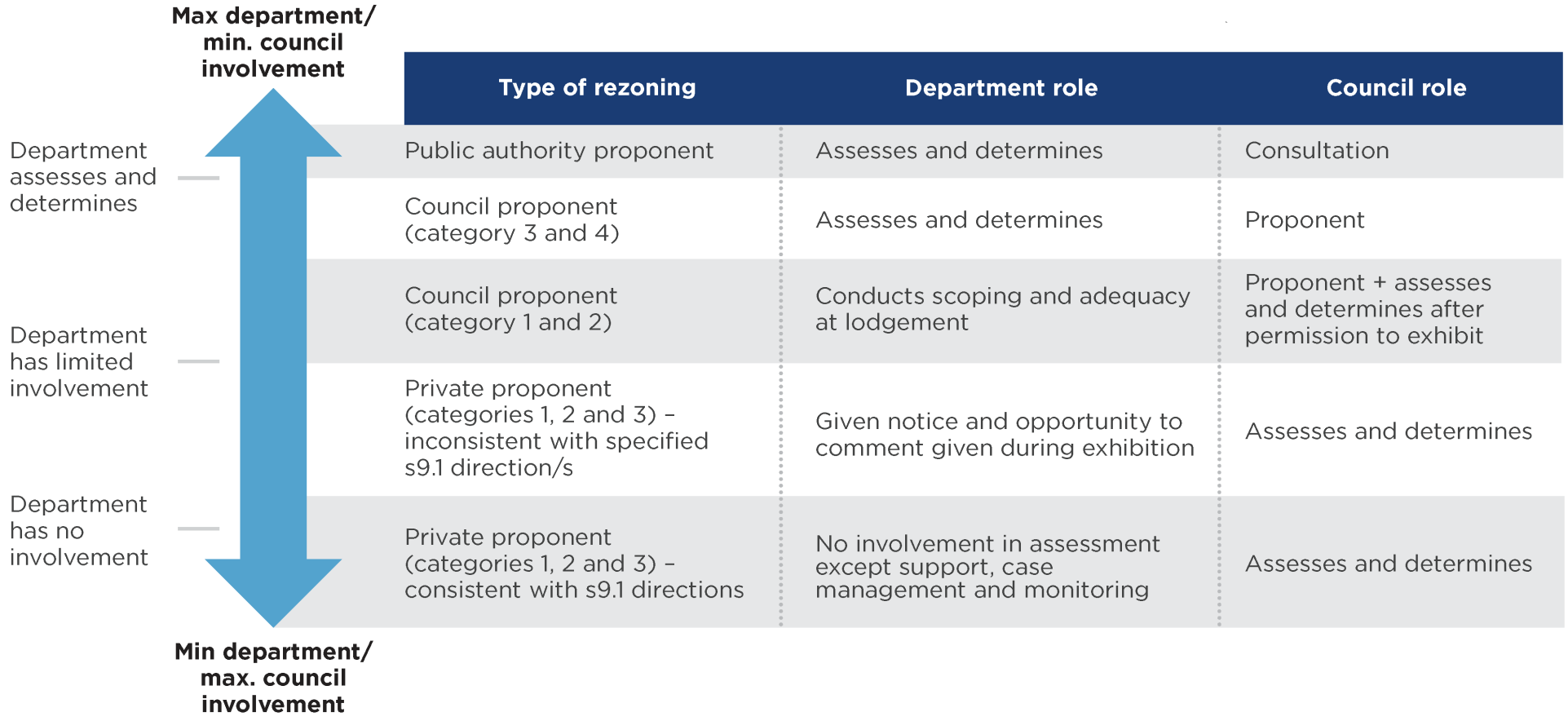
*The total timeframe does not include the scoping stage, which occurs before lodgement.

What do you think?

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

New roles

The new approach changes the roles of the various parties in the rezoning process. It acknowledges the proponent by giving them ownership of the application throughout the process. It gives councils greater responsibility and accountability and allows the department to focus on strategically significant proposals, such as state-led rezonings.



Type of rezoning	Department role	Council role
Public authority proponent	Assesses and determines	Consultation
Council proponent (category 3 and 4)	Assesses and determines	Proponent
Council proponent (category 1 and 2)	Conducts scoping and adequacy at lodgement	Proponent + assesses and determines after permission to exhibit
Private proponent (categories 1, 2 and 3) – inconsistent with specified s9.1 direction/s	Given notice and opportunity to comment given during exhibition	Assesses and determines
Private proponent (categories 1, 2 and 3) – consistent with s9.1 directions	No involvement in assessment except support, case management and monitoring	Assesses and determines

Figure 4. The roles of councils and the department under the new approach

Proponents

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.

A private proponent will only be able to lodge a rezoning application if they are the owner of the land or have obtained the consent of the landowner to which the application relates.

Councils

Councils will continue to have a role in all rezoning applications, whether this is as a proponent, or in an assessment and determination or consultation role. The new approach aims to empower councils to make decisions about their local area without unnecessary departmental intervention.

This means that 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.

To support this expanded role, councils will be better resourced through a new fee scheme that will compensate councils for the full cost of assessing a rezoning application, while also enabling them to invest in staff and better systems.

The department would still be available to offer support and assistance where needed, as well as education and training.

If a council is the proponent of a rezoning application, they would continue to be appointed as the rezoning authority after scoping and once the department has given permission to exhibit.

The type of council proponent rezoning applications that a council can determine will also be streamlined to include all category 1 and 2 applications (unless there is a conflict of interest).

What do you think?

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

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

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

Department of Planning, Industry and Environment

Departmental resources will be refocused to state-led, strategic and collaborative planning. This will allow us to focus on the plan-led system and on matters of state and regional significance. The type of rezoning applications no longer assessed or determined by the minister through the department will include:

- private proponent rezoning applications (notice to the department may be needed if the rezoning application is inconsistent with a s. 9.1 direction)
- council proponent rezoning applications where the council is the rezoning authority (for example, mapping alterations, listing local heritage items, strategically consistent spot rezonings).

The minister, through the department, will assess and determine:

- rezoning applications initiated by public authorities
- rezoning applications accompanying a state-significant development application
- council proponent rezoning applications
- rezoning applications that propose to amend a SEPP
- rezoning applications that are state or regionally significant.

The department will also continue to lead state-led rezonings, which will be generally carried out through a SEPP process and not through our proposed new approach.

Case management, monitoring and reporting

The department's Planning Delivery Unit was established in 2020 to progress priority development applications and planning proposals that are stuck in the system. Under the new approach, the unit's role will continue and the department's regional teams will continue to assist councils, state agencies and private proponents at either the scoping stage or to help resolve issues after lodgement.

We will require rezoning applications to be lodged and progressed through the NSW Planning Portal. The portal offers capabilities that will improve how the department monitors the rezoning process and the types of decisions that are being made. It provides a publicly available register of decisions, including the reasons for those decisions. This will help to maintain the integrity of the planning system through transparency, consistent decision-making and checks and balances, and it will act as an important anti-corruption measure.

What do you think?

Is there enough supervision of the rezoning process? What else could we do to minimise the risk of corruption and encourage good decision-making?

Do you think the new approach and the department's proposed new role strikes the right balance between what councils should determine and what the department should determine?

Inconsistency with section 9.1 ministerial directions

The new approach gives us the opportunity to review current section 9.1 ministerial directions (there are 41 at the time of publication) and consider approaches to streamline the assessment process. The current s. 9.1 directions cover the following categories:

- employment and resources

- environment and heritage
- housing, infrastructure and urban development
- hazard and risk
- regional planning
- local plan making
- metropolitan planning.

You can view them on the department's policy directions for plan-making web page.

From 1 March 2022, the s. 9.1 directions will include a direction that states a planning authority must have regard to the Minister's Planning Principles and consider specific planning principles that are relevant to the preparation of a planning proposal.

Currently, the approval of the department's secretary may be required if a planning proposal is inconsistent with a s. 9.1 direction. In the new approach, we propose that:

- in some circumstances, a council can approve an inconsistency, rather than notifying the department and seeking approval from the secretary
- in other circumstances, the department will be given the opportunity to comment and/or approve an inconsistency.

What do you think?

Should councils be able to approve inconsistencies with certain s. 9.1 directions? If so, in what circumstances would this be appropriate?

Public authorities

State agencies

State agencies are the knowledge-holders on matters that can affect the viability and appropriateness of rezoning applications such as infrastructure provision, environmental impacts and bushfire safety.

The quality of the rezoning application and whether engagement has occurred with a particular agency before a rezoning application is lodged can affect the timeliness of a state agency's response.

Providing input into rezonings can also be resource-intensive for agencies. All of these things have the potential to delay assessment, especially if feedback comes late in the process and requires fundamental changes to a proposal.

To ensure state agencies share their knowledge without affecting timeframes and certainty, we're proposing changes to the agency referral process for rezoning applications as we continue to work to build a clearer role for state agencies in strategic planning.

- Councils, proponents and the department will have clear direction about the circumstances in which an agency referral is required at both the scoping and exhibition stages, tailored to individual agencies and circumstances.
- Proponents will have clear direction about the information they must give to agencies to allow study requirements to be issued and rezoning applications to be assessed.
- State agencies will have clarity about the appropriate level of assessment for rezoning applications.
- Requests for more information will be managed more closely.
- Strict timeframes for agency responses will be set, along with the ability for a rezoning authority to continue to progress and determine an application where an agency has not responded within the timeframe. If an agency objects, a rezoning authority could still approve the rezoning application, but will need to consider the objection when assessing it.

Many of these changes will be rolled out in the interim to realise immediate benefits and will be built on in the new approach.

Public authority proponents

There are also circumstances where public authorities that are holders of infrastructure and other assets are also proponents in the rezoning process. Under the new approach, if a rezoning application is initiated by a public authority, the application will be lodged with and determined by the department rather than a council.

What do you think?

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

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

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?

New steps

The proposed new process is outlined in the following diagram.

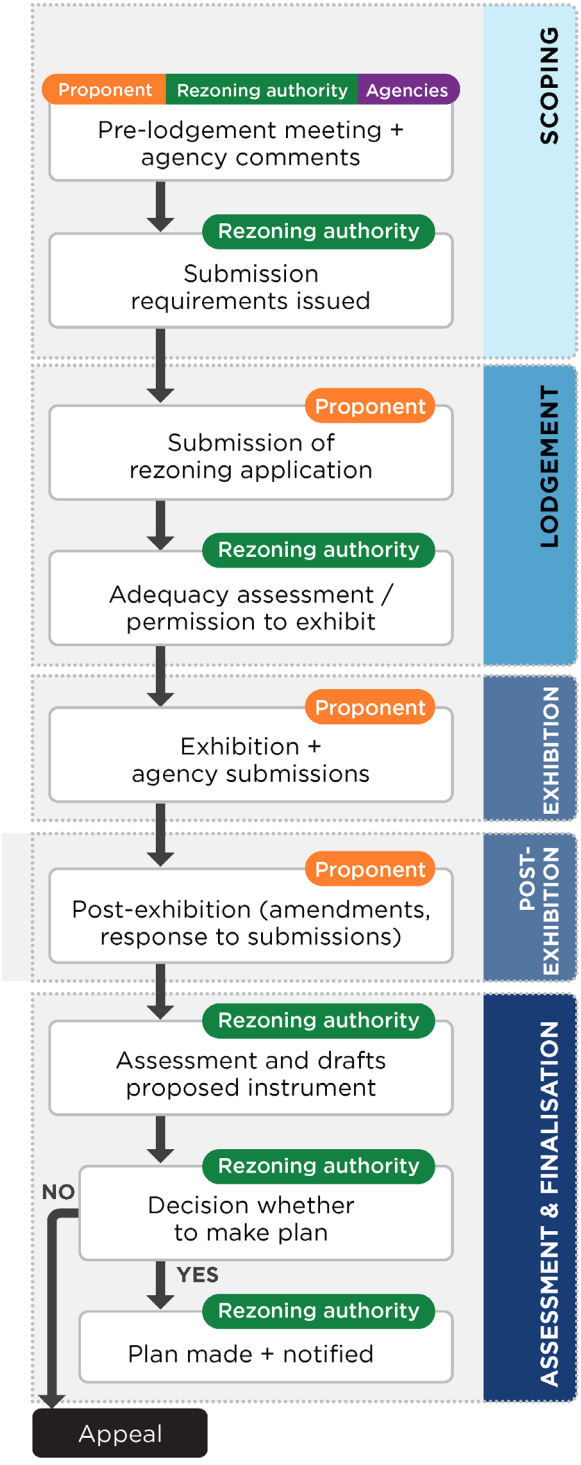


Figure 5. The proposed new process

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.

Even before the scoping process begins, a proponent will have a good understanding of the information that will be required to accompany a rezoning application through publicly available, standardised information requirements.

The scoping process will build on these standard requirements by giving all parties the opportunity to:

- discuss and give feedback on a rezoning application early in the process
- clarify the standard information required (determined through the categorisation process), and any additional site-specific information required for that specific rezoning application.

Proponents will not be able to lodge a rezoning application without progressing through the scoping process. Failure to provide the information required in the study requirements may lead to rejection of a rezoning application at lodgement or refusal at the end of the process.

Study requirements will be valid for 18 months. If a rezoning application is not submitted in this timeframe, the scoping process will need to start again with new study requirements issued.

This stage also helps proponents to understand the nuances of certain issues and the concerns communities may have regarding proposals, allowing for a better and more acceptable response.

Scoping report

This process will begin with a high-level scoping report, prepared by the proponent, that overviews the proposal, how it aligns with the strategic context, any planning or site-specific issues, and any required studies.

Scoping meeting

A scoping meeting is held between the proponent and the rezoning authority and other relevant parties (including state agencies) to discuss the scoping report and provide preliminary feedback. Early agency input is important to allow agencies to shape proposals early on and avoid problems later in the assessment process by allowing proponents to adapt or change their proposal to address agency issues at the outset.

Written feedback

The rezoning authority will provide written feedback that indicates:

- the rezoning application’s consistency with strategic planning
- agency feedback
- any recommended changes to the rezoning proposal
- the nominated rezoning application category.

This written feedback will also set out the standard information that should accompany the rezoning application including:

- intended objectives and outcomes of the proposal
- broad justification/case for change – need, strategic merit and site-specific merit of the proposal
- high-level evaluation against strategic planning (including any relevant SEPPs or s. 9.1 directions)
- any study requirements such as technical reports that demonstrate strategic and site-specific merit (the rezoning authority should seek input from relevant state agencies when determining these requirements)
- whether a section 7.11 infrastructure contributions plan is needed (consistent with ministerial directions).

Although the rezoning authority will provide feedback on whether the rezoning proposal is likely to be consistent with strategic plans, it will not be able to prevent the proponent from lodging an application. Study requirements must still be issued, and a proponent may still lodge a rezoning application, and have it assessed and determined.

What do you think?

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

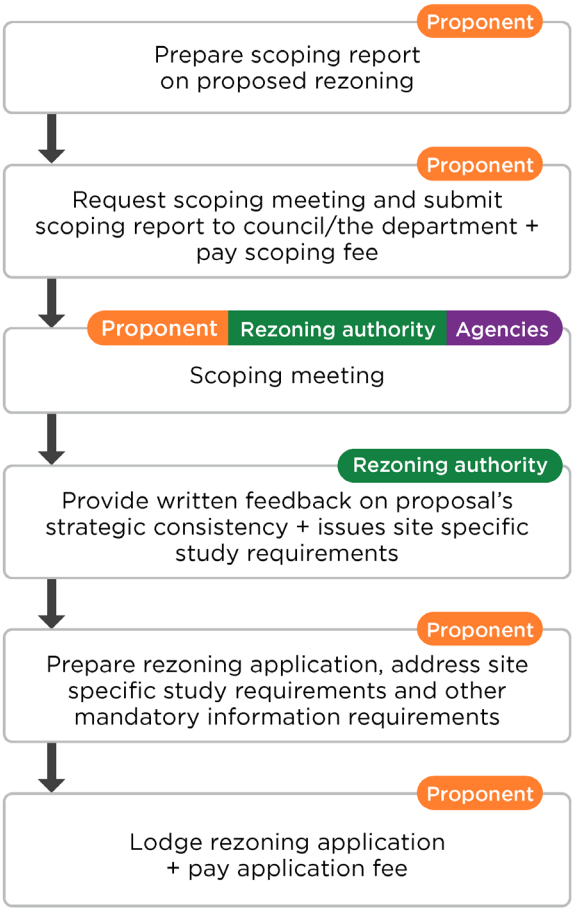


Figure 6. Framework for scoping

Consistent documentation requirements

Given that a rezoning application is not a development application, technical information should be proportionate to the category of the rezoning application.

The LEP Guideline contains information to support proponents, councils and state agencies throughout the process, including:

- a new scoping template to help proponents prepare a scoping proposal
- a technical document that outlines the information and technical studies that may be required to support a planning proposal, based on the category of planning proposal and the types of planning proposals where a proponent should engage with a particular authority or government agency before lodgement
- the content requirements, structure and form of the planning proposal and matters that the planning proposal must address, including relevant state and local policies, section 9.1 directions, planning circulars and SEPPs. For example, the guidance indicates that a complex greenfield or urban renewal rezoning is likely to require an urban design study, but a basic rezoning will not.

The guidance will ensure a consistent approach across NSW, while accounting for metropolitan and regional differences. We will adapt it and incorporate it into the new approach to rezoning applications.

Lodgement

Rezoning applications are lodged on the NSW Planning Portal, the NSW Government's online planning system. The rezoning authority will check that the application is adequate and have 7 days to confirm that study requirements have been met.

This will align with the development application process, enabling greater opportunities to lodge concurrent rezoning applications and development applications.

Where requirements are met, this will trigger exhibition of the rezoning application, meaning the application will go live on the portal and the formal exhibition period begins. This is a significant change from the existing process. Currently, exhibition is determined as part of the gateway determination, when both the adequacy of information provided and the proposal's strategic alignment is assessed. A proposal might not proceed if it is found to be inadequate.

If study requirements have not been met, the rezoning application will be rejected and will need to be resubmitted.

Under the new approach, the only opportunity to refuse a rezoning application if it lacks strategic merit is after exhibition, in the final assessment stage. This means that the initial assessment effort will go into deciding if all required information has been provided, ensuring quicker adequacy checks and an opportunity for the public to scrutinise rezoning applications in an open and transparent way.

What do you think?

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?

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?

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

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.

The new approach will mean:

- The exhibition period automatically begins when the rezoning authority considers the rezoning application adequate and the rezoning application is visible on the NSW Planning Portal.
- Exhibition periods are determined according to the category of rezoning application (with an additional week included to allow the rezoning authority to send notification letters).
- Exhibition processes are automated as much as possible through the portal or, potentially, through integration with the Service NSW app.
- Proponents must provide a short, plain English summary of the proposal, its intent and justification and how it aligns with strategic plans, to be attached to notification letters.

What do you think?

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

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

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.

The deemed refusal and planning guarantee concepts are addressed in more detail in the next sections.

The finalisation timeframe is based on the category of rezoning application in Table 4.

Table 4. Assessment/finalisation timeframes

Category	1 (Basic)	2 (Standard)	3 (Complex)	4 (Principal LEP)
Assessment/finalisation timeframe	11 weeks	17 weeks	24 weeks	N/A (appeal only for private proponents)

What do you think?

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?

Information requests

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

Requests for more information will be discouraged as the new approach is designed to:

- provide an opportunity for all necessary information to be identified upfront in the study requirements at scoping stage
- ensure that proponents resolve any outstanding agency and community concerns before submitting the final version of the rezoning application after exhibition.

Where requests for more information are unavoidable, or determining the application depends only on minor or unforeseen clarifications, requests for more information are allowed:

- from state agencies during exhibition/agency consultation, direct with the proponent
- within 25 days of being forwarded to the rezoning authority for assessment. Where this happens, the assessment clock (see Part D: Appeals) will be paused.

What do you think?

Do you think requests for more information should be allowed?

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.

The kind of matters that could be considered include:

- whether the proposal has strategic merit
- provisions of any relevant SEPP or section 9.1 directions (including the Minister's Planning Principles)
- whether the proposal has site-specific merit
- any submissions made by the public or state agencies
- the public interest.

In considering strategic merit, the rezoning authority would consider whether the rezoning application:

- gives effect to the relevant strategic planning documents
- is consistent with the relevant local strategic planning statement or supporting strategy
- responds to a change in circumstances not yet recognised under the existing planning framework.

In considering site-specific merit, the rezoning authority would consider:

- the natural environment, built environment, and social and economic conditions
- existing, approved or likely future uses of land near the land subject to the application
- the services and infrastructure that are or will be available to meet demand arising from the rezoning application and any proposed financial arrangements for infrastructure provision.

What do you think?

Are there any other changes that we could make to streamline the assessment and finalisation process more? What roadblocks do you currently face at this stage of the process?

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

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

Conflicts of interest

A conflict of interest may arise from certain voluntary planning agreements (VPA) or if council land is included in the rezoning application. This is separate to conflict of interest obligations on councillors under local government legislation.

Some of these potential conflicts of interest will be addressed in reforms to the NSW infrastructure contributions system, which funds the local and regional infrastructure needed to support new development. As part of the reforms, infrastructure contributions plans will be encouraged to be prepared alongside rezonings, minimising the need for VPAs.

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.

What do you think?

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

Where a council has a conflict of interest, should a rezoning application be determined by the local planning panel (as proposed), or should the department take full responsibility for the assessment and determination of the rezoning application?

New fee structure

Ad hoc rezonings led by private proponents may be used to achieve a different development outcome for a specific site than that permitted through the current controls. Typically, this relates to higher development yields, which can generate a better return on investment. This can mean private proponents stand to realise considerable economic benefits from a rezoning.

As this happens, we also need to ensure that any right to lodge a rezoning application comes with the responsibility to adequately compensate councils for the cost and time of assessing and determining applications. Councils should not be left short-changed or with stretched resources.

Currently, councils can charge fees for services under the *Local Government Act 1993* and rely on these fees for processing planning proposals. These fees are levied outside of the planning system.

Without relevant regulations, councils can structure and charge these fees as they wish, leading to varying fee payment structures between councils. We see fee variations for:

- pre-lodgement meetings
- categorising planning proposals (whether minor, major, complex or precinct-based)
- fees for public hearings or using external consultants to prepare additional supporting studies
- staging of payments proportionate to work done at any stage
- whether fee refunds are offered and the terms of the refund.

On average, Greater Sydney councils charge higher fees for pre-lodgement and the processing of planning proposals than regional councils. Some regional councils charge as little as $9,000 and some Greater Sydney councils charge as much as $150,000 for what they individually categorise as a major planning proposal.

Given the varying fees that councils charge and having heard that councils often have stretched resources, we have considered if it is appropriate to set a consistent structure for fees to proponents (other than council proponents). This could be done through 3 potential options, based on the following objectives:

- cost recovery for the rezoning authority, without creating a barrier to entry for rezoning applications that have strategic merit
- reasonableness for proponents (fees aligned with actual rezoning authority costs, including refund of fees not expended)
- transparency and predictability (proponents able to easily estimate fees with councils able to budget for quality staff and system improvements)
- ease of administration (administration minimised by limiting discretion, estimation or recording of assessment time by a rezoning authority).

Scoping fees

Any scoping fee structure would require a proponent to pay a fixed fee based on the application category (if known) when the scoping meeting is requested and a scoping report is submitted to the rezoning authority for preliminary feedback. Alternatively, the fee would be payable when the rezoning authority confirms the category.

The fee would cover the rezoning authority's costs for any activity during scoping, including consultation with state agencies and providing written feedback.

Assessment fees

Any assessment fee structure would require the proponent to pay a fee at lodgement. This would cover the costs of the merit assessment and any associated work to make the plan. We are considering 3 options.

Option 1: Fixed assessment fees

- Assessment fees are fixed by the rezoning authority, based on the category of rezoning application and divided into sub-categories based on the complexity of the rezoning application.
- Sub-categories are based on the extent of change to zoning and/or development standards by location and site area, along with other matters that complicate the assessment process (such as whether a proposal includes a VPA). For example, a standard rezoning application that proposes a zone change and a significant increase in height of building and floor space ratio could attract a higher fee than a standard rezoning application that only seeks an additional permitted use or a minor increase to the height of building and floor space ratio.
- No fees would be charged for any other associated costs such as consultant fees for peer reviews.
- If a rezoning application is withdrawn after lodgement, the proponent could be entitled to a set percentage refund of fees, depending on the stage the rezoning application reaches.
- This option provides certainty for proponents and lessens the administrative burden for rezoning authorities. However, it may not always result in actual costs being recovered.

Option 2: Variable assessment fees

- Assessment fees are based on the estimated costs a rezoning authority would incur on a case-by-case basis, depending on the category of rezoning application, staff time in scoping meetings and a forward estimate of staff hours required to assess the rezoning application.
- Associated costs would be charged to the proponent based on actual costs incurred.
- If a rezoning application is withdrawn post-lodgement, the proponent could be entitled to a refund of fees not yet expended by the rezoning authority.
- This option will achieve actual cost recovery but will be time-consuming to administer and uncertain for proponents.

Option 3: Fixed and variable assessment fees

- Assessment fees have a fixed and variable component. The fixed fee would be charged upfront, based on the category of rezoning application (similar to option 1). In addition, a variable fee is charged once the rezoning application is finalised, based on actual staff hours that exceed the costs covered by the fixed fee.
- To reduce the risk of non-payment of the variable fee component, proponents of complex rezoning applications could be required to provide a bank guarantee at lodgement.
- Associated costs will be charged to the proponent based on the actual costs incurred.
- This option will achieve actual cost recovery and be less time-consuming to administer and more certain for proponents than option 2 (although less so than option 1).

What do you think?

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

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?

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?

What is your feedback about the 3 options presented above?

Should fee refunds be available if a proponent decides not to progress a rezoning application? If so, what refund terms should apply? What should not be refunded?

Planning guarantee

A planning guarantee was introduced into the UK planning system in 2013. It provides for a fee refund if councils take too long to assess the equivalent of a development application and works to encourage the timely progress of applications. Even where a fee refund is given, assessment and determination of the application continues.

We are looking at mechanisms for rezoning authorities to determine rezoning applications more efficiently while being transparent and giving proponents certainty. As part of this, we have considered the potential for a planning guarantee scheme in NSW.

We have considered 4 elements:

- **The assessment clock** – when the clock starts and stops during the rezoning application process.
- **Timing** – how long the clock should run before a proponent is entitled to a fee refund.
- **Refund amount** – the percentage or component of fees to be refunded.
- **Extension of time agreements (EoT)** – the ability for a rezoning authority and proponent to agree on a longer timeframe.

We developed a potential planning guarantee option by applying the UK model to our own system, with the 4 elements aligning with the new approach and potential fee structure options.

- **The assessment clock** starts once the proponent submits the response to submissions and any amended rezoning application to the rezoning authority for assessment and finalisation.
- **Timing** is based on the assessment/finalisation timeframes for that category of rezoning application (see Table 4 – Assessment/finalisation timeframes) and are the same as deemed refusal timeframes discussed under Part C: New appeals pathways.
- **Refund amount**, whether full or a portion and staged, so that the longer a rezoning authority takes, the higher the refund (this could mean, for example, an additional 10% refund for every week the rezoning authority does not meet the determination timeframe).
- **EoTs** would be required if it becomes clear that more time is genuinely required. EoT requests and agreements would be in writing and agreed to before the end of the determination timeframe. Only one EoT can be agreed to and the extension cannot be longer than the original finalisation time for that category of rezoning application.

The following diagram shows how the planning guarantee would fit within the rezoning application process.

Figure 7. Example of planning guarantee timeframes in rezoning process

What do you think?

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?

If so, what mitigation measures (for example, stop-the-clock provisions, or refusing applications to avoid giving fee refunds) would be necessary to prevent a rezoning authority from having to pay refunds for delays it can't control?

If not, what other measures could encourage authorities to process rezoning applications promptly?

Part C: New appeals pathways

Introduction

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

There are currently 2 ways that decisions can be reviewed:

- **A rezoning review** – An appeal to the relevant planning panels where there is delay or a council has decided not to forward a planning proposal for gateway determination
- **A gateway review** – An appeal to the Independent Planning Commission where a council or proponent is dissatisfied with the gateway determination.

Both these reviews are non-statutory in that they are not specifically governed by the EP&A Act. They happen relatively early in the overall rezoning process, which means there is no opportunity for a review or appeal towards or at the end of the process – making the final decision beyond question.

There are benefits to some form of appeal mechanism at the end of the process:

- The opportunity to appeal where there is a delay encourages decision-makers to assess and determine applications promptly.
- An appeal on the final decision delivers a real and practical outcome if successful (for example, an LEP amendment), whereas reviews/appeals earlier in the process only move a proponent a step forward in the process.
- Written decisions about an appeal such as a judgment adds scrutiny to the decision-making process. This can guide and improve future decision-making as principles are developed, or highlight where there are gaps or inconsistencies in strategic planning documents.
- The appeal process can improve public visibility of decision-making and increases the accountability of decision-makers.

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.

The deemed refusal period would be based on the category of rezoning application as shown in Table 4 above.

This proposed pathway will allow the review body to look at the final decision and consider if a different decision ought to be made.

Options

We have already discussed a merit appeal right to the Land and Environment Court with stakeholders. While the Land and Environment Court is the primary institution in NSW for resolving environmental and planning disputes, stakeholder feedback prompted us to consider an appeal to the Independent Planning Commission as an alternative.

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.

Industry groups generally support an appeals pathway. They want greater certainty that proposals that are strategically aligned and address community needs can be approved in a mechanism that is apolitical.

However, there are concerns about the cost and complexity of Land and Environment Court proceedings, which may not be suited to strategic planning. Some industry stakeholders supported consideration of a non-judicial pathway, such as the Independent Planning Commission.

Councils are concerned that any proposed appeals pathway would add extra pressure and time. They feel the increase in costs, time and speculation would undermine strategic planning.

We have outlined advantages and disadvantages below.

Table 5. Land and Environment Court

Advantages	Disadvantages
• Established processes and procedures relating to merit review could be adapted. • Existing wide-reaching powers enable it to consider fresh evidence and exercise necessary powers. • Opportunity for conciliation allows parties to discuss and resolve issues. • Potential legal proceedings are a strong deterrent against delay or poor decision-making.	• Can be costly and time consuming – legal representation is not mandatory but is common. • No historical dealings with the merit of strategic planning decisions and may not currently have the expertise. • Adversarial process may not be suited to rezonings. • The court may have an issue intervening in the making of an LEP, being a form of delegated legislation (which is the role of the Minister for Planning and Public Spaces).

Table 6. Independent Planning Commission

Advantages	Disadvantages
• Likely to be quicker and cheaper. • More flexible procedure and less adversarial, meaning we can tailor a new process to strategic planning decisions. • Appropriately independent from government to review government decisions.	• Would be a significant shift in operations, requiring resourcing. • May not have the expertise to deal with strategic planning decisions. • No opportunity for conciliation – to maintain an efficient process, may need to limit opportunities for changes to proposals and fresh information on review.

What do you think?

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

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?

Part D: Implementation

Implementing the new approach

Our focus in this 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.

Applying the new approach could involve both legislative and non-legislative changes.

We could implement the proposed new approach using existing legislative provisions, along with other existing mechanisms such as:

- ministerial directions to make assessment considerations more certain
- delegation to empower decision-makers
- departmental secretary's requirements to make application requirements clear
- amendments to the Standard Instrument to standardise common amendments
- new regulations to provide more certainty in the agency engagement process.

This would be supported with other policy and guidance material.

By using the existing statutory framework, the reforms are, necessarily, more limited in scope.

A legislative approach would involve amending the EP&A Act in addition to the mechanisms described above. This allows greater opportunity and flexibility in any reform. Importantly, legislative change would be needed to allow a rezoning application to be appealed in the Land and Environment Court.

The implementation of the new approach will be supported with policy guidance and education for industry and councils to ensure a smooth transition and minimise disruption and uncertainty. There will also be opportunity for councils to adjust their processes and resourcing.

NSW Planning Portal improvements

We will need to increase the capability and use of the NSW Planning Portal for triggering referrals, standardising requirements and ensuring accountability and transparency.

Much of this work is underway, including the ability to lodge a planning proposal online, which began in the middle of 2021.

The department's ePlanning team will continue to increase the capabilities of the portal and adjust the system to account for changes to the process.