



File Ref:

4 May 2022

Planning System Policy
Department of Planning and Environment
Level 16, 4 Parramatta Square
Parramatta 2150

Dear Sir/Madam

RE: Submission to 'A new approach to rezonings' Discussion Paper

The exhibition of the Discussion Paper 'A new approach to rezonings' did not adequately take into account the timing of local government elections and the need to on-board new Councillors before they could meaningfully debate the issues under consideration. As a result, Sutherland Shire Council made a preliminary submission through the on-line survey pending full consideration by Council.

Please note that Sutherland Shire Council formally considered the Discussion Paper at the Shire Strategic Planning Committee meeting of 7 March 2022 (Report PLN003-22) and the Council meeting of 28 March 2022. Council resolved to endorse the preliminary submission and as such the points may now be considered the views of Sutherland Shire Council. I have attached the report to Council and the minutes of the Council meeting. I have also attached the submission for your convenience.

Sutherland Shire Council is also firmly of the view that the elected Council must remain actively involved in the rezoning process. The proposed reforms effectively reduce the role of the elected Council to a single decision point at the end of the process. This approach does not allow Councillors to adequately represent the needs of their community.

There must be an opportunity for the elected Council to terminate rezoning requests that have no chance of success before they enrage local communities. The proposed rezoning reforms will result in applications will be exhibited upon lodgement. Once a proposal is known to the community, the community expectation is that it will be approved, and they will reasonably form action groups to pursue their case. Planning Proposals that are best described as speculative, or perhaps even outrageous, will simply lead to coordinated protests and consume considerable Council resources. Proposals which generate community action result in resources being allocated to public meetings, staff spending considerable time dealing with upset community members, requests from Councillors for action and increase the complexity of reporting through the generation of large numbers of submissions. Councils have limited resources and it is far better for staff to engaged with high priority planning matters or matters that make good planning sense.

Any reform must involve the elected Council early in the process to ensure community views are represented by those it has elected. The Mayor, Carmelo Pesce, will make personal representations to the Members for Cronulla, Miranda, Heathcote and Holsworthy to ensure that they are aware of the implications of the proposed changes on local communities. The Mayor will also write to the Minister for Planning to reinforce Sutherland Shire Council's concerns.

If you require any further information, please contact me on [REDACTED] or [REDACTED]

Yours sincerely,

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Mark Carlon
Manager Strategic Planning

Submission to Department of Planning and Environment (DPE)

Discussion Paper: A new approach to rezonings

DPE is seeking Council input in relation to a proposed new approach to rezonings. Feedback is to be provided by way of an online survey. The following answers to the questions in bold have been lodged as Council's submission and are put to Council for its endorsement.

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?

Sutherland Shire Council supports the review of the current framework. The current system is unnecessary complex and lengthy. It can certainly be improved and streamlined. At present it is a "one size fits all" that ignores complexity and risk.

Categories will help improve the timeliness of processing. However, there are matters which appear simple at face value which turn out to be complex and generate very significant community input.

The new framework must ensure that there is adequate opportunity for the community and the elected Council to be involved in the process. The proposed reforms reduce the role of the elected Council to a single decision point at the end of the process. Given that rezoning applications are often highly controversial, the elected Council will reasonably want to be able to understand the nature of the matter and represent the views of their community. More opportunity is needed within the streamlined processing for this to take place.

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

Benchmark timeframes are a useful guide for both council's and proponents. However, they should not be mandatory because there will regularly be circumstances that reasonably force delays. Even relatively simple matters often tend to unearth some complex issue that simply would not have been known at scoping stage. The following issues have all presented themselves during the assessment stage of recent planning proposals and resulted in unavoidable delays: the migration of contaminants from a site in the vicinity; the implications of proximity of a vulnerable species that were not understood until referrals were complete; the need for amended massing or form as a result of advice from a Planning Panel and Design Review Panel; and where a proponent agreed to enter into a Planning Agreement on the eve of Gateway referral delaying exhibition until the terms of the Agreement are resolved.

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

Many rezoning decisions are straight forward and are not of any State significance. It is logical and appropriate that these proceed through a more streamlined path. Giving council ownership of the process is welcomed in these instances.

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?

Councils do value the input of their DPE colleagues. It allows further insight to be gained in relation to state's objectives and also gives an opportunity for conclusions to be tested. While keeping the

proposed streamlined process, perhaps DPE could be treated as another state agency with the proponent being required to seek DPE input at scoping stage and also at exhibition stage. This would allow officers to include the position of DPE within the final determination report to Council and in any subsequent appeal.

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

Officers at Sutherland Shire Council currently have a good working relationship with DPE officers, but this has not always been the case. DPE officers need to feel empowered to provide advice that can be relied upon.

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?

It is agreed that the current rezoning framework is overly complex and contains inefficient duplication by DPE and councils. However, the checks in the current process guard against corruption and poor decision making. It is acknowledged that this is at the cost of efficiency. The proposed process maximises efficiency but does allow more opportunities for poor or corrupt decision making.

Perhaps an alternative is to use a DPE referral as a flag to highlight poor decision making. Determination reports could contain a mandatory section to highlight how the recommendation aligns with the referral advice received from DPE. Where there is departure from DPE advice, Council could be required to inform DPE as part of its referral of the plan to Parliamentary Counsel. This referral could also be used where a Council decision departs from the officer's recommendation. While either of these outcomes could be entirely appropriate and reasonable in the circumstances, it would simply provide a flag and give an opportunity for DPE to identify poor decision making before a LEP is amended.

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

At present the s.9.1 directions are very high level and open to interpretation. It is questionable just how much value they add.

The reforms are based on the aim of a *'plan-led' system – an approach that ensures strategic planning is the foundation for all decisions about potential land-use changes*. This must equally apply to DPE. There is enough strategic context with the District Plan and State Environmental Policies to determine the strategic merit of applications. The s.9.1 directions add very little. Perhaps they could be set within a strategic context to make intent clear.

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 coordinates 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?

Council's efficiency has suffered from poor agency involvement. However, the issue is not just time but the nature of the advice given. Agencies do not always seem to appreciate the difference between a

Planning Proposal and a Development Application. Many seek detail that is simply not known at rezoning stage, or provide conditions which cannot be imposed at Planning Proposal stage.

It is helpful to be able to ask DPE to chase input from agencies. This element should be retained.

Where an agency issue is critical to the matter at hand, Council cannot simply proceed with the rezoning. Take for example a recent issue Council has had with the proximity of a site to a nationally significant grey headed flying fox camp. Council could not proceed without knowing whether potential impact would be considered detrimental to the population. To proceed without the advice would have been reckless and contrary to achieving good planning outcomes.

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

It is valuable to be able to ask someone for help that has clout with State agencies. It would also be beneficial if DPE or an agency looked at the information Council's receive from agencies because it could be improved to make the advice more relevant to the assessment of the merits of the planning proposal.

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?

The introduction of appeal rights for rezoning applications will see a dramatic increase in applications being received by councils because rezoning can deliver windfall land value to the proponent. We can expect to see far more speculative rezoning applications simply because the proponents will have little to lose but potentially make very significant gains.

There should be a way to refuse highly speculative applications at the onset where they are clearly inconsistent with strategic plans. Failure to do otherwise will result in council expending limited and valuable resources on projects that clearly do not have strategic or site specific merit. A quick refusal path is also needed where the information submitted does not meet the study requirements issued at the scoping stage.

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?

Sutherland Shire Council uses the Join the Conversation platform as the basis of its engagement programs. This is coupled with notification through electronic media in addition to traditional advertisements in the local paper and letters to land owners. This approach works well however, the streamlined rezoning process allows only one week for notification. This is inadequate.

Advertising in local media requires more than a week's lead time to secure space. It also takes time to craft tailored Join the Conversation web pages. Sutherland Shire Council tries to include frequently asked questions, plain language explanations of proposals and artwork to support a high standard of engagement. This will be undermined by the streamlined process exhibited.

Do you think requests for more information should be allowed?

Yes – even with detailed scoping there will still be times when issues are identified during the consultation phase that require investigation.

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?

Time seems to be wasted at the final stages of drafting by Parliamentary Counsel. For most planners this still seems a somewhat mysterious process and there are times when the final drafting loses its initial intent.

When LEPs moved to the standard instrument template we assumed that final drafting would become routine, yet this does not seem to be the case. Planners identify provisions in other LEPs that now seem to be unacceptable. The system would be improved if there was a comprehensive list of provisions that have been deemed to be acceptable and can be used by councils without negotiation or redrafting by the PC.

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?

The problem with a “public interest” consideration is that many people think that if there is enough opposition to the proposal, it can be refused as it is not in the public interest. Planners know that planning isn’t a democracy, but this is a difficult point to get across. It is used as a catch all reason for refusal at present.

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

Sutherland Shire Council has deferred consideration of a Planning Proposal to its Local Planning Panel due to a conflict of interest. This process worked well and was accepted by Council. The Local Panel is in many ways preferable to the Department because it allows objectors to make a submission direct to the panel. It more closely replicates the Council determination process.

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 fee options?

Fees need to be simple in their application so that potential applicants understand how much an application will cost. It is preferable to say \$65,000 than “cost recovery based on complexity”.

Very few councils would have the ability to track actual costs associated with an individual application. To impose this requirement would add another administrative burden to the process.

The Discussion Paper states that *“to support the expanded role of councils under the reforms, 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 scale of the rezoning fee must deliver on this commitment. It needs to be beyond cost recovery and contribution towards the cost of broad strategic planning.

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?

The fee is to contribute towards Council’s costs in processing rezoning applications. It is not a fee for approval.

Under the proposed framework Council will have to invest considerable resources at the scoping stage. A separate fee should apply to this stage because many matters will not proceed beyond scoping. This element of the fee should not be refundable.

Once the exhibition is complete, Council officers are heavily invested in the application. Submissions would generally be read as they are lodged and officers would have typically commenced their investigation of any issues raised. As such a refund is not appropriate once exhibition is complete.

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?

The deemed refusal appeals mechanism being proposed will be sufficient to ensure the councils determine applications in a timely manner. To be forced to refund the fee and defend an appeal is a double hit to councils’ limited financial resources. It is in direct conflict with the commitment made in the Discussion Paper that *“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.”* Councils need more funding not less.

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?

If proponents have a right of appeal against council decisions, public authorities should also have a right of appeal.

The real issue is the cost of appeal. Council would expect to see a surge in speculative rezoning applications once appeal rights are introduced because of the potential windfall gains rezoning can deliver.

Decision of the Court are a considerable benefit for planners determining development applications and case law would also assist in relation to rezoning appeals. However, the most critical issue to council is that of cost. An independent but cost effective solution is preferred.