



28 February 2022

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

Dear Ms Wythes

Subject: Staff Submission - Discussion Paper: A New Approach to Rezoning

Thank you for the opportunity to provide feedback on the Discussion Paper: A New Approach to Rezoning. Council staff have reviewed the discussion paper and offer the following feedback.

1. General comments

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?

Improvements to simplify the planning proposal process and reduce processing times is supported and we agree that all stakeholders need to have greater accountability in the process. However, the Discussion Paper attributes lengthy timeframes wholly to process issues and lack of accountability. The Discussion Paper should acknowledge the inherent complexity of rezoning proposals (particularly category 3 proposals) and the iterative process that stakeholders engage in to achieve good quality place based outcomes. The Discussion Paper seeks to implement a more transactional development application style process which is unlikely to result in good planning outcomes.

We acknowledge that some changes recently implemented through the new LEP Making Guideline will help improve the quality of the planning proposal information and may reduce "official" processing times. However, the work needed to achieve good quality place-based outcomes including the preparation and review of studies, discussion and negotiation still needs to take place. This will now be undertaken up-front and outside of the official assessment times. Where proponents choose not to undertake these discussions, the process will become adversarial and result in greater costs and administrative burden in order to meet the designated timeframes.

Meaningful improvements and reduction in end to end timeframes could more readily

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be achieved by having clearly defined policy parameters for planning proposals. The need for agency referrals could be reduced with clearly articulated agency policy and identified agency roles. Often delays in the processing of planning proposals result from disagreement about study requirements, the detail required for those studies, and which parts of a site may be suitable or not for urban development. Clear Ministerial Directions, standard study requirements (where possible), together with information identifying what is required for a proposal to be supported, and the circumstances in which it won't be supported would greatly assist. Defined agency roles (e.g. is concurrence required or is the advice discretionary) would also improve processing times.

Any review of the LEP amendment process should incorporate a review of the standard instrument LEP, particularly the suitability of including development standards such as floor space ratio and height of buildings. The number of basic and standard planning proposals could be significantly reduced by implementing a modern fit for purpose local environmental plan that balances certainty and flexibility to respond to changing circumstances. This is more likely to address the Productivity Commission recommendation to reduce timeframes, spot rezonings and remove redundant requirements than the changes canvassed in this Discussion Paper.

2. New terminology

The use of consistent and plain English terminology throughout the process is supported.

3. New categories and timeframes

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

The use of categories to differentiate between the different types of planning proposals is supported.

Benchmark timeframes in themselves will not create greater efficiency and time savings. As previously noted, studies, discussion and negotiation still need to be undertaken to achieve good quality place-based outcomes. Completing this work during the scoping stage outside of the official assessment times may give the appearance of faster approvals, however, the overall end to end timeframe is not reduced by benchmark timeframes. The variety and complexity of issues associated with category 3 planning proposals mean it is difficult to predict the time needed to resolve complex issues. The benchmark time frames for these planning proposals does

not adequately reflect the iterative process needed to achieve good quality place-based outcomes. For example, ecological studies can take 12 - 18 months to complete with some issues only becoming apparent upon completion, necessitating further field work and study. In that time legislation can change, such as listing of new endangered ecological communities, in turn requiring additional studies. The new processes / benchmark timeframes need to better reflect the iterative process involved in achieving good quality place based outcomes. Having stop-the-clock provisions would support a more collaborative approach to resolving complex issues.

Benchmark timeframes may be suitable for category 1 and 2 (basic and standard) planning proposals, although it will be difficult to achieve the timeframes proposed. The proposed benchmark timeframes represent an 'ideal' scenario and do not adequately consider the realities of council resources and workloads. For example, it will be difficult to meet pre-lodgement timeframes due to the often limited resourcing of technical experts within councils with delays likely when a technical expert is on leave or working on other priority projects.

To improve efficiency and reduce timeframes agencies and Local Aboriginal Land Councils (LALC's) need to be adequately resourced to support timely and meaningful input into the rezoning process. In our experience, agencies and LALC's are not adequately resourced to enable them to provide meaningful and timely advice.

4. New roles

Opportunities for private proponents to have greater responsibility for resolving issues directly with agencies and responding to submissions is supported. However, this needs to be undertaken in ways that do not undermine community trust in the planning system.

Councils

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

Councils should have greater autonomy over rezoning decisions, particularly category 1 and 2 planning proposals that are consistent with Ministerial Directions. However, we do not support shifting the risk and costs of all decision making to councils. If councils are to make rezoning decisions that may be inconsistent with Ministerial directions, then clear guidelines need to be developed to support councils and ensure consistent decision making.

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?

These changes have the potential to shift risk and costs to Council. If benchmark timeframes and a planning guarantee are implemented then the Department should provide and fund a pool of planners that can be deployed to assist councils to meet their assessment requirements.

The Department could provide additional support by better resourcing the E-planning team to make improvements to the planning portal and provide prompt customer support to find solutions to issues raised by customers. The current planning portal design is a barrier to the efficient processing of rezoning proposals and has added a significant administrative burden for Lake Macquarie City Council. Improving the user experience, reducing the administrative burden of the current system and proactively responding to identified issues will significantly improve the efficiency of the rezoning process. The planning portal should be updated to:

- Support integration with council record keeping systems to ensure all documents, referral and exhibition information can be directly registered in accordance with State Records Act requirements. The current process has added to council's administrative burden as staff have to manually download documents, screenshot other relevant information then upload and register this information within councils record management system.
- Enable users to view previous and future steps so the previous information can easily be reviewed and forward planning can be undertaken for the next steps in the process.
- Enable submissions received via the planning portal to be viewed by the public. Council makes submissions viewable on our website. The planning portal has reduced transparency and added to our administrative workload as submissions are not viewable on the portal and cannot be downloaded by Council staff. Staff now have to manually copy and paste submissions into a document, register the document, redact sensitive information and make it available on Councils website to maintain transparency.

The Department should develop a tool that can be used by councils and proponents in the pre-lodgement phase to determine which agency referrals will be needed (as per Attachment B to the guideline) and the level of information the agency requires (as per Attachment C to the guideline). An automated summary of these requirements can be produced for preparation of the scoping study. Lake Macquarie Council staff have created an excel spreadsheet to trial this process. It may be possible to extend the tool to include Ministerial Directions and SEPP's which can be used to form the written scoping proposal.

It would significantly assist councils and proponents for the Department to provide a

transition period before commencement of new policy. The release and commencement of the new LEP Making Guideline on the same date has presented significant challenges for Lake Macquarie Council and proponents initiating planning proposals. Assessment of new proposals has been delayed as we develop council procedures to reflect the guideline processes, including upfront agency engagement.

Department of Planning and Environment

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?

Yes, Council delegations and reporting requirements already minimise the risk of corruption. The imposition of timeframes with the planning guarantee is more likely to result in poor decision making. Should councils be able to approve inconsistencies with certain s. 9.1 directions? If so, in what circumstances would this be appropriate?

The proposed changes to the rezoning process rely on a thorough strategic planning framework being in place. Despite the adoption of regional plans and local strategic planning statements, in many cases these plans do not contain sufficient detail to confirm site specific merit. For example the draft Hunter Regional Plan recognises the need to prepare place plans to provide the level of detail to inform rezoning applications.

Councils should be able to approve minor inconsistencies with s9.1 directions where clear guidance has been provided to guide decision making. As previously discussed clearer Ministerial Directions that articulate elements that are not negotiable and elements that are discretionary with regard to site specific conditions would enable better and faster decision making.

Public authorities

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?

Agencies should continue to have a role in the formal rezoning process and not just at

scoping stage. Where agencies have identified particular matters to be considered or study requirements they should have the opportunity to formally review the proposal and ensure their requirements have been met before it is publicly exhibited. Alternatively, the proponent could submit these studies directly to agencies for review prior to lodging the application. The proponent would need to submit with their rezoning application a letter from the agency indicating their satisfaction with the study.

A central coordination body has the potential to add complexity and increase assessment timeframes. However, the Department (e.g. Planning Delivery Unit) should continue to have a role in facilitating agencies to respond with meaningful and timely comments and assisting to resolve any conflict between agencies advice. As previously discussed, having clear agency policy positions would assist with this. Now that pre-lodgement processes happen outside of the planning portal it would be helpful for each agency to have a specific referral email address or portal to send pre-lodgement referrals and upload information to. This would reduce the administrative burden for councils in identifying where referrals should be sent and how best to share large files. It would also reduce the likelihood of referrals getting 'lost' and maximise the time available for agencies to respond to referral requests.

Determination of rezoning applications without the required agency input raises some concerns. Key issues may not be adequately addressed and this has the potential to further erode community trust; reduce the desired consistency and result in poor on-ground outcomes. The quality of places should not come at the expense of achieving an arbitrary approval timeframe. However, as previously discussed this may be suitable if agency policy and roles are clearly defined.

5. New steps

Scoping

Council supports making the scoping or pre-lodgement stage mandatory for standard, complex and principal LEP rezoning applications.

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?

Yes, a council or the Department should be able to refuse to issue study requirements at the scoping stage if a proposal is inconsistent with strategic plans. The Ministers Planning Principles embed the importance of adopting a strategic led approach to planning. Significant time and money are spent consulting with local communities to develop strategic plans. Enabling a fully formed proposal that is not strategically

aligned to be lodged and assessed would be inconsistent with this strategic approach and further erode community trust in the planning system.

This would also be a waste of time and resources, potentially affecting the staff time available to spend on proposals that are strategically aligned. Proposals that are not strategically aligned are likely to be inconsistent with the Productivity Commission recommendation to reduce spot rezonings. The important first step is that proponents need to demonstrate strategic merit. Council staff are then able to indicate that a proposal has or does not have strategic merit. Once strategic merit is demonstrated and accepted the proponent can then confidently undertake the studies needed to justify site specific merit.

Lodgement

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?

Council supports having standard public exhibition periods based on the rezoning category but does not support moving all assessment to the end of the process as this is likely to increase time-frames. An example of this would be the need to re-exhibit a rezoning proposal because the submitted studies have not addressed all necessary requirements. The community should have the opportunity to respond to complete and relevant information rather than to part information or a proposal with elements missing. It may also create more administrative work to address community questions and formal submissions, which could have been avoided if the information was provided and assessed before exhibition. Assessment prior to exhibition will enable councils to ensure studies have been completed to the standard required (rather than ticking a box that a study has been submitted) and is more likely to achieve better timeframes. A seven day timeframe is insufficient to review studies and identify if study requirements have been met.

Leaving the decision making role for the elected officials to the end of the process is significantly different to the current system and may result in longer timeframes to determine an application. Given the broad nature of the existing strategic framework, elected officials should have the opportunity to review and confirm consistency with the strategic plans earlier in the process. This would also assist in identifying any potential conflict of interest that may require a rezoning application to be determined by the local

planning panel / Department.

The inclusion of a short, plain English summary of the proposal to be attached to the notification letter is supported. The summary should be developed in consultation with the council to ensure it is accurate and can be trusted by the community.

One of the objectives of the *Environmental Planning and Assessment Act 1979* is “to provide increased opportunity for community participation in environmental planning and assessment.” This objective is implanted through mandatory Community Participation Plans (CPP) which contain a range of exhibition and notification requirements. The purpose of individual CPPs is to enable councils to detail exhibition and notification methods that best meet the needs of their local community. If changes are made to exhibition and notification requirements, sufficient time will be needed to ensure Councils can meet their CPP obligations, consistent with the objectives of the Act.

Exhibition

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?

To engage the community and provide a better understanding of proposed changes the NSW government should continue to support and fund the development of digital twins which can be used during exhibition.

The proposed “rezoning application” process is very different to what we consider a strategic planning process. The Discussion Paper appears to seek to minimise community input in the rezoning process which is not supported. As previously discussed early exhibition of a rezoning application is not likely to streamline the process.

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?

The new process requires the proponent to summarise and respond to submissions received and to work with State agencies to resolve objections. Council supports the increased responsibility for the proponent. The summary, response to submissions and any changes to the rezoning proposal should be developed in consultation with the council to ensure the response is accurate and can be trusted by the community.

The ‘assessment clock’ concept and proposed timing undermine the iterative process

involved in achieving good quality place based outcomes. If an 'assessment clock' is to be used it needs to include 'stop the clock' provisions to enable complex issues to be resolved.

Do you think requests for more information should be allowed?

Yes, each planning proposal is unique and additional study requirements may be identified during the assessment phase or as a result of issues raised during exhibition. Not allowing additional information encourages 'tick the box' planning to meet arbitrary timeframes instead of collaboration to create good quality place based outcomes. This could also lead to proposals being rejected that could have otherwise been supported with further information and adjustment.

Assessment and finalisation

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?

As previously discussed, clearly articulated policy positions and standard methodologies for studies need to be in place to enable an efficient and streamlined assessment of proposals.

Council has experienced delays in finalising local environmental plans due to the availability of Parliamentary Counsel and requirements to make updates to maps not related to the proposal (e.g. addition of suburb names or size of text). Again adequate resourcing is required to enable timely responses.

A specific listing of 'public interest' is not required as it is sufficiently addressed through the other considerations.

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

Rezoning applications associated with a planning agreement do not need to be determined by a body other than council. The legislation, directions and practice notes applying to planning agreements provide a robust framework to manage this process.

The Discussion Paper acknowledges the need to develop infrastructure contributions plans and / or planning agreements alongside rezoning applications. To meet the

proposed timeframes and exhibition requirements this work will need to be undertaken at the scoping stage and before a rezoning application is lodged. However, it is not practical or feasible to develop these plans in the scoping stage.

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?

Where there is a conflict of interest we have no preference whether a rezoning application is determined by the local planning panel or the Department. However, guidance will need to be provided as to the type of conflict that will require the determination to be made by the local planning panel (e.g. pecuniary interests only?).

This will also affect compliance with determination timeframes, particularly if elected officials only have the opportunity to see the rezoning application at the end of the process. The benchmark timeframes will need to make allowances for this.

6. New fee structure

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

Fees need to be reflective of the true resources needed to undertake a rezoning process and enable full cost recovery. It would be unfair if rate payers subsidise a proposal that benefits a private proponent. Every council has different overheads and should be able to set their own fees to enable full cost recovery for the review and assessment of scoping proposals and rezoning applications. Lake Macquarie City Council currently uses fixed and variable assessment fees to recover costs. Once the fixed fee is exhausted, proponents are invoiced variable fees on a monthly basis. This is our preferred option. Further consideration should be given to monthly invoicing rather than adding the complications of arranging and processing a bank guarantee.

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?

As each planning proposal is different, assessment needs will also be different. Cost components that need to be considered include staff time, advertising and community engagement costs (e.g. venue hire, printing), costs associated with engaging and managing expert consultants (where council does not have the expertise on staff or needs to employ a consultant planner to meet the benchmark timeframes).

As previously discussed, every council has different overheads and should be able to set their own fees. Council staff do not support 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?

Processing planning proposals is resource intensive for councils and full costs must be able to be recovered. Enabling refunds may encourage developers to submit speculative proposals just to 'have a go', with low risk to themselves. This would lead to administrative strain and poor outcomes that are not consistent with achieving a strategic led planning system. However, a pro-rata refund of funds that have not been expended may be acceptable.

Planning guarantee

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 key issues identified at the start of the Discussion Paper acknowledge council funding issues. Any plan to refund fees if timeframes are not met will lead to poor decision making, mistakes and increased administrative burden through refusal of applications, or negotiation with proponents to extend time periods. The planning guarantee prioritises time frames over quality decision making.

Many factors that are beyond the control of councils can affect their ability to meet assessment timeframes. For example, local government elections involve a caretaker period before the election, resulting in Council reporting delays. More often, delays are the result of proponents delaying providing necessary information to inform land use decisions or debating established policy positions and/or the suitability of agency advice. The proposed planning guarantee prioritises a private proponent interests over the ability for councils to negotiate quality outcomes for the benefit of the wider community.

7. New appeals pathway

There is significant concern that the Government is considering introducing an opportunity to challenge the merit of a statute that the industry itself is regulated by. In all other circumstances we can think of, appeal rights apply to challenge whether something complies with a statute and there is no opportunity to appeal against the legislation. The responsibility for establishing regulation of industry must remain a democratic process and be decided by elected officials. As such, the introduction of a new appeals pathway is strongly opposed. The discussion paper does not provide any evidence to demonstrate a need for such an appeals pathway and the purported benefits can be attained through other changes to the process.

In our opinion, allowing the Land and Environment Court or unelected officials to decide whether a developer proposal is consistent with local strategic plans will result in further community disengagement and even less public participation in the planning system.

If a rezoning proposal has strategic merit, it will be identified early in the process. Knowing an appeal opportunity exists may lead to more 'spot rezoning' and speculative proposals contrary to the Productivity Commission recommendations as a proponent factors in the cost of an appeal process to their business model. This is an unacceptable outcome and not in support of achieving strategic led planning outcomes and objectives developed with the community.

Lastly, adding an appeals process to the end of a rezoning application will add a significant cost and resource burden to councils.

We welcome a discussion on any aspect of this submission and we are keen to remain involved in any future reforms regarding the LEP amendment process.

Should you require further information, please contact me on [REDACTED] or [REDACTED].

Yours faithfully,

[REDACTED]

Wes Hain
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