



**Discussion Paper: A New Approach to  
Rezoning Submission**

by North Sydney Council

to the Department of Planning and  
Environment

March 2022

North Sydney Council welcomes the review and optimisation of existing processes by the Department of Planning and Environment (DPE). Council considers that the current planning proposal process works reasonably well and does not require major reform. On review of the Discussion Paper, there are several alternative pathways being contemplated that represent major changes to current process. This submission outlines the position of Council on key elements of the proposed reform for further consideration and refinement by DPE.

### ***Strategic Context***

The NSW Planning system has rightly been on a trajectory of increased focus and reliance on strategic planning to guide significant change. The creation of the Greater Sydney Commission in 2018 reinforced this with the creation of the Regional Plan, District Plans and the local embodiment of these plans through the Local Strategic Planning Statements (LSPS). This has been a welcome focus particularly at a time of significant and fast paced change.

The general thrust of the Discussion Paper must be cognisant of this overarching direction in the NSW Planning system. A planning proposal must continue to be consistent with the general planning directions outlined in Council's LSPS. Heading too far down a streamlined and efficient process of facilitating changes to the planning controls must be carefully managed to discourage speculative planning proposals that both undermine the strategic planning framework and lead to ad hoc decisions that begin to set a different and unintended strategic direction.

### ***Supported changes:***

- Streamlining approach that avoids double-handling by multiple agencies and panels.
- Emphasising strategic Local Environmental Planning (LEP) amendments and discouraging site-specific rezoning requests.
- Increasing transparency and consistency of planning decision-making.
- Returning planning power to local authorities who are best-placed to make local plan changes.

### ***Comments on key reform elements:***

#### Process and timeframes

The proposed maximum timeframes for each step in the rezoning process are insufficient and do not accurately reflect the typical journey of a planning proposal. It is recommended that timeframes be reviewed to avoid misaligned expectations.

While the introductory text states that there are no set timeframes for the scoping phase, various references to timeframes have been included ranging from 6-12 weeks. It is not considered necessary or helpful to give any indication of timeframes during this scoping stage, as the preparation of proposals varies significantly and can sometimes be flagged months if not years in advance of a proposal being formally lodged. It should also be noted that, like the present process, there is no ability to compel proponents to modify plans to align with preliminary advice provided, which means issues may not be addressed any earlier in many cases.

A single week for lodgement is insufficient and should be expanded to two - four weeks. This accounts for any administrative errors (incorrect forms, missing reports, fee payment), gives time for the proponent to prepare and provide additional requested supporting details, and time for the rezoning authority to process and record the information submitted. This timeframe becomes more important given exhibition is intended to be brought forward ahead of any formal assessment, thus documents lodged must be correct. A maximum timeframe for the proponent to respond could be added which, if missed, means the proposal lodgement lapses.

It is recommended that an additional step for preliminary assessment of the proposal ahead of any exhibition is incorporated into the process. The strategic alignment test of a planning proposal must

occur up-front to ensure proposals are worthy of being considered suitable for initial exhibition and that the community only responds to planning proposals where there is a reasonable prospect of them proceeding. Some proposals will require refinement, while others may simply be speculative, inconsistent with a LSPS, and should have the option of being rejected and not entertained. Just because a proposal is lodged should not automatically generate a right to exhibition where strategic alignment is not demonstrated at the outset.

The proposal would be publicly exhibited before Council could prepare or consider any necessary associated Development Control Plan (DCP) amendments or Voluntary Planning Agreements (VPAs) for concurrent public exhibition. This may prevent the community and Council from understanding a proposal holistically as such mechanisms are intended to work in tandem and not be processed independent of the primary planning proposal. Currently, the process would require a second round of exhibition incorporating any DCP amendment or VPA, duplicating effort, risking community consultation fatigue, and potentially disrupting the subsequent development application process if not readily resolved alongside the planning proposal stage.

The proposed exhibition periods are generally consistent with current benchmarks, but to allow more fulsome community engagement, consideration should be given to extended periods when over public holidays (particularly Easter and Christmas – New Year). If the proposal is State Government led, additional timeframes need to be added that allow a local government to present proposals to its council, incorporating sufficient agenda preparation lead-in times. If consideration by a Local Planning Panel remains obligatory (discussed further in this submission below), time allowances for this process this should be included.

Proposed timeframes do not account for requests for further information, or when items are deferred by Council, amongst other reasons. The concept of a “stop-the-clock” mechanism may be beneficial in this regard however no detail is provided on this point in the Discussion Paper. The application of a “stop-the-clock” adds an administrative layer which adds complexity and is time-consuming. Experience from other jurisdictions suggests that proponents either refuse to agree or agree to very short and incremental intervals of 1-2 weeks which can be unworkable and invites replication of the administrative process to extend further. The idea of only one extension of time is not acceptable in this regard. Equally an extension being no longer than the original timeframe does not add sufficient flexibility in instances where it might be warranted to hold the proposal in abeyance for longer, to allow a more complex issue to be examined, particularly where Council and the proponent are generally aligned.

The reality of a planning proposal assessment is that there is no standard one-size-fits-all timeframe. Rather than a reliance on benchmarking, there should be an emphasis on regular and transparent interaction between the proponent and rezoning authority at key milestones to ensure that status updates are available and realistic timeframes are generally agreed or modified as the proposal progresses.

#### Role of Proponents

The increased role of private proponents is not supported as proposed as it will not achieve the reform objectives of efficiency and transparency. There is merit in a proponent responding directly to submissions in that it improves ownership of issues and greater accountability to the community. However, allowing private proponents to have such significant responsibilities including both advertising and responding to the public exhibition submissions blurs the line between proponent and decision-maker, particularly when combined with the introduction of a “planning guarantee” (discussed further below). It invites low-value quality in proposals to achieve the bare minimum for compliance, and has the potential to erode public trust and confidence in the planning process. Proponents bring vested interests in progressing their own site redevelopment and are not able to

approach planning issues strategically, objectively or with the community's best interests always in mind. Inevitably it will fall to Council officers to cross-check any proponent-led submission review, causing a doubling-up which does not currently exist.

It is recommended that Council retains ownership of submission assessment – including referrals to state agencies, with proponents responding to submissions in a “right of reply” process step which is then incorporated into Council reporting.

#### Role of Local Governments

Strong support is given to returning decision-making power to local governments for the majority of proposals given its knowledge and strength in setting the strategic direction of its municipality. State government determination of State-led proposals also has merit, provided local government has sufficient ability to provide feedback and shape outcomes.

Clarification should be provided regarding the scope of State Government comments and “checks and balances” in relation to Council-determined proposals. If a Gateway Determination is removed, the interaction between local and state levels should be limited to matters of process to ensure consistency across LEPs, as local governments are capable of assessing for consistency with legislation and policy. Such resourcing should be expanded to include assistance with obtaining external agency referrals where they are not forthcoming. A State Government resource and assistance regarding process and interpretation would be welcomed in lieu of the current Gateway Determination, particularly to maintain consistency and standardisation of LEP controls across local governments. Note the table identifies actions (not roles) of each stakeholder and should be modified for clarity.

#### Role of public agencies

Clearer parameters for public authority involvement in rezoning applications is supported. Public authorities should be adequately resourced to respond to referrals in a timely manner, ideally with specific staff dedicated to this purpose. It is not sufficient that they be consulted during the scoping stage only, as proposals often evolve during the process or more complex issues become apparent after a more detailed assessment. Further consultation may be necessary where it may negate advice previously given, or the proposal is substantially changed. State Government should also perform an intermediary or co-ordinating role if and when public authorities are not responsive and/or in navigating a difference of opinion.

#### Fee structure and refunds

The proposed fee structures should be tested and explored against real case studies based on a variety of different planning proposal types. Variable, rather than fixed, rates are preferred for improved cost recovery that accounts for the level of complexity and time spent assessing proposals.

It is important to be aware of the cost implications to Councils on these new measures, particularly the greater emphasis on the pre-lodgement phase. This creates a resource burden for Councils, where significant officer time may be spent navigating a proponent through the process and in providing advice, without any ability to recoup through a suitable fee structure. Fees for pre-lodgement advice on a per-meeting basis with a maximum number of meetings should be foreshadowed by any changes to the rezoning framework. This will also deter those with speculative or baseless proposals and enable councils to properly resource a component of the process that the Discussion Paper seeks, quite rightly, to reinforce.

The concept of a refund is not supported. There needs to be recognition that it costs time and money for councils to assess planning proposals, irrespective of the final outcome. The concept of a refund conflates a planning decision with a financial one, which is inappropriate and not reflective of effort

expended. This is a punitive measure that is not used anywhere else in the planning system that will simply lead to more hasty refusals as refund deadlines loom. Removing the ability to seek a refund (except in administrative situations, as is presently the case) will also reduce speculative proposals seeking a view only to withdraw where the assessment outcome does not arrive in favour.

The concept of a “planning guarantee”, or refund, has the potential to gamify planning and skews the focus towards timeframes not quality of proposals for planning outcomes that are robust and enduring. While additional funding for assessment is generally welcomed, it should be done so in a highly controlled and consistent basis. Otherwise, this creates the potential for local governments to appear as consultants for the development industry, potentially eroding community perceptions of integrity and independence given that they are working on the community’s behalf. Ultimately, greater resources are required in-house at Councils and State Government is best-placed to provide additional funding directly rather than cost-shifting to proponents.

Rather than a focus on time and cost, the emphasis should be placed on increasing transparency, reliability and trust in the decisions of the planning profession by keeping private proponents separated from assessment and determination through rigorous processes and regular engagement with stakeholders.

#### Rezoning Appeals

Council does not support the introduction of a rezoning appeals avenue. It is not expected to achieve the objectives of the proposed reform in that it will significantly increase timeframes, increases costs with significant resource implications for local governments, and undermines local planning decision-making without any assurance of an improved planning outcome. There has been much discussion and general opposition to a third-party appeals pathway for planning proposals already documented in recent submissions by Local Government NSW, the Planning Institute of Australia and legal practitioners.

While an appeals pathway is suitable for development applications, it cannot be readily replicated for planning proposals which are strategic in nature and set policy direction rather than adhere to existing legislative standards. It is not apparent from the Discussion Paper why there is a need to deviate from the current process of a Rezoning Review, or if this step will remain and be supplemented by a more formal appeals authority. The first question should be what benefit such a pathway would add to quality planning outcomes that the current process does not already address, bearing in mind the initial comments in this submission regarding the maintenance of the integrity of a strategic planning-led system. The benefit of providing greater power back to local governments in determining planning proposals is tarnished with the new threat of appeal.

Secondly, the mechanism of appeal needs much greater clarity. Traditional courts of law struggle with the sometimes grey areas of strategic planning and policy review, traditionally taking the role of adjudicator of an existing set of prescribed rules and legislative process. Allowing a legal court to dictate such outcomes may skew the focus towards compliance with current controls and lessen the quality of merit-based planning decision-making. The increased cost of involving courts and lawyers in lengthy strategic planning exercises should also be considered.

Further consideration should also be given to an appropriate appeal trigger, whether it be a timeframe or a decision. The apparent loss of avenues such as Local Planning Panels and Rezoning Reviews prevents a second pair of eyes and independent evaluation and judgement being applied separate from a Council decision. These avenues should be reinstated, and their roles enhanced, such as in the

instance of both a Local Planning Panel and Council not supporting a proposal no further appeal avenue is triggered as it is deemed to have been independently assessed.

#### Other issues and comments

- Consideration should be given to mechanisms that emphasise the need for precinct-based controls to avoid reliance on site-specific planning proposals to make changes. Councils should be resourced to lead precinct-wide LEP amendments, where speculative proposals are not entertained until the controls are in place and development can be suitably rolled-out with a high level of community acceptance.
- In certain circumstances, consideration could be given to planning proposals running concurrently with a development application to better marry the processes and achieve more cohesive place-based outcomes. The approval of planning proposals often includes the consideration of a vast array of information and design that simply leads to a crude numerical amendment to an LEP. Concurrent planning proposal and development application processes would allow a greater degree of detailed design resolution upfront for more complex sites. While this capacity already exists in the *Environmental Planning and Assessment Act 1979*, councils are extremely reluctant to utilise this option given the extreme focus on development application processing times.
- If inconsistencies with s. 9.1 Ministerial Directions are allowed, then their strength falls away, and the concepts and objectives should instead be embedded in the relevant SEPPs. The new Minister's Principles duplicates the intent of many directions and adds yet another layer to an already complex series of considerations. Such documents require streamlining as part of this reform package.

Council would be happy to discuss any of the above and continue to attend forums to further assist DPE in refining this important reform initiative. Please contact Neal McCarry, Team Leader Strategic Planning, on [REDACTED] or [REDACTED] to arrange.