

28 February 2022

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

Our Ref: 2022/054023

Dear Ms Wythes

Submission on A New Approach to Rezoning in NSW

Northern Beaches Council (Council) appreciates the opportunity to comment on the NSW Department of Planning, Industry and Environment's (the Department's) exhibition of a Discussion Paper on *A New Approach to Rezoning in NSW*.

Council recognises the complexity of the NSW planning system and appreciates the opportunity to consider ways to improve the rezoning process. While Council believes that the existing rezoning process works effectively in general, we recognise that there may be opportunities to improve how the rezoning process is understood by a range of stakeholders and users.

Proposed reforms that are supported by Council include:

- new terminology to ensure consistency and to reduce planning jargon to give the community better understanding of the process;
- obtaining landowners consent for proponent initiated rezoning applications;
- mandatory pre-lodgement meetings (scoping proposals) and consultation with state agencies (if applicable), with the feedback received valid up to 18 months;
- removal of the Gateway determination phase on the basis that mandatory pre-lodgement meetings (scoping proposals) are implemented;
- shifting merit assessment to after the public exhibition period and removing multiple assessment points in the process;
- greater autonomy provided to councils to determine and finalise proponent initiated rezoning applications; and
- providing a level of consistency between councils in structuring fees for rezoning applications.

However, Council expresses its strong opposition to two proposed suggestions. This includes the proposed appeals pathway through the NSW Land and Environment Court, as well as the possibility to apply a fee refund (Planning Guarantee) for rezoning applications that are not determined within a certain timeframe.

Council also raises concern with the proposed changes to exhibition requirements. This includes the 7-day adequacy assessment timeframe, which is difficult to achieve with postal notification, and the requirement for proponents to include an explanation of the application in the postal notification, which will create mixed messaging with the public.

Please refer to the attached document for further detailed comments and suggestions. Council would like to thank the Department for affording Council the opportunity to provide comment on the Discussion Paper.

Should you require any further information or assistance in this matter, please contact my office on [REDACTED]

Yours faithfully

Andrew Pigott
Executive Manager Strategic & Place Planning

Response to Discussion Paper Questions

What do you think?	Council response
Part A: Background	
The need for reform	
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?	<p>Yes.</p> <p>The Discussion Paper provides a fair summary of the issues within the current framework including the duplication of assessments by councils and the Department, inconsistencies with consultation approaches, as well as inadequate resourcing and funding amongst councils for strategic planning, assessment and progressing rezoning applications.</p> <p>The present issue with the NSW Planning Portal for processing rezoning applications is not mentioned in the Discussion Paper. The current system is inefficient and clunky. Council is currently required to process applications using its own systems and the NSW Planning Portal. This has become an administrative burden for Council.</p> <p>Whilst Council recognises that there will be improvements to the NSW Planning Portal, Council notes that current issues with rezoning applications include:</p> <ul style="list-style-type: none"> - processing rezoning applications using the NSW Planning Portal is not a mandatory requirement, hence not all councils use it. Proponents have difficulties when they submit a request for a Rezoning Review, which cannot be processed because the original rezoning application was not submitted through the NSW Planning Portal - because the fees for rezoning applications frequently exceed standard credit card limits, they are processed directly with Council. As a result, instead of using the

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	<p>NSW Planning Portal, proponents prefer to submit rezoning applications directly to Council</p> <ul style="list-style-type: none"> - due to the Department's and Council's varied record keeping systems, there is some confusion among the public about application numbers - there are delays with referral responses to state agencies sent through the NSW Planning Portal because it is unclear which staff or business division the request has reached, with no ability to follow up via phone or email.
Part B: The new approach	
New categories and timeframes	
<p>Do you think benchmark timeframes create greater efficiency and will lead to time savings?</p>	<p>No.</p> <p>Benchmark timeframes will not, in and of themselves, create greater efficiency or lead to time savings.</p> <p>Council sees that the purpose of the benchmark timeframes is to provide guidance to stakeholders on expected timeframes for each stage.</p> <p>Council's key focus is to comply with the timeframes set out in the Minister's Statement of Expectations i.e., make a decision on a proponent initiated rezoning application within 90 days. This timeframe is well established and works well.</p> <p>We question why there is only a 6 week exhibition period proposed for a Council's Principal LEP and an 8 week exhibition for a Category 3 (Complex) rezoning.</p>
New roles - councils	
<p>What do you think about giving councils greater autonomy over rezoning decisions?</p>	<p>Providing greater autonomy to councils for proponent initiated rezoning applications is supported as local assessment and decision making are best done by locally elected bodies on behalf of their communities.</p>

What do you think?	Council response
	<p>Matters for consideration in this approach include:</p> <ul style="list-style-type: none"> - Appropriate probity measures would need to be in place in circumstances where Council land will be impacted by a proposed rezoning. - We do not support any proposal for appeal pathways being established for rezonings.
<p>What additional support could we give councils to enable high-quality and efficient rezoning decisions?</p>	<p>Suggested support measures include:</p> <ul style="list-style-type: none"> - for Council staff: practice notes, secondment opportunities for Department staff to assist councils with resourcing constraints or periods of high workload - for Local Planning Panel: grants to assist with additional meetings, training programme for panel members - for Council meetings: training programme for Councillors
<p>What changes can be made to the Department's role and processes to improve the assessment and determination of council-led rezonings?</p>	<p>The scoping proposal, as identified in the Discussion Paper, is welcomed. This will ensure that all issues are identified at the start and a more efficient assessment process is provided.</p>
<p>Department of Planning, Industry and Environment – case management, monitoring and reporting</p>	
<p>Is there enough supervision of the rezoning process? What else could we do to minimise the risk of corruption and encourage good decision-making?</p>	<p>Providing greater autonomy to councils for proponent initiated rezoning applications may increase the risk of corruption and good decision-making.</p> <p>Setting up clear procedures is one approach to reducing the risk of corruption and encouraging good decision-making.</p>
<p>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?</p>	<p>Yes.</p> <p>The criteria set out in the Discussion Paper sets a fair and balanced approach to the determination of rezoning applications by councils and the Department.</p>

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Department of Planning, Industry and Environment – inconsistency with section 9.1 ministerial directions	
Should councils be able to approve inconsistencies with certain s. 9.1 directions? If so, in what circumstances would this be appropriate?	<p>Yes.</p> <p>Council staff have relevant qualifications and local knowledge and should be able to approve inconsistencies that are justified. Guidance on the definition of 'minor significance', as referred to in the s. 9.1 directions, could assist with consistency of assessment.</p>
Public authorities	
Is it enough to have agencies involved in scoping and to give them the opportunity to make a submission during exhibition?	<p>Yes.</p> <p>However, Council recognises that state agencies may not have sufficient resources to provide preliminary advice, particularly at the scoping stage.</p> <p>Council is concerned that a lack of response from state agencies would exacerbate future challenges related to the application.</p>
Do you think it would be beneficial to have a central body that co-ordinates agency involvement?	<p>Yes.</p> <p>Council notes that sometimes it is difficult to determine where to send referrals within some state agencies. A central body that coordinates agency involvement may be more beneficial when following up outstanding referral requests and this may also improve efficiencies as state agency consultation is normally the part of the process that is responsible for extended delays.</p>
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?	<p>Yes.</p> <p>In order to proceed with assessment, Council will escalate the response within the relevant state agency. This occurs regularly and is the cause of many of the delays in the process.</p> <p>A lack of response from state agencies exacerbates future challenges from the application e.g., at development application</p>

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	stage, and this may be reflected in the assessment.
New steps - scoping	
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?	<p>No.</p> <p>If a fee is to be charged to proponents for a scoping proposal, study requirements should be issued which addresses why the rezoning application is inconsistent with strategic plans.</p> <p>Proponents should have the opportunity to address the concerns raised in the scoping report prior to submitting a fully formed proposal for exhibition and assessment.</p>
New steps – 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?	<p>One idea for assuring community members that the exhibition does not mean the rezoning authority supports the application and that it may still be rejected is to provide an explanation of the rezoning process on the Department's website. This could include a short educational video or infographic about the rezoning process.</p> <p>Standard wording for all councils to include in their notification letters / website to confirm that exhibition does not necessarily mean the application is supported.</p>
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?	<p>Removing the opportunity for a merit assessment before exhibition is supported.</p> <p>This will save time as all assessment will shift towards a single point in the process. The mandatory scoping proposal will ensure that all requirements are identified upfront prior to lodgement.</p>
Should the public have the opportunity to comment on a rezoning application before it is assessed?	<p>Yes.</p> <p>Council's current process includes the requirement to conduct pre-gateway (non-statutory) exhibition to allow the public an opportunity to comment on the rezoning application before assessment.</p>

What do you think?	Council response
	The proposed approach to exhibit rezoning applications within seven days of lodgement allows the public to comment on the rezoning application before assessment.
New steps – exhibition	
What other opportunities are there to engage the community in strategic planning in a meaningful and accessible way?	<p>The level of engagement should depend on the impact level of the project.</p> <p>Targeted engagement may be required for high impact rezoning applications such as Category 3 (Complex) or Category 4 (Principal LEP). This could include creating a dedicated website to describe the project's history, as well as hosting webinars or other educational materials.</p> <p>Council notes that postal notification to adjoining owners and occupiers prior to the exhibition start date may be difficult to achieve within 7 days. Recognition in the process that there may be delays with postal notification or extending the 7-day timeframe is recommended.</p> <p>The idea that proponents assume more responsibility for exhibition such as by adding an explanation of the rezoning application in notification letters, is met with caution by Council. This sends mixed messages to the public, and the language will almost certainly favour the proposal's benefits.</p>
Do you have any suggestions on how we could streamline or automate the exhibition process further?	The exhibition process could be streamlined and automated with improvements to the NSW Planning Portal such as the receipt of submissions and automatic forwarding to councils, links to Council websites to assist with more complex applications, or email alerts to registered users if a proposal has proceeded to a new stage.
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?	<p>No.</p> <p>The proposed approach is streamlined enough to manage potential delays that may happen earlier.</p> <p>Council supports the assessment 'clock' starting when proponents submit their</p>

What do you think?	Council response
	<p>response to submissions and any amendments to the rezoning application.</p> <p>For Category 1 (Basic) and Category 2 (Standard) rezoning applications, Council recommends that the current 90 day timeframe be maintained. Regardless of the complexity of the rezoning application, all rezoning applications are subject to internal reporting requirements, such as reports to Design Review Panels, the Local Planning Panel, Councillor briefing sessions and Council meetings, The Minister's Statement of Expectations will be met as well if the 90 day timeframe is reached.</p> <p>The 90 day timeframe allows councils to be flexible in order to achieve the greatest possible planning outcome, without having to worry about proponents filing an appeal. There may be opportunities to reduce benchmark timeframes within other stages that do not require internal reporting, such as the scoping and post-exhibition stages, to account for the 90 day timeframe.</p>
Do you think requests for more information should be allowed?	Council agrees with the statement in the Discussion Paper that requests for more information should be discouraged, unless it addresses a concern from state agencies during the exhibition period or is considered minor.
New steps – 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?	Reporting obligations such as Design Review Panels, Local Planning Panels, Councillor briefings and Council meetings are a matter for Council to address internally.
Do you think the public interest is a necessary consideration, or is it covered by the other proposed considerations?	Public interest is a necessary consideration.
Are there any additional matters that are relevant to determining whether a plan should be made?	<p>Yes.</p> <p>In 2021, the NSW Government exhibited a range of reforms to infrastructure contributions. This included an Environmental Planning and Assessment (Local Infrastructure Contributions – Planning Proposals) Directions 2022. This Direction</p>

What do you think?	Council response
	<p>seeks to facilitate the preparation and exhibition of draft contributions plans at the same time as rezoning applications.</p> <p>A key concern that relates to the proposed reforms is the significant time and cost for councils to meet this requirement under proponent initiated rezoning applications. An adopted contributions plan by a council should be a relevant matter in determining whether a plan should be made.</p>
New steps – conflicts of interest	
<p>Do you think a body other than the council (such as a panel) should determine rezoning applications where there is a VPA?</p>	<p>With appropriate probity plans/measures in place and a clear identification of roles, Council is able to consider and determine rezoning applications where a VPA is included.</p>
<p>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?</p>	<p>No issue is raised with either approach (i.e., determination by a Local Planning Panel or Department) when a conflict of interest arises. If the LPP is to take a greater role in the consideration of rezoning applications, care should be taken to ensure the make up of the Panels includes members with appropriate strategic experience (not just DA experience).</p>
New fee structure – scoping fees, assessment fees	
<p>Do we need a consistent structure for rezoning authority fees for rezoning applications?</p>	<p>Yes.</p> <p>There is an opportunity to harmonise the fee structure by aligning with the rezoning application category to promote consistency. But any review would need to give strong consideration into the significant resources (including Council Officer hours) that are required to process rezoning applications. There also needs to be appropriate mechanisms to increase the fee on an annual basis to recognise inflationary impacts.</p>
<p>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?</p>	<p>A single, lump sum fee works effectively with Council since fees are paid up front and there is no opportunity for fee disagreements during the process.</p> <p>Cost components are likely to vary between councils since some may incur higher</p>

What do you think?	Council response
	<p>expenditures in the assessment process due to staff hourly rates.</p> <p>Council's cost components aim to ensure the cost recovery for the assessment of a rezoning application. As of 2021/22, Council has structured its fees and charges as follows:</p> <ul style="list-style-type: none"> - major rezoning application (includes advertising): \$69,974 - minor rezoning application (includes advertising): \$32,390 - public hearing: cost recovery - extra studies or work required post gateway: cost recovery <p>Council offers fee refunds (up to 30%) if a rezoning application does not progress past the Gateway determination stage (only where no application is made for a Rezoning Review).</p>
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?	A fee schedule is a simpler approach than identifying for what, how and when rezoning authorities can charge fees.
What is your feedback about the 3 options presented above?	<p>Option 1: Fixed assessment fees is supported by Council because it is equivalent to the current fee approach for Council's rezoning applications.</p> <p>Option 2: Variable assessment fees and Option 3: Fixed and variable assessment fees are both considered complicated and an administrative burden. Due to varying degrees of experience and knowledge, estimated staff hours would be extremely challenging. To achieve deadlines, overtime rates may also be required, which would add to the cost. While Council recognises that a bank guarantee at the time of lodgement would reduce the risk of non-payment in the case of a variable assessment fee approach, this would be an administrative burden for both proponents and Council.</p>
Should fee refunds be available if a proponent decides not to progress a rezoning application? If so, what refund	Fee refunds should only be available if a proponent decides not to progress a rezoning

What do you think?	Council response
terms should apply? What should not be refunded?	<p>application and no application is made for an appeal.</p> <p>Council recommends that only a certain percentage is refunded so that costs associated with advertising and the initial assessment can be recovered.</p>
New fee structure – 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?	<p>No.</p> <p>Council strongly objects to an approach which enables a fee refund if a rezoning authority takes too long to assess a rezoning application (planning guarantee).</p> <p>A fee refund places unnecessary pressure on rezoning authorities who cannot control how many rezoning applications are lodged or competing workloads. This process penalises rezoning authorities as significant assessment and resources would have occurred.</p> <p>Further, this approach is likely to result in more councils not supporting applications to meet the timeframes imposed, and hence more applications being decided on appeal. This may not be the best planning outcome because it would undermine strategic planning over time.</p>
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?	Not applicable due to Council's objection to the proposed planning guarantee approach.
If not, what other measures could encourage authorities to process rezoning applications promptly?	<p>More guidelines for councils on when reports to Design Review Panels, Local Planning Panels and Council meetings are required will help provide consistency in approach and expedite the processing of rezoning applications.</p> <p>Council recognises that these meetings take a significant amount of planning (at least one month in advance), so knowing whether reports are necessary to be presented at these meetings and formalising this in the flowchart would be helpful.</p>

What do you think?	Council response
Part C: New appeals pathway	
Do you think public authorities (including councils) should have access to an appeal?	<p>No</p> <p>We do not support appeals in the rezoning system.</p>
Which of these options – the Land and Environment Court or the Independent Planning Panel Commission (or other non-judicial body) – do you believe would be most appropriate?	<p>The Independent Planning Commission is strongly preferable over the Land and Environment Court and considered more appropriate for strategic planning.</p> <p>Council strongly objects to rezoning applications being determined under appeal by the Land and Environment Court. This approach would invalidate and, in some ways, reverse the Department's longer-term land use planning reforms for a strategic led system.</p> <p>Merit appeals are appropriate for development applications because the judge interprets the planning controls to reach a decision i.e., they consider the original decision maker's intent and reach a view based on the guidance in the statutory controls, relevant legislation, and the evidence presented. This is a role that a legal mind can easily fill.</p> <p>An appeal to the Land and Environment Court would be much more difficult for rezoning applications because the judge would not be able to rely on applying a legal interpretation of the controls. They would have to consider the complex policy backdrop of strategic planning, as well as local circumstances, and competing interests and priorities. A decision by the Land and Environment Court will take longer and cost more money for both parties.</p>