CITY OF PARRAMATTA

SUBMISSION

To the Department of Planning and Environment (DPE)

In response to the exhibition of Discussion Paper: A new approach to rezonings

Review of the proposed solutions to create a better rezoning process and appeals or review framework

Submission by City of Parramatta Council

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1. Executive Summary

As part of the Planning Reform Action Plan initiated by the Minister for Planning and Public Spaces, a Discussion Paper was released by the NSW Government titled 'A new approach to rezonings in NSW'. The Discussion Paper provides options for potential changes to how planning proposals (new proposed term: "rezoning applications") are assessed and determined.

Council supports the need for a transparent and efficient planning system that ensures decisions about potential land use changes are consistent with strategic planning policy. However, Council strongly objects to the following details of the proposed reforms:

- Appeals processes: strong objections are raised to the proposed appeals mechanism. The appeals mechanisms proposed will remove the critical policy decision making powers of councils in their role as elected officials and the communities they represent. This concern is compounded by the fact that the appeals are proposed to be granted only to private proponents and will not be available to councils or community groups. This will cause further dilution of the role of councils and the community in the strategic policy decision making process.

- Fees and resources: the proposed fee structure is too rigid (based on categories) and Councils should instead be able to set fees. Mandatory fee refunds are strongly objected to (such as planning guarantees). These will severely limit Council resources whilst affecting the quality of planning decisions due to rushed assessments. As the planning guarantee will not halt the assessment and determination of rezoning applications, it will likely create an incentive for proponents to recover costs rather than allowing councils the time needed to properly assess an application.

- Process risks: the proposed reforms create several risks to Council's assessment of planning proposals. Most significantly, these include the imposition of minimal timeframes to assess rezoning applications, as well as a review of their quality prior to exhibition. Importantly, it is considered the timeframes create a 'one size fits all' approach that does not consider that some rezoning applications may be more complex than others and therefore require more time to properly assess. This is the case with City of Parramatta, where it is commonplace for a planning proposal to also include the assessment of site specific Development Control Plans and Planning Agreements.

The most significant and overarching concern of this submission is that the proposed reforms would undermine strategic planning policy and would have the effect of removing the critical policy decision making powers of councils (and therefore the local community). The resultant outcome would be that

strategic planning decisions that affect how a community live, work and interact with their localised environments would not be fully considered in the decision making process.

NOTE: The Discussion Paper refers to planning proposals as “rezoning applications”, therefore this proposed new term is used throughout the submission and **Appendix A**.

2. Introduction / Background

In December 2021, the NSW Government released a Discussion Paper titled 'A new approach to rezonings in NSW'. The Discussion Paper provides options for potential changes to how rezoning applications are assessed and determined. It is noted that the Discussion Paper focuses solely on the rezoning processes that happen using rezoning applications to make or amend LEPs or SEPPs and does not include state-led rezonings.

The Discussion Paper was an initiative of the former Minister for Planning and Public Spaces, Rob Stokes, as part of the Planning Reform Action Plan to build a faster, simpler planning system to support jobs, homes and public spaces. The Planning Reform Action Plan outlines long-term structural reform of the NSW planning system to help unlock NSW's productivity and leave a legacy of great places for the community.

In addition to process, a change to planning proposal terminology is also proposed. The change is intended to reflect the roles of the parties more clearly and avoid confusion and duplication of titles. It is sought to replace the term 'planning proposal' with 'rezoning application' and remove the term 'Gateway' noting the Gateway stage is proposed to be removed. Council does not object to these proposed changes as set out in the table below.

Current roles	Proposed roles	Description of proposed roles
Planning Proposal	Rezoning application	An application to make or amend an LEP
Private applicant (not recognised) Public authority applicant (not recognised) Planning Proposal Authority (PPA) - usually council, responsible for planning proposal	Rezoning authority	Means a rezoning application lodged by any of the below: Private individual or corporation Public authority, including state-owned corporations Council for changes to their LEP
Local Plan Making Authority (LPMA). Makes or amends the LEP	Rezoning authority	Responsible for assessing and determining the rezoning application. Can be a council or the minister
Gateway	N/A – Gateway stage to be removed	Included in the function of the rezoning authority

Table 1 – Current and proposed terminology

3. Objections & Comments

3.1 Changes to the roles of local and state government, state agencies and private applicants

The new approach seeks to change the roles of applicants, councils and the DPE in the assessment and determination of rezoning applications.

- **Applicants:** proponents will be acknowledged as applicants, giving applicants the right to meet with the rezoning authority to discuss a potential request, submit a rezoning application and have it assessed and determined after exhibition, and appeal a decision because of a delay or dissatisfaction with a decision. Applicants will be responsible for meeting information requirements, consulting with state agencies and responding to submissions. They will require owner's consent to lodge a rezoning application.

- **Councils:** will have full control of privately initiated rezoning applications, including giving permission to exhibit (currently given by gateway determination), reviewing any changes made after exhibition, and making a final decision. However it is noted that an appeal process is proposed that would present the opportunity for Council's decision to be over-ridden. The DPE will be available to assist Council where needed. 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).

  Discussion Paper Questions:

  > *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?*

  Council response: Given there is no gateway process identified, Council will have an increased role in finalising rezoning applications. This is supported, as Council represents the community and has a fundamental understanding of the applicable strategies and policies that govern quality planning outcomes for the community.

  There is no requirement for reporting up to Council or the Local Planning Panel pre-exhibition. It is Council's preference to make this a legislated requirement to ensure quality planning outcomes are achieved.

Although Council will assess proponent led planning proposals with less input from the DPE than is currently the case, this is not anticipated to provide Council with additional control on the final determination, noting proponents will be allowed to appeal Council decisions under the new approach.

- **DPE**: resources will be refocused to state-led, strategic and collaborative planning. The Minister will still assess and determine a reduced scope of rezoning applications.

  Discussion Paper Questions:

  > *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?*

  Council response: The DPE involvement at the scoping phase will be key to ensuring accountability on behalf of the applicant to provide quality rezoning applications for lodgement.

  The new recommended process that sees all rezonings by government agencies dealt with by the DPE reduces the amount of say that communities have when government land is sold or rezoned; the issue of sale of Government owned land can be controversial. There would also be a financial imperative for the government to allow densities on land being sold for redevelopment at densities or for uses that do not align with the local community. Government rezoning applications should not be assessed by the DPE as conflicts of interest will arise.

  A case study is the land in Epping acquired for the Metro to Rouse Hill, which was then rezoned for high density residential. When Council argued the land should be used for commercial purposes, the agencies did not want to respond to this community need because it would decrease the value of the property when they sold it. The good of the community was not necessarily the key issue that was driving decision making in this case in the opinion of Council. These sorts of Government rezoning applications should stay with Council, or Council should have an appeal right if it considered the zoning or other controls are not appropriate.

  > *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?*

Council response: Yes, this would be appropriate in all circumstances to ensure that Council is not taken out of the decision-making process.

The Discussion Paper does not set out where and when decisions are made on who makes a plan where there is a Section 9.1 Direction. It implies that this would be identified as part of the scoping phase, in which case it is assumed the DPE shall also attend all scoping meetings that may involve a Section 9.1 Direction variation who will then advise whether it is significant enough to warrant the DPE dealing with the rezoning application post exhibition. Should this occur, it is unclear whether the rezoning application will be reported to Council and then forwarded to the DPE for finalisation.

It is also unclear what occurs should a rezoning application be amended by the applicant in their response to exhibition issues. If the application is transferred to the DPE post exhibition, then there is the potential for the applicant to seek a Section 9.1 Direction variation simply in order to have the matter taken out of the Council decision-making process.

- **State agencies:** will outline requirements at the pre-lodgement / scoping phase and strict timeframes for agency responses will be provided.

  It is unclear how the relevant state agencies will be decided upon for consultation. It is assumed the DPE will issue the applicant a list of requirements. This will need to be explained and Council should be involved with these discussions to ensure transparency.

- **Public authority proponents:** Rezoning applications lodged by public authority proponents that are holders of infrastructure / other assets will be determined by the DPE.

  Discussion Paper questions:

  > *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?*

  Council response: Agencies should form part of the scoping phase, to put forward their comments / requirements for the rezoning application. It would be insufficient for agencies to review the application and the information submitted in response to their requirements solely as part of the exhibition process.

It would be of benefit to have a central body to co-ordinate agency involvement, particularly for complex applications whereby multiple agencies are involved. This will also ensure agencies are accountable and provide responses in a timely manner. Should agencies not respond within a certain timeframe, this may have major consequences for delaying the determination process.

3.2 Introduction of new planning proposal 'categories' and corresponding timeframes for completion

The Discussion Paper suggests categorising rezoning applications based on complexity, which will in turn inform timeframes for their completion, public exhibition requirements and fees charged. Four categories are proposed with corresponding timeframes: Category 1 (Basic), Category 2 (Standard), Category 3 (Complex), Category 4 (Principal LEP led by Council).

With regards to Council's comments on fees, refer to section 3.4. With regards to Council's comments on exhibition, refer to section 3.3.

Category 3 will cover a wide range of applications, including site-specific and larger precinct-sized rezoning applications. This category requires more detail, for example it does not include a rezoning application that requires a VPA, DCP amendment or generation of a site specific DCP, which is common for complex applications.

Category 4, where it involves an entire LGA, should not be limited to 6 weeks exhibition. To ensure all stakeholders are properly consulted when doing a comprehensive LEP, the period must be able to be extended up to 12 weeks depending on the complexity of the proposal.

Discussion Paper Questions:

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

Council response: Benchmark timeframes are not useful as these cannot apply linearly across all rezoning applications noting some are innately complex involving DCPs and VPAs, as is commonplace in City of Parramatta. They also have the potential to result in rushed assessments and therefore poorer quality planning outcomes by setting unrealistic expectations.

3.3 Changes to the steps involved in the processing of a rezoning application

<u>Scoping phase</u>

The Discussion Paper recommends a mandatory scoping / pre-lodgement phase to enable early feedback on a rezoning application and to clarify

information requirements for lodgement. The applicant must prepare a scoping report for review by the consent authority.

The new mandatory requirement is supported by Council, with the emphasis on resolving issues prior to lodgement likely to reduce formal processing times. However, Council raises several concerns with this process.

Council should be granted the opportunity to refuse the issuing of scoping requirements at the scoping phase if a rezoning application is clearly inconsistent with Council's strategic policy framework. This will prevent speculative applications from being lodged and save time and resources required to process them. Additionally, such applications would be prevented from proceeding to exhibition, thereby avoiding the risk of unnecessarily generating community anxiety and concern about proposals that lack strategic merit.

It should be a legislated requirement for all scoping phase applications to be reported to Council. This will ensure the elected officials are able to comment early in the process, and their concerns considered / addressed before a rezoning application is lodged. It is also recommended newly lodged rezoning applications are reported to Council so that any issue Councillors want addressed as part of the scoping phase can be reviewed before the council determines the application at the end of the process.

Discussion Paper questions:

> *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 applicants have the opportunity to submit a fully formed proposal for exhibition and assessment?*

Council response: Yes - if a prospective application is grossly inconsistent with strategic plans, then it cannot be supported and therefore study requirements should be refused. The correct mechanism would be for the applicant to seek an amendment to the strategic plan rather than significantly varying it.

Lodgement

The Discussion Paper notes that future rezoning applications will be lodged via the NSW Planning Portal. Upon lodgement, Council will be granted 7 days to review the adequacy of lodgement material, including studies. If adequate, this will trigger exhibition of the proposal. If inadequate, a consent authority can reject the lodgement (within 7 days).

The proposed 7 days to review an application is too short to determine whether the quality is sufficient for public exhibition. This is particularly true of complex rezoning applications. It is appreciated that this new process is

similar to a DA process, however, it is important to note that DAs must conform (within reason) to the applicable controls and therefore are unlikely to be grossly inconsistent with the strategic framework.

Based on research carried out by DPE and outlined in the Discussion Paper, it's been identified that councils want greater empowerment to reject rezoning applications in early stages of the process before doing a full assessment, and they seek a greater decision-making role. Should it be decided that applications cannot be rejected at the scoping phase, and applicants are afforded the opportunity to lodge a rezoning application despite its inconsistency with the strategic framework, then more time should be granted for councils to reject the rezoning application before it is put out on exhibition. Additional review time could be based upon the four proposed categories.

Discussion Paper questions:

> *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?*

Council response: Standardised wording for notification letters could be utilised for all councils to assure the community that exhibition does not mean the application is supported, including details provided by the DPE on their website, and on the Planning Portal.

Removing the opportunity for a merit assessment is not supported, as the technical issues should firstly be resolved before the community is consulted to ensure that the information is accurate and in accordance with the strategic planning framework. In this regard, the proposed 7-day review period is too short to allow for a merit assessment to be carried out prior to exhibition occurring.

The Discussion Paper proposes applicants provide a short, plain English summary of their rezoning application, its intent and justification and how it aligns with strategic plans to accompany the exhibition material. It should be a mandatory requirement for Council to prepare an initial response to the applicant's summary, outlining Council's preliminary view on the rezoning application for inclusion in the exhibition material. This will provide clarity for all stakeholders on the initial views of Council on the application.

Exhibition

The Discussion Paper identifies exhibition periods based on the rezoning application category with the exhibition processes automated through the NSW Planning Portal. Applicants must provide a summary of the proposal, its intent and justification and how it aligns with strategic plans. It is proposed to attach these to the notification letters. Applicants are also required to respond to any submissions received once the exhibition period has concluded.

As noted above, it should be a mandatory requirement for Council to prepare an initial response to the applicant's summary, outlining Council's preliminary view on the rezoning application, to be included as part of the exhibition material.

Clarity is required around how lodgement and exhibition will work when a DCP or a VPA is required, as this did not form part of the Discussion Paper.

Providing only 7 days for Council to review a rezoning application will mean Council will not have sufficient time to consider the quality of submitted material, nor the ability to organise briefing sessions with elected officials. This limits Council's discretion on how the application is advertised and consulted on in the name of speeding up the process, potentially reducing the effectiveness of consultation. Should an application go out on exhibition after 7 days, it will need to be made explicit in the exhibition material that Council has not considered the quality of the rezoning application and has no position on whether to support / not support it.

Should it be decided that Council cannot reject at the scoping phase and then have only 7 days to review and reject upon lodgement, the risk for Council and the community is such that a rezoning application that is inconsistent with the strategic planning framework would then afford the applicant appeal rights, the determination then being taken away from the Council. There is also a risk of Council and the community wasting time and resources in considering exhibition material and making submissions on rezoning applications that are inconsistent with Council policy / plans; this will lead to unnecessary community concern.

Council objects to the idea of applicants attaching a summary of strategic justification to notification letters unaccompanied by a response from Council outlining Council's preliminary review of the application. Without the latter, this may cause the community to presume Council is in support of the rezoning application when it has not been formally considered, hence Council's proposal that it be mandatory that a statement of Council's initial consideration of the application be included in the exhibition material. Due to the limited time proposed for Council to consider the application before exhibition commences, this statement would need to include an acknowledgement of the need for a full assessment of the application material to be subsequently carried out, with the statement being likely to draw substantially on issues identified during pre-lodgement.

There are no identified triggers for re-exhibition, nor what re-exhibition means for set timeframes and appeal rights. It is assumed Council will have the authority to require re-exhibition based on the applicant's amended material submitted in response to concerns (like a DA process). The document does acknowledge there may be cases where re-exhibition is necessary but does not give any clarity on what this means for appeal rights and other timeframe related issues such as fees.

Discussion Paper questions:

> *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?*

Council response: The intention to streamline the process by initiating exhibition early is appreciated, however it is important to differentiate a DA assessment from that of a rezoning application. This would likely reduce efficiency given that following initial exhibition, the detailed assessment will likely necessitate changes following which it would require re-exhibition to afford the community the right to understand how their concerns might have been addressed. This would take additional time and resources as part of the re-exhibition process.

Discussion Paper questions:

> *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?*

Council response: No - the assessment clock should not start until all revised information is submitted. Further, the assessment clock should not start until after a 1-week grace period following receipt of additional information in order for Council to be assured the information is appropriate / has addressed the concerns. If it has not, then the clock should not start until this is resolved.

<u>Assessment and finalisation</u>

The Discussion Paper outlines when a rezoning application is supported, the consent authority will engage with the Parliamentary Counsel's Office to draft the instrument and mapping can then be prepared. The consent authority will be able to vary or defer any aspect of the amended LEP.

The Discussion Paper does not set out the role of the Local Planning Panel as part of the assessment and finalisation process. It is recommended that this is a statutory requirement to report to the Local Planning Panel following exhibition.

The role of the Local Planning Panel when Council identifies a conflict of interest if a VPA is involved also needs exploring. The Discussion Paper states a conflict of interest may arise from certain VPAs, or if Council land is included, and in these instances the Local Planning Panel or Regional Panel would make the determination. This is of concern as a Local Planning Panel instead of the Council would be responsible for considering the complexities of a VPA offer, i.e. considering financial assets / infrastructure and maintenance obligations Council would be taking on.

When a VPA and a DCP are required, the following concerns are raised:

- Qualifying criteria and timeframes.
- Conflict of interest involving a VPA.

Discussion Paper questions:

> *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?*

Council response: The public interest is best served by putting a rezoning application out on exhibition after the detailed assessment is carried out to ensure it is supportable from a technical basis. This would also possibly require a review of, and an amendment to, the processes that apply to the preparation / amendment of a DCP and the process for progressing Planning Agreements.

Current processes that require Council reporting pre and post exhibition of both DCPs and VPAs will make some of the timeframes unachievable for some rezoning applications unless there is an attempt at changing processes to ensure some integration. There may be a need to create a new category of application where a DCP or VPA is required that factors in the DCP/ Planning agreement processes into the rezoning process and timelines.

> *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?*

Council response: No – a VPA often makes provision for critical infrastructure, which is necessary to support a local community. It is an important part of the assessment. In this case, where the infrastructure provided under the VPA will ultimately be transferred to Council, it is essential that it meets Council

standards and is properly integrated with existing infrastructure. This can only occur if Council is involved in the VPA negotiation.

The decision to allow a rezoning that increases the density of development involves a policy decision that considers the impact of the proposed development, and critical to that is the provision of supporting infrastructure. It is not possible to separate rezoning application assessment and infrastructure issues, and so Planning Proposals involving Planning Agreements should remain with Council so it can properly assess all the issues in an integrated approach. Separating the decision making on planning controls with decision on the infrastructure in a planning agreement will lead to poor planning outcomes.

If when the state Government determines a Council has a conflict of interest that warrants the application being considered by another body, then Council should be afforded appeal rights should they disagree with the planning changes proposed.

> *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?*

Council response: The DPE involvement at the scoping phase will be key to ensuring accountability on behalf of the applicant to provide quality rezoning applications for lodgement. Criteria are required as to what constitutes a conflict of interest, otherwise the applicant will potentially manipulate the system to circumnavigate Council's decision making.

> *What do you think? Do you think requests for more information should be allowed?*

Council response: Yes - rezoning applications are complex and often further information is required following detailed assessment. This should also 'stop the clock' in terms of appeal rights.

With regards to mandating that Council can only make one request for information post exhibition, this is not a reasonable approach and will result in poorer quality assessment. There should be a process of review whereby if Council is asking for unnecessary information, then the DPE can take over the application, or the independent arbitrator can refund fees. However, there will be many circumstances where it is reasonable and in the public interest to require further additional information to produce the best possible assessment because information provided in Council's first request raises questions that need to be addressed to ensure the best possible recommendation / decision is made. Council supports a new process that avoids unnecessary delays, but not a process that puts at risk the quality of the decision being made.

3.4 New fee structure

The Discussion Paper identifies three options for how fees could be calculated for rezoning applications:

Option 1: Fixed assessment fees
Option 2: Variable assessment fees
Option 3: Fixed and variable assessment fees

Council favours full cost recovery regardless of the option (pre-lodgement costs should also be fully recoverable). Council objects to the idea of mandatory refunds. Only a partial refund should be offered if a rezoning application is withdrawn, based upon the resources expended.

With regards to setting fees, Council nominates a variable full cost recovery model as its preference rather than the other two models proposed in the Discussion Paper. A standardised fee would not take into consideration costs that Council expends, for example an internal urban design assessment that other councils do not do because the projects are not as complex. There is a concern that if fixed costs are based on the average of costs of different councils, a lower fee not relative to Parramatta will be obtained. Council should have full cost recovery and the discretion to set fees. Notwithstanding, should fee options be introduced councils should be afforded the choice of fixed, variable, or fixed and variable fee options to tailor fee requirements to the type of rezoning application.

The Discussion Paper also suggests introducing planning guarantees that provide a fee refund if councils take too long to assess/determine a rezoning application. It is understood that even where a fee refund is given, assessment and determination of a rezoning application must continue. This will translate to an incentive for applicants to recover costs rather than allowing councils the time needed to properly assess an application.

Councils should be able to ask for the information they reasonably require to make an informed decision, even if a timeframe is put at risk without the community bearing a financial cost for good decision making. There is also a possibility of Council assessment officers rushing referrals and detailed assessments due to this pressure, resulting in poor planning outcomes. Further, there is lack of clarity as to when a fee is refunded, e.g., does re-exhibition (a common requirement for complex proposals) automatically trigger a refund?

Should a planning guarantee be introduced, an independent body should be established to determine the refund amount with each party putting forward

their case before the amount is decided. If an independent arbiter finds Council was causing unreasonable delay, they should order a refund, but this process should not be automatic as it may be exploited.

Discussion Paper questions:

> *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 an applicant decides not to progress a rezoning application? If so, what refund terms should apply? What should not be refunded?*

Council response: A fixed fee structure should not be set. Council should have full cost recovery and the discretion to set fees. If a rezoning application is withdrawn, Council should have the discretion to offer a partial refund of fees based on resource expenditure. An example of what should not be refunded are costs associated with public exhibition.

> *What do you think? Do we need a framework that enables applicants 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?*

Council response: Applicants should not be able to request a fee refund based on length of time taken to assess a rezoning application. If, however this is implemented, an independent body should be established to determine the refund amount with each party putting forward their case before the amount is decided.

If additional information is requested, this should 'stop the clock' until the additional information is submitted, with a minimum 1-week grace period to allow Council time to properly review the information to ensure it is sufficient before the clock starts back up. Should the additional information not be sufficient, the clock should remain stopped and a further request for information submitted to the applicant within the 1-week grace period.

3.5 New appeal pathways

The Discussion Paper proposes a review/appeal right for private applicants at the end of the rezoning application process if progress of the application has been delayed, or if the applicant is dissatisfied with the Council decision. Set timeframes with a 'deemed refusal' period are proposed (similar to a Development Application), which would begin once an application is lodged.

The deemed refusal period would be based on the category of rezoning application. The exhibition discusses two possible appeal pathways either appeals to the Land and Environment Court or to the Independent Planning Commission. It is Council's view that appeals via either of these pathways would require a new process given the difference between DAs and rezoning application process.

The Discussion Paper identifies that councils' are concerned that any proposed appeals pathway would add extra pressure and time. Councils feel the increase in costs, time and speculation would undermine strategic planning. City of Parramatta Council concurs with this view, not only because of costs, but the undermining of strategic planning and policy with any appeal process taking critical policy decisions away from the role of government - elected officials. In this regard, Council does not have a preference as to whether appeals are to the Court or IPC, but rather strongly objects to this suggestion outright. If such a system is introduced it is important that cost recovery provisions for councils are included.

With regards to an appeals process, this will result in resourcing and cost implications for Council, which will need to engage experts and invest considerable time to prepare expert reports and evidence for appeals that proceed to hearing should conciliation not be successful. Presently, should a planning proposal (rezoning application) not be supportable, it is reported as such to Council who decide whether to progress the application. If it is not progressed to Gateway, no more resources are expended (unless the applicant is successful with a Gateway Review application). Given the proposed introduction of statutory timeframes for when an appeal can be filed as a 'deemed refusal', there are likely to be many appeals, particularly if the applicant proposes a highly ambitious proposal they know will not gain Council support.

When Local Planning Panels were introduced and DA determinations were removed from councils; the justification was that councils would set the policy and determinations would therefore be assessed independently against the policy. The proposed rezoning process takes this a step further whereby unelected officials will determine the policy through an appeal. Therefore, there could be outcomes whereby the policy and the DA are entirely

determined by unelected officials (government). This is strongly objected to given the Court will be granted power to override the statutory policy decision making of Council. Under this scheme, the purpose of elected officials, that is, being representatives of the community, will be diluted and their decision-making power undermined. This could result in strategic planning decisions that affect how a community live, work and interact with their localised environments not being fully considered.

Policy is determined by government - whether it be local, state or federal government. Policy is not determined through the legal system (courts) or non-elected panels such as the Independent Planning Commission. Rezoning applications should be determined by Government - councils or the State Government, and any appeal on a Council decision should be considered by the Minister (an elected community representative) and not an unelected official(s) who is not accountable to the community for their policy decisions. If an appeals system is to be introduced clear criteria should be set that identify grounds on which decisions that vary from the Council determination can be justified. It is expected that these would require demonstration of why a variation to existing strategic planning controls is to be permitted, as the most appropriate approach would normally be to seek a review the relevant policy.

In addition to removing policy-making decisions from councils (elected officials), an appeals process would potentially add significant delay to the assessment / determination of a rezoning application. As with DAs, should conciliation not be reached (common for complex matters), court dates are often set for hearing some 12 months ahead. Lengthy joint expert reports are required, with evidence provided from a multitude of experts. Such a hearing for a rezoning application would be even more extensive and the joint reporting phase exhaustive. It would also be likely that court hearings would stretch across several days, thus likely resulting in hearing dates being set greater than 12 months ahead.

Should an appeals mechanism be put in place, third party appeal rights for stakeholders and for Council would need to be clarified and appeal rights should be provided for councils.

Discussion Paper questions:

> *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?*

Council response: In the first instance, such an appeal process should not be implemented for reasons given above. Should an appeal process be implemented, appeal rights should be afforded to public authorities and to

Council should a rezoning application be approved and not align with Council's strategic vision. Should an appeals process be introduced, Council's preference would be for the IPC to oversee this process to minimise timeframes and costs.

4. CONCLUSION

This submission identifies Council's support for the process to be more efficient and transparent however it raises objections and some concerns with elements of the proposed new approach. In addition there are other issues, questions and recommendations about the process that Council has raised that are set out in Appendix A – Detailed Assessment Issues.

The overarching concern in this submission is the undermining of strategic planning with any appeal process taking critical policy decisions away from elected representatives, effectively giving the Court power to override the statutory policy decision making of Council.

The intention of the Planning Reform Action Plan is to build a faster, simpler planning system to support jobs, homes and public spaces. Although the Discussion Paper outlines a strong desire to align with the Planning Reform Action Plan, there are concerns that the oversimplification of the rezoning application process will result in a less efficient planning system and potentially create greater uncertainty for the community and applicants.

Whist some comparisons might be drawn between the proposed rezoning application process and that of a DA or SSDA assessment process, the latter are innately different to rezoning applications by virtue of the set parameters they must abide by. Rezoning applications are complex, and this must be better understood and considered before such radical changes are implemented. In this regard, Council welcomes the opportunity to provide clarification and further comment on the contents of this submission, and to be involved in ongoing discussions with the Department of Planning and Environment.

Appendix A - Detailed assessment issues

Reforms to the NSW Planning Process: *"aim for a 'plan-led' system - an approach that ensures strategic planning is the foundation for all decisions about potential land-use changes"*

The City of Parramatta Council supports the move by the NSW Government towards a "plan-led" approach to the planning process in lieu of *ad hoc* rezoning applications being lodged and assessed, often in isolation.

Any proposal to improve efficiencies in the planning system whereby requiring a rezoning application to be consistent with wider strategic planning documents is supported, conditional on the rezoning authority being able to refuse upfront such applications where they deviate significantly from the strategic planning framework. In the event a rezoning application seeks to deviate from the strategic framework, the strategy should be reviewed in the first instance to ensure the rigour of a 'plan-led' basis to support (or refute as the case may be) the rezoning application.

The Discussion Paper suggests that the first (and only) chance to reject a rezoning application for the lack of strategic merit is after public exhibition during the final assessment phase. This is considered very inefficient as it commits the rezoning authority and the community to consider and respond to applications that should not have been supported to begin with *because* of their lack of strategic merit and/or inconsistency with strategic frameworks. It also raises the expectation to some private applicants that a rezoning authority must receive, exhibit and consider their application – even if it does not necessarily have strategic merit at the outset. This could lead to an increase in rezoning applications submitted on speculative propositions with the perverse result of significant council and agency resources being committed to reviewing and then rejecting rezoning applications.

The City of Parramatta Recommends:

- A rezoning authority can refuse to issue study requirements or submission requirements at the scoping stage where an application is clearly inconsistent with the strategic planning framework and/or lacks strategic merit at the outset. This should prevent speculative applications being lodged, and consequently committing Council and agency resources to review or progress such applications. It could also ensure that the strategy or plan is reviewed in the first instance before an inconsistent rezoning application is entertained – thereby reinforcing the primacy of a 'plan-led' system.
- There needs to be a formalised structure in place given this new phase will have resource implications for councils, especially as applicants will be keen to obtain early officer support before formal lodgement.
- Timeframes and expectations will need to be set for the scoping phase. For example, is it proposed to be a forum whereby Council identifies key issues, or is it intended for these key issues to be resolved before lodgement (i.e. allowing applicants to respond to key issues as part of this phase)?
- Council must have discretion to list requirements for assessment, which varies based on the local planning context. Council does not want to be in a position where it requires a particular study, but the applicant refuses because it is not

on the state mandated list. The assessment of rezoning applications depends on the local and planning context and therefore, Council must have the ability to ask for information relevant to its context. This context varies across the state so the list must not be too prescriptive. In this regard, Council objects to any state government mandated list of rezoning application requirements.

Process Issue: Council role for assessment of rezoning applications.

The role of councils to have almost full carriage as a rezoning authority of private applicant rezoning applications is supported in principle. It is recognised that efficiencies can be gained by delegating the authority to councils to fully manage the rezoning application process for private applicant-initiated requests provided the relevant council is suitably resourced to handle the entire process, which may require some reworking of internal business processes and allocation of staff. Councils have significant knowledge of their local area and communities; and the strategies developed for their area. This knowledge is particularly relevant where changes to local policy and planning controls will be sought through the rezoning application process.

There is a concern, however, at councils' role where a public authority applicant is seeking to amend local planning controls. The intentions of the public authority applicant may be significantly inconsistent with the established local planning framework (e.g. Council's LSPS, LHS, etc.). A public authority applicant seeking to amend local planning controls through a rezoning application should not be allowed to be in a position that disregards the local planning framework; as to do so diminishes the value of a 'plan-led' system. The Department, as the rezoning authority, must work in partnership (not just consultation) with the council to ensure that interests of the local community are fairly represented in a situation where the applicant for a rezoning application is a public authority.

The City of Parramatta Recommends:

- Council's role as the rezoning authority and carriage of the entire process for private applicant-initiated rezoning applications is supported, in principle.
- The role of councils in considering public authority applicant applications needs to be undertaken in partnership with the Department as the rezoning authority to ensure local and community interests are upheld in the consideration of such applications and the integrity of local strategic planning frameworks (e.g. LSPS, LHS, etc) are maintained in a 'plan-led' system.

Process Issue: Involving Councillors in the endorsement or establishment of submission requirements for a rezoning application as part of the scoping process.

The role of Councillors is to make decisions on matters of policy affecting the council area and is an important one to ensure the interests of the community are duly represented. A rezoning application, ostensibly, makes changes to policy within the council area by amending the Local Environmental Plan. The removal of Councillors from the rezoning application process until the final assessment stage may cause delays to the process if a particular issue (or issues) is requested to be addressed by the rezoning authority that has not previously been considered.

Additionally, if the issue or issues substantially change the rezoning application from that previously submitted, exhibited, and assessed, the process would effectively have to start again with a revised rezoning application, exhibition and assessment along with the commensurate increases in processing time and resource commitment.

The City of Parramatta Recommends:

- The rezoning process considers the need to involve Councillors in their role as policy decision makers at the Scoping stage – for example endorsement of the Submission Requirements before issuing them to the applicant. This may have implications for the scoping timeframes to take account of reporting.

Process Issue: Consideration of submissions by an applicant after exhibition.

The revised process suggests the applicant (rather than the rezoning authority) is responsible for assessing and responding to submissions. Procedurally, this is a concern as any applicant would have a vested interest to ensure their rezoning application is successful. Consequently, the perception that the community's issues are being independently and neutrally considered by the rezoning authority are potentially removed by this process. If the applicant is to be responsible for the assessment and response to submissions; that summary response document should be subject to a peer review by an independent party (e.g. the rezoning authority) to ensure the applicant has adequately and fairly addressed the matters raised by submitters.

The City of Parramatta Recommends:

- The rezoning process considers the need to have the summary of submissions and response to submissions document independently reviewed by the rezoning authority or a third party to the applicant to ensure that matters raised in submissions are adequately and fairly addressed by the applicant in any response to those matters raised.

Process Issue: Category 3 – Complex Rezoning applications, VPAs and DCPs

The Discussion Paper recognises rezoning applications that may require accompanying additional infrastructure investment (e.g. requiring a contributions plan) as complex. The Discussion Paper is, however, silent on any rezoning applications that may require amendments to a Development Control Plan (DCP) or the creation of new controls for a precinct in the DCP. Ideally, a site-specific DCP accompanying a rezoning application should be exhibited concurrently. The proposed timeframe for a 7-day suitability assessment of a rezoning application before it is exhibited does not consider any need to provide for an accompanying DCP amendment and the requisite statutory process it has to follow before it can be considered and exhibited.

It is unreasonable to assume that a draft DCP or contributions plan or VPA is prepared as part of the scoping process if the principal planning controls in the rezoning application are still being finalised. Certainty and consistency must be afforded to the rezoning authority and the community during exhibition where a

rezoning application involves, where relevant, additional changes to DCPs, planning agreements, and contributions plans.

In the case of VPA offers for physical works, internal consultation with relevant council staff (such as asset owners and managers) must occur up front to ensure the suitability of the works meets requisite specifications and council/community needs. There is a risk where a VPA offer places a council in a conflict of interest position that the council can be sidelined in the rezoning process, for example if the Department becomes the rezoning authority, assesses and determines the rezoning application, and then amends Council's LEP.

In a situation involving VPAs, the negotiation of the VPA could be undertaken by council staff separate to (and apart from) those assessing the rezoning application. This would reduce some of the perceived interaction between an applicant and the rezoning authority on a VPA matter - i.e. the negotiations are conducted "at arm's length" to the assessment of the rezoning application. The Department could maintain an independent oversight role in the event of a conflict of interest between a council as the party involved in VPA negotiations and a private applicant to case manage the conflict of interest issues.

When there is a VPA, the matter should remain with Council but there should be some oversight by the Department before the matter is finalised to manage the conflict of interest issue raised.

The City of Parramatta Recommends:

- The rezoning process needs to reconsider the provision of benchmark timeframes, particularly where they involve accompanying changes to a DCP, contributions plan, or consideration of a VPA offer which, ideally, should accompany the exhibition of a rezoning application to enable a comprehensive and complete presentation of the rezoning to the community and agencies.
- The rezoning process needs to consider complications to the process and timeframes that may eventuate if, for example, a VPA offer places council in a conflict of interest position that needs to be resolved by a third party.
- There needs to be qualifying criteria to identify conflicts of interest.

Process Issue: Category 4 – Comprehensive Rezoning Applications

The Discussion Paper suggests that a comprehensive rezoning application affecting an entire LGA could have a 6-week exhibition period. The City of Parramatta considers this length of time may be insufficient, especially if the changes are significant and of strategic importance to the community within the LGA.

As examples, Council's CBD Rezoning application and Harmonisation Rezoning application were publicly exhibited in statutory terms for six weeks. However, both of these included significant non-statutory public consultation and public access to draft controls *before* being placed on statutory exhibition. Iterations of draft planning controls for the CBD Rezoning application had been in the public arena since its initial endorsement in April 2016 with formal statutory exhibition in September 2020. The Harmonisation rezoning application had a separate

Discussion Paper, which was separately exhibited for a further 6 weeks in 2019, to canvas community opinions on matters that informed the draft rezoning application which was also exhibited in 2020. Additional comments in the section pertaining to exhibition and effective community engagement are also relevant for this matter.

The City of Parramatta Recommends:

- The rezoning process needs to reconsider whether 6 weeks is suitable for a public exhibition of a complex and/or comprehensive rezoning application. Flexibility should be considered for further prolongation of the exhibition period – for example up to 12 weeks (3 months) – to enable sufficient consideration of a comprehensive change by the broad set of stakeholders and public agencies.

Process Issue: Iterative or amended rezoning applications

The Discussion Paper does not clearly articulate the potential for rezoning applications to be modified mid-stream in the process. The timeframes proposed may be optimistic (best case) scenarios where all matters are comparatively simple to consider and resolve.

Experience with complex rezonings in the City of Parramatta LGA often involves a process of multiple iterations of a rezoning application – such as revised concept designs or requests for changes to controls – as the proposal progresses. These may either be at the request of the applicant, at the council's request, at the request of other state agencies, or to address conditions in the Gateway Determination. In most cases these iterative changes occur before commencing public exhibition. Consequently, the version released for public consideration has often been refined from the proposal originally submitted.

If this iterative process is to occur as part of the scoping process, the proposed timeframe of 12 weeks is extremely optimistic and, in many cases, cannot reasonably be achieved. The iterative process is often very fluid and relies on back-and-forth discussions between the applicant, relevant agencies, and the rezoning authority. There is a risk an applicant may delay responding to matters raised by the rezoning authority and agencies, or stubbornly not addressing the matters raised, but then expecting the rezoning application to be accepted and exhibited.

The City of Parramatta Recommends:

- The scoping process is not subject to a fixed time limit, or the proposed benchmark time frame is a minimum to allow for iterative work on a concept design that informs the relevant planning controls.

The proposed process would allow only one further opportunity for the rezoning authority to request additional information after the exhibition of the rezoning application. This is unreasonable and could result in poorer quality assessment. A rezoning application can involve potentially a significant policy change to planning controls within a council area. The Parramatta CBD Rezoning application, for example, has had multiple requests by the Department for additional information at various stages throughout the process – both before and after exhibition. This may seem frustrating and appear to slow the process down. However, Council's

preparedness to respond in a timely manner to these requests is considered crucial to the success and enable the best possible assessment of the proposal by the Department in the interests of the community.

The City of Parramatta Recommends:

- Limiting to a single request for further information post-exhibition is insufficient. A rezoning authority should have the capability to request information as many times as deemed necessary and reasonable to ensure the best possible assessment of a rezoning application.
- A process to review a claim of a vexatious use of this process – e.g. the applicant claims the rezoning authority is asking for unnecessary information or to deliberately delay the process – could be considered. If proven by an independent review, the rezoning authority could be penalised by having to refund a portion of the assessment fees; or the Department may choose to call-in the rezoning application and continue the assessment.

Process Issue: Exhibition shortly after lodgement and effective community engagement

The proposed process includes a public exhibition of the rezoning application shortly after lodgement. This is of concern as it raises the expectation to the community that the rezoning application has been subject to some degree of assessment by the rezoning authority and has been, at least, tacitly endorsed by the rezoning authority for the purposes of public exhibition.

Any early public exhibition needs to clearly indicate that the rezoning application, as lodged, has not been endorsed nor has it been assessed by the rezoning authority. Early public scrutiny can be useful to gauge initial public opinion; however if this scrutiny results in significant changes to the rezoning application from the submissions received, the application will have to be amended and then re-exhibited. This may create confusion with stakeholders being subject to multiple exhibitions of the application; and disenfranchisement if the matters raised by the community to the first exhibition are not comprehensively discussed and responded to in a subsequent iteration of the rezoning application.

Additionally, the more complex rezoning applications (Category 3 and 4) often require a longer lead time for logistics to support more comprehensive exhibitions – including, for example, drop-in sessions, public meetings or briefings, etc. A 7-day timeframe from lodgement to commencement of exhibition effectively precludes the capability to provide this level of engagement with the community who may have an interest in the application and may also be significantly impacted by the application.

Reliance on the Planning Portal as the primary source of engagement for rezoning applications will also be insufficient, particularly for persons and communities of disadvantage who may not have reliable computer and internet access – such as those in areas where reliable internet access has been compromised by natural disasters or extreme weather events.

A letter to affected owners accompanied by a “Plain English” summary of the rezoning proposal prepared by the applicant is insufficient engagement, particularly in diverse communities where English may not be the primary language. Allowances may also be necessary for translation into dominant community languages to facilitate effective engagement. Furthermore, the “Plain English” document will also need to be reviewed by the rezoning authority to ensure accuracy and fair and reasonable portrayal of the proposal. Any applicant, again, has a vested interest to ensure the success of their rezoning application so communication with the community needs to be unbiased and not overtly depict the proposal in a favourable position.

The City of Parramatta Recommends:

- The 7-day timeframe from lodgement to commencing exhibition may be insufficient, especially for larger or more complex rezoning applications that would warrant a greater level of community engagement in addition to the Planning Portal – such as public meetings, drop-in sessions, etc.
- Any early public exhibition must clearly indicate that the contents on exhibition have not been assessed by the rezoning authority, nor does the rezoning authority endorse or support the contents. The rezoning application will then be subject to detailed assessment post-exhibition. Council should be required to provide a preliminary response to the applicant’s summary as part of the exhibition material.
- The Planning Portal must be able to handle multiple languages and, more importantly, accurate translation where required of a “Plain English” summary into local community languages to ensure full and comprehensive engagement with the community where English may not be a primary language.
- The rezoning application process should allow a feedback loop to enable additional exhibition/s where a rezoning application is significantly changed post-exhibition and as part of any assessment by the rezoning authority where required.

Process Issue: Application Requirements and Studies

The proposed process suggests adopting “standardised” information requirements for particular categories of rezoning applications. This position is not supported as each rezoning application is unique – either in the requested changes to the planning controls or the circumstances applying to the site/s subject to the rezoning application. Council / state agencies should have the ability to list specific requirements.

Should standardised information requirements be applied, rather than providing a conclusive list, a minimum benchmark could apply for the studies to be undertaken to be consistent across most rezoning applications, such as:

- an urban design study if the proposal changes controls like height or FSR,
- heritage study if the property is a heritage item or in a conservation area,
- flood study if the property is within a flood prone area,

- transport study if the proposal is likely to generate additional traffic by a change of use, intensification of use, or is likely to have impacts on a classified road, etc.

The City of Parramatta Recommends:

- Any standardisation of information requirements should not be introduced.
- The rezoning authority must be able to require the additional information / studies as deemed necessary for a full and proper assessment of the rezoning application relevant to the local context and conditions.

Process Issue: Fees and Refunds

Establishing standardised fees across the State is not supported. As outlined previously, each rezoning application is unique. While there may be some consistency in basic process terms, the time taken to process the rezoning application will inevitably vary between applications. Experience with rezoning applications for the City of Parramatta have often had more complex applications received – varying from a site-specific change seeking significant uplift (i.e. St John's Cathedral or 2 O'Connell St in Parramatta CBD) to a large master planned precinct (i.e. Melrose Park or 14-16 Hill Road). The commitment of resources and time to process these larger applications in terms of internal referrals to other Council business units (e.g. urban design, traffic, assets, open space, etc.) may not necessarily be recognised with standardised fees.

Council seeks the capability to fully recover the costs associated with private applicant-initiated rezoning applications as they inevitably result in a benefit to the applicant rather than the council or community *per se*. Council could establish baseline fees for respective stages/complexity of the rezoning application process. This may be determined on an averaged number of hours allocated to the application based on its complexity. Any additional commitment of resources above the baseline will then be recoverable from the applicant at the end of the stage in the rezoning process. Payment of those additional fees will be a prerequisite to the rezoning application moving to the next stage. If the applicant does not pay the fees in a timely manner, the rezoning application process will conclude at that stage. In the event the work commitment is less than the benchmark, the difference may either be refunded to the applicant or credited towards fees for a subsequent stage in the rezoning process.

The City of Parramatta Recommends:

- Rezoning authorities should be able to establish fees based on a full cost recovery model for private applicant-initiated rezoning applications. This ensures the costs of processing these applications are not subsidised by ratepayers or the community as the benefits derived from the rezoning application are often limited to the applicant.

Council does not support a mechanism to require refunds under the terms of a proposed "planning guarantee". Any requirement for refunds to be paid to an applicant for not meeting timeframes is onerous and, effectively, is a stick to the rezoning authority to process applications with the risk of not ensuring a full and the best possible assessment of a rezoning application. As identified previously,

rezoning applications will change local council policies through amendment to planning controls. A rezoning application is not a DA which *applies* the local planning controls to a particular development. Any timeframes should be seen as a benchmark in ideal conditions for assessment of a rezoning application.

If planning guarantees are to be established, like any contractual arrangement between parties, there needs to be a process for independent mediation or arbitration of a dispute between the parties. If timeframes are not met, for example, then either party may seek an independent review to establish whether the breach may have been the deliberate fault of the rezoning authority, or a situation where the applicant caused delay in a request for information, or other no-fault situation that contributed to the timeframe not being met. The proposed process is unclear about what could establish grounds for a dispute on timeframes (e.g. re-exhibition due to substantial changes of the rezoning application; or reasonable requests for additional information by the rezoning authority to ensure full and best possible assessment of the application). The independent review would then determine the sanction to be applied – such as a proportional refund of fees, or the rezoning application is terminated.

The City of Parramatta Recommends:

- Rezoning authorities and applicants have a process to enable resolution of disputes between the parties in the event of a timeframe breach. Automatic assumption that the rezoning authority is at fault for not meeting timeframes, and a resulting refund on fees, is an unreasonable proposition that will risk a poor planning outcome for the community in favour of meeting a nominal processing timeframe.
- Should a planning guarantee occur, an independent body should be established to determine the refund amount with each party putting forward their case before the amount is decided. If an independent arbiter finds Council was causing unreasonable delay, they should order a refund, but this process should not be automatic as it may be exploited.
- A potential option for fee payment could be asking for a bond upon lodgement of the rezoning application. Staff could then log hours worked to deduct it from the bond. Any remaining funds would then be returned to the applicant. Should the 3 options be introduced, Council should be given the ability to adopt its preferred option.

Appeals

Council strongly objects to proposals that enable appeals to the strategic merit or outcome of a rezoning application where policy decisions are further removed from elected representatives of the local community and become the responsibility of unelected officials. Local Environmental Plans, and any changes thereto, constitute local development policy within a statutory framework.

Councils are elected to establish policy direction for the local area as representatives of the local community. An applicant appealing a policy outcome for their rezoning application simply because they are dissatisfied with the decision (i.e. they don't get their desired result) diminishes the importance of clear policy direction in the interests of the local community. The risk of speculative or

vexatious appeals in the early stages of this process would result in delays to the rezoning process as council and agency resources end up committed to responding to appeals by dissatisfied applicants and undermine the role and function of councils to establish policy. Related to this is the need for cost recovery provisions for councils to be included in any appeals process.

Any decision-making of the council in respect of rezoning applications is already visible to the community through council reports and business papers being publicly accessible; and the councillors themselves are held accountable to the community by way of their election. In the event of a council-initiated proposal where the Department is the rezoning authority, the Minister as an elected official is ultimately accountable to the community for their decision-making.

The current framework where an appeal can be lodged to the Land and Environment Court on a *procedural failure* in the rezoning process may still be reasonable.

The City of Parramatta Recommends:

- Any appeals mechanism for a rezoning application on the basis of a final decision by the rezoning authority is not supported. The risk of speculative or vexatious appeals because an applicant does not get their desired outcome would undermine the policy framework and commit significant council and agency resources to respond to such claims.
- Rezoning applications should be determined by councils or the Minister, and any appeal on a Council decision should be considered by the Minister (an elected community representative) and not an unelected official who is not accountable to the community for their policy decisions.
- Should an appeals mechanism be put in place, cost recovery provisions for councils, third party appeal rights for stakeholders and for Council would need to be clarified and appeal rights for councils should be provided.