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Ms Paulina Wythes  
Director, Planning Legislative Reform  
Department of Planning, Industry and Environment

Via Planning Portal

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**RE: FEEDBACK ON DISCUSSION PAPER: A NEW APPROACH TO REZONINGS IN NSW**

The Winten Property Group has been involved in numerous rezonings over the years and we welcome the opportunity to provide feedback on the December 2021 discussion paper.

We agree that the discussion paper contains a fair summary of some of the key issues within the current framework. The key issues from our perspective, as a proponent of rezonings are:

1. a feeling of disempowerment – a proponent has no formally recognised role and no real rights under the current framework,
2. lack of any accountability of agencies, and
3. lack of any enforceable timeframes.

The proposal outlined in the discussion paper would see the rezoning process more closely aligned to the development application process, allowing a proponent to choose to invest the time and money in pursuing a rezoning application, with there being no obstacle to lodgement and exhibition of a rezoning application. We are very supportive of this approach. We would also be interested in utilising the ability to submit a combined rezoning request and development application, which is not currently a viable option, despite being legally permitted.

While we are generally supportive of the change in approach that is proposed in the discussion paper, we provide the following comments for your further consideration:

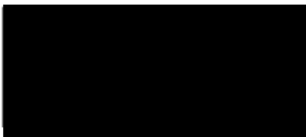
1. We are of the view that the proposed balance between what councils should determine and what the department should determine is not optimal. We believe that some centralised management of the rezoning process is needed to depoliticise the process and to ensure consistency across different LGAs throughout the State. We support the use of the PDU or similar body to assist local councils and proponents to case manage the rezoning process. This will be particularly important to ensure that the scoping exercise is effective and fair, and that study requirements are reasonable and consistent.
2. It would be quite harsh for study requirements to automatically lapse after 18 months – extensions of time should be permitted in appropriate circumstances
3. How will all relevant agencies be brought together in the one meeting in a timely fashion? Having all relevant parties “at the table” will make the pre-lodgement meeting incredibly valuable but we are concerned that in order to ensure that this can occur, these meetings will need to be facilitated by a central body, which must have the power to compel attendance by all relevant parties.

4. An enforceable timeframe should apply for the provision of written feedback from the scoping meeting. Is it proposed that this feedback will essentially be binding, like a gateway determination, or will it be more like non-binding pre-DA minutes? Binding is preferred.
5. Written feedback should include council's preliminary assessment of strategic merit.
6. Refusal of study requirements should not be possible because rezoning applications inconsistent with strategic plans are allowed under the proposed changes— these are category 3 proposals. This means that there should be no basis upon which a council can refuse to issue study requirements.
7. A proponent will need to have direct access to agencies in order to properly understand and resolve any issues. How will this be coordinated? Agencies must be obliged to meet with proponents.
8. Deadlines for agency responses – while it is good for a rezoning authority to be able to proceed without an agency response, in reality this is unlikely to occur. This is already permitted for DAs but councils are invariably reluctant to proceed without agency feedback. There are practical difficulties in proceeding without agency feedback, in cases where the feedback is critical – eg. essential infrastructure. It would be good to have a central body not just to coordinate agency involvement, but also to compel (timely) responses from those agencies whose input is critical, such as TfNSW.
9. The proposal re assessment clock is fine.
10. Requests for additional information should be allowed.
11. PCO drafting should be shared with the proponent prior to finalisation. A proponent should not be required to execute a VPA until it has seen the draft instrument. The actual drafting of the instrument is important.
12. Preparation of contributions plans alongside rezonings – how will this work? A lot of work is involved in the preparation of contributions plans and as it is almost impossible for a proponent to prepare a contributions plan, the council will realistically need to do this in most cases. How will a council be compelled to do this for a rezoning application that they may not support or which may be purely speculative? We are concerned that the rezoning of land (or alternatively, its development after rezoning) may be delayed for extended periods of time, outside of a proponent's control, to await the outcome of a lengthy contributions planning process by a local council. Where a contributions plan is not ready in time, this can often be remedied by suitable alternative arrangements in a planning agreement, and we would like to see this option retained.
13. Recognising the role of proponents in the legislation is supported, as is some right of appeal.

14. Although the LEC is arguably an inappropriate forum for strategic planning, where a rezoning request is inconsistent with strategic planning, the same cannot be said of applying strategic plans and approving rezonings that are consistent with strategic plans – the Court has extensive expertise in interpreting and applying strategic plans. An LEC appeal would likely be a good avenue for independent apolitical review of most category 1 and category 2 rezonings, and the Court does have appropriate expertise and processes to deal with such appeals. Where referral agencies are the roadblock, and issues of regional infrastructure etc prevent a rezoning, perhaps a hybrid approach could be adopted, where a body like the IPC or the PDU can bring together the relevant agencies, and the proponent, to attempt to resolve such roadblocks.
15. Although “no opportunity for conciliation” is noted as a disadvantage of an IPC review, why couldn’t the IPC be empowered to conciliate? Alternatively, mediation could be inserted as part of the IPC review process.
16. If proponents are to be recognised by the legislation and given some appeal rights, thought should be given to the rights that may extend to other parties involved in the rezoning processes. For larger rezonings, a number of landowners may group together – what if there are 2 or more proponents? What happens if the land is sold prior to completion of the rezoning and the new owner wishes to continue the rezoning application? It would be good if there was an ability for a proponent to assign its rights.
17. Fees should be consistent throughout the State based on category of rezoning.

We are supportive of the department’s desire to improve the current framework for rezonings in NSW and appreciate the opportunity to provide comment on the discussion paper.

Yours sincerely



William Sarkis