

22 March 2022

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

Dear Ms Paulina Wythes,

**Discussion Paper 'A New Approach to Rezoning' –
Canterbury Bankstown Council Submission**

Thank you for the opportunity to comment on the Discussion Paper 'A New Approach to Rezoning'.

Council made an officer-level submission in February 2022, and the attached submission has been endorsed by elected officials at the Ordinary Meeting of 15 March 2022. At the meeting, it was resolved that:

Council endorse the submission to the Department of Planning and Environment's Discussion Paper 'A New Approach to Rezoning', as provided in Attachment A.

The Council report and endorsed submission are attached and raises a number of concerns. Council does not support:

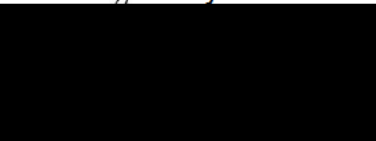
1. The proposed new approach to rezonings as it bypasses the 'plan-led' system and undermines Council's new planning framework.
2. Merit appeal rights to the Land and Environment Court for rezoning applications.
3. The proposed planning guarantees.
4. The proposed mandated fee structures.
5. The proposed mandated timeframes.

Other matters that Council wishes to bring to the Department's attention, include:

6. Implementing other improvements to the rezoning process.
7. Updating the Ministerial Directions and Practice Notes to be fit-for-purpose.

If you have any enquiries, please contact Council officer Mauricio Tapia on [REDACTED].

Yours sincerely



Mitchell Noble
Manager Spatial Planning

ITEM 5.1 Submission to the Discussion Paper 'A New Approach to Rezoning's'

AUTHOR Planning

PURPOSE AND BACKGROUND

This report outlines Council's submission to the exhibition of the Department of Planning and Environment's Discussion Paper '*A New Approach to Rezoning's*', and requests Council's endorsement of the submission.

ISSUE

The Department of Planning and Environment (the Department) and the Greater Sydney Commission introduced amendments to the *Environmental Planning and Assessment Act 1979* (the Act) in 2018 to deliver a 'plan-led' system – an approach that ensures strategic planning is the foundation for all decisions about potential land use changes.

Council has invested significant resources and engaged widely to prepare its new planning framework as required by the Act. The new planning framework provides a pathway to manage growth and change across Canterbury Bankstown. The Greater Sydney Commission has assured Council's Local Strategic Planning Statement '*Connective City 2036*', confirming it is consistent with State priorities and the Department has endorsed the Housing Strategy. Council is currently master planning the centres and surrounding residential zones in accordance with its new planning framework.

The Department's existing 'Gateway' rezoning process supports Council's new planning framework, by discouraging ad hoc, site-specific rezoning applications from proceeding prior to the completion of the master planning process. It requires rezoning applications to satisfy a strategic merit test if Council and the Department are to support the applications proceeding to 'Gateway' and the exhibition stage. The benefit of this filtering system is that it ensures Council's time and resources are not drawn away from plan-led activities like strategic planning and master planning. As a result, Council has a proven track record of determining rezoning applications within the decision-making periods set by the Department.

In December 2021, the Department commenced the exhibition of the Discussion Paper '*A New Approach to Rezoning's*'. The Discussion Paper seeks to accelerate rezoning outcomes as a way to support the State's economic recovery from the COVID-19 pandemic. It proposes to replace the existing 'Gateway' rezoning process with a new approach that aligns more closely with the development application process to improve timeframes.

Council has prepared a detailed submission, which does not support the proposed new approach as it would:

- Bypass the 'plan-led' system and undermine Council's new planning framework. It would allow proponents to lodge ad hoc, site-specific rezoning applications that do not strategically align with the master planning process. Council cannot refuse on merit until after exhibition. Proponents would have merit appeal rights to the Land and Environment Court.
- Accelerate the approval times for rezoning applications at the expense of assessment quality. It would remove merit assessments and the issue of Gateway Determinations prior to exhibition. It would remove Council from reviewing submissions and consulting with state agencies after exhibition. It would set mandated timeframes with minimal opportunities for information requests.
- Disempower Council from the decision-making process and diminish opportunities for meaningful community engagement. It would remove the function of Councillors to decide whether rezoning applications demonstrate strategic merit to proceed to exhibition. The Department and Local Planning Panel would no longer provide oversight of the rezoning process.
- Impact on Council's finances and resources. It would replace Council's ability to set application fees under the *Local Government Act 1993* with a new mandated fee structure to apply to all councils. It would introduce planning guarantees to enable fee refunds if Council does not meet mandated timeframes.

While Council advocates on many issues, this submission is forwarded to Council for endorsement given the importance of the proposed changes and the potential impacts on Council and the community. Should Council endorse the submission, it will be forwarded to the Department for consideration. The Department has not indicated a timeframe for the implementation of the proposed new approach.

RECOMMENDATION

That Council endorse the submission to the Department of Planning and Environment's Discussion Paper '*A New Approach to Rezoning*', as provided in Attachment A.

ATTACHMENTS

- A. Council Submission
- B. Discussion Paper '*A New Approach to Rezoning*'

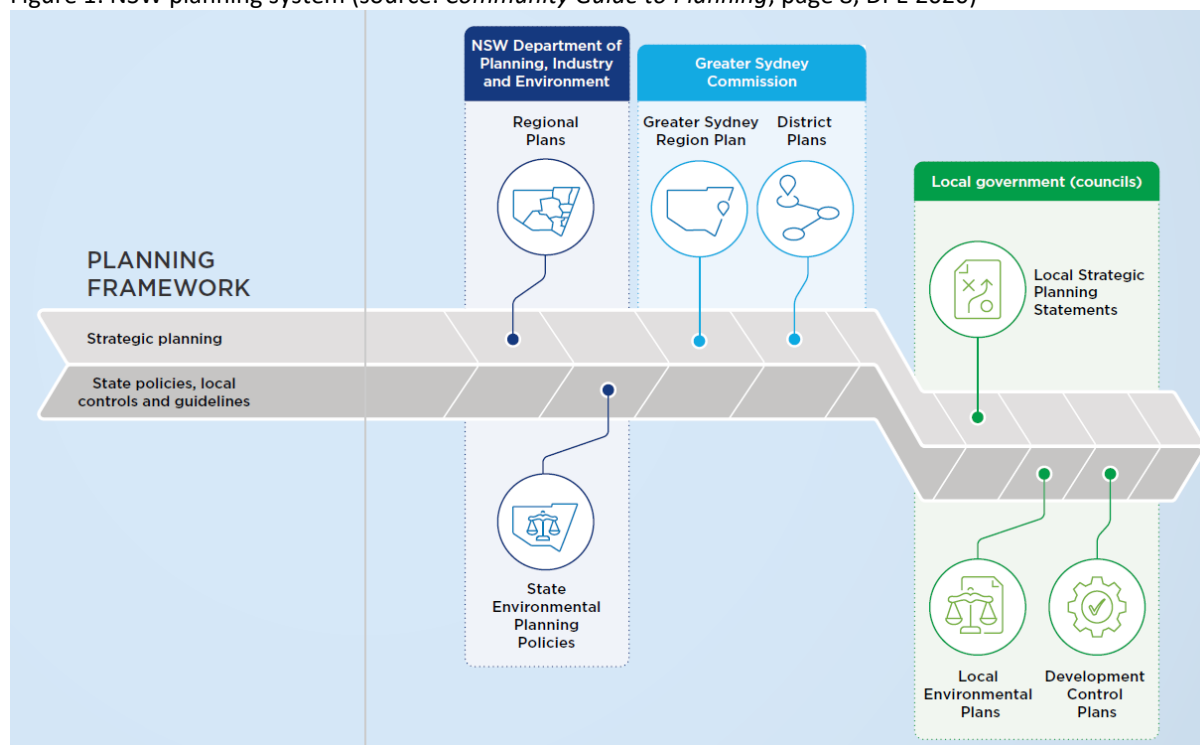
POLICY IMPACT

1. Overview of the NSW planning system

The *Environmental Planning and Assessment Act 1979* (the Act) is the State's primary planning legislation. The Act sets out the planning pathways and legal requirements to determine how we plan, develop, use and regulate land across the city.

The Act is supported by Council's Local Environmental Plan (the LEP), as illustrated in Figure 1. The LEP contains planning rules for development and land use in Canterbury Bankstown, such as land use zones, floors space ratios and building heights.

Figure 1: NSW planning system (source: *Community Guide to Planning*, page 8, DPE 2020)



2. Overview of the existing 'Gateway' rezoning process

Changes to the LEP, such as the rezoning of land, are important to maintain up-to-date planning rules. The changes must strategically align with State and local policies and deliver good planning outcomes and demonstrate public benefit.

The Act allows Council to administer the existing 'Gateway' rezoning process during the lodgement, exhibition and assessment stages. The Department's role is to make a final determination and to provide oversight of the decision-making process to ensure the objectives of strategic plans are met in a timely way. As part of the current process the Gateway function performed by the Department also acts as a checks and balance step in the process to ensure planning policies are consistently applied across the state. This stands to be lost.

In 2018, the Department and the Greater Sydney Commission introduced amendments to the Act to deliver a 'plan-led' system – an approach that ensures strategic planning is the foundation for all decisions about potential land use changes.

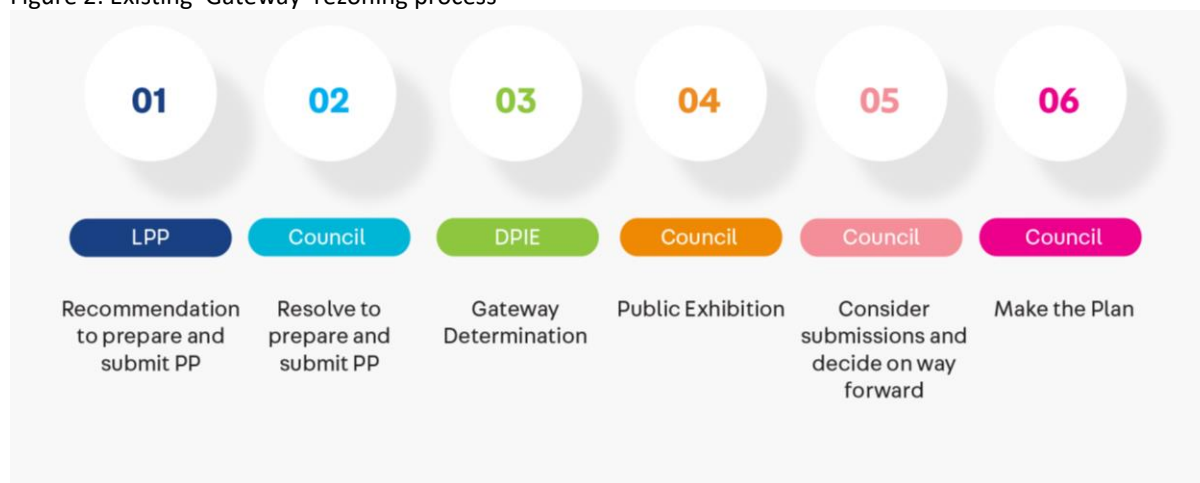
Council has invested significant resources and engaged widely to prepare its new planning framework as required by the Act. The new planning framework provides a pathway to manage growth and change across Canterbury Bankstown, and includes:

- Adopting *Connective City 2036* and supporting strategies such as the Housing Strategy, Affordable Housing Strategy and Employment Lands Strategy. The Greater Sydney Commission has assured *Connective City 2036*, confirming it is consistent with State priorities and the Department has endorsed the Housing Strategy.
- Adopting the Consolidated Local Environmental Plan, which merges the planning rules of the former Bankstown and Canterbury Councils, and implements existing land use strategies.
- Adopting the Consolidated Development Control Plan and Community Participation Plan.
- Submitting a planning proposal to merge the residential planning rules of the former Bankstown and Canterbury Councils.
- Adopting the Bankstown Master Plan to support growth in the Bankstown City Centre, which will be anchored by Bankstown's Health and Education Precinct development.
- Master planning the Campsie Town Centre and local centres in accordance with the South District Plan, *Connective City 2036* and Housing Strategy.

The Department's existing 'Gateway' rezoning process supports Council's master planning process, by discouraging ad hoc, site-specific rezoning applications from proceeding prior to the completion of the master planning process.

In summary, the process (refer to Figure 2) requires rezoning applications to satisfy a strategic merit test if Council and the Department are to support rezoning applications proceeding to 'Gateway' and the exhibition stage. The benefit of this filtering system is it ensures Council's time and resources are not drawn away from plan-led activities like strategic planning and master planning.

Figure 2: Existing 'Gateway' rezoning process



As a result, Council has a proven track record of determining rezoning applications within the decision-making periods set by the *Environmental Planning and Assessment (Statement of Expectations) Order 2021*. The Order requires Council to decide whether to support a proponent led application within 90 days of lodgement, and to process applications within the timeframes specified in the Gateway Determination.

3. Overview of the Discussion Paper 'A New Approach to Rezoning'

In December 2021, the Department commenced the exhibition of the Discussion Paper 'A New Approach to Rezoning', as provided in Attachment B.

The Discussion Paper seeks to accelerate rezoning outcomes as a way to support the State's economic recovery from the COVID-19 pandemic. It proposes to replace the existing 'Gateway' rezoning process with a new approach that aligns more closely with the development application process to improve timeframes. The policy implications for Council include:

Council's procedures under the existing 'Gateway' rezoning process	Proposed new approach to rezonings
<u>Pre-lodgement</u> <ul style="list-style-type: none"> Pre-lodgement meeting optional. 	<u>Pre-lodgement</u> <ul style="list-style-type: none"> Pre-lodgement meetings would become mandatory. Council must hold a scoping meeting with proponent and state agencies. Council to provide written feedback with study requirements.
<u>Lodgement</u> <ul style="list-style-type: none"> Council undertakes a merit assessment (i.e. strategic merit test). The rezoning application is reported to the Local Planning Panel and Council to decide if the application has strategic merit to proceed to 'Gateway' and the exhibition stage. The Department provides oversight by issuing a Gateway Determination to confirm if the application may proceed to exhibition. Council and the Department may refuse a rezoning application prior to 'Gateway' based on merit. Administrative appeal rights limited to refusals to proceed to 'Gateway' or deemed refusals if Council does not meet the 90 day timeframe. 	<u>Lodgement</u> <ul style="list-style-type: none"> Removes the 'Gateway' system and oversight by the Department and Local Planning Panel in the decision-making process. Removes the merit assessment (i.e. strategic merit test) prior to exhibition. Removes the function of Councillors at this stage of the process. Removes the ability for Council and the Department to refuse rezoning applications prior to exhibition. Maintains appeal rights based on deemed refusals.
<u>Exhibition</u> <ul style="list-style-type: none"> Council exhibits a planning proposal in accordance with its Community Participation Plan. Council prepares the planning proposal and exhibition material. Council exhibits DCP Amendments and Planning Agreements concurrently with the planning proposal. 	<u>Exhibition</u> <ul style="list-style-type: none"> Council would have one week to confirm if the study requirements have been met. The exhibition process would be automated via the Department's Planning Portal and Service NSW app. The proponent would prepare the rezoning application and exhibition material. There is no discussion on the status of DCP Amendments and Planning Agreements as part of the exhibition process.
<u>Assessment and Finalisation</u> <ul style="list-style-type: none"> Council reviews submissions and consults with state agencies after exhibition. Council may request additional information and re-exhibit if required. 	<u>Assessment and Finalisation</u> <ul style="list-style-type: none"> Proponent to review submissions and consult with state agencies after exhibition. Requests for additional information and re-exhibitions would be discouraged.

<ul style="list-style-type: none"> • The planning proposal is reported to Council for determination. • The planning proposal is forwarded to the Department for final determination. 	<ul style="list-style-type: none"> • The rezoning application is reported to Council for determination. Only opportunity for Council to refuse on merit. • Removes any oversight by the Department in the decision-making process.
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The submission does not support the proposed new approach as it would bypass the 'plan-led' system, undermine Council's new planning framework, and accelerate the approval times for rezoning applications at the expense of assessment quality. The submission outlines these issues in detail.

The submission recommends retaining Council's procedures under the existing 'Gateway' rezoning process given that Council has a proven track record of determining rezoning applications within the decision-making periods set by the Department.

FINANCIAL IMPACT

The Discussion Paper seeks to mandate a consistent fee structure across councils, with the aim to adequately compensate councils for the cost and time of assessing and determining applications. The financial implications for Council include:

Council's existing fee structure (Fees and Charges 2021/22)	Proposed new approach to rezonings
<p><u>Application fees</u> Council sets application fees under the <i>Local Government Act 1993</i> as follows:</p> <ul style="list-style-type: none"> • <u>Lodgement</u>: The existing fee structure is proportionate to the scale and complexity of the rezoning application, and ranges from \$16,904.70 to \$150,000. The fee to lodge an amended rezoning application is a maximum 50% of the original fee, as determined by Council's Director Planning. • <u>Assessment</u>: Proponent commissions studies and peer reviews, or Council enters into cost recovery agreement with the proponent to recoup costs. 	<p><u>Application fees</u> Removes Council's ability to set fees under the <i>Local Government Act 1993</i>, which is easy to administer and provides flexibility to recoup actual costs incurred during the rezoning process.</p> <p>Replaces the existing fee structure with a mandated fee structure under the <i>Environmental Planning and Assessment Act 1979</i> to apply to all councils as follows:</p> <ul style="list-style-type: none"> • <u>Pre-lodgement</u>: Scoping fee to be fixed fee based. Council cannot amend the fee. • <u>Lodgement and Assessment</u>: Three options for discussion: <ol style="list-style-type: none"> 1. Fixed assessment fees. No fees would be charged for any other associated costs such as consultant fees for peer reviews. 2. Variable assessment fees. Assessment fees to be based on the estimated costs Council would incur on a case-by-case basis. Would need a forward estimate of staff hours required to assess the rezoning application. 3. Fixed and variable assessment fees. The fixed fee would be charged upfront. The variable fee is charged once the rezoning application is finalised, based on actual staff hours that exceed the costs covered by the fixed fee. To

	reduce the risk of non-payment of the variable fee component, proponents of complex rezoning applications could be required to provide a bank guarantee at lodgement.
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The submission does not support this proposal due to the financial implications and administrative burden of the proposed options. A 'one size fits all' approach does not provide Council with the flexibility to set fees that recoup actual costs incurred in the assessment of rezoning applications. The submission recommends continuing with the existing ability to set fees under the *Local Government Act 1993*.

The Discussion Paper also seeks to introduce incentives for Council to make decisions. The financial implications for Council include:

Council's procedures under the existing 'Gateway' rezoning process	Proposed new approach to rezonings
<u>Fee refunds</u> Council's existing fee structure does not generally refund application fees. However, Council may (at its discretion) refund a certain proportion of the application fee under the following circumstances: <ul style="list-style-type: none"> • where Council resolves not to prepare a planning proposal; • where the proponent withdraws the application prior to Council deciding whether to prepare a planning proposal. 	<u>Fee refunds</u> Introduces planning guarantees, which would require fee refunds if Council does not meet the mandated assessment timeframes. This could mean, for example, a ten per cent refund for every week that Council does not meet the timeframe. Even where a fee refund is given, the assessment and determination of a rezoning application continues.
<u>Appeals pathways</u> No merit appeal rights to the Land and Environment Court.	<u>Appeals pathways</u> Introduces merit appeal rights to the Land and Environment Court. This will impact on Council's legal costs.

The submission does not support these proposals due to the financial and resource implications. Incentives already exist for Council to make decisions, namely:

- A rezoning review appeals process based on deemed refusals already exists through the Independent Planning Commission and Planning Panels.
- The *Environmental Planning and Assessment (Statement of Expectations) Order 2021* requires Council to decide whether to support a proponent led application within 90 days of lodgement, and to process applications within the timeframes specified in the Gateway Determination. If Council does not meet these expectations, the Minister for Planning may appoint a planning administrator or regional panel to exercise Council's functions.

The submission recommends continuing with the existing rezoning review appeals process.

COMMUNITY IMPACT

An objective of the Act is *'to provide increased opportunity for community participation in environmental planning and assessment'*.

The existing 'Gateway' rezoning process achieves this objective by involving Councillors early in the decision-making process. A function of Councillors is to represent the views of the community while making decisions on whether rezoning applications demonstrate strategic merit to proceed to exhibition. A key benefit is it identifies potential community issues early in the rezoning process, before significant time and costs have been expended.

The submission does not support the proposed removal of this function to improve timeframes, as it disempowers Council from the decision-making process. The submission recommends retaining the involvement of Councillors early in the decision-making process.

DETAILED INFORMATION

Summary of Council's Submission

The submission, as provided in Attachment A, raises the following issues:

1. Council does not support the proposed new approach to rezonings as it bypasses the 'plan-led' system and undermines Council's new planning framework

The Discussion Paper proposes to empower Council to make decisions about its local area without unnecessary departmental intervention (page 19), and to remove merit assessments (also known as the strategic merit test) prior to the exhibition of rezoning applications (page 26). The intended outcome is to improve timeframes.

Whilst the submission supports the proposal to empower Council to determine rezoning applications, it does not support the removal of merit assessments prior to exhibition as it would:

- Allow the lodgement of ad hoc, site-specific rezoning applications that are inconsistent with Council's planning framework and the Act's objective to promote the orderly development of the City.
- Require Council to invest significant time and resources to exhibit and assess these rezoning applications, which may ultimately be refused after a lengthy process. It would draw Council's time and resources away from activities like strategic planning and master planning.
- Delay the assessment of rezoning applications as the removal of the strategic merit test is likely to see significant issues being identified at the final assessment stage.
- Poses a risk of confusing the community. It needs to be made clear to the community that proceeding straight to exhibition does not mean Council has decided to support a rezoning application.
- Remove the ability for Councillors to identify potential community issues early in the rezoning process, before significant time and costs have been expended.
- Removes the ability for associated elements to the rezoning proposal such as DCP, planning agreement or contributions plan to be exhibited alongside the proposal.

If the Department is seeking to improve the rezoning process, the starting point is for the Department to focus on State-led strategic planning, and for Council to be the rezoning authority to translate strategic planning into statutory controls. The submission recommends:

- Allowing Council to receive and determine rezoning applications.
- Limiting the Department's oversight of the rezoning process to procedural matters, such as cross checks to ensure the legal process is followed in a timely way. The Department should not intervene in the merit assessment of rezoning applications, which is a matter of local significance and is the leading cause for delays for Council's planning proposals.
- Maintaining merit assessments (i.e. strategic merit test) prior to exhibition.
- Maintaining the existing function of Councillors to determine if rezoning applications demonstrate strategic merit to proceed to 'Gateway'.

- Maintaining the legal mechanism (i.e. Gateway Determination) to refuse a rezoning application from proceeding to exhibition.
- 2. Council does not support merit appeal rights to the Land and Environment Court for rezoning applications

The Discussion Paper proposes to introduce merit appeal rights to the Land and Environment Court to encourage Council to assess and determine applications promptly and to add scrutiny to the decision-making process. However, it is not proposed to extend these rights to public authorities such as Council and state-owned corporations (page 36).

The submission does not support this proposal for the following reasons:

- The Court would undermine Council's strategic planning. There is no requirement for the Court to ensure its 'merit-based' rezoning determinations are consistent with State/local policies and community consultation outcomes. This approach would undermine Council's ability to implement its strategies and master planning process in an orderly manner, resulting in greater uncertainty.
- The existing 'Gateway' rezoning process already provides oversight of rezoning decisions and incentives for Council to make decisions, namely:
 - The Department and Greater Sydney Commission provide oversight of Council's strategic planning framework.
 - A rezoning review appeals process already exists through the Independent Planning Commission and Planning Panels.
 - The *Environmental Planning and Assessment (Statement of Expectations) Order 2021* requires Council to decide whether to support a proponent led application within 90 days of lodgement, and to process applications within the timeframes specified in the Gateway Determination. If Council does not meet these expectations, the Minister for Planning may appoint a planning administrator or regional panel to exercise Council's functions.

The submission recommends retaining the existing rezoning review process involving the Independent Planning Commission and Planning Panels as it currently provides an incentive for Council to make decisions. The Discussion Paper does not identify any concerns with this existing process.

- 3. Council does not support the proposed planning guarantees

The Discussion Paper proposes to introduce a planning guarantee to require fee refunds if Council does not meet the mandated assessment timeframes (page 33).

The submission does not support planning guarantees as it assumes there are no existing incentives for Council to make decisions. A rezoning review appeals process based on deemed refusals already exists through the Independent Planning Commission and Planning Panels. The *Environmental Planning and Assessment (Statement of Expectations) Order 2021* requires Council to meet mandated timeframes. The Discussion Paper does not identify any concerns with these existing processes to justify the introduction of planning guarantees.

4. Council does not support the proposed mandated fee structures

The Discussion Paper proposes to mandate application fees to provide a consistent fee structure across councils, with the aim to adequately compensate councils for the cost and time of assessing and determining applications (page 31).

The submission does not support mandated fee structures as it would remove Council's ability to set fee structures that are already designed to recoup actual costs incurred in the assessment of rezoning applications in Canterbury Bankstown. A 'one size fits all' approach to fees would be inappropriate if the intent is to better resource Council. The submission recommends continuing with the existing flexibility to set fees under the *Local Government Act 1993*.

5. Council does not support the proposed mandated timeframes

The Discussion Paper proposes to mandate timeframes to accelerate rezoning outcomes. Council would have 26 to 50 weeks to assess and determine rezoning applications, depending on the complexity of the proposal (page 17).

The submission does not support the proposed timeframes unless the following changes are made:

- Include 'stop the clock' provisions to recognise that proponents often will take time to respond to Council. Rezoning applications cannot progress during this time.
- Include timeframes for state agencies to provide comments. If state agencies do not provide comments within the specified timeframe, the rezoning authority should proceed on the basis that the state agencies do not object to the proposal.
- Include timeframes for Commonwealth authorities to provide comments. The Department should ensure Commonwealth authorities sign up to the timeframes to provide comments, particularly in relation to airport issues, or clarify what implications delays in Commonwealth agency responses will have on timeframes.
- Include timeframes to allow Council to negotiate planning agreements and prepare DCP Amendments, which are exhibited concurrently with rezoning applications.
- Do not limit the number of information requests that Council can make.
- Include timeframes for the Parliamentary Counsel's Office to draft LEP Amendments.

6. Implement other improvements to the rezoning process

Proposed new approach to rezonings	Recommendations
<u>Council proponent rezoning applications</u> The Department would continue to assess and determine council proponent rezoning applications (page 20).	The Department must improve its role and processes in assessing and determining council proponent rezoning applications by: <ul style="list-style-type: none">• Updating the State Environmental Planning Policies and Ministerial Directions to ensure all information requirements are identified at the Gateway stage.• Ensuring the right information is submitted at the right time.• Not requesting information that would normally be required at the development application stage.• Providing regular updates on the status of planning proposals and target dates for when Gateway Determinations may be issued.

	<ul style="list-style-type: none"> • Making referrals to state agencies and strictly applying timeframes.
<u>Extension of time agreements</u> Only one EoT will be permitted for a rezoning authority and proponent to agree on a longer timeframe (page 33).	There should be no limit to the number of EoT requests a rezoning authority can make, to consider unforeseen circumstances and issues arising.
<u>Rezoning Application Template</u> The Discussion Paper does not identify the existing planning proposal template as an issue.	<p>The Department's <i>Local Environmental Plan Making Guideline</i> (page 69) outlines the template to demonstrate strategic and site-specific merit. The intended outcome is for the document to be clear and concise, and written in plain English, so it is easily understood by the community.</p> <p>The issue is the various parts in the template are repetitive, resulting in duplication of information. This makes the document lengthy to read and difficult for the community to understand. A review of the rezoning application template is required to ensure the content is simple to understand.</p>

7. Update the Ministerial Directions to be fit-for-purpose

The Discussion Paper gives the opportunity to review the Department's Ministerial Directions, which provide broad policy directions in the categories of employment and resources, environment and heritage, housing, infrastructure and urban development, hazard and risk, regional planning, local plan-making and metropolitan planning. Rezoning applications must demonstrate consistency with the Ministerial Directions (page 20).

The issue is many have not been reviewed since 2009 and are no longer fit-for-purpose to make assessment considerations more certain. The submission recommends mandating the periodic reviews of Ministerial Directions and allowing Council to approve inconsistencies with Ministerial Directions.

Next Steps

Should Council endorse the submission, it will be forwarded to the Department for consideration. The Department has not indicated a timeframe for the implementation of the proposed new approach.



Canterbury Bankstown Council Submission

Discussion Paper: A New Approach to Rezoning

March 2022





EXECUTIVE SUMMARY

Council acknowledges the importance of timely decision-making

Canterbury Bankstown is a highly urbanised metropolitan environment. It occupies a strategic position within Sydney's primary transport and freight corridors, accessible by air, rail, and road and is within 30 minutes of Sydney (Kingsford Smith) Airport and Port Botany.

Canterbury Bankstown was the largest local government area by population in NSW at the last census. The estimated population in 2020 was 380,000 residents. It is the eighth largest economy in NSW, with 115,000 jobs and a gross regional product of \$14.48 billion. In the 2020/21 financial year, Council determined 1,073 development applications and 360 Section 4.55 applications (applications to modify a development consent), with a total capital investment value of \$1.1 billion.

Council's Local Strategic Planning Statement '*Connective City 2036*' creates opportunities for growth and improvement to deliver 50,000 new homes and 41,000 new jobs. The population is forecast to grow to 500,000 residents by 2036. The focus is to ensure growth is appropriately supported by an established and funded infrastructure delivery plan, whilst preserving the identity and character that make Canterbury Bankstown highly desirable.

Council acknowledges the importance of timely decision-making to support growth and investment, and has a proven track record of determining planning proposals and development applications within the mandated decision-making periods.

Council does not support the proposed new approach to rezonings to improve timeframes

Council has invested significant resources and engaged widely to prepare its new planning framework as required by the *Environmental Planning and Assessment Act 1979*.

The new planning framework provides a pathway to manage growth and change across Canterbury Bankstown. The Greater Sydney Commission has assured *Connective City 2036*, confirming it is consistent with State priorities and the Department of Planning and Environment (the Department) has endorsed the Housing Strategy. Council is currently master planning the centres and surrounding residential zones in accordance with its new planning framework.



The existing 'Gateway' rezoning process supports Council's new planning framework, by discouraging ad hoc, site-specific rezoning applications from proceeding prior to the completion of the master planning process. It requires rezoning applications to satisfy a strategic merit test if Council and the Department are to support the applications proceeding to 'Gateway' and the exhibition stage.

The benefit of this filtering system is it ensures Council's time and resources are not drawn away from plan-led activities like strategic planning and master planning. As a result, Council has a proven track record of determining rezoning applications within the decision-making periods set by the Department.

In December 2021, the Department commenced the exhibition of the Discussion Paper '*A New Approach to Rezoning*'. The Discussion Paper seeks to accelerate rezoning outcomes as a way to support the State's economic recovery from the COVID-19 pandemic. It proposes to replace the existing 'Gateway' rezoning process with a new approach that aligns more closely with the development application process to improve timeframes.

This submission raises a number of concerns. Council does not support:

1. The proposed new approach to rezonings as it bypasses the 'plan-led' system and undermines Council's new planning framework.
2. Merit appeal rights to the Land and Environment Court for rezoning applications.
3. The proposed planning guarantees.
4. The proposed mandated fee structures.
5. The proposed mandated timeframes.

Other matters that Council wishes to bring to the Department's attention, include:

6. Implementing other improvements to the rezoning process.
7. Updating the Ministerial Directions and Practice Notes to be fit-for-purpose.



Issue 1: Council does not support the proposed new approach to rezonings as it bypasses the 'plan-led' system and undermines Council's new planning framework.

Discussion Paper

The Discussion Paper seeks to improve timeframes in the rezoning process and comments that *'these time savings will mainly happen by removing duplication in who assesses the application and how often it is assessed throughout the process'* (page 12). The Discussion Paper proposes:

- To *'empower councils to make decisions about their local area without unnecessary departmental intervention. This means that for private proponent rezoning applications, councils will have full control of the process, including giving permission to exhibit, which is currently given by a gateway determination. Councils will review any changes after exhibition and make the final decision'* (page 19). However, the Department will continue to assess and determine council proponent rezoning applications (page 20).
- To shift all merit assessment processes to after the exhibition of rezoning applications. Under the new approach, *'the only opportunity to refuse a rezoning application if it lacks strategic merit is after exhibition, in the final assessment stage. This means that the initial assessment effort will go into deciding if all required information has been provided'* (page 26).

Comment

In 2018, the Department and the Greater Sydney Commission introduced amendments to the *Environmental Planning and Assessment Act 1979* to reinforce a 'plan-led' system – an approach that ensures strategic planning is the foundation for all decisions about potential land use changes.

Council has invested significant resources to prepare its new planning framework. The new planning framework provides a pathway to manage growth and change across Canterbury Bankstown, and includes:

- Adopting *Connective City 2036* and supporting strategies such as the Housing Strategy, Affordable Housing Strategy and Employment Lands Strategy. The Greater Sydney Commission has assured *Connective City 2036*, confirming it is consistent with State priorities. The Department has endorsed the Housing Strategy.
- Adopting a Consolidated Local Environmental Plan, which merges the planning rules of the former Bankstown and Canterbury Councils, and implements existing land use strategies under the Department's Accelerated LEP Review Program.



- Submitting a planning proposal to merge the residential planning rules of the former Bankstown and Canterbury Councils. This will facilitate a simpler and faster development assessment process and provide certainty in planning controls across the City that will benefit both residents and industry alike.
- Adopting the Bankstown Master Plan to support growth in the Bankstown City Centre, which will be anchored by Bankstown's Health and Education Precinct development. The planning proposal will facilitate 25,000 jobs, 25,000 students and an additional 12,500 dwellings in the strategic centre by 2036.
- Master planning the Campsie Town Centre, local centres and surrounding residential zones in accordance with the South District Plan, *Connective City 2036* and Housing Strategy.
- Determining private proponent rezoning applications within the decision-making periods. Following the merger of the former Bankstown and Canterbury Councils, Council focussed its resources to processing 34 applications that were lodged with Council at the time. Most were supported including the Western Sydney University Bankstown Campus, a private hospital and numerous multi-storey mixed use developments. Today, there are eight applications under assessment.

As a result, Council has a proven track record of determining rezoning applications within the decision-making periods set by the *Environmental Planning and Assessment (Statement of Expectations) Order 2021*. The expectations are Council must decide whether to support a proponent led application within 90 days of lodgement, and process applications within the timeframes specified in the Gateway Determination.

If the Department is seeking to improve the rezoning process and associated timeframes:

- 1. Allow Council to receive and determine rezoning applications, with the Department's oversight limited to procedural and legal matters. The Department should not intervene in the merit assessment of rezoning applications.**

Despite the new planning framework, the Department's intervention in the merit assessment of rezoning applications has resulted in unnecessary delays in the rezoning process. Examples of this intervention include:

- Reviewing planning proposals like development applications at 'Gateway' and requesting information that would normally be required at the development application stage.
- Requiring Council to satisfy all information requirements prior to the issue of the Gateway Determination.



- Moving the ‘goal posts’ by requesting new information at the final assessment stage that was not required by State Environmental Planning Policies or Ministerial Directions.
- Providing little to no communication regarding the status of planning proposals or target dates for when Gateway Determinations may be issued.
- Providing inconsistent advice at different stages due to staff turnover.
- Assuming the audience of planning proposals is the Department, rather than the community. The intended outcome of the main report is to be clear and concise, and written in plain English, so it is easily understood by the community. However, the Department has requested extensive detailed technical information in planning proposals that is disproportionate to the complexity of proposals, making the document lengthy to read and difficult for the community to understand.

In the case of Canterbury Bankstown, this intervention has delayed planning proposals that are important to delivering a ‘plan-led’ system. For example:

- Council adopted its Draft Consolidated Local Environmental Plan and submitted the draft plan to the Department in July 2020 for finalisation. After 20 months, the Department is yet to finalise the draft plan, even though it was prepared under the Department’s Accelerated LEP Review Program.
- Council submitted a planning proposal to the Department in December 2020 to consolidate the residential planning rules of the former Bankstown and Canterbury Councils to facilitate a simpler and faster development assessment process. After 14 months, the Department is yet to issue a Gateway Determination.

If the Department is seeking to improve the rezoning process, the starting point is for the Department to focus on State-led strategic planning, and for Council to be the rezoning authority to translate strategic planning into statutory controls. The preferred option is for Council to receive and determine the following rezoning applications:

- Private proponent rezoning applications.
- Council proponent rezoning applications where Council is the rezoning authority (for example, mapping alterations, listing local heritage items, strategically consistent spot rezonings).

Whilst the Department should continue to have some oversight of the rezoning process, this oversight should be limited to procedural matters, such as cross checks to ensure the legal process is followed in a timely way. The Department should not intervene in the merit assessment of rezoning applications, which is a matter of local significance and is the leading cause for delays for Council’s planning proposals.



2. Do not remove merit assessments (i.e. strategic merit test) prior to exhibition.

Prior to 2009, the Department acknowledged that a key factor causing delays in the rezoning process was the number of ad hoc, site-specific rezoning applications being lodged with councils that were inconsistent with strategic directions and did not demonstrate strategic merit. There was no legal mechanism to prevent proponents from lodging these types of zoning applications. Councils would invest significant resources to exhibit and assess these rezoning applications, which would ultimately be refused after a lengthy process.

In 2009, the Department introduced the 'Gateway' rezoning process to ensure there is sufficient justification early in the process to proceed with a rezoning application before significant time and costs have been expended, and to determine the ongoing information and assessment requirements. The strategic merit test saw a reduction in the number of ad hoc, site-specific rezoning applications being lodged with Council.

Council does not support the removal of the strategic merit test prior to exhibition, for the following reasons:

- The proposal will encourage the lodgement of ad hoc, site-specific rezoning applications that do not demonstrate strategic merit. The existing 'Gateway' rezoning process is found to save time and resources by preventing inappropriate rezoning applications from proceeding to 'Gateway' and the exhibition stage.

In addition, the existing 'Gateway' rezoning process supports Council's master planning process, by discouraging ad hoc, site-specific rezoning applications from proceeding prior to the completion of the master planning process. In summary, the process requires rezoning applications to satisfy a strategic merit test if Council and the Department are to support the applications proceeding to 'Gateway' and the exhibition stage. The benefit of this filtering system is it ensures Council's time and resources are not drawn away from plan-led activities like strategic planning and master planning.

While the Discussion Paper indicates Council may reject the lodgement of rezoning applications that do not meet the scoping requirements (page 24), the reality is there is no legal mechanism to prevent proponents from lodging inappropriate zoning applications. According to the Discussion Paper, Council '*will not be able to prevent the proponent from lodging an application. Study requirements must still be issued, and a proponent may still lodge a rezoning application, and have it assessed and determined*' (page 25).



- The proposal will delay the assessment of rezoning applications after exhibition. The removal of the strategic merit test is likely to see significant issues being identified at the final assessment stage, which may require re-exhibition or additional consultation with state agencies. This will create pressure for Council and proponents to meet the timeframes if the additional information results in a new or revised rezoning application.
- The proposal will not enable greater opportunities to lodge concurrent rezoning applications and development applications. According to the Discussion Paper, the removal of the strategic merit test ‘*may increase the number of combined rezoning and development applications, a mechanism which is underused*’ (page 1). This will align with the development application process, ‘*enabling greater opportunities to lodge concurrent rezoning applications and development applications*’ (page 26).

However, experience with a combined rezoning and development application at 83 North Terrace, Bankstown (PP-2021-1072) found it was impractical to assess the development application prior to resolving the rezoning application and the proposed built form controls. Removing the strategic merit test will not resolve this problem.

- Proceeding straight to exhibition poses a risk of confusing the community. It needs to be made clear to the community that the exhibition of a rezoning application does not mean Council has decided to support it.
3. **Do not remove the existing function of Councillors to determine if rezoning applications demonstrate strategic merit to proceed to ‘Gateway’.**

An objective of the Act is ‘*to provide increased opportunity for community participation in environmental planning and assessment*’.

The existing ‘Gateway’ rezoning process achieves the objective by involving Councillors early in the decision-making process. The function of Councillors is to represent the views of the community while making decisions on whether rezoning applications demonstrate strategic merit to proceed to exhibition. A key benefit is it identifies potential community issues early in the rezoning process, before significant time and costs have been expended.

The submission does not support the proposal to remove this existing function as it disempowers Council from the decision-making process.



Recommended Actions

- Ensure the Department focuses on State-led strategic planning under the new rezoning approach, and for Council to be the rezoning authority to translate strategic planning into statutory controls.
- Allow Council to receive and determine the following applications:
 - Private proponent rezoning applications.
 - Council proponent rezoning applications where Council is the rezoning authority.
- Limit the Department's oversight of the rezoning process to procedural matters, such as cross checks to ensure the legal process is followed in a timely way. The Department should not intervene in the merit assessment of rezoning applications, which is a matter of local significance.
- Maintain the existing function of Councillors to determine if rezoning applications demonstrate strategic merit to proceed to 'Gateway'.
- Maintain merit assessments (i.e. strategic merit test) prior to exhibition.
- Maintain the legal mechanism (i.e. Gateway Determination) to refuse a rezoning application from proceeding to exhibition.



Issue 2: Council does not support merit appeal rights to the Land and Environment Court for rezoning applications.

Discussion Paper

The FAQ comments that the *'focus on the appeals process acknowledges that while the planning system gives some opportunity to review decisions about planning proposals, there is no oversight of a final rezoning decision based on the merits. This is at odds with the development application process, which allows a merit appeal where an applicant is dissatisfied with the outcome of an application or where there has been a delay'* (page 1).

A proposal is to introduce merit appeal rights to the Land and Environment Court to encourage decision-makers to assess and determine applications promptly and to add scrutiny to the decision-making process. However, it is not proposed to extend these rights to public authorities such as councils and state-owned corporations (page 36).

Comment

Council does not support the proposal to introduce merit appeal rights to the Land and Environment Court for rezoning applications, for the following reasons:

- The Land and Environment Court would undermine Council's strategic planning. The intended outcome of the State reforms is to reinforce a 'plan-led' system – an approach that ensures strategic planning is the foundation for all decisions about potential land use changes. Council has invested significant resources to preparing its new planning framework in consultation with the community and state agencies.

The issue is there is no requirement for the Court to ensure its 'merit-based' rezoning determinations are consistent with State/local policies and community consultation outcomes. This approach would undermine Council's ability to implement the strategies in an orderly manner, resulting in greater uncertainty that proposals are strategically aligned and address community needs.

- The existing 'Gateway' rezoning process already provides oversight of rezoning decisions and incentives for Council to make decisions. There are three incentives that already exist for Council to make decisions:
 - The Department and Greater Sydney Commission currently provide oversight of Council's strategic planning and rezoning decisions based on merit. The Greater Sydney Commission has assured *Connective City 2036*, confirming it is consistent with State priorities. The Department has endorsed the Housing Strategy.



- A rezoning review appeals process already exists through the Independent Planning Commission and Planning Panels. The Discussion Paper does not identify any concerns with this existing process.
- The *Environmental Planning and Assessment (Statement of Expectations) Order 2021* requires Council to decide whether to support a proponent led application within 90 days of lodgement, and to process applications within the timeframes specified in the Gateway Determination. If Council does not meet these expectations, the Minister for Planning may appoint a planning administrator or regional panel to exercise Council's functions.
- Introducing a new process would add red tape, and draw Council's time and resources away from activities like strategic planning, master planning and assessment of rezoning applications.

Should the Department be looking for ways to improve timeframes, the preferred approach is to maintain the existing rezoning review process involving the Independent Planning Commission and Planning Panels as it already provides an incentive for Council to make decisions.

Recommended Actions

- Do not introduce merit appeal rights to the Land and Environment Court for rezoning applications.
- Maintain the existing rezoning review process involving the Independent Planning Commission and Planning Panels as it already provides an incentive for Council to make decisions.



Issue 3: Council does not support the proposed planning guarantees.

Discussion Paper

The Discussion Paper seeks to look for 'mechanisms for rezoning authorities to determine rezoning applications more efficiently while being transparent and giving proponents certainty'. A proposal is to introduce planning guarantees to require fee refunds if councils do not meet the mandated assessment timeframes (page 33).

Comment

Council does not support the proposal to introduce a planning guarantee as it assumes there are no existing incentives for Council to make decisions.

As outlined in Issue 2, a rezoning review appeals process based on deemed refusals already exists through the Independent Planning Commission and Planning Panels. The *Environmental Planning and Assessment (Statement of Expectations) Order 2021* requires Council to meet mandated timeframes. The Discussion Paper does not identify any concerns with these existing processes to justify the introduction of planning guarantees.

Recommended Actions

- Do not introduce planning guarantees.
- Maintain the existing rezoning review process involving the Independent Planning Commission and Planning Panels as it already provides an incentive for Council to make decisions.



Issue 4: Council does not support the proposed mandated fee structures.

Discussion Paper

The Discussion Paper seeks to 'ensure that any right to lodge a rezoning application comes with the responsibility to adequately compensate councils for the cost and time of assessing and determining applications. Councils should not be left short-changed or with stretched resources'. A proposal is to regulate scoping fees and assessment fees to provide a consistent fee structure across councils (page 31).

Comment

The assessment of rezoning applications is informed by a wide range of legal requirements, including State Environment Planning Policies, Ministerial Directions, local strategies, community consultation, state agency consultation and public hearings.

The combination of these legal requirements has resulted in a multitude of planning issues that need to be considered and peer reviewed, including hazards, amenity, design quality, sustainability and contextual relationship with surrounding land uses. As a result, assessment fees may vary across councils depending on local circumstances and urban conditions.

In the case of Canterbury Bankstown, the existing fee structure (Fees and Charges 2021/22) is proportionate to the scale and complexity of the rezoning application.

At the lodgement stage, the application fees range from \$16,904.70 to \$150,000. The fee to lodge an amended rezoning application is a maximum 50% of the original fee, as determined by Council's Director Planning. At the assessment stage, the proponent would commission the required studies and peer reviews, or Council would enter into a cost recovery agreement with the proponent to recoup costs. Council's full fees and charges schedule relevant to planning proposals is provided below.

Table 1: Council's Fees and Charges 2021/22

Application for LEP Amendment – Minor Proposals	Fee (GST is not charged)
Lodgement of an application for a minor planning proposal to amend a mapping or drafting error/anomaly, adding / removing a heritage item or adding an additional permitted use on a small site, or adding an additional permitted use that does not require complex assessment and is consistent with all of Council's strategies. Application of this fee category at Council officer discretion. Assessment of application and report to Council. Subject to the outcome of Council's consideration, this process may include the preparation, exhibition and making of a planning proposal.	\$16,904.70



Commission of studies to inform the planning proposal – If the Department of Planning and Environment issues a Gateway Determination requiring additional studies or investigations to be undertaken (including changes to Council's DCP), additional fees are required to commission this work	Full Cost Recovery
Public Hearing – Additional fees are required if a planning proposal needs to go through a public hearing process	Full Cost Recovery
Application for LEP Amendment – Standard Proposals	Fee (GST is not charged)
Lodgement of an application for a planning proposal. Application of this fee category at Manager discretion. Assessment of application and report to Council. Subject to the outcome of Council's consideration, this process may include the preparation, exhibition and making of a planning proposal.	\$87,960
Lodgement of amended planning proposal application (Note: Major changes will require new planning proposal)	\$21,990.50
Commission of studies to inform the planning proposal – If the Department of Planning and Environment issues a Gateway Determination requiring additional studies or investigations to be undertaken (including changes to Council's DCP), additional fees are required to commission this work	Full Cost Recovery
Public Hearing – Additional fees are required if a planning proposal needs to go through a public hearing process	Full Cost Recovery
Application for LEP Amendment – Major / Complex Proposals	Fee (GST is not charged)
Lodgement of an application for a major or complex planning proposal that requires complex assessment, consideration of significant planning matters and/or involves multiple lots. Application of this fee category at Manager discretion. Assessment of application and report to Council. Subject to the outcome of Council's consideration, this process may include the preparation, exhibition and making of a planning proposal.	\$150,000
Amended Application	Fee (GST is not charged)
Lodgement of amended planning proposal application (Note: Major changes will require new planning proposal)	maximum 50% of original fee as determined by Director Planning

According to the Discussion Paper, 'councils will be better resourced through a new fee scheme that will compensate councils for the full cost of assessing a rezoning application, while also enabling them to invest in staff and better systems' (page 19).

The issue is Council's fee structure already achieves this intended outcome. A 'one size fits all' approach to fees would be inappropriate if the intent is to better resource Council. Council is not aware of any concerns raised by proponents in relation to Council's existing fee structure.



The preferred option is to continue to allow flexibility in setting fees under the *Local Government Act 1993*. This option achieves actual cost recovery and is easy to administer. It ensures Council is resourced to assess and determine rezoning applications within the mandated decision-making periods.

Recommended Actions

- Do not introduce mandated fee structures.
- Maintain existing flexibility in setting fees under the *Local Government Act 1993*.



Issue 5: Council does not support the proposed mandated timeframes.

Discussion Paper

The Discussion Paper identifies issues with timeframes under the existing Gateway system, and comments that *'there is a lack of accountability and certainty about timeframes, including for the exhibition process and agency submissions. For example, legislation prescribes timeframes and appeal rights for the assessment of development applications, but there is no equivalent legislative requirement for planning proposals'* (page 9).

A proposal is to set out maximum timeframes for each stage of the new approach (page 17).

Comment

In practice, there is no guarantee that benchmark timeframes will create greater efficiency unless there are changes made to legislation around:

- 'Stop the clock' provisions. There should be a DA style 'stop the clock' provision to recognise that proponents often will take time to respond to Council. Rezoning applications cannot progress during this time.
- Timeframes for state agencies to respond. There should be strict timeframes for state agencies to provide comments, similar to the integrated DA process. If state agencies do not provide comments within the specified timeframe, the rezoning authority should proceed on the basis that the state agencies do not object to the proposal.
- Timeframes for Commonwealth authorities to respond. The Department should ensure Commonwealth authorities sign up to the timeframes to provide comments, particularly in relation to airport issues. The Discussion Paper does not identify the roles and responsibilities of Commonwealth authorities to comply with the timeframes and implications of their ability or inability to meet these timeframes for rezoning applications.



- Timeframes to negotiate and prepare DCP Amendments and planning agreements. The Discussion Paper does not discuss these supporting documents, which are exhibited concurrently with rezoning applications. It is important that the timeframes allow for these documents to be exhibited concurrently to ensure transparency in the planning system.

The following issues are also raised in relation to the proposed mandated timeframes:

Discussion Paper	Comments
<u>Scoping (page 17)</u> The maximum timeframes range from 6–12 weeks.	Additional time is required to: <ul style="list-style-type: none"> • Discuss key issues at the preliminary meeting. • Allow time for Commonwealth authorities and state agencies to provide comment. • Allow time for referrals to the design review panel, as proposed by the Draft Design and Place SEPP.
<u>Lodgement (page 26)</u> Rezoning authorities will have 7 days to check that applications are adequate and to confirm that study requirements have been met.	Additional time is required to allow Council to review the information submitted and confirm all matters raised in the scoping stage have been satisfactorily addressed. Experience indicates that rezoning applications often require further work/studies to be undertaken at the lodgement stage. This process is likely to become much lengthier than the timeframes suggested in the Discussion Paper depending on the complexity of the proposal.
<u>Information requests (page 28)</u> Ongoing requests for more information cause delays. Requests for more information will be discouraged.	There should be no limit to the number of requests for more information a rezoning authority can make, and the timeframes should reflect this accordingly.
<u>Finalisation (page 29)</u> The rezoning authority will engage with the Parliamentary Counsel's Office to draft the instrument and mapping can be prepared.	Experience indicates the Parliamentary Counsel's Office (PCO) is a key cause for delay as the PCO is involved in the drafting of other legislation. A timeframe should be applied to the PCO, and the Department's involvement is required to progress draft plans which may be delayed in the system.



Recommended Actions

- Do not introduce mandated timeframes unless the following amendments are made:
 - Include 'stop the clock' provisions.
 - Include timeframes for Commonwealth authorities and state agencies to respond.
 - Include timeframes to negotiate and prepare DCP Amendments and planning agreements.
 - Allow additional time at the lodgement stage for rezoning authorities to check that applications are adequate and to confirm that study requirements have been met.
 - Do not limit the number of information requests a rezoning authority can make.
 - Include timeframes for the Parliamentary Counsel's Office to draft LEP Amendments.



Issue 6: Implement other improvements to the rezoning process.

Discussion Paper

The Discussion Paper seeks comments on best-practice process and procedures to assist in the timely assessment of rezoning applications.

Comments

Council recommends the following improvements to assist in the timely assessment of rezoning applications:

Discussion Paper	Comments
<u>Council-led rezonings (page 20)</u> The Department will continue to assess and determine council proponent rezoning applications. What changes can be made to the Department's role and processes to improve the assessment and determination of council-led rezonings?	The Department must improve its administrative practices to avoid unnecessary delays by: <ul style="list-style-type: none">• Updating the State Environmental Planning Policies and Ministerial Directions to ensure all information requirements are identified at the Gateway stage.• Ensuring the right information is submitted at the right time.• Not requesting information that would normally be required at the development application stage.• Providing regular updates on the status of planning proposals and target dates for when Gateway Determinations may be issued.• Making referrals to state agencies via the planning portal website and strictly apply timeframes. This should be similar to how integrated development applications work on the portal.
<u>Scoping – reject applications at lodgement (page 24)</u> Failure to provide the information required in the study requirements may lead to rejection of a rezoning application at lodgement or refusal at the end of the process.	There should be a legal mechanism and clear guidelines that Council has the power to reject rezoning applications at the lodgement stage. Proponents must not have any right to appeal.



Discussion Paper	Comments
<p><u>Scoping – state agencies (page 24)</u></p> <p>A scoping meeting is held between the proponent and the rezoning authority and other relevant parties (including state agencies) to discuss the scoping report and provide preliminary feedback.</p>	<p>Experience indicates that seeking comments from state agencies is not an easy task and the Department's involvement is required to secure comments.</p>
<p><u>Changes after exhibition (page 27)</u></p> <p>Proponents must both summarise and respond to submissions received, including working with state agencies to resolve any objections.</p>	<p>Council should be responsible to review submissions. This will avoid duplication as the proposal would require Council to review the proponent's response to submissions. This will also avoid any inconsistencies with privacy laws such as the <i>Government Information (Public Access) Act 2009</i>.</p> <p>Council should also be responsible to work with state agencies. This will avoid duplication as the proposal would require Council to review the proponent's response to state agency comments. The Department should assist to coordinate submissions from the state agencies.</p>
<p><u>Extension of time agreements (page 33)</u></p> <p>Only one EoT will be permitted for a rezoning authority and proponent to agree on a longer timeframe.</p>	<p>There should be no limit to the number of EoT requests a rezoning authority can make, to consider unforeseen circumstances and issues arising.</p>
<p><u>Rezoning Application Template</u></p> <p>The Discussion Paper does not identify the existing planning proposal template as an issue.</p>	<p>The Department's <i>Local Environmental Plan Making Guideline</i> (page 69) outlines the template to demonstrate strategic and site-specific merit. The intended outcome is for the document to be clear and concise, and written in plain English, so it is easily understood by the community.</p> <p>The issue is the various parts in the template are repetitive, resulting in duplication of information. This makes the document lengthy to read and difficult for the community to understand. A review of the rezoning application template is required to ensure the content is simple to understand.</p>



Recommended Actions

- The Department must improve its role and processes in assessing and determining council proponent rezoning applications by:
 - Updating the State Environmental Planning Policies and Ministerial Directions to ensure all information requirements are identified at the Gateway stage.
 - Ensuring the right information is submitted at the right time.
 - Not requesting information that would normally be required at the development application stage.
 - Providing regular updates on the status of planning proposals and target dates for when Gateway Determinations may be issued.
 - Making referrals to state agencies via the planning portal website and strictly apply timeframes.
- Provide a legal mechanism to allow Council to refuse to issue study requirements at the scoping stage if a rezoning application is clearly inconsistent with strategic plans.
- Require Council to summarise and respond to submissions after the exhibition.
- Require Council to consult with state agencies after the exhibition.
- Do not limit the number of Extension of Time agreements.
- Review the rezoning application template to ensure the content is clear and concise, and written in plain English, so it is easily understood by the community.



Issue 7: Update the Ministerial Directions and Practice Notes to be fit-for-purpose.

Discussion Paper

The Discussion Paper proposes to implement *‘the proposed new approach using existing legislative provisions, along with other existing mechanisms such as ministerial directions to make assessment considerations more certain’* (page 40). The Discussion Paper gives the opportunity to review the Ministerial Directions and consider approaches to streamline the assessment process.

Comment

To date, there are 41 Ministerial Directions that Council must consider when assessing rezoning applications. Many have not been reviewed since 2009 and are no longer fit-for-purpose to make assessment considerations more certain. Key examples include:

Ministerial Direction 3.5–Development near Licensed Aerodromes

The objectives of the Ministerial Direction are to ensure the effective and safe operation of regulated airports, and to ensure their operation is not compromised by development.

Council's experience with the Commonwealth Department of Infrastructure, Transport, Regional Development & Communications and Bankstown Airport Limited found that planning proposals around Bankstown Airport are inconsistent with clause 4(d) of the Ministerial Direction. Clause 4(d) requires Council to obtain permission from the Commonwealth Government (or delegate) if a planning proposal is to allow (as permissible with consent) development that encroaches above the Obstacle Limitation Surface. The Department of Infrastructure, Transport, Regional Development & Communications and Bankstown Airport Limited have confirmed in writing that it cannot give permission at the rezoning stage.

The reason is the *Commonwealth Airports Act 1996* and the *Airports (Protection of Airspace) Regulations 1996* require all penetrations of the prescribed airspace to be approved on a case-by-case basis, subject to safety assessments and advice from the Civil Aviation Safety Authority and Airservices Australia. This would occur at the development application stage. Therefore, the Department of Infrastructure, Transport, Regional Development & Communications does not support, and the legislation does not allow blanket shielding at the rezoning stage. Council officers have met with the Department of Planning and Environment to discuss this inconsistency between the Commonwealth and State legislation, and the Department has advised Council to proceed with planning proposals despite the inconsistency with this direction. This uncertainty has resulted in delays in the rezoning process.



High pressure pipelines

The *State Environmental Planning Policy (Infrastructure) 2007* requires high pressure pipelines to be considered at the development application stage. There is no Ministerial Direction to require this consideration to occur at the rezoning stage.

However, the Department has requested a risk assessment at the final assessment stage for planning proposals in Canterbury Bankstown, with no supporting advice to methodology. The Department should update the Ministerial Directions to address contemporary issues affecting the State, rather than an ad hoc approach where each council must approach the same issue using different methodologies. This uncertainty has resulted in delays in the rezoning process.

Practice Notes and Planning Circulars

The Discussion Paper proposes to support the new approach with policy guidance '*to ensure a smooth transition and minimise disruption and uncertainty*' (page 40). This is often in the form of practice notes and planning circulars.

The issue is the volume of existing practice notes and planning circulars on the Department's website is difficult to navigate, and there is no longer a 'one-stop shop' for Council, industry and the community to understand the legal requirements of the rezoning process.

An example is public hearings, where the legal requirements are dispersed across the *Local Government Act 1993*, *Environmental Planning and Assessment Act 1979* and *Practice Note PN 16-001*. The consolidation of the various requirements would assist to streamline the rezoning and public hearing processes and avoid unnecessary delays.

Recommended Actions

- Review the Ministerial Directions to be fit-for-purpose under the 'plan-led' system.
- Council should be able to approve inconsistencies with Ministerial Directions.
- Streamline the practice notes and planning circulars to support the rezoning process.
- Mandate periodic reviews of Ministerial Directions, practice notes and circulars.