

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

27 February 2022

Dear Ms Wythes

RE: A New Approach to Rezoning – Discussion Paper

We are writing to strongly oppose the proposals in the Discussion Paper. The proposed changes are driven by the development and property industry in the interest of profit, not good planning. The objective is to facilitate development, weaken input from elected councils and their communities and to introduce yet another SEPP to override LEPs .

The LEP defines the areas in which particular development and usage is to be encouraged. State Government under the guise of ‘streamlining’, ‘flexibility’, ‘simplifying’ or ‘removing red tape’ is facilitating the development industry to being self-governing and by-passing councils and local communities to amend LEPs.

Former Planning Minister Robert Stokes flagged the land use changes to the Property Council in a speech just a few weeks prior to departing his Ministerial position. The Minister in our view, has clearly been influenced and is taking the advice from lobbyist’s tied to the property and development industry

We oppose the Discussion Paper’s proposals:

1. To introduce a pre-lodgement stage to a ‘rezoning authority’. There is little trust in the government or authorities whose members are appointed by the Planning Minister. Decisions on changes to zoning in an LEP should be considered by elected council in consultation with local communities and considered in the context of the council’s strategic plans.
2. For Developers to have a new formal status as an applicant for planning proposals. Spot rezonings require an amendment to an LEP via a planning proposal. Currently a developer cannot amend an LEP but it can request that a council or other relevant authority do so. The proposed change effectively by-passes the planning proposal authority which is usually council.
3. Currently the Planning Minister decides about community consultation at the Gateway determination stage. It is unclear how the proposed removal of Gateway Determination will

affect community consultation

4. To mandate timeframes for assessing rezoning applications, with a 'deemed refusal' if the timeframe is not met. Timeframes are open to abuse as proponents can intentionally delay supplying necessary documentation. In addition, agency referrals are sometimes delayed. There must be a 'stop clock' provision in the assessment process, for a fair process and proper assessment of the proposal to be undertaken, including consideration of agency referral responses.
5. To ignore environmental assessments. There is no longer a mandatory process for full environmental assessments for new LEPs. Environmental Studies should be mandatory for spot rezonings, not left at the discretion of the Minister. Any determination of rezoning must be considered in the context of the adopted LEP and must consider environmental and ecological sustainability.
6. To give the right of appeal to proponents and the injustice of restricting or denying objectors similar right of merits appeal in respect of Category 2 and 3 Rezoning Applications.
7. To introduce a "planning guarantee" that is a refund of application fee where a determination of an application is not made within the statutory assessment period with an obligation to progress the application. This is unfair and may result in hasty decisions. Any fee refund in order to reach faster turnaround times will irrevocably lead to detrimental rezoning outcomes for the community. Especially when under resourced councils have been so clearly mentioned.
8. To introduce full recovery costs of fees whether the change in planning controls goes ahead or not. This is unjust and puts the onus on the planning authority to make a hasty determination, not necessarily a fair or considered one.
9. To facilitate spot rezoning which will result in ad-hoc development which is contrary to objectives of planning to achieve fair, orderly and sustainable development of land.
10. The application and approval system at Council level provides for a new set of conflicts of interest. The proposal where the authorising authority is the Council is analogous to the now disrespected Private Certifying Authority system. As proposed, the proponent can go 'hand-in-hand' with the Council to approve a rezoning which will benefit both parties, to the detriment of the community. Objections and areas of concern could be removed or obscured to progress the rezoning, with no oversight.
11. Public Exhibition periods need to be a minimum of 6 weeks in order of appropriate evaluation by the community. Four weeks is far too small. There also needs to be secondary periods of public exhibition once a revised plan has addressed the issues and been assessed for its strategic merit. The planning system needs to acknowledge that often an important oversight of developments in the planning stages will come from public engagement.
12. The Independent Planning Commission should not be the final appeals arbiter of planning decisions as it has a record of over 90% approval of proposed developments. The Land and Environment Court would remain a far better and independent arbiter.

The proposals for rezoning reforms are clearly not intended to be in the public interest as they will effectively further reduce democratic input into the planning system. The reforms erode the autonomy and control of Councils in the rezoning process and decision making, reduce community consultation and, in essence, override strategic planning for the benefit of development and the property industry.

These proposals reduce public scrutiny periods, side-line community concerns with no right of appeal or engagement at subsequent stages and will do nothing to improve community trust in the state's compromised planning system.

Yours sincerely

Kathy Cowley
PRESIDENT

cc Mayor and Councillors – Ku-ring-gai Council

cc The Hon Jonathan O'Dea MP Member for Davidson

cc The Hon Alister Henskens SC MP Member for Ku-ring-gai

cc The Hon Paul Fletcher Member for Bradfield