

25 March 2022

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

By email: planninglegislativereform@planning.nsw.gov.au

Dear Ms Wythes,

Re: Submission on the New Approach to Rezoning: Discussion Paper

Thank you for the opportunity to make a submission to the New Approach to Rezoning Discussion Paper.

Council supports the objectives of the Discussion Paper to streamline the rezoning process, balance robust processes with a flexible and responsive planning system while maintaining good planning outcomes. Council acknowledges the improvements already introduced into the Local Environmental Plan Making Guideline including consistent lodgement requirements and pre-lodgement meetings.

A Response to Survey Questions (**ATTACHMENT 1**) has been prepared to address the questions detailed in the Discussion Paper. This submission focuses on our experience in streamlining the rezoning request process for proponents in Port Stephens and further ideas to streamline the process across the State.

Streamlining the rezoning request process in Port Stephens

In 2018, Port Stephens Council had 44 active planning proposals under assessment. Many of these were unsuitable and quite old, requiring significant work to progress. At the same time, new planning proposals could be lodged over the counter without any prior consultation with staff.

To rectify this, we prepared a Rezoning Request Policy. The Policy established a pre-lodgement process requiring proponents to meet with staff prior to preparing a planning proposal to discuss their objectives.

Staff review the preliminary application and provide advice during a pre-lodgement meeting on suitability, lodgement requirements and issues to consider. All advice is consistent with our Local Housing Strategy (Live Port Stephens) which details suitability criteria and lodgements requirements for proponents.

Where a proposal is considered inconsistent with local strategies and policies or not supported, the proponent is informed upfront. This process has prevented poor planning proposals from being lodged, and proponents from outlaying significant investments on a rezoning request that isn't supported.

Additionally, the Policy allowed staff to forward any proposal directly to the DPE for a Gateway determination under delegated authority.

Significant time-savings for Council have been achieved under this process and we have now worked our backlog of planning proposals down to 15 from 44.

Through this process improvement we have also identified a new strategy to further streamline our approach to rezonings.

Place Plans

Through our continued focus on process improvement we have discovered that a significant roadblock occurs around the consultation phase of the rezoning request process.

Consultation should be undertaken upfront, but currently the exhibition and consultation requirements post-Gateway mean no time savings can be realised, and upfront work has to be duplicated. Consulting post-Gateway often leads to frustrations from the community as by this stage we are already invested in a particular outcome. We have also found that the submissions we receive from the public post-Gateway often relate to visioning concerns rather than land use.

We are currently working on improving consultation efforts at the visioning stage of strategic planning, prior to the preparation of a planning proposal. We are doing this through the preparation of place plans. Place plans are action-orientated strategies for local areas that respond to community values and aspirations, enhance connections to a place, address local character and enable residents, business, schools and community groups to create vibrant communities in partnership with Council.

Good consultation with the community and relevant State agencies during the preparation of place plans should allow for a streamlined approach for rezonings. Where a rezoning request is supported by a place plan it should receive a strategic gateway where additional consultation is not required at the post-Gateway stage.

This streamlined approach should significantly reduce timeframes for rezoning requests and lead to better planning outcomes that support the local community.



PORT STEPHENS
COUNCIL

Port Stephens Council is supportive of steps to improve the current rezoning/planning proposal system. Steps taken within our organisation have demonstrated improved outcomes. The shift to again place Council at the centre of this process is broadly supported. Ultimately Council is and should be responsible for the implementation of the agenda set at the State/Regional level. In this regard they should be the custodians of the Local Environmental Plan (LEP) and empowered to make the appropriate decisions.

This role/responsibility however should not then be fettered away via the creation of alternative pathways such as deemed refusals. Similarly the system should not be punitive via the introduction of Planning Guarantees.

The LEP Guidelines are an important first step that can be utilised to assess the capacity of the system to make improvements with minimal change/impact. The next steps should build on these positive steps.

For any further information, please contact Gemma Wallace, Strategic Planner on [REDACTED] or by email at [REDACTED]

Best wishes,



Brock Lamont
Strategy and Environment Section Manager

25 March 2022



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ATTACHMENT 1 - Survey Questions

Survey question	Response
Is this a fair summary of some of the issues within the current framework? Are there any other problems you think we need to address?	This is a fair summary of issues.
Do you think benchmark timeframes create greater efficiency and will lead to time savings?	<p>The use of benchmarks can assist in timeframes, but importantly they can provide greater certainty of timing for proponents.</p> <p>However, the proposed timeframes along with the proposal planning guarantee timeframe and/or appeal rights risk outcomes to ensure compliance. The timeframes also fail to recognise the internal requirements of Council in respect to reporting/approval. As such the proposed timeframes need to be amended or allow for some flexibility to ensure that outcomes are not compromised.</p>
What do you think about giving councils greater autonomy over rezoning decisions?	Giving councils greater autonomy over rezoning decisions is supported. Councils should have the authority to make planning decisions that affect their local areas.
What additional support could we give councils to enable high-quality and efficient rezoning decisions?	A standard approach for resolving agency concerns and objections. The Department could provide a mediation service when compromises between agencies and Councils need to be made.
What changes can be made to the department's role and processes to improve the assessment and determination of council-led rezonings?	The Department's assessment of planning proposals could be held to timeframes
Is there enough supervision of the rezoning process? What else could we do to minimise the risk of corruption and encourage good decision-making?	PSC's approach to this matter is to start the rezoning journey at strategy creation stage. Our place planning approach starts with community consultation to develop the vision and outcomes for an area, that planning proposals must then respond to. This ensures that vision and outcomes are not defined through a planning proposal and therefore the chance of self-serving outcomes is reduced.

<p>Do you think the new approach and the department's proposed new role strikes the right balance between what councils should determine and what the department should determine?</p>	<p>Local councils should have the authority to determine all proponent led rezoning requests. In respect to rezonings involving a Public Authority, Council's role should be elevated to ensure that where issues arise Council has an opportunity to seek to resolve these in a meaningful way.</p>
<p>Should councils be able to approve inconsistencies with certain s. 9.1 directions? If so, in what circumstances would this be appropriate?</p>	<p>Yes. A council should be able to approve an inconsistency with certain s. 9.1 directions where significant upfront local strategic work has been undertaken that provides justification for an inconsistency. For example, if a place plan provides justification for an inconsistency with a ministerial direction, Council should be able to approve the inconsistency at the assessment stage of the rezoning.</p>
<p>Is it enough to have agencies involved in scoping and to give them the opportunity to make a submission during exhibition?</p>	<p>Yes, upfront consultation with agencies during the scoping stage and the opportunity to submit further comments during exhibition should be adequate. The critical element of this stage will be the level of detail that is provided to enable the supporting studies to be prepared. Lack of clarity/information provided early on in the process would impact the capacity for Council to deliver the rezoning within the timeframes provided for subsequent stages.</p> <p>The Ministerial Direction 4.3 Planning for Bushfire Protection needs to be amended to support this approach as it currently requires consultation with the Commissioner of the NSW Rural Fire Service to be undertaken following receipt of a Gateway determination and prior to community consultation.</p>
<p>Do you think it would be beneficial to have a central body that co-ordinates agency involvement?</p>	<p>Yes, a central body that coordinates agency involvement could streamline this process by ensuring the appropriate agencies and staff are engaged during the scoping stage for private proponents. The central body could also ensure the timely response of agencies, facilitate meetings and act as a mediator where required. This would be especially beneficial for private proponents undertaking consultation during the proposed scoping stage.</p>
<p>If a state agency has not responded in the required timeframe, are there any practical</p>	<p>Yes, particularly with the intent of requiring upfront consultation. It can be difficult to determine if there are outstanding issues that require consideration</p>

<p>difficulties in continuing to assess and determine a rezoning application?</p>	<p>when agencies do not respond within the provided timeframe. It is common for agencies to provide no response when there are no objections or recommendations. But it is just as common for agencies to request additional time during or after the conclusion of their timeframe. Waiting on these responses, and addressing agency concerns can lead to significant delay to the exhibition of a planning proposal.</p>
<p>Should a council or the department be able to refuse to issue study requirements at the scoping stage if a rezoning application is clearly inconsistent with strategic plans? Or should all proponents have the opportunity to submit a fully formed proposal for exhibition and assessment?</p>	<p>Yes, a council should be able to refuse to issue study requirements at the scoping stage when a rezoning request is inconsistent with strategic plans. Where this occurs, proponents should be directed to look at developing a place plan to review/determine the strategic merit of the proposal. Subject to the approval of this, the subsequent rezoning can be considered under Cat 1.</p>
<p>What sort of material could we supply to assure community members that exhibition does not mean the rezoning authority supports the application and may still reject it?</p>	<p>It is important for the community to understand that exhibited planning proposals are yet to be assessed and determined by a planning proposal authority.</p> <p>A simple fact sheet, with helpful diagrams, could be used to explain the process and reiterate that exhibited proposals will still need to undergo assessment following community consultation and that they may be amended or rejected.</p>
<p>What do you think of removing the opportunity for a merit assessment before exhibition? Will it save time or money to move all assessment to the end of the process?</p>	<p>Exhibiting rezoning requests prior to Council assessment may save time, but has the potential to create additional problems. With the use of online portals, the information can be available/accessible, however this should not be considered to be “exhibited” until Council can assess the planning proposals and review the supporting technical studies.</p> <p>Relevant expert staff assess the quality of the studies and the implications of their findings in relation to the proposed amendment. This step often identifies the need to undertake additional technical work or update the planning proposal to appropriately respond.</p> <p>Delaying this step until after the exhibition period could lead to significant post-exhibition delays,</p>

	<p>where amendments to the planning proposal are required.</p> <p>Exhibiting planning proposals that have not been assessed would also require the community to interpret technical studies which may be misleading or confusing and could reduce the quality and quantity of submissions made.</p> <p>Additionally, the assessment stage may confirm that the rezoning request is inappropriate and not supported by Council. A planning proposal that is not supported should not be exhibited. Exhibiting poor quality and/or inappropriate rezoning requests would cause unnecessary concern and confusion in the community and require unnecessary work to be undertaken by proponents.</p>
<p>Should the public have the opportunity to comment on a rezoning application before it is assessed?</p>	<p>Yes. The community have regularly stated in submissions on planning proposals that they would have like to have been engaged prior to a Gateway determination and felt as though the decision to make the plan had already been made by the time a rezoning request is exhibited.</p> <p>Consultation with the community, prior to assessment, can build trust, improve transparency and lead to better planning outcomes. Community insight may identify potential conflicts that can be evaluated during the assessment stage.</p> <p>Ideally this consultation would be undertaken during the development of a local place plan that supports the rezoning request. It is at this stage that the community can have the most impact in defining outcomes.</p> <p>Where a Place Plan is not required, informal community consultation could be undertaken during the scoping stage when preliminary agency comments are being sought.</p> <p>As discussed in the submission body, good consultation during the development of a place plan that supports a rezoning request could circumvent the need for formal consultation during the assessment of a rezoning request.</p> <p>As the planning proposal is publicly available on the portal following a gateway determination, the community should be able to engage with councils</p>

	on the rezoning request until formal consultation has concluded.
What other opportunities are there to engage the community in strategic planning in a meaningful and accessible way?	We can engage the community early in the strategic planning process by engaging them during the preparation of local place plans when visioning is still being undertaken. Place plans can then be used to guide and support the preparation of planning proposals.
Do you have any suggestions on how we could streamline or automate the exhibition process further?	Planning proposals that are consistent with an adopted place plan should be considered under Cat 1.
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?	The assessment clock should begin once the finalised rezoning request is submitted. If the planning proposal requires additional information during this stage, the assessment clock should be stopped as it is for development assessment.
Do you think requests for more information should be allowed?	Yes, sometimes the assessment process highlights the need for further information. A proponent might not respond to agency or community concerns adequately, or a change to the planning proposal may be required. If more information is requested from the proponent, the assessment clock for the planning proposal authority should be stopped.
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?	The process for preparing maps during the finalisation stage could be streamlined. Currently, syncing Council generated maps with the Department is a time-consuming process that involves lots of back and forth to make corrections. If the Departments GIS team took more ownership of this process that would significantly speed up this process. For example, after maps have been prepared and uploaded to the planning portal, any further amendments should be undertaken by the GIS team within the Department to reduce duplication of work and prevent miscommunications between organisations.
Do you think the public interest is a necessary consideration, or is it	The public interest is an important consideration during the assessment of rezoning requests.

covered by the other proposed considerations?	
Are there any additional matters that are relevant to determining whether a plan should be made?	There are no additional matters.
Do you think a body other than the council (such as a panel) should determine rezoning applications where there is a VPA?	No, Council 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?	Councils should be able to prepare a probity report to demonstrate how a conflict of interest has been managed to continue assessment. If this can't be achieved it should be determined by the Department.
Do we need a consistent structure for rezoning authority fees for rezoning applications?	No. Appropriate fees and charges should be determined by local councils.
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?	See above.
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?	The fee structure needs to be flexible enough to ensure councils can recover the full cost of processing/assessing planning proposals.
What is your feedback about the 3 options presented above?	Of the proposed fees, option 3: fixed and variable assessment fee would be the preferred option. A fixed fee works to set cost expectations for potential proponents, and the flexible component helps councils recover costs where additional work is required.

<p>Should fee refunds be available if a proponent decides not to progress a rezoning application? If so, what refund terms should apply? What should not be refunded?</p>	<p>Refund policies should be determined by local councils. There are some circumstances where a refund for a withdrawn proposal may be appropriate. Port Stephens Council currently offers a partial refund for withdrawn proposals that may be increased by the elected council.</p>
<p>Do we need a framework that enables proponents to request a fee refund if a rezoning authority takes too long to assess a rezoning application?</p>	<p>No. Refund policies should be determined by local councils. There are many external stakeholders and circumstances that may delay the assessment of rezoning requests that are outside of the control of councils.</p>
<p>If so, what mitigation measures (for example, stop-the-clock provisions, or refusing applications to avoid giving fee refunds) would be necessary to prevent a rezoning authority from having to pay refunds for delays it can't control?</p>	<p>NA</p>
<p>If not, what other measures could encourage authorities to process rezoning applications promptly?</p>	<p>An incentive based approach, rather than punitive, would be more effective in encouraging speedier assessment. Additionally, the Planning Delivery Unit could provide more assistance in resolving complex issues and agency objections.</p>
<p>Do you think public authorities (including councils) should have access to an appeal?</p>	<p>No, Council opposes an appeal pathway for rezoning requests. An appeals pathway would undermine the ability of council and its elected councillors to determine local land use outcomes. Additionally, an appeals pathway would have significant time and cost implications for local councils, would undermine the integrity of the planning system and encourage speculative rezoning requests.</p>
<p>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?</p>	<p>NA</p>