

Ref: F12/1210 PGO:EF

22 February 2022

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Dear Paulina

RE: COUNCIL SUBMISSION – ‘A NEW APPROACH TO REZONING IN NSW’

Council has been invited to make a submission regarding the Discussion Paper: *A New Approach to Rezonings* dated December 2021, which is on exhibition until Monday 28 February 2022. Please accept the response below as Council’s formal submission on this matter.

Council would agree that there is room for improvement with the current NSW rezoning framework and welcomes the opportunity to be a participant in this review process.

Rationale for change

While it is acknowledged that there is room for improvement within the current rezoning framework, Council has concerns that the focus appears to be on faster approvals and establishing an appeals pathway. Council instead favors incremental change that acknowledges and balances the needs of Council to deliver its strategic ambitions and proponents to make legitimate amendments to the planning scheme.

Processes

The new approach favors a linear, timeframe per task, DA-style process, but without the benefit of a “stop the clock” arrangement. Council frequently needs to chase proponents for revised or additional material to support the planning proposal. It is unclear how unmet requests for material fundamental to the determination of the planning proposal would work. Council would be most concerned if it is expected to proceed incomplete proposals to public exhibition to simply fulfill immovable time restrictions.

An “assessment clock” commences once the proponent provides a response to any submissions received and makes amendments to application. Council’s role in assessing the suitability of the proponent’s response is unknown. DPIE material provided states that “requests for more information will be discouraged” in the assessment phase – which seems to be for the purpose of achieving speedier determinations rather than well informed outcomes.

Four categories of planning proposal are identified, each with specific maximum timeframes. This categorization is all well and good, however it must be subject to a robust set of objective criteria to prevent category shopping and the placement of unreasonable expectations on Councils.

While no specifics are provided, Council is not fundamentally opposed to the concept of the proponent undertaking public exhibition notification and agency referral. Details on this matter would be helpful to forming Council’s opinion.

Fees

Three fee options have been provided for consideration – ranging from fixed to variable fee structures and include unspent fee refunds. Obviously, these arrangements have financial implications for Council and further discussions with local government should occur on these options before progressing these arrangements further.

Merit

It is recommended that merit assessment is not considered until post-exhibition. Council considers this arrangement to ultimately be inefficient and problematic, as it has considerable potential to lead to an adversarial outcome in court late in the process chain. If the merit assessment is considered early in the process, much time and resources can be saved for all parties if the proposal is unsupported and the likelihood for adversarial outcomes much reduced.

Review Process

The current review structure for planning proposals can be problematic given the lack of legislative weight given to the process. However, the undeveloped appeals process needs to be thought through before this process is enacted.

Council has significant concerns as to whether an adversarial Court-based appeals system is appropriate for the amendment of planning controls. There are concerns with the potential to of this arrangement to undermine the role of local government to deliver the community's strategic vision through the creation and management of planning controls. Could an appeals arrangement inadvertently encourage spot-rezoning based on the legislative direction given to the Court? Are courts really the appropriate determinate as to what weight is to be given to the consistency of the proposal to Council's strategies developed through ongoing engagement by Council with the local communities and stakeholders. There are also the considerable potential infrastructure cost implications for out-of-sequence development when a court, rather than local government, makes the determination.

Thank you for the opportunity to provide the above submission. Should you have any questions regarding the matters raised above, please contact Peter Orr, A/Coordinator Strategic & Environmental Planning at email [REDACTED]

Yours faithfully

[REDACTED]

Erin Fuller
MANAGER STRATEGIC AND ASSETT PLANNING