



25 February 2022

Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Contact: Keren Brown
Our Ref: DOC2022/026962
Your Ref: A new approach to rezoning a
discussion paper

Via Planning Portal

Dear Sir / Madam

Submission - A new approach to rezoning: Discussion paper

Thank you for the opportunity to provide feedback and commentary on *A new approach to rezoning: Discussion paper*.

Cessnock City Council (CCC) is a regional Council located partially within the Greater Newcastle Metropolitan Growth Area. Council is experiencing considerable growth pressures, particularly in relation to the creation of new Urban Release Areas (URAs), and the ability to provide adequate support infrastructure for existing and new communities.

Council understands that the general intent of the Discussion paper is to improve timeframes through shifting the supporting studies and Agency consultation to the beginning of the process (as opposed to after Gateway) and to place the proposal on public exhibition as soon as possible. Council has a number of concerns with this approach which are outlined in more detail below but in summary include:

- Requiring the developer to spend significant amounts of money up front on studies before it is determined if the proposal is likely to be supported.
- Deferring the strategic merit assessment to the final stage of the process. This may cause community angst and lack of faith in Council for exhibiting proposals which later may not be supported by Council or substantially changed.
- Not allowing adequate time to complete complex studies such as a Biodiversity Certification Assessment Report (BCAR).
- Setting appropriate fee and appeal mechanisms.

Scoping phase

Council understands the intent of the scoping phase and can see that there is benefit in consulting with agencies early in the process; however has concerns with the practicality of some aspects. It is also unclear if the scoping phase is done through the planning portal (to allow sharing of documents with State agencies) or directly with Council.

A number of studies that are needed to support planning proposals cannot be completed in the timeframe nominated in the discussion paper, particularly studies that are dependent on being completed in a particular season such as flora and fauna. The process also does not lend itself to resolving complex issues that affect planning proposals. For example negotiating a Biodiversity Certification Assessment Report (BCAR), which ultimately affects the zoning footprint of a large rezoning, can take many months to finalise. There is no room in the process, either at the scoping

t: 02 4993 4100 f: 02 4993 2500

p: PO Box 152 Cessnock NSW 2325

e: council@cessnock.nsw.gov.au w: www.cessnock.nsw.gov.au

ABN 60 919 148 928

phase or Assessment and Finalisation stage, for these issues to be resolved. It is important that these issues are resolved at the rezoning stage and not deferred to the Development Application stage.

The discussion paper states that study requirements are valid for 18 months. This should be subject to legislation not changing in that time. There have recently been a number of significant legislation changes that have affected requirements for planning proposals.

Council has often found State Agencies reluctant to provide comment on a planning proposal early in the process. Recent discussion with State Agencies has indicated that they are unaware of this draft discussion paper and proposal to consult with them early in the process. It is suggested that consultation occur with the State Agencies to ensure they have the resources to provide input at the scoping stage.

Lodgment phase

Council is concerned that the lodgment phase is only one week. This does not allow adequate time to review the documents submitted to make sure that they reflect what was discussed at the scoping stage or for lead in time for meaningful consultation, such as notifying property owners and placing ads in the local newspaper. It is also important to consider resourcing in smaller regional Council. Staff are often working on a number of projects and are often unable to just stop what they are working on to assess a planning proposal with a week of it being lodged.

It is also unclear from the discussion paper when the planning proposal becomes Councils.

Exhibition and Agency Submissions

Concern is raised that the proponent is responsible for reviewing submissions, summarizing the issues and providing responses. Although this reduces the work local Councils have to do it also increases the risk for issues to be overlooked or not addressed appropriately. This approach also does not seem to be reducing timeframes as in the Assessment and Finalization stage Council will still need to review the submission to ensure all issues have been appropriately summarized and addressed.

The timeframe for exhibition (6 Weeks) is not appropriate for planning proposals that involve a reclassification. In accordance with the practice note and the Local Government Act at least 28 days' notice is required to persons who made a submission of the public hearing. This means that the public hearing cannot be held for at least 4 weeks after the exhibition concludes.

Council raises significant concern that neither the scoping phase or lodgment stage contains an assessment of a proposal against strategic plans. This assessment for strategic merit isn't until the assessment and finalization stage. This is very concerning as once a proposal is exhibited it can cause angst in the community that the development is more certain. The discussion paper makes reference to 'building community trust'. Exhibiting a proposal before an assessment is likely to undermine trust within the community. From a political perspective it can be more difficult to refuse an application so late in the process when such substantial work, and funds have been spent on the studies justifying the proposal. In recent years the Department of Planning and Environment has been trying to strengthen strategic planning through giving Councils Local Strategic Planning Statements (LSPS) more weight. Council is concerned that this proposed approach could detract from strategic documents that have been prepared in consultation with the community. A Strategic merit assessment is needed prior to public exhibition. Deferring the strategic merit assessment of the proposal to post exhibition does not necessarily save time. It is likely that a proposal may require re exhibition which can add to the timeframes.

Fee structure

It is understood the Discussion paper and proposed fee approach aims to ensure Councils are recovering costs for planning proposals and are able to assess them in the allocated timeframe. It is important to note that being able to change fees (and have income) doesn't necessarily means Councils will be able to attract staff to assess the proposals.

Councils preference for fees is more closely aligned to option 3 in the discussion paper, being fixed and variable fees. It is strongly recommended that Council should be able to set what these fees are.

The discussion paper raises the idea of refunding fees. Council is opposed to refunding fees if Council is able to justify that staff time has been spent on the proposal.

Appeal process

The discussion paper raised two options for appeals, the Land and Environment Court or an Independent Planning Commissions. Councils preference is for the Independent Planning Commissions to assess appeals. This is largely based on the face that a Commission is likely to be quicker and cheaper and be an independent body. The Land and Environment Court can be costly and time consuming and has the potential to set precedent.

Council also raises concern that the appear option is so late in the process. It is suggested that an appeal option also be available earlier in the process.

General Commentary on Planning Reforms

Council appreciates the opportunity to be involved in reforms to the current planning framework. It is important though that the Department of Planning and Environment give consideration and due regard to the pressures facing local government. This is particularly important for regional areas. Staff and resources are limited, and the recent timing and range of reforms are voluminous and intricate, requiring extensive amounts of staff time. It is requested the DP&E consider this in good faith moving forward.

If you require any further information, please do not hesitate to contact myself on telephone [REDACTED].

Yours faithfully

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Keren Brown
Principal Strategic Planner