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Ms Paulina Wythes
Director, Planning Legislative Reform
Department of Planning, Industry and Environment
Locked Bag 5022
PARRAMATTA NSW 2124
planninglegislativereform@planning.nsw.gov.au



Dear Ms Wythes

SUBMISSION TO A NEW APPROACH TO REZONINGS IN NSW

Council thanks the Department of Planning, Industry and Environment for the opportunity to comment on the proposed changes to rezoning under the Planning Reform Action Plan. Council recognises the importance of strategic planning and the need to create a planning system that is more transparent, faster, certain and easier to use.

Council provides the following summary on the proposed approach:

- Council would like the Department to note that the scoping phase potentially duplicates the requirement to review and assess a rezoning application both before and after lodgement. Regional Councils often have limited and stretched resources to undertake strategic planning, and these costs would need to be passed onto the proponent to cover the additional assessment work.
- Council supports greater empowerment and less Department involvement when assessing proponent-submitted rezoning applications.
- Council does not support public exhibition being undertaken before assessment as it potentially results in incomplete or inadequate applications being displayed. Public exhibition would need to be undertaken again if the application significantly changes in response to additional information or submissions.
- Council supports the process becoming applicant-driven rather than Council-driven.
- Council does not support the planning guarantee.



All communications to: **CHIEF EXECUTIVE OFFICER**

ABN 53 539 070 928

PO Box 81 Dubbo NSW 2830

T (02) 6801 4000 **F** (02) 6801 4259 **E** council@dubbo.nsw.gov.au

Civic Administration Building Church St Dubbo NSW 2830

W dubbo.nsw.gov.au

1 A New Process

Council supports a number of individual components and requirements of the new process. However, Council raises concerns with the overall design and requirements of the system.

1.1 Scoping

Council supports the requirement for pre-lodgement meetings to be held between the proponent, the rezoning authority and other relevant parties. Early input from all stakeholders is important as it allows direction to be provided before further detailed work is undertaken, which can lead to better quality and complete applications.

However, it is considered that scoping potentially duplicates the work undertaken by Council, state agencies and the proponent for the following reasons:

- Scoping would require Council and state agencies to review the rezoning application's requirements and intended objectives, and complete an assessment to identify the strategic merit, identify the technical report requirements and any other relevant information prior to lodgement. This would require Council and state agencies to undertake the majority of the assessment work in the scoping stage. Furthermore, this stage is not included in assessment timeframes, which would not accurately represent the total time to assess and determine a rezoning application.
- The proponent would need to undertake a high-level assessment and outline the rezoning application's objectives, broad justification, strategic planning matters and any site-specific information. This information would then need to be explained in further detail when lodging the rezoning application, which effectively duplicates the documentation. Council and state agencies would need to review all of this documentation as part of the scoping and assessment stages.

The Department should note that many regional Council's do not charge for pre-lodgement meetings, but fees would need to be imposed to cover the additional time and costs required to prepare the scoping report. Council's fees are already low in order to help stimulate development, but additional fees imposed by the proponent would be passed on to the end-user and/or cause the proponent to not proceed with the rezoning application.

It is also imperative that proponents should not rely on scoping meetings to get an early indication of whether or not an application is likely to be supported. All rezoning applications should undergo a merits-based assessment.

1.2 Lodgement

It is considered that 14 days is a more appropriate timeframe to undertake adequacy assessment. This would align with the timeframe allowed to reject a development application, which would provide greater consistency across planning legislation.

Council raises concerns with the provision of encouraging the lodgement of concurrent rezoning applications and development applications. Strategic planning underpins the development application process, and any potential changes to the local statutory framework should be determined before any development application is lodged.

1.3 Exhibition

Exhibition is currently determined as part of the gateway determination after the adequacy of information and the strategic merit of the proposal are assessed. If exhibition is undertaken before the adequacy assessment occurs, the rezoning application could contain inadequate or missing information. This would reduce the ability of the public to scrutinise applications in an open and transparent way as they may not fully understand it or have access to a wide range of documentation. Furthermore, if the rezoning application significantly changes or additional information is required after exhibition, the rezoning application may need to be placed on exhibition again. This will further delay the determination and increase costs for Council and the proponent.

It is considered that exhibition should be undertaken after assessment to ensure the information is adequate and complete. Council acknowledges that scoping should result in most rezoning applications being 'public exhibition' ready, however, there will be circumstances where additional information or assessment may be required after the rezoning application is lodged.

Council supports the requirement for the proponent to summarise and respond to submissions received, as this would assist Council with the final assessment.

1.4 Information requests

Council understands that ongoing requests for information cause delays and create uncertainty throughout the process. The scoping report would indicate any study and technical report requirements, however, requests for more information are often required to clarify and ensure submitted documents contain sufficient detail and address Council's concerns.

Requests for information should be allowed to provide consistency across strategic planning and development assessment processes.

1.5 Assessment and finalisation

The Department should ensure all parties involved with rezoning applications have access to the planning portal. This would streamline the assessment and finalisation process as liaison with some state agencies and Parliamentary Counsel is currently undertaken outside the portal. This inconsistency of liaison and processes currently creates roadblocks.

Council requests that the Department provide greater clarification on what is meant by publishing reasons for the decision on the NSW Planning Portal. All Councils present a report to a Council meeting that includes the assessment and the reasons for the decision, which:

- Helps those affected by the decision to understand the factors that were taken into account when making the decision;
- Identifies the process that Council took to reach reasonable and reliable decisions; and
- Provides an open, transparent and accountable decision-making framework.

2 New Roles

Council supports the proposed changes to the roles of the various parties in the rezoning process.

2.1 Council

Council supports the new approach and greater empowerment when assessing proponent-submitted rezoning applications. The gateway process can be onerous and is sometimes unnecessary, resulting in delays and transparency issues. The new approach would allow Council to focus on local strategic matters, and the Department to focus on state-led, strategic and collaborative planning on matters of state and regional significance.

Council has a strong relationship with the Department and greatly appreciates the support and assistance provided when needed.

2.2 Proponent

Council supports the shift towards the process being proponent-driven and making proponents more responsible for consulting with state agencies, undertaking public exhibition and reviewing and responding to any submissions during public exhibition. The Department should ensure that guidelines and templates are available for the proponent as regional Councils often receive rezoning applications from “mum and dad” developers that need to be guided through the rezoning application process and don’t know necessarily know the general requirements.

2.3 Public authorities

Council understands that state-agencies are knowledge-holders and that rezoning applications can be resource-intensive. Council supports setting assessment timeframes for agency responses, along with the ability to progress and determine a rezoning application where an agency has not responded within the required timeframe.

It is noted that similar provisions currently exist for certain agency assessment. However, most Councils are currently unwilling to risk furthering the assessment process for a Planning Proposal without the input of the State Agency given the risks associated with the Planning Proposal process. In addition, Councils are also cognisant of the fact that if the conclusion of a Planning

Proposal process is reached without the input of a required agency, the Department of Planning, Industry and Environment may not further the assessment and finalisation of the rezoning.

Council considers that having a central body to coordinate agency involvement would improve project coordination and help proponents navigate the complexities of the referral system. However, this approach should not be considered if costs would be imposed to cover the additional service provided. In addition, it is considered that agencies would significantly benefit from town planning knowledge and advice being readily available in the respective agency, which would ensure a greater understanding of the planning system was undertaken as an education piece and provide a more robust knowledge bank in agencies.

3 New Fee Structure

3.1 Preferred fee structure

Many Councils often have stretched resources and need cost-recovery mechanisms without creating barriers for rezoning applications that have strategic merit.

Council currently charges a fixed assessment fee based on the rezoning application category (basic, standard and complex), with fees payable at lodgement and post-Gateway determination. This approach is fair and transparent as it makes proponents aware of the costs upfront, ensures the proponent does not pay a large fee upfront, reduces administrative burdens and is not time-consuming to determine and process. Council reviews fees and charges on a yearly basis and adjusts them accordingly to recover actual costs.

3.2 Planning guarantee

Council does not support the planning guarantee. The Department acknowledges many Council's often have stretched resources, but the planning guarantee contradicts this acknowledgement and would require Council to further reduce services if funding is lost through a rezoning application. Proponents currently have effective mechanisms to appeal if it takes too long to assess a rezoning application. The planning guarantee is not part of the development application process and should not be incorporated into the rezoning application process.

4 Conclusion

Council thanks the Department for the opportunity to comment on the proposed changes to rezoning under the Planning Reform Action Plan. Council requests that the Department consider these concerns and potential amendments to help create a planning system that is transparent, faster, more certain and easier to use.

If you require any further information, please contact Council's Manager Growth Planning, Steven Jennings, on [REDACTED].

Yours faithfully

[REDACTED]

Stephen Wallace
Director Development and Environment