

Our Reference: CM 13004

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

18 May 2022

Dear Ms Wythes,

**WOLLONDILLY SHIRE COUNCIL SUBMISSION  
A NEW APPROACH TO REZONINGS IN NSW DISCUSSION PAPER**

Following the Council Officer Submission dated 28 February 2022, I can advise that Council considered this matter at its Ordinary meeting on 4 May 2022 and resolved the following;

*"That Council:*

1. *Endorses the attached officer submission on the NSW Government's A New Approach to Rezoning in NSW Discussion Paper.*
2. *Records its major concerns over the proposed reforms and undertake a social media campaign to educate the community on the potential impacts.*
3. *Clearly outlines its major concerns in a covering letter to the submission including:*
  - a. *That the reforms appear designed to benefit developers at the expense of the community and sound strategic planning principles.*
  - b. *There is a total disregard of any legitimate, meaningful, genuine community consultation process.*
  - c. *The significant negative financial and resource implications these reforms will have on local government and its rate payers for the benefit of developers.*
  - d. *The efficiency gains proposed will not be realised and simply displace the problems and figures.*
  - e. *The timeframes proposed are totally unreasonable.*
  - f. *There is a diminished role of the elected Council, inconsistent with the local government act and the expectations of its community.*
  - g. *There is zero integration with the infrastructure contributions system and the need to plan for infrastructure upfront.*
  - h. *There is zero accountability for the Department of Planning and Environment and other State agencies in the proposed process.*

## ATTACHMENT - Wollondilly Shire Council Submission - 28 February 2022



Frank McKay Building 62-64 Menangle Street, Picton NSW 2571

All Correspondence to PO Box 21, Picton NSW 2571

Telephone: 02 4677 1100 Fax: 02 4677 2339

Email: [council@wollondilly.nsw.gov.au](mailto:council@wollondilly.nsw.gov.au) Web: [www.wollondilly.nsw.gov.au](http://www.wollondilly.nsw.gov.au)

ABN: 93 723 245 808

*Our Reference: CM13004*

Ms Paulina Wythes  
Director, Planning Legislative Reform Department of  
Planning, Industry and Environment Locked Bag 5022  
PARAMMATT A NSE 2124

28 February 2022

Dear Ms Wythes,

### **WOLLONDILLY SHIRE COUNCIL SUBMISSION A NEW APPROACH TO REZONINGS IN NSW DISCUSSION PAPER**

Thank you for opportunity to make a submission on the NSW Department of Planning, and Environment's (the Department) discussion paper for reforms to the rezoning process.

For many years now, Wollondilly has processed significant numbers of planning proposals given the Shire's location on the outer edges of Greater Sydney. At one point Wollondilly had the highest number of planning proposals submitted in NSW almost totalling 50. With this in mind Council will support reforms which seek to simplify rezoning processes and provide clear, strong and genuine planning outcomes.

However, upfront we must be clear that a number of aspects proposed by the Department are alarming and will not achieve the right balance between the need to provide greater certainty and improve processing timeframes while ensuring good planning outcomes. Of particular concern, the proposed reforms will diminish councils and communities' roles to determine what and how development occurs in their local areas. This is particularly at odd's with the Ministers Planning Principles, and also the mandate of encouraging genuine consultation in the strategic planning proposal.

Not only this, the reforms are largely seen as disrespectful to Council and community resources, which will need to utilise significant ratepayers funding to carry out processes that are proposed to benefit developers, not the community. Council and local government strategic planning are accountable for and are required to carry out so many more legislative requirements and core business than simply rezoning land, and this discussion paper appears to show contempt to local government.

On a more positive note, the introduction of a mandatory pre-lodgement stage is supported and provides a strong pathway for early engagement with Council staff and public authorities. This is something that Wollondilly does now, and the ability to mandate this requirement is supported. But, Councils should be provided with authority to prevent rezoning applications progressing beyond the scoping stage where there is no established strategic planning merit. Without this, the proposed benefit of the new system is flawed.



- **Unfairly penalises Councils;** The proposed 'Planning guarantee' unfairly penalises Councils, and ultimately communities, for a proposed framework that heavily focusses/benefits the development industry.
- **No Accountability for DPE and State Agency.** One of the biggest (if not the biggest) time delays experienced by our Council in more recent planning proposals is awaiting Agency feedback, approvals, commitments etc. In addition, the Department has taken more time to finalise some critically urgent planning proposals, then the timeframe provided by Gateway to complete the entire processes. The new system appears to ignore this critical accountability.

As we have done with several other significant planning exhibitions, I need to continually express my continued disappointment about the exhibitions that took place during the local government elections caretaker period and over Christmas. This is not appropriate for seeking genuine consultation with our industry and as a result, the exhibition is not consistent with the Minister's Planning Principles.

A copy of the submission will be reported to the first available Council meeting, and the final endorsed submission will be provided to the Department after that time. Please accept this staff level submission as provided in good faith until that time.

Should you wish to discuss any aspect of this submission please contact Carolyn Whitten, Strategic Planning Team Leader on [REDACTED] or at [REDACTED]

Yours faithfully

[REDACTED]

Stephen Gardiner  
**Manager Sustainable Growth**

The 'Post Exhibition Process' has proposed timeframes however, there are no mechanisms to enforce it. Is there a 'deemed' refusal mechanism available for Council or 'clock stop'? There is discussion regarding 'agreed' clock stops however, no process for when these are not agreed to. This could have implications on recently required s10.7 (planning certificate) annotations for draft proposals (rezoning applications) and the 3 Year timeframe reporting requirements.

### **New Roles**

It is proposed to change the roles within the Rezoning process. The focus will be on the applicant to undertake consultation with both State agencies and the community once an application is submitted. Further, the Department will have no involvement in Private Proponent applications (Category 1, 2 and 3) that are consistent with s9.1 Directions.

The Department may have involvement in Private Proponent applications (Category 1, 2 and 3) that are inconsistent with s9.1 *specified* Directions however, these have yet to be identified.

Council will have the ability to assess and determine Council Proponent applications (Category 1 and 2). This is supported.

The proposed changes are likely to have significant impacts on the elected Council's engagement with the rezoning application process and the community. Further, the applicant-led consultation process is likely to erode community trust in the process. Council should be involved in both agency and community consultation in order to provide a level of autonomy that is expected in a transparent process.

### **Proponents**

The proposed changes shift the focus of the process to the proponent. This is based on the Development Application process and is said to recognise the proponent as the 'applicant' and give them greater control over the process and give new rights to the proponent, such as;

- meet with the rezoning authority to discuss a potential request (this currently happens)
- submit a rezoning application and have it assessed and determined after public exhibition
- appeal a decision made about a rezoning application because of a delay or dissatisfaction with a decision (see Part C: New appeals pathways).

Along with these rights, the private proponent will be responsible for all fees, meeting information requirements, consulting with state agencies, and reviewing and responding to any submissions received during consultation. A private proponent will only be able to lodge a rezoning application if they are the owner of the land or have obtained the consent of the landowner to which the application relates.

The provision of control of the process to the private proponent has significant potential impacts for Council as the rezoning authority. It effectively excludes Council from the community and agency conversation and erodes Councillor engagement and public confidence. The community are less likely to raise issues of concern if they are being made directly to the private applicant as there will be a level of distrust and despondency. Council currently performs this role to provide greater transparency and autonomy in the process.



greater resourcing is also required to enable this new function. Any review of Ministerial directions should be assisted and supported by appropriate practice notes, planning circulars and consistent advice.

### **Public Authorities – State Agencies**

Council welcome the inclusion of greater certainty with regard to state agency consultation timeframes however, need to be included in the consultation process at all stages to obtain a thorough understanding of issues faced, and how they are adequately addressed.

The inclusion of a central body to coordinate state agency consultation is supported. It is expected that this body would identify (at the Scoping Stage) which agencies are required to be consulted with.

It is noted that the Departments greatest challenge will be working with Agencies to better align processes, and timeliness of responses. Our Council will not want to proceed should there be a delay in receiving critically important advice from agencies, particularly given the bushfires and floods we have experienced, and the lack of existing adequate State infrastructure that serves our existing community.

### **Public Authorities – Proponent**

There are also circumstances where public authorities that are holders of infrastructure and other assets are also proponents in the rezoning process. Under the new approach, if a rezoning application is initiated by a public authority, the application will be lodged with and determined by the department rather than a council.

Regardless of who the proponent is, Council requires involvement in the process as the impacts and consequences of any rezoning are likely to be felt greatest at the local level.

lead to rejection of a rezoning application at lodgement or refusal at the end of the process. Study requirements will be valid for 18 months. If a rezoning application is not submitted in this timeframe, the scoping process will need to start again with new study requirements issued.

The process begins with a high-level scoping report, prepared by the proponent, that overviews the proposal, how it aligns with the strategic context, any planning or site-specific issues, and any required studies.

A scoping meeting is held between the proponent and the rezoning authority and other relevant parties (including state agencies) to discuss the scoping report and provide preliminary feedback.

The rezoning authority will provide written feedback that indicates:

- the rezoning application's consistency with strategic planning
- agency feedback
- any recommended changes to the rezoning proposal
- the nominated rezoning application category.

This written feedback will also set out the standard information that should accompany the rezoning application including:

- intended objectives and outcomes of the proposal
- broad justification/case for change – need, strategic merit and site-specific merit of the proposal
- high-level evaluation against strategic planning (including any relevant SEPPs or s. 9.1 directions)
- any study requirements such as technical reports that demonstrate strategic and site-specific merit (the rezoning authority should seek input from relevant state agencies when determining these requirements)
- whether a section 7.11 infrastructure contributions plan is needed (consistent with ministerial directions).

Although the rezoning authority will provide feedback on whether the rezoning proposal is likely to be consistent with strategic plans, it will not be able to prevent the proponent from lodging an application. Study requirements must still be issued, and a proponent may still lodge a rezoning application, and have it assessed and determined.

Council welcome the mandate for pre-lodgement discussions however, it appears the level of input and feedback will require a greater level of information to be provided. The temptation for most Council's will be to undertake a pseudo merit assessment at this stage to enable the level of input sought. The applicant is likely to perceive this process as "in-principle" support. This is not the intent of pre-lodgement discussions. In order to give this level of confidence, the applicant will be required to provide a greater level of information, which will significantly shift the cost of studies etc to the pre-lodgement stage.

Council's also will be required to input a greater level of resourcing at this early stage. This has implications on cost recovery and resourcing.

### **Infrastructure Contributions Plans**

The framework is incongruent with the "Land Use Planning" requirements of the Department's Infrastructure Contributions Reforms, that a Contributions Plan is drafted and



odd's with their role and function under the local government act. The angst to elected representatives, the community and others falling outside of the process will be significant.

### **Post Exhibition**

The applicant is responsible for assessing any submissions (agency or community) made through the exhibition process. It is then the applicant's responsibility to make any necessary changes or amendments and undertake any further consultation required.

As previously identified, Council have concerns regarding the loss of control of this step in the process and the inability to adequately resource staff/workloads. There are no real incentives to ensure the applicant expedites this stage and Council are not given the opportunity to develop intimate knowledge of the proposal or changes made to it. There will be a discord in information available to Council and the community.

### **Assessment and Finalisation**

Once the response to submissions and any amendment to the rezoning application have been made and forwarded to the rezoning authority, assessment will begin. The application may need to be exhibited again if changes made after the first exhibition are extensive – this will be determined by the rezoning authority.

At this point, the assessment 'clock' will start. Strict timeframes are given for the merit assessment process based on type of application (Standard is 17 weeks, Complex 24 weeks). Council may Stop the Clock in the first 25 days of assessment and request further information however, this is discouraged.

### **New Fee Structure**

The proposed reforms include the introduction of a new fee structure. Currently, councils can charge fees for services under the *Local Government Act 1993* and rely on these fees for processing planning proposals. These fees are levied outside of the planning system.

Any scoping fee structure would require a proponent to pay a fixed fee based on the application category (if known) when the scoping meeting is requested and a scoping report is submitted to the rezoning authority for preliminary feedback. Alternatively, the fee would be payable when the rezoning authority confirms the category.

Three options are proposed to cover the costs of the merit assessment and any associated work to make the plan.

#### ***Option 1: Fixed assessment fees***

Assessment fees are fixed by the rezoning authority, based on the category of rezoning application and divided into sub-categories based on the complexity of the rezoning application. No fees would be charged for any other associated costs such as consultant fees for peer reviews. If a rezoning application is withdrawn after lodgement, the proponent could be entitled to a set percentage refund of fees, depending on the stage the rezoning application reaches.

This option provides certainty for proponents and lessens the administrative burden for rezoning authorities. However, it may not always result in actual costs being recovered.

#### ***Option 2: Variable assessment fees***

Assessment fees are based on the estimated costs a rezoning authority would incur on a case-by-case basis, depending on the category of rezoning application, staff time in scoping meetings and a forward estimate of staff hours required to assess the rezoning application. Associated costs would be charged to the proponent based on actual costs incurred. If a

### **Part C: New appeals pathways**

As part of these overall reforms, new appeals pathway for planning proposals are being considered. There are currently 2 ways that decisions can be reviewed, a rezoning review to the relevant planning panels or through a gateway review to the Independent Planning Commission. These reviews happen relatively early in the overall rezoning process. There is no appeal opportunity at the end of the process.

The proposed approach will include a review opportunity for private proponents at the end of the process, if progress has been delayed or if the proponent is dissatisfied with the final decision. Proponents will have a certain timeframe within which to lodge an appeal, similar to the right to appeal a decision about the merit of a development application. It is not proposed to allow an appeal to public authorities such as councils or state-owned corporations.

While the Land and Environment Court of NSW is the primary institution in NSW for resolving environmental and planning disputes, an alternative option being considered is an appeal to the Independent Planning Commission.

Council **object** to the proposed introduction of a court system appeals process at the end of the process. Representation at appeals add significant costs and resources on time poor councils. The Land and Environment Court has no historical dealings or expertise in strategic planning merit considerations. The introduction of an appeal at the end of the process denies Council the opportunity to make and set strategic policy direction. Furthermore, the court or the Independent Planning Commission will have the power to compel a Council and/or other land owner to enter into a voluntary planning agreement which will make the timing, process and ability to overrule decisions even more challenging.

Council's preference would be for an independent planning commission if an appeals pathway is to be introduced.