

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

28<sup>th</sup> February 2022

Dear Ms Wythes,

## New Approach to Rezoning

This is a submission concerning the Discussion Paper on a “New Approach to Rezoning” which has recently been exhibited by your Department.

I am a town planner with over 30 years professional experience and I live on the Central Coast. I am a member of the Central Coast Community Better Planning Group; this submission is based on discussions with CCCBPG members and our recent experience of public consultations concerning planning proposals on the Central Coast.

A report to Central Coast Council on the Discussion Paper (Council Meeting 22 February 2022) summarises the proposed changes to the rezoning process as:

- Providing private proponents with ownership of the rezoning application, throughout the process
- Provision of mandatory scoping / pre-lodgement meetings with State agencies.
- Removal of gateway review and determination as part of the rezoning process.
- All rezoning proposals to be exhibited, assessed and determined, irrespective of strategic merit.
- Exhibition to commence immediately upon lodgement.
- Implementing maximum timeframes for referrals and assessment.
- Enforcing refunds if Council does not meet the assessment timeframes.
- Allowing councils to approve some inconsistencies with Ministerial directions rather than notifying DPE.

- Changes to the roles of various parties in the rezoning process.
- Introduction of a new class of merit appeals in the Land and Environment Court for planning proposals.

When the Discussion Paper was outlined at a recent CCCBPG meeting, I concluded that the NSW Government in conjunction with the Administrator of Central Coast Council have already commenced unofficial implementation of the proposed changes in the Discussion Paper. In particular, the recent exhibition of the Peat Island and Mooney Mooney Planning Proposal in effect made the following changes to the rezoning process:

### **Providing private proponents with ownership of the rezoning application, throughout the process**

The Executive Summary of the Peat Island Planning Proposal states in its first paragraph:

**“This Planning Proposal Report has been prepared by Urbis on behalf of Property & Development NSW and seeks amendments to the Gosford Local Environmental Plan 2014 (GLEP 2014) for surplus Government owned land at Peat Island and Mooney Mooney (the site).”**

As I argued in my submission on the Peat Island Planning Proposal, the Planning Proposal, including 22 technical reports in the exhibition, was prepared by consultants to Property and Development NSW, the property owner of Peat Island and the Mooney Mooney Peninsula:

“There is no document on exhibition which meets the requirements of Section 3.33 for a planning proposal prepared by Central Coast Council (or its predecessors). The so-called Planning Proposal on exhibition has been prepared by consultants on behalf of the property owner, Property & Development NSW. The justification for the so-called Planning Proposal is based on the 22 appendices that have not been commissioned or endorsed by Central Coast Council.”

As a consequence of the planning proposal being prepared by consultants on behalf of Property & Development NSW, I argued that the planning proposal does not comply with the DPIE “Guide to preparing planning proposals”. The Guide states:

**The planning proposal document, which is submitted for a Gateway determination is the responsibility of the planning proposal authority (PPA). The PPA is responsible for ensuring that the level of detail in the planning proposal document is sufficient to respond to the statutory requirements of the Act and the requirements set out in this guideline.**

The **“ownership of the rezoning application” by the proponent** in this case was a primary factor in the exhibition of a Planning Proposal that did not comply with the requirements of Section 3.33 of the Environmental Planning & Assessment Act or the DPIE “Guide to preparing planning proposals”.

## **Removal of gateway review and determination as part of the rezoning process.**

The DPIE “Guide to preparing planning proposals” states:

**The PPA must ensure the information is accurate, current and sufficient for issuing a Gateway determination and subsequently detailed enough for the purposes of consulting with agencies and the general community.**

In the case of the Peat Island Planning Proposal, the Gateway process appears to have worked up to the time of the Gateway Determination. Central Coast Council did prepare a draft planning proposal in June 2017 and submit it to the DPIE for Gateway Approval; however, the planning proposal was not given unconditional approval:

**The Gateway Determination (10<sup>th</sup> August 2017) required that Council was to update the Planning Proposal prior to community consultation to demonstrate consistency with the following section 117 Directions and State Environmental Planning Policies:**

- 1.1 Business and Industrial Zones;
- 1.4 Oyster Aquaculture;
- 2.1 Environment Protection Zones;
- 2.2 Coastal Protection;
- 2.3 Heritage Conservation;
- 3.1 Residential Zones;
- 3.4 Integrating Land Use and Transport;
- 4.1 Acid Sulfate Soils;
- 4.3 Flood Prone Land;
- 4.4 Planning for Bushfire Protection;
- 5.10 Implementation of Regional Plans;
- 6.2 Reserving Land for Public Purposes;
- 6.3 Site Specific Provisions;
- SEPP 19 Bushland in Urban Areas;
- SEPP 55 Remediation of Land;
- SEPP 62 Sustainable Aquaculture;
- SEPP 71 Coastal Protection;
- SREP 20 Hawkesbury Nepean River; and
- Draft SEPP Coastal Management.

There was no documentation exhibited with the Planning Proposal in September 2021 that showed that **Council** had updated the Planning Proposal since August 2017 to demonstrate consistency with several of the section 117 Directions and SEPPs listed in the Gateway Determination.

In my submission on the Planning Proposal, I concluded that:

**There is no supporting documentation on exhibition that demonstrates that Council, in accordance with Section 3.33 and the DPIE Guidelines, has independently assessed and endorsed:**

- **the objectives or intended outcomes of the Planning Proposal;**
- **the explanation of the provisions that are to be included in the proposed instrument;**

- **the justification for those objectives, outcomes and provisions and the process for their implementation.**

In the second part of my submission I specifically argued that the exhibited Planning Proposal is not consistent with SEPP 71 Coastal Protection, SREP 20 Hawkesbury Nepean River (now a SEPP) and SEPP Coastal Management. Furthermore, the proposed amendments to Gosford LEP 2014 would not be consistent with the Section 117 Directions related to these SEPPs.

The failure of Central Coast Council to ensure that the Planning Proposal was consistent with the SEPPs and Section 117 Directions listed in the Gateway Determination was the second major factor in this exhibition of a seriously flawed Planning Proposal.

The exhibition of this flawed Planning Proposal demonstrates that the proposed removal of the Gateway process would lead to many more exhibitions of Planning Proposals that have major inconsistencies with SEPPs and Section 117 Directions.

**All rezoning proposals to be exhibited, assessed and determined, irrespective of strategic merit.**

The Discussion Paper suggests that any planning proposal that passes the scrutiny of a Council planner in just 7 days should be exhibited and assessed, without any consideration of its strategic merit.

The preparation of submissions concerning exhibited Planning Proposals requires major effort for members of the public, especially for those who have not legal expertise and/or qualifications /experience in the planning system. The people who make the effort to prepare submissions take this role seriously because these proposals have been examined by a Gateway panel who are expected to have relevant expertise and qualifications.

Although the Gateway Determination for the Peat Island Planning Proposal was, in effect, subject to a long list of conditions, this provided some guidance to members of the public who were writing submissions on the Planning Proposal. In view of the mass of information in the Planning Proposal Report and 22 appendices, the public had the benefit of a list of issues on which to focus their submissions, knowing that the Gateway Panel considered these issues required resolution.

The removal of the Gateway process and proposed exhibition of all rezoning proposals, regardless of strategic merit, would be a major deterrent to public consultation. The public would have no clear indication of which proposals were likely to be seriously considered to have strategic merit. It would result in the efforts of those people concerned with planning issues being spread over a wider range of rezoning proposals.

**Allowing councils to approve some inconsistencies with Ministerial directions rather than notifying DPE.**

The Ministerial Directions were introduced in the original version of the Environmental Planning and Assessment Act 1979 to ensure that Councils prepared local plans that are consistent with the State planning policies and regional plans for the whole State or region. The Directions have usually been drafted with a clause that allows local inconsistencies where they are justified by an environmental study etc.

The Peat Island Planning Proposal is a classic demonstration of the problems that would arise if a Council is able to approve inconsistencies with the Ministerial Directions. My submission on the Planning Proposal showed that the proposal would allow development that would seriously compromise the objectives of the Coastal Management SEPP and SREP Hawkesbury Nepean River.

These issues had been identified in the Gateway determination which specifically referred to the need for consistency with the Ministerial Directions and the SEPPs. The proposal in the Discussion Paper to allow some inconsistencies without advising DPIE would seriously undermine the weight that Councils give to Ministerial Directions.

Yours sincerely,

Michael Conroy

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