



25 March 2022

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

RE: A New Approach to Rezoning in NSW Discussion Paper

Inner West Council appreciates the opportunity to comment on the NSW Department of Planning and Environment's (the Department) discussion paper for A New Approach to Rezoning in NSW.

Council concurs that the current rezoning process is both complex and lengthy; and supports the Department progressing planning reforms aimed at making the system easier to use and administer. Council strongly supports the Department's intention to:

improve transparency and trust;

improve the quality of proposals; and

empower Councils to make decisions on matters important to their local communities.

We also support the Department's new approach that seeks to give councils greater control over local decision making, however we do have several areas of concern relating to:

rezoning benchmark timeframes and associated resourcing costs for Council;

the coordination and timely receipt of state agency consultations;

the proposed new appeals pathway and role of Land and Environment Court;

inadequate guidance on interrelationship of the new rezoning process with development controls plans and developer contributions plans as well as assessment of Council-led proposals; and

the diminishing role of meaningful community consultation.

Attached is Appendix 1, which tabulates Council's areas of support and concern in relation to the Department's discussion paper. Below is a summary of Council's key recommendations:

1. That the Parliamentary Counsel's (PC) role be identified in the Department's review of the current NSW planning process. For example, Council's draft Inner West Local Environment Plan 2022 (LEP) was submitted to PC for finalisation over 20 months ago and has still not been finalised.
2. The proposed benchmark timeframes for rezoning assessments are unrealistic particularly for Complex and Principal LEPs. Timely application of 'stop the clock' provisions will be critical in Council meeting new benchmark timeframes.

3. Council's autonomy as the local plan making authority must be retained in upcoming planning reforms.
4. That consistent transparency requirements should be applied to all decision makers across the rezoning process, including councils, public authorities and panels.
5. Council does not support the transfer of roles from the Department to Council, in determining inconsistent section 9.1 directions in the rezoning process.
6. Council strongly supports the introduction of new measures that will assist with expediting state agency consultations.
7. Council is strongly opposed to proponents proceeding to submit a rezoning application for exhibition and assessment without demonstrating strategic merit.
8. Council strongly supports the ability for either Council or the Department to refuse to issue study requirements at a scoping stage if the rezoning application is inconsistent with strategic plans.
9. Council does not support removing the opportunity for strategic merit assessment before exhibition. This approach appears to be inconsistent with objectives of Council's Community Engagement Framework relating to Council building trust, early identification of issues and optimised use of limited resources across the planning process.
10. Council does not support further streamlining of the public exhibition process and instead, encourages further development of meaningful consultation, including pre-community consultation for complex proposals.
11. Council welcomes efficiencies to the assessment process, however, cannot support streamlining of the assessment process that removes consideration of the public interest.
12. Council does not support the Department in regulating fees for rezoning applications, this is a role that Council can continue to fulfil.
13. Council does not support any framework that enables proponents to request a refund of fees associated with the rezoning assessment process.
14. Council objects to the Land and Environment Court being utilised for strategic land use decision making and plan making and its potential involvement in a new appeal process.

Council is committed to delivering sustainable and coordinated place-based strategic planning across the Inner West that is supported by consistent strategic merit-based assessments. Whilst Council is supportive of the Department's intention to streamline the planning proposal process, these changes cannot be brought in at the cost of creating distrust in the community and local government's plan making role.

The above recommendations aim to provide constructive comments and again we thank you for the opportunity to respond to the exhibition material.

We strongly encourage further exploration and consultation with Council in the areas of strategic merit assessment and public exhibition, as it relates to the new rezoning process. Both issues are of critical importance to Council in ensuring that place-based planning

informs futures rezonings, and that rezoning proposals are in keeping with the aspirations of our community.

If you require any clarification or wish to discuss any of the matters raised, please contact Gunika Singh, Acting Team Leader, Strategic Planning on

[REDACTED]

Regards

[REDACTED]

Daniel East
Strategic Planning Manager

Appendix 1

The following table summarises Inner West Council's key points of support and concern with regard to the Department of Planning, Industry and Environment Discussion Paper 'A New Approach to Rezoning'.

Part A: Background

Department of Planning, Industry and Environment Discussion Paper Questions	Inner West Council Commentary
<p>Is it a fair summary of some of the issues within the current framework?</p> <p>Are there any problems you think we need to address?</p>	<p>Council largely concurs with the summary of the current NSW planning process provided in the discussion paper. However, Council notes that the Department did not raise the role of Parliamentary Counsel (PC) in summarising the rezoning process.</p> <p>It is critical that the Department acknowledge and address the delays that arise from PC, which can adversely impact the timely finalisation of a planning proposal. For example, draft Inner West Local Environment Plan 2022 (LEP) was submitted to PC for finalisation over 22 months ago, resulting in significant delays for Council in moving forward with a consolidated LEP that is reflective of Council's amalgamated structure.</p> <p>Recommendation 1. That the work of PC be identified in the Department's review of the current NSW planning process and that the Department identify means of streamlining the PC process, with consideration given to benchmarking drafting times based on the complexity of the LEP.</p>

Part B: The New Approach

New Categories and Timeframes

Department of Planning, Industry and Environment Discussion Paper Questions	Inner West Commentary
<p>Do you think benchmark timeframes create greater efficiency and will lead to time savings?</p>	<p>The new benchmark timeframes identified in the discussion paper correspond to both the category of the rezoning application and the stage of the rezoning process. Categories range</p>

from Category 1 (Basic), Category 2 (Standard), Category 3 (Complex) and Category 4 (Principal LEP).

The total timeframe for Council to process a rezoning application as per suggested benchmarks in the discussion paper are significantly less than the actual and average processing times of Council's planning proposals to date.

While supportive of the introduction of benchmarked timeframes, Council urges the Department to carefully consider the time that is required to report rezoning applications to Council meetings, and for Council officers to undertake necessary briefings and workshops with both Councillors and the wider community during the assessment process.

In addition, the discussion paper makes little reference to how Development Control Plans (DCPs), Planning Agreements (PAs) and contribution plans fit into the proposed timeframes. Clarification is sought as to whether the Local Planning Panel and Design Review Panel will have opportunity to provide recommendations during the rezoning process and how such actions affect the proposed timeframes.

Additional concern is raised as it relates to the removal of strategic merit-based assessment in the preliminary stages of the rezoning process. By transferring the strategic merit-based assessment to follow public exhibition, Council officers will have limited involvement in the rezoning assessment process until its end stages, an unacceptable assessment approach and involvement to Council.

Concerns with proposed benchmarked timeframes are of importance to Council, due to newly proposed ramifications should the assessment of a rezoning application be delayed. The possible introduction of partial fee refunds to proponents should a rezoning assessment exceed the benchmarked timeframe poses significant financial implications for Council.

Council supports the use of 'stop the clock' provisions to assist in managing assessment delays and in addition, suggests an increase of time to the proposed 1-week timeframe allocated to the lodgement stage for all rezoning applications. Additional time in the lodgement stage would ideally incorporate strategic merit assessment of the rezoning application by the planning authority.

	<p>Recommendation 2. The proposed benchmark timeframes for rezoning assessments are unrealistic particularly for Complex and Principal LEPs. Timely application of 'stop the clock' provisions will be an important element in Council meeting new benchmark timeframes. To assist in effective usage of 'stop the clock', it is strongly recommended that strategic merit-based assessment take place in the early stages of the rezoning assessment process, ideally following the lodgement stage prior to exhibition.</p>
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New Roles – Councils

Department of Planning, Industry and Environment Discussion Paper Questions	Inner West Commentary
<p>What do you think about giving councils greater autonomy over rezoning decisions?</p> <p>What additional support could we give councils to enable high-quality and efficient rezoning decisions?</p> <p>What changes can be made to the department's role and processes to improve the assessment and determination of council-led rezonings?</p>	<p>We support a greater role for Council decision making in the proposed rezoning process.</p> <p>Council's autonomy within the rezoning process should be recognised not only as a local plan making authority, but as the overarching coordinator of both place and community. By developing local place-based strategies, that are consistent with Council's Local Strategic Planning Statement, Local Environment Plan, Development Control Plans, Local Housing Study, etc, that are both adopted and endorsed by Council and the Department, local councils are equipped with the specialist local expertise to make sound long term land use decisions across its local government area (LGA).</p> <p>It is important to stress that the introduction of an appeals pathway involving the Land and Environment Court may reduce Council's autonomy. Furthermore, it is argued that the Land and Environment Court is not intended for strategic land use planning or policy making, and that the referral of problematic and / or untimely rezoning applications to the Land and Environment Court through an appeal process will result in inconsistent strategic land use planning outcomes.</p> <p>As for additional support provided by the Department, the proposed rezoning process as described in the discussion paper increases the responsibilities for Council, in addition to Council's ongoing strategic planning work. Support offered by the Department should be consistent with the needs of a Council in assessing a rezoning application. Additionally, Council</p>

	<p>would require sufficient staff resourcing to ensure the rezoning assessments are completed in line with the proposed benchmark timeframes.</p> <p>Recommendation 3. Council's autonomy must be retained in upcoming planning reforms. Council's autonomy in strategic land use decision making is reliant on the Department recognising and empowering Council in its role as the local plan making authority.</p>
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New Roles - Department of Planning, Industry and Environment

<p>Department of Planning, Industry and Environment Discussion Paper Question</p>	<p>Inner West Commentary</p>
<p>Is there enough supervision of the rezoning process?</p> <p>What else could we do to minimise the risk of corruption and encourage good decision-making?</p> <p>Do you think the new approach and the department's proposed new role strikes the right balance between what councils should determine and what the department should determine?</p> <p>Should councils be able to approve inconsistencies with certain s. 9.1 directions?</p>	<p>It is recognised that the removal of the Gateway process will reduce Departmental supervision, however in most instances this is generally supported. Council strongly supports the involvement of the Department in the rezoning process where inconsistent s.9.1 directions are evident. Council also supports the Department's or an independent body's involvement in the assessment of proposals relating to Council land.</p> <p>Council supports all measures coordinated by both the Department and local government, that reduce the risk and acts of corruption across the rezoning process. Council has a number of adopted policies and processes in place that aim to reduce corruption, as does the state government.</p> <p>In response to further minimising the risk of corruption, Council supports transparency throughout the rezoning process. Should planning reforms change the current roles in decision making regarding rezoning of land, Council raises the need for greater transparency, to ensure that consistent levels of scrutiny are applied to all decision makers.</p> <p>Recommendation 4. That consistent transparency requirements should be applied to all decision makers across the rezoning process.</p> <p>Recommendation 5.</p>

	Council does not support the transfer of roles from the Department to Council, in determining inconsistent section 9.1 directions in the rezoning process. An exception would be, if the inconsistent section 9.1 direction is supported by Council's strategic planning policies.
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New Roles - Public Authority

Department of Planning, Industry and Environment Discussion Paper Question	Inner West Commentary
<p>Is it enough to have agencies involved in scoping and to give them the opportunity to make a submission during exhibition?</p> <p>Do you think it would be beneficial to have a central body that co-ordinates agency involvement?</p> <p>If a state agency has not responded in the required timeframe, are there any practical difficulties in continuing to assess and determine a rezoning application?</p>	<p>Current strategic planning practice informs that lengthy delays are typical when seeking advice from state agencies in the rezoning process. The use of stop the clock provisions will be critical in Council adhering to benchmarked timeframes, particularly in gaining advice from state agencies.</p> <p>Council supports the concept of having state agencies involved in the scoping stage and raises the resources that this would require. A central coordinating agency would be of benefit, that can continue to educate state agencies on the importance of benchmark timeframes and assist in their involvement in the scoping process.</p> <p>Council agrees that state agencies must be provided with the opportunity to make a submission during the exhibition stage, regardless of involvement of state agencies at scoping stage.</p> <p>The discussion paper describes the removal of the Department in the assessment and decision-making roles across a range of rezoning applications, it is of interest how Council's will interact with a central body that coordinate agency involvement, and if this is indeed a role for the Department to assume.</p> <p>Recommendation 6. Council strongly supports the introduction of new measures that will assist with public authority involvement and receipt of their submissions in a timely manner.</p>

New Steps - Scoping

Department of Planning, Industry and Environment Discussion Paper Questions	Inner West Commentary
<p>Should a council or the department be able to refuse to issue study requirements at the scoping stage if a rezoning application is clearly inconsistent with strategic plans?</p> <p>Or should all proponents have the opportunity to submit a fully formed proposal for exhibition and assessment?</p> <p>What sort of material could we supply to assure community members that exhibition does not mean the rezoning authority supports the application and may still reject it?</p> <p>What do you think of removing the opportunity for a merit assessment before exhibition?</p> <p>Will it save time or money to move all assessment to the end of the process?</p> <p>Will it save time or money to move all assessment to the end of the process?</p> <p>Should the public have the opportunity to comment on a rezoning application before it is assessed?</p>	<p>Council strongly supports the ability for either Council or the Department to refuse to issue study requirements at a scoping stage if the rezoning application is inconsistent with strategic plans.</p> <p>It is both resource intensive and inconsistent regarding Council's autonomy for proponents to proceed with rezoning applications that hold no strategic merit. In addition, such practice is likely to generate confusion and conflict with local community, and unnecessarily strains relationships between local community and Council.</p> <p>Council is strongly opposed to removing the opportunity for a merit assessment prior to exhibition, this is an inefficient approach that lacks transparency and reduces technical assessment opportunities throughout the rezoning process.</p> <p>Recommendation 7. Council is strongly opposed to proponents proceeding to submit a rezoning application for exhibition and assessment without demonstrated strategic merit. It is recommended that the Department consider the inclusion of guidelines that inform proponents of restrictions relating to resubmitting unsupported rezoning applications to Council for scoping.</p> <p>Recommendation 8. Council strongly supports the ability for either Council or the Department to refuse to issue study requirements at a scoping stage if the rezoning application is inconsistent with strategic plans.</p> <p>Recommendation 9. Council does not support removing the opportunity for strategic merit before exhibition. This approach appears to be inconsistent with objectives of Council's Community Engagement Framework relating to Council building trust, early identification of issues and optimised use of limited resources across the planning process.</p>

New Steps - Exhibition

Department of Planning, Industry and Environment Discussion Paper Question	Inner West Commentary
<p>What other opportunities are there to engage the community in strategic planning in a meaningful and accessible way?</p> <p>Do you have any suggestions on how we could streamline or automate the exhibition process further?</p> <p>Do you think the assessment clock should start sooner than final submission for assessment, or is the proposed approach streamlined enough to manage potential delays that may happen earlier?</p> <p>Do you think requests for more information should be allowed?</p>	<p>Council raises concern with discussion paper content that seeks to streamline or further automate the exhibition process. Council is committed to meaningful engagement with the community, as required by Council’s Community Engagement Framework. Currently Council officers for example, would brief the Councillors on a rezoning application, followed by a report to Council, at which point the community would be able to attend a Council meeting and raise concerns.</p> <p>Depending on the complexity or sensitivity of a rezoning application there may also be Council coordinated information sessions with the community during the exhibition process. Further streamlining of the exhibition process creates conflict with Council’s current adopted position regarding community engagement and exhibition of planning matters.</p> <p>Concern is raised regarding Council officers and Councillor’s ability to respond to community enquiries regarding exhibited rezoning applications under the proposed changes. Neither will have the requisite background information to respond to resident’s enquiries. Should exhibition notices be automated by a Service NSW app as referred to in the discussion paper, who can a resident contact for further information and how does this impact a resident’s ability to make an informed decision in relation to making a submission.</p> <p>Council raises equity and inclusion concerns regarding an automated exhibition process, managed through an app.</p> <p>Council seeks clarification on exhibition of a rezoning application that is inconsistent with Ministerial Directions. In such a case, Council should have opportunity to comment on this inconsistency, which is compromised if a strategic merit assessment has not been undertaken prior to exhibition. Community should be made aware of the nature and magnitude of inconsistencies when being provided with the opportunity to provide comment.</p> <p>Recommendation 10.</p>

	Council does not support further streamlining of the exhibition process and instead, encourages further development of meaningful public exhibition of rezoning applications, including pre-consultations with community.
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New Steps - Assessment and Finalisation

Department of Planning, Industry and Environment Discussion Paper Questions	Inner West Council Commentary
<p>Are there any other changes that we could make to streamline the assessment and finalisation process more?</p> <p>What roadblocks do you currently face at this stage of the process? Do you think the public interest is a necessary consideration, or is it covered by the other proposed considerations? Are there any additional matters that are relevant to determining whether a plan should be made?</p> <p>Do you think requests for more information should be allowed?</p> <p>Do you think a body other than the council (such as a panel) should determine rezoning applications where there is a VPA?</p> <p>Where a council has a conflict of interest, should a rezoning application be determined by the local planning panel (as</p>	<p>The discussion paper raises the proposal of removing the gateway process. Whilst this may create timeframe efficiencies, caution is raised in relation to any change that reduces rigorous strategic merit assessment. A balance of technical assessment, efficiency and transparency must be achieved, all of which should be considered together with the public interest.</p> <p>Councils own conflict of interest is currently well managed through both established policy and practice together with Departmental involvement. Conflict of interest should not impact Council's autonomy as a strategic land use decision maker, however, should the Department's involvement in the rezoning process be removed, a Local Planning Panel may assist in providing further transparency.</p> <p>Recommendation 11. Council welcomes efficiencies to the assessment process, however, cannot support streamlining of the assessment process that removes consideration of the public interest.</p>

<p>proposed), or should the department take full responsibility for the assessment and determination of the rezoning application?</p>	
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New Fee Structure

<p>Department of Planning, Industry and Environment Discussion Paper Questions</p>	<p>Inner West Council Commentary</p>
<p>Do we need a consistent structure for rezoning authority fees for rezoning applications?</p> <p>What cost components need to be incorporated into a fee structure to ensure councils can employ the right staff and apply the right systems to efficiently assess and determine applications?</p> <p>Should the fee structure be limited to identifying for what, how and when rezoning authorities can charge fees, or should it extend to establishing a fee schedule?</p> <p>Should fee refunds be available if a proponent decides not to progress a rezoning application?</p> <p>If so, what refund terms should apply?</p> <p>What should not be refunded?</p>	<p>Council advocates strongly that the fees applied to a rezoning application should reflect the complexity of the rezoning application. If proposed benchmark timeframes raised in the discussion paper proceed, Council may need to engage additional planning officers to meet the benchmarks and may require subject matter experts to review documentation. Council has an adopted Fees and Charges Policy that details a clear and consistent schedule of fees for rezoning applications.</p> <p>The discussion paper identifies the three fee options being fixed assessment fees, variable assessment fees and lastly a mix of fixed and variable fees. Council’s current Fees and Charges Policy is most similar to the proposed fee option that provides a mix of fixed and variable fees. This approach ensures the cost of engaging consultants to undertake components of the assessment (expert advice) can be built in through cost recovery, including fee refunds in accordance with hours worked /costs expended at that point.</p> <p>Council raises concern with transfer of role as it relates to fee-setting from Council to the Department. Council is well informed to establish their own fee structures.</p> <p>Council does not support the refund of fees in instances where Council has already incurred staff and resourcing costs.</p> <p>Recommendation 12. Council does not support the Department in setting fees for rezoning applications, this is a role that Council can continue to fulfil.</p>

New Fee Structure - Planning Guarantee

Department of Planning, Industry and Environment Discussion Paper Questions	Inner West Council Commentary
<p>Do we need a framework that enables proponents to request a fee refund if a rezoning authority takes too long to assess a rezoning application?</p> <p>If so, what mitigation measures (for example, stop-the-clock provisions, or refusing applications to avoid giving fee refunds) would be necessary to prevent a rezoning authority from having to pay refunds for delays it can't control?</p> <p>If not, what other measures could encourage authorities to process rezoning applications promptly?</p>	<p>Council does not support any aspect or framework that enables proponents to request a refund of fees associated with the rezoning assessment process. Council invests significant resources in its strategic planning work, and when planning officers undertake an assessment of a rezoning application, Council is fulfilling its due responsibilities. Council will not provide any type of refund should Council fail to meet a timeframe or benchmark.</p> <p>Council's preference is to undertake upfront strategic merit-based assessment following lodgement of a rezoning application. In addition, Council should be permitted to refuse to accept applications that do not align with Council's strategic plans and studies.</p> <p>Recommendation 13. Council does not support any framework development that enables proponents to request a refund of fees associated with the rezoning assessment process.</p>

Part C: New appeals pathways - Options

Department of Planning, Industry and Environment Discussion Paper Question	Inner West Council Commentary
<p>Do you think public authorities (including councils) should have access to an appeal? Which of these options – the Land and Environment Court or the Independent Planning Commission (or</p>	<p>Concern is raised in the involvement of the Land and Environment Court in a new appeals process. The Land and Environment Court does not have expertise in strategic plan or place making, nor will it have specialist local knowledge regarding precinct character, community building or infrastructure needs. Such processes incur significant resourcing costs to Council and may reduce Council's autonomy in decision making.</p>

other non-judicial body) – do you believe would be most appropriate?

Recommendation 14.

Council objects to the Land and Environment Court being utilised for strategic land use decision making and plan making and its potential involvement in a new appeal process.

Part D: Implementation

Part D provides a short summary of the anticipated next steps in developing a new rezoning process. In doing so the Department flag legislative changes in due course. No significant concerns raised however Council seeks further clarification with regard to savings provisions in relation to current rezoning applications in due course.