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**CONSULTING SERVICES IN URBAN AND ENVIRONMENTAL PLANNING**

LANE COVE NSW 2066

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SUBMISSION to NSW DEPARTMENT OF PLANNING INDUSTRY AND ENVIRONMENT

On behalf of Mr Laurie Bennett, Northmead

DISCUSSION PAPER – A NEW APPROACH TO REZONINGS

25 February 2022

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### **Introduction**

This submission responds to the Discussion Paper on *A new Approach to Rezonings*, released by the NSW Department of Planning, Industry and Environment in December 2021. It has been prepared on behalf of Mr Laurie Bennett of Northmead and is lodged pursuant to the invitation for ‘feedback’ on page 2 of the Discussion Paper.

As a long-time resident of Parramatta and as an ex-Councilor of the Parramatta City Council, Mr Bennett has been very close to the various official planning projects and programs affecting his city over many years. He has seen statutory and strategic plans come and go. He has seen Councils come and go. He has witnessed at first hand the replacement of elected Councils by single Administrators whose arbitrary decisions on planning matters were made behind closed doors, lacking completely in citizen input.

More recently he has seen the abandonment of long-standing plans for a green, heritage -rich, mixed-use and low-rise North Parramatta in favour of what can only be described as a wall-wall extension of the dreary, character-less high-density high-rise CBD which has been allowed to develop south of the river. In the context of the Discussion Paper he has witnessed at first hand the adverse impacts of numerous privately-promoted spot-rezonings on the heritage and pedestrian environment in the CBD to the south. He has noted that sporadic spot rezoning proposals for sites north of the river are in the pipeline and is concerned that if finally approved they will prevent North Parramatta from becoming a real ‘place’ with its own dedicated plan consistent with the government’s own place-making guidelines.

The submission which follows draws on Mr Bennett’s first-hand knowledge and experience as an ex-Councilor and resident of North Parramatta. It is augmented by the writer’s experience as an independent architect and planning consultant. Mr Bennett believes that the North Parramatta situation offers lessons as to what can happen when the process of community participation breaks down; when officialdom is reluctant to engage in direct civil debate with the community; when bureaucracy take precedence over local democracy; when the push for financial “up-lift” for property owners takes precedence over the achievement of an “up-lift” to environmental quality in the public domain; and when constant government calls for better “place-making” result in the kind of blighted non-place environment which is currently being officially promoted for North Parramatta – surely one of Australia’s most valued heritage places.

In North Parramatta, all these things have happened. They have all happened in the name of “good planning” yet the end result is anything but “good”. Something has gone seriously wrong.

The Department is therefore asked to accept that the matters raised in this submission are drawn from Mr Bennett's real world knowledge and experience as a direct participant in the on-going debate about the future of North Parramatta. The submission can be read as the result of a de-facto 'case study', with findings cross-referenced to text in the Discussion Paper. He believes that although North Parramatta may be an unusual case there are important lessons for other places; and he wishes to place those lessons on the public record.

The Department is requested to formally acknowledge receipt of this submission and to advise Mr Bennett in due course as to the Department's response.

### **Background to Case study**

Several years ago the Council embarked on a major program of change to the current LEP as it applied to the CBD. The Proposal involved an extension of the CBD across the river into North Parramatta. In 2020 the Proposal passed the Gateway and was released for exhibition. In 2021 the Council released an amendment to the Proposal. The Proposal is still not finalized and the 2011 LEP zonings in North Parramatta remain in place.

During the period prior to Gateway and public exhibition the Council received speculative privately sponsored spot-rezoning proposals for sites in North Parramatta. Typically these comprised lavishly documented specialist reports, preliminary design drawings, technical studies, site-specific heritage assessments and the like. Proponents argued that they were consistent with the proposed CBD rezonings – even though these had not even passed the public exhibition stage. They were seemingly lodged on the confident presumption that because they were seen by their proponents as being consistent with the proposed CBD changes, they should be approved. Council officer support was evident.

The North Parramatta community had no chance in this 'David and Goliath' situation. A small resident action group with minimal resources was facing powerful developers and their armies of consultants - many of whom enjoyed direct lines of communication to Council staff. Over the period under review, the proponents released thousands of pages of documents for so-called "exhibition". The exhibition process was tokenistic – mainly on-line, tight deadlines for submissions, no public release of hard copies, minimal expert guidance from Council staff, no open meetings for discussion and debate, and so on.....

Mr Bennett believes that the North Parramatta experience has echoes in other parts of Metro Sydney. It throws light on matters which should be addressed in the current review of the rezoning process. It also provides real-world evidence of weaknesses in a planning system which is supposedly anchored in community aspirations but which today is increasingly seen by the wider community as having been captured by the property development industry in its push for quicker decisions, less 'red tape' and generous 'up-lift'.

### **Matters of concern:**

#### **(page numbers are those in the Discussion Paper)**

*p.1 Par.5: ...optimize the economic and environmental benefits of development*

Comment: Social benefits should come into the equation: they should be defined, and be regulated somehow. For a proponent, achieving maximum uplift will always be the primary goal, with social goals coming very low in the priority list. To "optimize" environmental and social benefits may well require a proponent to accept a lesser uplift in the public interest. The new system should make it clear that there is no automatic entitlement to a maximum FSR (for example).

*p.1 Par 9: ...great outcomes for places, public spaces; improving consultation processes; empowering councils to make decisions on matters important to their communities ...*

Comment: In North Parramatta, the process is failing dismally to create 'great spaces or places' despite incessant ministerial calls and statements and official place-making guidelines. Somehow the gap between

high-sounding policies pushing for quality on the one hand, and ‘growth at all costs’ on the other, must be bridged. As things stand there will never be a great public space in historic North Parramatta because it is the search for uplift which is driving the process – not the search for quality in the public domain. The community is the loser because of flaws in the council ‘empowerment’ process. The images in the 2021 North East Planning Investigation Area report provide stark evidence to support this claim.

*p.2 Par.1 establish an appeals pathway for planning proposals to overcome delays...*

Comment: If developers are to be offered an opportunity to appeal a rejected planning proposal, so too should the community be offered an opportunity to appeal an unwanted proposal. Fairness demands that there should be a third party appeals provision in the case of major rezonings affecting the wider community.

*Par.2 best - practice process*

Comment: ‘Best practice’ must be defined. The phrase is wide open to abuse. It is not only a matter of “efficiency” and “time-saving”. It MUST also involve achieving the best long-term results for the end user – i.e. the host community who will have to live with a development long after the proponent has moved on to fresh pastures. Best practice MUST also include attention to social and environmental expectations (including good urban design) as well as the legitimate commercial expectations of impatient developers and the bureaucratic hopes of a quick fix.

*(foot of page) shaping a sustainable future*

Comment: Achieving sustainability has become a fundamental tenet of today’s strategic planning processes. However, the North Parramatta case shows that in this particular rezoning the end result of the relevant strategic plan will be far from sustainable. Rather will it consist of a forest of speculative ‘one-off’ commercial towers; no mandatory requirements for harvesting solar energy; minimal provision of green space; extensive overshadowing of the public domain; no plans for social or community infrastructure; and so on.

The Discussion Paper offers no guidance as to how the new rezoning approach will lead to more sustainable environments. Nor does it provide a reliable metric for determining the potential for a rezoning to achieve a sustainable outcome.

*p.6 par, 9 community consultation*

Comment: The consultation requirements embodied in Gateway determinations do not go far enough. Typically they will see the Council make announcements (on line or in a local paper) advising the community that documents can be accessed (on line or in a library) and that submissions are to be lodged by a certain date. It is an inequitable and unfair process. The community is expected to somehow obtain, analyse, and discuss all the relevant documents. In the North Parramatta case, one particular Proposal generated a mini-library of technical documents. If the job of preparing robust submissions is to be properly done, hard copies of proposal documents will be needed – with printing costs running into the 100s of dollars. Submissions have to be prepared, with minimal resources, limited time, and virtually no face-to-face guidance from Council staff. Again (in the NP case) staff-community briefing sessions were never offered and there were no opportunities for real debate about controversial matters. The Planning Panel sessions were likewise futile, with no face-to-face interaction between the parties and no debate. The information flow process is unbalanced. A flood of material flows from government and proponent, and the web sites are bulging. Yet a detailed 20 page submission from an objector does not even make the public record and typically will be disposed of with a bland recommendation from staff that it be “noted”.

The process must be redesigned so that the government’s admirable intentions for stakeholder engagement (as set out on p.2 of the Design and Place SEPP Review, December 2021, and elsewhere) can actually bear fruit. If Council resources do not cover a proper two-way consultation program for major rezonings in particular, government should provide financial support. Otherwise the current tokenistic arrangements will remain – and the community will continue to lose out.

p.8 Par.1 *reduce the processing time for proposals; increase quality; place-based outcome*

Comment: There is no direct correlation between time, integrity and the creation of “quality, place-based outcomes”. “Quality” is not defined. Less time does not always mean better results. The achievement of “place-based outcomes” may require extensive site analysis and professional design input – all of which is time-consuming. Developers will always press for quicker decisions; but unless the decision-making process provides adequate time for thorough consultation with community and NGOs, the end result will inevitably favour the developer. This applies particularly to large and complex Planning Proposals involving numerous community interests and agencies.

p9, p29 - *strategic merit*

Comment: The Discussion Paper admits that “there are mixed views “about strategic merit and how it should be measured. Councils should be required to make sure that the community is properly informed and that strategic merit is explained by way of meetings, briefing papers or similar when major area-wide rezonings are on the table. Simply notifying the community that a proposal is in train and that details can be seen on line is not enough to demonstrate “strategic merit”. Developers will always argue that their proposals have merit (jobs, dollars, etc) but any merit assessment must cover other matters as set out on p. 29 – especially *the natural environment, built environment, and social and economic conditions* from a public interest point of view.

p.12 *final dot point: giving private proponents a right of appeal*

Comment: The Discussion Paper makes no reference to the possibility that third party appeals should be available in the case of major planning proposals. If developers are to be given appeal rights, the public interest should be served by granting the same rights to affected communities and NGOs.

p.13 Fig 3. *Where are the opportunities for real debate ?*

Comment: Figure 3 should include an explicit reference to a requirement that exhibitions on major rezonings should include public meetings or expert briefings or similar. As discussed above, current exhibition procedures fail to provide opportunities for such briefings. Debate is impossible because information flows in one direction only – from Council to community – and almost always in digital format on line. If real debate is the aim, *that is not good enough.*

p.19 *What additional support ...?*

Comment: Resources (\$ and technical expertise) should be made available to help Councils prepare and mount well-designed exhibitions and related literature for community distribution, the aim being to ensure that the impacts (positive and negative) of major rezonings are fully understood by the host community. As a bare minimum, Councils should provide all affected community members with simple well-designed hard copy handouts in colour to explain the location and extent of the Proposal, and a summary of its pros and cons. The summary should be prepared by the Council, not the proponent; and offered with advice as to how to get more information and make a submission.

p.25 Fig 6 *scoping*

Comment: The intent of the new scoping approach is supported. However, in the case of major rezoning proposals, scoping should go beyond assessing agency and rezoning authority interests. It should also be mandatory for proponents to talk to NGOs and established community groups and to invite feedback from those parties. Such feedback should be written into the public record.

p27 *Public comments prior to assessment ; Changes after exhibition:*

Comment: Consistent with previous comment on scoping, it should be a requirement for proponents (including Councils ) to invite comments from the general public on major rezonings which are likely to have impacts on their territory. Those comments should be placed on the public record prior to assessment.

Regarding the first point on p.27, the rezoning authority should definitely provide relevant material to the affected community to assure them that support is not automatic and that rejection is still a possibility.

### **Other matters**

- *Heritage advice – weight ?*

Comment: The Discussion Paper says little about heritage. In the case of North Parramatta, heritage conservation is a core planning objective – not a soft option. In a rezoning context, the lesson is that where national and area-wide heritage values are at stake their protection should be a priority aim in any major rezoning. *Regrettably this has not been the case in North Paramatta.* The current situation is such that the government-supported CBD Planning Proposal could well see this heritage-rich precinct transformed into a mini-CBD with only token effort being applied to conserve precinct-wide heritage values. Evidence suggests that the City Council placed little if any weight on submissions from the NSW Heritage Office amidst concerns that the overall heritage quality of the wider area would be adversely affected. It is submitted that when rezoning proposals for sites *in unique heritage-rich areas (such as North Parramatta)* are being assessed, the views of official heritage experts should be given prevailing weight unless there are powerful and well-argued reasons against .

- *Up-lift (ie windfall) profits*

Comment: If a council is intent on supporting private rezoning proposals where ‘up-lift’ is the objective, the question must be asked: where is the community benefit ? Will the overall value and attraction and public amenity of the area in question be likewise ‘up-lifted’.

It is often forgotten that private property values will generally be enhanced by civic improvements and good urban design. Good environmental design brings ‘up-lift’ regardless of zonings. Rezoning proposals should therefore be assessed firstly on their capacity to enhance civic amenity – not on their potential to enhance corporate wealth. In the North Parramatta case, the evidence points to extensive private uplift accompanied by area-wide civic and environmental decay due to poor urban design outcomes. This is not strategic ‘place-making’ in the public interest, as advocated by the government.

### **CONCLUSIONS**

1. Major multi-million \$ privately sponsored proposals for zone changes to specific sites in or adjoining a heritage precinct or Heritage Conservation Area should be assessed in the context of an area-wide heritage study prepared by the Council or an independent heritage consultant. The brief should be signed off by Heritage NSW.
2. Public faith and confidence in the entire community participation process has never been lower than it is today – despite ministerial and official promotion of so-called “community engagement strategies” and community participation activity. The public interest is not being served by the current unbalanced and inequitable consultation system, and tokenistic exhibitions on- line are a travesty of the participation process.
3. When major change is likely, the affected community needs more time – not less – to prepare its response. It also needs government to allocate more resources into making sure that the community is fully briefed on the proposed changes through meetings and the like.
4. Benefits of development must include social as well as economic and environmental. Rezoning proposals should be required to deliver all three.
5. Developers hoping for market uplift associated with rezonings should be required to demonstrate that any such uplift will be accompanied by major improvements (uplift) to the public domain commensurate with the value of the private uplift (i.e. the “windfall” gain).
6. If proponents can appeal rezoning decisions, the same right of appeal should be available to community groups and NGOs.

7. "Best practice" is not defined; but it is not only a matter of efficiency and time-saving. It MUST involve the delivery of the "best" environmental results for the host community.
  8. There is no guidance in the Discussion Paper as to how the new rezoning process will produce sustainable developments.
  9. Merit assessments must cover not only technical aspects but also impacts on the natural and built environments and social and economic conditions.
  10. It should be mandatory that public exhibitions of major rezoning proposals are accompanied by expert community briefing sessions. If necessary government funding should be made available to help make this happen.
  11. Scoping should include consultation with community and NGOs, followed by written reports.
  12. Where rezonings bring possible adverse heritage impacts to a wide heritage - rich area (especially when it includes national and World Heritage items) , special weight should be placed on the advice of Heritage NSW.
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