



SUBMISSION (Final)

Discussion Paper – A New Approach to Rezoning

To the NSW Department of Planning and Environment (DPE)

28 February 2022
File No: 09/04653

1. GENERAL COMMENTS

This submission outlines Fairfield City Council's response to the discussion paper currently on exhibition relating to rezoning reforms. The submission provides comments and recommendations regarding the proposed changes and endeavours to provide a response to each of the discussions questions posed in the paper (highlighted in red).

The proposed reforms outlined in the Discussion Paper are substantial and the potential implications on local and state government as well as proponents are extensive. There are some aspects of the proposed reforms that are positive and supported however Council considers that there should be more significant thought and refinement to the proposed reforms to ensure that the drive for change does not compromise the quality and appropriateness of future development.

As a general comment/concern, Council is disappointed that the amount of reforms concurrently being driven by the Department lacks an understanding or consideration of due process and local government reporting timeframes and procedures. Newly elected Councillors require time to be educated/briefed on existing plans and policies let alone being inundated with multiple reforms which are all inter-related yet being produced and exhibited in such an ad-hoc manner. Council requests that greater consideration and consultation be undertaken with Councils as early as possible with the ongoing reforms to allow Council a voice throughout the process and the Department an understanding of Council's resourcing, timeframes and competing priorities.

Council looks forward to reviewing more detailed draft policy documents and would very much like the opportunity to be involved in any stakeholder workshops that are available in the future. The following outlines specific comments that Council has in relation to the exhibited Discussion Paper and the extent of changes being considered. Council's response specifically relates to Parts B-D of the Discussion Paper.

2. THE NEW APPROACH

i. New terminology, categories and timeframes

The nominated title for the reforms and amendments relates to "Rezoning Reforms" and "Rezoning Applications" which in some instances is considered to be confusing. It is recommended that the reforms actually be referred to as "LEP Amendment Applications" and LEP Amendment Reforms" as not all changes to LEPs through Planning Proposals relate to the zoning of land. In fact, many of the amendments relate to development standards, heritage status and/or local site specific provisions whilst retaining the existing zoning of the land.

Do you think benchmark timeframes create greater efficiency and will lead to time savings?

No - timeframes already allocated under current Gateway Determinations are frequently being amended/extended due to delays in the assessment process. In Council's experience, more often than not these delays are either as a result of inadequate information being submitted by a proponent or lack of timely/robust advice from State Agencies. The greatest way to improve efficiency is to establish a division within DPIE that solely facilitates consultation with State Government Agencies. The creation of specialised divisions within other key agencies should also be investigated, similar to the section that already exists within the TfNSW, dedicated to dealing with more complex development applications.

New roles

- It is understood that the Discussion Paper proposes the removal of Gateway Determinations and allocates the function of exhibition approval to Council's or the rezoning authority. In removing the Gateway Determination phase it is understood that referrals to the relevant Local Planning Panel (LPP) will also be removed. Such a change would only be supported for Basic and Standard applications however for Complex proposals this stage provides a worthwhile step to undertake an independent review and confirmation on the criteria/matters that need to be addressed by an applicant, particularly when applicants are reluctant to adopt the recommendations of Council. The advice from the LPP also helps to remove some of the contentious elements for Council. For these reasons, Council would recommend the retention of the LPP for Complex applications in the scoping stage.
- The proposed reforms appear to significantly reduce councillor involvement in the initial stages of a rezoning proposal. Council does not support the removal of a formal report to Council for consideration by Councillors at the pre-exhibition stage. Councillors play a vital role in the plan making process and represent the community's needs and concerns. Councillors also are avenues for the community and local associations to voice their concerns and gain clarity regarding a proposal. If Councillors are not involved in the initial upfront assessment of the strategic merits of a proposal, they will not be adequately informed to provide these services to their communities. The responsibility for whether or not a proposal should proceed to exhibition should not be the responsibility of Council officers.
- Removal of the formal Gateway Determination process is generally supported however it is recommended there still be procedural involvement of the Department during the initial scoping stage. At this stage the Department is required to endorse/support the recommended type of application lodged and it is recommended that this assessment should also provide formal comment regarding the general consistency of the proposal with relevant Regional Strategic Plans, relevant Ministerial Directions and other relevant state policies etc. and the position of the Department with regards to the proposal. This involvement will help provide some certainty around the future progression of a proposal and potentially assist Council in refusing proposals that are completely inadequate or inconsistent with strategic planning policies.

What do you think about giving councils greater autonomy over rezoning decisions? Council would support a pathway which provides Council with the ownership and self-sufficiency to manage Basic and Standard rezoning applications. More complex proposals which have the potential to affect local character, future development of broader areas of land and infrastructure provision should still be considered by the Department. Complex proposals generally require collaboration and commitments from various state agencies and Council would appreciate facilitation of the process with staff from DPE as well as the relevant LPP.

What additional support could we give councils to enable high-quality and efficient rezoning decisions? As previously stated the greatest benefit to the process would be to establish a role/division within DPE & key agencies (e.g. TfNSW) which solely facilitates timely and robust state agency feedback on complex proposals.

What changes can be made to the department's role and processes to improve the assessment and determination of council-led rezonings? One of the biggest challenges is to receive meaningful and timely advice from State Agencies particularly when significant funding/upgrade or provision of infrastructure is required.

Is there enough supervision of the rezoning process? As already discussed, Council recommends retaining the involvement of the LPP in the scoping stage for complex proposals. Additionally, it is suggested that both DPE and Councillors should provide in-principal support earlier in the process rather than simply at the end.

What else could we do to minimise the risk of corruption and encourage good decision-making? Allowing proponents to deal with submissions and submission responses is open to manipulation and corruption. This will greatly reduce transparency in the process and ultimately Council's will have to review all submissions and proponent responses to ensure they have been adequately and fairly addressed. Good decision making is based upon timely and accurate advice from all relevant parties as early on in the assessment process as possible. It is essential that the Department facilitate consultation with State Agencies during the scoping stage for complex proposals which delivers timely, accurate and accountable feedback.

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? Yes for basic and standard proposals, however complex proposals require greater influence from an independent body to ensure due process is completed within the proposed benchmark timeframes. The role of formal Council assessment in the initial scoping stage should also be retained.

Should councils be able to approve inconsistencies with certain s. 9.1 directions? If so, in what circumstances would this be appropriate? Yes there are instances where inconsistencies with the objectives and intended outcomes of these Directions could be justified or where the benefits of a proposal outweigh any minor inconsistencies (e.g. in relation to State or Council strategic plans). However, it is recommended that an indication of support is required from state agencies on any justified inconsistency.

Is it enough to have agencies involved in scoping and to give them the opportunity to make a submission during exhibition? Yes it is essential to have agencies involved in the scoping stage, however as many of the required studies and reports may not yet be completed at the scoping stage and will be submitted for exhibition, it is essential that a submission also be received from agencies outlining support/objection or proposed amendments during the exhibition process.

Do you think it would be beneficial to have a central body that co-ordinates agency involvement? YES this is essential. Even under the current processes this would be of great benefit to both Council's and proponents. By way of example, Fairfield Council has been dealing with a major planning proposal for Cabramatta Town Centre for the last three years. One of the most beneficial outcomes of the proposal would be a proponent built overhead pedestrian bridge linking the site to Cabramatta Railway Station. Over the 3 years, the advice obtained from Transport for NSW and Sydney Trains has been limited, delayed and inconsistent culminating in a final submission withdrawing support for the proposed infrastructure.

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? Yes as highlighted above, many hours and dollars can be wasted over the course of assessment of a proposal only to have state agencies withdraw support or move the goalposts at the final hurdle. Inclusion of a "stop-the-clock" provisions would assist with this.

ii. Scoping

Council supports the compulsory inclusion of this stage in the formal application and assessment process. As such timeframes will need to be adjusted to include this stage in the projected completion period. A sufficient “stand-alone” scoping fee should also be charged to ensure work completed in this initial assessment stage is adequately paid for, this includes the capacity for Council to recoup the costs for commissioning the independent peer review of technical reports that councils do not have the required expertise to undertake. If the proposal does not progress past this point there has been a proportionate fee charged yet no refunds required. The time and resources to Council (and relevant state agencies) will be quite significant and there should be payment for this.

The Department have indicated that a report to Council at the completion of the scoping stage is discouraged however as discussed above, this is not supported and Council objects to the further removal of Councillors from the strategic planning process.

The proposal to get State Agencies on board and providing constructive relevant feedback during the scoping stage is fully supported by Council. There should be a division/role within DPE which solely facilitates agency consultation on rezoning applications and LEP amendments. Council’s current Planning Proposal relating to the Cabramatta Town Centre is a clear example of the issues Councils/proponents face in getting agencies engaged in the process and providing reliable feedback.

Council supports the requirement for private proponents to have the written consent of all landowners if they are not the owners of the land. This will help ensure that future development of land occurs in a timely and orderly manner.

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? Yes.

The possibility that Council cannot refuse an application at the scoping stage is also proposed in the Discussion Paper. If this is the case, there will be situations where many many hours, dollars and resources are invested in proposals which have no strategic merit and will ultimately not be supported by Council. If an appeal pathway is then introduced, there are complex issues with use of the Land and Environment Court to resolve these decisions.

Should all proponents have the opportunity to submit a fully formed proposal for exhibition and assessment? No, if the proposal is clearly inconsistent with relevant state, regional and local strategic plans. Council has recently undertaken extensive studies and adopted its Local Strategic Planning Statement (LSPS) which should be considered and reflected in all future proposals. Development and adoption of the LSPS involved significant community engagement and provides the community with some certainty regarding the future direction of land use planning in their area. Applications that are clearly inconsistent with Council’s LSPS and other strategic planning documents should not be supported and Council should not be compelled to divert resources, time and money on proposals that will ultimately not be supported.

iii. Lodgement

7 days to prepare exhibition material and letters is not enough. This time allowance does not take into account notification preparation and competing priorities that Council may have at any given time.

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? This is no different to the current process where a proposal is not endorsed/adopted for finalisation until after exhibition. Clearly written, plain English exhibition material and notification letters should be able to adequately address this issue.

What do you think of removing the opportunity for a merit assessment before exhibition?

This is not supported. As discussed earlier in this submission, it is unclear how the Department and Council can determine the strategic consistency of a proposal without some level of assessment at the scoping stage. Similarly, how will the appropriate studies, investigations and consultation be determined without some merit assessment upfront. Removing merit assessment from the early stages of the proposal will result in refusals at the final assessment stage becoming more common and ultimately wasting time and money. Often the general public requires information obtained from Council's merit assessment of a proposal to be able to understand the full extent and effects of a proposal. If there has been no merit assessment completed prior to the exhibition stage, then the local community cannot be fully informed.

Will it save time or money to move all assessment to the end of the process? No

Should the public have the opportunity to comment on a rezoning application before it is assessed? Not necessarily, however in some more complex proposals, this may be warranted and Council's should have the flexibility to decide this on a case by case basis.

iv. Exhibition

What other opportunities are there to engage the community in strategic planning in a meaningful and accessible way? In order to ensure the community are engaged in the strategic planning process, it is essential that councillor involvement early on in the process be retained. This enables strengthened community engagement through the Council meeting process and the option for public forums to be held. Future reforms should incorporate this element into the proposed framework.

Do you have any suggestions on how we could streamline or automate the exhibition process further? No however the current workings of the Planning Portal are not user friendly and do not facilitate community engagement.

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? No and as stated previously it is recommended that a 'stop-the-clock' provision be incorporated into the assessment process.

Do you think requests for more information should be allowed? Only during the initial scoping stage or if there is significant changes to a proposal or the circumstances surrounding the proposal. This option needs to be flexible.

v. Assessment and Finalisation

This is the time at which it is proposed that Council will formally consider (via a report and resolution) the merits of the proposal and either adopt or refuse. Requests for additional information at the assessment stage are discouraged unless a "stop-the-clock" provision is introduced. If the scoping stage has been done thoroughly and correctly, then there should be minimal need for additional information. Lodgement of additional information at this stage may require the proposal to be re-exhibited and the clock is ticking by this point and any changes will require re-exhibition. This has not been factored into the benchmark timeframes outlined in the paper.

Failure to determine the application in the required timeframe will allow the applicant to either ask for a refund via a new Planning Guarantee system or ask for an appeal via the LEC or IPC similar to a deemed refusal of a DA.

A Planning Guarantee system is not supported as it will encourage rushed planning decisions and ultimately poor development outcomes. Thorough assessment of a proposal is reliant upon the lodgement of accurate and comprehensive information upfront at the scoping stage.

If fees are structured and staged correctly and proportionately then there should be no need for a refund process through a Planning Guarantee. This system places the responsibility wholly on Council and does not account for the vast majority of delays generated by lack of timely and accurate advice from State agencies, Departmental delays and inaccurate/incomplete information from the applicant. Council will still be required to complete the necessary work for assessment and response to exhibition and will then be burdened with the loss of revenue for actions beyond its control.

Planning Agreements, Contributions Plan amendments and DCP amendments are left out of the discussion paper yet are arguably one of the biggest sources of delay to planning proposals. The legal complexities of both Planning Agreements and Contribution Plan amendments can cause months or at worst years of extensive negotiations that involve Council staff, legal input, state agencies, councillor endorsement and community consultation. Both parallel processes are paramount in ensuring the plan making process accounts for supporting infrastructure.

Are there any other changes that we could make to streamline the assessment and finalisation process more? What roadblocks do you currently face at this stage of the process? No. The primary cause of delay at this stage in the assessment process is obtaining clear feedback from State Agencies as well as finalisation and endorsement of associated Planning Agreements and / or Contributions Plan amendments and/or DCP amendments in parallel with planning proposals.

Do you think the public interest is a necessary consideration, or is it covered by the other proposed considerations? Yes, public interest is a crucial and necessary consideration.

Are there any additional matters that are relevant to determining whether a plan should be made? More often than not, complex proposals will concurrently involve the preparation and finalisation of planning agreements, contributions plan amendments and/or Development Control Plan provisions. These matters are integral to the future development of land as well as providing infrastructure and community benefits necessitated by a proposal. These additional matters should be factored into the process and timeframes proposed.

3. PART C – NEW APPEALS PATHWAY

I. Comments

Council does not support the implementation of an appeals pathway that circumvents the decision-making powers of Councillors. Referral to the Land and Environment Court (LEC) is seen as inappropriate as there are no historic dealings with the strategic merit test, the strategic planning framework has not been written with consideration for legal scrutiny, and finally the cost and time delays of court proceedings would undermine the purpose behind the proposed reforms. Appeal rights via the LEC would add an unnecessary level of complexity to the rezoning process and could lead to State and Local strategic plans being unravelled by legal considerations or interpretations that are handed down in the court.

It also has potentially to cause an undesirable balance in the planning system, whereby developers could circumvent local government as the key entity for determining local policy outcomes.

II. Response to Questions

Do you think public authorities (including councils) should have access to an appeal?

Yes but not through the LEC. The current local and regional planning panel systems are far better established and independent resource to assess and determine the strategic merits of planning matters.

Which of these options – the Land and Environment Court or the Independent Planning Commission (or other non-judicial body) – do you believe would be most appropriate?

Whilst the Independent Planning Commission is the preferred option out of the two presented, Council believes the Local Planning Panel (LPP) can adequately fulfil this role reducing cost and time delays.

4. PART D – IMPLEMENTATION

Comments

The purpose of the Discussion Paper is stated to be “to seek feedback on the concepts or principles of the new approach”. To ensure that future reforms are truly representative of the feedback gained, Council requests that all submissions be made public to allow councils the ability understand the viewpoints of all parties involved in the process. It is only through open and transparent engagement that true beneficial reform can be achieved.

If the overall objective of the reforms is the reduce timeframes for completion of proposals, then the greatest benefit and pathway to achieving this is for the DPE to facilitate and manage all state agency consultation on complex proposals particularly in relation to funding and provision of infrastructure. Many elements of the current system are worth retaining and can be slightly tweaked to improve efficiency and reduce costs.

If the lodgement, scoping, exhibition, assessment and finalisation of proposals is to be through the NSW Planning Portal, this system requires significant re-working to ensure efficient, accurate, transparent and timely management of proposals.

5. CONCLUSION

Council welcomes the opportunity to provide feedback on the proposed reforms however the time-frame allocated to review information, prepare a submission and gain the endorsement of Council was inadequate. Coupled with this is the overwhelming pressure being placed on Councils due to the stream of reforms currently being proposed which are all inter-related yet being dealt with separately.

Council acknowledges that there can be efficiencies made to current LEP amendment processes however there are many aspects of the current system that should be retained. Council does not support any reforms which further remove Councillors from the decision making processes that affect their local area and the communities they were duly elected to represent. Particularly, the following proposed reforms are **not supported**:

1. Removal of formal Council consideration of a proposal at the completion of the scoping stage;
2. Withdrawal of the Department from providing initial advice/endorsement on a proposal (particularly complex proposals) during the scoping stage.
3. Removal of the Local Planning Panel (LPP) referral system for complex proposals.
4. A refund pathway through a Planning Guarantee system.
5. An appeals pathway through the LEC;

The following reforms outlined in the Discussion Paper are considered to have merit and Council welcomes the opportunity to review and provide further feedback on more refined processes:

1. Formal recognition and integration of the up-front Scoping Stage for all proposals;
2. Establishment of a role/division of DPE which solely facilitates consultation with and advice from State agencies;
3. Consideration of specialised assessment groups within key agencies (e.g. TfNSW) who's role it is to coordinate feedback on complex planning proposals in the scoping stages;
4. Removal of the Department from the initial assessment/endorsement stage for proposals deemed to be basic or standard;
5. A standardised fee schedule for all categories of proposals. This should include an initial scoping fee which is paid up front. Further payment for exhibition/assessment and finalisation should not be received until Scoping stage is complete and there is an understanding of the merits of a proposal and likelihood of it proceeding or not. A staging of fees would eliminate the need for a Planning Guarantee system and would ensure that fees paid are commensurate for the level of work and assessment undertaken. Council's should also still be able to recoup costs for independent peer reviews of technical studies at this stage, where it does not have the necessary in-house expertise to undertake the assessment.

Council thanks the Department for the opportunity to provide such extensive feedback on the proposed reforms. In particular the ability to direct answers to specific questions within the Discussion Paper is considered beneficial. Council looks forward to being involved in further discussions and forums once there has been further refinement to the LEP amendment reforms being proposed.

Outcomes Committee



MINUTES

DATE OF MEETING: 08 March 2022

LOCATION: Council Chambers

TIME: 6.33pm

PRESENT:

His Worship Mayor Carbone (Chairperson).

Councillors Barkho, Karajcic, Le, Ly, Mijatovic and Rohan.

Also in Attendance were Councillors Barcha (arrived 6.54pm during Item 12), Lam (arrived 6.54pm during Item 12), Lazar (arrived 6.54pm during Item 12), Morvillo (arrived 6.51pm during Item 12), C Saliba (arrived 6.54pm during Item 12) and M Saliba (arrived 6.54pm during Item 12).

Also in attendance were the Acting City Manager (B Cutts) (arrived 6.51pm during Item 12), Director Community Outcomes, Acting Director Corporate Governance (A Bray) (arrived 6.51pm during Item 12), Group Manager City Strategic Planning, Group Manager City Resources and Chief Financial Officer, Group Manager City Development and Compliance Manager (arrived 6.51pm during Item 12), Manager Strategic Land Use Planning, Development Planning Coordinator, Manager Governance and Legal, ICT Operations and Infrastructure Manager, Telecommunication Specialist (T Le), Technical Support Officer (M Malik), Technical Support Officer (P Cordova) and Committee Clerk (P Violi).

The Group Manager City Assets and Operations (arrived 6.51pm during Item 12) attended remotely via audio-visual link.

WEBCAST ANNOUNCEMENT

In opening the meeting, the Chairperson advised that the meeting is being livestreamed on Council's website and all present should refrain from making any defamatory statements.

APOLOGIES AND REASONS ACCEPTED

There were no apologies tendered for this meeting.

REMOTE MEETING ATTENDANCE DECLARATIONS

The Chairperson confirmed that declarations were received from a Council Officer who was participating remotely via audio-visual link.

CONFIRMATION OF MINUTES

MOTION: (Le/Rohan)

That the Minutes of the meeting held on 08 February 2022 be noted.

CARRIED UNANIMOUSLY

SECTION A

'Matters referred to Council for its decision

- 13:** Submission to State Government Discussion Paper - Proposed Reforms to Rezoning Processes & Amendments to Local Environmental Plans
File Number: 22/02330

MOTION: (Le/Mijatovic)

That Council endorse the recommendations as outlined in the report on the proposed reforms to processes relating to the rezoning of land and amending Local Environmental Plans (LEPs) in NSW and, in particular, advise the State Government as follows:

1. Councils must continue to have a say in the early stages of the rezoning of land and LEP amendment process to ensure that the role of local government in representing the interests of local communities and setting local land use policy directions is maintained.
2. Fairfield City Council (FCC) does not support the introduction of an appeals system whereby applicants can challenge a council's refusal of a proposal for rezoning of land or LEP amendment in the NSW Land and Environment Court (L&EC).
3. The opportunity for councils to refer a rezoning application to a Local Planning Panel (LPP) in the early stages of assessment of an application must be retained.
4. Establishment of a specialist role/division within the NSW Department of Planning and Environment (DPE) which co-ordinates and manages stage agencies' consultation and feedback on complex proposals is supported.

CARRIED UNANIMOUSLY

CLOSURE

There being no further business, the meeting concluded at 7.07pm.

Chairperson

CONFIRMATION

These minutes were confirmed as a correct record of the proceedings at a meeting held on 08 March 2022.

Chairperson