



CUMBERLAND
CITY COUNCIL

14 March 2022

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

Dear Ms Wythes

SUBMISSION – NEW APPROACH TO REZONINGS

Thank you for the opportunity to comment on the Department of Planning and Environment's Discussion Paper: A new approach to rezonings. We attach our Council officer level submission for your consideration, and request that it is treated as confidential.

Over the past five years, Council has been working closely with the Department and the Greater Sydney Commission to develop and implement a new strategic planning framework for our local area based on the needs and aspirations of our community and aligned to the Central City District Plan. Cumberland's Local Strategic Planning Statement was endorsed by Council in November 2019 and the new Cumberland Local Environmental Plan was made in November 2021.

Council officers support in-principle the proposed approach to rezoning that aims to simplify the process and provides an approach similar to assessing a State significant development application. However, there are a number of areas that need refinement to ensure these reflect realities experienced by Councils and avoid unintended consequences under the proposed approach to rezonings. These are outlined in further detail in the attached submission.

Council is available to work with the Department in progressing the outcomes arising from the proposed approach to rezonings.

If you have any queries in relation to this matter, please contact Daniel Cavallo, Director Environment and Planning, on [REDACTED] or email [REDACTED]

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GENERAL MANAGER

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DISCUSSION PAPER: A NEW APPROACH TO REZONINGS

CUMBERLAND CITY COUNCIL SUBMISSION

Thank you for the opportunity to comment on the new approach to rezonings.

Council officers support in-principle the proposed approach to rezoning that aims to simplify the process and provides an approach similar to assessing a State significant development application. However, there are a number of areas that need refinement to ensure these reflect realities experienced by Councils and avoid unintended consequences under the proposed approach to rezonings.

Our responses to key aspects of the new approach are outlined below.

Council-led planning proposals

- Council-led planning proposals range from minor administrative LEP amendments to large-scale, highly complex proposals which are often highly political and involve significant changes to entire precincts, including key centres and corridors
- The proposed timeframes do not provide sufficient time for Council to further investigate certain matters in response to feedback from DPE and other government authorities/agencies. Often Council must engage external consultants to provide input and, given the scale/cost of the studies, this usually involves lengthy procurement processes.
- We recommend the benchmark timeframes therefore be revised to allow additional time to be provided for larger scale council-led proposals consistent with any detailed studies required for a gateway determination, or a stop the clock mechanism is made available throughout the process.

Scoping / pre-lodgement

- We support the upfront technical report requirements, similar to a SEARS, prior to lodgement and this aspect should be mandatory prior to lodgement of a planning proposal.
- We support the mandatory upfront scoping / pre-lodgement process to facilitate collaboration between the proponent, councils, and other government authorities/agencies to identify issues and submission requirements upfront.
- We note, however, that even if proponents attend pre-lodgement meetings, the quality and completeness of applications cannot be guaranteed. The type of proposals Council receives, especially if they are lodged directly to the Portal, is largely out of our control.
- We support early engagement with State Agencies and their requirements as part of the list of technical reports required for lodgement.
- DPE will need to confirm their level of involvement as part of this stage of the proposed approach. Should there be disagreement on the role of DPE for a

rezoning application, a mechanism to work through the issue needs to be included as part of the process.

Adequacy check

- Once formally lodged, Council has seven days to review a planning proposal and all supporting documents, including a range of detailed technical studies.
- We recommend extending the timeframe for Council officers to complete the adequacy check (14 days or more, depending on the number and complexity of studies and the need to consult internally and externally)
- We also request more time to request further information if required at this stage of the proposed approach.

Exhibition

- The proposed proponent led exhibition is not supported as it raises serious and obvious concerns about conflict of interest, confidentiality and transparency. Our preference is that exhibition is managed by Councils, consistent with the DA process.
- Under the proposed system, the proponent is responsible for exhibiting the planning proposal and supporting studies, seeking comments from the community and relevant public authorities, responding to submissions, and amending the proposal at their discretion.
- With the exception of undertaking the required technical studies and amending the planning proposal, community consultation by the developer with a direct conflict of interest is not supported and it should be Council's role as one of the consent authorities in the process.

Merit assessment

- We note that the approach to merit assessment is similar to that undertaken in the DA process.
- The proposed approach to rezonings is unclear on the role of the Local Planning Panel and the elected Council in considering the merit assessment. This needs to be clarified should the proposal progress.

Finalisation

- It is recommended that Parliamentary Counsel is given a benchmark timeframe to complete their part of the process (i.e. to prepare the draft legal instrument and issue an Opinion). In our experience, there is variability in this aspect of the process, which makes it difficult for DPE and Council to manage timeframes associated with planning proposals.

Proposals involving planning agreements

- We recommend that councils are given more time to finalise planning proposals that involve a planning agreement.
- If an LEP is made before the associated VPA is executed and registered on title, this presents a significant financial risk to Council and the community, including potential loss of required infrastructure and public benefits.

Appeal process

- The proposal to introduce an appeal process does little to promote local autonomy or certainty
- The current system of referring planning proposals to local planning panels for an independent assessment of planning merit at the beginning of the LEP making process works well. We do not need an appeals process on top of this.
- We have a fundamental issue with planning proposals being appealed to the Land and Environment Court. The reforms appear to change the accepted role of the court from applying the law to creating law/policy; however, this is the responsibility of government.
- We strongly object to the Court being given the power to set the policy direction/precedent for our local area.
- If DPE introduces an appeal process, we would prefer to see proposals be determined by the Independent Planning Commission as outlined in the information provided by DPE.
- If Council is the proponent, we would expect to be able to appeal an unsatisfactory decision by DPE, and for the matter to be considered and determined by Independent Planning Commission.

New categories

- There is a risk that Council and DPE will have differing views on which category to apply to a proposal. This needs to be clearly articulated in the scoping / pre-lodgement phase to avoid uncertainty during the process.
- Since DPE confirms the category after the lodgement fee is paid, there is a risk that council will need to seek additional fees or issue a partial refund, which is not only inefficient but also time consuming.

Information requests

- We do not agree with the proposal to limit or discourage information requests.
- Despite council's best efforts to identify and address issues early on in the process, there is a risk that further issues will come to light later in the process. Council needs the ability to request further information to ensure a thorough and informed assessment of a proposal's merits and potential impacts.

- Council's need the ability to stop the clock at various stages throughout the process to obtain information as required.
- In our experience, even when councils provide proponents with a clear and detailed information request, the information can take weeks or months to be submitted. Sometimes the information is inadequate and has to be revised and resubmitted, or not submitted at all.

Probity

- We do not believe it is necessary for an independent panel to determine a planning proposal if there is a potential conflict of interest involving a planning agreement or Council-owned land.
- In these instances, Council can use alternate approach, such as to engage consultants to prepare the planning proposal to ensure probity. The ability for alternate processes should also be identified if the proposed approach progresses to the next stage.

Fees

- The way that Council currently deal with fees and charges is working, where we apply a flat planning proposal fee based on the scale of the proposal and cost recovery for post Gateway studies.
- Under the proposed approach, Option 1 does not reflect the time and resources that go into managing planning proposals, and Options 2 and 3 would be difficult and time-consuming to administer.
- Should Council's current approach not be supported as part of the proposed approach to rezonings, a hybrid approach to fees (fixed and variable) should be mandated, to ensure that the costs attributable for Council to receive, assess and finalise planning proposals is covered.

Planning guarantee

- We do not support a framework that enables proponents to request a fee refund if a rezoning authority takes 'too long' to assess a rezoning application.
- In our experience, proposals that are aligned with our strategic planning framework and are likely to deliver good outcomes for our community and are the ones that are progressed in a timely manner. Cumberland City has progressed proponent-initiated planning proposals in an exemplary and timely over the pandemic period.
- It is usually speculative, unreasonable and insufficiently detailed proposals that take the excessive amounts of time to progress, because they tend to have the highest number of issues to be addressed along the way and Council needs to fund the studies or spend increased time on working through the issues.
- Quite often, time delays are out of Council's control; therefore, it is unreasonable for councils to be financially disadvantaged.

Planning proposal template

- We request that the planning proposal template it reviewed and updated to make it less repetitive.