

26 March 2022

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

Attention: Ms Wythes

Dear Ms Wythes,

Re: A new approach to rezonings in NSW

Thank you for the opportunity to comment on the proposed reforms to the rezoning process in NSW.

Council staff have consulted with our elected representatives via informal briefing and have listed the submission on the draft agenda for the Ordinary Meeting on 12 April 2022. Accordingly, please see Council's submission on the Discussion Paper, A New Approach to Rezoning below.

- 1. Pre-lodgement / scoping meeting and agency comments:** Although the current rezoning system already involves pre-lodgement processes, the practice of staff is to outline the process involved in determining whether a proposal has strategic and site specific merit. This is currently achieved via early advice from the Local Planning Panel, briefing of the elected Council and then a decision of the Council as to whether it will support the proposal and seek a Gateway Determination. Agency feedback is usually resolved as a condition of Gateway Determination.

The new approach appears to assume that staff are delegated to provide proponents early indications of application support. The specified one-week adequacy assessment stage is inadequate and would prevent the involvement of Councillors prior to exhibition. This is particularly concerning for very large proposals that would impact on the community and on local infrastructure provision. This would be particularly concerning for proposals that appear on the surface to not uphold or be consistent with the Council's strategic direction.

In the case of obtaining Agency comments, proponents struggle to access and obtain feedback from Agencies without an active application in the system. Concern is raised that councils should not be obligated to proceed with the scoping phase if Agency feedback is not provided. In this regard, it is recommended that DPE retain a role in coordinating this process.

Concern is also raised that the scoping stage excludes the role of Planning Agreements, Contribution Plan and DCP amendments. Negotiating and drafting of these documents can be a lengthy process, often involving legal advice and other professional services. In the case of planning agreements, offers should ideally be exhibited with a rezoning application and would require additional upfront time to be resolved. Councils generally also require

separate fees for consideration of these matters and there this must not be consolidated into the proposed fee structure.

Recommendation:

- a) The scoping stage be facilitated through the NSW Planning Portal to prompt DPE involvement, assist with State Agency submissions, ease council responsibilities for minute keeping, and ensure continuity of information and advice.
- b) Proponents should not commence the formal scoping phase with councils until all relevant Agency comments are received and consistency with relevant 9.1 directions resolved.
- c) The Department of Planning and Environment should maintain a role in mediating Agency feedback.
- d) Councillors should retain a role in the pre-lodgement process.
- e) The proposed fee structure should account for the additional level of assessment required to issue study requirements.
- f) Stop the clock provisions should be considered for this step.
- g) Clarify the role of Local Planning Panels in the process.
- h) Clarify the role of voluntary planning agreements, contributions plans and DCP amendments in the process.

2. Fee Structure

Council already has a fee structure that addresses the estimated cost recovery of low, medium and high complexity planning proposals. Councils also have the option under section 3.32 (3) of the Environmental Planning and Assessment Act 1979 to require an owner to carry out studies or pay the cost of the authority. On this basis, the Act already provides cost neutrality which is not referenced by the discussion paper.

Many councils also have policies in relation to the circumstances that refunds would be offered.

Councils do not currently recoup sufficient costs to employ staff for development applications and are stretched in resourcing existing assessments. The introduction of a fee structure within the Act and Regulations would potentially reduce the capacity of councils to assess rezoning applications and provide increased incentive for applicants to make spurious applications.

Recommendation:

- a) That councils maintain responsibility for the setting of fees and charges for rezoning applications under the Local Government Act 1993.

3. New Roles for Council, DPE and Proponents

Department of Planning and Environment (DPE): Concern is raised that removal of the Gateway process would potentially leave applicants with a refusal from the DPE at the final plan making stage, and after much expense and time has been incurred by the proponent. DPE could add value to the scoping stage by coordinating agency feedback and mediating outcomes that involve competing priorities.

Councillors: As part of the reforms to implement local planning panels, the NSW Government removed the role of the elected Council from the DA process, but strengthened the role of elected Council in the strategic planning framework which Council has responded too. The proposed reforms would remove the opportunity for Councillors to be involved in the strategic merit assessment stage, and potentially result in elected councillors becoming aware of an exhibition at the same time as their constituents.

This is seen to be a further erosion of the power of the elected Council, and their power as the representative of their communities.

Proponent: Concern is raised with limiting rezoning applications to land owned or by consent of the owner. This has the potential to further encourage spot rezoning and would not allow Council opportunity, as it currently does, to consider expanding a rezoning proposal to a more appropriate scale to encourage orderly development. This would also increase the resourcing requirements of a Council in attending to spot rezoning applications, while trying to meet the fixed rezoning process timeframes.

Council staff: Concern is raised that staff would be empowered to approve justifiable inconsistencies with Section 9.1 directions in some circumstances. This role should remain with the DPE to resolve with agencies prior to lodgement and drafting of scoping advice. Rezoning does not guarantee that development consent can be issued, especially in circumstances that require concurrence from Agencies.

Recommendation:

- a) That DPE retain a role in the scoping stage to coordinate Agency responses and advice on Section 9.1 Directions.
- b) Sufficient time is required for Councillor involvement and should be a mandatory step prior to lodgement, and drafting of scoping requirements.

4. Benchmark Timeframes

The current process of lodging planning proposals on the NSW Planning Portal is generally supported.

However, 7 days is not sufficient for councils to confirm that study requirements have been met. Strategic planning staff are not usually engaged in daily portal duty due to infrequent volumes and could not be managed in the same way that development applications are lodged. Should planning proposals be treated in the same way as development applications, there is a high risk that documentation exhibited would be inadequate and may need to substantially change after exhibition.

The discussion paper does not address the process of amendment, re-exhibition and the applicable fees should this occur.

Inadequate assessment prior to exhibition could lead to exhibited rezoning applications being refused at the assessment / finalisation stage. The airing of such proposals to the community without sufficient assessment and engagement of elected representatives may also generate unnecessary community engagement and distrust.

Following exhibition, the new approach requires the proponent to summarise and respond to submissions received, including working with Agencies to resolve objections. This role must remain the responsibility of councils to maintain a separation of roles and independence.

Recommendation:

- a) Substantially increase the time for adequacy assessment at lodgement and prior to exhibition.
- b) Similar to development applications, introduce a fee regime for modifications and re-exhibition.
- c) Introduce stop the clock provisions for Requests for Information.

5. Planning Guarantee

The proposed fee refund for rezoning applications that “take too long” is not supported and may result in undesirable outcomes. For rezoning applications that generally meet strategic and site-specific merit considerations, staff often spend significant time with applicants to resolve issues which lead to better outcomes.

Well considered planning outcomes are rarely achieved when the importance of a timed KPI is put before the importance of achieving quality outcomes, managed in collaboration with the proponent over a timeframe commensurate with the scale of the rezoning proposal.

Also, unlike DAs, rezoning applications cannot include conditions that require issues to be resolved prior operation of any future consent, or CC / SWC stages. Therefore, if councils are held to strict timeframes that don't allow for cooperation and mediated outcomes, further time would be lost to refusals, re-lodgement and re-exhibition that lengthen the overall time and increase community dissatisfaction with the process.

Recommendation:

- a) That the planning guarantee not proceed or be further amended to account for the reasons of delay.

6. Appeal Pathways

Concern is raised that referral of matters to the Land and Environment Court (LEC) would result in gross wastage of Council resources in defending matters on the grounds of strategic and site specific merit. The role of the Court is not to draft or make strategic or policy recommendations/decisions on behalf of a community, nor should it have the power to craft the strategic future of a Local Government Area, in lieu of the desires of elected Council.

This role would be better retained via the exiting Regional Planning Panels, who are already involved in this process. There may be scope for the Independent Planning Commission for matters of state significance.

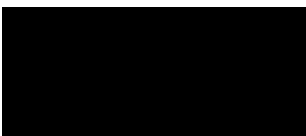
Recommendation:

- a) The existing role of the Sydney Region Planning Panels remain in regards to appeals.

In summary, although some aspects of the reform have merit, concern is raised that a return to applicant driven rezoning applications would involve a return to the former system, prior to the Gateway Authorisation process (circa early 2000s), that significantly increased the upfront cost of making a rezoning application.

Should you require clarification of any aspect of this request, please do not hesitate to contact Mr Jim Baldwin, Director City Development on [REDACTED].

Yours sincerely,



Lindy Deitz
General Manager