



THE HILLS
Sydney's Garden Shire

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

Our Ref: FP85

Via the NSW Planning Portal online submission form.

Dear Ms Wythes,

SUBMISSION TO 'A NEW APPROACH TO REZONINGS'

Thank you for the opportunity to make a submission on the discussion paper 'A new approach to rezonings' released by the Department of Planning and Environment.

The Hills Shire Council is extremely concerned about the proposed changes to the role of Councils in the rezoning process and strongly objects to the proposed reforms as exhibited. The Hills Shire Council considered a report on the discussion paper at its meeting on 22 February 2022 and resolved to make this submission and urge the Minister to reconsider the new approach to rezonings and/or abandon the proposed changes. A copy of the Council report and resolution is attached to this letter and forms part of the submission (refer to Attachment 1).

The discussion paper is framed in the context of the reforms making the system 'plan-led'. That is, the basis for all decision making regarding potential land-use change is strategic planning and strategic planning will be strengthened in the planning legislation, with emphasis on place-based planning. There is an explanation of how strategic planning informs various documents prepared by State and Local Governments and ultimately is implemented through State Environmental Planning Policies (SEPP), Local Environmental Plans (LEP) and Development Control Plans (DCP). While this principal is supported in theory, the remainder of the paper does not clearly explain how the proposed reforms will ensure that the rezoning process is 'plan-led' and place-based, with its foundation in strategic planning. Strategic precinct planning is a critical component of the planning system and 'place-based' planning is increasingly being referred to in policies released by DPE, many of which would concurrently reduce the opportunity for Councils and the community to make autonomous and 'place-based' planning decisions. Further information is needed to explain how the reforms will actually lead to 'plan-led', place-based, strategic planning outcomes and what legislative changes are proposed to strengthen strategic planning in the system and retain (not diminish) the ability for Councils to make decisions in the interest of the local communities they represent.

Resourcing strategic planning work is a major concern for Council and significant, specialist resources are required to undertake this work. A barrier currently being experienced in The Hills, is in relation to precinct planning for strategic centres around Sydney Metro Northwest stations, where strategic transport modelling for Sydney Metro Northwest corridor is only now being undertaken (yet to be completed) to determine growth capacities and infrastructure upgrades

required, some 10 years after the Government released its strategy to significantly increase development yields within these areas. Government has failed to appropriately plan for the growth identified in their own strategies since 2013 and as a result, the precinct planning Council is currently undertaking is held back, as traffic and transport information is still not available to support the plans and Council's responsible decision-making. This has led to a number of site-specific planning proposals being lodged where developers are quite reasonably trying to capitalize on the investment in the Sydney Metro Northwest, which takes substantial resources away from Council's core strategic planning work and diverts these into ad-hoc site-specific planning proposals.

The discussion paper notes that the economic benefits of an efficient and consistent rezoning process should not be underestimated. However, in the context of The Hills, where Council's long-term and established strategic policy directions and planning settings are delivering the housing to meet and exceed its targets, Proponent-initiated proposals are not needed to deliver housing supply and encourage investment. Instead they are most often the pathway pursued by developers seeking approval for outcomes which are not in alignment with prevailing strategic policies, in order to increase the value of land. Concern is raised that the proposed reforms will not materially reduce the incentive for such speculative proposals and that further consideration should be given to the right balance between the short-term economic benefits of rezonings and the long-term and proper orderly planning of an area.

Further responses to each of the key areas and questions within the Department's discussion paper are provided below.

Part A: Background Summary of Framework

Is this a fair summary of some of the issues within the current framework? Are there any other problems you think we need to address?

There is a need to acknowledge the diversity in rezoning applications. For example, one rezoning application may simply allow one additional storey on a building, whilst another could facilitate an entire suburb being created. These two rezonings are vastly different in terms of scale, scope and outcome, and yet undergo the same process to come to fruition. There may be difficulties in seeking to establish a single process to facilitate such vastly different outcomes and applications, resulting in a process that is not of maximum efficiency for either. It will potentially overlook key considerations of the more complex rezoning, or have onerous requirements for more simple rezonings.

The issues regarding transparency and trust when communities see a decision of Council overturned through a Rezoning Review are noted. The community angst, mistrust and concern that is caused by this process should not be underestimated and there should be reconsideration of the Rezoning Review process altogether, if the new system is truly intended to strengthen place-based decision-making and outcomes.

Part B: The new approach New Categories and Timeframes

The new categories of rezonings highlight the diversity in rezoning applications and as stated above, there are difficulties with having a single process for each of these rezoning categories. Further information is needed to assist in determining which category a rezoning will be, as the current wording will likely lead to frequent disagreements between Proponents and Councils as to which category is accurate (and as a result, which timeframes and fees are applicable).

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

Ultimately, the proposed reforms would excise a number of steps out of the current planning

proposal process and simply “front-load” these such that they occur prior to the formal lodgment of a planning proposal. Accordingly, Councils and Proponents will still need to input significant time and resources at these very early stages prior to lodgment and while it may lead to statistics which indicate increased efficiencies and reduced timeframes (when measured from the point of formal lodgment of a proposal), it is unlikely that this will materially speed-up the rezoning system as experienced by a Council or Proponent.

The benchmark timeframes are difficult to compare to the current timeframes of rezonings, because the process would be so significantly altered. Notwithstanding, the proposed benchmark timeframes are extremely short compared to the average time for completing a planning proposal. For example, based on Council’s records from 2018 onwards, a ‘standard’ category Proponent-initiated planning proposal takes 679 days (97 weeks) on average to be completed. In comparison, the new DPE Guideline benchmark timeframe for a standard proposal is 320 days (45 weeks) and in the exhibited discussion paper proposed to further reduce this to 259 days (37 weeks). It has been Council’s experience that only the most straightforward proposals are able to be completed in a timeframe which is close to the benchmark timeframes.

A majority of rezonings are not simple and straightforward and this, in part, is why Proponents are forced to seek such development outcomes through a planning proposal process, as opposed to any other pathway within the system. Delays in the current process often occur when Proponents are advised of concerns or issues with their proposal, leading to repeated attempts by Proponents to amend the proposal to address issues. Delays are also often the result of concurrent (but necessary) consideration of associated Voluntary Planning Agreements and Development Control Plan amendments. Currently, the negotiations and revisions that occur during these delays will most often result in a superior planning outcome (in many cases, are the difference between a proposal being suitable to proceed or not). The revised process would not provide any opportunity for Proponent’s to revise proposals materially once submitted. The financial penalties and triggers for appeal rights would force Councils into being extremely rigid in their assessment of rezoning applications and determining all proposals based on the application as initially submitted. There would be no scope for negotiation of outcomes between Council and Proponents or the submission of revised applications.

In summary, while there is undoubtedly a need to increase the efficiency of the system (especially with respect to certain parts of the system such as public agency consultation timeframes, timeframes for the issue of Gateway Determinations and timeframes for finalisation of proposals), an over-emphasis on timeframes could ultimately lead to inadequate time to properly consider and resolve the complex planning issues often associated with planning proposals (many of which have wider-reaching policy implications). This, in turn, will likely drive either an inability to meet said timeframes, a need to accept sub-optimal planning and infrastructure outcomes or an increase in ‘negative’ decisions by planning authorities which have not been afforded the time to work with a Proponent to resolve issues.

New Roles

What do you think about giving councils greater autonomy over rezoning decisions?

Council would welcome additional control over rezonings, however the resourcing implications of having this role are potentially significant and it is uncertain whether the proposed reforms would actually achieve this objective. The proposed fee structure and resourcing implications are discussed further below. The proposed role of Council is concerning, as it appears that while Council may have increased autonomy over some types of rezonings, for many other types of rezonings Council will actually be further removed from the process and potentially relegated to a consultative role, rather than a determinative one.

What additional support could we give councils to enable high-quality and efficient rezoning decisions?

The Hills Shire Council progresses rezonings as efficiently as possible. It is noted that the major delays to planning proposals in recent years have actually arisen as a result of State Government actions, not Council or Proponents. This includes the additional requirement for rezonings to be considered by the Local Planning Panel prior to a Council decision, the time taken for public agency consultation to occur and delays at the finalisation stage (including resolution of Government agency concerns and decisions of Parliamentary Counsel and the Department's Legal Branch which result in draft legal instruments that don't align with the intent and objectives of the subject planning proposal). In Council's experience, the majority of delays and inefficiencies with the current system could be resolved through focusing on the role and performance of various Government Departments.

As mentioned above, the other main cause of delay in the process is when Proponents submit multiple revisions of rezonings as a result of feedback from Council officers or public authorities. In many instances, the ability for Proponents to adjust their proposals in response to this ultimately results in a superior planning outcome, however this is obviously at the expense of the time it takes for Proponents to amend their rezonings to the satisfaction of Council or the public authority. There needs to be a balance between ensuring high quality outcomes are delivered in an appropriate timeframe, rather than focusing on timeframes so strongly.

What changes can be made to the department's role and processes to improve the assessment and determination of council-led rezonings?

The Hills Shire Council's concerns with Council initiated rezonings relate to DPE or public agencies identifying issues very late in the process, to the point where they are not able to be resolved without significant investment or alterations to the rezoning. In some instances, DPE has issued Gateway Determinations, only to raise new issues at the finalisation stage which have led to proposals not being finalised post exhibition or alternatively, being finalised in a form which doesn't align with the proposal endorsed by Council.

Other issues relate to the inflexibility of the Standard Instrument LEP, where a simple and efficient solution could not be reached because the rigid nature of the Standard Instrument did not facilitate place-based outcomes and needed to be changed.

Is there enough supervision of the rezoning process? What else could we do to minimise the risk of corruption and encourage good decision-making?

There is adequate 'supervision' of the rezoning process with minimal risk of corruption.

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?

The proposed split of rezonings determined by Council versus the Minister/DPE indicates that Councils involvement in certain types of rezonings will be limited. There is significant concern regarding the role of Government in proposals initiated by public authorities, where state significant Development Applications are lodged, rezoning applications to amend a SEPP and those that are state or regionally significant.

Public authorities often develop infrastructure that has significant implications for local planning and impacts on local residents. It is not clear what Council's role will be in the assessment of rezonings by public authorities but it is implied that Council will have a reduced role in this process, which is not appropriate.

There is significant concern regarding the ability of a developer to not only progress a rezoning but also a state significant development application through DPE without having any kind of oversight from Council. While some developments are able to progress via the state significant development application path, this is where the planning framework set by Council already enables this to occur.

It is not appropriate that a developer could bypass Council altogether and seek both new planning controls and State Significant Development consent concurrently from the Government.

With respect to DPE being the authority for amending a SEPP, there is concern that rezoning on land covered by the Growth Centres SEPP will only be progressed by DPE and not by Council. The Growth Centres SEPP operates very similarly to an LEP for large and important development areas within the Shire (in particular, North Kellyville and Box Hill Precincts). It is inappropriate that Council would not have the ability to manage land uses and development control in these area as it does for the remainder of the Hills Shire Council area. Furthermore, given Government's separation from the day-to-day implementation of the Growth Centres SEPP, there have been a number of recent amendments to the Growth Centres SEPP made by Government that have caused issues, as DPE have not understood the implications or properly consulted with the affected Councils or landowners.

In particular, DPE's long-standing lack of action in updating the Growth Centres SEPP to match the Standard Instrument land use terms recently lead to a rapid amendment of the dictionary and land use terms in the SEPP (without consultation with affected Councils), which has impacted on permissible/prohibited uses in certain land use zones. Furthermore, the lack of progress on rectifying 'density band' issues within Growth Centre precincts has resulted in insufficient infrastructure being provided in the Growth Centres. These issues have led to Council having a lack of confidence in DPE's ability to appropriately manage the Growth Centres SEPP environmental planning instrument and Council strongly objects to no longer being the authority to progress planning proposals for these areas.

Section 9.1 Directions

Should councils be able to approve inconsistencies with certain s. 9.1 directions? If so, in what circumstances would this be appropriate?

There may be circumstances where it is appropriate for Councils to be able to approve inconsistencies with some s.9.1 directions, especially where the inconsistency is minor. However if this role was to be delegated to Councils the circumstances upon which Council could exercise this delegation would need to be clearly articulated.

State Agencies

Is it enough to have agencies involved in scoping and to give them the opportunity to make a submission during exhibition?

A key issue with the current process is that public agencies often provide feedback after a Gateway determination is issued (and in many cases, after the completion of the public exhibition period), which is too late in the process for their views to be appropriately considered by Proponents. The involvement of agencies in the scoping phase of a proposal would be beneficial to establish the requirements of agencies upfront. There is concern that, as with the Hills experience on the Sydney Metro Norwest, some agencies are unable to clearly articulate their requirements or alternatively, may change their requirements part way through an assessment due to changing policy positions or staff turnover. If this occurs in the new process, it will cause significant delays, as Proponents try to change proposals to comply with agency requirements, or alternatively, necessary infrastructure will not be provided to support future development.

Do you think it would be beneficial to have a central body that co-ordinates agency involvement?

It would be beneficial to have a central way to communicate with agencies, coordinate their involvement, ensure they meet relevant timeframes and undertake a quality and/or consistency check on the comments that are being provided.

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?

In some circumstances there will be difficulties, especially where progression of a proposal is dependent on the comments from an agency (for example, RFS comments where there is severe bushfire threat, TfNSW comments where there is potentially a traffic and transport infrastructure shortfall). The views of these agencies are required to be included in the planning proposal and considered by Council in assessing the application. These views are often important in enabling a planning authority to make a fully informed and proper decision. This is not possible without the views of agencies.

Scoping

The 'scoping' phase appears to be similar to the original intent of the Gateway process when it was first implemented, being to require only minimal information to determine the merit of the proposal prior to receiving the Gateway determination and then preparing the more detailed studies. However, the Gateway process has in practice evolved into a much more formal consideration of a proposal – effectively akin to a 'green/amber/red light' view of the proposal as a whole. There are concerns that the scoping phase, including the indication that Council officers need to provide an indication of whether a proposal has merit (without actually having assessed the full proposal), will similarly evolve to have similar weight and become the new 'traffic light', with even less information provided by Proponents upfront, especially if Council officers are required to give a written view on whether or not a proposal has merit. Council officers will naturally adopt an extremely conservative approach when providing scoping comments, as they will be required to provide such advice without all the detailed information in front of them to make an assessment and properly determine merit at this time.

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? Or should all proponents have the opportunity to submit a fully formed proposal for exhibition and assessment?

Councils should have the ability to refuse study requirements if a proposal is inconsistent with the strategic framework, or if Council is unable to progress a rezoning. To allow a Proponent to prepare an application that is not able to be supported would be a waste of time and resources. It is likely that if a rezoning that is clearly inconsistent with the strategic framework is lodged, this would be with the intent of utilising the appeal process, further consuming time and resources. The ability to not issue study requirements would be a strong message to the development industry that only proposals that are consistent with the strategic framework will be considered.

However, there are some concerns with this, as this would be akin to a "not proceed" decision and would be made without any detailed assessment of a proposal and importantly, without any input from the elected Council who is ultimately responsible for determining rezoning proposals. The timeframes do not allow Council officers time to complete an assessment to balance the competing priorities in the strategic framework, or provide a report to the elected Council to consider these competing priorities and the best way to implement the local strategic plans. This may lead to a process which lacks transparency and excises the elected Council from the decision-making process.

Lodgement

The "Lodgement" phase timeframe is highly unrealistic. Allowing only 1 week for both lodgement and adequacy assessment prior to exhibition does not account for the specialist reviews of technical studies and other supporting information to determine adequacy. Planning proposal applications are often not accompanied by complete or reliable assessment information at the time of lodgement, which results in the requests for further or amended information during the assessment process. The process outlined in this discussion paper will result in extreme pressure

on Councils to undertake adequacy checks in very short periods of time and will likely lead to Councils rejecting many applications on the basis of inadequacy of information.

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?

There are clear benefits to enabling the Council to make a decision on strategic and site specific merit prior to public exhibition occurring. These include the community being spared the angst and concern associated with speculative proposals (or those that clearly don't align with the framework) and/or fatigue associated with frequent exhibitions on planning matters which may or may not come to fruition (ultimately leading to confusion and frustration with the planning system). It also provides time for Council to ensure the information provided is sufficient for exhibition so that the community can appropriately understand and comment on a proposal. It is also unclear how amended proposals will be dealt with in terms of exhibition, what will warrant re-exhibition of a proposal and who makes that decision.

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

The removal of a merit assessment before exhibition is particularly concerning, given the strategic merit test is the first and foremost lens through which all planning proposal applications should be viewed. A rezoning application is seeking to change the planning framework within which development occurs and progressing an application that is unable to satisfy the strategic merit test through any portion of the process is a waste of time and resources and will cause community angst and distrust.

It also appears illogical, as prior to exhibition (in the scoping phase) Council officers would supposedly already be required to indicate whether a proposal has strategic or site specific merit, without undertaking a full detailed assessment. It would be very difficult to provide advice on merit upfront, without the necessary information, and then potentially change this advice upon receipt of the further information. This will further breed distrust between Councils, the community and the development industry, with many questioning why a proposal that has been found not to have strategic or site specific merit is progressing through a planning process.

Will it save time or money to move all assessment to the end of the process? Should the public have the opportunity to comment on a rezoning application before it is assessed?

It appears illogical to progress a rezoning to the point of public exhibition when it has not yet been assessed. Rezoning is changing the local planning framework and should have support of the local Council and have clearly passed the strategic and site specific merit test before being presented to the community for views. It is unlikely to save developers time or money, as they will still need to provide the same information, consultant reports and fees that they currently do and will potentially need to progress through more of the planning proposal process (and expend more resources) before being able to obtain a decision from a planning authority. This is in contrast to a system whereby developers can receive a clear and early decision from a planning authority (being an elected Council) and therefore make informed investment decisions.

Exhibition

What other opportunities are there to engage the community in strategic planning in a meaningful and accessible way?

Strategic planning is a challenging subject to engage with the community on, as the discussion often covers intangible elements and development that will not occur for quite some time into the future. Further, the community that we engage with now, may not be the community that will utilise the spaces we are creating through strategic plans. This, in part, is why Council is tasked with making decisions on these matters on behalf of the community (albeit with the community's input where appropriate).

Key factors to consider when engaging on strategic matters are to keep the documentation simple, clear and easily communicable, with as much tangible information in it as possible. Some technology is often helpful to explain outcomes in a visual way, however videos/3D models can be expensive to prepare.

Do you have any suggestions on how we could streamline or automate the exhibition process further?

It is clear that the NSW Planning Portal is the intended method for communicating to the public and exhibiting rezonings. The Planning Portal is far from ideal for the exhibition process. It is difficult to navigate and not user friendly. It will alienate members of the community who are less computer literate or who do not have time to read the large volumes of documentation to understand what is proposed in their neighbourhood.

Council's process for exhibition includes hard copies of exhibition material at the Council administration centre, in addition to the online presence (Council's website, LinkedIn, Facebook, Instagram, Have Your Say page), to cater for those community members who are less computer literate. In addition, Council's exhibition process also includes directly notifying nearby landowners and residents of a site specific rezoning, to allow them to participate in processes that will tangibly affect them. A Council officer contact person with a direct phone number (rather than a generic email address) is provided for community members to contact if they have enquiries.

It is not clear how this level of engagement and availability could be undertaken through the NSW Planning Portal. It is not clear if there is an expectation that Council would facilitate the exhibition process. Further, it is suggested that Proponent's may be responsible for the community consultation phase. Would they be required to respond to enquiries and how would it be guaranteed that this is completed in a balanced and fair way. Further, if directly notification of affected residents is to occur, landowner information would need to be released to DPE or to a Proponent, which is not appropriate.

The exhibition of a rezoning, with the level of community engagement currently undertaken, before Council officers have assessed a proposal and before the elected Council has had any opportunity to make a decision, would likely seem as though Council is supportive of a rezoning (as is currently the case in the current system).

If the reforms are to proceed, the exhibition process should require Proponents to provide plain English, simple summaries of rezonings, with labelled, clear images of the site and the impacts on nearby properties and images of what is proposed in an easily accessible format. Further clarification is needed on the roles of Council and the Proponent for exhibitions.

Changes After Exhibition

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?

The assessment 'clock' with the penalties described later in the discussion paper will force Council into being extremely rigid in its assessment of rezoning applications and determining all proposals based on the application as initially submitted. There would be no scope for negotiation of outcomes between Council and Proponents or the submission of revised applications. This may not provide the flexibility needed to achieve the best planning outcomes and would likely lead to an increase in 'negative' determinations in the short term. This would not necessarily be in the interests of optimal planning outcomes for the community, Council, Government or developers.

If an assessment clock is introduced, it should not start until the assessment authority is satisfied that all the information needed to undertake an assessment is provided. The final submission is the

first time Council officers will have viewed the complete rezoning application. There may be differences to a proposal in comparison to versions presented during any earlier scoping phase and it is not reasonable for Council to determine if all necessary information is there during the assessment clock timeframe.

Information Requests

Do you think requests for more information should be allowed?

Under the current framework Councils utilise requests for more information to raise issues and deficiencies with Proponents, and enable for submission of additional supporting information and revised proposals. If these requests are not allowed, then Councils would be required to assess and determine each proposal exactly as submitted, without scope for additional supporting information or revision by a Proponent. As detailed above, this may lead to faster assessment times, but ultimately less optimal planning outcomes and a likely increase in 'negative' determinations of applications.

The opportunity for requests for further information could be beneficial in certain circumstances, but if allowed, should not count toward the assessment clock for Council.

Assessment and Finalisation

There is very little information provided with respect to the obligations of the assessment authority during the assessment stage. In particular, clarification is sought on whether a rezoning is still required to be considered by the Local Planning Panel for advice before consideration by Council. It is also noted that under the draft Design and Places SEPP there will be a requirement for some rezonings to be considered by a Design Review Panel and clarification is sought on when in the process this is to occur and how the associated timeframes (and lead-in times) will be managed.

There is no indication of when an associated draft Development Control Plan would be considered with a rezoning application. Given the scale and scope of changes proposed in many rezonings, revised development controls (such as setbacks, landscaping requirements, car parking requirements, access arrangements, solar access etc.) are also necessary to ensure the most appropriate outcomes are achieved on the site and are often critical factors in determining whether or not site specific merit can be demonstrated. It is not clear how this will fit into the process.

Further, there is no indication of how a revision to a Contributions Plan or a Voluntary Planning Agreement can be considered in association with a rezoning. The reforms to the contributions framework that have recently been exhibited clearly recognise the importance of proper infrastructure considerations as a critical consideration in setting the planning framework and should be considered as early in the process as possible. This is reinforced by reference to historical planning decisions of Government where progression of rezonings without proper infrastructure consideration and resolution of contributions mechanism has led to significant issues and delays in the actual roll-out of development. This separate set of reforms being concurrently worked through by the Department is at odds with the revised rezoning process, which barely mentions infrastructure considerations, fails to indicate when in the process any infrastructure considerations will occur and does not provide timeframes that will allow infrastructure solutions to be put in place.

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?

The assessment process should ensure there is proper consideration of the rezoning in terms of the strategic framework, site specific outcomes, infrastructure capacity and the public interest. In many instances this requires the views of specialists and public authorities, to balance the competing priorities in the strategic framework. This is not a 'tick a box' exercise and requires

deliberate consideration and analysis of all the various outcomes sought in the strategic plans and what is best for each site, neighbourhood and precinct.

The finalisation process could be improved by ensuring that the legal drafting of SEPP and LEP amendments is simple and in plain English. The process needs to be clear that the role of legal drafting is to enact the planning intent of an endorsed planning proposal and that the role of Parliamentary Counsel and/or the Department's legal branch is to give legal effect to the planning outcomes that have already been determined, not to provide planning advice or a view regarding the planning merit of a proposal at this final stage of the process. Council has unfortunately experienced significant delays with proposals in the past where the legal drafting phase, which should be straightforward for Council, has been drawn out on account of parliamentary counsel or the Department raising perceived planning issues with a proposal (despite these not being raised at the appropriate times in the process, such as the Gateway assessment and determination).

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

The public interest is a critical and necessary consideration, as it is required to be considered with any future development application. A rezoning should meet the test for the public interest in order to facilitate a future development application.

Are there any additional matters that are relevant to determining whether a plan should be made?

The capacity of a location to service a development with infrastructure should be at the forefront of the consideration of a proposal. Under the current process, proper consideration of infrastructure provision is often left to the end of the process, resulting in extended timeframes and delays while agencies, Councils and Proponent attempt to negotiate and resolve the issues. A rezoning should not progress past the initial stages if infrastructure provision cannot be resolved and the ability for a proposal to be adequately serviced by infrastructure (as well as make fair and reasonable contributions towards future provisions) should be a more prominent component of the strategic merit test, rather than a matter that is deferred to resolution later in the process.

Conflicts of Interest

Do you think a body other than the council (such as a panel) should determine rezoning applications where there is a VPA?

No, a VPA is a legitimate mechanism to capture contributions when a developer is seeking to rezone land which will increase demand for infrastructure. This is not a conflict of interest, it is a legitimate way for a Developer to provide infrastructure to support unanticipated demand that is not accounted for in Contributions Plans. The contributions framework does not allow a Council to factor in any surplus capacity in a contribution plan to meet the needs of potential rezoning applications and as such, they will never have capacity for additional demand created through a rezoning application. As an alternative to VPAs, Council's would need to prepare amendments to existing contributions plans or a new contributions plan in association with every planning proposal, which will likely take longer and more resources than negotiating a Voluntary Planning Agreement.

Furthermore, if a Voluntary Planning Agreement is the mechanism through which a developer can demonstrate resolution of infrastructure issues associated with a proposal, it is necessary that the same authority is responsible for determining both the VPA and planning proposal concurrently. For example, if Council was to determine not to enter into a VPA associated with a planning proposal, that would by association leave any alternate determining body unable to progress with a planning proposal in isolation (as there would not be an infrastructure solution in place and the alternate bodies do not have the authority to enter into VPAs on behalf of Council).

Where a council has a conflict of interest, should a rezoning application be determined by the local planning panel (as proposed), or should the department take full responsibility for the assessment and determination of the rezoning application?

The discussion paper is not clear on how or why the Council would have a conflict of interest in dealing with a proposal, especially in the context of VPAs. Councils are generally best placed to be responsible for assessment and determination of rezoning applications, as they also have the ability and authority to resolve concurrently deal with all other supporting mechanisms that often go alongside such proposals (such as Development Control Plan amendments and Voluntary Planning Agreements for example). If an alternate authority was to be responsible for determining rezoning applications, how would any associated instruments and agreements (which are often critical to the strategic and site specific merit of a proposal) be progressed and how would the views of local Council and the community be factored into the decision-making process.

New Fee Structure

Do we need a consistent structure for rezoning authority fees for rezoning applications?

There is a substantial variation in the types of rezonings and work required to assess each application. It is difficult to determine a standard fee structure, as the work required to assess a proposal is not always clear upfront. It is dependent on a number of factors, including the quality of the information provided, amount of information provided, complexity of technical and strategic issues and the timeliness of agency responses. Council's should retain discretion to set the rezoning fees accordingly based on the types and scale of proposals received in their Local Government Area and the level of resources deemed necessary to properly assess and determine each proposal.

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?

If a standard fee structure is to be imposed, some suggested components include:

1. Fees for the scoping phase, agency consultation;
2. Fees for internal referrals to Council staff;
3. Fees for engaging consultants to peer review supporting studies;
4. Fees for consideration of the matters by an LPP and/or DRP;
5. Fees for the planning assessment and report preparation;
6. Fees for administration;
7. Fees for exhibition and notification;
8. Fees for assessing, reporting and exhibiting Contributions Plan amendments or VPAs;
9. Fees for assessing, reporting and exhibiting Development Control Plan amendments; and
10. Fees for the preparation of necessary reports for consideration by the elected Council.

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?

As discussed above, Council should be able to determine and charge appropriate fees and achieve cost recovery without a large administrative burden. These costs will vary by Local Government Area based on the type and scope of proposals received. Any fee structure should be limited to identifying what, how and when fees can be charged. It should *not* establish a fee schedule.

What is your feedback about the 3 options presented above?

These options are extremely vague and it is difficult to provide meaningful feedback. Further information is needed with respect to the fee structure in order to appropriately consider the implications for Council.

Should fee refunds be available if a proponent decides not to progress a rezoning application? If so, what refund terms should apply? What should not be refunded?

No, if Council has undertaken work and applied resources to a proposal, there should not be a refund, even if the Proponent chooses to withdraw. Council has used resources to progress the application and should be able to recover its cost. The community and Council should not be penalised for a Proponent's commercial decisions around lodgement or withdrawal of proposals.

Planning Guarantee

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?

No, Councils have indicated that resourcing is a critical issue in the timely progression of assessing rezoning applications and undertaking strategic planning. If Councils are required to issue refunds for rezonings that are still requiring assessment, this will further deplete Council resources and reduce the time available to undertake strategic planning. It is noted that this was not considered necessary for the assessment of Development Applications and therefore would be inappropriate to impose on rezonings.

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?

If further information is required or other matters that are outside the assessment authorities control are causing delays, then stop the clock would be beneficial. However, the imposition of a 'clock' with financial penalties is not supported.

If not, what other measures could encourage authorities to process rezoning applications promptly?

Strong objection is raised to the premise of this question and the "planning guarantee" – namely, that Councils are the party responsible for delays to the process. In the Hills Shire Council experience, the largest delays in the current process occur in association with State Government involvement (public agency consultation, legal drafting and finalisation processes) or alternatively, when Proponents are advised of concerns or issues with their proposal and provided with opportunity to submit further justification or revisions. With respect to the latter, the negotiations and revisions that occur during these delays will most often result in a superior planning outcome (and in many cases, are the difference between a proposal being suitable to proceed or not).

It is suggested that prior to large-scale reform of the system, Government may consider a less drastic set of reforms which simply isolate and reduce the delays associated with a poorly drafted Standard Instrument that compels the need for many rezonings that might not otherwise be needed, Local Planning Panels advice, Gateway Determinations, public agency consultation, legal drafting and finalisation processes.

Part C: New appeals pathways Appeals

As an over-arching comment, strong objection is raised with the introduction of any further appeal pathways in the planning proposal process. It is considered that such pathways simply encourage speculative proposals that do not align with the strategic planning framework and will drastically increase the time and resource costs associated with planning proposals, whilst also significantly

increasing the time for planning proposals to progress to a “final” decision and placing another burden on the Land and Environment Court or the Independent Planning Commission that neither are resourced to manage.

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

Yes, if private Proponents are able to access an appeal, it would be inconsistent and inappropriate for Councils to not have the same access. The Hills has utilised the review process in the past and had success, so it has been beneficial and justified that this option is available.

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?

The Independent Planning Commission presents a more reasonable appeal/review pathway than the Land and Environment Court. The Land and Environment Court is a costly and time consuming process that does not improve efficiency of the Development Application process. Further, the Land and Environment Court does not have the appropriate expertise in strategic planning and local planning policy to appropriately consider strategic planning matters.

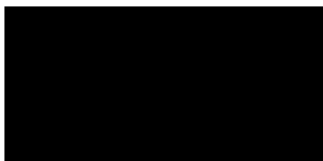
The Independent Planning Commission is constituted of planning professionals that have more experience with strategic planning and rezoning applications, which makes them a more appropriate body to consider appeals/reviews.

Part D: Implementation Planning Portal Improvements

Council’s experience with rezonings on the NSW Planning Portal to date has been extremely disappointing. The Portal is difficult to navigate, not user friendly and requests for improvement to the portal to overcome issues have been repeatedly denied. There is concern that the Portal will be unable to manage the new functions that are proposed with these reforms. If the Portal is to be further utilised, significant testing and improvement is required to ensure that the functions to be undertaken via the Portal can be facilitated.

Should you require any further information or wish to discuss further please contact David Reynolds, Group Manager – Shire Strategy, Transformation and Solutions [REDACTED].

Yours faithfully



Michael Edgar
GENERAL MANAGER

ITEM 5
**SUBMISSION REGARDING NSW GOVERNMENT
DISCUSSION PAPER - 'A NEW APPROACH TO
REZONINGS'**

THEME: Shaping Growth

GROUP: **SHIRE STRATEGY, TRANSFORMATION AND SOLUTIONS**
PRINCIPAL COORDINATOR FORWARD PLANNING

AUTHOR: **MEGAN MUNARI**

RESPONSIBLE OFFICER: **MANAGER – FORWARD PLANNING**
NICHOLAS CARLTON

PURPOSE

This report provides a summary of the Government's proposed reforms to the planning proposal (rezoning) system, identifies the significant implications of these documents for Council and provides a recommended draft submission for consideration and endorsement by Council.

RECOMMENDATION

Council make a submission on the discussion paper 'A new approach to rezonings', as provided in Attachment 1, which strongly objects to the proposed reforms and requests that the Minister reconsider the new approach to rezonings and/or abandon the changes proposed.

IMPACTS**Financial**

This matter has no direct financial impact upon Council's adopted budget or forward estimates. However, it is possible depending on the outcome of this review to increase costs, penalties and legal may constrain income. Appeal mechanisms will significantly increase the number of applications and appeals. DPE has flagged the potential to change the fee structure for planning proposal applications and set fixed rates for different types of applications, in comparison to the current system which provides individual Councils the discretion to set the value and terms of fees for the lodgement of a planning proposal. No details have been provided with respect to proposed fees by DPE, however this may impact on Council's ability to adequately resource the efficient processing of planning proposals, as well other key planning work. It is difficult to estimate financial impact until reforms are finalised.

Strategic Plan - Hills Future

Council is required to assess individual planning proposals on their merits, in an equitable and transparent manner. The efficient and proper assessment and processing of planning proposals is critical to Council's role in shaping growth, achieving a vibrant community and developing a prosperous economy in the Shire. Council's submission with respect to the new

approach to rezonings will advocate for The Hills Shire, our community, residents and businesses and articulates Council's expectations with respect to the new rezoning process. Critically, the submission seeks to reiterate the need for Councils to maintain a predominant role in the determination of planning proposals.

LINK TO HILLS SHIRE PLAN

Strategy:

5.1 The shire's natural and built environment is well managed through strategic land use and urban planning that reflects our values and aspirations.

Outcome:

5 Well planned and liveable neighbourhoods that meets growth targets and maintains amenity

EXECUTIVE SUMMARY

This report provides a summary of two documents released by the Department of Planning and Environment (DPE) (formerly Department of Planning, Industry and Environment) in December 2021, being:

1. A revised 'Local Environmental Plan Making Guideline' (provided as Attachment 2); and
2. A discussion paper titled 'A new approach to rezonings' (provided as Attachment 3).

It also outlines the significant implications of these documents for Council's role in making local planning decisions and provides a draft submission to the exhibition of 'A new approach to rezonings' (provided as Attachment 1) for Council's consideration and endorsement. The submission concludes that the efforts of the former Minister to improve the planning system are noted but that the current Minister should be strongly urged to substantially reconsider and/or abandon the proposed changes.

The discussion paper flags changes to the rezoning process which will significantly alter the role of Councils, Proponents and Government agencies. Some of the key features of the current rezoning process, such as Gateway Determinations and Rezoning Reviews are proposed to be removed. The new process would place a disproportionate emphasis on the pre-lodgement phase of the process by requiring Council officers to comment on the strategic and site specific merit of a proposal prior to submission of application material and technical studies. It would also result in upfront public exhibition (prior to Council making any decision on the matter) and require Proponents to take on much of the role Council currently undertakes, such as considering and responding to public submissions and consulting with Government agencies, before any consideration or determination of a proposal by Council.

The discussion paper creates 'categories' of rezonings, which have standardised benchmark timeframes within which certain milestones are to be reached. The proposed changes will standardise fees for rezonings (currently Councils can determine appropriate fees) and enable Proponents to access refunds in the event the benchmark timeframes are not met. The discussion paper indicates that DPE will have a significantly reduced role for many rezonings.

The discussion paper also indicates the potential for appeals for private proponents only (not Councils) in the Land and Environment Court for rezonings, with another option being rezoning appeals being considered by the Independent Planning Commission.

The changes proposed in the discussion paper may provide Council with additional control of the rezoning process. However, there are significant risks to Council in terms of increased appeal rights and the associated costs of defending appeals and reducing the rights for Council initiated rezonings.

BACKGROUND

Council's Local Strategic Planning Statement (LSPS) is the primary policy guiding decisions on strategic land use planning and how growth in The Shire is managed. Action 22.2 of the LSPS states that Council will prepare and endorse a Planning Proposal Policy that articulates its expectations with respect to new planning proposals.

While the Environmental Planning and Assessment Act 1979 provides the legislative and procedural framework for the assessment of planning proposals, there remains scope for Council to have a Policy that provides greater guidance for the general public and Proponents with respect to Council's expectations and standard procedures.

On 28 July 2020 Council adopted a Planning Proposal Policy (refer to Attachment 4), which has been in force since this time. The Policy articulates the steps in the planning proposal process, clarifies the supporting information required to be submitted with a proposal and identifies the opportunities available for Proponents to engage with Councillors. It also communicates Council's expectations with respect to consideration of the relevant State and local strategic planning policies and identifies the need for satisfactory arrangements to be in place to address additional infrastructure demands where unplanned development uplift is sought through a proposal.

Also in July 2020, the NSW Government announced the Planning Reform Action Plan. The Action Plan outlines long term structural reform of the planning system and consists of a series of initiatives, some of which seek to reduce assessment times for planning proposals, regionally significant development applications (DAs) and major projects. To support the reduction of planning proposal assessment timeframes and streamline processes, DPE are working on a range of process reforms such as revised delegations, additional guidelines, clearer timeframes post gateway determination, digital mapping and improving the quality of planning proposals. As part of the Planning Reform Action Plan, DPE have released the revised 'Local Environmental Plan Making Guideline' and a discussion paper titled 'A new approach to rezonings'.

On 15 December 2021 Council received a letter from the then Secretary of the Department of Planning, Industry and Environment (now known as Department of Planning and Environment) notifying Council that the then Minister for Planning and Public Spaces Hon. Rob Stokes has made the Environmental Planning and Assessment (Statement of Expectations) Order 2021 (refer to Attachment 5). The Order sets out the Ministers expectations as to what constitutes an efficient and effective planning system. This includes setting benchmarks for council performance in the areas of development assessment, planning proposals and strategic planning. The Minister had decided to outline his clear expectations for the planning system in the Order so that incoming Councillors are aware of the importance of an efficient and effective planning system in supporting a strong economy and delivering better places.

The order requires Councils to make decisions on whether to support a planning proposal within 90 days from receiving the application and comply with the conditions in the Gateway Determination, including the finalisation deadline.

REPORT

1. Revised Local Environmental Plan Making Guideline

The 'Local Environmental Plan Making Guideline' provides an overview of and further guidance on the current process of considering rezonings, with some changes and additions. Critically, this Guideline came into force upon its release in December 2021 and DPE is *not* seeking feedback on this document.

The key changes in comparison to the existing process include guidance related to a new pre-lodgement phase, known as a 'scoping study' (which includes pre-lodgement Government agency consultation) and the identification of 'categories' of rezoning proposals with corresponding benchmark timeframes and supporting technical information requirements. It is noted that these elements are not yet reflected in legislation and as such, the 'scoping study' and pre-lodgement meetings are not currently mandatory nor are the timeframes and information requirements for different categories of proposals referenced in legislation.

The four categories of proposals identified are:

- *Basic* – amendments to correct minor errors, housekeeping amendments;
- *Standard* – rezonings with limited impact which amend principal development standards, or include additional permitted uses;
- *Complex* – rezonings with significant amendments to the LEP which would trigger infrastructure demand, respond to new infrastructure or implement a new policy; and
- *Principal* – a Principal Local Environmental Plan, creating a new LEP or significant amendments that apply to the whole Council area.

The four categories of planning proposals and the corresponding timeframes are shown in the figure below:

Stage	Maximum Benchmark Timeframes (working days)			
	Basic	Standard	Complex	Principal
Stage 1 - Pre-lodgement	30 days	50 days	60 days	20-30 days
Stage 2 - Planning Proposal	80 days	95 days	120 days	40 days
Stage 3 - Gateway determination	25 days	25 days	45 days	45 days
Stage 4 - Post-Gateway	20 days	50 days	70 days	160 days
Stage 5 - Public Exhibition & Assessment	70 days	95 days	115 days	95 days
Stage 6 - Finalisation	25 days	55 days	70 days	80 days
Sub-total (Department target)	140 working days	225 working days	300 working days	380 working days
Total (end to end)	220 days	320 days	420 days	420 days

Note: Department target of 380 working days is measured from Stage 3 - Stage 6 (inclusive).

Figure 1

Rezoning categories and benchmark timeframes

Source: Local Environmental Plan Guideline (December 2021) DPE

It is noted that the majority of the Proponent-initiated rezonings Council currently considers would fall into the 'standard' or 'complex' categories.

The Guidelines indicate that a Proponent is eligible to lodge a Rezoning Review after either 90 days or 115 days, depending on the category of rezoning. This is an amendment from the previous 90 day only trigger for a Rezoning Review, however it is noted that the Practice Note PS 18-012 '*Independent reviews of plan making decisions*' has not been updated to reflect the new 115 day trigger. Council will no longer be asked to be the Planning Proposal Authority for planning proposals that were not supported by Council but are subsequently progressed as a result of a Rezoning Review, this will be the Sydney Central City Planning Panel.

The Guidelines also include a template 'scoping study' for Proponents to use, a framework for engaging with Government authorities at the pre-lodgement stage and indicative requirements for supporting technical information to accompany each rezoning based on the category.

It is noted that the changes to the process included in the Guideline that is now in force, are also included in the discussion paper 'A new approach to rezonings' which is currently on exhibition and discussed below.

2. Summary Of 'A New Approach To Rezoning' Discussion Paper

The discussion paper, 'A new approach to rezonings' has been prepared by DPE to outline proposed changes to the way planning proposals, or rezonings are processed in the future. DPE is exhibiting the discussion paper for feedback from stakeholders.

The reforms are ultimately intended to cut the time it takes to process a proposal to change planning rules by a third by 2023, establish an appeals pathway for planning proposals to overcome delays and enable expedient progression of rezonings that are consistent with strategic plans.

DPE intend to:

- simplify process and minimise duplication;
- create more certainty and consistency;
- improve transparency and trust;
- improve the quality of proposals;
- reduce processing timeframes;
- empower councils to make decisions on matters important to their local communities;
- allow the Government to deal with matters where intervention is beneficial; and
- recognise private Proponents in the process and give recourse opportunities.

DPE is inviting submissions until 28th February 2022, with a view to commencing the new process in 2022. The following figure outlines the key changes to the rezoning process proposed in the discussion paper:

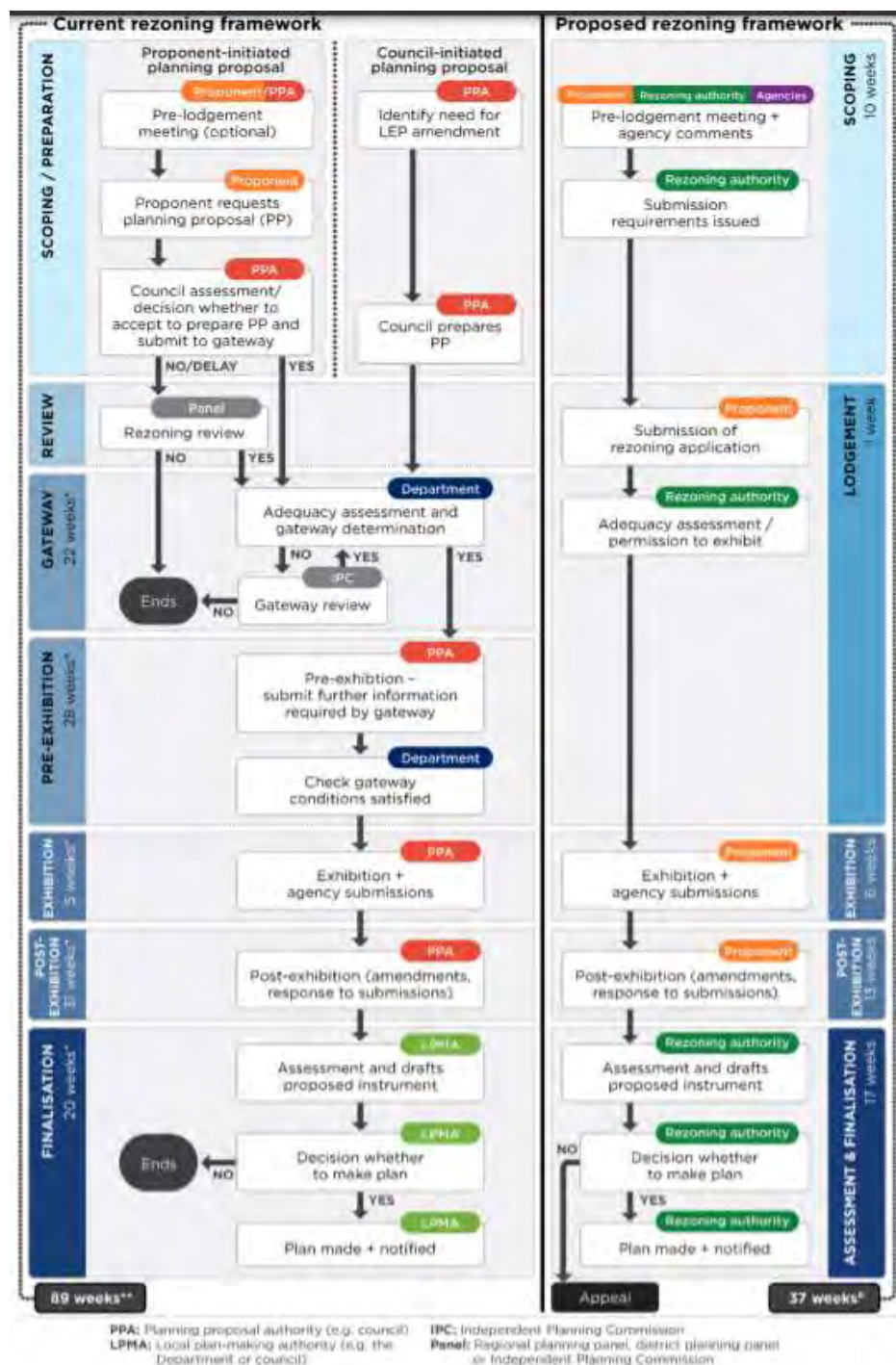


Figure 2

Comparison of existing and proposed rezoning process
Source: 'A new approach to rezonings' (December 2021) DPE

The key changes to the process include:

- A mandatory 'scoping' stage, prior to lodgement of the rezoning, which involves the preparation of the scoping study, meeting with Council and state agencies and the issue of formal advice following the meeting. The advice will include initial feedback on whether a rezoning has strategic and site specific merit as well as 'study requirements' (supporting technical information required) which will be valid for 18 months. If a

Proponent does not lodge their rezoning within 18 months, the study requirements lapse and the Proponent must commence the process again. It is not intended for Council to formally consider any rezoning at the scoping stage. It is intended for there to be a standard fee for this process, based on the category of rezoning;

- There are to be standard fees for the assessment of rezonings (in addition to the scoping fee). However there are no details on what these fees will be, other than three (3) options of fee structures being fixed fees, variable fees and or combination of both. The objectives are to achieve cost recovery for Council, keep fees reasonable for Proponents, be transparent and predictable and easily administered;
- The discussion paper includes benchmark timeframes for each category of proposal, as shown in the figure below:

Stage	Category 1 (Basic)	Category 2 (Standard)	Category 3 (Complex)	Category 4 (Principal LEP)
Scoping	6 weeks	10 weeks	12 weeks	10 weeks
Lodgement	1 week	1 week	1 week	1 week
Exhibition	4 weeks	6 weeks	8 weeks	6 weeks
Post-exhibition	10 weeks	13 weeks	15 weeks	17 weeks
Assessment and finalisation	11 weeks	17 weeks	24 weeks	26 weeks
Total, excluding scoping*	26 weeks	37 weeks	48 weeks	50 weeks

*The total timeframe does not include the scoping stage, which occurs before lodgement.

Figure 3

Proposed categories of rezonings and associated benchmark timeframes
Source: 'A new approach to rezonings' (December 2021) DPE

- Introduction of a 'planning guarantee', where Proponents are entitled to fee refunds if Council does not determine rezonings within the benchmark timeframes. Council still needs to assess and determine the rezoning following issuing a refund.
- There will be no longer be a Gateway Determination stage and DPE will not be involved in a majority of Proponent initiated rezonings. Council will no longer have the opportunity to resolve to proceed to exhibition of a rezoning (as this will occur before Council has considered a proposal). The elected Council will only consider Proponent initiated rezonings once, following public exhibition and Council officer assessment of the proposal;
- Once a Proponent lodges a rezoning proposal, public exhibition commences immediately and automatically on the Planning Portal. There would be no Councillor workshop or formal Council consideration of the proposal prior to public exhibition;
- DPE will take carriage of rezoning applications initiated by public authorities, rezonings accompanied by a state significant DA, rezonings where Council is the Proponent, rezoning applications to amend a SEPP (which presumably includes the Growth

Centres) or rezoning applications that are considered to be state or regionally significant;

- Following exhibition, the Proponent will be responsible for responding to public and public authority submissions and submitting these responses and potentially an amended rezoning proposal to Council as a result. At this point the 'assessment' begins and a 'clock' is started for assessment, finalisation and determination of a rezoning (similar to a Development Application assessment), before a Proponent can appeal or access a fee refund under the planning guarantee;
- The matters for consideration in the assessment of a rezoning are now aligned with the current Rezoning Review considerations, being the strategic and site specific merit tests, consideration of submissions and public interest;
- The elected Council will consider the rezoning only once, towards the end of the process, to determine whether or not to finalise a planning proposal;
- Rezoning Reviews and Gateway Reviews are no longer part of the process. Instead, there would be an appeal process either through the Land and Environment Court or Independent Planning Commission. These appeal processes would not be available for Council initiated rezonings, where Council would instead need to seek review (not a formal appeal) through the Planning Delivery Unit of DPE;
- There are instances where certain Voluntary Planning Agreements and rezonings being determined by Council may be considered a conflict of interest. There is the potential for the Local Planning Panel, District Planning Panel or DPE to instead determine these rezonings.

3. Issues

A draft submission has been prepared and is provided as Attachment 1 for Council's consideration. The most critical issues for Council are summarised below:

1. The proposed reforms will drastically change the role and timing of Council considering a rezoning proposal. Council will no longer get the opportunity to consider a proposal to determine whether or not it has sufficient strategic and site specific merit to proceed to public exhibition, with all rezoning proposals (even those that are not aligned with the strategic framework and are unlikely to be supported) being exhibited to the community. Council currently has the role of being a 'gatekeeper' of rezonings, ensuring that there is some merit in a proposal before it is progressed for a Gateway Determination and public exhibition. This role is being removed.
2. The proposed benchmark timeframes do not account for the wide variety of matters considered in planning proposals. The current Hills Shire Council Planning Proposal Policy aims to process rezonings efficiently, while also allowing the development industry flexibility to respond to issues. The proposed benchmark timeframes are very short compared to the average time for completing a planning proposal. For example, based on Councils records from 2018 onwards, a 'standard' category Proponent-initiated planning proposal takes 679 days (97 weeks) on average to be completed. In

comparison, the new DPE Guideline benchmark timeframe for a standard proposal is 320 days (45 weeks) and in the exhibited discussion paper proposed to further reduce this to 259 days (37 weeks). It has been Council's experience that only the most straightforward proposals are able to be completed in a timeframe which is close to the benchmark timeframes. For example, the recent rezoning and amendments to development standards to facilitate expansion of the Museum Discovery Centre took 347 days (49 weeks) to complete.

3. In contrast, many proposals require significant negotiations and revisions in response to outcomes of Council officer and/or public agency assessment or in order to establish appropriate infrastructure contributions mechanisms. For example, a planning proposal to increase the height and floor space ratio applicable to land at 2-4 Burbank Place, Norwest took approximately 1,319 days (188 weeks). Delays in the current process often occur when Proponents are advised of concerns or issues with their proposal, leading to repeated attempts by Proponents to amend the proposal to address issues. Delays are also often the result of concurrent (but necessary) consideration of associated Voluntary Planning Agreements and Development Control Plan amendments. Currently, the negotiations and revisions that occur during these delays will most often result in a superior planning outcome (in many cases, are the difference between a proposal being suitable to proceed or not). The revised process would not provide any opportunity for Proponent's to revise proposals materially once submitted. The financial penalties and triggers for appeal rights would force Council into being extremely rigid in its assessment of rezoning applications and determining all proposals based on the application as initially submitted. There would be no scope for negotiation of outcomes between Council and Proponents or the submission of revised applications. This may not provide the flexibility needed to achieve the best planning outcomes and would likely lead to an increase in 'negative' determinations in the short term.
4. With respect to Council-initiated proposals, from 2018 onwards, these took an average of 555 days (79 weeks). Council initiated proposals often move more swiftly through the process, with the delays most often being caused awaiting the issue of a Gateway Determination, public agency submissions or finalisation processes by Government (as Council often does not have delegation). None of the Council initiated proposals progressed by Council since 2018 met the benchmark timeframes in the Guideline for a Gateway Determination being issued or for finalisation. However, the majority of these proposals met the Guideline benchmarks for public exhibition (being the part of the process controlled by the Council). The benchmark timeframes should be reconsidered to be more reasonable and achievable for rezonings, whilst also allowing for some flexibility to work through issues and achieve superior (and 'approvable') planning outcomes.
5. It is not appropriate for appeals on rezoning decision to be considered at the Land and Environment Court. The cost and time of Land and Environment Court proceedings is unreasonable and would create a significant burden for Council's and the community it represents, taking away from Council's ability to allocate resources to its other primary functions (and strategic planning operations). Further, Land and Environment Court commissioners and judges are not experts in strategic planning, land use strategy or the consideration of a wide range of potential outcome scenarios, which is required when making strategic planning decisions.

6. There is concern regarding the lack of appeal process for Council initiated rezonings, it is not appropriate that a Council initiated proposal does not have the same appeal rights as Proponent-led rezonings. The Hills has had multiple instances of needing to exercise Gateway Reviews and had significant Council-led projects delayed as a result of having rezoning proposals determined to not proceed at the end of the process.
7. The timing set out by DPE would mean that a planning proposal is able to progress through the majority of the process, with the first time a planning authority is formally considering/determining the process being one of the final steps. The assessment of a rezoning occurring so late in the process, following public exhibition and consultation with Government authorities is not appropriate. It is unreasonable for Council officers to provide advice to Proponents at the 'scoping stage' on strategic and site specific merit, when they do not have the technical information needed to make a full assessment. Further, the assessment stage of the process is not clearly detailed in the discussion paper to enable Council to understand the implications. The current role of the Local Planning Panel giving advice and/or the proposed Design and Place SEPP requirements for consideration by a Design Review Panel is not mentioned.
8. The lack of information regarding fees is concerning, as there are significant costs associated with progressing rezonings, especially where there are a large volumes of technical information provided and multiple Council staff members required to assess the information. The workload and resourcing requirements associated with the assessment and management of proponent-led planning proposals has, in the past, been a major barrier to enabling Council to properly resource and progress other more critical (and wider-reaching) strategic planning policy work. This would be further exacerbated by any discrepancy between resourcing costs incurred by Council and the amount that can be recovered through application fees.

A draft submission has been prepared by Council officers and is provided as Attachment 1. The draft submission comments on these major issues detailed above, as well as a range of other technical matters identified during a review of the material. It is recommended that Council make a submission on the discussion paper 'A new approach to rezonings', as provided in Attachment 3.

Ultimately, given the significant implications that the reforms would have on Council's ability to manage planning proposals and retain its predominant decision-making role with respect to local planning issues, it is recommend that Council strongly object to the proposed reforms and request that the Minister substantially reconsider the new approach to rezonings and/or abandon the changes proposed.

4. Planning Proposal Policy

It is noted that Council's existing Planning Proposal Policy is required to be reviewed within the first 12 months of each term of Council. The review of the existing Planning Proposal Policy will be the subject of a future report to Council. This review will need to reflect the changes to the Local Environmental Plan Making Guidelines made by DPE in December 2021 and consider and reflect any changes flagged in the discussion paper to the extent they are finalised by DPE following the exhibition period.

ATTACHMENTS

1. Draft Submission on 'A new approach to rezonings' discussion paper (13 pages)
2. Local Environmental Plan Making Guideline (December 2021) (81 pages)
3. 'A new approach to rezonings' Discussion Paper (December 2021) (44 pages)
4. The Hills Planning Proposal Policy (16 pages)
5. Letter from DPE and Environmental Planning and Assessment (Statement of Expectations) Order 2021 (7 pages)