Blacktown City Council

File no: F22/452

28 February 2022

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

By email: [redacted]

Dear Ms Wythes

Blacktown City Council's submission on the Discussion Paper - A new approach to rezonings

Thank you for the opportunity to comment on the 'Discussion paper – A new approach to rezonings' that proposes to reform the local environmental plan-making system in New South Wales.

I have attached council officer's submission on the Discussion Paper. Due to the timeframe for feedback, we are unable to present our submission to Council.

Whilst we support a planning framework that achieves greater certainty, transparency, efficiency and fairness, we do not believe that the Department has provided sufficient detail to justify the proposed reforms. In particular, there is insufficient justification for the proposed planning guarantee and appeals pathway.

We do not support granting an appeal right to an individual for a non-determination or refusal of its rezoning application, as well as the delegation of power to an appeals body to create public policy. We are concerned that the proposed reform will create adverse environmental planning outcomes in New South Wales.

If you would like to discuss this matter further, please contact me, on [redacted].

Yours faithfully

[redacted]

Chris Shannon
Manager Strategic Planning

A new approach to rezonings: Discussion paper

Submission to the Department of Planning and Environment

February 2022

Table of Contents

1. Context 3
2. Executive summary 4
3. The need for reform 7
4. New terminology 7
5. New categories and timeframes 8
6. New roles 11
6.1 Proponents 11
6.2 Councils 12
6.3 Department of Planning and Environment 13
6.4 Public authorities 14
7. New steps 16
7.1 Scoping 16
7.2 Lodgement 17
7.3 Exhibition 18
7.4 Assessment and finalisation 21
8. New fee structure 23
8.1 Planning guarantee 24
9. New appeals pathway 25

1. Context

Blacktown City is 35 kilometres from the Sydney CBD, occupying 247 square kilometres on the Cumberland Plain. Eastern Creek, South Creek, Ropes Creek and Toongabbie Creek and their tributaries provide natural corridors that buffer areas of urban development. Sydney's North West Growth Area (NWGA) precincts occupy 7,700 hectares within the northern third of Blacktown City.

Our City's current population of 403,000 is one of the fastest growing in Australia, and within 10 years it will be home to more than 500,000 people. By 2041, the NSW Government forecasts that Blacktown City's population will exceed 600,000 people.

This means that we need to build on our planning for new homes and jobs that are importantly supported by the full range of essential local infrastructure, delivered in the right place and at the right time.

Other statistics that describe Blacktown City include:

- economy of $18.8 billion
- average economic growth rate 4.6%
- 138,000 jobs
- 180,000 employed
- 21,200 registered businesses.

Our vision for the City of Blacktown is to be a: 'City of Excellence – diverse, dynamic, progressive'. Our 20-year planning vision is for 'A planned city of sustainable growth, supported by essential infrastructure, efficient transport, a prosperous economy and equitable access to a vibrant, healthy lifestyle.' Blacktown City Council therefore welcomes the NSW Government's commitment through the Planning Reform Action Plan to address the state's economic and social recovery from the COVID-19 pandemic. We support a framework that achieves greater certainty, transparency, efficiency and fairness in planning and development in New South Wales.

We welcome the opportunity to provide our submission on the Discussion Paper: a new approach to rezonings.

This submission is a technical submission and is not yet endorsed by our council.

Should interested parties have any questions in relation to our submission, initial enquiries should be forwarded to our Manager Strategic Planning, Mr Chris Shannon on [redacted] or via email to [redacted].

We hope that the contents of our submission will help inform a better planning system in New South Wales.

2. Executive summary

Our submission provides our analysis of the Discussion Paper exhibited by the Department of Planning and Environment, and makes recommendations in response.

A summary of our main concerns with the Discussion Paper are outlined below:

- **The need for reform**

It is incumbent upon the Department to provide sound and transparent justification for changes to the environmental planning system. It needs to be based on evidence, reflective of better practices and demonstrating that it will lead to quality, reliable and consistent outcomes. This is particularly important when government proposes to remove itself from the process and to delegate its powers to an unaccountable appeals body. The detail in the Discussion Paper is insufficient.

- **Terminology**

Changing the terminology from planning proposals to rezoning applications is confusing, misleading and doesn't accurately represent the nature of all proposals.

- **Roles and responsibilities**

We oppose handing control of rezoning applications (public policy) to private proponents and we oppose government delegating public policy decisions to an appeals body. We also don't support the Department removing itself from the rezoning process. We believe there is a role for the Department or Greater Sydney Commission to coordinate State agencies.

- **Categories and timeframes**

We generally support categorising rezoning applications based on complexity. We are concerned that the timeframes don't give adequate regard to councils' reporting cycle. Council is the rezoning authority and must be involved early in the process. Inadequate timeframes will lead to frustration and threats of an appeal.

- **Regulated fees**

No justification is put forward for the regulation of rezoning application fees. The Department has not demonstrated that councils' fees are a barrier to entry for proponents wanting to submit a rezoning application. No specific details are provided on what the exact fees will be.

- **Planning guarantee**

There is no justification in the Discussion Paper for a planning guarantee. As a matter of principle, we oppose granting a right to a proponent to obtain a refund of fees due to delays in the system. There is no refund available in the development assessment system, which is used as a comparison throughout the Discussion Paper.

- **Appeal pathway**

We strongly oppose the ability for proponents to appeal a non-determination or refusal of a rezoning application, which is a form of public policy that is traditionally determined by government. There is no justification put forward in the Discussion Paper to warrant an appeals system. As a matter of principle, we fundamentally oppose an unaccountable appeals body being granted power to create public policy.

A summary of our recommendations is outlined below:

Recommendations	
1.	Retain the term 'planning proposal' or use more generic terminology to capture the nature of all amendments to environmental planning instruments.

2.	Remove the appeals right for private proponents under the following categories:
	• Category 2 (Standard)
	  ○ 'altering the principal development standards of the LEP'
	  ○ 'adding a permissible land use or uses' to a land use table'.
	• Category 3 (Complex)

3.	Extend the lodgement timeframe by 2 weeks, for all categories, to enable the elected Council to be informed of the application prior to public exhibition given they are ultimately the decision makers as the rezoning authority.
4.	Extend the finalisation timeframe by 6 weeks or exclude the council reporting timeframe from the finalisation timeframe.
5.	Exclude the timeframe for obtaining an opinion from Parliamentary Counsel from the finalisation timeframe as this is beyond the control of a rezoning authority.
6.	The Department adopt a 'case management' role to oversee rezoning applications and manage State agencies.
7.	Require rezoning authorities to report the reasons for a decision where a rezoning application has been approved and is inconsistent with a Ministerial Direction.
8.	Create guidelines, training and education for State agencies and private proponents to ensure they fulfill their obligations in the rezoning process.
9.	Implement assumed concurrence or a stop the clock mechanism for the assessment timeframe until concurrence is received.
10.	Prepare standard format scoping reports and required information to be submitted with all rezoning applications.
11.	Extend the time period for written advice to be provided to a proponent following a pre-lodgement meeting from 10 working days to 20 working days.
12.	Reduce the period of validity for studies from 18 months to 12 months.
13.	Prevent a proponent from lodging a rezoning application if it is advised at the scoping stage that the rezoning application does not have strategic and site-specific merit.
14.	Adopt Option 1: fixed fee assessment as the basis for regulated rezoning application fees.

15.	Requests for a refund of fees be determined by the rezoning authority on a case-by-case basis.
16.	Delete the proposed planning guarantee and any ability for a proponent to obtain a refund.
17.	Delete the proposed appeals pathway.
18.	Should the Department decide to progress with an appeals pathway, then we recommend that the NSW Land and Environment Court is the appropriate appeals body.

3. The need for reform

Department of Planning and Environment question:

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?

We understand that the proposed approach to rezoning applications seeks to implement the NSW Government's Reform Action Plan and the Minister for Planning and Public Spaces thematic planning framework and principles for a simpler planning framework that is transparent, consistent and time efficient.

The Department has indicated that the new approach has been designed to align the rezoning process more closely with the development application process to reduce time and complexity, remove inconsistencies, increase transparency and help councils with resourcing.

Whilst we support these broad principles, the Discussion Paper does not provide justifiable reasoning for some of the significant changes the Department proposes to the environmental planning system. The Department needs to be more transparent in providing the evidence to justify the reforms it is proposing. This is particularly important when government proposes to remove itself from the process and to delegate its powers to an unaccountable appeals body.

The Discussion Paper needs to provide the data that shows comparisons with other jurisdictions, greater transparency about the level of consultation undertaken, who was consulted and what were the findings, and the detail that shows the current delays caused by State agencies. The need for reform should not just be based on economic performance, but a on holistic planning grounds. We believe the Discussion Paper is lacking the detail that is required to justify the proposed changes, particularly in terms of economic, environmental and social outcomes.

4. New terminology

The Department is seeking to change the terminology for an LEP amendment from a 'planning proposal' to a 'rezoning application'. The term 'rezoning' is confusing and does not accurately represent the universal nature of all proposals. Not all LEP amendments change land use zones. So, it is unclear why a narrow, misleading and outdated terminology is proposed. The Department should focus on plain English by using more generic terminology, such as retaining the term 'planning proposals' or 'LEP/SEPP application'.

Recommendation:	
1.	Retain the term 'planning proposal' or use more generic terminology to capture the nature of all amendments to environmental planning instruments.

5. New categories and timeframes

New categories

We note that the Department released the "Local Environmental Plan Making Guideline" in December 2021 that has introduced four categories of planning proposals. Each category has different timeframes, assessment pathways and presumably different fees. We support this approach. We have been advocating for this change for many years.

However, we do not support the ability for private proponents to determine the category of application, particularly if different fees and timeframes are associated with each category. The category of application must only be determined by the rezoning authority.

There must be an opportunity to transition between categories if, during the assessment phase, new information becomes available that warrants shifting categories to reasonably reflect the timeframes for assessment.

Further, we do not support the ability for private proponents to appeal a rezoning application, and in particular, under the following circumstances:

- Category 2 (Standard)
    - 'altering the principal development standards of the LEP'
    - 'adding a permissible land use or uses' to a land use table'.

These examples under Category 2 do not relate solely to land owned by a private proponent. They are policy matters that can affect multiple sites across an LGA. A proponent-led rezoning application under these examples would be invalid without the agreement of everyone affected landowner.

- Category 3 (Complex)

The very description of a 'Category 3' application outlined in the Discussion Paper is that it 'may not be consistent with strategic planning'. This implies that an appeals body can approve a rezoning application that is inconsistent with government (local or State) strategic planning. This is completely unacceptable. It would undermine strategic planning in favour of site specific rezoning's and set a dangerous precedent. There is no justification in the Discussion Paper for proposing such a significant change.

Further, we oppose the following listed examples of Category 3 applications:

- changes that would 'increase demand for infrastructure and require an amendment to or preparation of a development contribution plan'
- 'requiring a significant amendment to or preparation of a development contribution plan or a related infrastructure strategy'.

Proponent-led rezoning applications by their very nature can only relate to land owned by the proponent. It is difficult to understand how a proponent will be able to satisfy the increased demand on infrastructure that is needed beyond their site without agreement from infrastructure agencies (State and council).

The Department is proposing that the obligation for infrastructure/contributions planning be transferred to private proponents, and ultimately an appeals body who will be asked to make infrastructure decisions, including the expenditure of public funds, on behalf of State agencies and council. The alignment between a proponent-led rezoning application and public infrastructure / contributions planning is unclear. We strongly oppose any appeals system on proponent-led Category 3 applications that generates demand for additional unplanned infrastructure.

Recommendation:	

2.	Remove the appeals right for private proponents under the following categories:
	• Category 2 (Standard)
	  ○ 'altering the principal development standards of the LEP'
	  ○ 'adding a permissible land use or uses' to a land use table'.
	• Category 3 (Complex)

New benchmark timeframes

Department of Planning and Environment question:

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

Introducing benchmark timeframes can be useful to set expectations for all parties involved in the rezoning application process. We are not opposed to the principle of timeframes provided they are reasonable and that there is no refund or appeal where delays exceed timeframes. We do believe that the proposed benchmark timeframes need further refinement.

Benchmark timeframes need to be achievable without compromising the integrity of the assessment process. Further detail is required on how benchmark timeframes might work, the stakeholder responsible for ensuring a timeframe is met at different stages of the process and the ramifications if a benchmark timeframe is not met. There also needs to be sufficient flexibility to recognise where a delay in meeting a benchmark timeframe is outside the control of the rezoning authority. There should also be benchmarked timeframes from other jurisdictions to compare.

More benefit can be gained from a streamlined process rather than setting benchmark timeframes per se. Proposing penalties such as a planning guarantee and appeals for not meeting timeframes introduces conflict between good long-term outcomes for the local community against financial penalties based purely on timeframes. The proposed system incentivises proponents to lodge speculative proposals with the knowledge that council and State agencies can be removed from the process via an appeal if there are delays.

The main causes for delay under the current system is:

- insufficient information lodged with the rezoning application
- assessment of technical reports
- timely, consistent and reasonable advice from State agencies on technical matters.

It is difficult to understand how a private proponent will manage the engagement with State agencies on public policy matters when agencies are sometimes reluctant to even engage with council. It will also be difficult to understand how council is expected to progress a rezoning application in the absence of definitive advice or where there is an objection from a State agency. Council's should not be penalised through punitive measures because it can't progress a rezoning application due to an outstanding objection from a State agency in the same way that the Department doesn't progress planning proposals under the current system for the same reason.

Involving Councillors at the end of process does not provide any certainty to proponents on council's views. Councillors need to be aware of rezoning applications affecting their local community prior to exhibition and need to adopt the proposed final plan. We therefore suggest that the timeframe for the lodgement stage is extended by 1 week for all categories. This permits time for a summary of the rezoning application, provided by the proponent, to be circulated to Councillors to brief them on the rezoning application prior to exhibition, given they are ultimately the rezoning authority.

We suggest the finalisation stage is extended by 6 weeks for all categories to allow lead time to report to council or that the reporting timeframe to council is excluded from the overall finalisation timeframe. Similarly, the timeframe for seeking Parliamentary Counsel's opinion must also be removed from the finalisation timeframe as it is outside the control of a rezoning authority.

The proposed timeframes also do not appear to account for the process and time to consider supporting infrastructure through a contributions plan or voluntary planning agreement, where this is required. While some of the infrastructure provision mechanisms can proceed concurrently with the rezoning application, it cannot be finalised prior to rezoning, including any appeal. A rezoning application cannot be conditioned like a development application. A contributions plans that requires a review by the Independent Pricing and Regulatory Tribunal and then endorsed by the Department can take up to 18 months. Under the recently exhibited contributions reforms, the Department proposed that a planning proposal could not proceed to Gateway unless the required infrastructure costs were known. It appears that contributions / infrastructure planning has not been considered in drafting the Discussion Paper.

Recommendation:	
3.	Extend the lodgement timeframe by 2 weeks, for all categories, to enable the elected Council to be informed of the application prior to public exhibition given they are ultimately the decision makers as the rezoning authority.
4.	Extend the finalisation timeframe by 6 weeks or exclude the council reporting timeframe from the finalisation timeframe.
5.	Exclude the timeframe for obtaining an opinion from Parliamentary Counsel from the finalisation timeframe as this is beyond the control of a rezoning authority.

6. New roles

The single biggest concern with the Discussion Paper is the proposed changing role of a proponent and the ability for it to appeal a non-determination or satisfactory outcome on a rezoning application. There is no explanation or justification for the role of an appeals body.

When considering the roles of different parties in the rezoning process, we need to consider the objects of the Environmental Planning and Assessment Act 1979 outlined in Section 1.3. One of the objects of the Act are:

> "(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State". [emphasis added]

We question whether the Department's proposal to delegate the responsibility for rezoning applications to private individuals and appeals bodies is consistent with this object. The Department attempts to justify the proposal by using a comparison between a development application and a rezoning application, which is a change in the roles of parties involved in environmental planning and assessment.

- Development applications are assessed against established rules (legislation created by government and common law created by courts).
- Rezoning applications seek to establish or amend legislation. Government is proposing to delegate its power to an appeals body (court or commission), but only for proponent-led rezoning applications where council is the rezoning authority. We do not support this unjustified approach.

6.1 Proponents

A fundamental change proposed in the Discussion Paper is the willingness of the Department to grant a 'right' to a proponent to 'appeal a decision about a rezoning application because of delay or dissatisfaction with a decision'. The Department appears to be concerned that proponents 'have little control of the processes' under the current system. Our view is that individuals should never have 'control' of processes that determine public policy, as they are not a level of government that can represent the public interest.

We see the rezoning appeals proposal by the Department as a monumental shift in public policy thinking. It enables an appeal body to replace government (State and local) in creating planning law legislation (public policy). It is highly unusual for government to delegate its public policy decision-making powers to the judiciary, and is very much a distortion of the long standing doctrine of separation of powers between government, agencies and the judiciary.

Should this proposal proceed, then under the principle of consistency and transparency, the appeals mechanism should be made available to council where it is the proponent to enable it to challenge an unsatisfactory determination or delay caused by the Department. Not to allow this to occur, is creating an inconsistent environmental planning system. There is no justification in the Discussion Paper why an appeals power is granted only to private proponents.

We do not believe that the case for such a proposal has been made and we strongly oppose it. Under the principle of transparency, the Department needs to be very clear why such a proposal is warranted and who is advocating for it.

6.2 Councils

Department of Planning and Environment questions:

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

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

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

We welcome the stated intent to 'empower councils to make decisions about their local area without unnecessary Departmental intervention'. However, the proposed process does not support this. The Department is proposing to give a proponent the right to appeal a decision because they are dissatisfied with the outcome is in direct conflict with the Discussion Paper's claim to give greater autonomy to councils. The right of a proponent to appeal a rezoning decision has the effect of removing the right of a council to make decisions on local policy, purely on the basis of the dissatisfaction of a self-interested party. This does not support the autonomy of local government to act on behalf of the local community which they represent in pursuit of a beneficial outcome aligned with local council policy and strategic planning.

The proposed new process does not appear to have a role for the elected council representing the local community, as differentiated from council officers. This needs to be recognised both in the new roles and in the proposed process. It is important for an efficient and cost-effective process that the proponent receives an indication early on whether a proposal is likely to be supported by the elected council, who is ultimately the rezoning authority. This should occur prior to exhibition.

We suggest the following as potential improvements to council-led rezonings:

- ensuring that agencies commit to the same timeframes that are imposed on proponent-led rezonings
- consistency and accountability with the appeals process. If proponents-led rezoning applications are granted a right of appeal, then that same appeal right must be granted to council-led rezonings
- greater 'case management' from the Department in coordinating agencies in a 'whole of government' response. This means that the Department needs to balance the competing interests of government agencies and ensure they adhere to adopted and endorsed local plans and policies such as Local Strategic Planning Statements and Housing Strategies
- continued improvement of digital resources, including a layer for draft proposals in the spatial viewer and improvements to the planning portal
- clarify the mechanism and decision making authority where a State agency refuses concurrence for a rezoning application which is aligned with local strategic plans.

6.3 Department of Planning and Environment

Department of Planning and Environment questions:

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

Do you think the new approach and the department's proposed new role strikes the right balance between what council's should determine and what the department should determine?

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

The Discussion Paper states that the Department will only focus on State-led, strategic and collaborative planning. It will also retain the role of assessing and determining Council-led rezoning applications in Category 3 or above. This has merit from the perspective of managing amendments which may be politically driven rather than arising from policy.

However, we believe that the proposed adversarial appeals system on proponent-led rezonings could be avoided if the Department took more of a role in coordinating and resolving State agency matters. It will become difficult for a private proponent, and council as the rezoning authority, to resolve conflicting State agency matters. A central body is needed to assist this process.

Case management

As an alternative to the appeals mechanism, we suggest that the Department adopt a 'case management' approach to oversee rezoning applications in a consistent and transparent manner. This could operate like a "LEP Panel", chaired by the Department that meets monthly to oversee progress and resolve issues. Relevant agencies, council and proponents would attend to provide progress reports and have a forum for open dialogue for issues resolution. The chair would have authority to compel outcomes, timeframes, overrule parties and make determinations.

It could function like local or District panels or the court who case manage development applications. The exception being that it would be chaired by the Department who has power to make policy decisions and compel parties to timeframes. It would be there to make sure public policy decisions are made efficiently and consistently in the public interest. We acknowledge that this would require greater resources from the Department, but would avoid the need for an inefficient and costly appeals process.

Inconsistency with section 9.1 ministerial directions

If councils are given autonomy to determine 'rezoning applications' this should extend to approving inconsistencies with Ministerial Directions. If councils are being required to defend a potential appeal, they need full autonomy in the assessment and finalisation stage. We see this as no different to councils determining development applications that may not comply with a State planning control. There should however be reporting of 'rezoning applications' approved by councils that rely on an inconsistency with a Ministerial Direction in the same way that reporting occurs with cl.4.6 exceptions to development standards on development applications.

Recommendation:	
6.	The Department adopt a 'case management' role to oversee rezoning applications and manage State agencies.
7.	Require rezoning authorities to report the reasons for a decision where a rezoning application has been approved and is inconsistent with a Ministerial Direction.

6.4 Public authorities

Department of Planning and Environment questions:

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

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

If a state agency has not responded in the required timeframes, are there any practical difficulties in continuing to assess and determine a rezoning application?

A central coordinating body is needed to provide a whole of government commitment to timeframes on rezoning applications. The Department needs to assist by providing State agencies with:

- clear guidelines on the advice to be provided at scoping and exhibition stages
- training so they understand their obligations to meet timeframes
- education to better understand the differences between rezoning applications and development applications. Too often agency submissions on rezoning applications relate to future detail to be considered on a development application.

We support involving State agencies at the scoping stage, and the provision of more guidance to all stakeholders around this process. Consultation with State agencies is a common pinch point in rezoning applications often resulting in significant delays and cost imposts caused by unreasonable requests, and contradictory and inconsistent advice with published State strategies.

Under the current system, the Department rarely proceeds with a planning proposal where there is an outstanding objection from a public authority. It will be difficult for council to similarly determine a rezoning application in the absence of State agency support. Where there is a delay caused by a State agency, they must be held to account through payment of refunds on behalf of Council and joined as defendants to an appeal. We therefore believe it is critically important that an assumed concurrence step is introduced to allow proposals to proceed and timelines achieved. If there is no assumed concurrence, the assessment clock must stop until concurrence is received.

In relation to public authority rezoning applications, we request that the Department ensure that they are consistent with Local Strategic Planning Statements, in the same way that council must ensure consistency with State strategies when it determines proponent-led rezonings.

Recommendation:	
8.	Create guidelines, training and education for State agencies to ensure they fulfill their obligations in the rezoning process.
9.	Implement assumed concurrence or a stop the clock mechanism for the assessment timeframe until concurrence is received.

7. New steps

7.1 Scoping

Department of Planning and Environment questions:

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?

We support the concept of early consultation between the proponent, the Department, agencies and councils. Upfront advice to a proponent on whether the application is likely to be supported and issues to be addressed is a useful addition to the process. We already hold free pre-lodgement meetings for all planning proposals as a mandatory step in the process. We also support a standardised format for scoping reports and general standard guidelines on information that is required to be submitted on all rezoning applications.

Based on the new "LEP Making Guideline" December 2021, council is to provide the proponent with minutes and written advice within 10 working days of holding a pre-lodgement meeting. This is to include detail of any proposed amendments to the scope of the proposal, recommended studies to support the proposal and a copy of authority/agency comments. The timeframe specified is insufficient for council and relevant agencies to adequately assess the scoping material in the light of any additional explanation provided during the pre-lodgement meeting and provide feedback of sufficient detail.

In order to genuinely make the process more efficient by identifying and resolving issues upfront, the process must enable time for genuine assessment and validation of the scoping material in order to understand key issues and whether there is the potential for a solution. Council and State agencies have an obligation to act in the public interest. This cannot be discharged by accepting a report submitted by a private self-interested proponent at face value.

We do not support the proposition that a proponent has a right to lodge a rezoning application, and have this exhibited, assessed and determined, if the application is identified in writing at the scoping stage that is doesn't have strategic or site-specific merit. To progress such an application will cause delays in the system and result in likely appeals against Council or State agencies. The scoping stage should be treated like the Gateway process, whereby a proponent must obtain permission to lodge a rezoning application. This would stop speculative proposals but also provide a degree of certainty for proponents, subject to full assessment.

The new approach also proposes that study requirements will be valid for 18 months after which the scoping process begins again. We agree there should be a time period for the validity of a scoping report, but suggest it should be 12 months. Plans, strategies, policies can change substantially within an 18 month period, and could lead to outdated applications when lodged. Proponents should be sufficiently prepared to progress an application within 12 months.

Recommendation:	
10.	Prepare standard format scoping reports and required information to be submitted with all rezoning applications.
11.	Extend the time period for written advice to be provided to a proponent following a pre-lodgement meeting from 10 working days to 20 working days.
12.	Reduce the period of validity for studies from 18 months to 12 months.
13.	Prevent a proponent from lodging a rezoning application if it is advised at the scoping stage that the rezoning application does not have strategic and site-specific merit.

7.2 Lodgement

Department of Planning and Environment questions:

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?

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

We suggest that the timeframe for the lodgement stage is extended by at least 2 weeks for all categories. This recognises that resourcing can be an issue for some councils, particularly in regional areas, and permits time for a summary of the rezoning application, provided by the proponent, to be circulated to Councillors to brief them on the rezoning application prior to exhibition.

We note that the lodgement stage timeframe only permits a tick-a-box assessment as to whether a document of the type named in the scoping requirements has been submitted with the application. There is a critical difference between a technical report being submitted, and that report being adequate for the purpose. We therefore suggest a further extension of the timeframe between lodgement and exhibition to enable a genuine assessment and validation of technical reports and enable refusal of the rezoning application prior to exhibition on technical grounds if these are found to be inadequate.

7.3 Exhibition

Department of Planning and Environment questions:

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

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

We do not support the principle of exhibition of a rezoning application prior to merits assessment. There is no other area of government which enables exhibition of a proposed public policy where government (council and/or State agency) is removed from the process. According to the Discussion Paper, the responsibility rests with the proponent to accurately, and in sufficient detail, describe their own proposal so that the community can make an informed submission.

Inadequate information being exhibited prior to formal assessment may lead to re-exhibition later in the process when amendments need to be made. To avoid inadequate exhibition material, there must to be a standardised document submitted at lodgement outlining the explanation of intended effect. If it is inadequate, the rezoning application will not be accepted. Hence, early assessment of adequacy for exhibition is essential.

We support automation of the exhibition process as much as possible and would welcome investigation into an automated digital-only notification process such as appears to be suggested by reference to potential integration with the Service NSW app. The proponent must also meet Council's Community Participation Plan requirements. This includes written material suitable for written and digital communication, website publishing and social media.

Whilst we agree with improving the level of community engagement, it is unclear how this will save time given the application will be exhibited within the same period of days as is currently the case. We disagree that the current system does not allow the community full access to planning proposals. Councils represent the local community and is better positioned to work with the community on applications that affect them.

7.3.1 Changes after exhibition

Department of Planning and Environment questions:

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?

We support the concept that the proponent take responsibility for ensuring that its rezoning application is of high quality and the supporting information meets the requirements of technical subject matter experts.

However, the Discussion Paper does not provide sufficient detail on the process and expectations for exhibition, responses to submissions and the role of council. Given that rezoning applications create or amend public policy, council must be involved in the process to be satisfied regarding the scope and coverage of the exhibition and adequacy of responses to submissions. Council consultation and involvement in the resolution of local matters is critical. The new process should not require councils to make a submission on exhibition of a rezoning application to ensure its concerns are addressed prior to finalisation.

We do not support commencement of the 'assessment clock' prior to final submission of the rezoning application for assessment. The clock can only start after council receives the final submission for assessment. Starting the clock before this time is inefficient and potentially wastes the Council time to assess a proposal that then changes after the final is submitted. We suggest a 'stop the clock' mechanism be available during the assessment period should the rezoning authority require further information.

7.3.2 Information requests

Department of Planning and Environment questions:

Do you think requests for more information should be allowed?

We support the principle of efficient communication upfront in the scoping stage of a rezoning application. However, reform cannot lose sight of the fundamental intent of a rezoning application, which is the creation of public policy. The importance of thorough examination of public policy proposals, particularly lodged by self-interested parties, should not be dismissed simply for the sake of efficiency of process. There needs to be a balanced approach.

Outright discouraging requests for further information is short-sighted and does not recognise the need for flexibility to account for:

- the iterative nature of some of the information and processes required
- not all information will be able to be foreseen or provided at scoping stage
- not all applications will be of sufficient quality or adequacy at lodgement. The lodgement timeframe does not permit validation of the adequacy of the material submitted
- mechanisms for the provision of infrastructure requiring a contributions plan or voluntary planning agreement cannot be finalised until the details of the new or amended policy are determined.

A rezoning authority should always have the opportunity to request additional information at any time throughout the rezoning process. This needs to be undertaken in an efficient and coordinated manner so as not to frustrate the process. Requests for information should also be allowed after exhibition where needed to adequately respond to matters raised in submissions.

Requiring high quality, accurate information which verifies that a rezoning application is capable of satisfying essential technical requirements should not be penalised. This approach risks rewarding the submission of poorer quality applications. Without adequate and timely responses for information from proponents, the rezoning application will be refused.

7.4 Assessment and finalisation

Department of Planning and Environment questions:

Are there any changes that we could make to streamlined the assessment and finalisation process more? What roadblocks do you currently face at this stage of the process?

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

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

The consideration as to whether a rezoning application has strategic and site-specific merit should be undertaken at the scoping stage rather than at the end of the process. This would provide more certainty for the proponents early in the process. Leaving it to the finalisation stage builds expectations from proponents that the rezoning application will be approved and causes confusion in the community during exhibition.

The start of the timeframe must be the submission of a finalisation report from the proponent that sufficiently addresses all matters raised during exhibition, particularly those matters raised by public authorities. It is unreasonable to expect that council will be able to determine a rezoning application if a proponent has not adequately addressed a public authority concern. Fundamental to the assessment is the overarching consideration of the public interest. The onus is on the proponent to satisfactorily demonstrate that its rezoning application is in the public interest.

We also challenge the embedded concept in the Discussion Paper that the time taken to prepare an accurate and thorough assessment and report is a 'delay'. The main delay councils experience in this area is from State agencies not providing feedback in the requested timeframe, delays in making data available to update a report as requested, being insufficiently resourced, amending its requirements after agreeing to a scope of works in a report and having insufficient budget to provide State-funded infrastructure required to support growth aligned with strategic planning.

7.4.1 Conflicts of interest

Department of Planning and Environment questions:

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

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?

We note that the reforms to NSW infrastructure contributions system seek to address some of these conflicts. It proposed that infrastructure contributions plans will be encouraged to be prepared with a rezoning application.

Our submission to the infrastructure contributions reforms recommended that the Practice Note on Contribution Plans and Planning Proposals needs to be amended to apply to all environmental planning instruments, including state environmental planning policies and local environmental plans, prepared by either councils or the NSW Government.

We support the principal of encouraging the preparation and exhibition of draft contributions plans at the same time as a planning proposal. The cost of supporting infrastructure is an important consideration in providing certainty as to the likely development costs arising from changes to planning controls.

Further, as a matter of principle, we don't agree that an appeals body should have power to create public policy. We therefore do not agree that local or regional planning panels should determine rezoning applications where council is the landowner. The Department should retain that responsibility.

8. New fee structure

Department of Planning and Environment questions:

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

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?

Should the fees structure be limited to identifying for what, how and when rezoning authorities can charge fees, or should it extend to establishing a fee schedule?

What is your feedback about the 3 options presented above?

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

There is no justification in the Discussion Paper as to why rezoning application fees need to be regulated. The Department has not demonstrated that councils' fees are a barrier to entry for proponents or that they caused delays in rezoning applications. No specific details are provided on what the exact fees will be. Notwithstanding, we support rezoning authorities being adequately compensated for the cost and time of assessing and determining applications.

We support Option 1 where a proponent pays a fixed fee based on the category of application when the scoping meeting is requested. This fee is easier to administer. The fee would cover the rezoning authority's costs for any activity during scoping, including consultation with State agencies and providing written feedback. The proponent must pay a fee at lodgement to enable the rezoning application process to commence. A fee structure based on a calculation of actual hours worked will require a new system for tracking timesheets or recording billable hours, imposing additional cost and resources for councils for little benefit or efficiency. By comparison, regulated development application fees are fixed. They are not based on actual hours worked.

In terms of refunds, if the new system is designed to mirror the development application system where there is no refund, then there shouldn't be a regulated refund on rezoning application. Notwithstanding, a partial refund on a rezoning application could be contemplated if a proponent withdraws its rezoning application prior to public exhibition. This should be left to the rezoning authority to consider. Once an application proceeds to public exhibition, then there should be no refund. This would deter speculative proposals, which rely on a refund if the proposal is not supported during public exhibition.

Recommendation:	
14.	Adopt Option 1: fixed fee assessment as the basis for regulated rezoning application fees.
15.	Requests for a refund of fees be determined by the rezoning authority on a case-by-case basis.

8.1 Planning guarantee

There is no justification or logic outlined in the Discussion Paper for a planning guarantee. The whole premise of this proposal is that delays in the rezoning process are all caused by councils. That is not an accurate representation of the system and completely contradicts the advice the Department received during its early engagement process as suggested in the Discussion Paper. There are many reasons for delays, including those caused by State agencies, the Department, Parliamentary Counsel, the proponent and council.

Fees are paid to councils to undertake an assessment, generally on a cost-recovery principle. A delay in the assessment process doesn't reduce councils' costs, but rather increases its costs. We also recognise that delays can also increase a proponent's costs. A threat of a refund for time delays from already stretched and limited resources in some councils doesn't achieve anything.

In practice, the only guarantee that we can give is that there will never be a refund of fees based on time delays. We will choose to refuse a rezoning application before the opportunity for a refund begins, even if we are prepared to support the application. The costs to council for delays and the threat of an appeal is enough of an incentive to improve efficiency.

If the Department are modelling the development application system where no refund is given for time delays, then it stands to reason that no refund should be given on a rezoning application. If the basis of the proposed system is one of consistency and the Department proceed with the planning guarantee, then we expect the following parties to pay costs where they cause delays:

- proponent to pay council additional costs
- State agencies, including the Department, to pay proponents and council
- Parliamentary Counsel to pay proponents and council.

If parties causing the delays are not prepared to pay costs, then council will be forced to refuse the rezoning application.

Clearly the complexity of determining who has caused a delay is problematic. Hence, we do not support this proposal and it must be deleted.

Recommendation:	
16.	Delete the proposed planning guarantee and any ability for a proponent to obtain a refund caused by time delays.

9. New appeals pathway

Department of Planning and Environment questions:
Do you think public authorities (including councils) should have access to an appeal?
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?

There is no justification put forward by the Department to delegate decision making powers on public policy to an appeals body, who is meant to operate separately and independently from government. Unlike government, the appeals body is unaccountable to the community. We therefore strongly oppose the very principle that an individual has a right to appeal a rezoning application to an appeals body.

The obligation is on the Department to be transparent and present the evidence that supports the basis of this proposal. The case for such a change has not been made in the Discussion Paper. Particularly when the Discussion Paper talks about consistency, yet only proposes an appeal right be granted to private proponents and not others. If the Department is genuine about an appeals process, then council and State agencies who submit rezoning applications should also be able to appeal a delay or unsatisfactory determination from the Department. That is not being proposed.

We believe there is a fundamental difference between appeal rights on a development application and a rezoning application. Government establishes statutory rules in which to assess a development application. The court interprets those rules and may create common law rules where government hasn't legislated. A rezoning application seeks to amend or establish new statutory rules. This would create a very different judicial system by empowering courts to create both statute and common law rules. It is highly unusual and unprecedented for government to delegate such powers to the judiciary to create legislation (public policy).

Nevertheless, we would expect that any appeals system against a delayed rezoning application would be defended by the party causing the delay. This would include relevant State agencies, the Department and Parliamentary Counsel. The alternative would be to establish concurrence requirements such that an appeal cannot be submitted if the rezoning application requires approval from a State agency. Further, the 'deemed refusal' timeframe should be stopped when rezoning applications are reported to Council and forwarded to Parliamentary Counsel for advice as these are necessary steps in every rezoning process.

If an appeals mechanism is established, the preferred option is the Land and Environment Court for the advantages that are outlined in the Discussion Paper. But it is absolutely imperative that the appeals body by held to account and its decision making must be entirely consistent with the Governments district plans and council local strategic planning statements.

Recommendation:	
17.	Delete the proposed appeals pathway.
18.	Should the Department decide to progress with an appeals pathway, then we recommend that the NSW Land and Environment Court is the appropriate appeals body.