

Our ref: Department of Planning & Environment A New Approach to Rezoning
Contact: Strategic Land Use Planning

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Council Response to A New Approach to Rezoning Discussion Paper

Introduction

Council agrees that the Planning Proposal process needs to be an 'effective planning tool' and that all stakeholders, developers, the community and Council itself need to have confidence in that process and associated timeframes. To achieve that goal, the process needs to be fair & robust. Council agrees that duplication and delays in communication between Council and the Department create unnecessary complexity. Council also agrees that a more streamlined and consistent approach could provide many benefits.

Council DOES NOT SUPPORT changing the name of Planning Proposals to Rezoning Requests

Council is not convinced that naming all Planning Proposals 'Rezoning Requests' will reduce confusion. In fact, quite the opposite. Council has already experienced a situation of proponent confusion with the name of the current 'rezoning review' process. The original Planning Proposal was not for a rezoning and when Council advised the proponent that they had a right of review through the 'rezoning review' process, Council was accused of ineptitude for not even understanding the intent of Planning Proposal which was not to rezone the land.

The standard term Planning Proposal is now well recognised as referring to an LEP amendment of any description and it is suggested that this more familiar and less confusing term continue to be used. The term is clearly defined in the new Guideline as *a document and supporting information that explains the intended effect and justification of a proposed LEP or amendment to an LEP*. Rezoning is a specific action and there is far more to a Local Environmental Plan than zoning. If any change is required it could be to the Rezoning Review Process, due to the confusion it can currently create as discussed above.

Council QUESTIONS the proposed categories

As long as Council can determine for itself the correct 'category', this is not a major concern. But if the Department imposes category descriptions, this could become a problem. In Wingecarribee Shire, the listing of a local heritage item has rarely been a 'Basic' matter. Similarly, the assumption that a 'site-specific' Standard proposal would require less time than a more Complex matter, may not necessarily be the case, even with strategic merit. While Council relies primarily on strategic merit and inclusion in a Local Strategy, local communities generally react to proposals as they become aware of them.

Working with you

Council SUPPORTS the removal of the gateway process

Council supports the proposed removal of the gateway process in certain circumstances as it is often merely an endorsement of documents which have already received preliminary assessment and consideration by Council, hence its decision to proceed with the Planning Proposal. Council understands that where the proponent is a public authority or Council, the Department will undertake scoping and adequacy at lodgement, similar to the current gateway process.

Council DOES NOT SUPPORT a one week turnaround to place a Planning Proposal on exhibition

However, it is noted that the Discussion Paper proposes a one week timeframe between lodgement of a Planning Proposal and the start of the exhibition period. Even if Council supports a Planning Proposal to go on exhibition (and the fact that a proponent could lodge a proposal even without Council support is discussed later in this submission), a one week timeframe is not sufficient.

The Planning Proposal and supporting documentation still need to be reviewed to ensure consistency with those considered during the Scoping phase. Even if Council can't alter these, at least Council needs to be aware of any inconsistencies. What is concerning about that scenario is that agency consultation during the Scoping phase may no longer be relevant if a Planning Proposal is substantially changed.

Then there is the time required to set up and undertake a mail out to affected neighbours, generally a broader range than that for a Development Application. There are legal timeframes to allow for postal delivery prior to the commencement of the exhibition period. There are also demands on Council's resources to set up exhibition material on the Planning Portal or on 'advertise' the exhibition period on Council's website.

Council SUPPORTS the introduction of a Scoping Phase

Council supports the inclusion of a Scoping phase (currently Pre-lodgement in the Guideline) prior to formal lodgement of a Planning Proposal. Mandating such a phase can ensure that all Councils operate within the same framework providing consistency for proponents, Councils and the community.

Council strongly supports 'strategic merit' as the principal criteria for considering a Planning Proposal and notes the current definitions in the Guideline for 'site specific merit' (*a proposal's demonstrated environmental, social and economic impact on the site and surrounds and ability to be accommodated within the capacity of the current and/or future infrastructure and services*) and 'strategic merit' (*a proposal's demonstrated alignment with the NSW strategic planning framework*).

Council identifies the NSW strategic planning framework as including, as a minimum, the relevant Regional Plan, endorsed Local Strategic Planning Statement (LSPS) and Local Housing Strategy (LHS) and relevant adopted infrastructure and servicing plans.

As the current Guideline states, "*the NSW Government has placed significant focus on the strategic planning framework which guides the assessment of planning proposals under the strategic merit test. Planning proposals should demonstrate consistency with applicable strategic plans.*"

The Guideline includes the following comments with regard to Strategic Merit:

The pre-lodgement stage of a planning proposal is the important first step in the LEP making process. A proposal's early alignment with the strategic planning framework can reduce time and cost later in preparing the planning proposal and making the LEP.

And with regard to infrastructure requirements:

The need and capacity for local and regional infrastructure to support the future development resulting from the proposal should be considered upfront in the LEP making process.

Council should work with proponents and provide advice on existing and many planned local infrastructure as part of the initial concept proposal. It is the responsibility of the proponent to investigate infrastructure requirements and associated funding for the proposal.

Council should meet with the proponent and issue advice identifying any significant barriers and if a proposal should proceed.

Council totally supports this approach as it provides clear guidance and certainty to a proponent and the community, ensuring that the strategic planning framework which the Department and Councils have worked so hard to establish is reinforced and enhanced by consistent advice to proponents.

It is noted that the Guideline provides for and requires a Council resolution to determine if the Planning Proposal should proceed, stating,

Council staff will prepare and submit an assessment report to a council meeting for formal consideration. If the council determines that the planning proposal has strategic and site-specific merit, and is to be supported, it should submit the planning proposal to the department for a Gateway determination.

The Discussion Paper appears silent on the reporting of any planning proposal to Council. Council would intend to do so at the completion of the Scoping Phase, similar to the current Guideline requirements, but if a proponent can then submit a different proposal through the portal, how does Council know whether its resolution is even still relevant?

Council DOES NOT SUPPORT a dilution of strategic merit in assessing a Planning Proposal

Most Planning Proposals received by Council seek to rezone land for residential development. Council's endorsed LHS and LSPS specifically require that infrastructure needs must be addressed and satisfactory arrangements in place before Council will support any rezoning application, especially for housing. Therefore, Council would expect that determining whether to support a Planning Proposal or not could rely solely on whether the land is included in the LHS and whether adequate infrastructure is in place to support it. And initially, the Discussion Paper also seems to support this approach. Many of the benefits articulated in the Discussion Paper imply they are embedded in a robust strategic planning framework. Indeed, to do otherwise would undermine the current strategic framework and the processes underpinning it.

So, it is of deep concern to Council that page 25 of the Discussion Paper states that:

Although the rezoning authority will provide feedback on whether the rezoning proposal is likely to be consistent with strategic plans, it will not be able to prevent the proponent from lodging an application. Study requirements must still be issued, and a proponent may still lodge a rezoning application, and have it assessed and determined.

The new Pre-lodgement/Scoping phase is a good initiative to enable development opportunities to be explored within clear strategic frameworks, as discussed above. However, to enable a proponent to ignore all the information and advice provided through that process and to proceed to lodge a

planning proposal through the planning portal anyway, seems to undermine and make a mockery of the scoping phase, especially when Council would then be obliged to place that planning proposal on public exhibition, a process which involves considerable time and effort on the part of the Council. Such an approach is inconsistent with all of the valuable strategic planning work which has been, and continues to be, undertaken by the department and the council. It will create confusion and even anger in local communities where it would appear to them that council is ignoring all of the strategic work they themselves have contributed to through consultation and feedback.

Nor can Council see any benefit to the proponent in this approach. Council recognises the right of a proponent to seek to develop their land, but to pursue a proposal that simply can't be achieved due to infrastructure constraints serves no one. Good planning outcomes should not be measured by the amount of land zoned for development. Good planning outcomes should be measured in efficient and effective land uses that provide housing choice and employment opportunities supported by the infrastructure and services the community and business expects. Sadly, the rezoning of land does not automatically put infrastructure on the ground. To rezone land without the ability to meet infrastructure needs will create unrealistic and unachievable expectations for both the community and the development sector.

The option for a proponent to submit a Planning Proposal through the Planning Portal, even without Council support, seems even more incongruous when the assessment and finalisation phase of the process outlined in the Discussion Paper again focusses on the strategic and site-specific merit of the proposal in determining support. The Guideline sets out the matters that should be considered which include:

- whether the proposal has strategic merit
- provisions of any relevant SEPP or section 9.1 directions (including the Minister's Planning Principles)
- whether the proposal has site-specific merit
- any submissions made by the public or state agencies
- the public interest.

In considering strategic merit, the rezoning authority would consider whether the rezoning application:

- gives effect to the relevant strategic planning documents
- is consistent with the relevant local strategic planning statement or supporting strategy
- responds to a change in circumstances not yet recognised under the existing planning framework.

In considering site-specific merit, the rezoning authority would consider:

- the natural environment, built environment, and social and economic conditions
- existing, approved or likely future uses of land near the land subject to the application
- the services and infrastructure that are or will be available to meet demand arising from the rezoning application and any proposed financial arrangements for infrastructure provision.

But isn't this all meant to be considered during the Scoping Phase? How is an assessment to not proceed at the Scoping phase meant to be different at the Final Assessment phase? And presumably the Final Assessment will be undertaken by Council, the authority which may have previously determined the Proposal not proceed.

This is the most concerning aspect of the Discussion Paper from Council's perspective and needs further clarification because at the moment it does not seem to make sense.

New Appeal Pathways

Council agrees that proponents should have access to an appeals process, but it does not support either of the proposed new appeal pathways. Council supports retention of the current appeal pathway through the relevant Regional Planning Panel which is retained in the new Guideline document. The Regional Planning Panel maintains the strategic planning context which Council strongly supports.

An alternative pathway through the Land & Environment Court places the Planning Proposal within a legal framework rather than a planning merit one which is not considered suitable. It would certainly not improve Planning Proposal timeframes. The IPC is a planning authority, and already considers Planning Proposal decisions in certain circumstances. The Discussion Paper indicates that new procedures would be required so the timeframe and details for those would need to be considered and potential delays in accessing the IPC taken into account.

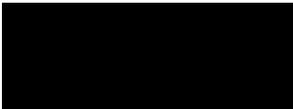
Council SUPPORTS a consistent fee structure

Council agrees that a separate fee should be paid for the Scoping phase and that fee should be paid up front. With regards to assessment fees, which are assumed to be separate from and in addition to the Scoping fee. Council prefers Option 1 as it provides consistency and a clear quotation can be provided to the proponent.

Council does not support a Planning Guarantee. Most usually delays occur when the proponent fails to provide documentation in a timely manner, or to an adequate professional standard and such a proposal would inevitably end in disagreement.

Thank you for the opportunity to provide comment on the Discussion Paper.

Your sincerely



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