

Department of Planning and Environment  
Locked Bag 5022  
**PARRAMATTA NSW 2150**

Submitted via Planning Portal

Dear Sir / Madam

**Re: Discussion Paper: A new approach to rezoning**

Thank you for the opportunity for Liverpool City Council to make a submission on the Discussion Paper for a New Approach to Rezoning.

At its meeting on 23 February 2022, Council resolved to *endorse the submission on the Department of Planning and Environment's discussion paper: A New Approach to Rezoning, with minor amendments as listed below:*

- *Additional Councillor input at the beginning of the process; and*
- *Supports the retention of the Local Planning Panel.*

Council supports more efficient assessment of planning proposals; however, Council does not support some of the proposed changes. Detailed comments are provided at **Appendix A** and questions outlined throughout the discussion paper are answered in **Appendix B**.

Should you require any further information on this matter, please do not hesitate to contact [REDACTED] on [REDACTED]

Yours sincerely,

[REDACTED]

**David Smith**  
Director Planning and Compliance

# Liverpool City Council Submission

## A New Approach to Rezoning

### Detailed Comments

#### Benchmark timeframes

Council only has one week to check that the planning proposal is lodged as complete. This is not sufficient to check the adequacy of submitted information, especially for more complex proposals with several supporting studies and plans. As such, it is anticipated that this step will reflect a Development Application (DA) process in which material is advertised prior to Council staff assessing any of the supporting documentation in detail. If this were the case, there is a risk that inadequate documentation is exhibited, and/or the proposal will change substantially after exhibition. Therefore Council request that further time be given to enable an adequate assessment prior to public exhibition.

There is no discussion about timeframes for a follow-up exhibition in instances where a proposal must be re-exhibited (which would likely increase in frequency under these new reforms). This should be reflected within the proposed framework.

The proposed timeframes are rigid and do not take into consideration Council's reporting timeframes, full agendas, care-taker mode, and Christmas shut down. These various complexities are outside of the control of Council staff, and there should be a mechanism to recognise delays caused by reasons such as these within the reforms.

The timeframes do not cater for referral to the Local Planning Panel, or proposals which include planning agreements, contribution plans amendments or development control plan (DCP) amendments. This is discussed in detail below.

Finally, it is noted that Council rarely refuses planning proposals currently, instead deferring decisions to enable further negotiations. This iterative approach whilst lengthy, ultimately leads to better outcomes in most instances. Alternatively, if Council were to refuse planning proposals more often, the time to re-scope, lodge, exhibit, and assess a revised planning proposal could actually result in a lengthier overall timeframe.

#### **Recommendations:**

1. Increase the timeframe for '*adequacy assessment / permission*' to enable a more thorough assessment.
2. Indicate the instance of re-exhibiting a proposal within the timeframes.
3. Introduce a stop-the-clock provision.

## **Scoping / Pre-lodgement**

Liverpool City Council is generally supportive of the mandatory scoping stage. Council already strongly encourages pre-lodgement meetings. However, the scoping stage is not likely to save time from an operational perspective as it will require Council and agencies to scrutinise the proposals more closely, perhaps without technical supporting studies, or a proposal containing a lesser degree of detail.

Whilst consultation upfront is welcomed, this stage will be significantly more time and resource consuming. Furthermore, Council's current pre-lodgement fee structure would be grossly inadequate in their current form if these reforms were to be established. These fees would need to be increased to account for the additional level of rigour required at this new scoping phase of the process.

Placing greater emphasis on the pre-lodgement advice as having to identify all matters that a proponent needs to address will help to streamline processes and clarify expectations. However, it also poses a risk to Council, DPE and other agencies. Council stresses the need for information requests to occur throughout the process to account for changing circumstances, community feedback, and state agency concerns.

### **Recommendations:**

4. Enable fees to be charged at the scoping phase to account for the additional level of assessment required prior to lodgement.
5. Enable information requests to still occur, with a stop-the-clock provision to apply during this stage.

## **New Roles**

### **Department Planning and Environment (DPE)**

The discussion paper proposed substantial changes to the role DPE plays in the planning proposal process. Council has some concerns with DPE involvement and requires further clarity in what situations / capacities DPE will be involved.

Currently the Gateway stage offers a certain level of certainty to proponents and Council for both proponent-led and Council-led planning proposals. Whilst the removal of the Gateway determination could create some efficiencies, for private proposals DPE only becomes involved in a planning proposal at the finalisation stage under the proposed framework. This is problematic if DPE is of the opinion that the proposal lacks strategic merit or site-specific merit as significant resources would have been spent by Council and the proponent in the process leading up to the finalisation stage.

Council is of the opinion that DPE should be involved formally at an earlier stage and required to provide comment. The process does not have to be as extensive as the current Gateway

Determination mechanism, but this will help both Council staff, Councillors and proponents ensure alignment between strategic documents before the proposal is in the finalisation stage.

Council also requests that DPE function as a central co-ordination body to facilitate state agency consultation. This currently occurs in some instances and has been beneficial.

### Councillors

Council strongly opposes the decreased involvement of Councillors as reflected within the new reforms. Councillors play a vital role in the plan making process and represent the communities needs and concerns. Councillor involvement in planning matters has been steadily diminished over recent years, and this would represent a further reduction in their influence over landuse planning and development. The Local Environmental Plan (LEP) remains the primary instrument for Council's to guide development within LGA's and it is crucial that elected Councillors are actively involved in any amendments to the LEP.

The specified one week '*adequacy assessment / permission to exhibit*' stage prohibits the involvement of Councillors prior to exhibition. Similarly with the involvement of DPE, if Councillors are involved only at the end of the process, there is a risk that proposals will be refused late in the process as in-principal Councillor support was not provided earlier.

### The Proponent

DPE also stated that "a private proponent will only be able to lodge a rezoning application if they are the owner of the land or have obtained the consent of the landowner to which the application relates." There is a risk that this change will further encourage spot-rezoning proposals in instances where there is a need to consider a more strategic and holistic approach to reviewing planning controls in a block / locality / precinct. Council do not see an acute need for this specific element of the proposed reforms to be introduced.

### Local Planning Panel (LPP)

The role of the LPP is currently unspecified, and clarification is required if referrals for planning proposal to the LPP are still mandatory for Council. Council believes the LPP offers valuable expert advice for proposals and suggests that they should be retained in the process. They offer another layer of independence and the advice provided can improve outcomes. If the LPP are still involved, the specified timeframes do not account for their referral and needs to be amended to account for their involvement.

### Council Staff

The proposed reforms identify that justifiable inconsistencies with 9.1 directions could be approved by Council in some instances. It is suggested that this should occur only with the support of relevant state agencies.

### **Recommendations:**

6. DPE is included in the scoping stage and provide in-principal support and conditions to inform planning proposals at an early stage.
7. DPE functions as a central co-ordination body to facilitate state agency consultation
8. Additional Councillors involvement is included earlier in the process, prior to exhibition to enable an indication of in-principal support at a political level.
9. The requirement for Council to seek advice from the LPP is retained, and this element is accounted for in the proposed timeframes.
10. Indication of support from relevant state agencies is required on any justified inconsistency with 9.1 directions.

### **Planning Agreements, Contribution Plan amendments and DCP amendments**

Planning Agreements, Contributions Plan amendments and DCP amendments are left out of the discussion paper yet are arguably the biggest sources of delay to planning proposals. The legal complexities of both Planning Agreements and Contribution Plan amendments can cause months or at worst years of extensive negotiations that involve Council staff, legal input, state agencies, Councillor endorsement and community consultation. Both Planning Agreements and Contributions Plan amendments do not integrate with the proposed process, and this needs to be taken into consideration. Both parallel processes are paramount in ensuring the plan making process accounts for supporting infrastructure.

Under the suggested approach, to meet the specified time frames Planning Agreement and / or Contribution Plan amendment negotiations would have to occur during the scoping stage. This would require proponents and Council to engage legal services and other consultants up front, which is time consuming and resource heavy. It also means a large amount of resourcing for both Council and the proponent before any reassurance / commitment is provided that the proposal will proceed. Finally, both Planning Agreements and Contributions Plan amendments must be reported to Council prior to exhibition for in-principal support and after exhibition for approval.

Furthermore, DCP amendments are typically required to support planning proposals to provide detailed guidance for future development beyond the role of an LEP. The proposed framework does not account for this element.

For supporting Planning Agreements, Contributions Plan amendments, and DCP amendments public exhibition should occur in tandem with planning proposals. These various parallel elements ultimately support the merit and function of a planning proposal. If this does not occur, separate exhibition periods would be required that would cause community confusion and broad inefficiencies. Therefore, it is crucial that parallel supporting elements such as these are incorporated and accounted for in the new rezoning framework. Whilst not mentioned, the ability to charge fees for these parallel supporting elements should be retained.

### **Recommendations:**

11. The proposed framework accounts for Planning Agreements and / or Contributions Plan amendments and / or DCP amendments in parallel with planning proposals including scoping, reporting to Council for in-principal support, public exhibition, assessment, reporting to Council for endorsement and, finalisation.
12. Retain the ability for Council's to charge fees to assess Planning Agreements and / or Contributions Plan amendments and / or DCP amendments in parallel with planning proposals.

### **Fee Structure**

Council is not in-principally opposed to a standardise fee structure if Council is recovering fair and reasonable costs incurred and not burdening the rate payer. However, it is suggested a one-size fits all approach does not work across New South Wales as a whole. The discussion paper does not take into consideration the local government award structure, skills shortages, fluctuating workloads, attractiveness of particular organisations, delays associated with the recruitment process, and other externalities which may influence the ability for Councils to resource themselves appropriately at any given moment.

There is no discussion of DPE aiding Councils if they are unable to attract staff, or letting Council adjust fees to reflect high demand (such as higher than average planning proposal requests) and limited supply (a lack of suitably qualified staff applying for positions), which can currently influence Council's fee structure on a year on year out basis.

If Council is required to select a preferred option from the discussion paper, Option 3 is the preferred option. This option allows for actual cost recovery as opposed to Option 1 which does not charge for associated costs (such as peer reviews) and provides a fixed component which will lessen the impact of calculating standardised components (e.g., advertising fees).

### **Recommendations:**

13. A fixed and variable fee structure is established (Option 3) to enable cost recovery in accordance with the complexity of planning proposals.

### **Planning Guarantee**

Council does not support this element of the proposed reforms. The complexity of planning proposals is difficult to ascertain upfront, and issues often arise at the post-exhibition stage. Furthermore, the proposed timeframes do not consider sources of delay such as:

- Parallel elements as mentioned earlier like Planning Agreements, Contributions Plan amendments, or DCP amendments;
- State agency delays;

- Council meeting delays such as full agendas, specified review times, care-taker mode, or deferred decisions by Council.

Council rarely refuses planning proposals and works closely with proponents to ensure great outcomes are achieved through a flexible and iterative process. This can require multiple revisions and flexibility from both Council and the proponent. The proposed framework and timeframes do not allow for this iterative approach and in a practical sense, this could result in an increase of refusals.

Furthermore, this element of the reforms would encourage Council to refuse planning proposals at the 17<sup>th</sup> week, to avoid refunding fees. It would then be up to the proponent to lodge a new planning proposal or challenge the refusal through an appeal process.

### **Recommendations:**

14. Refine the planning guarantee element further to account for external sources of delay and avoid needless refusals.

### **Appeal Pathways**

Council does not support the implementation of an appeals process that circumvents the decision-making powers of Councillors. Referral to the Land and Environment Court is seen as inappropriate as there are no historic dealings with the strategic merit test, the strategic planning framework has not been written with consideration for legal scrutiny, and finally the cost and time delays of court proceedings would undermine the purpose behind the proposed reforms. Whilst the Independent Planning Commission is the preferred option out of the two presented, Council believes the Regional Planning Panel (RPP) remains the better alternative.

The post-decision appeals pathway seems out-of-step with the purpose of the proposed reforms, as it will potentially prolong timeframes, increase costs, decrease Council's role as the rezoning authority, and decrease DPE's role in preventing land-use changes that are inconsistent with the strategic planning framework.

### **Recommendations:**

15. Incorporate the existing rezoning review process involving the RPP into the proposed framework.

### **Recommendations**

A comprehensive list of Council's recommendations is provided as follows:

1. Increase the timeframe for '*adequacy assessment / permission*' to enable a more thorough assessment.

2. Indicate the instance of re-exhibiting a proposal within the timeframes.
3. Introduce a stop-the-clock provision.
4. Enable fees to be charged at the scoping phase to account for the additional level of assessment required prior to lodgement.
5. Enable information requests to still occur, with a stop-the-clock provision to apply during this stage.
6. DPE is included in the scoping stage and provide in-principal support and conditions to inform planning proposals at an early stage.
7. DPE functions as a central co-ordination body to facilitate state agency consultation.
8. Additional Councillors involvement is included earlier in the process, prior to exhibition to enable an indication of in-principal support at a political level.
9. The requirement for Council to seek advice from the LPP is retained, and this element is accounted for in the proposed timeframes.
10. Indication of support from relevant state agencies is required on any justified inconsistency with 9.1 directions.
11. The proposed framework accounts for Planning Agreements and / or Contributions Plan amendments and / or DCP amendments in parallel with planning proposals including scoping, reporting to Council for in-principal support, public exhibition, assessment, reporting to Council for endorsement and, finalisation.
12. Retain the ability for Council's to charge fees to assess Planning Agreements and / or Contributions Plan amendments and / or DCP amendments in parallel with planning proposals.
13. A fixed and variable fee structure is established (Option 3) to enable cost recovery in accordance with the complexity of planning proposals.
14. Refine the planning guarantee element further to account for external sources of delay and avoid needless refusals.
15. Incorporate the existing rezoning review process involving the RPP into the proposed framework.



# Answers to Discussion Paper Questions

## The need for reform

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 has been insufficient consideration of supporting Planning Agreements, Contribution Plan Amendments and DCP amendments that occur in parallel with planning proposals (**Recommendation 11**).

## New categories and timeframes

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

The benchmark timeframes are rigid and do not take into consideration a variety of external factors as discussed in Council's detailed comments. While some efficiencies will be gained, there requires further refinements to ensure better outcomes.

It is noted that Council rarely refuses planning proposals currently, instead deferring decisions to enable further negotiations. This iterative approach whilst lengthy, ultimately leads to better outcomes in most instances. Alternatively if Council were to refuse planning proposals more often, the time to re-scope, lodge, exhibit, and assess a revised planning proposal could actually result in a lengthier overall timeframe.

## New roles

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

Council staff will have a degree of higher autonomy; however Councillors will have less involvement in the process. Council is not supportive of this implication (**Recommendation 8**).

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

Council recommends several changes including **Recommendations 1 – 9**.

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

Council requests that DPE provide in-principal support at an early stage to provide a level of assurance to both Council and proponents (**Recommendation 6**).

## Case management, monitoring and reporting:

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

Council is a strong advocate for the involvement of the LPP (**Recommendation 9**). Additionally, it is suggested that both DPE and Councillors should provide in-principal support earlier in the process rather than simply at the end (**Recommendation 6 and 8**).

Do you think the new approach and the departments proposed new role strikes the right balance between what councils should determine and what the department should determine?

Yes, however it is suggested that Councillor involvement has been overly diminished and should be reinstated (**Recommendation 8**).

## Inconsistencies with section 9.1 ministerial directions

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

If a proposal has sufficient strategic merit, and adequately justifies the inconsistency with the 9.1 direction Council should be able to approve the proposal. However, it is recommended that an indication of support is required from state agencies on any justified inconsistency (**Recommendation 10**).

## Public authorities

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

Yes

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

Yes, DPE should fulfill this role (**Recommendation 7**).

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

Yes, a stop-the-clock provision should occur in this instance (**Recommendation 3**)

## Scoping

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 full formed proposal for exhibition and assessment?

Yes, although it is unlikely that this would occur.

## Lodgement

What sort of material could we supply to assure community members that exhibition does mean the rezoning authority supports the application and may still reject it?

This element of the proposed reforms is not supported (**Recommendation 8**).

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?

Not necessarily. It will result in refusals becoming more common. This is discussed in more detail within the detailed comments section.

Should the public have the opportunity to comment on a rezoning application before it is assessed?

Not necessarily, Council currently offers this opportunity to the community on large scale proposals in alignment with the Liverpool Community Participation Plan. However, this can result in a minor increase in overall timeframes.

## Exhibition

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

Further Councillor involvement enables strengthened community engagement through the Council meeting process (**Recommendation 8**). Public forums could also be held, this element is currently absent from the proposed framework.

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

No.

## Changes after exhibition

Do you think the assessment clock should start sooner than final submission for assessment, or is the proposal approach streamlined enough to manage potential delays that may have happened earlier?

No. Stop-the-clock provisions are requested (**Recommendation 3 and 5**).

## Information request

Do you think requests for more information should be allowed?

Yes (**Recommendation 5**).

## Assessment and finalisation

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?

No. Currently Council's main source of delays at this stage of the process is supporting Planning Agreements and / or Contributions Plan amendments and / or DCP amendments in parallel with planning proposals (**Recommendation 11**).

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

Yes, public interest is a crucial and necessary consideration.

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

Supporting infrastructure (Planning Agreements and Contribution Plan amendments), and additional guidance through DCP's (**Recommendation 11**).

## Conflict 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.

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 rezoning application?

DPE should take full responsibility.

## **New fee structure**

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

No, Councils vary significantly across New South Wales.

What cost components need to be incorporated into a fee structure to ensure council can employ the right staff and apply the right systems to efficiently assess and determine applications?

The local government award structure, skills shortages, fluctuating workloads, attractiveness of particular organisations, delays associated with the recruitment process, and other externalities which may influence the ability for Councils to resource themselves appropriately at any given moment.

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?

It should extend to establishing a fee schedule.

What is your feedback about the 3 options present above?

Refer to Council's detailed comments and **Recommendation 13**.

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?

Yes, however this should take into account the quantity of work undertaken up until that point.

## **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, the current rezoning review process provides a sufficient mechanism to combat this issue.

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?

Council recommends stop-the-clock provisions be introduced (**Recommendation 3 and 5**).

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

Council currently seeks to progress planning proposals promptly to ensure great outcomes for the community. The current rezoning review process is sufficient for when an authority is unduly delaying a meritorious planning proposal.

### **New appeals pathway**

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

Yes.

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?

Council suggest that the IPC would be more appropriate and effective in comparison to the LEC as discussed in the detailed comments. However, Council recommends the RPP is utilised instead (**Recommendation 15**).