

4 March 2022

NSW Department of Planning and Environment
Locked Bag 5022
Parramatta NSW 2124

Attention: Ms Paulina Wythes
Director, Planning Legislative Reform

Dear Ms Wythes;

Re: Council endorsed submission – A New Approach to Rezonings in NSW

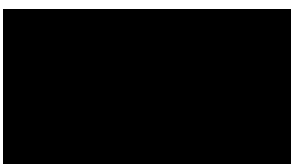
Thank you for granting an extension of time to Council to enable this matter to be reported to the March Council Meeting.

I wish to advise that at the Council Meeting held on 1 March 2022, the Council considered a report on the Department's '*A new approach to rezonings*' Discussion Paper, December 2021, and resolved that:

1. Council endorse the staff submission made to the NSW Department of Planning and Environment (dated 10 February 2022) which raises serious concerns with the changes outlined in the Government's '*A New Approach to Rezonings Discussion Paper*'.
2. That at a future time when greater clarity is obtained about the likelihood of these reforms transpiring, a public meeting be held to inform the community regarding the reforms.

A copy of the 10 February staff submission is enclosed.

Yours sincerely



Kelly Lynch
SENIOR STRATEGIC PLANNER

10 February 2022

NSW Department of Planning and Environment
Locked Bag 5022
Parramatta NSW 2124

Attention: Ms Paulina Wythes
Director, Planning Legislative Reform

Dear Ms Wythes

Re: Submission – A New Approach to Rezoning in NSW

Thank you for the opportunity to provide feedback in response to the exhibition of the NSW Department of Planning and Environment's (DPE's) 'A new approach to rezonings' Discussion Paper and Frequently Asked Questions document, both dated December 2021.

Council raises serious concerns about the DPE's reasoning behind the new approach to rezonings, which appears to be solely focussed on optimising the economic benefits of development for developers. It is feared that the changes outlined in the discussion paper will encourage speculative and ad-hoc rezoning proposals, along with litigation, undermining recent strategic planning work undertaken by councils in consultation with the community and placing additional burden on council resources. This new approach will likely be extremely unpopular with the community and the elected councillors alike, as the community is looking for certainty in terms of development yet this new approach provides for the very opposite.

Initiatives to improve planning processes are supported, although not at the expense of transparency and good planning outcomes. The current system is not broken. Mosman is not besieged with delayed rezoning applications, but it will likely be if this ill-considered change is introduced.

At workshops held in early February 2022, DPE staff advised councils that the new approach is just a 'thought piece', however exhibition material indicates that the new rezoning framework is anticipated come into effect in 2022. I urge the DPE to rethink the approach outlined.

More detailed feedback follows.

Focus of new approach on financial gain to developers is flawed

The focus of the discussion paper on optimising the economic benefits of development for developers is seriously flawed. Over recent years, Council has committed significant resources to undertake strategic planning work and prepare a local strategic planning statement, local housing strategy and local environmental plan review to meet priorities and directions outlined in the Government's Metropolitan and North District plans. This work has involved extensive engagement with the Mosman community and endorsement of plans by the elected Council.

The new approach threatens to undermine Council's strategic planning work and depower the community by encouraging speculative and ad-hoc rezoning proposals. The focus on a "streamlined and predictable process" for developers does not provide certainty for the local community and clearly attempts to unstick carefully consulted and endorsed strategic plans for the benefit of developers. Council is entrusted by the community to meet its vision and priorities for an area, and this should not be handed over to the development industry.

Timeframes for assessment and burden on council resources

The new approach shifts the burden to councils to meet assessment timeframes imposed by the State Government with little regard for the strain that many council workforces are under with staff shortages and the raft of Government reforms and changes currently underway. Speculative rezoning applications disrupt the regular work program of council staff responding to carefully considered and planned strategies, with the new approach likely to amplify this burden.

The requirement for councils to refund part of the rezoning application fee if timeframes are not met does not recognise that some aspects of this process are outside of the council's control.

Benchmark timeframes do not necessarily create greater efficiency nor lead to time savings. Rather than working together with an applicant to resolve issues, a rezoning authority may be obliged to determine an application to meet arbitrary timeframes, resulting in appeal or re-lodgement and further expense for both the proponent and council.

Treating rezoning applications like development applications

The new approach will remove preliminary consultation, Gateway advice and initial reporting processes, and apply shorter set processing times, essentially treating rezoning applications as if they are development applications. However a rezoning application and development application are very different. In many instances a rezoning application involves significant change from the council's local environmental plan (i.e. greater height and floor space ratio, or 'up-zoning' from low to medium density residential) which demands considerably more complex analysis and consultation with affected landowners and State agencies, than compared with a development application which generally is within the known rules the local environmental plan.

Appeal of rezoning applications

The new approach to give private proponents a right of appeal against the final decision of a rezoning application will place additional financial burden on councils to defend decisions made in keeping with Council endorsed strategic plans. The details of this appeal process are unclear - What are the criteria to be considered? Will the community and council be notified of an appeal and be able to make representations? Is the decision on appeal final?

Pre-lodgement meetings

Council is supportive of the emphasis on scoping and pre-lodgement meetings under the proposed new approach. However there is no obligation mentioned in the discussion paper for a proponent to adhere to the advice given by a council at pre-lodgement stage, which is a clear limitation with this process. Pre-lodgement meetings provide an opportunity to carefully consider proposed development in the context of applicable planning instruments and council's vision for an area, and Council staff routinely meet with proponents to give clear and candid advice about proposed development.

Consultation

The new approach aims to recognise private proponents as applicants noting that the proponent will have the right to meet with a rezoning authority to discuss a proposal, submit an application and appeal a decision – similar to the current development application process. However the discussion paper

goes further, noting that along with these rights, the private proponent will be responsible for consulting with state agencies, and reviewing and responding to any submissions received during consultation. This raises serious concerns about confidentiality and transparency as part of this process – Will complete submissions be available to a rezoning authority (council) to review, or just a summary? Will a proponent be able to contact an objector directly?

Role of the local planning panel

It is unclear whether the local planning panel will retain the same advice-giving role under the new approach. Currently, all planning proposals are referred to the local planning panel for advice at pre-Gateway stage unless determined otherwise by the general manager. However, with the Gateway stage removed under the new approach, the role of the local planning panel is unclear – Will their role be retained, but moved to prior to final decision making? Council is supportive of the local planning panel in providing valuable, independent advice in the rezoning process.

Confusing change in terminology from ‘planning proposal’ to ‘rezoning application’

The proposed change in terminology from ‘planning proposal’ to ‘rezoning application’ for all changes to a council’s local environmental plan assumes that all amendments relate to the rezoning of land, which is not the case. The amendment may relate to an objective, development standard, local provision or schedule, or to a map other than land zoning. Recent amendments to Mosman’s Local Environmental Plan, for example, have included updating archaeological heritage listings, adding local provisions for landscaped area and earthworks, and amending business zone objectives. The change in terminology is confusing and geared solely towards proponent-initiated land rezonings.

Thank you for the opportunity to comment on the proposed changes.

Please contact [REDACTED] Planner, on [REDACTED] or at [REDACTED] if you would like to discuss this further.

Yours sincerely

[REDACTED]

Dominic Johnson
GENERAL MANAGER