



Council Ref: [REDACTED]

4 March 2022

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

Dear Ms Wythes

**Submission to the public exhibition of
*A new approach to rezonings Discussion Paper***

Woollahra Council welcomes the opportunity to comment on the exhibition of *A new approach to rezonings Discussion Paper* (Dec 2021).

Council acknowledges there is broad concern with regards to the time it currently takes to approve a planning proposal but the proposed reforms in the “new approach” overwhelmingly favour the developer and will result in diminished opportunities for community engagement, less rigour in planning decisions and poor built form outcomes. The reforms will compromise the integrity of the planning system and are not in the public interest.

Council requests that the NSW Government rejects the need for a complete overhaul of the rezoning process as proposed in the Discussion Paper, and instead moves to fine-tune and value-add to the current process.

Our key concerns with the proposed new approach are:

- Undermines local planning— The proposals in the Discussion Paper will undermine carefully crafted, community led strategic planning, and will significantly diminish the role and status of the LEP as a mechanism which directs land use. The proposed reforms will reduce planning certainty and create a planning framework that is constantly under pressure for change from developers, creating tension and an adversarial system between developers, Council and the community.
- Reduces planning rigour— Under the proposed approach there is an over-emphasis on reducing decision-making timeframes. This will reduce the quality of assessment and compromise integrity of the planning system. For example there will be less transparency and accountability in decisions as a result of the benchmark timeframes, limiting opportunities to ask the proponent for more information, and diminished community engagement.
- Reduces opportunities for community consultation— Proposals in the Discussion Paper will significantly diminish opportunities for meaningful consultation and alienate the community. The reforms to the exhibition stage focus on streamlining and automating the exhibition process, and these are entirely inconsistent with *Woollahra’s Community Participation Plan 2019*.
- Devalues and disempowers Council— The proposed changes will remove opportunity for a Council report to consider the rezoning request in principle and for Council to determine if it supports the proposal for the purpose of public exhibition. Instead the rezoning proposal will only be reported to Council after it has been on exhibition. Further to that, a pathway to then appeal Council’s decision is proposed. The appeals authority will be the Land and Environment Court or other independent

planning body. This appeals pathway will fundamentally undermine Council's role in determining the direction of rezoning and strategic planning initiatives. Over the last 10 years there has been a systematic erosion of Council's role and decision making powers in regards to planning. Councillors are elected by the community to make strategic planning policy decisions, and it is completely inappropriate to introduce an appeals mechanism for rezoning applications.

The Discussion Paper also includes a range of inconsistencies. For example it states that the new approach "*allows councils to receive and determine private proponent-initiated LEP amendments, with no or minimal department involvement in assessment*" while also contending that it "*bolsters the department's role in supporting, monitoring and assisting councils in the process.*"

The community's confidence and trust in government is at an all-time low. Implementing the nature and scope of changes proposed under the new approach will only further diminish that trust.

Council urges the NSW Government to reject the new approach.

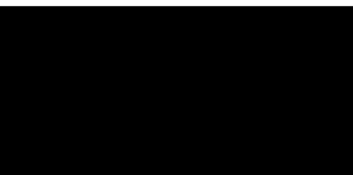
The current system for LEP amendments is not fundamentally flawed. There are certainly opportunities to refine and adjust the existing framework.

Council requests that the Department takes the next 6 months to monitor the recent changes in the *Local Environmental Plan Making Guideline* (Dec 2021), and in collaboration with stakeholders identify what further refinements can be made to improve efficiency within the current system whilst also ensuring quality decision-making and meaningful community consultation.

Woollahra Council's submission is attached for your consideration.

If you require further information about our submission please contact [REDACTED],
[REDACTED], on [REDACTED] [REDACTED]

Yours sincerely,



Anne White
Manager – Strategic Planning



Submission to *A new approach to rezonings* Discussion Paper

Woollahra Council raises significant concerns with the key proposals in the *A new approach to rezonings Discussion Paper* (Dec 2021) and requests that the NSW Government rejects the need for a complete overall as proposed in the Discussion Paper. Our submission is provided below for your consideration.

1. New terminology

We generally support the proposed changes to terminology in the Discussion Paper, Table 1 (page 15). The proposed terms seem more meaningful, relevant and readily understood. However, we do have specific comments about “rezoning application” and “rezoning authority”:

Rezoning application

In the community there is confusion about the term “planning proposal” and what it means. We agree that this term should be amended to better recognise a request or application to amend the LEP.

In the Discussion Paper it is suggested that the term “rezoning application” should be used. However, a rezoning application seems to specifically indicate a change in the zoning of the land. We suggest that the broader term “LEP amendment application” may be better as it covers a wide range of changes that can be made to the LEP such as an amendment to the maximum building height, FSR, etc.

Rezoning authority

In the Discussion Paper it is proposed that the term “rezoning authority” will replace the current term “local plan-making authority”. The proposed definition of “rezoning authority” is:

The party responsible for assessing and determining the rezoning application. This could be a council or the minister, depending on the type of rezoning application.

We understand that reference to “Council” in regards to the rezoning authority is the full Council rather than a delegation authority such as the Woollahra Local Planning Panel, but seek confirmation of this interpretation.

2. New categories and timeframes

Proposed categories

Under the proposal there are four categories of rezoning applications and each category has associated target timeframes for the rezoning application to be assessed and determined.

Establishing four categories for rezoning applications seems reasonable in theory, but will be problematic in practice if the categories and the timeframes are applied rigidly (which seems to be the intention).

For example, a Category 1 (Basic) rezoning application may generate significant community interest and 100s of submissions. These planning proposals may seem basic on paper, but are not in practice. To account for this we suggest there could be a threshold relating to the number of submissions received, that gives Council discretion to change the category of a rezoning application from Category 1 to 2 after the exhibition to provide more time for assessment.

We also note that these 4 categories are already incorporated in the Department's recently published *Local Environmental Plan Making Guideline* (Dec 2021). We request that the Department affords councils sufficient time to apply these categories (at least 6 months) and provide feedback on the categories and refine the descriptions within each category. For example in:

- Category 1 it is unclear what is meant by “*attaining consistency with an endorsed local strategy, such as a local housing strategy*”, and
- Category 2 (Standard) “*ensuring consistency with an endorsed strategic planning or local strategic planning statement*” is such a broad description that almost any proposed rezoning could be shown to be consistent as part of the Local Strategic Planning Statement and therefore it is not really a meaningful measure.

Proposed benchmark timeframes

We do not support the proposed timeframes. These timeframes are too rigid act and as deadlines, establishing the framework for applying penalties to councils and an appeal pathway for developers.

We recognise that there is broad concern with the time it currently takes to approve a planning proposal but the proposals in this “new approach” overwhelmingly favours the developer and will result in poor planning decisions and poor built form outcomes.

If the Department wants to reduce processing times for planning proposals, the following refinements can (and should) be taken within the existing framework:

- By the NSW Government
 - Department to improve time for issuing the gateway determination, or remove / replace the gateway stage.
 - State agencies to improve consultation response times.
- By the applicant
 - Mandatory scoping meeting / pre-application consultation with Council staff.
 - Better formed and quality planning proposals lodged (including to lodge planning proposals consistent with the Department's Guidelines and the pre-application consultation advice).
- By Council
 - Greater authority for staff to reject incomplete planning proposals at lodgement stage
 - Greater authority for Council to reject unsuitable planning proposals (i.e. those with insufficient strategic and site specific merit) after in principle consideration by Council (i.e. prior to request for gateway determination).

We note that maximum benchmark timeframes have also been included in the Department's recently published *Local Environmental Plan Making Guideline* (Dec 2021). We request that the Department monitors how each stakeholder works within these timeframes and engages with councils to identify what efficiencies can be gained in each stage of the process, before considering such radical changes as proposed in the Discussion Paper.

3. New roles

The new approach changes the roles of the various parties in the rezoning process. We support some of the ideas behind the proposed changes but not the details.

Private proponent

Under the existing framework the planning proposal initiated by a third party (private proponent) becomes council's planning proposal once council decides to support the proposal for the purpose of public exhibition. We agree that this should be changed, i.e. for rezoning applications initiated by a private proponent it should be clear throughout the entire rezoning process that a private/ third party is the applicant.

However we do not support a number of the responsibilities that the Department suggests should confer to the private proponent during the rezoning process. For example, we don't support the following:

- Private proponent is responsible for consulting with State agencies—
This could be problematic (e.g. proponent may not faithfully represent proposal, or may misconstrue State agency feedback). Also State agencies can be slow in providing comment; Council staff will be very persistent in seeking a response from agencies, whereas a private proponent is less likely to do this.
- Private proponent is responsible for preparing information for notification letters—
For accuracy, consistency and probity Council staff should prepare this content, or at least be required to check and verify the proponent's content for the notification letters.
- Private proponent is responsible for reviewing and responding to submissions—
In theory this approach sounds appropriate, as it places the onus on the proponent to address the issues raised in the submissions, justify and or suitably respond to those issues by identifying possible amendments to the rezoning proposal. However, it is highly questionable as to whether the proponent will have the capacity and willingness to undertake this task in good faith and with an appropriate level of scrutiny.
- Private proponent has the right to appeal a decision made about a rezoning application cause of a delay or dissatisfaction with a decision—
We vehemently object to establishing such an appeal pathway (see our further comments to the *New appeals pathways* at section 7 below).

We also note that the Discussion Paper does not outline what the consequences will be if the private proponent does not undertake these proposed responsibilities to a suitable standard. There must be checks and balances, authority for Council to ensure that these tasks are undertaken properly, and suitable penalties where these responsibilities have not been faithfully undertaken by the proponent.

Councils

The Discussion Paper states that the "*new approach aims to empower councils to make decisions about their local area without unnecessary departmental intervention.*" (page 19)

We do not agree and find that the proposed new approach diminishes Council's authority and role in setting the strategic planning framework. In particular, the proposed appeal pathway will diminish the role and status of the LEP as a mechanism that directs land use, and it will create uncertainty about the form and scale of development that can occur.

Further, the establishment of prescriptive timeframes for each stage of the rezoning process and significant penalties if these are not met, further devalues and diminishes Council's authority.

What needs to be done to empower Councils

If the Department wants to ensure Councils are empowered to make decisions throughout the rezoning application process the following matters must be established within the framework:

- Authority for Council staff to reject rezoning application at the 1st stage due to insufficient information or not fully formed proposals.
- Maintain opportunity in the early part of the process, for a report to Council to consider the rezoning request in principle and determine if Council supports the proposal for the purpose of public exhibition. Also provide clear authority for Council to reject the application at that stage if the application does not have sufficient strategic and site specific merit. (Also see comments to section 4 *New Steps – Lodgement*)
- Authority for Council to require further information from the applicant at any point in the process, including after exhibition in response to matters raised in submissions. (Also see comments to section 4 *New Steps – Exhibition*)
- Final decision is with Council, with no appeals pathway. (Also see comments to section 7 *New appeals pathway*)
- Ability for Council to determine its own fees to ensure full cost recovery. (Also see comments to section 5 *New fee structure*)

Anything less than the above will not provide Councils with greater autonomy over rezoning decisions and will compromise high-quality decision making and inevitably compromise outcomes for the community.

What support the Department can provide Councils

To enable high-quality and efficient rezoning decisions, the Department could support Councils by doing the fundamental things really well such as, responding to information requests and providing that advice in a timely, clear and consistent manner.

Council staff value the input of the Department but there are often significant delays. For example:

- Woollahra Council wants to initiate a planning proposal to regulating smoking in licensed premises. Given this is potentially new ground for an LEP we sought the Department's comment. Woollahra Council staff have been waiting for the Department's final response since September 2021.
- In December 2020 Council staff lodged a planning proposal with the Department. At the time of preparing this submission we are still waiting for a gateway determination to allow public exhibition.

We need the Department to allocate more staff to supporting Councils and the planning proposal process, and less staff developing new policy (and so called reforms).

There are also inconsistencies in the Discussion Paper for example it states that the new approach "*allows councils to receive and determine private proponent-initiated LEP amendments, with no or minimal department involvement in assessment*" while also contending that it "*bolsters the department's role in supporting, monitoring and assisting councils in the process.*"

Department of Planning and Environment

We agree that there are opportunities for the Department to step back from certain stages in the rezoning application process, in particular the Department does not need to be as involved in certain types of LEP amendments, such as rezoning land and changing height and FSR where the request is initiated by a private proponent.

Although removal of the gateway determination may speed up processing timeframes it also removes a useful touchpoint in the earlier stage of the rezoning process which provides useful direction to both the application and Council and the community. The gateway determination process is particularly useful where Council has raised concerns with the planning proposal as it can provide validation of Council's position. Such direction and validation is more effective for all stakeholders if provided early in the process than at the end of the process.

Council staff have always welcomed the Department's comment and involvement and there should always be role for the Department in providing advice and information to assist councils, proponents and facilitate state agencies involvement.

Case management, monitoring and reporting

Under the proposal, rezoning applications will be lodged and progressed through the NSW Planning Portal. The Discussion Paper states that the portal "*will help to maintain the integrity of the planning system through transparency, consistent decision-making and checks and balances, and it will act as an important anti-corruption measure.*" (page 20).

We find the Planning Portal to be clunky and time-consuming to just load documents. We question the increased role of the portal, including its relevance as an important anti-corruption measure.

To address corruption and the perception of corruption the planning framework needs to support and require transparent, accountable and consistent decision-making. This is achieved by having clear strategic plans and direction, sound staff advice, fully formed rezoning applications with supporting documents and studies, meaningful engagement and opportunities for the public to critique the application and provide comment, and high-quality assessment reports, and rigorous debate at Council meetings. Opportunities for these seem to be removed under the new approach.

Under the proposed new approach there will be less transparency and accountability in decisions as a result of the benchmark timeframes, limiting opportunities to ask the proponent for more information, diminished opportunities for meaningful community engagement, and reduced quality of assessment.

Further, the optimal way to encourage transparency, certainty and good decision making is to restrict rezoning applications by placing a moratorium on accepting spot rezoning applications, and to require development consistent with the LEP. For example perhaps Councils could establish a register of rezoning requests, and undertake a comprehensive LEP review every 3 years. That way rezoning requests would be considered in a strategic and collective manner rather than a piecemeal and incremental way. Staff resources could then be spent on strategic planning rather than diverted to address spot rezonings that has limited public benefit for the broader community.

Unfortunately however, we anticipate that the proposed new approach will encourage developers to lodge rezoning applications.

Inconsistency with section 9.1 ministerial directions

We support a review of the current section 9.1 ministerial directions and the need to streamline the section 9.1 assessment process, including to remove duplication with the checklist for *Consistency with State Environmental Planning Policies*.

There should be scope for councils to approve inconsistencies with certain s. 9.1 directions. We recommend that the Department undertake a review of section 9.1 Tables submitted in planning proposals to identify which directions Councils commonly identify as inconsistent but reasonable, and from that prepare a guideline setting out thresholds, examples and matters to consider to guide those decisions. State agencies would also be well positioned to provide examples or thresholds for acceptable inconsistencies.

In addition, or alternatively the proponent should be required to identify any inconsistencies at the scoping stage, and undertake consultation with the relevant agency and provide information to justify the inconsistency. Council may approve the inconsistency on that basis, or identify consultation requirements with State agencies to respond during the exhibition stage.

Public authorities

State agencies

State agencies are the knowledge-holders on matters that can affect the viability and appropriateness of rezoning applications such as infrastructure provision, environmental impacts and bushfire safety. However, it is often difficult to get State agencies to provide comment on rezoning applications, and there is definitely a role for the Department to facilitate and broker State agency input if agency is not engaging in the process.

In the Discussion Paper we support the following:

- Councils, proponents and the Department will have clear direction about the circumstances in which an agency referral is required at both the scoping and exhibition stages, tailored to individual agencies and circumstances. Notwithstanding the timing and progress of the Discussion Paper, this system improvement should be incorporated into the current process.
- Proponents will have clear direction about the information they must give to agencies to allow study requirements to be issued and rezoning applications to be assessed.
- State agencies will have clarity about the appropriate level of assessment for rezoning applications.

However we do not support the rigid timeframes proposed to be imposed on State agency responses. We also strongly object to the idea that a rezoning authority could continue to progress and determine a rezoning application where a State agency has not responded within the timeframe.

We also do not understand how, if an agency objects, a rezoning authority could still approve the rezoning application, but will need to consider the objection when assessing it. (page 22) This is not sound planning practice. Good planning decisions are based on consideration of the relevant issues. State agencies must be sufficiently resourced to provide informed and timely responses, and the culture within the NSW Government should show leadership and demonstrate best practice in customer service and relationships.

Public authority proponents

There are circumstances where public authorities that are holders of infrastructure and other assets are also proponents in the rezoning process. Under the new approach, if a rezoning application is initiated by a public authority, the application will be lodged with and determined by the department rather than a council.

We do not support this proposal. There are already numerous SEPPs that allow State agencies to by-pass local Council consultation and zoning assessment. The proposal to remove Council as the rezoning authority further reduces open and transparent decision-making and alienates the community.

Should a central body co-ordinate agency involvement?

We do not support the establishment of a central body to co-ordinate agency involvement. This would create yet another layer for delays, as well as an opportunity for central agency to influence comments and direction of advice from individual agencies.

Each State agency needs to have a designated referral section and contact. State agencies need to be accountable and required to provide timely and informed comments to rezoning applications.

4. New Steps

Scoping

The new approach includes a mandatory pre-lodgement stage for the standard, complex and principal LEP rezoning applications (optional for the basic applications) called scoping.

We support the proposal for a mandatory scoping stage, but raise concern with other elements. In particular, 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.”* (page 25)

We find that issuing study requirements for a proposal that does not have in-principle merit establishes false hope for the proponent, and implies that there may be something that could provide supporting evidence that may change the Council’s position. Instead of issuing study requirements maybe Council could issue the reasons for not supporting the proposal, the applicant if they wish to proceed could investigate and justify matters on the list if they choose, and have another pre-lodgement scoping meeting.

We agree that the applicant should be able to lodge the application but Council staff must have clear authority to reject the application because it is not fully formed (i.e. does not contain sufficient information, and is not submitted in the required format).

Lodgement

Under the new approach, once the application is lodged the rezoning authority will have 7 days to check that the application is adequate and to confirm that study requirements have been met. The application will then commence exhibition via the Planning Portal.

We raise a number of concerns with the proposed lodgement process:

- The rezoning authority will only have 7 days to check that the application for adequacy. This is not enough time. For example if the proposal includes supporting studies these may need to be referred within Council or to external consultants to check that they are adequate. Also we anticipate that if these reforms go through there will be a spike in rezoning applications, and this will place great pressure on staff resources and likely divert staff from public interest policy work to private proponent spot rezonings.

- Where application is adequate, this will trigger exhibition of the rezoning application, meaning the application will go live on the portal and the formal exhibition period begins. This means that Council will not have any input until after the exhibition stage.

This is a significant change from the current process where a request for the planning proposal is reported to the Local Planning Panel and Council for consideration, and for Council to decide if it provides in principle support for the proposal to go on public exhibition. We strongly oppose this change. It diminishes Council's role in directing its land use policy, and it also potentially wastes Council, community and the proponents time and resources by placing on exhibition and assessing rezoning applications that do not have merit.

Removing this Council checkpoint is another example of a developer-led approach to rezoning and is not in the public interest.

The community's confidence and trust in government is at an all-time low. Implementing these types of changes only further diminishes that trust. Rezoning proposals placed on public exhibition must be able to demonstrate strategic and site specific merit – otherwise we are wasting the community's and the proponent's time and resources.

Exhibition

We agree that "*effective community engagement is key to developing trust and transparency in the planning system.*" (page 27). However the proposals in the Discussion Paper will diminish opportunities for meaningful consultation and alienate the community, and are also entirely inconsistent with *Woollahra's Community Participation Plan 2019* which was adopted following a period of community consultation.

For example:

- Exhibition will be through the NSW Planning Portal. We are concerned that the portal may not be accessible or may alienate certain members of our community. Our community is used to liaising with their local Council on local planning matters. Council's website includes the "*Your Say Woollahra*" consultation page which contains proposals for community feedback. To encourage consultation we often include surveys and other feedback opportunities (i.e. formats in addition to written submissions) to make it easier and more engaging for people to provide comment. Can (and how) will this be accommodated within the proposed changes?
- Exhibition periods seem to be set as a maximum, rather than minimum days, in order to reduce timeframes for the developer. This will remove scope for Council to use its discretion to extend the exhibition period to account for matters such school and public holidays, and is likely to impact on opportunities to undertake targeted engagement activities and meaningful community consultation.
- The proponent would be responsible for preparing the information for the notification letters. For accuracy, consistency and probity Council staff should prepare this content, or at least be required to check and verify the content included the notification letters.

It appears that the key Department's objective for exhibition is to identify ways to streamline or automate the exhibition. This is another part of the new approach that seems to be a developer-led approach that sets aside good planning practice and the public interest.

Changes after exhibition

The Discussion Paper (page 28) states that:

Following exhibition, a proponent must both summarise and respond to submissions received, including working with state agencies to resolve any objections. This will help the rezoning authority in its final assessment, while also giving the proponent the opportunity to respond to issues raised. Those who provided submissions will know the proponent's response to their submissions. As part of the response, the proponent will need to submit any changes or amendments to the rezoning application before final assessment.

Following exhibition and any amendments, the rezoning authority will assess the rezoning application. The application may need to be exhibited again if changes made after the first exhibition are extensive – this will be determined by the rezoning authority.

In theory this approach sounds appropriate, as it places the onus on the proponent to address the issues raised in the submissions, justify and or suitably respond to those issues by identifying possible amendments to the rezoning proposal. However, it is highly questionable as to whether the proponent will have the capacity and willingness to undertake this task in good faith and with an appropriate level of scrutiny, and will be able to satisfactorily resolve outstanding agency and community concerns before submitting the final version of the rezoning application after exhibition.

The proponent's response to submissions (and any amended rezoning application) is then forwarded to the rezoning authority, such as Council, to assess, finalise and determine the rezoning application. Under the proposal this assessment and determination must be completed within the specified timeframe (e.g. 11 weeks for Category 1, and 17 weeks for Category 2), otherwise the proponent can appeal (based on a decision being a 'deemed refusal') and/or access a fee refund through a planning guarantee.

We have significant concerns with this proposed approach:

- We do not agree with the timeframes. For example, the timeframes do not account for the strong possibility that the proponent's assessment of the submissions may be bias and cursory, and that Council staff will most likely need to reassess the submissions. Furthermore, the timeframes do not recognise that reports to Council need to be signed-off consistent with Council's established internal governance and reporting cycles, which may include reporting to a committee (such as the Environmental Planning Committee) before it is reported to Council.
- We note that there are no such timeframes applied to the operation of the Department. For example, one of our current planning proposals has been in with the Department for assessment since December 2020. We are still waiting on a gateway determination to allow public exhibition.

Information requests

We acknowledge that ongoing requests for more information cause delays throughout the rezoning application process and create uncertainty for all parties to the process. However, the process must provide discretion for Council to request more information at any time during the process. This includes before exhibition to ensure that the proposal is a fully formed to help inform the community and after exhibition in response to submissions.

The authority to require more information to allow for informed consideration of a rezoning application is fundamental to good planning and decision making. To limit and unreasonably

restrict the opportunity to request more information, as proposed in the Discussion Paper, compromises the integrity of the planning system.

Assessment and finalisation

In the Discussion Paper (page 29) the Department identifies that it wants to standardise matters of consideration, as relevant to the final decision made by the rezoning authority.

The kind of matters that could be considered 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.

We recommend that specific additional weight is given to whether the proposal has site-specific merit and the submissions.

In particular, we question the value of the strategic merit considerations. We are concerned that justifying a proposal based on the strategic merit is too broad and elements of strategic planning documents can be cherry-picked and manipulated to support almost any proposal. This concern is further heightened having regard to the proposed strategic merit consideration "*responds to a change in circumstances not yet recognised under the existing too planning framework*" (page 29). We are not sure what this means, but seems too open ended and provides the developer with significant creative scope to justify their proposal.

Conflicts of interest

In the Discussion Paper it is suggested that the local planning panel (LPP) could assess and determine a rezoning proposal where a conflict of interest may arise for Council, such as for certain voluntary planning agreements (VPA) or if council land is included in the rezoning application.

It is our view that Council can (and does) suitably manage potential conflicts of interest, and there would be very limited circumstances for the LPP to be the rezoning authority in lieu of Council. Instead there may be merit in seeking the advice of the LPP on matters such as rezoning or reclassifying Council land, but the LPP's advice should not be definitive but rather considered within the context of other submissions.

5. New fee structure

Councils must have the authority to charge fees for private proponent rezoning applications. The fee regime must ensure full cost recovery to Council. And in the event a proponent decides not to progress a rezone application, partial fee refunds should only be provided for work not commenced. Generally no refunds should be required where the stage has substantially commenced and involved Council staff and resources.

From the options in the Discussion Paper we prefer Option 3: Fixed and variable assessment fees.

We do not support NSW Government prescribing the fees and/or setting a maximum hourly rate, as this may impact on the ability for Council to achieve full cost recovery. It needs to be

remembered that Council staff who are working on a spot rezoning which will specifically benefit a third party, would otherwise be working on public policy and strategic planning matters that have broad public interest. Council's staffing budget should not be compromised and impacted on delivering third party rezonings.

6. Planning guarantee

We do not support the idea of a planning guarantee. We are strongly opposed to the proposed use of penalties when the timeframes are not met. Applying these punitive measures on Council reflects the underlying sentiment in the Discussion Paper that councils are to blame for delays in the planning proposal process.

This proposal is another element in the Discussion Paper that unashamedly favours the developer and will result in poor planning decisions and poor built form outcomes.

7. New appeals pathways

We strongly oppose any form of appeal process at the end of the rezoning process. We see no benefit for the community or Council. Developers are the only group that will benefit from this proposal.

Introducing an appeal mechanism at the end of the rezoning process has the potential to significantly undermine Council's role in rezoning and strategic planning initiatives. The LEP and strategic plans are meant to reflect the community's vision, whilst addressing broader regional and State wide policies. Council's role is to ensure that these matters are balanced, and to ensure that growth occurs in a planned and co-ordinated way consistent with the community's expectations.

The proposed appeal pathway will diminish the role and status of the LEP as a mechanism that directs land use, and will create uncertainty about the form and scale of development that can occur.

Based on the DA appeals process, the appeals process would be a conciliatory / negotiating process with outcomes overwhelmingly resulting in approval of the proposal albeit with some concessions. This is not what should occur for land use planning.

Councillors are elected by the community to make strategic planning policy decisions. Devolving rezoning decisions to the LEC or other body is completely inappropriate.

Over the last 10 years there has been a systematic erosion of Council's role and decision making powers in regards to planning. To implement an appeals process for rezoning decisions further weakens Council's role and will completely erode community confidence in the planning system.

8. Implementing the new approach

The Department identifies that from the feedback received to the Discussion Paper they will refine the rezoning approach with a view to implementing change in 2022 (page 2). We request that the Department revises that timeframe for implementation given the significance of the proposed changes.

In particular, we recommend that the Department takes the next 6 months to monitor the recent changes in the *Local Environmental Plan Making Guideline* (Dec 2021), to identify what impact these changes have on planning proposal processing timeframes, and what further refinements can be made to improve efficiency within the current system whilst also ensuring quality decision making and meaningful community consultation.

The current system for LEP amendments is not fundamentally flawed, and it does not need a complete overall as proposed in the Discussion Paper. There are certainly opportunities refine and adjust processes to streamline and improve the framework and we request that the Department listens to the local government sector and the community on how this can be achieved.