



Ms Paulina Wythes
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Discussion Paper – A New Approach to Rezoning

Dear Ms Wythes

Thank you for the opportunity to provide comment on the Department of Planning and Environment's *Discussion Paper – A New Approach to Rezoning*.

Heritage NSW supports many of the initiatives identified in the Discussion Paper including:

- introduction of simpler, easier to understand terminology (e.g. replacing planning proposal with rezoning application)
- reconfiguring the rezoning process into a process similar to development assessment
- the simplification of the rezoning process into five stages – scoping, lodgement, exhibition, post-exhibition, assessment & finalisation
- the requirement that amendments go through a mandatory and upfront pre-lodgement process, including agency consultation, and
- the introduction of four categories of rezoning – basic, standard, complex, principal Local Environmental Plan (LEP).

We have reviewed the Discussion Paper and provide the following advice in relation to local, State and Aboriginal heritage matters, historical archaeology and maritime heritage considerations.

Local Heritage

We note that the Department proposes to categorise the listing of local heritage items as a 'Basic' rezoning application under the new categorisation system.

While we agree with the above categorisation, we do not support the requirement (in Table 2, p. 16) that the listing be "supported by a study endorsed by the Department's Environment, Energy and Science group", which we assume is a reference to Heritage NSW, following the upcoming Machinery of Government change on 1 April 2022.

We note that a version of the above requirement also exists on page 14 of the Department's new *Local Environmental Plan Making Guideline*, published December 2021, which require that a local heritage listing be "supported by an Office of Environment and Heritage endorsed study."

Heritage NSW does not have a role in the endorsement of studies for the listing of local heritage items. Our current legislative responsibilities include the administration of the *Heritage Act 1977* and the administration of the Aboriginal cultural heritage functions under the *National Parks and Wildlife Act 1974*.

Therefore, we request that both these above requirements be amended to read “supported by a heritage study prepared by a suitably qualified heritage consultant in accordance with the guidelines in the NSW Heritage Manual.”

As local heritage items are listed under LEPs, they are the responsibility of local councils, and the listing on new items and/or Heritage Conservation Areas (HCA) rests with councils. The Heritage Council of NSW and Heritage NSW do not provide advice on planning matters which impact on local heritage. As such, there should be no requirement within the rezoning process to consult with the Heritage Council or Heritage NSW on local heritage.

State Heritage

We note that the Discussion Paper does not identify how to address potential impacts on State Heritage Register (SHR) items through the rezoning process. We note that there is potential for these impacts to occur in the ‘Standard’, ‘Complex’ and ‘Principal LEP’ rezoning categories.

Where there is potential for impacts on SHR items from a rezoning application, we recommend that a Statement of Heritage Impact (SOHI) is prepared by a suitably qualified heritage consultant in accordance with Heritage NSW guidelines (heritage.nsw.gov.au/assets/uploads/a-z-publications/m-o/Statements-of-Heritage-Impact.pdf). The results of the SOHI should be used to inform the rezoning application and identify preliminary planning or design measures to avoid or mitigate harm to items on the SHR.

Where a rezoning application is intended to enable the subdivision of an SHR item, this must be prepared in accordance with Heritage NSW’s guideline on *Subdivision and NSW State Heritage Register Items* (heritage.nsw.gov.au/assets/subdivision-nsw-state-heritage-register-items-2019.pdf). Please note that under the Heritage Act, subdivision or any proposal which may lead to works to an SHR item, requires approval from the Heritage Council. Therefore, provision should be made within the rezoning process to seek General Terms of Approval from the Heritage Council as part of the assessment of the rezoning application.

Where required, consideration of heritage impacts and/or consultation with the Heritage Council by the proponent should be done before or during the scoping stage to identify and mitigate potential impacts as early as possible. The timeframes required for these processes will need to be considered in the rezoning application timeframe.

Aboriginal Cultural Heritage

The Discussion Paper does not identify any Aboriginal cultural heritage assessment which may be required as part of the rezoning process. We note that there is potential for Aboriginal cultural heritage impacts to occur in the ‘Standard’, ‘Complex’ and ‘Principal LEP’ rezoning categories.

As such, we recommend that, if Aboriginal cultural heritage assessment and consultation with the Aboriginal community is required, it occurs before or during the scoping stage of rezoning. The results of this assessment and consultation should be used to inform the rezoning application and identify preliminary planning or design measures to avoid or mitigate harm to Aboriginal cultural heritage.

We note that the Aboriginal community consultation process has statutory timeframes identified under the *National Parks and Wildlife Regulation 2019* which will need to be considered in the rezoning application timeframe. More information is available in Heritage NSW’s *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010* (heritage.nsw.gov.au/assets/Uploads/files/Aboriginal-Cultural-Heritage-Consultation-Requirements-for-Proponents.pdf).

Early assessment of Aboriginal cultural heritage values provides the best opportunity to identify and protect those values. It also provides certainty to all parties about any future Aboriginal cultural heritage management requirements.

Historical Archaeology

The Discussion Paper does not identify how to address potential impacts on historical archaeology through the rezoning process. We note that there is potential for these impacts to occur in the 'Standard', 'Complex' and 'Principal LEP' rezoning categories.

If a rezoning application has potential impacts on historical archaeology, a historical archaeological assessment should be prepared by a suitably qualified archaeologist in accordance with the following Heritage NSW guidelines:

- *Archaeological Assessments* (1996)
heritage.nsw.gov.au/assets/Uploads/files/archaeological-assessments-guidelines.pdf
- *Assessing Significance for Historical Archaeological Sites and Relics* (2009)
heritage.nsw.gov.au/assets/Uploads/a-z-publications/a-c/Assessing-Significance-A-Historical-Archaeological-Sites-and-Relics.pdf.

Where a rezoning application has a potential to have an impact on historical archaeology, provision should be made within the rezoning process to comply with the requirements of the Heritage Act.

Where required, consideration of archaeological impacts and/or consultation with the Heritage Council by the proponent should be done before or during the scoping stage to identify and mitigate potential impacts as early as possible. The timeframes required for these processes will need to be considered in the rezoning application timeframe.

Where harm is likely to occur, it is recommended that the significance of relics is considered in determining an appropriate avoidance strategy, the conservation of State significant archaeology is a priority. If harm cannot be avoided in whole or part, an appropriate mitigation strategy should be prepared.

Maritime Heritage

The Discussion Paper does not identify how to address potential impacts on maritime heritage through the rezoning process. We note that there is potential for these impacts to occur in the 'Standard', 'Complex' and 'Principal LEP' rezoning categories.

If a rezoning application has potential impacts on maritime heritage, an assessment should be prepared by a suitably qualified professional in accordance with the guidelines in the NSW Heritage Manual. This assessment should occur before or during the scoping stage and be used to inform the rezoning application and identify preliminary planning or design measures to avoid or mitigate harm.

If you would like to discuss any of the matters raised above further, please contact James Sellwood, Senior Planning Officer, Heritage Assessments at Heritage NSW by phone on [REDACTED] or email at [REDACTED].

Yours sincerely

[REDACTED]

Tim Smith OAM
Director, Heritage Assessments
Heritage NSW
Department of Premier and Cabinet
As delegate of the Heritage Council of NSW and for Heritage NSW

7 March 2022