

23 February 2022



Department of Planning and Environment
PO Box 1148
GOSFORD NSW 2250

Dear Sir/Madam,

Submission on 'A New Approach To Rezoning' Discussion Paper (December 2021)

Thank you for the opportunity to provide comment on the proposed new approach to rezonings. Central Coast Council (Council) has reviewed the discussion paper and supports the underlying objectives of the new framework to simplify the rezoning process, improve the quality of proposals, empower councils to make decisions and create more certainty and consistency. However, there are a number of proposed changes to the rezoning process that have the potential to adversely impact on Council's time, money and resources as well as set unrealistic expectations for proponents and the community.

Planning proposals are an important planning process and whilst it is important that they are processed in a timely manner, this should not be at the expense of good planning practice. Council feels that the proposed process moves the balance too far in favour of developers and increases the challenges of achieving good planning outcomes. Planners are at their best when given scope to negotiate good planning outcomes and it is considered the absolute focus on timeframes reduces local government planners' abilities to achieve that. Whilst the intent of the new approach is broadly supported, changes such as removing the strategic merit test, introducing appeals processes and the idea of a planning guarantee, will make it more difficult to achieve good planning outcomes. All local government planners wish to increase the speed of processing rezonings, however not at the expense of good planning outcomes. The new approach should focus on achieving a system that supports planners to do just that.

It is considered that renaming all planning proposals to rezonings will add to confusion, rather than reduce it. Rezoning is a sub-set of all planning proposals, and whilst perhaps the most high-profile, many planning proposals may not involve the changing of a zone at all. Perhaps Local Environmental Plan Amendments could be considered as a better term.

A detailed submission is provided in **Attachment 1**, with a summary of Council's key feedback and recommendations as follows:

- Council supports the aims of improving the rezoning process efficiency and clarity.
- Council supports mandatory pre-lodgement meetings, however, further information is required on how the mandated pre-lodgement/scoping process will work. The discussion paper states "The total timeframe does not include the scoping stage, which occurs before



lodgement.” The maximum timeframe for the scoping stage should also be confirmed. Furthermore, the mandatory pre-lodgements should be directly linked to the next phase, i.e. a proponent should not be able to submit a rezoning that is different from the one considered at pre-lodgement.

- Council supports early government agency involvement in the scoping stage however it would be beneficial to have a central body that co-ordinates agency involvement. There also needs to be responsibility on State agencies to provide comments within a set timeframe. Whilst the intent is certainly supported, how this will be enforced is unclear.
- When a rezoning proposal is lodged, the rezoning authority will have 7 days to check study requirements have been met. Council cannot support this timeframe as it is simply insufficient to complete the task. It is shorter than the current LEP Guidelines (10 days) and is insufficient time to allow a comprehensive review of the documentation and to determine whether or not a Planning Proposal is adequate to commence exhibition. Many pre-exhibition processes, such as advertisements in newspapers or online, have a lead-in period of more than seven days. There needs to be sufficient lead in time for exhibition and a ‘stop the clock’ mechanism.
- Under the new approach, the only opportunity to refuse rezoning applications which lack strategic merit is after public exhibition. Council does not support removing the opportunity for a merit assessment before exhibition and does not support wasting significant amounts of time and resources preparing study requirements at scoping stage if the proposal is clearly inconsistent with strategic plans and not supportable. Furthermore, proposals such as these should not be publicly exhibited as this will create both proponent and community expectations. The new process should require consideration of alignment with planning strategy (the strategic merit test) before the exhibition phase and the ability to dismiss rezonings that do not align with strategy.
- Council suggests that focus should be placed on resources across the planning system and on providing an appropriate review mechanism, rather than appeals processes and planning guarantees. A planning guarantee only serves to place further pressure on already burdened local governments, and merit appeals processes further complicate the rezoning process and will likely lead to longer timeframes and increased housing costs.
- Council does not think that councils should be able to approve all inconsistencies with 9.1 directions, particularly the Hazard and Risk directions.
- The discussion paper notes that in some circumstances where a rezoning application accompanies a state significant development application, is a Council proponent rezoning application or is of state and regional significance, that the Minister, through DPE, will assess these. It is not clear if proposals assessed by DPE will adhere to the same process proposed in the discussion paper.
- Further clarification on the process for State-led rezonings that trigger assessment and determination by the Minister is required.
- Further detail on who will be responsible for monitoring the proposed timeframes for each stage of the rezoning process and the consequences if timeframes are not met.
- Further detail is required on how DPE will support councils through ‘a new fee scheme that will compensate councils for the full cost of assessing a rezoning application, while also enabling them to invest in staff and better systems’.
- The new process relies on a more mature strategic planning system. Whilst the introduction of Local Strategic Planning Statements is a move in the right direction, they are not spatial and there is less governance around the adoption of other forms of spatial



strategic plans. In order to assess strategic merit in a more timely manner, improved processes and better resources for strategic planning is required.

- The review mechanisms and roles of planning panels (including the Regional Planning Panel) need to be better defined. It is the view of Councils planning staff that Local Planning Panel's should play a significant role in the assessment of rezonings to ensure independence and transparency.
- It would be beneficial if the rezoning process mandated that a Biodiversity Certification Assessment Report (BCAR) is lodged with Biodiversity Conservation Division (BCD) and certified adequate prior to lodgement, for greenfield rezonings where biodiversity is a consideration
- Council supports *Option 3: Fixed and variable assessment fees*. Council currently has a similar fee structure in place which has proved to work successfully for several years and should be retained. The fee structure should recover 100% of the cost of processing planning proposals.
- Further clarification on the process for requesting an extension of time and who will determine if one is 'genuinely' required and at what point in the rezoning process a proponent can commence the appeal process (noting that Council does not support the introduction of an appeals process).

As discussed above, Council fundamentally supports the objectives of the proposed reforms as the planning industry would benefit from process efficiencies and clearer requirements, however, the framework as currently presented may create significant process and resourcing constraints. It is considered that the Department should engage closely with the planning profession to create a rezoning process that achieves these aims for local government as well as the development industry.

If you require any further details or wish to discuss any of the matters raised above, please feel free to contact the undersigned on [REDACTED] or [REDACTED].

Yours sincerely,



David Milliken

Acting Director, Environment and Planning

Reference: D15030677



Attachment 1

The table below provides further detail on Council's key comments and recommendations on the discussion paper.

Discussion paper reference	Council Comment
General comments	
<i>Objectives of reform (p.12)</i>	Council supports the NSW Government's intent to reform the rezoning process to simplify the process, improve the quality of proposals, reduce processing timeframes, and provide councils with greater autonomy over rezoning decisions. However, delays and complexity can be attributed to more than just timeframes, duplication of assessment, gateway process and finalisation stage. Proponents often submit partially complete or speculative proposals with little strategic merit which slows the rezoning process. It is important that support and guidance is provided to both councils and proponents to improve the quality of proponent submissions.
<i>State-led rezonings (p.1)</i>	The discussion paper focuses solely on the rezoning process for planning proposals to make or amend LEPs or SEPPs. It does not include the process for State-led rezonings. Please clarify what is defined as a State-led rezoning and the rezoning process for state-led proposals.
<i>Role of Councils in proponent-led submissions (p.12)</i>	The new approach acknowledges the proponent by giving them ownership of the application throughout the rezoning process. With regards to the objective ' <i>allows councils to receive and determine private proponent-initiated LEP amendments.</i> ' Please clarify the role of councils in proponent-led rezoning proposals if councils no longer undertake proposals on behalf of proponents.
<i>Council resourcing</i>	<p>The discussion paper acknowledges that many councils are time poor and under-resourced, however the proposal transfers more responsibility to councils and as such, the whole process will have an impact on resourcing. The proposed process increases resourcing required and provides penalties where the timeframes are not met.</p> <p>Council also request that State government provide more funding to councils to enable them to update their strategic planning studies. This will help better frame strategic merit of rezoning proposals early in the rezoning process.</p> <p>As discussed below, with the new appeal rights, more resourcing may be required to manage the appeals. If staff are caught up in the appeals, this may make it difficult to meet the proposed benchmark timeframes.</p> <p>It is noteworthy that all councils operate in a planning environment of limited staff and funding, with Central Coast also under significant financial constraint. Whereas the Department appears to have more resourcing in comparison. The number of planners employed and recruited by the Department also adds to the challenge of recruiting planners for local</p>



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	government. Adequately resourcing council planning staff across the State would have a significant impact on assessment timeframes for all planning processes.
Scoping	
<i>Benchmark timeframes (p.17)</i>	<p>The successful implementation of the new process and benchmark timeframes is heavily dependent on the scoping stage and quality of documentation submitted by proponents.</p> <p>The timeframes identified on page 17 nominate 6-12 weeks for the scoping stage however the discussion paper states, <i>'the total timeframe does not include the scoping stage, which occurs before lodgement'</i>. Please clarify if a timeframe is proposed for the scoping stage (i.e. 6-12 weeks). If so, it is likely the scoping process will take longer than 6-12 weeks if all information submitted is to be adequate for lodgement and public exhibition.</p>
<i>Removal of gateway (p.6)</i>	<p>The discussion paper and recently released new LEP making guideline, both acknowledge the benefits of Gateway, however, propose to remove this step of the rezoning process – <i>'The Gateway Determination is a key assessment point for the planning proposal. It allows for review of the strategic and site-specific merits or a proposal and determines whether the planning proposal should proceed'</i> (p.37 of new LEP guideline).</p> <p>The Gateway step ensures that effort is invested at appropriate stages of the planning process and that authorities and government agency and community consultation is informed and effective. Without the Gateway step there will be no "early check" on whether the rezoning proposal is consistent with the strategic planning framework and s9.1 ministerial directions. Under these proposals a 'check' whether the proposal has strategic merit will only occur post-exhibition. Please advise if an alternative to a Gateway Determination step is proposed.</p>
<i>Refusal of applications (p.26)</i>	<p>The discussion paper states that the only opportunity to refuse a rezoning application if it lacks strategic merit is after exhibition (p.26). Council should not be required to spend considerable time and resources preparing study requirements at scoping stage if the proposal is clearly inconsistent with strategic plans and not supportable. This will use up a lot of Council resources if all applications must be accepted, particularly with a view from the proponent to appeal the assessment.</p> <p>This also conflicts with the new LEP Guidelines which states, <i>'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'</i> (p.19).</p>
<i>Written feedback (p.24)</i>	Following the scoping meeting, the rezoning authority must provide written feedback to the proponent that indicates the rezoning application's consistency with strategic planning, agency feedback, any recommended changes to the rezoning proposal and the nominated rezoning application category. Please clarify who is required to sign off on this written feedback



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	and whether a rezoning proposal require Council endorsement prior to exhibition.
<i>Mandating the pre-lodgement process (p.24)</i>	Council support mandating the pre-lodgement process. It is unclear how the pre-lodgement process will be mandated, whether all submitted rezoning proposals must be consistent with pre-lodgement advice and, if so, how that would be enforced. For example, it is unclear whether legislative amendments to EP&A Act or LEPs are proposed. To ensure it is adequate the pre-lodgement process must have closer ties to the next steps in the process.
<i>State agency involvement (p.24)</i>	Council supports early engagement with State agencies however it is unclear if they are required to partake in all pre-lodgement scoping meetings, irrespective of whether the proposal has strategic merit. Some State agencies have previously taken up to one year to provide a response to rezoning applications, significantly delaying assessment. It would be beneficial to have a central body that co-ordinates agency involvement and ensures State agencies provide comments within a reasonable timeframe. Council staff also support steps to improve engagement with State agencies, as their hesitancy to participate is a major source of delays in the rezoning process.
Lodgement	
<i>Lodgement check (p.26)</i>	The rezoning authority will have 7 days to check the study requirements have been met and once lodged, exhibition will commence immediately. The new LEP Guidelines propose 10 days. It is unclear why there is a reduction in time. Seven days is insufficient time to allow a comprehensive review and check of the documentation submitted, determine whether it is suitable for exhibition and coordinate exhibition documents. This is also insufficient to meet scheduling requirements to commence a community consultation process, in terms of advising landowners and giving public notice. It is unclear whether Council, the proponent or DPE will co-ordinate the public exhibition process.
<i>Alignment with DAs (p.12)</i>	The new approach has been designed to align with the development application (DA) process, noting 'concurrent applications bring about greater economic benefits as development can happen more quickly'. This may be the case for additional permitted use rezoning proposals however typically the detail of a DA will slow the rezoning process significantly. An increase in the number of rezoning proposals lodged concurrently with DA's will significantly impact on the benchmark timeframes.
Assessment and finalisation	
<i>Strategic assessment (p.9, p.26, p.29)</i>	Under the new approach, the only opportunity to refuse a rezoning application if it lacks strategic merit is after exhibition, in the final assessment stage. Council does not support removing the opportunity for a merit assessment before exhibition and does not support wasting significant amounts of time and resources preparing study requirements at scoping stage if the proposal is clearly inconsistent with strategic plans and not supportable.



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	<p>The strategic planning process in NSW is relatively immature, Local Strategic Planning Statements have only recently been introduced and are not spatial in nature. There is also a lack of rigour in other strategic process such as Structure Plans. Consideration should be given to increasing the governance processes around other elements of strategic planning, to better articulate what might or might not be considered to have strategic merit.</p>
<i>Quality of submissions</i>	<p>To prevent delays in the assessment process post-exhibition, the onus will be on the proponent to prepare and submit a quality response to submissions report to minimise additional requests for information or amendments to the proposal. Councils should not be penalised for delays to the assessment process caused by poor quality or inadequate proponent submissions. DPE will need to ensure consistent advice and guidance is provided to all proponents regarding the quality of submissions.</p>
<i>Ministerial directions (p.21)</i>	<p>Under the new approach, it is proposed that councils can approve an inconsistency with a s9.1 Ministerial direction, rather than notifying DPE and seeking approval from the secretary. Council does not think it should be able to approve all inconsistencies with 9.1 directions, particularly the Hazard and Risk directions. For example, based on advice provided by the NSW Biodiversity Conservation Division (BCD), any variation to the bushfire direction should be signed off by the NSW Rural Fire Service and flooding direction by DPE.</p>
<i>Classification of land (p.16)</i>	<p>The classifying or reclassifying of public land through an LEP is proposed to be categorised as a Category 1 or 2 proposal. Council suggests there is some level of oversight over reclassification of land rezoning proposals to avoid permitting the sale of 'surplus' community land and on occasion to pre-determined buyers.</p>
Exhibition	
<i>Stakeholders (p.26)</i>	<p>A key shift in the new approach is to exhibit the rezoning application as soon as possible after lodgement. If every rezoning proposal is exhibited (regardless of strategic merit), it has the potential to create an expectation that Council supports the proposal, irrespective of strategic merit, which may not always be the case. There is also the risk of disengagement from the community which will result in less participation in the planning process.</p> <p>This differs greatly from the current process whereby a robust strategic assessment occurs prior to public exhibition. It typically involves a report to Council recommending refusal or progression to DPE for Gateway. If it progresses, a Gateway review and satisfaction of Gateway conditions is determined, and finally, amendments to the planning proposal. If Council does not endorse the proposal going to gateway or gateway is not granted, public exhibition does not occur.</p> <p>The Gateway step was originally brought in to determine the overall strategic merit of a proposal before the proponent spent a lot of time and</p>



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	<p>money preparing the planning proposal. Under the proposed framework, proponents will be required to spend time, money and resources upfront on a proposal that may have no strategic merit. The more time and money spent on a proposal, the greater the expectation is that it will proceed. Councils should be granted time and money to complete a strategic assessment upfront and rezoning proposals with no strategic merit should not be exhibited.</p>
<i>Council processes</i>	<p>The new process does not align with current Council reporting processes whereby a Council resolution is required prior to requesting Gateway and publicly exhibiting a proposal. Under the new framework, the formal exhibition period will commence immediately once a rezoning proposal meets all study requirements and is lodged via the NSW planning portal. This will require changes to council staff delegations, who do not currently have delegation to exhibit a proposal without a council resolution.</p>
Categories and benchmark timeframes	
<i>Category (p.16)</i>	<p>It is not clear who decides what category a rezoning proposal should be. Will this be automatic via the NSW Planning Portal or will Council decide this during their initial assessment at the scoping stage?</p>
<i>Timeframes (p.17)</i>	<p>The proposed rezoning framework, as presented in the discussion paper represents a focus on increasing the speed of rezonings at the expense of good planning processes. This is a consistent theme currently where proposals are put forward under the guise of improving planning, however, add significant resource requirements to local governments.</p> <p>Perversely, this proposal may result in slowing the overall development process as planning resources will likely be directed to Court processes. It should be noted that rezonings are generally a small portion of the development process yet attract significant attention from the development sector.</p> <p>Further clarity is required on who will be responsible for monitoring the proposed timeframes for each stage of the rezoning process and the consequences if timeframes are not met. Quality control measures will need to be in place to ensure proponent-led submissions are high quality and adequate for exhibition to enable a streamlined assessment process.</p> <p>Council staff do not believe that Council(s) should be penalised for delays to the assessment process caused by poor quality, inadequate proponent submissions or proponents running out the clock by not providing information when requested.</p> <p>Planners work best where they are afforded the opportunity to negotiate better outcomes with proponents. Strict enforcement of timeframes substantially removes this ability and results in rezonings becoming a determination (yes or no) of what was initially submitted. Whilst the concept of having a timeframe for each step is generally supported, clear</p>



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	<p>"stop the clock" requirements are necessary to enable better outcomes to be negotiated.</p> <p>It is also noteworthy that the proposal gives the Department 26 weeks to consider the assessment and finalisation of principal LEP's. The Central Coast LEP was submitted in July 2020, 31 weeks prior to this report. It will be important that the timeframes outlined are met by the Department, not just dictated to local governments. The concept of each Council having a standard instrument LEP was to streamline the adoption of principal LEP's, therefore this particular timeframe should be a shorter timeframe, not the longest in the table.</p>
Council resourcing and funding	
<i>Appeals (p.36)</i>	<p>The discussion paper acknowledges that some councils '<i>do not have adequate resourcing and funding for strategic planning, assessing and progressing planning proposals, or for taking part in court proceedings</i>' (p.10). This statement is contradictory as DPE acknowledge that many councils are time poor and under-resourced however are proposing to transfer more responsibility to councils. The whole process will require more money and more staff. Further information is required as to how DPE propose to support councils with resourcing and funding for strategic planning.</p> <p>The new appeals pathway will result in staff dedicating more time and money to appeals and less time invested in strategic merit proposals, which will further hinder the ability to meet the benchmark timeframes. Consideration needs to be given to not just the legal costs involved but the cost in staff time. It also needs to be identified at what point of the rezoning process can a proponent commence the appeal process.</p>
<i>Strategic studies</i>	Council request that State government provide more funding to councils to enable them to update their strategic planning studies. This will help better frame strategic merit of rezoning proposals early in the rezoning process.
New roles	
<i>Council (p.18)</i>	<p>The reforms allow councils to receive and determine private proponent-initiated LEP amendments. It is not clear if the proponent or council will prepare the rezoning proposal once scoping studies are complete.</p> <p>Expanding council's role and providing Council with greater autonomy over rezoning decisions is supported. DPE and the Planning Delivery Unit could provide more support by coordinating NSW Government agency responses and support for rezonings.</p>
<i>Planning panels (p.30)</i>	The discussion paper notes that where a conflict of interest arises with a council, the relevant local planning panel (or regional panel) will determine the rezoning application. With the exception of conflicts of interest, it is unclear what role Local Planning Panel's (LPP's) will play in the new rezoning process. It is the view of Councils planning staff that



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	LPP's should play significant role in the assessment of rezonings to ensure independence and transparency. The review mechanisms and roles of planning panels (including the Regional Planning Panel) need to be better defined.
<i>DPE (p.18)</i>	The discussion paper notes that in some circumstances where a rezoning application accompanies a state significant development application, is a Council proponent rezoning application or is of state and regional significance, that the Minister, through DPE, will assess these. It is not clear if proposals assessed by DPE will adhere to the same process proposed in the discussion paper.
Stakeholder engagement	
<i>Community (p.26)</i>	If every rezoning proposal is exhibited (regardless of strategic merit), it may create an expectation that Council supports the proposal, which may not be the case. There is also the risk of disengagement from the community, which could result in less participation in the planning process.
<i>State agencies (p.10, p.22)</i>	<p>The discussion paper acknowledges there is a '<i>perception that State agencies are either under-resourced or reluctant to get involved unless the issue directly affects their work. Referrals seem to get lost in the system</i>' (p.10). Please provide further detail on how Council can ensure that State agencies participate in scoping meetings and provide comments early in the process? There needs to be a clear checklist of referral agencies and timeframes for agencies to provide comment.</p> <p>It is not clear how requests for more information will be 'managed more closely' (p.22) to minimise back and forth.</p> <p>If agencies are to provide detailed and useful comments at the scoping meeting, proponents need to ensure information submitted is highly detailed and adequate. The scoping template accompanying the new LEP guideline does not appear to be overly detailed.</p> <p>Council receives a number of complex proposals seeking to rezone significantly constrained environmental sites. Greater efficiency would be achieved if the rezoning process mandated that a Biodiversity Certification Assessment Report (BCAR) is lodged with Biodiversity Conservation Division (BCD) and certified prior to lodgement.</p>
<i>Fees (p.31)</i>	<p>Council supports Option 3: Fixed and variable assessment fees. Council currently has a similar fee structure in place to this option which has proved to work successfully for several years and should be retained.</p> <p>Council does not support Option 1 and 2. Option 1: Fixed Assessment Fees will likely mean Council will not recoup staff time and effort, while Option 2: Variable assessment fees is considered unnecessary. The establishment of a standard fee schedule across NSW is not supported.</p>



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	Councils should be able to ensure fees meet 100% of the cost of servicing planning proposals.
<i>Planning Agreements</i>	As part of the reforms, infrastructure contributions plans will be encouraged to be prepared alongside rezonings, minimising the need for Planning Agreements. The preparation of Planning Agreements and infrastructure contribution plans require a lot of time and money which may impact on benchmark timeframes. It is not clear if these must be in place prior to lodgement.
<i>Planning guarantees and refunds (p.34)</i>	<p>The proposal to require Council to refund fees at 'Assessment & Finalisation' if application is not determined within 17 weeks is not supported. This proposal implies that Council's deliberately delay finalisation of planning proposals and should be penalised financially as a result. Whilst Council supports a faster and streamlined assessment process, the majority of assessment delays are related to a lack of sufficient documentation, inability to demonstrate appropriate provision of infrastructure, and/or the process to achieve Biodiversity Certification.</p> <p>Consideration needs to be given to smaller councils with limited staff who may struggle to meet these timeframes if staff are on leave or required to work on appeals. If adopted, mitigation measures will be required. Refusing applications to avoid giving fee refunds is not supported as a mitigation measure and would result in delays for proponents as well as additional costs involved in review of decisions and updating of documentation to lodge a new submission.</p> <p>Extensions of Time (EoT) would be required if it becomes clear that more time is genuinely required. It is not clear who will determine if EoT is genuinely required? If the EoT cannot be longer than the original finalisation time for that category of rezoning, how will council and/or the proponent benefit from an EoT?</p>
<i>New appeals pathway (p.35)</i>	<p>The new appeals pathway will result in staff dedicating more time and money to appeals and less time invested in strategic merit proposals, which will further hinder the ability to meet the benchmark timeframes. Consideration needs to be given to not just the legal costs involved but the cost in staff time. It also needs to be identified at what point of the rezoning process can a proponent commence the appeal process.</p> <p>The analysis on p.37 summarises the pros and cons of the LEC and Independent Planning Commission and identifies a key issue as neither having historical dealings with the merit of strategic planning decisions and may not currently have the expertise. It is not clear how DPE will ensure appeals are considered before those with expertise in strategic planning.</p>

