CITY OF SYDNEY

Submission - A new approach to rezoning

Submission

February 2022

Green Global Connected

Contents

Introduction

This submission is the City of Sydney's (the City's) response to the December 2021 discussion paper *A new approach to rezonings* released by the NSW Government. The high-level topics on rezonings (planning proposals) are – a new approach, new appeals pathways, and implementation.

Denser cities can be the healthiest, greenest, and most stimulating places for people to live with the least environmental footprint.

The City of Sydney follows this mantra through well communicated planning strategies that incentivise the tallest income-earning towers in Australia on the one hand and the largest scale urban renewal areas on the other with close attention to amenity and sustainability in either circumstance. It has been a high-growth high-quality council for some time.

With this experience in mind, the City has serious concerns with many propositions in the discussion paper and thank the NSW Government for the opportunity to share our concerns. They have the potential to devalue the built legacy made possible through consistent and responsible planning and design excellence. They also have the potential to escalate tensions between the development and building sectors, governments and the community at large.

Development and construction are dependent on a social license, and despite disruption and inconvenience for a time, deliver measurable benefits and an increased quality of life from development designed well and built well. When not designed well nor built well, there is an economic and political cost. This can be seen in the market reaction towards off-the-plan multi-unit residential sales resulting in part, from the publicity surrounding design and construction failure and the perilous position experienced by unsuspecting owners unable to return to their home or pay for repairs. This tension can be seen in the rising price differential between detached and Torrens title homes compared to new apartments and strata living.

Over the past five or more years, increased environmental planning obligations have placed greater burdens on rate-capped local government. Not only are Local Environmental Plans required to be continually updated every five years, they must reflect respective Local Strategic Planning Statements and Housing Policies which in themselves must be individually approved by the NSW Government.

At the same time, development applications must be determined by regional and local planning panels. The rationale is that elected councils should be in charge of community consultation and strategic planning for their community while the determination of development that follows is handled by appointed experts.

NSW planning legislation allows rezonings to be proposed by both council (council-led) and landowners and their proxies (proponent-led) between formal LEP revisions, all subject to NSW Government approval and oversight (gateway process). These can be strategic rezonings (responding to an endorsed strategy such as Pyrmont Peninsula or central Sydney) or they can be unexpected and ad-hoc (spot rezonings) often with little strategically discernible public value or intent.

The City has successfully used rezonings to meet higher targets for housing and jobs growth in the past ten years; to deliver affordable housing; and to demonstrate that higher sustainability outcomes can be achieved. Rezonings can deliver much needed infrastructure and improve the desirability of denser living through better built form in greener settings. In doing this, the City continues to be guided by the NSW Government's regional and district plans as well as State and City strategies such as Sustainable Sydney 2030-50, the Community Strategic Plan, and the Central Sydney Planning Strategy.

Council-led planning proposals for whole precincts, have and will continue to, do the heavy lifting for creating capacity for housing and employment and improving our cities and neighbourhoods.

Proponent-led planning proposals that respond to specific endorsed strategies can equally contribute to common strategic aims.

In the Sydney LGA, this has occurred in a variety of precincts such as the Green Square Urban Renewal Area, the Southern Enterprise Area and central Sydney.

The discussion paper does not demonstrate consultation with the Independent Commission Against Corruption (ICAC) in seeking to streamline proponent-led changes rezonings and introduce punitive measures by proponents against councils.

Summary

The City is concerned that proposals in the discussion paper will incentivise spot rezonings and undermine the overall policy position which has focused on improving the strategic planning process. The proposed incentives and disincentives – in the form of time limits on assessment, financial disincentives and appeals – will only increase the number of speculative applications that councils (and the courts) will be required to deal with.

If these proposed amendments are followed through by the NSW Government, they will significantly change planning in NSW for the worse. The City is concerned that they will erode certainty and trust in the planning system, damage long term strategic planning, pit proponents against the community, increase delays and squander limited planning resources – all of which are contrary to good governance aims.

Key issues

- LEPs are delegated legislation (although subject to NSW Government oversight), which have been subject to extensive community consultation prior to their adoption, with councils acting as the decisionmaker on behalf of the community. The Department discussion paper indicates the NSW Government wants private proponents to take greater ownership of their rezoning applications. It is **not appropriate to outsource changes to laws to conflicted private proponents** who stand to benefit from the proposed changes and put little weight on the impacts compared to the opportunity. Councils as rezoning authority must maintain primary responsibility for the process. There is room to give private proponents greater strategic recognition and responsibility without going to the extent proposed in this discussion paper.
- There is also a significant shift towards an **adversarial approach at the expense of collaboration**. Proponent issues can be complex, needing to gain approvals from easement owners and associated property interests after lodgement. Strictly mandated timeframes and the punitive measures proposed to implement them leave little incentive for councils to wait for property related approvals, for proponents to collaborate with councils, and encourages refusals and appeals. These include deemed refusals for failure to meet mandated timeframes, and a potential planning guarantee to refund proponent fees. The proposed approach requires significant resources from proponents, councils and the community before a final determination can be made at the end of a lengthy process.
- The discussion paper approach **incentivises speculative spot-rezonings** at the expense of strategic rezonings. If the Government is genuine about delivering ‘fewer ad-hoc, site specific rezonings that are more likely to cause these inefficiencies’ then the process would have an opportunity to determine the merit of a rezoning application early. Rezonings should only respond to a specific state or council endorsed strategy or framework for a defined area that anticipates rezoning applications (Pyrmont Peninsula, central Sydney).
- Moving the major part of merit assessment to the end of the process means there can be **no early certainty for investment** or for councils in allocating resources. There will be considerable risks carried through to the assessment and finalisation stage of large, complex rezoning applications. In the City’s experience, proponents value the higher certainty provided by early merit assessment, de-risking further investment decisions.
- In addition, moving all merit assessment to the end of the process will likely **cause even greater process delays or appeals**. In the City’s experience a rezoning proposal can change substantially during the initial consideration of the merit in the current process as issues become identified and addressed collaboratively. The new approach means this will only

happen at the end of the process, meaning many applications will require re-exhibition and re-assessment, increasing time and diverting resources.

- The new approach is wasteful and inefficient and will **divert limited resources from critical state approved strategic planning** which supply the majority of housing and jobs growth. Additional planning resources will be required to manage an increase in speculative and ad hoc spot-rezonings and to process inefficiencies created through moving all merit assessment to the end of the process.
- Treating rezonings like regular Development Applications and encouraging combined applications will **seriously undermine certainty and trust in NSW planning system**. There will be no reason for a proponent to pay attention to an adopted planning control if it can be simply changed. This will undermine long term strategic planning along with community trust in the planning system and may also put upward pressure on land values through increased speculation.
- The proposed appeals pathway would have the **Land and Environment Court making delegated legislation, which is fundamentally incompatible with its role**. The Government needs to decide whether it wants strategic planning or not – an ad hoc system and a strategic system are incompatible. It is not appropriate for the Land and Environment Court to hear these appeals. The ability for the Court to set a precedent on the basis of a single application will collapse the long-term strategic planning system. Any review or mediation process should be undertaken by an independent administrative (non-judicial) body with the relevant expertise and the capacity to facilitate discussions and negotiations between proponents and rezoning authorities. Any such body would need to be appropriately resourced to manage the anticipated load of complex matters referred for review.
- The proposed appeals pathway will incur **significant costs for councils.** A complex rezoning appeal would be similar to a complex DA appeal, with similar costs for legal advice and representation, expert consultants, and a similar amount of court time. The City estimates costs to Council for the suggested appeals as being in the order of $250,000 - $400,000.
- Significant **delays caused by Parliamentary Counsel are not addressed**. These are often caused by poor early collaboration and limited experience of the practical application of LEPs by drafting officers. Councils are often given little time or scope to comment on drafting leading to rushed and sub-optimal outcomes, including delays and complexities when assessing subsequent development applications.

The **City supports the elimination of the Gateway request stage** for locally significant rezoning applications. Avoiding ‘double-handling’ of request at this point will significantly streamline the planning process and offer clarity and real time-savings for private proponents.

The City’s **Central Sydney Planning Strategy as a model is the best way to achieve strategic outcomes and streamline proponent-led rezonings**. The strategy anticipates the specific merit of proposals in a defined area and provides detailed guidance on achieving better planning and design outcomes. It provides the balance of certainty, opportunity and flexibility. This is a template model that the NSW Government should consider for all proponent-led rezonings.

In summary, rezoning requests must respond to a framework or strategy so that they are not ad hoc, disruptive, out of sequence or create uncertainty for the community. They should respond to a state or council endorsed strategy (such as the Pyrmont Peninsula or Central Sydney Planning Strategy); a response to an endorsed Local Strategic Planning Statement or endorsed housing or employment strategy. Endorsed strategies are often matched with significant investment in infrastructure as well which gives certainty and a rationale to landowners and neighbours about intended change, enabling government and the private sector to align resources.

Spot rezonings (ad hoc planning proposals) are by their nature often contrary to a framework, strategy or long-term plan, all of which are required to have extensive community consultation prior to their adoption – they are mostly driven by private rather than public interest.

The City acknowledges improvements are needed to the system. Opportunities exist for the more efficient use of planning resources, reduce overall timeframes, provide greater certainty for proponents and the community, improve strategic alignment of homes and business space, and increase opportunities for meaningful community input.

Rezonings must support a process that is strategically aligned, in the public interest, and as stated in the NSW Government's discussion paper results in 'fewer ad-hoc, site specific rezonings that are more likely to cause these inefficiencies.'[1]

[1] NSW Department of Planning, Industry and Environment, *A new approach to rezoning*, December 2021, p1

Approach to rezoning

Planning controls guide the future role and character of our city neighbourhoods in the medium and long term. They guide investment decisions to promote jobs and housing growth, and both respond to and drive infrastructure investment.

The community, landowners, development proponents, local councils and state agencies need the certainty that strong planning controls delivered through a robust process bring, and this engenders confidence in the planning system. Certainty does not coexist with surprise.

A sudden change to planning controls can significantly alter role and character, delivering potential windfall gains for specific landowners and proponents at the expense of others, and trigger substantial infrastructure investment.

The process for setting planning controls should be thorough and robust. It often requires significant financial investment from proponents and resource investment from councils. It needs to consider the needs and perspectives of the many stakeholders involved and allow for effective and ongoing collaboration. It is important that certainty is delivered at pressure points through the process to make the best use of that investment and resources.

The City strongly advocates for a planning system that prioritises collaboration, makes the best use of the available planning resources and leverages investment to optimise broad public interest.

The NSW Government's discussion paper, *A new approach to rezoning*, seeks feedback on new processes for rezoning and appeals. It has been prepared on the basis that 'rezoning process has become unwieldy, resulting in weaker planning outcomes, unnecessary delays and higher costs.' It looks to pass primary responsibility from councils to proponents, and to re-shape the system to be more like a development application.

The discussion paper puts forward a new approach that makes the following key changes to the rezoning process:

– New terminology, with planning proposals now referred to as rezoning applications, and the relevant authority (council or the Department) as the rezoning authority
– New roles, giving the proponent ownership of the application throughout the process. Currently, the planning authority has responsibility for the process. The Department will take less of a role in general, except for when council is the proponent for the rezoning request
– Alignment of rezoning and development application processes to encourage combined applications which seek to change the rules while applying for development approval
– A mandatory scoping stage before lodgement
– Exhibition of a proposal prior to any Council assessment or determination on the merit of the proposal
– Public exhibition and community consultation will be the responsibility of the proponent, with no involvement by council and no formal opportunity for council to provide public information to support the community understanding of the rezoning application
– The assessment and response to submissions will be the responsibility of the proponent
– A single merit assessment which would happen only at the very end of the process, after public consultation and the proponent response to submissions
– Reduced opportunities for council to request additional information to inform their assessment and enable a positive determination, with only one opportunity permitted

- New mandated timeframes for the different stages. These will be implemented by deemed refusals with the right to appeal for exceeding the timeframe.
- A proposed fee refund, or planning guarantee, for proponents where council does make determinations in the mandated timeframe
- A formal appeal process to either the Land and Environment Court or the Independent Planning Commission
- New roles, with council no longer having significant involvement with any state agency rezoning request, which instead would be assessed and determined by the Department with minimal council involvement
- Councils will be considered to have a conflict of interest if a rezoning application involves a Voluntary Planning Agreement where council receives a public benefit
- Standardised fees across all councils to provide consistency for proponents

The proposed rezoning process

The rezoning process outlined in the discussion paper is **fundamentally flawed and cannot be supported**. The reasons for this are described in more detail in the following sections and include:

- Allocating greater responsibility to a private proponent for the making of planning laws
- The loss of an opportunity to make an early assessment and determination on strategic and site-specific merit will result in more refusals, increased timeframes and wasted resources
- Assigning responsibility for community consultation to a private proponent will erode the effectiveness of consultation. The rezoning authority must continue to provide a report to community with its initial assessment of merits of the proposal when it is exhibited
- Reduced ability for councils and proponents to work towards good planning outcomes for proposals that have clear strategic merit

Recommendation: The Department does not proceed with the proposed process and further engages with local government on:

- a rezoning process that focuses resources on agreed strategic outcomes and will result in 'fewer ad-hoc, site specific rezonings that are more likely to cause these inefficiencies.'
- instead maintaining local government plan-making and public consultation responsibilities,
- enabling an early determination of merit, and
- consider opportunities to reduce timeframes such as removal of the gateway for locally significant planning proposals, provided they continue to be considered and endorsed by the consent authority; and consider improvements to the finalisation and drafting stage.
- the rezoning authority must provide a report to the community with its initial assessment of the strategic and site-specific merit of a request and response to any public benefit offer to support the public exhibition documents. This would allow the community to understand the strengths and weaknesses of a request, and the likelihood of subsequent council support.

Making an LEP is not the same as assessing development applications

The proposed process outlined in the discussion paper has been designed to reflect the development application process, and in particular the State Significant Development process.

There is no sound reasoning behind the desire to have the rezoning process match a DA process.

Local environmental plans (LEPs) are statutory instruments containing delegated legislation put in place to establish the policies of local councils and state governments. They are enacted through a statutory process with significant community consultation, reflecting the seriousness of that status. They are instruments of government to achieve the objects of the Act. They contain planning controls which shape the long-term future of neighbourhoods and drive investment in supporting public infrastructure.

Rezonings change local environmental plans, including the permitted uses of land, the development standards for height and density or the heritage status of a building. Rezonings must be considered against long term strategy and incorporating the aspirations of multiple stakeholders.

In contrast, the assessment of development applications is an administrative act implementing aspects of that delegated legislation. They are fundamentally different scenarios from a governance perspective, and it is reasonable that they have differing processes that reflect that.

The Act facilitates the development of land within the laws set by local environmental plans and other plans. As with other laws, the government retains the responsibility of making the laws that regulate development. The landowner is given responsibility to act within those laws subject to applying for and being granted a consent. The City is concerned that proposed process establishes the right for a private landowner to change the law passing on government's inherent responsibility to make laws and compromising the public interest.

Recommendation: Retain a process that does not mirror the development application process and recognises the inherent differences between changing planning law from first principles (rezoning) and a landowner seeking approval to act on development rights (development application).

Encouraging combined rezoning and DA applications makes planning controls redundant

The discussion paper encourages combined rezoning and development applications by aligning the rezoning process with the development application process.

While combined or simultaneous applications are possible, they are rare due to the lack of certainty for proponents and the different processes.

The discussion paper approach is designed specifically to encourage concurrent rezoning and development applications, with the aim of making development happen more quickly. The Discussion Paper alleges that this will bring more certainty for communities.

The likely effect will be exactly the opposite, as for only a marginal additional investment those established planning controls can be set aside. It is difficult to see why a proponent would pay attention to the adopted planning controls in any circumstance. There will be no certainty for communities as all planning controls will be seen as open for amendment with each development application.

Planning controls provide certainty for the community about the character of their neighbourhood and how that will change – that certainty will now be lost. Planning controls also provide certainty for investment and discourage speculation. If planning controls can easily be changed, land value escalation may follow as proponents bid on sites based on what may be possible rather than what is permitted.

The City of Sydney uses site specific development control plans to streamline proposals that need both a rezoning and a development application. Preparation of a site-specific development control plan can fill the role of a concept application for major development and allow a proponent to move to a detailed design application more quickly following rezoning.

Recommendation: Examine the role of site-specific development control plans in reducing timeframes where both a rezoning and a development application is needed.

A collaborative approach is more robust and will deliver better planning outcomes

Rezoning applications are often complex with interrelated factors that need to be considered from first principles given the absence of adopted standards. There may be multiple stakeholders with an interest including the proponent, adjacent landowners, the wider community, councils and state agencies which may need to provide supporting infrastructure. State and local plans and strategies establish strategic direction, and while they strive for consistency, they are complex with many strategic priorities to be assessed and weighed in considering any rezoning. The nature of strategic alignment can change during the planning process as the project adjusts to address identified opportunities, shortcomings and impacts.

The existing process promotes collaboration through a balance in the power and responsibility of the roles of private proponents, councils and the Department. Early merit assessment gives private proponents, councils and the community greater certainty around issues. Any moves to reset that balance within the process should aim to maintain the presumption of collaboration over an adversarial approach.

Aspects of the proposed new approach, in particular, punitive measures to enforce mandated timeframes, court appeals, and the back-loading of all merit assessment substantially reduce the incentives for private proponents and councils to collaborate and are not supported.

Recommendation: Retain the ability for councils as the rezoning authority to work constructively with proponents to ensure proposals with strategic merit can deliver a good planning outcome.

Early assessment de-risks strategic planning and reduces delays later in the process

Early assessment of strategic and site-specific merit gives confidence to proponents that they can continue to invest, to councils that they can use their resources efficiently, and to the community that rezonings promote the public interest. It gives proponents and councils the incentive to collaborate early and effectively to arrive at strategically aligned outcomes.

It has been the City's experience that thoroughly assessing proposals prior to public exhibition and forming a proposal that has clear strategic and site-specific merit, improves certainty and timeframes.

The discussion paper approach prioritises the immediate exhibition of rezoning applications. While this may appear to accelerate the rezoning process and give certainty to proponents, it may well have the opposite effect. With all merit assessments deferred to the end of the process, the likelihood is that there will be significant delays in the assessment and finalisation stage with the high likelihood of re-exhibition (due process).

For example, if the assessment after public exhibition of a flood study finds it is inaccurate, there are a number of follow-on effects to the proposal which would lead to a refusal or at least increase time and costs. A revised flood study may find the need to increase the freeboard which then requires the overall building height to be increased with potential shading impacts to neighbours. Re-exhibition is likely, and a refusal is possible (regardless of whether there is strategic merit).

Issues that arise in the assessment, whether they be strategic alignment or site-specific merit, will be more likely to lead to refusals. Where proponents and councils can work together to address issues, any significant changes will likely lead to the re-exhibition of applications. **The best way to avoid these additional and costly delays is to maintain the requirement for early merit assessment prior to public exhibition.**

Greater certainty is achieved by presenting the community with a proposal that has well-articulated strategic merit and clearly manages site specific impacts. If a proposal isn't so well formed, any opposition is likely to continue despite any changes made at later stages in the process.

Recommendation: Retain the requirement for the consent authority to make a determination on strategic and site-specific merit prior to public exhibition.

Councils are best placed to lead community consultation

The proposed new approach to community consultation with no involvement of councils is not supported. Councils are required to develop Community Participation Plans under the Act, establishing minimum standards on how they will engage on matters that affect their community, including planning matters. Councils also have community engagement strategies required under the integrated planning and reporting framework to guide how they will engage their communities.

Councils often go beyond minimum standards in undertaking consultation, supplementing formal statutory exhibition with community meetings, information sessions and the like. The community places faith in the information provided by councils as their elected community representatives, and councils are motivated to engage thoroughly and honestly for that reason. The City has significant concerns about the capacity of an individual proponent to engage as honestly and meaningfully with the community, given the very different motivation and interests.

Poor engagement will simply lead to stronger opposition and more objections to rezoning proposals which in turn increases the chances of proposals being refused.

Proponent-led statutory exhibition will not be as effective as council-led consultation, will not be accepted by the community, and will not improve the rezoning process.

Recommendation: The rezoning authority must continue to be responsible for community consultation and responding to submissions.

The new approach will not make best use of investment and resources

Proponent-led spot rezonings can deliver substantial windfalls for specific proponents and landowners, but the greatest strategic planning gains generally come from wider, council-led proposals. The new approach will divert planning resources from strategic planning that delivers substantial strategic benefit, in favour of proponent-led spot rezonings, which are generally speculative in nature.

The new approach establishes an adversarial framework through removing structural incentives for collaboration, and delays certainty for proponents and councils through the backloading of all merit assessment.

There is a clear risk that the new process will actually lengthen rezoning processes, divert resources from much-needed strategic planning, and discourage investment through adding increased risk for investors.

By way of example, the City's Central Sydney Planning Framework provides a better way of leveraging private investment in rezonings to deliver on agreed strategic objectives. It establishes the specific strategic merit for site specific planning proposals in a defined area and provides detailed guidance on achieving better planning and design outcomes. It provides the balance of certainty, opportunity and flexibility.

Behind this framework, the Central Sydney Planning Strategy is a 20-year growth strategy that delivers on our Sustainable Sydney 2030-50 program for a green, global and connected city. Through 10 key moves, the strategy balances opportunities for development to meet the demands of growing numbers of workers, residents and visitors and their changing needs in Central Sydney. It is supported by a guideline that outlines the considerations for rezonings.

The Strategy and associated guideline acknowledge the complexity of development in central Sydney and the need to consider opportunities identified by the private sector. While supporting significant development capacity delivered through a council-led planning proposal, it also establishes a pathway for proponent-led planning proposals.

When the City first endorsed the draft Strategy, it requested a streamlined gateway process such as reduced times or delegation given the high degree of certainty embedded in the Strategy and Guideline.

The streamlined process could be contemplated where a detailed planning strategy endorsed by the council is in force and has sufficiently established the strategic merit for a precinct and detailed guidelines to assess site specific merit.

Recommendation: Consider a streamlined process for rezonings where the council has endorsed a strategic place strategy that establishes strategic merit and provides detailed guidance on site specific merit.

Councils must maintain a meaningful role in state agency rezoning applications

The discussion paper is silent on potential conflict of interest surrounding rezoning applications lodged by public authorities. Under the proposed reforms, all public authority applications will be determined by the Department and not by councils.

This suggestion is not supported. It is the City's strong view that since many state agencies include a form of commercial development or development for sale in their rezoning proposals (i.e., Sydney Metro, Land and Housing Corporation) they should not be treated differently to non-state rezonings.

Recommendation: Retain the local consent authority determination process for state agency rezoning application that are not declared a State Significant Precinct.

Planning agreements do not inherently create a conflict of interest for councils

The discussion paper proposes making the Department of Planning and Environment (DPE) the rezoning authority for rezonings that are accompanied by a planning agreement.

The City rejects this proposed change. It is neither required nor beneficial. In most instances such situations are managed through either assessment by the local planning panel or regional panel for most councils, and by the Central Sydney Planning Committee for the City of Sydney. Any potential conflict is dealt with already and there is no need for the Department to intervene.

Planning and infrastructure needs are tightly connected. Most rezonings in the Green Square Urban Renewal Area are accompanied by planning agreements for the delivery of agreed infrastructure or works-in-kind package. Significant complexities and delays would arise by having

DPE assess a planning proposal with a planning agreement that would contemplate the specific infrastructure to be provided to the council. Councils are in a much better position to facilitate coordinated planning and infrastructure outcomes associated with a rezoning. The City of Sydney has demonstrated that it is best placed to determine planning proposals and planning agreements because it has the management processes, expertise and resources to do so.

Planning agreements do not automatically create conflicts of interest for councils. The City has separate and distinct processes for the assessment of planning proposals and consideration and acceptance of public benefits. This separation allows any potential conflict to be managed appropriately.

At the City, the CEO has delegated authority to negotiate planning agreements. With the endorsement of an internal panel made of a minimum of 3 executive members with other senior staff members, the City assesses a public benefit offer on whether it aligns with the City's strategies and policies, separately from the merits of the planning proposal. All of this is guided by the Fundamental Principles contained in the Department's Planning Agreements Practice Notes 2021.

By way of comparison, the planning proposal itself is assessed by the City's Strategic Planning Unit and determined by the Central Sydney Planning Committee (CSPC) and Council. No weight is placed on the recommended approval of a planning proposal, purely because of the public benefits offered. While the public benefits are related to the development, as is required under the Guidelines, they do not substantiate an inappropriate development and do not form part of the planning proposal assessment recommendation beyond an acknowledgement that they have separately been supported.

Recommendation: The City does not support the Department of Planning as the rezoning authority for proposals that are accompanied by a planning agreement.

The new approach will create timing difficulties for concurrent parts of the planning process

The proposed rezoning process does not contemplate the making of development control plans and planning agreements which are critical associated planning documents for delivering infrastructure and good design through subsequent development.

Development control plans

Development control plans (DCP) are essential to achieving good design and amenity (an object of the Act) and provides certainty to proponents and the community in the rezoning and subsequent development application stage. DCPs are able to illustrate preferred built form outcomes to manage potential impacts and can also truncate major development assessment processes by taking the place of a concept plan.

Development control plans are made by a council approving a draft and exhibiting it for 28 days before approving the final amendment. This process aligns with the current rezoning process, with council consideration before exhibition.

The preparation of the draft DCP during the assessment and finalisation phase requires additional resources and makes the 17-week timeframe even more challenging to achieve.

Undertaking a merit assessment early in the process provides an opportunity to align a rezoning with an associated DCP.

Recommendation: Align the rezoning process to enable the efficient and coordinated making of development control plans, including by providing for a merit determination early in the process at which time a draft DCP could be approved.

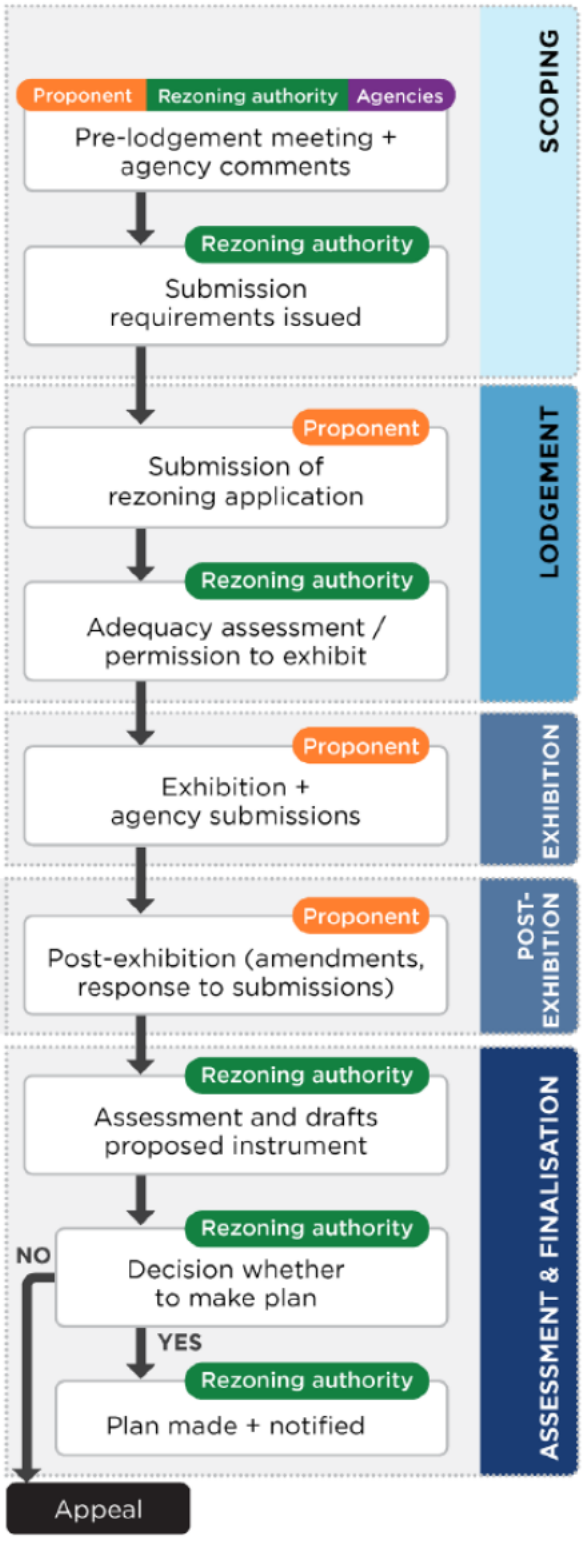
Planning agreements

Planning agreements are a critical tool in ensuring that community infrastructure is delivered alongside population growth. The timing of how that happens within a rezoning process is critical, and the incremental building of certainty through a process is the key to the timing. Ideally, planning agreements should be placed on public exhibition alongside the rezoning to which they relate, to allow the community to understand the full picture. When councils assess combined rezonings and planning agreements, they are careful to ensure that the rezoning cannot be approved until the planning agreement is in place, otherwise there is no guarantee that the supporting infrastructure will be delivered.

The relevant planning agreement and rezoning application should be exhibited concurrently. Without early assessment, neither party will have certainty until the end of the process. If not, the planning agreement will be exhibited separate to the rezoning request; the rezoning authority will exercise caution and not be able to approve the rezoning request until the planning agreement is settled; and the community may not be given a true indication of the provision of infrastructure if a proponent exhibits a public benefit offer that the council has not yet considered. This will add unnecessary delays to the project, create further uncertainty, and heighten risk.

Recommendation: Align the rezoning process to enable the efficient and coordinated making of planning agreements, including by providing for a merit determination early in the process to allow the certainty needed for planning agreements to be exhibited concurrently with a rezoning application.

Figure 1. Practical issues with the proposed process



Practical issues with the proposed process
Upfront scoping is highly valuable however a proponent is not compelled to implement the advice. Significant resources are potentially expended on unsupportable proposals through the following lodgement, exhibition and post exhibition stages. It is the City's experience that almost all proposals require some form of modification to demonstrate the strategic and site-specific merit requiring **re-exhibition or refusal to meet timeframes**.
The allocated 7 days for lodgement are insufficient to properly assess the adequacy of studies. It is highly likely inadequate studies, such as those with inaccurate and misleading findings, will be exhibited. This would then require **later amendments and re-exhibition.**
Having the proponent assess and respond to submissions will result in **double handling and increased time** as councils must assure themselves of the nature of the issues raised and the adequacy of any response. Communities will expect councils to provide this level of oversight for their submissions.
The current process has a determination of merit prior to exhibition. In the City's experience, amendments are necessary to establish merit which may cause **re-exhibition**.
The proposed timeframes and limitations on further information requests will **encourage refusals** rather than facilitating good planning outcomes there is potential merit.
The finalisation period incorporates drafting by Parliamentary Counsel which can take **significant time** and is outside council control.
Given the significant resources expended by the proponent to this stage in the process there will be **an incentive to proceed to appeal** despite the failure to establish strategic or site-specific merit. This will further **increase times and use of resources**.

The proposed assessment timeframe is insufficient

The City supports sensible benchmark timeframes to bring certainty for proponents, councils and the community and encourage efficient processing of planning proposals.

The City strongly objects to the proposed planning guarantee, as noted below, where refunds are given if timeframes are not met. The proposal is unreasonable and not applied to any other type of planning application in NSW. It discourages collaboration between parties to facilitate good planning outcomes and will result in refusals to ensure timeframes are met.

In addition, the proposed 17-week timeframe for assessment and finalisation includes the time to interact with Parliamentary Counsel (PCO) on drafting. The time taken for this is not under the control of councils, and Parliamentary Counsel are often a source of significant delays in drafting and finalisation. The assessment and finalisation steps are dual areas of responsibility which cannot be easily separated. The new approach suggests drafting should be done prior to determination. This is wasteful and will actually lead to more engagement with PCO and more burden on them and more delays. This should not be included in any timeframe for which council is held responsible.

Recommendation: The assessment stage must make provision for council meeting cycles and requests for information ('stop the clock' provisions) and exclude any steps outside the control of the rezoning authority, including the drafting of the planning proposal by Parliamentary Counsel.

The planning guarantee is unreasonable and unnecessary

The discussion paper proposes a planning guarantee which provides for a fee refund if councils take too long to assess the application and works to encourage the timely progress of applications.

Even where a fee refund is required to be returned, assessment and determination of the application continues.

The planning guarantee is a further incentive for the spot rezonings and ad-hoc proposals that the planning system should be avoiding; and an incentive for refusals.

The ability for a proponent to appeal if a determination has not been made in a specified time is sufficient incentive for a rezoning authority to efficiently process an application. The currently exists for rezoning reviews where a council does not make a determination within 90 days. It is understood that in practice there are relatively few rezoning reviews indicating proponents and councils work constructively towards outcomes on rezonings that have strategic merit.

Enabling refunds where timeframes are not met is simply punitive and is not offered for any other type of planning application. It will further discourage councils and applicants from working to achieve good planning outcomes.

In the UK, it is understood planning guarantees are provided for the equivalent of development applications and the right to a refund is extinguished if there is an appeal. If the Department was to follow this approach the refund will only be taken up by the most speculative of proposals as others that potentially have merit will tend to be resolved with the authority or legitimately move to appeal.

This indicates the proposal is an incentive for the types of proposals the Department has stated it is intending to avoid.

Recommendation: Abandon the proposal for a planning guarantee.

The new appeals pathways

The discussion paper proposes a new formal appeals pathway at the end of the process with options of an appeal being determined by the Land and Environment Court or the Independent Planning Commission.

Local environmental plans (LEPs) are statutory instruments containing delegated legislation put in place to establish the policies of local councils and state governments. They are enacted through a statutory process with significant community consultation, reflecting the seriousness of that status.

That process is largely carried out by local government on behalf of the Minister for Planning.

An application to change an LEP is an application to change subordinate legislation and government policy. This consideration should be front of mind in establishing any process that makes changes to LEPs. The new approach and the proposed appeals process attempt to side-step this inconvenient fact.

The City strongly objects to applications for changes to legislation (rezonings) being determined by the Land and Environment Court (LEC). This will become a contest of experts and judgements will have significant precedent repercussions. The role of a court should be to interpret the application of legislation, not to make policy and legislation, even delegated legislation. That is the role of elected representatives. This proposal is a radical departure from the established role of the LEC, and a significant erosion of council's role in the making of local strategic planning.

If there is to be an appeal pathway, although the City is unconvinced that there is a demonstrated need for any such pathway, this should only be by an appropriately qualified administrative or non-judicial body, such as the IPC or an alternate body. Reviews undertaken by an administrative body could be designed to include the opportunity for conciliation, noting that there is no legal limitation on the IPC facilitating or requiring a mediation process to be undertaken prior to proceeding to any assessment of an application. This would be entirely possible and more suitable in this context than an adversarial court process.

The LEC is not the appropriate review body for policy decisions

The Court is not the appropriate forum for merit review of strategic planning decisions and has not been established or resourced for this sort of function. This new role would see the Court be able to establish strategic planning direction for a local area through its interpretation and weighing of respective state and local strategic plans. It would also be making delegated legislation, which is fundamentally incompatible with the judicial role of the Court. There are no available structures or process models which can overcome this incompatibility.

Further, the Court will have the capacity to establish legal precedent through its decision-making. This would see a non-elected body effectively recast long-term local strategic planning policy that had been settled with community input.

This is what global legal firm Ashurst had to say about the role of judicial appeals in recent analysis of the Toronto planning framework in the context of the UK's move towards a more formalised zoning framework (by-law is a reference to the zoning framework, analogous to an LEP):

> [applications for judicial review] if approved on appeal, can establish a precedent and erode the integrity of the by-law over time. This is often the case for sites in downtown Toronto and can lead to delays in the development programme; an increased resource expenditure for all parties; and less certainty. These problems are akin to the issues facing the UK and result in an overburdening of local authorities and reduced confidence in the planning system. Whilst the Government expects that planning applications in its proposed Growth and Renewal areas would be exceptional, the experience in Toronto shows how difficult it can be to avoid planning applications and appeals without controls in place to restrict them.[2]

There is no consensus that judicial appeals deliver benefits across the planning system, and in fact it appears from international experience that they deliver uncertainty, costs and delays.

Review by an alternative body would be a better approach

The Discussion Paper states the advantages of using the LEC are that established processes could be adapted, existing powers enable it to consider fresh evidence, there is the opportunity for conciliation and that it establishes a strong deterrent against delay or poor decision-making. However, each of these benefits could be as easily realised in review process by another body specifically constituted for that purpose.

The Discussion Paper also outlines the significant disadvantages of appeals to the LEC including cost and time, no current expertise in strategic planning, the adversarial process is not suited to rezonings and the ability to intervene in making an LEP, which is the role of the Minister. The Department's own reasoning illustrates that appeals to LEC are counter to the aims of improving the rezoning process – it will not reduce times, will decrease certainty and will facilitate decisions at the expense of outcomes.

Other issues include that the Court could not compel a council to enter into a planning agreement or make a development control plan necessary to support future development under the rezoning. A less adversarial process than the LEC court could support these complementary processes.

Recommendations:

- The Department should provide supporting information to demonstrate the need for an appeals option, and how appeals would fix identified shortcomings in the rezoning process
- The proposal to have rezoning application appeals heard by the Land and Environment Court must be abandoned. Instead, if need is demonstrated (as above), consideration should be given to establishing an administrative review body specifically to facilitate conciliation processes as part of a merit review.
- All rezonings, whether prepared by a council or requested by a proponent, should be subject to the same appeals process for consistent strategic planning.
- Any new process should include and encourage conciliation between parties as opposed to encouraging an adversarial approach, as currently proposed.
- All rezonings, whether prepared by a council or requested by a proponent, should be subject to the same appeals process for consistent strategic planning.
- The rezoning process should have an early assessment of merit and appeals could also be available at that point. This would be similar to the existing rezoning review.

[2] https://www.ashurst.com/en/news-and-insights/insights/zoning-lessons-from-toronto

- An appeal process must be able to integrate planning agreements and development control plans, both of which are essential to support rezonings but are not within the power of the LEC.
- Before implementation, the Department must carry out detailed consultation with councils on the process and procedures for appeals to the new administrative review body.

Responses to discussion paper questions

Responses to detailed discussion paper questions are in the following table.

Part A - Background	
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?	The proposed new approach is based on a fundamental misunderstanding of the rezoning process. The Discussion Paper states the new approach has been designed to align with the development assessment process. It offers no insight into why this should be, and no consideration of whether it is appropriate or not. Rezoning is the making of delegated legislation. This is the responsibility of public authority, in this case the Minister or councils through delegation. A private proponent can be the financial beneficiary of this change to legislation. It is in no way appropriate to have proponents take primary responsibility for this process. The City agrees that in some instances rezonings can take too long, that there are delays in finalising requests, that proponent documentation can be inadequate and contrary to council advice, that there should be transparency in the process, and that duplication caused by the gateway process is unhelpful. It is not clear that the new approach will successfully address any of these issues. Rather than attempting to replicate the development assessment process for rezoning requests, a better approach would be to understand why some planning proposals advance more smoothly than others. In the City's experience, early and ongoing collaboration between proponents and councils, early assessment of merit, and clear consultation led by councils are critical. The paper is one sided and does not look at how the development sector needs to lift its performance to achieve timely rezoning determinations. The paper does not demonstrate consultation with the Independent Commission Against Corruption in presenting options for the streamlining of proponent-led changes to planning law (rezonings) for private gain.

Part B – The new approach	
Do you think benchmark timeframes create greater efficiency and will lead to time savings?	Benchmark timeframes are useful and supported. It is not in the interests of proponents, councils or the community for rezoning requests to drag out over long timeframes.
What do you think about giving councils greater autonomy over rezoning decisions?	The City supports greater council autonomy over locally significant requests. The removal of the gateway stage which duplicates council assessment is supported. Council does not agree with handing the primary responsibility for rezoning requests to proponents nor handing over the responsibility for consultation. Rezonings are changes to legislation and should be led by the authority with custodianship of that legislation.
What additional support could we give councils to enable high-quality and efficient rezoning decisions?	Councils need earlier and more effective engagement with Parliamentary Counsel and the Department in finalising requests. This is a significance source of delays and frustration for proponents and councils and should be a key focus area for process improvements.
What changes can be made to the department's role and processes to improve the assessment and determination of council-led rezonings?	The Department's role and functions should be clearly spelled out in any new approach. It is noted that much of the Department and Ministerial involvement in the current process is not dealt with directly in the Act or the regulations but is derived from administrative guidelines made without public input. The Departmental tendency to expand its role over time in response to particular external pressure needs to be explicitly curtailed. In addition, the Department should also be held to benchmark timeframes in exercising its functions in the new process.
Is there enough supervision of the rezoning process? What else could we do to minimise the risk of corruption and encourage good decision-making?	Multiple decision-making stages with clearly articulated and publicly documented and accessible reasons for decisions will reduce corruption and encourage good decision making.
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?	The City supports greater autonomy for councils for locally significant rezonings and rezonings generally. However, State agency requests should not be assessed and determined by the Department without significant involvement of councils. This will create perceptions of a conflict of interest for the Department and will lead to a loss of transparency and trust in the rezoning process.

Should councils be able to approve inconsistencies with certain s9.1 directions? If so, in what circumstances would this be appropriate?	Yes, councils should be able to approve these inconsistencies. Clear guidance from the Department on the circumstances in which these approvals can be made will help with process transparency.
Is it enough to have agencies involved in scoping and to give them the opportunity to make a submission during exhibition?	In some circumstances this will be sufficient. However, there will be other situations, where complex questions involving land and infrastructure are concerned, where much more intensive interaction with State agencies will be required. The process should recognise and cater for these situations within the proposed benchmark timeframes. There may also be the need for agency involvement on critical issues during the assessment phase. Currently this can be left to the finalisation phase which also delays rezonings.
Do you think it would be beneficial to have a central body that co-ordinates agency involvement?	The critical issue is for agencies to be appropriately resourced to respond to rezoning requests early in the process. There would be some benefits to a centralised approach to manage agency referrals and submissions. Commonly, councils find it challenging to identify the appropriate agency points of contact in a timely way, which often causes process delays. A centralised approach would manage this better, however it will require appropriate resourcing of the centralised body to ensure it can manage referrals and submissions efficiently and effectively.
If a state agency has not responded in the required timeframe, are there any practical difficulties in continuing to assess and determine a rezoning application?	There may be problems in some circumstances, for instance when it impacts on critical agency operations, or when complex land dealings or infrastructure implications arise. Examples include Ausgrid easements, Sydney Trains tunnels or Sydney Metro easements. In these circumstances a rezoning request cannot effectively proceed without direct and timely engagement with the relevant agencies. Proceeding in such circumstances creates the risk the project would need to be revised to respond to late feedback from an agency, causing significant delays and wasting investment and planning resources. There will be other instances where agency feedback early in the process is essential for progress. For instance, the City exhibited its Open and Creative Planning Proposal ending 18 November 2020. Request for agency comments were issued in accordance with the gateway determination on 21 October 2020. The planning proposal was approved by Council and sent for finalisation on 6 April 2021. That planning proposal is still with the Department in February 2022 – **10 months after the request for finalisation**. The sticking point is feedback from a state agency that did not make any response to the agency

	referral – in fact the state agency has still not contacted council directly. The planning proposal offers significant benefits for local businesses in the form of less red tape. It is an unfortunate irony that its implementation is being held up by that very factor.
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 fully formed proposal for exhibition and assessment?	No, council or the Department should issue study requirements even where they have indicated strategic inconsistency at the scoping stage. Proponents should be able to lodge a fully formed proposal for assessment and determination of strategic and site-specific merit prior to proceeding to public exhibition. If the rezoning authority determines that the request should not proceed to exhibition there should be a requirement that the rezoning authority needs to publish its reasons in the form of public report. At this point the proponent may be able to proceed to a rezoning review to test that decision, as is the case currently. If the review is successful, then they will be able to proceed to exhibition. This seems a much more targeted and efficient use of resources than continuing for many months with a project which does not have the support of the authority. This is fair recognition that proponents can submit a rezoning request and have its merit assessed by the rezoning authority. This should be the case even if the rezoning authority has advised from an early stage that the request is unlikely to be supported. However, there should be no right for public exhibition and a full assessment and determination if this test cannot be met.
What sort of material could we supply to assure the community members that exhibition does not mean the rezoning authority supports the application and may still reject it?	The rezoning authority should be required to provide a report to the community with its initial assessment of the strategic and site-specific merit of a request and response to any public benefit offer to support the public exhibition documents. This would allow the community to understand the strengths and weaknesses of a request, and the likelihood of subsequent council support. It will allow the community to have an impartial view of the request to sit alongside the material provided by the proponent. It is only natural that the proponent will produce material which focuses on the promotional aspects of a proposal. This process is already in place through the early merit assessment by council prior to public exhibition and is very effective in signalling to the community the likelihood of a request being supported, and the basis on which decisions will be made. The proposed new approach does not include this critical step and does not include time in the lodgement stage and before public exhibition for this step to be undertaken.

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?	Removing the merit test prior to exhibition is one of the key failures of the proposed process. Timeframes will increase and certainty will decrease without this step. There is no guarantee that moving all merit assessment to the end of the process will save time or money when measured over the full spectrum of rezoning requests. It will allow requests with no strategic alignment to progress, requiring the allocation of council planning resources. This will divert those resources from proposals which can demonstrate merit. There is considerable benefit to having merit assessment early in the process, before public exhibition. However, there are broader questions than just time or money. Removing merit assessment before exhibition introduces fundamental weakness into the proposed new approach which threaten to undermine community faith in the planning process. It creates a less robust process, and unintentionally undermines the public exhibition process. The community relies on information from council to form a balanced view of proposals. In the absence of that information, to what extent will the community be prepared to rely on information prepared by the party who stands to benefit from the decision?
Should the public have the opportunity to comment on a rezoning application before it is assessed?	It is not clear what this question means. Community involvement in strategic planning is a cornerstone of good planning and must be key to any process that looks to create greater transparency and trust in planning. It is important that the rezoning authority assesses the merit of an application before proceeding to public exhibition to ensure that consultation is as meaningful as possible. Informal consultation alongside that assessment should be allowed to inform the assessment within reasonable timeframes.
What other opportunities are there to engage the community in strategic planning in a meaningful and accessible way?	The information provided to support planning processes is critical to the community capacity to understand to and respond to the process in a meaningful way; and ultimately to their faith that the process works in the public interest. The community will engage much better with a planning process where it has a balance of information on which to make judgements about proposals and the strategic and site-specific merit are clearly articulated. The proposed new approach will only allow proponent material to be considered as part of the public exhibition. The community is likely to be sceptical about the completeness and veracity of information provided by the

	proponent, as they stand to make considerable gain from a rezoning decision.
Do you have any suggestions on how we could streamline or automate the exhibition process?	Automation of the exhibition process has some potential benefits, but may lead to gaps, particularly in ensuring that all parties are correctly notified of requests as per statutory requirements. In the City's experience there will be instances where landowners change addresses or use multiple addresses and may not always receive notifications. This can lead to delays in considering late submissions and could conceivably require re-exhibition of the request under certain circumstances. There will be challenges in ensuring that property databases are accurate, current and that all landowners are properly notified. Councils generally hold the most accurate address information and are best-placed to lead notification and exhibition. Further consultation with councils on such practical aspects of the process is needed.
Do you think the assessment clock should start sooner than final submission for assessment, or is the proposed approach streamlined enough to manage potential delays that may happen earlier?	The assessment should only start once the final proposal has been made available to the rezoning authority. Councils cannot be held liable for delays in proponents finalising the requests after submission including gaining approvals from interested parties and owners. There needs to be flexibility within the assessment clock for continued collaboration between proponents and councils to achieve good planning outcomes. The assessment clock should not include any time that is outside of the control of the rezoning authority, including any time spent waiting for the Department, concurrence authorities or the Parliamentary Counsel (PCO).
Do you think requests for more information should be allowed?	Stop-the-clock provisions should be clear and allow councils to make reasonable requests for additional information at the assessment stage to ensure the rezoning authority is making its determination based on complete and accurate supporting information. Restricting this to one opportunity only is inconsistent with the development application process and will lead to determinations based on incomplete supporting information, with a greater likelihood of refusals and appeals, increasing the risk of project delays or poor planning outcomes.
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?	Roadblocks commonly occur with drafting by PCO where council has delegation to make an LEP and more so with the Department's legal branch and PCO when council does not have delegation. Process improvements at this stage are essential to streamline the rezoning process and to ensure that the final instrument meets the strategic and legal intent of the planning proposal as submitted.

Do you think the public interest is a necessary consideration, or is it covered by the other proposed considerations?	It is a fundamental consideration in strategic planning, and a key object of the Act. Strategic planning must be able to demonstrate that it acts in the interests of the public it serves. If the public interest is not clearly addressed and demonstrated, the community will lose faith in strategic planning. Councils are best placed to assess whether proposals are in the broader public interest, not proponents driven by private interests.
Are there any additional matters that are relevant to determining whether a plan should be made?	Councils should be given the opportunity to refine local strategic planning statements if the formalised appeal process is introduced.
Do you think a body other than the council (such as a panel) should determine zoning applications where there is a VPA?	No, this should not be necessary and in many cases may not be appropriate. The City has processes in place to separately assess planning agreements and rezonings by separate parts of council and on their individual merits. In addition, the City's rezonings are determined by the CSPC, a body external to council, containing independent and State representation, and not directly party to a planning agreement. The legislation and practice notes for planning agreements provides significant rigour to the process. The coordination of planning and infrastructure delivery is essential and introducing another body into one aspect of it can comprise effect processes and outcomes.
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 the rezoning application?	The Discussion Paper has given little indication of what constitutes a conflict of interest. There should be no automatic presumption that potential conflicts cannot be managed by the council in exercising its functions.
Do we need a consistent structure for rezoning authority fees for rezoning applications?	No, Councils should be able to establish their own fees, reflecting the nature of the applications they receive and the complexity of dealing with them within their own local community.
What costs components need to be incorporated into a fee structure to ensure councils can employ the right staff and apply the right systems to efficiently assess and determine applications?	Councils make substantial resource investment in managing rezonings, including planning staff time in meeting proponents, assessing requests, technical advice from specialists to support planning staff, managing community consultation, providing reports and briefings to council, engaging with the Department and State agencies, drafting with PCO. Councils may need to

	undertake their own studies where applications are particularly complex.
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 not extend a fee schedule that applies across the state. Clearly, there is a different expectation of the assessment task involved in a complex high-rise residential development compared to a greenfield development.
What is your feedback on the 3 options presented above?	Councils should be able to set fees that reflect the assessment task at hand.
Should fee refunds be available if a proponent decides not to progress a rezoning application? If so, what refund terms would apply?	There could be a minor role for partial fee refunds for proposals that are withdrawn at a very early stage of the process, allowing for the rezoning authority to deduct costs for staff time and any other expenses incurred on consultants/exhibition processes could possibly be deducted at this stage.
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?	The City does not support the proposed planning guarantee scheme, delivering fee refunds for rezoning applications. This will encourage speculative applications and increase expectations from proponents that the system is a “pay to play” system geared to deliver favourable outcomes for developers. Currently there is no provision for refunding development application fees in relation to assessment time exceedances so it is not clear why it should be different for rezoning applications. It will discourage councils and proponents from working towards achieving a good planning outcome and instead encourage refusals and appeals which will extent timeframes and cause more resources to be invested. Together with the new broad appeal rights, the planning guarantee appears an effort to punish Councils for not progressing proposals, with no recognition that delays are often caused by proponents with speculative proposals and insufficient information, and by state government agencies.
If so, what mitigation measures (for example, stop the clock provisions, or refusing applications to avoid giving free refunds) would be necessary to prevent a rezoning authority from having to pay refunds for delays it can’t control?	See above response

If not, what other measures could encourage authorities to process rezoning applications promptly?	It is understood the Department's analysis has shown that applications that engage early and thoroughly, and genuinely collaborate with councils, tend to progress more quickly.

Part C: New appeals pathways	
Do you think public authorities (including councils) should have access to an appeal?	The City does not support judicial appeals for rezoning applications. If a review process is introduced, reviews of Government's decisions by the IPC should be available to councils. The possibility of reviewing a Gateway Determination currently exists.
Which of these options – the Land and Environment Court or the Independent Planning Commission (or other non-judicial body) – do you believe would be the most appropriate?	The Department have not presented a convincing argument that either is necessary. However, of the two options a non-judicial body such as the Independent Planning Commission is best placed to provide opportunities for mediation and merit review where mediation fails.