



WOLLONGONG CITY COUNCIL

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Ms Paulina Wythes
Director, Planning Legislative Reform
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Locked Bag 5022
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Our Ref:
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Dear Ms Wythes

A NEW APPROACH TO REZONINGS DISCUSSION PAPER

Thank you for the opportunity to comment on A New Approach to Rezoning Discussion Paper.

On 21 February 2021, Council considered a report on the Discussion Paper and endorsed the attached submission.

Should you or your team wish to discuss the submission, please contact Linda Davis, Director Planning & Environment on [REDACTED].

Yours faithfully

[REDACTED]
Greg Doyle
General Manager
Wollongong City Council
[REDACTED]

Attach

“A New Approach to Rezoning” Discussion Paper, December 2021

Wollongong City Council Submission

The Discussion Paper describes the proposed new way of assessing rezoning proposals as a “plan led” system, though the proposed process outlined looks more to be a developer led system and there is little in the proposed new system to increase a plan-led approach.

The draft paper suggests that -

“This new approach aims to support a stronger strategic planning process so that, collectively, we will continue to see great outcomes for people, places, jobs, housing and public spaces by -

- *simplifying the rezoning process and minimising duplication*
- *improving transparency*
- *improving consultation processes*
- *reducing processing times*
- *creating more certainty and consistency*
- *empowering councils to make decisions on matters important to their communities while allowing the NSW Government to deal with matters where government intervention is beneficial*
- *giving private proponents control and responsibility for rezoning requests*
- *improving the quality of planning proposals.”*

While the idea of reducing the time and cost of assessing rezoning proposals has merit, it is unclear from the Discussion Paper how the other aims of certainty, consistency and improving the quality of proposals would be achieved.

The Discussion Paper also notes that -

- The NSW Productivity Commission found the NSW planning system has become too complex and inefficient. It has recommended the need to reduce red tape and complexity.
- The Federal Productivity Commission found that the rezoning process can be time consuming, costly and uncertain. It recommended shorter timeframes for planning proposals (while maintaining integrity) and a policy to avoid spot rezonings (the rezoning for a specific parcel of land), or to remove redundant requirements or apply statutory timeframes for decisions where they cannot be avoided.

It is noted that the Plan Making process is entirely governed by the State, and local government follows the rules established by the State. Over the years the Department has made a series of changes with the intention to simplify and improve timeframes for the plan-making process, however often they have had the opposite affect by increasing complexity, inefficiencies and timeframes.

For example -

- The removal of section 65 delegations to Council to exhibit LEP amendments.
- The introduction of the Gateway Determination, which initially was an adequacy assessment against regional plans, but has evolved to a merit assessment of the proposal.

- The introduction of Rezoning Reviews, which has allowed proponents to appeal against Council not supporting or progressing their request. Prior to this change, Councils could reject inappropriate Planning Proposal requests without challenge. The Rezoning Review process and subsequent review by DPE can add up to 6 months to the process and result in proposals progressing that do not have the support of the Council.
- The DPE has introduced various Guidelines, SEPPs, Directions, Orders all of which add to the complexity of the rezoning process. Similarly other State Agencies have published their own Guidelines and requirements, many of which are non-statutory but are expected to be followed, otherwise there are un-resolved objections.
- The DPE has removed Council officer's ability to draft amending LEPs, and all amendments are drafted by the Parliamentary Counsel Office.
- The DPE mapping team reviews and comments on all map amendments. Often comments have nothing to do with the amendment, but on drafting details such as a line thickness, colours or labels.
- The introduction of Local Planning Panels to provide advice on Planning Proposal requests, while having merit in some circumstances, has added time to the process.
- The proposed introduction of Planning Proposal reviews by Design Review Panels through the Design and Place SEPP package, also has merit but will add further time to the process.

Council suggests that the implications arising from these previous process changes be critically considered through the rezoning reform process.

Spot Rezonings

Council supports the intent for a plan-led local planning process that moves away from "spot rezonings". However, Council is of the view that the suggested process for developer-initiated rezonings will in fact encourage more spot rezonings.

- The requirement to secure landholder consent will be a limitation for larger precinct based planning reviews that involve multiple property owners. Noting that currently owner(s) consent is not required.
- The ability for a developer to lodge, effectively exhibit and seek determination of a rezoning proposal without an initial assessment or support from the Council is likely to be attractive to land speculators.
- The ability for proponents to appeal against a negative Council decision at the end of the process will be a further incentive for speculative developers to "roll the dice" with a rezoning proposal.

The removal of a strategic and site specific merit assessment as the first step in the rezoning process is of particular concern. DPE placed considerable focus on the development of Local Strategic Planning Statements and Regional Plans as the strategic framework to guide land use planning decisions. The process being considered turns its back on this approach and would enable strategy inconsistent proposal to substantially progress through the rezoning process.

The investment of time and resources into exhibiting and assessing potentially strategy inconsistent proposals will reduce efficiency in the system and create unnecessary anxiety in the community. While an early decision to not support a Planning Proposal request may not be popular with the proponent, it saves them, the community and Council time and resources.

Council is of the view that the proposed new system puts consistency, integrity, transparency, and community trust at risk.

Public exhibition process

Council is concerned that the community may feel there is reduced transparency and trust with a public exhibition and response to submission that is essentially led by the developer at the start of the process.

The early exhibition envisaged in the new process also relies on the documentation being correct and supportable. There will be an increased likelihood that re-exhibitions will be required where proposals have to be amended to address issues raised by the community and/or through the assessment process. This raises a number of questions, for example:

- What process will be in place if an applicant amends the proposal post exhibition to determine whether the changes warrant re-exhibition?
- If the proposal needs to be re-exhibited, is this done by the proponent or council?
- Are exhibitions allowed to take place over Christmas/school holidays?

Department and agency involvement

It is unclear how the proposed new process increases consistency by removing the NSW Department of Planning and Environment from much of the process.

While it is appropriate to explore the roles and responsibilities of the Department at various steps in the rezoning process, the Department's involvement, especially at Gateway Determination phase does help to maintain consistency, transparency and integrity in the system.

The proposed use of submission requirements, including agency comments is a good idea. However, it is not clear in the process chart who is coordinating the Council and agency pre-lodgement meetings. Once again, questions to consider include:

- Is this coordinated by the proponent or Council?
- What will become of the traditional role of DPE to coordinate stage agencies?
- Will the agencies have the resources to attend pre-lodgement meetings?
- Who will prepare study / submission requirements?
- Will Councils have to draft new scoping requirements for each rezoning application or look to preparing a standardised set of requirements (similar to the Secretary's Environmental Assessment Requirements for State Significant Development Applications). If issues are not resolved at the rezoning stage, they are deferred to the DA stage and cause delays and increased contestability in that process.

Section 9.1 Directions will need to be updated to reflect the new system and the process timeframes envisaged. The Directions are not formed or controlled by Council, yet the responsibility for ensuring "consistency" is being shifted to Council. In the present system, Council forms an opinion, that is then agreed to/or disagreed with consistently by the Department. The new system reduces oversight, with potential for reduced consistency of assessment and less transparency.

Process and Timeframes

The Department should be aware that achieving the reduced benchmark timeframes at phases through the process will likely result in more refusals of rezoning proposals and the need for re-lodgement. The tight timeframes do not factor in the reality that additional information is often required to support rezoning proposals.

While on paper this may reduce timeframes on an application-by-application basis, will it result in overall inefficiencies and waste of time and resources.

The concept of moving assessment to the end-of-process will not necessarily save time or money but will merely transfers the merit debate to the end of the process, after the expenditure of significant resources has already occurred. Changes are also easier to accommodate at the start of the process.

New appeals pathway

Council does not support the introduction of Land and Environment Court appeal rights for rezoning proposals. Council has already seen its autonomy to set the strategic land use planning outcomes for the City eroded through the introduction of the "Gateway Review" process. Providing the opportunity for appeals through the courts will further reduce Council's autonomy and encourage speculative rezoning proposals.

Once again, the lack of detail in the Discussion Paper raises questions:

- What level of rigour will need to go into the studies required by the Court?
- Will new documentation be able to be lodged with the Court, which hasn't been reviewed by Council or the community?
- Will the community have appeal rights?
- Would objectors be able to have their views heard in such appeals?
- What resourcing will need to be made to allow for appeals to be processed?

The Department has not made the case for the failure in the current system that the introduction of appeal rights is designed to address. A review process is already in place using the Regional Planning Panels to provide independent review of Council decisions in relation to rezoning proposals. The use of Local Planning Panels or the Independent Planning Commission may be viable alternatives within the same general framework that is currently in place.

Introducing Land and Environment Court appeals will add to the cost and time to complete the review process. And as previously noted, tighter benchmark timeframes is likely to result in more refusals and therefore more appeals. Council envisages that more staff time and costs will be directed into defending appeals rather than investing into strategic planning.

Categories

The proposed Planning Proposal categories will need to be clearly defined in order to prevent debate on which category a proposal falls into. Whilst the categories seek to set out categories based on complexity levels, it is often site-specific constraints that can dictate complexity. It is also noted that for category 2 it is stated that a proposal falls into this category if it involves -

"changing the land-use zone if a proposal is consistent with the objectives identified in the LEP for that proposed zone".

There is no reference in the criteria for Category 2 that a proposal needs to be consistent with the intended character for the area. This statement would make more sense if it referred to a consistency with a Local Strategic Planning Statement or other strategic document.

New fee structure

The section in the Discussion Paper talks about fee structures, without really giving detail on how much the fees would be at each stage, or how they would be calculated.

The following alternate provisions suggested in the Discussion Paper could benefit the process if supported with other policy and guidance material to assist developers, Councils, and the public.

- Amend Ministerial Directions to make assessment considerations more certain.
- Delegation for decision-makers.
- Create submission requirements to make application requirements clear.
- Amendments to the Standard Instrument to standardise common amendments.
- New regulations to provide more certainty in the agency engagement process.

We agree that improvements would need to be made to the NSW Planning Portal to make it more effective and useable.

While the objective of creating a greater "plan-led" approach and reduced timeframes is supported as an objective, the framework suggested is unlikely lead to the outcomes desired.

Council appreciates the opportunity to provide feedback to the *New Approach to Rezoning Discussion Paper* and would welcome the opportunity to discuss our concerns in more detail as the reform process progresses.