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Ms Paulina Wythes
Director, Planning Legislative Reform
Department of Planning and Environment

Via email to [REDACTED]

EPA response to New Approach to Rezoning and LEP Making Guideline

Dear Ms Wythes

The Environment Protection Authority (EPA) has reviewed the *New Approach to Re-zonings Discussion Paper* (December 2021) (**Discussion Paper**) with reference to the recently released *Local Environmental Plan Making Guideline* (December 2021) (**Guideline**). The EPA provides its initial comments on both documents below.

In this letter the EPA addresses both the Discussion Paper and the Guideline as there is significant overlap between the two. Additionally, we note that the Department's initial invitation to comment invited submissions on the reforms generally. To this end, there may be some instances in which the terms used in this letter and derived from either document (such as for development categorisations) are used interchangeably.

While the EPA is broadly supportive of the reforms and their potential to encourage a more streamlined planning process, the reforms also provide an opportunity for the EPA to re-evaluate its role in the rezoning process. The EPA's priority is that its resources are directed at rezoning proposals that pose the most significant risk to the environment and human health. In this regard we have identified several issues that we would like to discuss with you at a convenient time. These include but are not limited to the matters set out below.

The Categorisation of Development

The categories for defining the types and scale of rezoning (Categories 1 to 4 or "Basic" to "Principle LEP") present an opportunity to limit the quantity of low-risk development proposals referred to the EPA.

However, we are concerned that with no clear test in place to determine when proposals should be referred to agencies, and in circumstances where some councils have limited expertise, the EPA could either:

- a) receive an excess of referrals regarding low risk assessments; or
- b) be deprived of the opportunity to comment on high risk proposals where a council has not identified the need for EPA input.

For example, in the case of a small rezoning of land that is near a scheduled activity under the *Protection of the Environment Operations Act 1997*, the proposal may be designated as a lower category designation, precluding EPA consultation. However, the EPA may deem such a proposal high risk due to the potential for land use conflict.

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Attachment B of the Guideline, the *Authority & Government Agency Pre-lodgement (Attachment B)*, provides a potential solution to this issue by providing referral criteria. The EPA supports this approach and would appreciate the opportunity to comment on the criteria for referral to the EPA contained in Attachment B in more detail.

The EPA is developing a risk-based approach for planning matters. This will form the basis for an agreement between EPA and the Department on what planning matters should be sent to the EPA and which applications can proceed without EPA input. This approach could work with **Attachment B** of the Guideline and lead to better planning and resource allocation outcomes.

Time Pressures for Lower Category Proposals

The EPA is also concerned that the focus on reduced timeframes for proponent-led applications falling into the “Basic” or “Category 1” classification may mean that the EPA does not have sufficient time to respond to applications in the pre-lodgement phase. The “Basic” timeline of 30 days for the pre-lodgement process described in the Guideline places an inherent time pressure on both councils and agencies, particularly because “days” are defined for rezoning review and gateway review to include weekends and public holidays. This approach fails to consider periods of low staff availability.

Interactions Between the EPA, the Rezoning Authority and the Department

The EPA is pleased that the mandatory pre-lodgement scoping process described in the Guideline and Discussion Paper will enable the EPA to set expectations for environmental outcomes with proponents early.

To ensure that the pre-lodgement process is as streamlined as possible and to reduce the likelihood of confusion resulting from conflicting messaging, any meetings with the EPA and the proponent should also be attended by a representative of the rezoning authority.

The EPA understands that discussions are currently underway as to whether the Department or councils will be permitted to reject study requirements requested by agencies that have received referrals under Attachment B, or where these are requested in consultation meetings. While the EPA appreciates the need to reduce time and cost in the rezoning process, this approach may result in technical requests from agencies being disregarded. This is likely to lead to poor planning outcomes. Having a representative from the rezoning authority present at the scoping meeting (as recommended above) will assist to clarify why these studies are required and why requirements they be completed should not be rejected.

Adequacy of Information to Support a Rezoning Proposal

With greater emphasis on enhancing the efficiency of information provision to support a rezoning proposal, the proposal may benefit from the approach that has been applied in the new Rapid Assessment Framework to improve assessment quality and engagement standards. The benefit of this framework is that it streamlines the assessment of major projects, providing clear guidance on environmental impact assessment requirements. It also introduces a new Registered Environmental Assessment Practitioners Scheme to provide quality assurance for environmental impact statements. The application of such an approach would benefit this new rezoning framework, especially in the case of large proponent-led rezoning proposals that can be technically complex and challenging.

There is also an opportunity for the Department to develop a standard set of study requirements to provide consistent guidance to rezoning proponents. These requirements could be tailored for the different categories of development under the Guideline. The EPA would be open to assisting by providing guidance to implement such an approach.

No recognition or fees to recover costs for agencies

As stated above, the emphasis on early engagement with agencies during scoping means that there is a high risk that the EPA will receive an increase in the number of requests for engagement and technical advice from councils. This issue will be exacerbated where councils have limited technical skills to undertake such assessments.

There is also a risk that agencies will be drawn into the new appeal processes.

In recognition of these concerns, the Department should consider developing a fee structure to support agencies to recover the costs of administering the new process. The Department may also wish to consider whether it should develop a fee structure that would support external peer review to assist Councils during assessment, particularly for complex technical proposals. This could support councils with limited technical expertise to undertake detailed complex assessments and could reduce the number of agency referrals.

Thank you for considering our comments and we look forward to meeting with you to discuss the above matters further. To organise a time for a meeting, please contact Lauren Musgrave on [REDACTED]

Yours sincerely

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MITCHELL BENNETT
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