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Dear Ms Wythes

Tweed Shire Council response to Discussion Paper on the New Approach to Rezoning

Thank you for an opportunity to review and provide comments to *A new approach to rezonings* Discussion Paper.

We note the intent of proposals, as outlined on the consultation website is “to simplify the system to cut timeframes and create investment certainty”. Following review of the Discussion Paper, we would like to raise the following points for the Department’s deliberation:

- a. The Scoping stage, whilst supported in principal, should not be bounded by fixed timeframes,
- b. The gap between the scoping and lodgement stages is excessively long and insufficiently articulated,
- c. Timeframe of the lodgement stage, particularly seven days for councils to review the documentation, is unrealistic,
- d. Removal of the Gateway Determination is supported as it increases council autonomy in local strategic planning decisions,
- e. Format of the exhibition, particularly the proposal to shift submission review from council to the proponent is not supported as it will substantially reduce the role of community in statutory planning, which in turn will result in a further decline of community confidence and trust in local planning,
- f. Positioning assessment against the strategic planning framework at the end of the process, after the public exhibition, is not supported. Strategic planning considerations should influence a rezoning early on, not be reduced to consistency check at the last stage.

A more detailed commentary is provided below.

Scoping

Positioning “scoping” as a mandatory step of the process is supported as it will send a clear message to the private applicants to engage with Council first, instead of the commonly occurring practice of initiating LEP amendments by way of submitting documentation that is often excessive in volume and insufficiently prepared. In this sense, the scoping stage is likely to reduce the costs to the proponents and workload impacts on Council staff.

A key concern related with formalising those already occurring pre-lodgement consultation, and building strict timeframes around them, is that they may be challenging to manage longer term. Council’s experience with pre-lodgement consultation is that the applicant, having received a response from Council staff, usually undertakes a detailed feasibility assessment

of the proposal, which may take weeks if not months before the developer/applicant is confident to commit resources further.

Should Council, under the new process, consider these initial enquiries as the commencement of the 'scoping' phase? If yes – should this trigger the clock to start?

Relevant experience indicates that the applicant is very unlikely to complete the financial feasibility, prepare a number of studies for initial review and address Council comments through revisions in 10 weeks. Should Council reject further communication if the applicant 'goes over time'? The discussion paper does not specify on how many occasions the proponent can approach Council for feedback and direction on a proposed rezoning during the scoping phase.

One suggested modification would be to not impose specific timeframes on the scoping stage. The following paragraphs provides further commentary on the timeframes required to complete the documentation prior to the lodgement.

Gap between scoping and lodgement

The Discussion Paper states that proponents will have 18 months to address technical requirements required for lodgement. This adds a fair degree of ambiguity to the timeframes of the scoping stage: what exactly is going to happen upon the last day of the 'scoping' phase: should Council and the Applicant stop communicating? How would this benefit the process? As mentioned above, the scoping and pre-lodgement phases are critical for the Applicant to do the most of the heavy lifting: prepare technical reports and build a strong case for rezoning.

Tweed Shire Council, at time of writing this submission, has eight (8) planning proposal enquiries that may be classified as being in the 'scoping' stage. In each case, Council has provided a comprehensive feedback for applicant's deliberation – our observation is that scoping and pre-lodgement phases have blurred boundaries and applicants require not only very flexible timeframes but most of all, ongoing guidance from Council's planning staff.

Importantly, the proposed timeframes appear to have been prepared to ensure councils will not be delaying the rezoning processes but these timeframes fail to acknowledge that in many cases it is the applicant who requires additional time, flexibility and technical advice.

One of the purposes of the new process is to 'reduce processing times' however the scoping phase appears to front-load resource intensive investigation and preparation of technical reports. From Council's and Applicant's perspective, there is little difference in resources required to ensure a proposal is ready to proceed, comparing with the current process. The only substantial difference is the removal of the Gateway Determination, which will definitely reduce the pressure on the Department's staff, however will have little effect on tasks and timeframes required from councils and the applicants.

Lodgement

Seven days for review of often complex technical documentation is unrealistic. It is effectively a scenario where key Council planning and technical staff have to "drop the tools", that is abandon their current, often urgent and more imperative tasks to focus on a rezoning application that just came in. On the face of it, offering an Applicant 18 months to prepare a rezoning application and then limiting the local authorities to just seven days of a quality check is strongly disproportionate. Council staff continues to experience very heavy workload related with processing high volumes of development applications, planning proposals and ongoing policy cycle. A more realistic timeframe to review the documentation is at least three weeks.

Exhibition

The key concern relates with DPIE's proposal to engage the applicant with the task of reviewing community submissions and responding to them. Local communities perceive their local environmental plans as principal tools shaping neighbourhoods, fostering economic growth and protecting the environment. This perception appears to be echoed by NSW DPIE with LEP described as "the main tool shaping the future of communities" (Planning NSW website). The rezoning process proposed by NSW DPIE goes in opposition to this role by substantial changes to the exhibition and positioning an LEP amendment process as "automated as much as possible through the portal" and failing to identify a single custodian or manager of a rezoning application. This proposal is not supported and the Department is requested to identify alternative scenarios for community engagement that would enhance community confidence in being able to have a say and be listened to about development proposals affecting their neighbourhoods.

Planning guarantee

The opportunity for proponents to request fee refund when the rezoning authority takes too long to assess a rezoning application could potentially place added pressures on less resourced and regional Council's. If Council's are unable to do the work to meet deadlines for whatever reason, they run the risk of being penalised. If this process is initiated, a 'stop the clock' provision would be necessary to minimise risk of Council refunding fees, especially in the context where some Council's may be under-resourced to meet the deadlines during the assessment phase.

As a final comment regarding the Department's published reason for why they are seeking to make these changes; which is the perception that "[O]ver time the rezoning process has become complex, leading to unnecessary delays and higher costs", we disagree.

The premise of this statement infers the statutory machinery of how LEPs are made or amended has become cumbersome or unnecessarily burdensome. Unlike many aspects of the legislation where that statement holds true, it is misplaced in this present context for the reasons stated below.

Since the earliest time under the *Environmental Planning and Assessment Act 1979* the substantive elements of consideration for good strategic planning by way of LEP amendment have remained largely unchanged. This is a fact. In more recent times, particularly since major reform in 2009, the legislative amendments have led to reordering of the same processes, nothing more. At the same time the complexity of related legislation, rules and guidelines has risen exponentially. Bio banking, environmental offsetting, inflexible and often misfit planning outcomes associated with the implementation and transition to a Standard Instrument EPI, Planning Agreements and the Gateway's 'greenlight' practice, the planning Portal among myriad other changes are in fact the root cause of longer assessment times and related increases in costs. The process itself is largely uncomplicated and rarely impacts on those other more substantive 'assessment' aspects.

The proposed amendments will not alter the need to assess and navigate a very complex web of planning requirements and considerations. It will empower the developer proponent by removing transparency in the decision making process by facilitating different pathways to approval and in the process disempowering local councils or worse using the process to shame councils who stand their ground on bad applications. Neither the need for different planning approval pathways nor shaming councils is necessary when the wider legislated and guideline environment is clear and unambiguous. There is presently nothing in the Government's planning reforms that will improve the assessment aspect of LEPs.

In light of the above, we reject the Department's claim that the rezoning process has become complex and is the cause of unnecessary delay and higher costs. Although, we do accept

that there are some aspects of the process and related legislative framework that would benefit from reform.

Once again, thank you for an opportunity to provide comment on the Government's draft planning reforms.

Should you wish to discuss this response further, please do not hesitate to contact Matthew Zenkteler, Senior Strategic Planner, on [REDACTED].

Yours faithfully



Vince Connell
DIRECTOR PLANNING AND REGULATION