WAVERLEY COUNCIL

1. Introduction

In December 2021, the Department of Planning and Environment (DPE) announced a review of existing rezoning processes which currently Council participates in as part of the planning proposal process. As part of this review, a discussion paper has been prepared entitled *A New Approach to Rezonings* (the discussion paper) and placed on public exhibition until 28 February 2022.

According to the DPE, the proposed approach intends to balance the need for a responsive and flexible planning system with the robust processes that maintains good planning outcomes. The new approach aims to support a stronger strategic planning process and the DPE believes this will occur 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, and
- improving the quality of planning proposals.

The discussion paper aims to build on recent changes to the way in which amendments of a Local Environmental Plan (LEP) occur, with the release of the new *LEP Making Guideline*. The new Guideline seeks to better explain the planning proposal system to rezone land and implements new changes, intended to improve the process, such as the introduction of timeframe expectations for the assessment of planning proposals. The changes outlined in the LEP Making Guideline came into effect on the 15 December 2021.

In providing feedback to the discussion paper, Council has structured its response based on the structure of the discussion paper, providing comment on the specific questions raised within the document, as well as providing general and additional comments where necessary. A number of figures and tables from the discussion paper have also been provided throughout the submission for reference.

The proposed new framework compared to the current framework is shown in the overleaf figure extracted from the discussion paper.

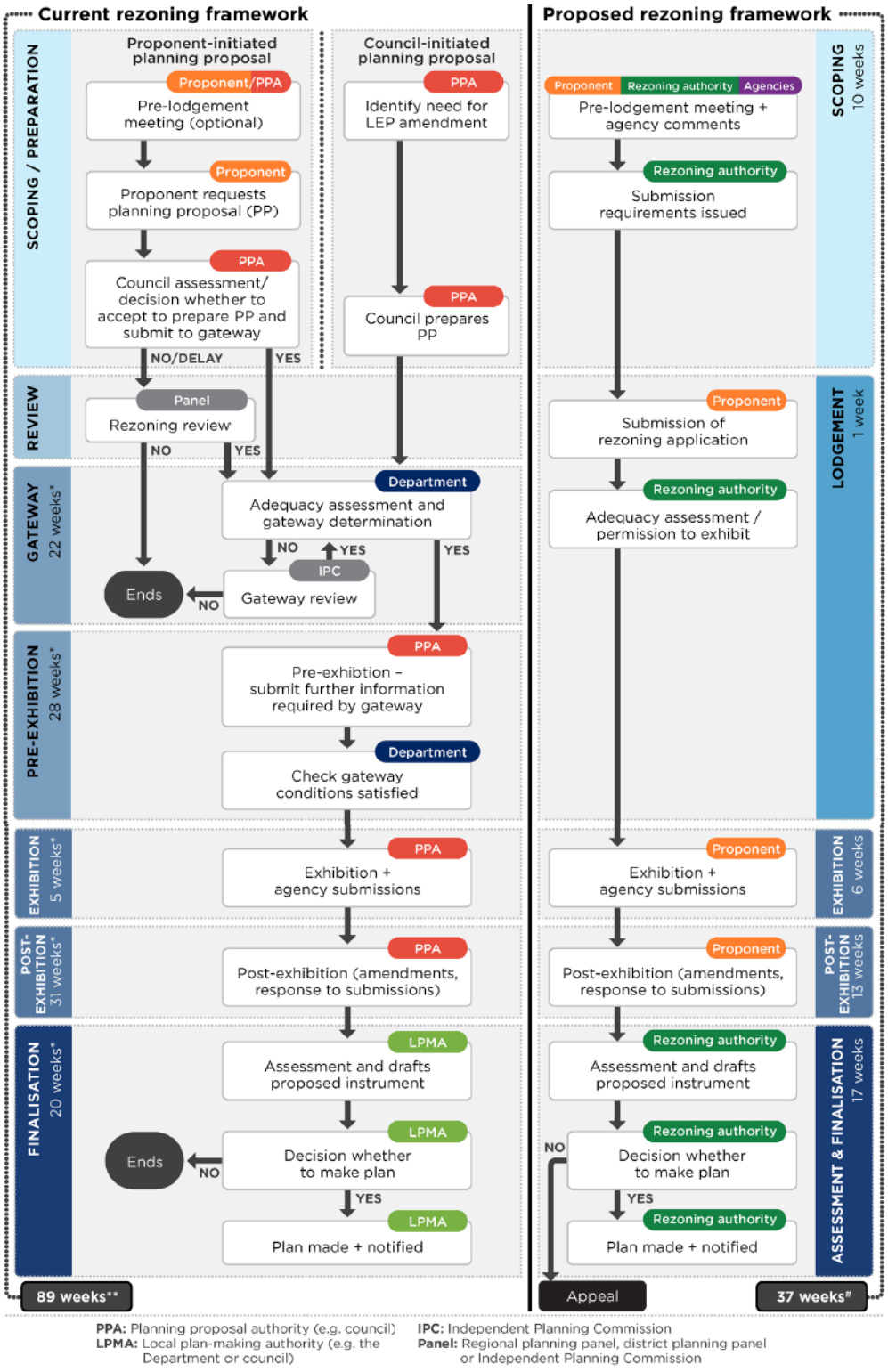

Figure 1 - Comparing the current and proposed rezoning frameworks (source: DPE)

2. New Terminology

The proposed changes to terminology, as outlined in the discussion paper are shown in the following table.

Current	Proposed	Description of proposed role
Rezoning request/planning proposal	Rezoning application	An application to make or amend an LEP.
• Private proponent (not recognised) • Public authority proponent (not recognised) • PPA ('owner' of the planning proposal, usually council)	Proponent (private, public authority or council)	A rezoning application lodged by a: • private individual or corporation • public authority, including a state-owned corporation • council for changes to their LEP.
LPMA (makes the LEP)	Rezoning authority	The party responsible for assessing and determining the rezoning application. This could be a council or the minister, depending on the type of rezoning application.
Gateway	N/A	Included in the rezoning authority function.

Table 1 - Current and proposed terminology (source: DPE)

Waverley Council response

The intention to change the terminology is supported, particularly in relation to the difference between the PPA and LPMA, which is often misunderstood, or difficult to explain to the community.

The community and developers understand and generally refer to any changes to the LEP as a 'rezoning' and therefore the proposed terminology could help to reduce confusion with the community and councils using the same terminology (rather than referring to the current generic term 'planning proposals'). Whilst changes to the terminology may be of benefit, the proposed change of terminology for the overarching process to 'rezoning application' does have the potential to result in some confusion, especially in circumstances where applications do not propose changes to zoning, or in instances where applications propose changes to not only zoning, but also to other principal development standards (such as height, floor space ratio, permitted uses, etc.)

3. New Categories and Timeframes

3.1 New Categories

The discussion paper proposes four different categories specific to different types of applications. It is noted that these categories have already been implemented through the new LEP Making Guidelines which came into effect on 15 December 2021.

The categories are listed in the below table.

Category	Description
Category 1 (Basic)	Administrative, housekeeping and minor local matters such as: • listing a local heritage item, supported by a study endorsed by the department's Environment, Energy and Science group • reclassifying land where the Governor of NSW's approval is not required • attaining consistency with an endorsed local strategy, such as a local housing strategy • attaining consistency with section 3.22 (fast-tracked changes of environmental planning instruments of the EP&A Act).
Category 2 (Standard)	Site-specific rezoning applications seeking a change in planning controls consistent with strategic planning, such as: • changing the land-use zone if a proposal is consistent with the objectives identified in the LEP for that proposed zone • altering the principal development standards of the LEP • adding a permissible land use or uses and/or any conditional arrangements under Schedule 1 Additional Permitted Uses of the LEP • ensuring consistency with an endorsed strategic planning or local strategic planning statement • classifying or reclassifying public land through the LEP.
Category 3 (Complex)	Applications that may be not consistent with strategic planning, including any LEP amendment not captured under category 1 or 2. Examples include: • changing the land use zone and/or the principal development standards of the LEP, which would increase demand for infrastructure and require an amendment to or preparation of a development contribution plan • responding to a change in circumstances, such as the investment in new infrastructure or changing demographic trends • requiring a significant amendment to or preparation of a development contribution plan or a related infrastructure strategy • making amendments that aren't captured as principal LEP, standard or basic planning proposal categories.
Category 4 (Principal LEP)	A comprehensive or housekeeping rezoning application led by council, proposing broadscale policy change to the LEP for the whole LGA.

Table 2 – New categories and descriptions (source: DPE)

Waverley Council response

It is noted that prior to the recent changes, there was no consistency relating to different types of planning proposals in different LGAs in NSW and the changes brought forward in the LEP Making Guideline aim to make for consistency in specifying different categories and types of applications

across the state. Council is supportive of the intention of the DPE in doing this, however, believes that the DPE should consider engaging with stakeholders in the short-medium term following the implementation of the changes, to obtain feedback as to whether the new categories has been deemed to have been an effective and practical change. Further refinement of Category 3 (Complex) may be necessary. There may be questions regarding how a carezoning application is "not consistent with strategic planning" but can still pass a 'strategic merit' test. The final catch-all dot point referring to amendments that aren't Category 1, 2 or 4 could be deleted as it invites speculative rezoning applications that aren't strategic, don't respond to a change in circumstances and are likely to include small, single sites that would be more suitable for a DA pathway and unsuitable for a rezoning application.

3.2 New timeframes

In addition to the new categories, the discussion paper also proposes benchmark timeframes against each of the categories, specifying maximum time frames for each of the following stages:

1. Scoping
2. Lodgement
3. Exhibition
4. Post-exhibition
5. Assessment and finalization

A summary of the proposed timeframes is specified in the table below.

Stage	Category 1 (Basic)	Category 2 (Standard)	Category 3 (Complex)	Category 4 (Principal LEP)
Scoping	6 weeks	10 weeks	12 weeks	10 weeks
Lodgement	1 week	1 week	1 week	1 week
Exhibition	4 weeks	6 weeks	8 weeks	6 weeks
Post-exhibition	10 weeks	13 weeks	15 weeks	17 weeks
Assessment and finalisation	11 weeks	17 weeks	24 weeks	26 weeks
Total, excluding scoping*	**26 weeks**	**37 weeks**	**48 weeks**	**50 weeks**

*The total timeframe does not include the scoping stage, which occurs before lodgement.

Table 3 - Proposed categories and benchmark timeframes (source: DPE)

Waverley Council response

Discussion paper question: Do you think benchmark timeframes create greater efficiency and will lead to time savings?

It is probable that placing benchmark timeframes may result in perceived time savings and greater efficiencies in the process. However, any incentives or disincentives implemented to achieve timeframes – such as deemed refusal or refund of planning fees – need to be considered carefully as they may result in perverse policy outcomes, such as lengthy timeframes in appeals processes which wouldn't be recorded in the 'official' timeframes and/or poorer quality planning outcomes. It is vitally important that any timeframes placed on different parts of the process have fully factored in an appropriate length of time for each of the stages. It is also noted that the real time it takes from initiation to finalisation might remain the same, however the 'formal' time between lodgement and finalisation will be less, as there will be more time spent in the scoping/preparation phase.

It is Council's experience that most of the abovementioned stages often take longer than is initially anticipated, due to delays from all stakeholders involved in the process. From Council's perspective, these delays can result from:

- Responses to requests for information from private proponents taking longer than anticipated.
- Unsatisfactory/insufficient information being provided by private proponents either at pre-Gateway or post-Gateway (under the current gateway process).
- Proponents not taking on initial advice provided as part of the scoping / pre-lodgement phase.
- Requests from the community and elected members for extensions of exhibition periods, due to the substantial nature of many proposals.
- Delays in reporting to Council, due to changes in meeting schedules.
- Delays with gateway assessment and determination.
- Delays in receiving responses from State Agencies.

Council does not support restrictive timeframes placed on these processes which, if not abided by may result in a penalty for Council and the proposed timeframes do not allow enough consideration to the varied resourcing across different LGAs, the nature of public exhibition and reporting these matters to decision makers, alongside other abovementioned issues. The lack of resourcing in smaller councils may mean that strategic planning staff are consistently delaying strategic planning projects to meet deadlines for reactive spot rezonings. This would be particularly acute when councils update their LSPS and associated strategic studies every five years in response to the GSC District Plans, or as required in order to implement NSW Government reform packages.

Should the DPE reconsider and provide the above timeframes (or revised, more appropriate timeframes) as guiding timeframes in which stakeholders should work towards (without an on-the-clock/stop-the-clock approach) Council would consider this approach more favourable. Alternatively, the DPE may consider stop the clock provisions where both the Council and developer agree it is appropriate.

4. New Roles

The discussion paper proposes changing the roles of the different stakeholders involved in the rezoning process. The new proposed roles are specified in the below table.

Type of rezoning	**Department role**	**Department level of involvement**	**Council role**
Public authority proponent	Assesses and determines	Department assesses and determines	Consultation
Council proponent (category 3 and 4)	Assesses and determines	Department assesses and determines	Proponent

Council proponent (Category 1 and 2)	Conducts scoping and adequacy at lodgement	Department has limited involvement	Proponent + assess and determines after permission to exhibit
Private proponent (categories 1,2 and 3) – inconsistent with specified s9.1 direction/s	Given notice and opportunity to comment given during exhibition	Department has limited involvement	Assesses and determines
Private proponent (categories 1,2 and 3) – consistent with s9.1 directions	Department has no involvement	No involvement in assessment except support, case management and monitoring	Assesses and determines

Table 3 - The roles of councils and the department under the new approach

4.1 Proponents

Councils – rather than private proponents – usually make changes to LEPs to ensure that LEPs give effect to strategic plans. The current rezoning request process means that Council is responsible in progressing a planning proposal, with costs covered by the private proponent. This means that the private proponent are not considered as the applicant.

The proposed approach in the discussion paper aims to recognize private proponents as applicants, as they are in the development application process. These changes would result in the proponent being able to:

- meet with the rezoning authority to discuss a potential request,
- submit a rezoning application and have it assessed and determined after public exhibition, and
- appeal a decision made about a rezoning application because of a delay or dissatisfaction with a decision (discussed later in this submission).

In addition, the discussion paper specifies that the private proponent will be responsible for all fees, meeting information requirements, consulting with state agencies, and reviewing and responding to any submissions received during consultation.

A private proponent will only be able to lodge a rezoning application if they are the owner of the land or have obtained the consent of the landowner to which the application relates. It is noted that under the current process, private proponents do not have to be the owner of the land or have landowners' consent to lodge a planning proposal with Council.

Waverley Council response

The discussion paper proposes elevating the role of private proponents to giving them more active participation and responsibilities throughout the process.

Council supports the requirement for a private proponent to only be able to lodge a rezoning application if they are the owner of the land or have obtained landowners consent for all relevant lots. However, the changes proposed in the discussion paper will result in the proponent more actively engaged in the rezoning application process, essentially leading the consultation process and given the

responsibility of receiving, reviewing and responding to submissions as part of the public exhibition process. These tasks are better placed within the remit of Council in order to ensure the exhibition process is more genuine and meaningful for those who provide submissions. Based on Council's experience in the past where officers been invited to join proponents privately run engagement activities, that the proponents ultimate summary of engagement as subsequently lodged to Council, did not accurately reflect feedback from the community.

The new proposed process may create significant angst and confusion in the community if a rezoning application is advertised and believed to be supported by Council, especially if the exhibition and engagement references Council involvement in the scoping phase. This could be reduced by requiring private proponents to make it clear that they are acting alone and without Council endorsement.

Further discussion is provided in more detail relating to these matters throughout the submission.

4.2 Councils

Councils will continue to have a role in all rezoning applications, whether this is as a proponent, or in an assessment and determination or consultation role. The new approach aims to empower councils to make decisions about their local area without unnecessary DPE intervention.

This means that for private proponent rezoning applications, councils will have full control of the process, including giving permission to exhibit, which is currently given by a gateway determination. Councils will also review any changes after exhibition and make the final decision. To support this expanded role, the DPE believes that councils will be better resourced through a new fee scheme that will compensate councils for the full cost of assessing a rezoning application, while also enabling them to invest in staff and better systems. Further discussion regarding Council's role in the process is provided throughout the submission.

According to the discussion paper, the DPE would still be available to offer support and assistance where needed, as well as education and training. If a council is the proponent of a rezoning application, they would continue to be appointed as the rezoning authority after scoping and once the department has given permission to exhibit.

It is also proposed that the type of council-proponent rezoning applications that a council can determine will also be streamlined to include all category 1 and 2 applications (unless there is a conflict of interest).

Waverley Council response

Discussion paper question*: *What do you think about giving councils greater autonomy over rezoning decisions?

Council supports the greater autonomy outlined in the discussion paper over rezoning decisions. As the primary stakeholder involved in undertaking local strategic planning, Council is best placed to consider any changes to its LEP and welcomes its role in the process.

It is noted that there is currently limited mention of what the role the Local Planning Panel (LPP) would play in any new process. Under the current existing process, planning proposals are required to be reported to the LPP. The retention of the LPP in the reporting/decision making process is supported in

ensuring that an independent review of the application can occur, and Council believes rezoning applications should be reported to the LPP prior to being reported to Council and a final determination being given.

It should be noted that despite councils being granted a greater autonomy (as is discussed later in Council's submission) this signaled greater autonomy should not be undermined by changes to the appeals process. In some instances, the new process actually limits Council's autonomy. Under the current approach, once Council has LPMA and decides to alter or refuse a planning proposal, there is no recourse for appeal for a private proponent. Under the proposed changes outlined in the discussion paper, the ability for a private proponent to appeal any final Council determination on any rezoning application type, limits the autonomy of a council. Ensuring any new process cannot be viewed by private proponents as simply a step on the way to an appeals process should be an important measure taken by the DPE as part of any changes to the process. This is further discussed under the appeals section of this submission.

***Discussion paper question: what additional support could we give councils to enable high-quality and efficient rezoning decisions*?**

To ensure high-quality and efficient rezoning decisions under a potentially higher-pressure, higher-stakes structure as is proposed in this discussion paper, councils need a well-designed rezoning process and adequate resources. A well-designed process would limit the amount of speculative and non-strategically aligned planning proposals to assist Councils in dealing with these matters swiftly. The process must reduce the ability for appeal rights and increase council determination powers, to avoid Council's, private proponents and the DPE and other state agency's time, money and resources being wasted on speculative planning proposals. The continued involvement of LPP can also provide additional independent oversight in the decision-making process as has been outlined earlier in this submission.

Furthermore, the DPE could give Councils additional financial support, particularly in assisting during the first few years of any changes, while Council's are still trying to gain an understanding as to what a typical volume of rezoning applications would look like. Additional financial support could be provided, for example in the form of non-contestable grant funding which is guaranteed for a number of years (i.e., 3-year terms) to bolster Council's ability to provide adequate staff resources. It is noted the DPE and other State Government agencies already provide these sorts of grants for councils to implement priority projects in other areas (for example Environment and Waste grants) and therefore, given the strong importance placed by the community and State Government on matters relating to strategic planning in NSW, it is not unreasonable to extend this type of program to support these changes.

Discussion paper question: what changes can be made to the Department's role and processes to improve the assessment and determination of council-led rezonings?

Council recommends the following:

- Increase internal delegation so that rezoning applications requiring the DPE to determine the outcome don't get delayed awaiting sign-off from senior executive.
- Internal DPE timeframes should be met. Consideration should be given for Council to progress their application through to the next stages on the presumption of approval – i.e. 'silence will be taken as acceptance'.
- The DPE should not hesitate to provide a swift refusal – DPE is often reluctant to provide a determination or written advice for fear of being challenged by Council. This needs to stop.

- Their newly defined role as outlined in the discussion paper should be implemented.

4.3 Department of Planning and Environment

Under the new process, Departmental resources will be refocused to state-led, strategic and collaborative planning. The aim of this, according to the discussion paper, is so that the DPE can focus on the plan-led system and on matters of state and regional significance. The type of rezoning applications no longer assessed or determined by the minister through the department will include:

- private proponent rezoning applications (notice to the department may be needed if the rezoning application is inconsistent with a s. 9.1 direction),
- council proponent rezoning applications where the council is the rezoning authority (for example, mapping alterations, listing local heritage items, strategically consistent spot rezonings).

The minister, through the department, will assess and determine:

- rezoning applications initiated by public authorities
- rezoning applications accompanying a state-significant development application
- council proponent rezoning applications
- rezoning applications that propose to amend a SEPP
- rezoning applications that are state or regionally significant. The department will also continue to lead state-led rezonings, which will be generally carried out through a SEPP process and not through our proposed new approach.

The Department's Planning Delivery Unit was established in 2020 to progress priority development applications and planning proposals that are stuck in the system. Under the proposed new approach, the unit's role will continue, and the department's regional teams will continue to assist councils, state agencies and private proponents at either the scoping stage or to help resolve issues after lodgement. All rezoning applications would be lodged and progressed through the NSW Planning Portal.

Waverley Council response

Discussion paper question: is there enough supervision of the rezoning process? What else could we do to minimise the risk of corruption and encourage good decision-making?

The continued involvement of the LPP is a suitable way of limiting corruption and providing independent involvement in the decision-making process. If there is a conflict between the decision of the LPP and Council (for example the LPP says no and Council says yes) then this has the potential to provide an opportunity for the DPE to review the process that has occurred up until the decision-making part of the process, to ensure no conflicts of interest have occurred throughout the process.

Discussion paper question: Do you think the new approach and the department's proposed new role strikes the right balance between what councils should determine and what the Department should determine?

The new approach provides Council and the community with greater certainty over who will be the assessing and determining body, in comparison to the current system where Council is unlikely to be given the role of PMA, if the planning proposal has been through the rezoning review process.

The role of the DPE in council led rezoning applications (where council is the proponent) could be more clearly defined than is in the discussion paper. Council believes that in relation to Category 1 and 2 applications where council is the proponent and where the DPE is responsible for conducting scoping and adequacy at lodgement (and providing permission to exhibit), that the role of the DPE is limited to ensuring proposed changes are consistent with the relevant legislation (i.e., EP&A Act, relevant SEPPs) and the strategic framework of both councils and the State Government. Council does not believe a comprehensive merit assessment (as is conducted in the current gateway process) is relevant for the DPE to undertake in this instance, otherwise the proposed removal of the gateway process would become meaningless.

There are also questions regarding the involvement of the DPE in the scoping phases. It is noted in the Scoping part of the discussion paper, it outlines that 'state agencies' will be involved; however, it is unclear if this also includes the DPE. It would be particularly important to have the DPE involved in circumstances where an application is inconstant with ministerial directions, as the DPE would be best placed to advise Council whether these inconsistencies warrant the application not proceeding to exhibition.

It is important to note that with the DPE absolving itself of many of its current responsibilities in the current process, any additional work for councils should be reflected in the way fees are structured, to ensure councils are not worse off financially under any changes.

4.4 Public authorities

State agencies

The discussion paper proposes changes to the agency referral process for rezoning applications.

Currently, the DPE believes that providing input into rezonings can be resource-intensive for agencies and has the potential to delay assessment, especially if feedback comes late in the process and requires fundamental changes to a proposal.

The revised role of state agencies is discussed in more detail throughout this submission and essentially sees the role of states agencies participating in:

- Scoping of the rezoning application, prior to lodgement.
- Exhibition of the planning proposal, by providing feedback as necessary prior to the assessment of the rezoning application by the rezoning authority.

Public authority proponents

There are also circumstances where public authorities that are holders of infrastructure and other assets are also proponents in the rezoning process. Under the proposed new approach, if a rezoning application is initiated by a public authority, the application will be lodged with and determined by the DPE rather than a council.

Waverley Council response

Discussion paper question: Is it enough to have agencies involved in scoping and to give them the opportunity to make a submission during exhibition?

Based on Council's experience, the current proposed approach would provide state agencies with a more active role in the process, and Council is supportive of this. In the past, state agencies have often sought extensions or been unable to provide submissions during the public exhibition of planning proposals, which has resulted in the absence of important information and feedback being received.

Discussion paper question: Do you think it would be beneficial to have a central body that co-ordinates agency involvement?

The most appropriate central body to co-ordinate agency involvement should be the DPE. The DPE, as a state agency itself should take the lead approach in assisting the rezoning authority to gain adequate agency involvement.

Discussion paper question: **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?**

Any new process should be set in a way that allows for extensions of timeframes for exhibition, particularly in relation to state agency feedback, particularly if state agency feedback is of critical importance.

4.5 Inconsistencies with section 9.1 ministerial directions

Currently, the approval of the DPE secretary may be required if a planning proposal is inconsistent with a s. 9.1 direction. Section 9.1 directions cover the following categories:

- employment and resources
- environment and heritage
- housing, infrastructure and urban development
- hazard and risk
- regional planning
- local plan making
- metropolitan planning.

Under the new approach proposed in the discussion paper it is proposed that:

- in some circumstances, a council can approve an inconsistency, rather than notifying the department and seeking approval from the secretary
- in other circumstances, the department will be given the opportunity to comment and/or approve an inconsistency.

Waverley Council response

Discussion paper question: Should councils be able to approve inconsistencies with certain s. 9.1 directions? If so, in what circumstances would this be appropriate?

Major inconstancies with s.91 directions should be addressed in the scoping process where in which the rezoning authority (if council) should discuss the matter with the DPE, as s.91 directions relate specifically to the DPE and the relevant minister. If the DPE takes issue with any inconsistencies present, then councils should have the ability to refuse the application from proceeding any further toward exhibition and assessment. Should the DPE deem the inconsistencies acceptable, then council could have the opportunity to progress the application, provided it meets all the other criteria for permission to exhibit.

Minor inconsistencies can likely be addressed throughout the process, and it is expected that the DPE would provide comment to this effect during the exhibition period, which would feed into any assessment undertaken by Council, when considering the ministerial directions as part of a broader assessment against other criteria.

5. New Steps

5.1 Scoping

The new approach includes a mandatory pre-lodgement stage for the standard, complex and principal LEP rezoning applications (optional for the basic applications) called scoping. The scoping process is the same as that set out in the new LEP Guideline, which are already in effect, except that under the new approach, it is proposed that scoping should be mandatory.

The intent of the Scoping stage is to allow relevant parties to come together early in the process to discuss the project and provide feedback and direction before detailed work has progressed.

Proponents will not be able to lodge a rezoning application without progressing through the scoping process. Under the proposed approach, failure to provide the information required in the study requirements may lead to rejection of a rezoning application at lodgement or refusal at the end of the process.

Study requirements will be valid for 18 months. If a rezoning application is not submitted in this timeframe, the scoping process will need to start again with new study requirements issued.

The following figure outlines the steps in the scoping process.

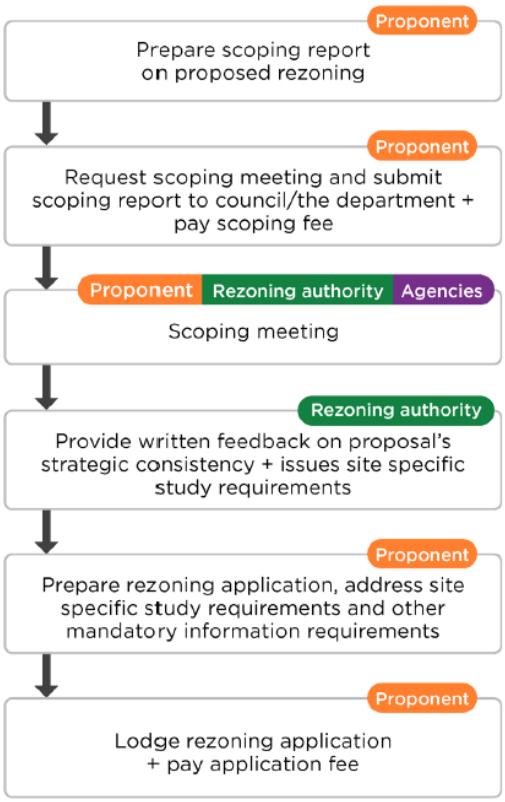

Figure 2 – Proposed framework for scoping (source: DPE)

Scoping report

The production of a high-level scoping report prepared by the proponent that overviews the proposal, how it aligns with the strategic context, any planning or site-specific issues, and any required studies.

Scoping meeting

A scoping meeting would be held between the proponent and the rezoning authority and other relevant parties (including state agencies) to discuss the scoping report and provide preliminary feedback. It is intended that early agency input will allow agencies to shape proposals early on and avoid problems later in the assessment process by allowing proponents to adapt or change their proposal to address agency issues at the outset.

Written feedback

The rezoning authority will provide written feedback that indicates;

- the rezoning application's consistency with strategic planning,
- agency feedback,
- any recommended changes to the rezoning proposal, and
- the nominated rezoning application category.

This written feedback will also set out the standard information that should accompany the rezoning application including;

- intended objectives and outcomes of the proposal,
- broad justification/case for change – need, strategic merit and site-specific merit of the proposal,
- high-level evaluation against strategic planning (including any relevant SEPPs or s. 9.1 directions),
- any study requirements such as technical reports that demonstrate strategic and site-specific merit (the rezoning authority should seek input from relevant state agencies when determining these requirements), and
- whether a section 7.11 infrastructure contributions plan is needed (consistent with ministerial directions).

Although the rezoning authority will provide feedback on whether the rezoning proposal is likely to be consistent with strategic plans, the proposed approach specifies that the rezoning authority will not be able to prevent the proponent from lodging an application. Study requirements must still be issued, and a proponent may still lodge a rezoning application, and have it assessed and determined.

It is noted that the new LEP Making Guideline already contains information to support proponents, councils and state agencies throughout the new optional scoping process which is proposed as mandatory in the discussion paper.

Waverley Council response

The current proposed scoping process, whilst providing a good opportunity for multiple stakeholders to discuss the application, is insufficient as it lacks further review/confirmation relating to the site-specific study requirements and other mandatory information requirements.

As is outlined in **Figure 2**, there is currently no feedback process in between when the rezoning authority provides feedback relating to the proposal's strategic consistency and site-specific study requirements and the application being lodged by the proponent. It is noted that checking to ensure the application adequately meets the study requirements issued by the rezoning application is currently proposed during the lodgement phase (after lodgement). Council proposes that this part of the process should instead be undertaken prior to lodgement.

It is also noted that the Scoping stage should address matters related to the rezoning application itself, and not a proposed future development scheme. Waverley Council often receives planning proposals with building schemes developed to a development application level. This is a waste of the proponent's time and resources, as well as irrelevant for Council to consider, as the planning proposal seeks to amend only the development standards and controls, rather than seek approval for a specific development. Clarification from the DPE about the correct nature of a Scoping Report is recommended, which emphasises urban design and the demonstration of a range of potential built form outcomes under any proposed development standards and controls, rather than a nominated concept scheme as such.

Discussion paper question: 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?

If proposals are clearly inconsistent with strategic plans and it is evident that the application would unlikely get supported, it does not make sense for an application and supporting studies to be prepared and to proceed to public exhibition. This is for the following reasons:

- It would be a waste of Council's resources and the often-limited time of the community in providing feedback to go through all stages if the proposal is clearly not aligned with Council's strategic plans.
- Councils should have the discretion to stop rezoning applications that clearly fail strategic and site-specific merit.
- Alternatively, the DPE should have criteria if the potential rezoning application is inconsistent with strategic planning (LSPS, s9.1 Directions, etc.) and is not responding to a change in circumstances (such as major investment in public transport), then it should not proceed past the Scoping stage.

Accordingly, a high-level Scoping stage merit test is recommended, to provide a 'sense check' as to whether a proposal has enough merit to warrant the investment of public resources into the assessment following public exhibition. The discussion paper does not provide enough detail surrounding what would prevent a rezoning application from being placed on exhibition.

5.2 Lodgement

Rezoning applications will be lodged on the NSW Planning Portal, the NSW Government's online planning system. The rezoning authority will check that the application is adequate and have seven days to confirm that study requirements have been met.

The intention of the abovementioned changes is to align with the development application process, enabling greater opportunities to lodge concurrent rezoning applications and development applications.

Where requirements are met, this will trigger exhibition of the rezoning application, meaning the application will go live on the portal and the formal exhibition period begins. This is a significant change from the existing process. Currently, exhibition is determined as part of the gateway determination, when both the adequacy of information provided, and the proposal's strategic alignment is assessed. A proposal might not proceed if it is found to be inadequate.

Waverley Council response

In response to the discussion regarding the lodgement of a rezoning application and 'permission to exhibit' as outlined in the flow chart illustrating the new process, it is not exactly clear as to what would prevent an application from proceeding to exhibition. The discussion paper outlines that "the rezoning authority will check that the application is adequate and have 7 days to confirm that study requirements have been met". A timeframe of 7 days is unlikely to be enough time for Council to thoroughly ensure that all study requirements have been met, particularly as applications will likely involve multiple departments who will be referred to for comment on things outside of the speciality of the nominated assessing officer for matters such as traffic reports, arborist reports, heritage conservation management plans etc. As the detailed process seeks to empower councils and elevate their role in the rezoning application process, councils should have a strong remit to refuse an application being placed on exhibition should an application not be deemed satisfactory to proceed.

Discussion paper question: What sort of material could we supply to assure community members that exhibition does not mean the rezoning authority supports the application and may still reject it?

The new proposed process may create significant angst and confusion in the community if a rezoning application is advertised and believed to be supported by Council; especially if the exhibition and engagement references Council involvement in the Scoping stage.

A clear discussion and explanation of the process is required if a new approach to rezonings is implemented. The DPE should work with Councils to implement effective communications around the changes, in order to ensure the community properly informed and educated.

Template key messages and other materials (such as fact sheets on the processes) would be beneficial for councils to utilise in their communications, as well as for consistency of messaging across different LGAs. A series of educational videos prepared by the DPE would be useful to clarify the process of exhibition, and that the rezoning application has not yet been thoroughly assessed. If the DPE is to prepare this, a similar video that explains the development application process, and how development applications are different to rezoning applications, would also be helpful for the community.

Furthermore, general communications to the public, relating to changes to the planning system (which have been frequent and substantial in recent years) should be improved.

Discussion paper question: 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 opportunity for a merit assessment runs the risk of an inadequate proposal going to public exhibition. There is opportunity for a merit assessment to occur after exhibition (as is the case with Development Applications) only if appropriate measures are put in place to ensure Council is satisfied that the proposal has undertaken the appropriate studies and documentation, has passed an initial Scoping stage merit test, and is of a standard to be exhibited. As has been discussed throughout this submission, Council believes that there should be an opportunity for applications to be refused to proceed to exhibition, if they are deemed insufficient of clearly inconsistent with strategic planning.

If the process proceeds in its current form, clear communication will be required to explain the new process to the public (as mentioned in above discussion).

Discussion paper question: Should the public have the opportunity to comment on a rezoning application before it is assessed?

Allowing the public to provide comment on a rezoning application before it is assessed can be both beneficial and problematic. In the instance what is being proposed is unlikely to be approved by Council and/or may be controversial, the proposed process could result in a substantial number of submissions and concern from both the community and Elected Members. As a result, substantially more administration may be required by council officers in responding to enquiries and submissions received. If the process proceeds in its current form, these issues must be factored into the proposed fee structure and time frames.

Under the current system, whilst the above situation may occur in some certain circumstances, as Council has more closely vetted the planning proposal and it has also been through the Gateway

process, it is more likely that documents placed on exhibition are more appropriate in relation to the types of proposals the community may expect in the respective LGA.

On the other hand, a benefit of having upfront feedback from the community would be that council officers can consider these views in their assessment process. Notwithstanding, we reiterate the earlier point raised that Council is best placed to consider and weigh community feedback, rather than having this mediated by the private proponent, whose interests may lie in downplaying any community concerns, in order to progress the application.

5.3 Exhibition

The discussion paper proposes a standard public exhibition period of between 14 and 42 days, depending on the category of rezoning application (as is currently the case, there could be circumstances where no exhibition is required).

A key shift in the new approach is to exhibit the rezoning application as soon as possible after lodgement. The discussion argues that currently, there can be a considerable lag between issuing a gateway determination that allows exhibition and the start of the exhibition, however it should also be noted that the DPE has recently set a maximum timeframe requirement for when in which councils have to exhibit, report and/or finalise planning proposals, as part of the Gateway Determination.

The proposed new approach would mean:

- The exhibition period automatically begins when the rezoning authority considers the rezoning application adequate and the rezoning application is visible on the NSW Planning Portal.
- Exhibition periods are determined according to the category of rezoning application (with an additional week included to allow the rezoning authority to send notification letters).
- Exhibition processes are automated as much as possible through the portal or, potentially, through integration with the Service NSW app.
- Proponents must provide a short, plain English summary of the proposal, its intent and justification and how it aligns with strategic plans, to be attached to notification letters.

Waverley Council response

The proposed public exhibition period is justified in the discussion paper by what the DPE sees as current exhibitions for planning proposals either taking too long to commence or being inefficient in nature. What the discussion paper fails to recognise is Council's role in facilitating exhibition and responding to questions and concerns from the community and elected members. The current process allows councils to place planning proposals on exhibition at the most appropriate time for Council, given limited resources and also the reporting requirements and frequency of Council meetings; something that should be an important consideration.

In addition, the current proposed timeframes for exhibition do not provide councils with enough flexibility in providing extensions, should more time be requested by one or multiple stakeholders. What is also important to note is that in Council's experience, state agencies often request extensions beyond the minimum 28 day exhibition period. If the DPE plans to set maximum timeframes for exhibition, it must work with state agencies to ensure they have adequate resources to provide comment on applications within the timeframe.

Discussion paper question: What other opportunities are there to engage the community in strategic planning in a meaningful and accessible way?

The most meaningful way to engage the community in strategic planning in relation to the rezoning application process is ensuring that;

- exhibition periods are sufficient in length, and
  feedback from the community raised in the public exhibition period is properly considered and responded to in any post-exhibition assessment and decision making.

In addition, encouraging the community to be involved in a council's strategic planning processes in the future, will continue to prioritise the relevance and importance of strategic plans, and reiterate that applications must align with these plans.

Discussion paper question: do you have any suggestions on how we could streamline or automate the exhibition process further?

Council has no comments relating to the above.

Changes after exhibition

Following exhibition, it is proposed that the proponent must both summarise and respond to submissions received, including working with state agencies to resolve any objections. This will help the rezoning authority in its final assessment, while also giving the proponent the opportunity to respond to issues raised. Those who provided submissions will know the proponent's response to their submissions. As part of the response, the proponent will need to submit any changes or amendments to the rezoning application before final assessment.

Once the response to submissions and any amended rezoning application has been forwarded to the rezoning authority, assessment will begin. At this point, it is proposed the assessment 'clock' will start. The assessment clock is the time allowed for the rezoning authority to assess, finalise and determine a rezoning application before a proponent can:

- appeal (based on a decision that is deemed to be refused, a 'deemed refusal') and/or
- access a fee refund through a planning guarantee.

The deemed refusal and planning guarantee concepts are addressed in more detail in the next sections.

Waverley Council response

The proposed approach to responding to submissions is one of the most problematic elements of the proposed new framework and approach of the rezoning application process.

The discussion paper on many occasions outlines that part of the intention of the changes is to align the process more closely with that of the Development Application process. The proposed framework for dealing with post-exhibition changes is in contradiction to this intent. Under the Development Application process, councils (equivalent to the rezoning authority) have the ability to review submissions received, investigate issues raised by the community and subsequently request the proponent to respond to these issues or provide further information. The approach proposed in the

discussion paper does not align with this, rather it puts the impetus on the proponent to only respond by updating the application if deemed necessary prior to assessment.

The discussion paper also proposes that the proponent responds directly to those who have who provided a submission via the planning portal. It is Council's opinion that this process will not result in sufficient responses to submissions from proponents and that as a result, further feedback will be provided to councils via other channels and further complicate the process.

In considering the above it is argued that submissions received during exhibition should be reviewed by the rezoning authority who reviews and raises the issues with the proponent and subsequently provides a response to the submissions once the assessment has been completed.

It should also be noted that in some cases, an exhibition period may highlight an additional study or report that is required, and the timeframe proposed may not be adequate to prepare a quality study.

Discussion paper question: 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?

It is recommended that if any 'assessment clock' is adopted as part of any new rezoning application process, that it only starts at the point in which exhibition has concluded and all required information has been received.

Information requests

In the discussion paper, it is argued that ongoing requests for more information cause delays throughout the rezoning application process and create uncertainty for all parties to the process.

The discussion paper specifies that requests for more information will be discouraged in the new approach and will only permitted to;

- provide an opportunity for all necessary information to be identified upfront in the study requirements at scoping stage, and
- ensure that proponents resolve any outstanding agency and community concerns before submitting the final version of the rezoning application after exhibition.

Where requests for more information are unavoidable, or determining the application depends only on minor or unforeseen clarifications, the discussion paper proposes requests for more information are allowed;

- from state agencies during exhibition/agency consultation, direct with the proponent, and
- within 25 days of being forwarded to the rezoning authority for assessment. Where this happens, the assessment clock (see Part D: Appeals) will be paused.

Waverley Council response

Discussion paper question: Do you think requests for more information should be allowed?

Requests for more information should be allowed. It is important that the rezoning authority be able to request more information in response to any submissions provided during the public exhibition period.

5.4 Assessment and finalization

Following exhibition and any amendments which are made, it is proposed that the rezoning authority will assess the rezoning application. The application may need to be exhibited again if changes made after the first exhibition are extensive – this will be determined by the rezoning authority.

If re-exhibition is not required and a rezoning application is supported, the rezoning authority will engage with the Parliamentary Counsel's Office to draft the instrument and mapping can be prepared. As is currently the case, the rezoning authority can vary or defer any aspect of an amended LEP, if appropriate.

In assessing a rezoning application, all decision-makers need to address the same considerations when determining if a plan should be made. Decisions will also need to be published on the NSW Planning Portal and with the reasons for the decision clearly communicated.

Rather than different assessment processes at gateway determination and finalisation, the DPE is proposing to standardise matters of consideration, as relevant to the final decision made by the rezoning authority. These standard matters will also inform advice given during scoping.

The kind of matters that could be considered include:

- Whether the proposal has strategic merit.
- Provisions of any relevant SEPP or section 9.1 directions (including the Minister's Planning Principles).
- Whether the proposal has site-specific merit.
- Any submissions made by the public or state agencies.
- The public interest.

In considering strategic merit, the rezoning authority would also have to consider whether the rezoning application:

- gives effect to the relevant strategic planning documents,
- is consistent with the relevant local strategic planning statement or supporting strategy, and
- responds to a change in circumstances not yet recognised under the existing planning framework.

In considering site-specific merit, the rezoning authority would consider:

- The natural environment, built environment, and social and economic conditions.
- Existing, approved or likely future uses of land near the land subject to the application.
- The services and infrastructure that are or will be available to meet demand arising from the rezoning application and any proposed financial arrangements for infrastructure provision.

Waverley Council response

These matters for consideration are supported, and it should be clear that a rezoning application is able to meet these matters at the Scoping stage, before proceeding to exhibition. The alignment of these matters of consideration at all stages is strongly supported.

Discussion paper question: 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?

Council's planning instruments have been developed over time with continuous feedback from the community. The LEP represents the community's view on how their area should develop and gives certainty to the community and development industry. It is in this context and framing of the issue, that planning proposals (rezoning applications) can reinforce communities' views that the planning system can promote narrow private interests over the broader public interest, notwithstanding that the LEP and development standards are a relatively blunt instrument and that each site is different. If a proponent wants to increase the development standards and controls, then the burden of proof should be set high. For example, if the standard height of the R3 Medium Density Residential zone is 12.5m across the entire LGA, why should a single site, or collection of sites, request an 18m height in this zone? Proponents should demonstrate that there is something inherently wrong with the existing development standards (i.e., that they don't facilitate the objectives of the LEP, they are wholly unreasonable, etc.).

Currently, the Strategic Merit Test is so high-level and broad that most proponents can argue that the planning proposal has 'strategic merit'. The Strategic Merit Test should be extended to include the aims and objectives of the LSPS as well as the aims of the LEP and potentially the DCP where it outlines the future vision or desired future character for an area. The current framing of the Strategic Merit Test relies on very high level and broad strategies and objectives. Under the current system a planning proposal can contravene all the desired future character objectives for an area outlined in the DCP, but still meet the Strategic Merit Test. Similarly, a planning proposal can contravene the aims of an LEP – which are the organising principles upon which all the details hang - or objectives of the LSPS, but still 'pass' the Strategic Merit Test. In Waverley's instance, one of the aims of the LEP is "to provide an appropriate transition in building scale around the edge of the commercial centres to protect the amenity of surrounding residential areas". Nevertheless, the consequence of two Rezoning Review processes permitted planning proposals at the far edges of Bondi Junction (194 Oxford Street and 122 Bronte Road) which contravene this aim that establishes the framework for height controls in Bondi Junction. It is difficult to understand, when considering that these Planning Proposal's that patently undermined a key aim of the relevant LEP had 'strategic merit'.

If development standards have only been recently reviewed as part of a comprehensive LEP update, rezoning applications should not be able to pass the Strategic Merit Test. In the past, the approach has been that there will be a presumption against a Rezoning Review request that seeks to amend LEP controls that are less than 5 years old. It is recommended that this presumption be continued and embedded into any new process to reflect those controls may have been reviewed but left unchanged due to appropriateness and therefore should not pass the Strategic Merit Test regardless of whether the zoning or development standards have changed. It should also be broadened to include a presumption against an appeal if a rezoning application is inconsistent with an endorsed strategic study for the area that is less than 5 years old.

Discussion paper question: do you think the public interest is a necessary consideration, or is it covered by the other proposed considerations?

The public interest is a necessary consideration, however this is largely implicitly included in the other considerations. It would be beneficial to clarify and draw out a Strategic Merit test question that

defines and relates specifically to the public interest. Public interest can be broadly defined and adapted to suit any argument, and thus a definition would be helpful in this instance.

Discussion paper question: are there any additional matters that are relevant to determining whether a plan should be made?

Increasingly, members of the community are concerned with overdevelopment, and increasing pressures on traffic, services, and infrastructure. DPE should consider how to help councils undertake ongoing social impact assessments and cumulative development impacts on localities, that will likely result from plan making changes.

5.5 Conflicts of interest

The discussion paper raised that it is possible a conflict of interest may arise from certain voluntary planning agreements (VPA) or if council land is included in the rezoning application. This is separate to conflict of interest obligations on councillors under local government legislation.

The DPE outlines that it believes that some of these potential conflicts of interest will be addressed in reforms to the NSW infrastructure contributions system, which funds the local and regional infrastructure needed to support new development. As part of the reforms, infrastructure contributions plans will be encouraged to be prepared alongside rezonings, minimising the need for VPAs.

The discussion paper argues that a council with a conflict of interest should not assess and determine a proposal. Under the new approach, it is proposed that if a conflict of interest is unavoidable, the relevant local planning panel (or regional panel where no local panel exists) should determine the rezoning application.

Waverley Council response

Discussion paper question: do you think a body other than the council (such as a panel) should determine rezoning applications where there is a VPA?

Council should be able to determine rezoning applications where there is a VPA involved, to ensure that the VPA addresses a direct need or public benefit in the community. These may not always be financial and may involve the allocation of space for community purposes, affordable housing, or other perceived and real benefits, which require the ongoing negotiation of terms to arrive at a resolution.

6. New Fee Structure

The discussion paper outlines that currently, fees vary across different Council's in Greater Sydney and as a result, the DPE is considering a variety of approaches toward the structuring of fees with the following objectives in mind:

- reasonableness for proponents (fees aligned with actual rezoning authority costs, including refund of fees not expended)
- transparency and predictability (proponents able to easily estimate fees with councils able to budget for quality staff and system improvements)
- ease of administration (administration minimised by limiting discretion, estimation or recording of assessment time by a rezoning authority).

Options proposed for fees have been detailed based on the scoping and assessment phases.

6.1 Scoping

Any scoping fee structure would require a proponent to pay a fixed fee based on the application category (if known) when the scoping meeting is requested, and a scoping report is submitted to the rezoning authority for preliminary feedback. Alternatively, the fee would be payable when the rezoning authority confirms the category.

The fee would cover the rezoning authority's costs for any activity during scoping, including consultation with state agencies and providing written feedback

6.2 Assessment fees

Any assessment fee structure would require the proponent to pay a fee at lodgement. This would cover the costs of the merit assessment and any associated work to make the plan. The DPE is considering 3 options.

Option 1: Fixed assessment fees

- Assessment fees are fixed by the rezoning authority, based on the category of rezoning application and divided into sub-categories based on the complexity of the rezoning application.
- Sub-categories are based on the extent of change to zoning and/or development standards by location and site area, along with other matters that complicate the assessment process (such as whether a proposal includes a VPA). For example, a standard rezoning application that proposes a zone change and a significant increase in height of building and floor space ratio could attract a higher fee than a standard rezoning application that only seeks an additional permitted use or a minor increase to the height of building and floor space ratio.
- No fees would be charged for any other associated costs such as consultant fees for peer reviews.
- If a rezoning application is withdrawn after lodgement, the proponent could be entitled to a set percentage refund of fees, depending on the stage the rezoning application reaches.
- This option provides certainty for proponents and lessens the administrative burden for rezoning authorities. However, it may not always result in actual costs being recovered.

Option 2: Variable assessment fees

- Assessment fees are based on the estimated costs a rezoning authority would incur on a case-by-case basis, depending on the category of rezoning application, staff time in scoping meetings and a forward estimate of staff hours required to assess the rezoning application.
- Associated costs would be charged to the proponent based on actual costs incurred.

- If a rezoning application is withdrawn post-lodgement, the proponent could be entitled to a refund of fees not yet expended by the rezoning authority.

- This option will achieve actual cost recovery but will be time-consuming to administer and uncertain for proponents.

Option 3: Fixed and variable assessment fees

- Assessment fees have a fixed and variable component. The fixed fee would be charged upfront, based on the category of rezoning application (similar to option 1). In addition, a variable fee is charged once the rezoning application is finalised, based on actual staff hours that exceed the costs covered by the fixed fee.

- To reduce the risk of non-payment of the variable fee component, proponents of complex rezoning applications could be required to provide a bank guarantee at lodgement.

- Associated costs will be charged to the proponent based on the actual costs incurred.

- This option will achieve actual cost recovery and be less time-consuming to administer and more certain for proponents than option 2c (although less so than option 1).

Waverley Council response

Discussion paper question: Do we need a consistent structure for rezoning authority fees for rezoning applications?

In considering the possibility of a consistent fee structure, Council Officers have done research to determine the variety of fees charged across Greater Sydney. What this research found was in accordance with the information provided in the discussion paper, which sees fees varying substantially across Greater Sydney. Some councils have rising fee structures dependent on the nature of the proposal, others instead undertake a full cost recovery for certain types of proposal and some councils also charge extra fees for any additional work that may be required to be undertaken throughout the process (such as amending a planning proposal and reviewing any additional studies submitted by a private proponent). As such it is acknowledged that a consistent approach to fees may be a more appropriate response to apply a higher level of consistency across different LGAs.

When considering any fee structure, it is important to consider it is standard practise Local Governments charge fees for a variety of services. While it would be desirable, for the purposes of a private proponent, to have consistent fee structures across all Local Governments, the fact is that fees for services vary substantially across different LGAs in NSW due to the fact that overhead costs vary, and no two organisations are the same. Whilst Council believes that the DPE is not proposing consistent fees (in terms of actual cost) to be levied across all LGAs, Council wants to ensure the DPE is aware of its position that it would not be equitable to have common, set blanket fees different LGAs and that councils should be able to set their respective fees, as they currently do.

Discussion paper question: what cost 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?

Fees should be structured in a way that represents the amount of work required to be completed and align the structure with key stages and milestones of the rezoning application process. This will ensure councils are compensated for any work completed and is not worse off, should the proponent seek to withdraw their application.

It should be noted not all councils will have consistent costs for assessing applications, as all councils have different processes and also likely a different level of on-costs associated.

Discussion paper question: 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?

The structure should be limited to identifying for what, how and when a council can charge fees, and may consider providing an indicative fee schedule only.

Discussion paper question: what is your feedback about the 3 options presented above?

Based on the 3 options presented above, Council is most supportive of **Option 3 – fixed and variable assessment fees.** This option provides for both some level of certainty for private proponents, as well as providing for actual cost recovery for councils. Whilst councils attempt to currently charge fees based on what the perceived cost of the entire process will be, it is Council's experience that planning proposals which drag out over a prolonged period (through no fault of Council) realistically have the potential to result in the full costs not being recovered.

The DPE has also failed to factor in the public exhibition process into the way in which fees are discussed in the discussion paper. Whilst it appears the DPE would prefer all exhibition to occur via the NSW Planning Portal, what the discussion around this fails to neglect is that councils will need to undertake advertising and communications of their own, as well as field any specific enquiries from the community. Fees related to these activities must be able to be recouped by the rezoning authority.

In addition, the proposed option for a bank guarantee is supported by Council to ensure funds can be drawn upon if the proponent delays payment. It is Council's experience that on occasion, proponents do not always pay their fees in a timely manner (particularly in the instance when planning proposals have not been supported) and as a result, additional administrative and financial burden is incurred on Council.

Discussion paper question: should fee refunds be available if a proponent decides not to progress a rezoning application? If so, what refund terms should apply? What should not be refunded?

Council does not believe refunds should be available if a proponent decides not to progress a rezoning application. A more detailed response below in relation to the Planning Guarantee.

7. Planning Guarantee

A planning guarantee was introduced into the UK planning system in 2013. It provides for a fee refund if councils take too long to assess the equivalent of a development application and works to encourage the timely progress of applications. Even where a fee refund is given, assessment and determination of the application continues.

The discussion paper considers the introduction of a planning guarantee scheme in NSW.

The DPE has developed a potential planning guarantee option by applying the UK model to the NSW system, with the 4 elements aligning with the new approach and potential fee structure options as follows:

- **The assessment clock** starts once the proponent submits the response to submissions and any amended rezoning application to the rezoning authority for assessment and finalisation.

- **Timing** is based on the assessment/finalisation timeframes for that category of rezoning application (see Table 4 – Assessment/finalisation timeframes) and are the same as deemed refusal timeframes discussed under Part C: New appeals pathways.

- **Refund amount**, whether full or a portion and staged, so that the longer a rezoning authority takes, the higher the refund (this could mean, for example, an additional 10% refund for every week the rezoning authority does not meet the determination timeframe).

- **EoTs** would be required if it becomes clear that more time is genuinely required. EoT requests and agreements would be in writing and agreed to before the end of the determination timeframe. Only one EoT can be agreed to and the extension cannot be longer than the original finalisation time for that category of rezoning application.

Waverley Council response

Discussion paper question: 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?

Council does not support a framework that enables proponents to request a fee refund if a rezoning authority takes too long to assess a rezoning application. Council's resources will still have been used and these need to be compensated by a proponent seeking to change the planning rules. If these costs are refunded, then Council staff time spent on speculative rezoning applications are effectively being funded by the community.

It is also important to recognise that all councils are resourced differently, and many considerations affect Council's ability to assess and determine rezoning applications including:

- Number of concurrent rezoning applications.
- Other key priorities (such as the preparation of plans and strategies which respond to pressing matters as well as other strategies and plans, for example the Community Strategic Plan).

Paying a fee to investigate amending the LEP should be considered a normal part of the development process for a proponent, which ultimately can result in a very significant financial windfall gain or 'reward'. Providing a refund changes the 'risk – reward' scenario for developers and may increase the number of speculative rezoning applications. Furthermore, private proponent led spot rezonings should not be normalised to be like a Development Application. The DA process regulates a building activity to provide shelter for residents and businesses. The rezoning process is a financial process used by proponents seeking a (often very large) windfall gain; noting that minor variations can be accommodated via the DA process. Seeking to change the LEP, which is established with the community and abided by a significant majority of the development community, should only be facilitated in exceptional circumstances and should not be seen as a 'riskless' activity.

Discussion paper question: if so, what mitigation measures (for example, stop-the-clock provisions, or refusing applications to avoid giving fee refunds) would be necessary to prevent a rezoning authority from having to pay refunds for delays it can't control?

Council supports both stop-the-clock provisions and the refusal of applications to avoid a refund.

Discussion paper question: if not, what other measures could encourage authorities to process rezoning applications Promptly?

Council believes that one of the most important measures to be incorporated into any new process should be focused around ensuring that rezoning applications can be thoroughly scoped and vetted at an early stage, to ensure that inadequate or inappropriate applications do not proceed to exhibition and subsequent assessment. It is vitally important that this be strongly considered by the DPE in their review of proposed current process in its currently presented form.

It should also be noted that Council's Strategic Town Planning team and other teams involved in the process (such as Urban Design, Heritage, Traffic, Sustainability etc.) have competing priorities and also have limited resources. One of the most important functions councils undertake is the preparation, implementation and review of Council's planning controls, as well as strategies, plans and policies which feed into these controls. These functions are ongoing functions of councils.

As has been discussed earlier in this submission, in order to encourage Council to process rezoning applications promptly, the DPE should consider providing councils with additional funding in the form of non-contestable grants, to assist in dealing with any transition to a new process and also in response to the substantially reduced allowable timeframes proposed in this discussion paper. It is critically important that any new process does not result in Councils spending the majority of their time processing rezoning applications, rather than undertaking the other essential functions mentioned above.

8. New Appeals Pathways

Under the current process, there is 2 ways that decisions can be reviewed:

- **A rezoning review** – An appeal to the relevant planning panels where there is delay or a council has decided not to forward a planning proposal for gateway determination

- **A gateway review** – An appeal to the Independent Planning Commission where a council or proponent is dissatisfied with the gateway determination.

Both of these reviews are non-statutory in that they are not specifically governed by the EP&A Act. They happen relatively early in the overall rezoning process, which means there is no opportunity for a review or appeal towards or at the end of the process – making the final decision beyond question.

The new proposed approach will include a review opportunity for private proponents at the end of the process, if progress has been delayed or if the proponent is dissatisfied with the final decision. Proponents will have a certain timeframe within which to lodge an appeal, similar to the right to appeal a decision about the merit of a development application.

It is noted, whilst Council's can currently request a gateway review based on decisions by the DPE, the new approach is not proposing an appeal mechanism, rather that the Planning Delivery Unit (PDU) could assist in resolving disputes between the DPE and Councils.

Whilst a preferred option for who will be the appropriate body to resolve disputes and appeals is not outlined, the discussion paper proposed two options:

- Land and Environment Court.
- Independent Planning Commission.

It is noted in the discussion paper neither body is currently resourced to undertake appeals of this nature and such, either option would require greater resourcing if selected as the appeals body.

Waverley Council response

Discussion paper question: Do you think public authorities (including councils) should have access to an appeal?

Yes, public authorities should have right to appeal in the same way a private proponent has a right to appeal, however, Council does not support a right to appeal in each circumstance and seeks to reduce the number of pathways to appeals presented in the discussion paper.

Council believes that if the LPP remains integrated in the decision-making process, and a rezoning application has been refused by both the LPP and Council, that there should be no avenue for appeal.

An example of how this could work is illustrated in the below table. Further discussion regarding the role the DPE could play in the process has been outlined earlier in the discussion paper.

Approval	**Refusal**	**Review**
Council	Local Planning Panel	DPE review
Local Planning Panel	Council	Right to appeal via IPC
Local Planning Panel, Council	Nil	N/A
Nil	Local Planning Panel, Council	No right to appeal

Table 4 – Potential avenues for appeal

In addition to the above, Council does not support council led rezoning application appeals being presented to the PDU, as the PDU is a unit within the DPE and does not have the independence of the IPC. The current independent appeal process for councils should remain.

Discussion paper question: which of these options – the Land and Environment Court or the Independent Planning Commission (or other non-judicial body) – do you believe would be most appropriate?

<u>Land and Environment Court</u>

Council strongly objects to the Land and Environment Court (LEC) being chosen as the body to hear merit appeals for rezoning applications under the new process. Councils already dedicate substantial time and financial resources to dealing with matters in the LEC, further committing more finances and staff resources from council's strategic planning teams would be of a financial disbenefit to the

community and also has the potential to stifle the policy and strategy work which strategic planners undertake, in implementing key priorities and directions from both Council and the State Government.

It is also likely that if a LEC pathway was chosen, proponents could see the council rezoning application process as less important and may lodge applications solely with the intention of 'forum shopping', seeking to obtain an outcome with an appeals process in mind. The use of the LEC would undermine Council's authority to make decisions for its local area and if the new approach led to an increase in proponents seeking an appeals process, undermine all the strategic planning councils have undertaken to develop existing planning controls, policies and strategies.

Independent Planning Commission (or other non-judicial body)

Council wants to reiterate its opposition to the appointment of the LEC and advise that utilising the Independent Planning Commission (IPC) or other non-judicial body is the preferred approach by Council in processing appeals. Council believes that the current process where in which appeals made by private proponents go to a Rezoning Review and are currently determined by the relevant District or Regional Panel/appeals made by Council in the form of a gateway review are heard by the Independent Planning Commission is a more effective process than any potential future LEC process.

9. Implementation

The discussion paper outlines the focus in this discussion paper as being to seek feedback on the concepts or principles of the new approach, rather than the means of carrying it out. Once it is clear which of the proposed elements will have the greatest benefit, it is outlined that feedback will be used to determine how any new approach is put into action.

Applying the new approach could involve both legislative and non-legislative changes.
The DPE could implement the proposed new approach using existing legislative provisions, along with other existing mechanisms such as:

- ministerial directions to make assessment considerations more certain
- delegation to empower decision-makers
- departmental secretary's 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.

It is proposed that this would be supported with other policy and guidance material.

By using the existing statutory framework, the reforms are, necessarily, more limited in scope.
A legislative approach would involve amending the EP&A Act in addition to the mechanisms described above. In addition, legislative change would be needed to allow a rezoning application to be appealed in the Land and Environment Court.

It is proposed that the implementation of the new approach will be supported with policy guidance and education for industry and councils to ensure a smooth transition and minimise disruption and uncertainty. There will also be opportunity for councils to adjust their processes and resourcing.

Waverley Council response

Council supports that any changes to the process as described in the discussion paper should be implemented by amendments and changes to the EP&A Act to ensure the occurrence of proper democratic process and public scrutiny of the process.