



23 February 2022

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Ref: GA01/02  
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Dear Paulina

**SUBMISSION – A new approach to rezoning**

MidCoast Council considered the NSW Government's new approach to rezoning at its Ordinary Meeting on 23 February 2022.

I advise that Council is supportive of the State's Planning Reforms, particularly efforts to reduce complexity, cut red tape, improve transparency and equity and reduce timeframes in the planning system.

The following comments are provided specifically in regard to the exhibition of 'A new approach to rezoning', and are provided for the Department's consideration in finalising these reforms:

**Part A – a case for change**

What we have currently is a flawed rezoning system that requires all studies to be completed upfront by the applicant in order to meet DPE time requirements (study costs range from \$300,000 - \$1m+ depending upon scale and complexity of rezoning) where the applicant does not know whether DPE will support the rezoning until a gateway determination is provided. Undertaking the necessary studies will usually take an applicant 6-12 months, which pushes the average rezoning to 2 – 2.5 years.

What the DPE timeframe statistics provided hide is that lengthy (and costly) studies have been pushed prior to lodgement, instead of some upfront and others post-gateway. The idea of the introduction of the gateway process was to provide certainty to an applicant to provide the confidence to then invest in costly studies to enable completion of the rezoning. It was recognised that this would then add time to a rezoning to be finalised. This has since been lost and we've been left with a flawed rezoning system.

Staff experience with DPE is usually that a response can be expected within 24 hours. This has potentially influenced the Department's view about other state agencies and the simplicity of rectifying the poor 'perception' from other stakeholders by shifting to an upfront model for involvement in the rezoning process. State agencies need to have dedicated staff that will be involved in pre-lodgement meetings for the proposed model to work, most likely for each planning region.

The greatest time delays we experience are:

- where applicants delay lodgement of required studies – this can be due to funding shortfall or disagreements between landowners over cost sharing, ability to undertake studies at certain times of the year, shortage of available consultants or lodgement of studies of an unsatisfactory standard;
- responses from government agencies – some agencies are well known for taking 4+ months to respond or failing to respond and DPE asking Council to try again until a response is forthcoming;
- staffing delays due to the need to use staff on other land use planning work as well as processing a rezoning;
- mapping changes – DPE often ask for changes to maps outside of the site being changed, with it quite normal for 3 - 4 sets of maps being prepared; and
- at the end of the process where Council can wait up to 9+ months until DPE decide to publish the amendment on the NSW Legislation website – with no reason provided for lengthy delays.

It is agreed that there has been no recognition that proponent lodged rezonings, particularly in regional areas, represent the majority of applications. DPE have ignored the applicant and in fact seen each council as the applicant. This has distanced applicants from the process and led to much double-handling as DPE believed it is councils that needed to amend and update rezonings while a council could not proceed until the applicant provided additional studies. Recognition of applicants and clarifications of the role of parties in the rezoning process is well overdue.

There are very likely to be inconsistencies between councils when each council is left to determine the documentation suitable for each rezoning – the previous guides did not provide this level of detail. As such, lower standards, or no standards may prevail at some councils in this regard. MidCoast Council established technical specifications for studies to support planning proposals soon after merger in recognition of these not existing in NSW but it is appreciated that this is not consistent for developers across the State or a region and a more standardised approach is supported.

Recognition of council resourcing and staffing is very timely, particularly given the constant planning changes currently being implemented by DPE which has left many councils with insufficient staff to respond to the many exhibitions underway, let alone have the resources to fund the strategic planning work identified in such plans or have staff available to undertake such work.

It is agreed that there is a strong case for change to the rezoning process. However, unless alternate resourcing/staffing mechanisms and appropriate rezoning fee structures are implemented, particularly to support regional councils, then there is a risk that the benefits of reframing the rezoning process will not be realised.

### **Part B – the proposed new approach**

As the gateway determination process is no longer being used as it was originally intended (as previously discussed), abandoning it in favour of relying on rezonings aligning with a councils strategic planning position is supported. Moving this upfront is also supported.

Requiring input from state agencies at the pre-lodgement stage is supported to avoid 'road-blocks' often experienced further in the rezoning process. Providing submission requirements upfront as part of the pre-lodgement process as to what will be acceptable will make the adequacy assessment of the rezoning when lodged much easier.

If the rezoning authority has the power to reject the application when lodged (if it does not align with its strategic planning or is out of sequence) then this avoids the need to go to a Council Meeting prior to exhibition. The proposal to remove this stage is supported (as Council has already determined the land that should be rezoned and in what order in its strategic planning).

The proposed rezoning terminology is clear and logical and is supported. The proposed categories are supported though the need to prepare planning agreements for some rezonings will push them into the complex category (particularly as they'll need more time to negotiate, report to Council to exhibit, review submissions and finalise) and this should be recognised.

The rezoning timeframes provided seem generally reasonable, though DPE will need to take measures to speed up the ability to have LEP Amendments appear in the government gazette in order to meet finalisation timeframes.

The timeframes that do not appear reasonable in Table 3 are those associated with Category 4 (Principle LEP). The scoping of 10 weeks is likely to be insufficient for major LEP changes. 6 weeks exhibition for a housekeeping LEP is sufficient but 12 weeks should be provided for major changes across the LGA, for example, the new MidCoast LEP. Assessment and finalisation timeframes for major LEP changes may also need to be increased.

It is agreed that the benchmark timeframes should create greater efficiency and lead to time savings, but only if fully supported by other state agencies as part of the proposed pre-lodgement process.

The devolvement of local decision making and processing ability to councils is fully supported. Councils are best placed to make local planning decisions.

To support councils in achieving quality and efficient decision making DPE could assist by providing:

- a planning proposal template tailored for each planning region;
- study specifications to guide proponents on the level of detail required to support a rezoning application and have this agreed to by other state agencies (otherwise this is likely to delay the assessment stage); and
- webinars on legislation changes and regular 'refresher' training.

The greatest change the Department can make to improve its role and processes would be to improve the mapping requirements. While the move to online mapping in the future instead of the current gazettal of pdf maps is supported, our GIS staff have regularly had to have DPE correct random errors to the current online portal system. This is a significant drain on Council resources, to ensure that the mapping we rely upon remains correct on a daily basis.

In regard to the question as to whether there is enough supervision in the rezoning process and whether we could do more to minimise the risk of corruption and encourage good decision making - the point here is you can have increased supervision (current state with DPE reviewing every step) or you can have a more streamlined system. The question however ignores the fact that all councils have governance frameworks in place to minimise the risk of corruption and policies, procedures, work plans and the like in place to encourage good decision making.

The proposed reforms strike a good balance between improving timeframes and removing unnecessary steps while allowing due process.

### S9.1 ministerial directions

There is significant benefit in councils being able to approve inconsistencies in s9.1 directions. We find that most rezonings trigger the need for a minor variation to these, often due to the way the directions are written. Councils should be able to approve the inconsistency where the impact is of a local nature. If it has the potential for a regional or state impact then DPE should be considering the inconsistency.

### Public authorities

If state agencies are involved at the pre-lodgement stage as proposed and in doing so provide parameters for studies, information on acceptability of receiving such a rezoning and the like then the system as proposed should work well.

It was always meant to be DPEs role to step in when state agency referrals became problematic or objections could not easily be overcome, so it would be logical that if a central body was formed that DPE would lead this. However, with the proposed process it is difficult to see why this is necessary.

The proposed rezoning process has the proponent undertaking the state agency referrals. If a response is not received a council should be able to continue with its assessment and finalisation of a rezoning.

### Pre-lodgement/scoping

The proposed intention to not provide council with the ability to refuse to issue study requirement for proposed rezonings not consistent with its strategic planning undermine this entire reframing of the rezoning process proposed by DPE, which is predicated on councils having strategic planning in place to enable rezoning that are identified in these to proceed.

If proponents have the ability to lodge rezonings applications not aligned with a councils strategic planning and then appeal when later refused by a council it will tie up council resources in processing and defending against applications that never should have been lodged in the first instance.

If the intent is to reframe the rezoning process similar to the DA process then it is pointed out that uses are either permissible or prohibited. If prohibited a development application cannot be considered. Similarly, a rezoning should be considered prohibited if not aligned to a councils strategic planning.

### Lodgement

*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?*

A standard notification letter supplied by DPE that makes it clear that a proponents rezoning application has no council or state endorsement at this stage would be beneficial. Exhibition is via the Planning Portal and when accessed by the public a disclaimer to the same effect should also appear.

*What do you think of removing the opportunity for a merit assessment before exhibition?*

There is a risk in doing this of inadequate information being provided to the public to support the zone changes. Full merit assessment prior to exhibition enables greater certainty during exhibition that what is exhibited is well planned and only likely to have minor changes (if any) following exhibition. However, it is acknowledged that this would not align with the DA process, which is DPEs intention.

*Will it save time or money to move all assessment to the end of the process?*

It is difficult to determine whether moving the assessment process would save time or money as in theory the same assessment is undertaken. The improvement is not so much due to moving when it is undertaken but due to a more rigorous pre-lodgement process that has mandatory involvement of government agencies.

*Should the public have the opportunity to comment on a rezoning application before it is assessed?*

If applications are only submitted where they align with a councils strategic planning then this can be supported. However, there should be the ability (as proposed) to re-exhibit if significant additional work is required following assessment and/or the planning controls alter significantly as a results of the council assessment.

#### Exhibition

*What other opportunities are there to engage the community in strategic planning in a meaningful and accessible way?*

Letters to affected landowners remain the most effective means of advising of an application. There is still a risk if the letters come from a council that there is an appearance that council has already assessed and supported the application so the wording will be important to ensure this is not seen as the case.

*Do you have any suggestions on how we could streamline or automate the exhibition process further?*

The proponent needs to provide the plain English summary at time of lodgement to ensure delays are not experienced. If the current 'glitches' and technical problems with the NSW Planning Portal are overcome then it has the potential to significantly streamline the process – enabling documentation to be viewed when exhibition commences and submissions to be lodged and removing the ability to lodge submissions after exhibition concludes.

#### Changes after exhibition

*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?*

No, the assessment clock should not start earlier - council staff time should not be wasted on assessing documentation later altered by the proponent in response to submissions. The clock should start following final submission from the proponent of the documentation for assessment. DPE could consider imposing a timeframe on the proponent to amend the documentation in response to submissions to ensure that the application is not on 'hold' for an undue amount of time prior to final submission to council.

#### Information requests

*Do you think requests for more information should be allowed?*

If requests for additional information are required to determine an application, these should always be allowed, otherwise the application would be refused and have to start again when this could have been avoided by providing additional information at the assessment time.

### Assessment and finalisation

*Are there any other changes that we could make to streamline the assessment and finalisation process more?*

No, it is important that thorough merit assessment is not eroded in favour of reducing assessment times.

*What roadblocks do you currently face at this stage of the process?*

State agency feedback (timeliness and relevance) is a significant current roadblock to the current assessment process. If the measures proposed in the Discussion Paper are implemented these should be eliminated.

*Do you think the public interest is a necessary consideration, or is it covered by the other proposed considerations?*

Yes, the public interest is a 'test' that the current strategic planning measures in place are still relevant and supported by the wider community.

*Are there any additional matters that are relevant to determining whether a plan should be made?*

Yes, will the rezoning application support liveable communities? For instance, the proposed planning controls and development concept may provide for an increase in housing and economic development, but does it enable people living there in the future to be part of the wider community in a way that provides for good design, healthy lifestyles and enhances the existing social structure.

### Conflicts of interest

*Do you think a body other than the council (such as a panel) should determine rezoning applications where there is a VPA?*

No. Contrary to the Discussion Paper it is not believed that most rezoning applications will need their own s7.11 plan and hence won't need a VPA. VPAs are an important tool in the rezoning process to capture issues such as land dedication, environmental restoration and infrastructure provision. It is likely that many rezoning applications will need VPAs which will push them into a complex category where more time is available to undertake this process.

*Where a council has a conflict of interest, should a rezoning application be determined by the local planning panel (as proposed), or should the department take full responsibility for the assessment and determination of the rezoning application?*

The proposal to use local planning panels to determine rezoning applications where a council has a significant conflict of interest is supported.

### New fee structure

*Do we need a consistent structure for rezoning authority fees for rezoning applications?*

No. Currently councils determine their fee structure for rezoning applications, which provides each council with the ability to work out how much it costs their organisation to process an application and then set a fee. While some councils are obviously setting a fee that is well below the actual cost to manage this, it is their choice to absorb this cost. The MidCoast Council fee for new rezoning applications under our release area program is \$65,000, which is proposed to be increased to \$75,000 in 2022/23.

The risk of DPE setting the fee is that the fee is created well below cost and then the financial burden falls to council to manage a process that they are not resourced to undertake.

*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?*

The cost components that should be factored in relate to the involvement of all council staff, not just the planning assessment officer. This means that engineering (traffic, drainage, roads, water and sewer), ecological, water quality, flooding, heritage, open space staff time is considered in the application fee. If the 'full-circle' were to be considered then the cost of staff and consultants to prepare the strategic planning strategies that enable a rezoning application to be lodged could also be considered. Investment in any management systems (outside the Planning Portal) could also be considered.

The fee system also would need to consider whether state agency involvement in the pre-lodgement process involved payment to each attending agency.

*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?*

Yes, setting the parameters around what a council can charge is sufficient.

*What is your feedback about the 3 options presented above?*

Option 1, a fixed fee, is the best option. We have used other methods in the past but using an upfront non-refundable fixed fee is the best solution. It enables the assessing officer to get on with the job of processing and assessing an application rather than trying to keeping track of time spent and payments to be made.

*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?*

No. A proponent has often worked with a council for 12+ months before lodgement so should be committed to the process. No refund should apply.

#### Planning guarantee

*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?*

No. All this would do is encourage staff to cut corners in processing and assessments to ensure that a council did not lose the fee, which would lead to a weakening of assessments and poor decision making.

*If not, what other measures could encourage authorities to process rezoning applications promptly?*

DPE could use its powers to have the local planning panel process and determine (and receive the fee) rezoning applications if a council had a poor record in meeting processing timeframes.

### **Part C – the proposed appeals process**

Concern is raised regarding the inability of public authorities including councils to appeal rezoning decisions. Public authorities should have the same rights as private proponent to call rezoning decisions into question. This will ensure a robust and transparent procedure, whereby all proponents have equal rights and are subject to the same process.

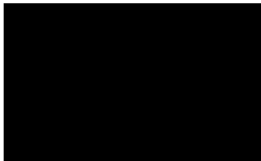
Council's preferred option for an appeal process would be through the Independent Planning Commission. It is noted that this would be quicker, cheaper and a more flexible in comparison to processing appeals in the Land and Environment Court (LEC). As indicated, legal representation in the LEC is common which could result in judgements directly influenced by the quality of the legal representation which is commonly a cost function.

### **Part D - implementation**

While it is noted that the improvements will need to be made to the NSW Planning Portal, concern is raised regarding the current functionality of the Planning Portal which is limited. At this time the Planning Portal requires significant improvements to assist with 'glitches' and functionality. Improvements will need to be made and demonstrated in practice in order to ensure efficiencies and associated envisaged time savings are realised.

I appreciate the opportunity to provide Council's feedback to the Planning Reforms. If you have any queries in regard to the above please contact Council's Principal Land Use Planner – Projects, Contributions and Planning Agreements, Richard Pamplin, on [REDACTED] or [REDACTED]

Yours sincerely



**Adrian Panuccio**  
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