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28 February 2022

Contact: *Stuart Little*
Telephone: [redacted]
Our ref: *D2022/13688*

Ms Paulina Wythes
Director, Planning Legislative Reform
Department of Planning, Industry and Environment
Locked Bag 5022 Parramatta NSW 2124

Dear Ms Wythes

RE: A New Approach to Rezonings in NSW: Discussion Paper

I refer to the public exhibition of the 'A new approach to rezonings Discussion Paper', which seeks to reframe the process for planning proposals and the making of Councils' Local Environmental Plans (LEP).

WaterNSW has an interest in the reforms with respect to our roles and responsibilities for water quality protection in the Sydney Drinking Water Catchment (SDWC) and with respect to the zoning of our land and assets, which include 42 dams across NSW. Currently, Planning Proposals within the SDWC must be consistent with Section 9.1 Ministerial Direction 5.2 Sydney Drinking Water Catchment. Direction 5.2 provides an important role in referring Planning Proposals to us for consideration prior to a Gateway determination being made. It requires Planning Proposals to be consistent with State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 (SDWC SEPP), consider the outcomes of relevant Strategic Land and Water Capability Assessments, and afford Special Areas particular zones depending on land tenure and whether the land relates to storages or operational purposes. The SDWC SEPP requires new development to have a neutral or beneficial effect on water quality and provides WaterNSW with a concurrence role at development application (DA) stage. We take into account the propensity of rezonings to deliver this outcome at DA stage when reviewing Planning Proposals.

We support the Department's aim of significantly reducing the time, cost and complexity of the rezoning process. However, we believe that the current system has many advantages and is not fundamentally flawed, although we agree that it could be improved, with a need for greater clarity, consistency, alignment and commitment to the process.

Issues

1. One of our key issues is that there is no compulsion or incentive under the current laws to keep section 9.1 Direction and other legislation that influences Planning Proposals and the making of LEPs up to date. To this end, we request that Direction 5.2 be updated as a matter of priority as it currently refers to outdated agencies, legislation and council areas. It needs to refer to WaterNSW, the *Water NSW Act 2014* and Council areas that were merged. It would also benefit by including additional requirements for Proposals or Rezoning applications to identify waterways and water quality risks.
2. It is unclear how existing laws and requirements interrelate with the new process proposed in the Discussion Paper. The new rezoning process seems to be superimposed over existing Ministerial Directions and laws that already require referral and which influence the rezoning process.
3. We believe that Council Housing Strategies should also play a more critical role, and be given stronger standing, in the rezoning processes. These are strategic long-term documents that

undergo a process of endorsement by the Department and govern where long-term urban development should and should not be located based on servicing, environmental risks and land constraints. Scoping reports and Rezoning applications should be required to be consistent with these Strategies, and Council allowed to refuse an application based on inconsistency.

4. In terms of oversight, we are concerned that the Department is taking a significant step back from involvement in the rezoning and LEP-making process. We fear that this will increase corruption risks for private proponent rezonings, which would only be assessed and determined by Councils.
5. In terms of process, we generally support the current Gateway process that applies an early assessment on the merits of the Proposal and provides an opportunity for the Department to reconcile any concerns from, or conflicting advice between, agencies before exhibition occurs. This minimises the risk of agency objections, long lag times in resolving competing interests from agencies and the community, and the Proposal being refused late in the process.
6. Under the new arrangement an initial scoping document is to be prepared however it is unclear what level of information will be provided in this document and at what stage agencies will comment on it. What is clear is that key agency assessment is proposed to occur at public exhibition stage. If this is the first opportunity agencies have to comment on the lodged application, agency objections and concerns are going to be more likely. Providing meaningful comment depends on the agency having sufficient information regarding the proposal.
7. Tail-ending the merits assessment, as proposed, is likely to lead to poor planning decisions. Following exhibition, agency and community objections, issues of competing interests and difficult to resolve issues are likely to be passed from the proponent to the rezoning authority (Council) to reconcile within a strict timeframe. The proponent will also have the benefit of an appeals mechanism if the timeframe lapses. The process risks our concerns or objections not being effectively addressed and inappropriate zoning, land uses and minimum lot sizes (MLSs) being introduced into the SDWC at the risk to water quality. It is also likely that agencies will become caught up in new proponent appeal processes on matters that could have been resolved had the assessment process happened earlier, or the rezoning authority given more time in the assessment. The Gateway process was invoked to counteract the problems associated with merits assessment happening late in the process. We therefore support the current process and believe that key issues need to be reconciled before public exhibition to minimise later potential impact on agency resources and to better deliver effective and appropriate rezoning outcomes.

Considering the above, we believe a more conservative approach is required to improve the rezoning process. We also believe that scrutiny and objectivity is best retained by the Department having some oversight and involvement in the rezoning process. We see benefit in obtaining agency feedback early in the process and having any issues or concerns resolved before exhibition rather than the merits assessment tail-ending the rezoning process.

The current reforms are proposed at a very 'high level' and may not work 'on-the-ground' in practice. They are also significant in scope and content. We therefore ask that the reforms be afforded another round of public exhibition once the Department has considered agency and public feedback on the Discussion paper, and given more detail to what is proposed.

Our detailed comments on the Discussion paper are provided in Attachment 1. These are structured as per the layout of the Discussion paper. Should you have any questions regarding the issues raised in this letter, please contact Stuart Little at [redacted].

Yours sincerely

[redacted]

DARYL GILCHRIST
Manager Catchment Protection

ATTACHMENT 1: DETAIL

PART A: Background

The process today

The planning system currently requires the preparation of a Planning Proposal to support the intended changes to a LEP, including a change in land use zoning. The new process will be called the 'rezoning process' with the role of a Planning Proposal being replaced by a Rezoning application. Rezoning applications will be approved by a rezoning authority – usually a Council, but sometimes the Department. For the purposes of our submission, we refer to Planning Proposals with respect to the current process and Rezoning when referring to the new process as proposed in the Discussion paper.

The need for reform

The section on the need for reform identifies issues with time and complexity, and attributes these to timeframes, duplication of assessment, the Gateway process and finalisation stage. Issues are also raised about inconsistencies, transparency and trust, council resourcing, recognition of proponents and State agency input. The Discussion paper takes a strong stance on expediting processing timeframes and advocates a process for allowing proponent-led, 'ad hoc' spot-rezoning as the solution. The Discussion paper gives little credence to site constraints and appears to operate from a premise that any rezoning proffered by a proponent is a good one. The paper doesn't allow for the fact that some areas are simply unsuitable for residential and other urban development (i.e. areas without water and sewer, are isolated, high bushfire risk and contain high biodiversity values). Put simply, some rezonings are just a bad idea.

WaterNSW's experience has been that the Planning Proposal and Gateway process has been very useful in sorting out potential water quality issues and other environmental concerns prior to public exhibition of the Proposal. While the system is not perfect, it has had the benefit of overall scrutiny from the Department and minimises agency objections and concerns at exhibition stage. With this in mind, we do not necessarily believe that the current system needs to be overhauled so completely as currently proposed.

While there is potential duplication of processes and for over-consultation to occur, some of these issues can be addressed through improved administrative arrangements without legislative reform. Our experience has also been that key elements influencing the rezoning process and given effect under the *Environmental Planning and Assessment Act 1979* (EP&A Act) are outdated. Provisions have not been kept current (e.g. s 9.1 Ministerial Directions, s 3.25 EP&A Act regarding threatened species consultation). Matters such as this can easily be overcome by proactively keeping the Direction current. We believe that there should be a legal requirement under the EP&A Act to review the s 9.1 Directions every 5 years.

Direction 5.2

Of particular interest to WaterNSW is Direction 5.2 Sydney Drinking Water Catchment, which has not been updated since it was issued in 2011[1], despite numerous approaches from ourselves to the Department over the years. We request that Direction 5.2 be updated as a matter of priority. The Direction refers to the former Sydney Catchment Authority (abolished) and the *Sydney Water Catchment Management Act 1998* (repealed in 2015). These references have resulted in some referrals going to Sydney Water. It also refers to council areas that no longer exist (e.g. Cooma Monaro and Palerang Councils). The Direction requires a full update including referencing WaterNSW and the *Water NSW Act 2014*, and the new Snowy Monaro and Queanbeyan Palerang Regional Council areas. We also seek refinements to the Direction to more clearly require planning proposal authorities to identify waterways and water quality risks on, or adjacent to, the site.

Council resourcing

The Discussion paper indicates that some Councils are insufficiently resourced for strategic planning, assessing and progressing planning proposals, or for taking part in Court proceedings.

[1] The new Ministerial Directions that take effect on 1 March 2022 simply replaces reference to the SDWC SEPP with the new Biodiversity and Conservation SEPP.

The document also states that there is limited funding for Council-led strategic studies or planning. The proposed process tail-ends the assessment procedure and introduces a right of appeal for proponents. It will therefore *increase* the costs to Councils in defending decisions made not to support proponent-led rezonings or, due to the cost of such proceeding and appeals, potentially encourage Councils to approve inappropriate rezoning proposals. These are not good outcomes for Council or for planning in general.

If some type of proponent-led rezoning process is to proceed, then we suggest an alternative framework to help minimise the risk of poor planning decisions being made.

Housing strategies

We strongly suggest that all Councils be required to prepare a Housing Strategy (urban and fringe, settlement strategy) for their LGA. Ideally this should be assisted by State funding. As these strategies are endorsed by the Department, we believe that these should be give greater effect in law as a strategic planning document, and particularly in the assessment of scoping reports and in the final post-exhibition assessment decision made by the rezoning authority. New rezoning applications and scoping reports should then be required to conform with the Housing Strategy or any deviations clearly stated and justified. The Council or the Rezoning authority should be permitted to refuse the rezoning at scoping stage and/or at the stage of lodgement of the Rezoning application (prior to exhibition) if the proposal is inconsistent with the endorsed Housing Strategy.

The above process would minimise the risk of rezoning being prepared contrary to the Department-endorsed Housing Strategies, thereby maintaining orderly, economic and efficient development for Council areas. It would also provide greater certainty for Council and developers at the outset regarding which areas are, and are not, appropriate for rezoning applications, particularly residential development. We have used our Strategic Land and Water Capability Assessments (SLWCAs) to help inform and respond to the housing strategies for Goulburn-Mulwaree and Wingecarribee Councils, helping to achieve positive future housing outcomes in areas of least water quality risk through this process. It would be discouraging and counter-productive if the new rezoning process undermined all these efforts and guidance by facilitating new housing development in high water quality risk areas.

State agency input

The Discussion paper identifies that agencies would like to be involved earlier in the process. WaterNSW is already involved early in the process through the pre-Gateway consultation requirement provided under Direction 5.2. The Discussion paper does not discuss how the new agency referral process inter-relates with existing agency consultation requirement under relevant s 9.1 Directions and other laws (e.g. s3.25 EP&A Act). We wish to retain this pre-Gateway (or pre-exhibition) opportunity for comment as it addresses any water quality risks arising from a proposed rezoning early and before public exhibition occurs. Further comments on State agency involvement in the new process are addressed later.

PART B: The new approach

Introduction

We agree with the intent of creating a streamlined and efficient approach to rezoning that sets clear matters for consideration and timeframes.

New terminology

We have no objection to the renaming of the Planning Proposal process as Rezoning applications, although we note that proposed changes to LEPs may not in fact require rezoning but changes to land-use tables, LEP Schedules to add permissible uses to certain areas, change clauses that apply to the whole LEP. The term ‘Rezoning application’ will likely result in some confusion regarding the nature of the application.

New categories and timeframes

Rezoning applications will be divided into four new categories: Category 1 (Basic), Category 2 (Standard), Category 3 (Complex) and Category 4 (Principal LEP), with descriptions in Table 2. We make the following comments:

The term ‘strategic planning’ is used very loosely and needs a tighter definition under this Table to clarify if it is meant to encompass strategic planning documents such as housing strategies, local strategic planning statements, regional and district plans, and s 9.1 Directions.

- We have no issue with Category 1 (Basic)
- We believe that the descriptions in Category 2 (Standard) should be expanded to:
  - reference ‘changing the minimum lot size (MLS)’ under dot point 2
  - modifying dot point 3 to also refer to ‘changing the range of permissible uses to the land use table’ (not just Schedule 1 as stated)
  - reference ‘consistency with an endorsed local housing strategy’ under dot point 4 to ensure developers are consistent with these strategies where they are endorsed by the Department.
- More clarity is required regarding what Category 3 (Complex) encompasses. This should more boldly encompass any applications not consistent with ‘strategic planning’. None of the examples actually relate back to how they would require a change in the LEP.
- We have no issue with Category 4 (Principal LEP). We assume this also covers any change to LEP provisions to reclassify development as ‘exempt’ and ‘complying’ development, vary zoning objectives or the local provisions specific to the LGA.

We note that Table 3 (p. 17) includes new public exhibition period timeframes for Category 1, 2, 3 and 4 rezoning applications, these being 4, 6, 8 and 6 weeks, respectively. We generally support these time periods but believe if any Council is proposing to replace its entire LEP with a new LEP (under Category 4), then the timeframe should be extended to 8 or 10 weeks.

New Roles

New roles for the Department and Councils are proposed depending on the rezoning category (Figure 4). We hold the following concerns:

- Where Council is the proponent for Category 1 and 2 rezoning applications, Council is both the proponent and the assessor without any Departmental scrutiny. To mitigate the risk of self-interest and impropriety (and conflicts of interest), we recommend that the Department takes on the assessment and approval role.

- We are concerned that for Private proponent rezonings (for Categories 1, 2 and 3) that are inconsistent with s 9.1 Directions, the Department is only given notice and an opportunity to comment during exhibition. As the Minister is responsible for issuing s.9.1 Directions, we believe the Department should take a more proactive role in ensuring consistency with these Directions or understanding the nature of the inconsistency before exhibition. We believe that for these types of rezonings the application should be sent to the Department for review and approval before proceeding to exhibition. To not do this risks highly contentious Proposals advancing further through the rezoning process before they are stopped, wasting time and resources.

- The Private proponent rezonings (Categories 1, 2 and 3) are based on consistency/ inconsistency with s9.1 Directions. Who makes the determination as to whether a Rezoning application is consistent with the Directions? We hold strong concerns if this decision is left to the Proponent to make. We strongly believe that the responsibility for checking whether Rezoning applications are consistent or not with Directions should rest with Council. As stated above, we also believe any application that is inconsistent with such Directions should be referred to Department to make a decision on whether or not the application should proceed to exhibition stage.

Proponents

The new process advocates to recognise Private proponents as applicants as they are in the DA process, increasing the rights, roles, and responsibilities in the Rezoning application. This is in contrast to the current process whereby the Private proponent has to approach and rely on Council to administer the Planning Proposal (rezoning) process with costs covered by the applicant. The new arrangement proposes to enable the private proponent to meet with the rezoning authority (Council) to discuss potential requirements, submit the Rezoning application, have it assessed and

determined after exhibition, and appeal a decision not made in its favour under a new proposed appeal pathway.

- There is no independent body (e.g. Council or the Department) ensuring that the Planning Proposal conforms with all necessary laws including consistency with s9.1 Directions. This appears to be left to the Proponent.
- Proponents are left to consult with State agencies directly and reviewing and responding to all submissions made – there is no separate scrutiny from Council or the Department and no assurance that applicants will consult with the right agencies.
- The process is weighted in favour of the Proponent regardless of the nature, scale and potential impact of the Proposal.

Presumably guidance material would be provided by the Department on the processes to be followed and matters to be addressed by the Proponent. Such information has not accompanied this Discussion paper, so we are unable to comment further on this matter.

Councils

For Private proponent Rezoning applications, control of the process would rest with Proponents (as described above), with Council overseeing the process at critical points including approval to exhibit (in place of the Gateway determination). The Department would have minimal to no involvement in this process. Our prime concern here is that there is no Departmental involvement in rezoning process which is at the heart of the planning system and in ensuring land is appropriately zoned to reduce land use conflicts.

We hold concerns that Councils are being given far greater control over each stage of the rezoning process for Private proponent-led Rezoning applications. This potentially creates a corruption risk given ultimately that decisions are made by the elected Councillors. We believe that there needs to be a role for the Department in reviewing all Rezoning applications, preferably before they go on exhibition (like the current Gateway process). This is to ensure that Rezoning applications meet the necessary legal and s 9.1 Direction requirements, and to provide some objectivity to the decision-making process. Apart from the corruption risk, without such oversight and involvement there is a risk that agency feedback will be ignored resulting in poor planning decisions and potentially later problems for the agency concerned.

To ensure scrutiny and minimise corruptions risks, we believe that the Department should have some involvement in all Rezoning applications, even simply to scrutinise the application prior to lodgement on the Planning Portal.

Department of Planning, Industry and Environment

The Department is positioning itself away from involvement or oversight of Rezoning applications that are considered to be of small scale or lower risk, including Private proponent Rezoning applications (Categories 1, 2 and 3). We believe that the Department should have a higher level of involvement in Private-proponent Category 3 (Complex) applications, potentially at lodgement stage, to ensure the application is consistent and adequate.

The information on Council-proponent rezonings is confusing: information at the top of page 20 says the Minister, through the Department, will no longer assess and determine Council-proponent rezoning applications where the council is the rezoning authority. Several lines later the document says the Minister, through the Department, will assess and determine Council-proponent rezoning applications. Which is it?

Inconsistency with Section 9.1 Directions

The information on pages 19-20 regarding the role of Ministerial Directions is scant. The Discussion paper focuses readers to think about whether Councils should be able to approve inconsistencies with certain s 9.1 Directions. We believe that there are far more fundamental issues pertaining to the Directions and make the following observations:

- The Discussion Paper doesn't recognise that nine of the 41 s 9.1 Directions in effect already require agency consultation,[2] and the implications that this has in relation to the agency consultation proposed in the early scoping stage. There has similarly been no examination of other existing consultation requirements (e.g. threatened species under s 25 of the EP&A Act). It would appear that the new agency referral arrangement is simply being superimposed over existing referral requirements.
- The role of approving and assessing inconsistencies with s 9.1 Direction is very unclear. Figure 4 (p.18) is vague as to whether applications that are inconsistent with s 9.1 Directions would still be referred to the Department or that the Department would only be given notice about the rezoning and an opportunity to comment during exhibition. The information on page 21 says that in some circumstances the Council will approve the inconsistency and in others the Department will be afforded the opportunity to comment or approve. The details regarding the 'circumstances' are lacking. Elsewhere, the Discussion paper appears to position the Proponents of proponent-led Rezoning applications to initially decide upon whether or not a Proposal is consistent or not with s 9.1 Directions, but prompts the question whether Councils should be able to approve inconsistencies. We hold strong concerns that if Councils can automatically process Proposals that are inconsistent with the Directions, this would not lead to good planning outcomes and potentially allow unfettered rezonings and development to occur. We believe the decision of consistency should first reside with Council and, for any Proposals that are inconsistent with the Direction, to be referred to the Department to decide upon before public exhibition.
- Many of the s 9.1 Directions need updating – Direction 5.2 Sydney Drinking Water Catchment has not been updated since it was issued in 2011 (see earlier). There is no requirement in the EP&A Act requiring the Department to regularly review and update Directions to keep them current. We believe a new provision should be introduced into the EP&A Act requiring the Department to review and update Directions on a 5-yearly basis or more frequently to keep them current.
- There is no consideration of obligations already placed on planning proposals and draft LEPs beyond s 9.1 Directions (e.g. Biodiversity Conservation Act 2016 section 8.6, SEPP (Koala Habitat Protection) 2020 clause 17, EP&A Act s 3.25).

Public Authorities

State Agencies

The Discussion paper advocates that Councils, proponents and the Department will have 'clear direction' about the circumstances when agency referral is required at both scoping and exhibition stages, tailored to individual agencies and circumstance. It also goes on to say that proponents will have 'clear direction' about the information they must give to agencies to allow study requirements to be issued and rezoning applications to be assessed.

Currently, it is very uncertain how this 'clear direction' will be established and what mechanisms will be used to ensure the referral occurs and the matters to be considered (e.g. guideline or legal requirements). Agencies need to be directly involved in preparing this 'clear direction' so that they are consulted when they need to be with respect to their relevant charters, and not consulted on Rezoning applications when the matter is irrelevant to their charter. This is very important in making the rezoning system work efficiently and effectively.

This section also says that State agencies will have clarity about the appropriate level of assessment for Rezoning applications. How will this be determined and provided? We ask to be consulted on determining the 'appropriate level of assessment'. From our experience, we have not been able to provide preliminary comment on a rezoning without having the detail of a draft Planning Proposal to assess. This issue is discussed more under Scoping (below).

We note that strict timeframes are proposed to be set for agency responses, but no suggested timeframe is provided. We currently operate within a 21-day timeframe for most Proposals. We believe most other agencies operate on a 28-day turnaround time. We would strongly object to any

[2] See Directions 1.3, 1.4, 3.5, 4.2, 4.4, 5.2, 5.4, 6.1 and 6.2.

proposed timeframe of less than 21 days. Also, our ability to provide advice very much depends on the nature and level of information provided to us (see below). There needs to be a 'stop-the-clock' provision for referral if there is insufficient information provided to the agency to inform its decision.

We are concerned that if an agency objects to the Rezoning application, the rezoning authority could still approve it. We believe that in cases of agency objection, the Council should be required to directly refer the matter to the Department for a decision rather than it being left in the hands of the Council. We recently objected to an aspect of a Planning Proposal that proposed events of 1,500 persons per year 12 times a year in unsewered areas in the SDWC to pass as 'exempt development'. This included Special Areas on private land. Following exhibition, the Council staff reduced the number of persons to 150. However, the elected Councillors overrode this and reinstated the 1,500 person cap. The matter is currently with the Department. This type of Proposal would fit under Council proponent (Category 1 and 2) which Council would assess and determine, with the Department only conducting scoping and adequacy at lodgement. If the Department was not involved in the final assessment of proposals such as this, there would be significant risks of high density event-type development adversely affecting water quality in the SDWC. The process also risks councils setting new LEP precedents for other Councils to follow.

Public authority proponents

Under the new approach, rezoning initiated by a public authority will be lodged and determined by the Department rather than a Council. We do not object to this. However, sometimes our land is erroneously zoned rural or environmental rather than SP2 infrastructure. To correct such matters, we may approach Council to see if there are housekeeping amendments being proposed to the LEP that we can 'piggyback' on rather than producing a full Planning Proposal ourselves. This creates efficiencies for public authorities and reduces the need for such changes to progress as separate Planning Proposals. We would support being able to continue such arrangements. As Council-led LEP changes are proposed to be assessed by the Department (or at least checked by the Department for Category 1 and 2 applications), this should not incur any additional impost.

Scoping

Scoping report

A new mandatory scoping stage is proposed prior to the lodgement of the Rezoning application. The Discussion paper flags that a 'high level' Scoping report will be prepared by the proponent. From our perspective, in order to inform our Pre-Gateway consultation under Direction 5.2 for Rezoning applications in the SDWC, we require the following information to make an informed decision. The same will apply to scoping documents. We require:

- Lots/ DPs of the areas concerned, land tenure and ownership, and a general location map.
- What changes in LEP provisions are being sought and the locations of areas affected (including maps) – without this we can't make informed comment on the Proposal.
- Location and proximity to WaterNSW assets.
- Whether or not the site is, or can be, connected to sewer and water.
- Whether the land is flood-prone.
- Maps of current and future zoning and MLS arrangements.
- Map of the site showing waterways, wetlands, areas of open water (farm dams and effluent ponds) and topography (contours). These matters need to be discussed in the Proposal and water quality risks to be clearly identified.
- For unsewered areas, some acknowledgement that effluent management areas (EMAs) will be required and must be set back 100 m from watercourses (which may affect development yield).
- Whether the land is likely to be contaminated and relevant contamination assessment documents.
- The outcomes of WaterNSW's SLWCA assessments (where relevant) and the configuration and nature of the rezoning (and MLS) to be responsive to these constraints as well as the above constraints.
- We also need to have reasonable confidence that later development will be able to have a neutral or beneficial effect (NorBE) on water quality, as required under the SDWC SEPP.

Scoping meeting and written feedback

It is currently unclear when in the process agencies issue their comments. Is it to inform the preparation of the Scoping report or is it in response to a prepared Scoping report? WaterNSW would not be able to provide adequate comment without the benefit of a Scoping report. The Discussion paper is also silent on how long agencies have to provide comment on the Scoping report. WaterNSW requires a minimum of 21 days to provide comment on any Scoping report. The Department may also wish to check whether it has factored this consultation timeframe into the timeframes proposed for Scoping in Table 3 (p. 17).

The Discussion paper discusses a scoping meeting being held between the proponent and the rezoning authority and other relevant parties (including State agencies) to discuss the Scoping report and provide feedback. Based on Figure 6 (p. 25), it would appear that the meeting happens *after* the submission of the Scoping report to Council and agencies may be present at the meeting. The role of agencies is simply positioned in relation to the meeting. This is not an adequate means of agencies providing feedback. Presumably there is an interim step either before or after the scoping meeting that enables agencies to provide their written feedback to the rezoning authority (Council). Where does this step occur? Figure 6 should be updated to display the steps where the Scoping report is provided to agencies and where the rezoning authority receives (and presumably takes account of) those responses. We would also expect the rezoning authority to provide a copy of our submission to the proponent.

We note that the intention is for the rezoning authority to also set out the standard information that should accompany the Rezoning application. We note and support that the mandatory information should include evaluation against any relevant SEPPs and s 9.1 directions, as this would include the SDWC SEPP and s 9.1 Direction 5.2. We also believe that consideration of consistency with Department-endorsed Local Housing Strategies should be a mandatory requirement in preparing and assessing Rezoning applications, to ensure that rezoning conforms.

We note that the rezoning authority will be able to provide feedback to the proponent on whether the Rezoning application is likely to be consistent with strategic plans, but will *not* be able to prevent the proponent from lodging the application (p. 25). As per above, we believe that Department-endorsed Housing Strategies should be included as one of the strategic plans made mandatory for consideration. We do not support allowing proponents to lodge Rezoning applications if the rezoning authority is satisfied that the application is inconsistent with strategic plans (regional and district plans, local strategic planning statements, and Local Housing Strategies). To automatically allow this renders the agency consultation redundant and goes against the very reason why the strategic plans were prepared. It is also generally contrary to the prime object of the EP&A Act. It also means that the development is more likely to be beyond the serviceability and constraints of the land. This will create greater difficulties for the consent authority at DA stage if these uses are actually incompatible with the capacity or capability of the land (e.g. flood risk). From our perspective, it also risks the developer not being able to meet a NorBE test for any development proposed in the SDWC.

Lodgement

We believe lodgement is a critical point in the new process and are concerned that it is largely a 'tick-a-box' arrangement without any merit assessment of the Rezoning application. The rezoning authority will check that the application is 'adequate' and have seven days to confirm that study requirements have been met. How will 'adequate' be determined? Where requirements are met, exhibition is automatically triggered and the application will go live on the Planning Portal. This then raises the question as to what requirements will apply at this stage?

WaterNSW would like to see the merits assessment brought forward to the lodgement stage and prior to exhibition, particularly as the Gateway process is proposed to be removed. This would potentially avert agency objections and unresolved issues passing 'straight through the keeper' onto exhibition.

There needs to be a process at lodgement to notify the relevant public agencies regarding the exhibition. This notification should occur prior to exhibition.

Exhibition

The Discussion paper identifies that there will be a standard exhibition period of between 14 and 42 days, depending on the category of Rezoning application. This contradicts the information provided

in Table 3 (p. 17) that provides an exhibition period of between 4 to 8 weeks (i.e. 28 to 56 days) depending on the rezoning category. We support the exhibition periods proposed in Table 3 and believe that exhibition should be a minimum of 28 days to allow community and State agencies sufficient time to provide comment. This minimum 28-day timeframe is particularly needed given that the agencies may not have the benefit of all relevant supporting reports when providing their initial comment at scoping stage and that the Gateway process will have been removed from the system requiring comment before exhibition. This will also be the first time agencies see the complete Rezoning application unless other mechanisms and requirements are retained for additional referral prior to exhibition. As indicated elsewhere, we generally support the retention of the current Gateway which reconciles agency issues, concerns and support before exhibition.

The Discussion paper identifies that the new approach is to exhibit the Rezoning application as soon as possible after lodgement, overcoming the time lag that currently applies due to the Gateway process. While we appreciate the new approach will expedite Rezoning applications, we are concerned that removal of the Gateway process also removes independent scrutiny and oversight provided by the Department. That process also ensures that the expert planning agency (i.e. the Department) refers matters to the right agencies and with sufficient information to make an informed decision. While this may extend the timeframe prior to exhibition, it ensures that the exhibited Rezoning application has addressed all agency concerns and minimises the risk of conflicting or inconsistent information being provided and going to exhibition. Similarly, we hold significant concerns over shifting the merits resolutions to the period after exhibition (discussed below).

The exhibition period should only commence from the date rezoning application is made available on the Planning Portal and not when the rezoning authority considers the Rezoning application adequate. It will also be challenging for the rezoning authority to consider a Rezoning application adequate if it is inconsistent with strategic plans yet allowed to be lodged (see earlier comments). Also, what if the rezoning authority considers the Rezoning application inadequate? Are they thereby refused? The rezoning authority needs to be afforded the power to refuse the application at this point in time if the authority considers the application to be inadequate. They also need to be afforded provisions to 'stop-the-clock' and seek additional information from the Proponent.

The Discussion paper flags that proponents must provide a short plain English summary of the Rezoning application and how it aligns with strategic plans. How will this be achieved if the application is inconsistent with strategic plans yet allowed to be lodged?

Changes after exhibition

The onus is placed on the proponent to summarise and respond to submissions received including working with State agencies to resolve any objections. The fact is that the objections may not be resolved, or the proponent may put forward a position of resolution to matters that remain unresolved in the agency's view. For example, a proponent-initiated rezoning might be proposed on unsewered land in the SDWC that sought to vary the MLS from 4,000m^2 to 1,500m^2. It is likely that WaterNSW would object to this due to the inability of future small 1,500m^2 lots being unable support necessary EMAs and meet the NorBE requirement at subdivision DA stage. If the SLWCA outcomes for unsewered development revealed only a low to moderate risk, WaterNSW may consider an MLS or 2,000m^2 or 2,500m^2 MLS as appropriate depending on the site constraints. Unless the proponent varied the Rezoning application to accommodate the MLS request, we would remain unsupportive of the rezoning. Presumably it would then be up to the rezoning authority to decide upon. If they refused, the proponent would be able to appeal. Also, if the rezoning proceeded as originally proposed, WaterNSW would be left having to make a decision on a high water quality risk development and reconciling expected lot yields at DA stage and additionally having to decide upon concurrence – matters which could all have averted by the proponent applying a slightly larger MLS at rezoning stage or by the rezoning authority having stronger powers at scoping stage or after lodgement to refuse or require amendments to the application.

We note that the Discussion paper does briefly contemplate the proponent amending the Rezoning application before final assessment. This allows the proponent to change the zoning configuration or MLS or permissibility arrangement sought in response to community and agency concerns. We support this approach.

We note that the submissions and any amendments to the Rezoning application are forwarded to the rezoning authority for assessment. The assessment 'clock' then starts. The rezoning authority then assesses, finalise and determines the rezoning application.

Information request

The Discussion paper discourages the ability to seek more information due to it causing time delays. It is proposed to allow requests for additional information from State agencies during exhibition and agency consultation stages (presumably at scoping stage?), and this will be directly with the Proponent. We support the ability to be able to request additional information but details on the timeframes and 'stop-the-clock' mechanism during exhibition need to be clarified.

The rezoning authority will also have an ability to 'stop-the-clock' in the final assessment period to seek additional information. However, this option is only available within the first 25 days of the Rezoning application being forwarded to the rezoning authority. We support the inclusion of this 'stop-the-clock' mechanism but believe the overall assessment timeframe should be extended and a longer period allowed for 'stop-the-clock' (say 40 days), particularly as the Gateway process will no longer exist. We think the 'stop-the-clock' provision will be used frequently. The system appears geared to the Proponent expediting its consideration of submissions in a minimalist way and passing any difficult or unresolved issues over to the rezoning authority to sort out as 'assessment' stage. The rezoning authority will have the assessment 'clock' ticking at the date of referral and the proponent has a 'right of appeal' for a 'deemed refusal' if the assessment 'clock' times out. This is unreasonable for the rezoning authority as it is likely to burdened in resolving all difficult and unaddressed issues at the end of the process and under considerable time-pressure.

As advocated below, we believe that there should be an interim oversight step involving Department scrutiny of the rezoning application before public exhibition. The Department should also have the ability to seek additional information from the applicant or agencies in this crucial step.

Assessment and finalisation

The merits-based assessment is now positioned right at the end of the rezoning process and risks the application being refused very late in the process. This could be based on site-specific merit, inconsistency with strategic planning documents, or due to community and agency concerns and objections (the matters stated are very vague and non-committal).

The Gateway process was put in place to overcome such a late merits-based assessment and to ensure key concerns and conflicts were resolved at the beginning of the rezoning process (i.e. before exhibition). We believe that resolution of key issues at the 'assessment' stage is too late and runs a high risk of reasonable, effective and orderly planning outcomes not being delivered. It will be particularly problematic in areas not serviced by water and sewer or where high conservation value vegetation and high bushfire risk areas concurrently occur. The lack of effective resolution of these issues before exhibition is likely to cause significant consternation and concern amongst agencies and potentially lead to conflicting agency advice (e.g. vegetation protection vs. clearing) and delay the rezoning process at its end stage. As raised above, these matters may not be reconciled by the proponent before forwarding the 'package' to the rezoning authority (Council) to resolve in their limited 'assessment' timeframe. We strongly urge that a step for Departmental referral be retained prior to public exhibition for all Planning Proposals to ensure objectivity and that key agency issues have been effectively dealt with and resolved prior to exhibition.

In terms of the 'assessment and finalisation' phase, the Discussion paper states that the Rezoning application may need to be re-exhibited if changes made after the first exhibition are extensive. Who is going to make these changes? Also, who has the power to require re-exhibition and what are the heads of consideration to inform whether or not re-exhibition is required? This information is missing.

It appears that only the proponent can make changes to the application, in which case the rezoning authority has no 'power' to change the application. It can only 'assess' it and support it or refuse it. If refused, the proponent will have a right of appeal.

We believe that the rezoning authority should have explicit power to require re-exhibition.

We believe that the rezoning authority should have the power to change the rezoning application, but that such changes be referred to the Department for endorsement before the rezoning is made.

Currently, rezoning changes cannot be made conditionally. The rezoning either has to be made or refused. We believe some submissions may raise the concept of conditional approvals. We do not support conditional approval as we hold a concern that it will open up a 'Pandora's box' regarding when the conditions of the approval have or have not been met – much as occurs with the 'deferred commencement conditions' for DAs.

We believe that there should be a mechanism for proponents to work with Council to create site-specific DCP provisions for their site. The reforms could include a mechanism to have these DCP provisions pre-endorsed by Council, which could accompany the Rezoning application at exhibition. This would give more assurance to State agencies, the community and Councils regarding development controls to be put in place in association with the rezoning. This is more up-front work for the proponent, but would potentially fill a significant gap in the rezoning process and give more specificity to the development likely to arise through a spot-rezoning.

The Discussion paper explores the kinds of matters that would be considered in the final decision made by the rezoning authority. These require more specificity and commitment.

In considering the strategic merit we request that an additional matter be added for the rezoning authority to consider:

- Conformity with a Department-endorsed Local Housing Strategy
- Consistency with s9.1 Ministerial Directions

In considering site-specific merit, we request that an additional matter be added for the rezoning authority to consider:

- Site suitability and the capacity and capability of the land for the rezoning proposed.

We note and support the proposed consideration of services and infrastructure availability.

Planning Guarantee

We hold significant concerns and do not support a planning guarantee being introduced into the rezoning process. Inclusion of a planning guarantee would mean that rezoning authorities, such as Councils, will be potentially held captive by the assessment timeframes. For reasons earlier explained, proponents will be able to pass any complicated and unresolved matters over to Council to reconcile in its 'assessment' phase and with the 'assessment' clock ticking. A planning guarantee on top of this, places too much power in the hands of the proponent, particularly if agencies such as ourselves raise concerns or object to Rezoning applications. We want those objections heard and rezoning potentially refused or at least modified if we raise an objection (which is rare). The planning guarantee also operates on the presumption that any rezoning is a good rezoning, where clearly industrial uses in environment (conservation) zones, or medium density residential zoning in unsewered areas which have yet to be serviced, are not.

PART C: New appeals pathways

We generally don't support the introduction of an appeals process at the end of the rezoning process. It is also unclear what time period would apply. For DAs this period is 6 months (s 8.10 EP&A Act).

Our *strong* preference is that the rezoning authority is given the power to refuse a Rezoning application at lodgement and prior to exhibition. We believe that there should be provision for that decision to be reviewed through an appeal mechanism to the Independent Planning Commission (IPC) similar to that which is currently available for Gateway determinations. We are generally not in favour of proponent appeals being positioned late in the rezoning process, particularly if Rezoning applications are refused on the basis of agency objections due to matters not being resolved in required timeframes. This could potentially make more work for the agencies and having to support Council in any IPC or Land and Environment Court (LEC) hearing.

If the Department decides to proceed with a new appeals process at the end of the rezoning process:

- A new step in the process and appeal timeframe would need to apply to all Rezoning applications as stated.

- The IPC should be the overseeing body rather than the LEC, for the reasons stated in the document. To make the LEC the overseeing body would also be giving rezoning power to the judiciary. Would the judiciary therefore become Rezoning authority? Would the LEC be the appropriate authority to make such decisions?
- Notification regarding the appeal should be given to all parties that made a submission during exhibition and, in the case of agencies, who corresponded on the initial scoping document.

The Discussion paper asks 'do you think public authorities (including councils) should have access to an appeal?' Is this question asking:

- should agencies have the ability to appeal decisions made in favour of the proponent if the agency has lodged and objection? OR
- should agencies have appeal rights if they are the proponent and the proposed rezoning is refused by the rezoning authority?

We work cooperatively with Councils and other State agencies to assist in the delivery of planning outcomes that can best meet all interests. We have found the Gateway process to be very useful in reconciling water quality concerns and complexities in planning proposals prior to exhibition. This has also reduced the risk of conflicting standpoints arising in agency feedback during public exhibition.

These above questions need not arise if the rezoning authority is given the power to refuse a Rezoning application prior to exhibition. We believe that there should be provision for that decision to be reviewed through an appeal mechanism to the IPC similar to that which is currently available for Gateway determinations. This could be made open to agencies if they are the proponent.

PART D: Implementation

The Discussion paper flags that the new approach could involve both legislative and non-legislative changes. It is difficult to see how this new framework could not involve legislative reform.

Given that the Discussion paper is very high level and lacks much of the mechanics, yet is proposing extensive reforms, we ask that further public consultation occur when the package is more refined. This includes providing more detailed proposal (following this public exhibition and feedback) and the draft legislation and policies to be given effect.