

## **Discussion Paper**

### Role of DPE in Rezoning Process

DPE and agencies should have a clear role in adequacy review for rezoning applications initiated by proponents to ensure alignment with strategic land use planning directions. Any inconsistencies with the issued submission requirements should be resolved before exhibition. Without this adequacy role, agencies are left with one chance to comment at exhibition stage meaning only the agency objection could stop a proposal.

The Rezoning Authority should oversee the process of consultation through the Planning Portal or similar. Alternatively, guidance is needed on how private proponents will consult with state agencies (p19) to ensure the correct units within agencies are contacted, that all relevant information is provided to the agency and if issues are identified how they will be addressed.

### Other issues

A greater emphasis on cumulative impact assessment is recommended, both positive and negative. This should include considerations regarding biodiversity, climate change, flooding and coastal management.

It is imperative that there is consistency between the new rezoning provisions and all SEPPs and the Standard Instrument.

### Objection to a Rezoning Application

The new rezoning process significantly weakens the ability of agencies to influence a rezoning application post-exhibition through objection. We do not support this change.

If the new process works properly, with agencies involved early in setting submission requirements and councils/DPE undertaking rigorous adequacy reviews, agency objections should continue to be rare. However, some rezoning applications will still get to the post-exhibition stage without properly addressing agency issues. The new process must not allow councils to still approve a rezoning application after only considering the agency objection as this will just result in objections being ignored. It is critical that DPE (Planning and Assessment Group) be the planning body to resolve any agency objection at this stage. The objection tool must be retained to support appropriate rezoning outcomes.

### Scoping

Whilst we strongly support the scoping process and the early involvement of agencies, we think that DPE should be able to refuse to issue study requirements if a rezoning application is inconsistent with strategic plans. It is imperative that inappropriate proposals do not progress at this stage so that proponents save time and money, expectations are curtailed, and protracted issues do not arise.

As well as attending the scoping meeting, agencies should also have an opportunity to provide written feedback to the council and the agency submission requirements for incorporation into the council's response to the proponent, otherwise agencies will not be sure their feedback or requirements will be formally provided to the proponent. This written feedback following a scoping meeting should be made publicly available, either on the portal or at exhibition stage or both.

Agencies are only identified to be consulted at scoping stage in Figure 3. While we strongly support a mandatory and upfront pre-lodgement process that includes a meeting with agencies, we question

how councils will decide which agencies are required to be consulted, noting biodiversity values may not be readily apparent in the early stages of proposals. Some councils may consider EES engagement is required and others not, so clear criteria are required (such as does the planning area contain native vegetation for example)

Page 24 of the discussion paper refers to the LEP Guideline stating it guides consultation. However, the LEP guideline does not mandate such consultation, and for biodiversity, it makes no reference to High Environmental Value, which is the construct covering biodiversity in regional plans. The LEP Guideline must be revised to require consultation with agencies, at least for basic and complex rezoning applications, and to correctly reference HEV.

The new approach needs to integrate with Commonwealth guidance on critical EPBC matters. Seeking early EPBC direction can be appreciated by EES/council and the bearing it will have on the underlying DA that is the purpose of the rezoning. Commonwealth timeframes for advice can be lengthy but that advice is strategically critical.

### Merit Assessment

There is a risk that removing merit assessment before exhibition and replacing it with adequacy assessment will make it more difficult to refuse a rezoning application at the end of the process. This will depend though on the level, depth, and rigour of the adequacy assessment. If adequacy assessment is just to check that all components of the required exhibition material are present, but not their accuracy, validity, or integrity, then the new process is unlikely to achieve sound planning outcomes.

There should also be filtering at scoping stage on the merit of the proposal and consistency with key strategic planning criteria. The gateway process was designed to filter out proposals that would not be supported to save proponents money and time. The new approach, and without a mechanism to return an application at the scoping stage as previously suggested, allows all rezoning applications to progress regardless of merit and then enables an appeal process. We do not support this approach as it will make it difficult to refuse a rezoning application that has travelled so far through the process, raising proponent expectations, and having consumed significant agency and proponent resources. This would be consistent with empowering councils to reject planning proposals in the early stages of the process before investing in a full assessment.

### Lodgement

The discussion paper refers to benefits in combined rezoning and development applications. We would support such an approach as it could reduce proponent costs for biodiversity assessment, but we recommend further consideration of this particularly considering recent court judgements on the 'avoid' principle under the BC Act. For example, a proponent could seek biodiversity certification at rezoning stage to streamline the process and switch off future assessment under the Biodiversity Conservation Act at DA stage (EES' preference particularly for larger rezonings) however in certain circumstances this could be more costly and time consuming than dealing with the Act at the DA stage. Proponents should be first encouraged to undertake a biodiversity certification where relevant and have agreement from EES to opt out.

### Changes after exhibition

The new process must clearly articulate the requirement for a proponent to resolve issues raised in agency submissions to the satisfaction of the agency. The ability for agencies to object to a rezoning application could be incorporated into this response to submissions phase, instead of the exhibition

phase, so agencies object if the issues they raised at exhibition are not resolved to their satisfaction, thereby bringing DPE into the fold to assist. Moving the objection to this phase gives the proponent an opportunity to respond to the agency issues from exhibition and for the agency to consider that response in either being satisfied or objecting. This will only work though if the process clearly specifies that the response to submissions phase requires a proponent to seek to resolve agency issues with a view to achieving agency satisfaction, and that the agency has an objection role if the outcome is not to its satisfaction.

To minimise the risk of corruption, encourage good decision-making and increase transparency, the agency and public submissions and Response to Submissions (RTS)s should be publicly available on the Planning Portal. Currently only the exhibition documents are provided [publicly](#) (although they could be accessed via a login if you know how to locate the relevant case). Making all post exhibition documents including agency submissions and RTSs publicly available will ensure accountability and transparency noting stakeholders' feedback was that the planning proposal process needs more transparency and accountability pp 8 and 9. We note this is standard practice for SSIs/SSDs on the MP portal and decisions of the Independent Planning Commission.

Public authorities (including councils) should have access to an appeal process.

### Timeframes

Benchmark timeframes (page 13) estimates 1 week to review documentation for all rezoning categories. One week is insufficient to ensure a robust review of complex applications where a large volume of documents are appended, particularly given current capacity issues in EES and time taken to allocate matters, especially for complex projects (Categories 3 and 4). EES suggest 3 weeks minimum (noting that timeframe aligns with PAG's SSD/SSI timeframes that are of similarly high priority/importance too).

Guidance should be provided to agencies whereby applications can be returned due to insufficient information. Also, this step could include the option, rather than requirement, to refer to agencies.

It is important that proponents adhere to timeframes specified by consent authorities and government agencies to respond to requests for further information. The guidance should be clear that a proponent must request additional time to the overall rezoning process where required to ensure that the review time for consent authorities and government agencies is not compromised.

It is recommended that both standard agency advice and site-specific agreements are developed where relevant to avoid matters being inappropriately delayed to the DA stage.

### Figures 3 and 4

Figure 3 should include "agencies" in the flow diagram at exhibition and post exhibition stage to ensure agencies are provided an opportunity to review and comment on assessment and that any issues raised are satisfactorily addressed. Agencies need to review the response to submissions and be able to object if the responses are unsatisfactory. Examples include rezoning land for residential purposes that is flood prone, inadequate protection of high environmental value lands (such as primary koala habitat) or not accounting for and properly addressing flooding or coastal hazards.

Figure 4 and elsewhere refers to "the Department", but these references do not recognise EES is also part of DPE. It is only DPE Planning Group that is being referred to here. This lack of differentiation is confusing for the public, councils, and proponents and should be addressed.