

A new approach to rezonings – Discussion Paper. Yass Valley Council Feedback.

PART A: Background

Yass Valley Council agrees with the observation that Council autonomy is important, and we want greater ability to decide on, or reject proposals. It often feels that Councils are not trusted to enact planning decisions despite being much more familiar with the community and its priorities as well as the local environment.

One of the issues in the current framework and associated delays, it that although Council's are responsible for ensuring Development Applications are referred to and obtain comments from any state agencies that may be required, this trust and responsibility has never extended to Councils through the Gateway process. We have had numerous instances where agencies cannot understand why a Planning Proposal (PP) is being referred to them, and time is wasted by Council's referring and then chasing a non response, or agencies having to draft letters that they are not responsible for (or have no interest in) this type of proposal. We have also had instances where agencies that no longer exist are included with Gateway Determinations. Council's should be trusted to refer proposals to the correct agencies rather than being held to those listed in a Gateway Determination.

There is a point in the paper, that PPs often go to twice to a Council Meeting. Unless they are very straightforward, Councillors should not be seeing a PP for the first time when it is being finalised. This is particularly the case if there is considerable community interest, and there needs to be a mechanism to do so (even if not needing a resolution of Council).

Council acknowledges the observation that the perception from the community that as considerable work has already been done prior to a Gateway, a decision has already largely been made. It is unclear how this issue will be addressed by requiring proponents to undertake even more work upfront. It may also make proponents even more determined (if significant work undertaken with associated costs) to pursue a proposal that is flawed due to the costs expended- especially if appeal option is available.

The discussion paper acknowledges some Councils do not have adequate resourcing and funding for strategic planning, however makes no suggestions as to how this might be addressed. Instead, some of the suggestions within the paper are likely to exacerbate this issue, by exposing Councils that have little strategic work done (how do you argue a proposal doesn't comply if the strategic work is absent or weak?).

The current approach where Councils become responsible for PPs once they proceed through the Gateway is flawed. The process should be similar to that of development applications where Council can remain the Planning Authority and the 'assessor', rather than become a quasi proponent who is sometimes forced to defend progressing a PP, when issues are identified by agencies or the community.

The discussion paper makes no mention of streamlining the preparation of LEP amendment mapping. Currently there is an expectation that Council's will prepare or engage a consultant to prepare the LEP maps to the Department's standards. Yass Valley, and many other Councils do not have in house GIS resources, nor the funds to pay consultants. In Victoria, the state planning department has had a centralised mapping function for some time- which saves time and ensures all mapping is prepared according to the departmental standards.

Part B: The New Approach

There is some discussion around encouraging more concurrent PP's and DA's. Yass Valley has tried to encourage this, especially with site specific re-zonings. While it produced some efficiencies in community and agency consultation times, it actually led to more confusion from state agencies who struggled with the combined approach (could not work out how to respond to both the PP and DA issues at the same time). Planning Proposals are likely to be determined quicker than the DA's – especially if there are biodiversity issues present.

Benchmark timeframes discussed in the paper need to have further consideration, especially for complex projects. As an example, the Parkwood Planning Proposal took three years, and the majority of delays were the result of agency or DPIE requirements rather than Council or Proponent Delays.

The suggested approach to call all proposals “rezoning applications” is flawed and undermines the significant education with the community that amendments are not just about changing zoning within an LEP. Using the term ‘LEP Amendment Applications’ is less confusing for the community and covers the broad range of amendment requests.

The new categories proposed are generally supported, and they align somewhat with the categories Yass Valley currently has within its fee structure. Guidance would be required as to determining categories, as some are not clear e.g. an application that does not align with strategic documents but is just adding an Additional Permitted Use in Schedule 1 such as multi dwelling housing in a RU1 zone. Who would decide whether it is Category 2 or 3?

The benchmark timeframes are aspirational, however will only be effective if agencies are supported to respond in a timely manner, and participate in scoping meetings. Using the Parkwood example again, many agencies did not respond- including NSW Treasury (who declined to even be briefed) despite the project having significant implications for NSW as a cross border development). \

In terms of the new proposed roles, further information is needed around the Department's role and being given ‘opportunity to comment’ (does this equate to intervene?) or ‘case management’. Also, nothing in the current proves prevent proponents from having the right to meet with the rezoning authority to discuss a potential request.

Additional support and guidance needs to be given to agencies, to enable high quality and efficient decisions. Standard response guidelines/conditions can be provided, as well as education on the differences between the DA and PP process- which continues to be a challenge. It is also agreed that for simpler proposals, involving agencies at the scoping stage may be sufficient, however the challenge will be getting them to the table in the first instance.

Council continues to experience delays in the decision finalisation, where agency responses arrive late or not at all. NRAR as an example are extremely under resourced, yet for rural or regional Councils, their response is often critical.

It is concerning that proponents may still be able to lodge an application despite being inconsistent with a strategic plan, and Council's must be given the authority to refuse/reject at the scoping stage if it is.

Although pushing a merit assessment towards the end of the process may achieve some efficiencies with simpler proposals, it is likely to actually delay the process if no assessment is done until later. Proposals may need to be significantly revised and re-exhibited, negating any savings upfront. Also, to what extent can a proposal be revised without needing to be re-exhibited (at the moment, and small amendment usually does). What will comprise a significant variation? When does it become a whole new application?

A suggestion to assist Councils in the assessment of submissions, is the ability set aside issues raised that are unable to be considered under the EP& A Act or as part of PP process – from both community and agencies.

Yass Valley Council opposes the part or full refund of fees. Refunds should only be considered where minimal assessment has occurred. Councils should not be expected to carry the financial burden or assessment time if a timeframe is not met – especially if it is outside its control. Ability to request fee refunds is not supported. Councils that are already under resourced will be further penalised.

It is difficult to anticipate every scenario and ALL information required upfront. There is no restriction on seeking additional information for DA's, why would it be restricted for PP's?

PPs with a VPA should not automatically require determination by a body other than council. A guideline may be required- e.g. if VPA relates to infrastructure under a Development Servicing Plan, the Council can determine.

Option3 Fee Structure is preferred, as this would provide a fee structure tied to the complexity, while allowing additional hours or consultant costs to be reimbursed to the Council. Note that in Yass Valley's experience, Bank Guarantees are no longer favoured as an option by applicants. While a fee structure is supported, any inclusion in the regulations is not, as these fees are not regularly reviewed or adjusted to CPI etc.

The Planning Delivery Unit function is very good- and needs to be expanded, especially in getting agencies to participate early in scoping exercise.

PART C: New Appeals Pathways

Yass Valley favours an alternative pathway such as the IPC for any appeal mechanism. The LEC approach will favour large companies or wealthy proponents. Due to the nature of PP's, the value of a favourable decision is usually much greater due to potential value uplift. Proponents will therefore generally take that risk with ANY refusal or deemed refusal and appeal to the LEC. What consideration has been given to how Council will fund their increased LEC legal costs? IPART has restricted raising rates above 0.7% for 2022-23, and most Council's are already struggling with deficits.