

City of Ryde Council

Submission to the
'New approach to rezonings'
Discussion Paper

Submission Date: 28 February 2028

Structure of Submission

The submission has been structured in the following manner based on the structure and content of the Discussion Paper:

- 1. Introduction**
- 2. Part A: Background**
 - a. Time and complexity
 - b. Inconsistencies
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 - d. The role of the proponent
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- 3. Part B: The New Approach**
 - a. New terminology
 - b. New categories and timeframes
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- 4. Part C: New Appeals Pathway**
 - a. Options
- 5. Part D: Implementation**
 - a. Transparent engagement
 - b. Mechanisms for implementation
 - c. Timing of changes

Note: The absence of a comment in response to a proposed change, new step, or reconfiguration of an existing step, infers neither support nor objection.

This submission has been prepared and submitted by Council staff.

1. Introduction

The 'Introduction' section of the Discussion Paper expresses the need for a 'plan-led' system that uses *"an approach that ensures strategic planning is the foundation for all decisions about potential land-use changes"*. It also discusses how over time the planning system, particularly the planning proposal process, has become complex, leading to unnecessary delays and higher costs.

While Council acknowledges the need to improve the planning proposal process to facilitate more efficient and transparent decision making, this needs to be balanced with ensuring the quality of decisions is of the highest order. The impact of poor planning decisions at the strategic level can be catastrophic for communities and quality must not be compromised as we seek improvements in timeliness. This could be more clearly acknowledged and articulated as it is important to frame this reform in a context of quality of outcome, not just in terms of quality of process.

Council welcomes the opportunity to comment, however, it is disappointing that more time was not afforded to Councils given the Department has also been progressing multiple policy and legislative matters including Industrial Lands Reforms, consolidation of the SEPPs, implementation of new Environmental Planning and Assessment Regulations, Developer Contributions reform over this same period. Further, this is at a time when Local Government elections were being undertaken, having been rescheduled due to COVID; new Councillors require induction and more detailed briefing on the numerous planning reforms and local planning matters currently underway and the time afforded for Councils to review what is a detailed and highly significant paper is considered insufficient in the circumstances. Council is committed to supporting an ambitious program of improvement; however, it needs to be inclusively undertaken to ensure the reforms are not just quick, but also positive.

2. PART A: Background

Part A of the Discussion Paper provides a summary of some of the current process, makes a case for reform and summarises some of the issues within the current planning proposal framework.

The City of Ryde Council (Council) has reviewed the summary of issues and makes the following comments based on the key themes discussed in the Discussion Paper:

2a. Time and complexity

The Discussion Paper states that *"stakeholders told us the planning proposal process takes too long, is overly complex, and needs more transparency and accountability"* (p.8). The Discussion Paper states that this feedback is supported by data that shows it can take several years to finalise a rezoning, with the average end-to-end processing times rising to an average of 114 weeks in 2019. The delays are attributed to the:

- lack of accountability and certainty around timeframes for assessment and processing;
- duplication of assessment with a planning proposal needing to be reported to Council and the Department multiple times;
- Gateway process being onerous, resulting in delays and transparency issues;
- delays during the finalisation stage during the drafting of the LEP changes and mapping.

While it is acknowledged that assessment times should be minimised, the reasons provided for current timeframes is incomplete and this could undermine the efficacy of the proposed reforms.

Currently, the Rezoning Review process includes a timeframe trigger, providing some accountability for Councils who do not commence assessment of their proposals in a timely fashion. The Discussion Paper does not provide any information on how many proposals become eligible for review, nor does it specify how many of these proposals are requested to be reviewed. Greater insight into how current review mechanisms are performing would be informative to understanding how review mechanisms affect the process. It may suggest that time triggers for reviews cannot compensate for more fundamental qualitative issues, or other issues with the process.

While the DA process is provided as an example of a process where a time contingent appeal trigger is used, information is also not provided on the number of DAs that are eligible for deemed refusals nor the number of deemed refusal appeals. It is the experience of Council that for both DAs and planning proposals, there are times where it is reasonable for complex applications to exceed the timeframes associated with the review or appeal triggers. Further, the timeframes achieved for DAs that are appealed is not provided; in order for this to be an effective means to reduce times, the impact of appeals on timeframes should be considered. Given the limited capacity of the courts, and in the absence of any evidence, it is questionable as to whether introducing legislative triggers for court appeals would in fact reduce timeframes for planning proposals.

It is agreed that accountability and certainty should be maximised within the process; however, the implication that prescribed timeframes and appeal triggers that currently apply in the DA process are best practice and effective is not sufficiently evidenced in the discussion paper.

It is agreed that there is an opportunity to reduce duplication in the process and there is an opportunity to identify certain (low risk, low impact) proposals where a more streamlined process is available. However, it should be noted that some duplication is important as it provides for oversight to ensure the quality of decisions. Currently, by requiring Councils to forward proposals to the Department for Gateway approval, the process ensures proposals are being appropriately assessed not just at a local level, but also in the wider context that may be less apparent to an individual Council. It also reduces the potential of corruption and increases transparency. Any new process should include robust oversight mechanisms and some minor duplication may be beneficial in this regard.

It should be acknowledged that the quality of proposals and supporting information, including a significant amount of time lost to speculative proposals is a current issue. While this is somewhat addressed under "Inconsistencies", it should also be acknowledged that proposals that are conceived as ambit claims currently drain resources and increase timeframes. Currently, proposals are commonly amended to further reduce impacts and working through these amendments takes time. Revision of the process should be undertaken to improve in this regard, and it is important to acknowledge and identify this as one of the issues we hope to address.

The current process, by allowing iterative improvement of proposals, can result in longer assessment times, but allows proposals that would otherwise be refused to be amended into a more acceptable format. It is reasonable for this review to question this approach and consider whether reducing the time spent on amending initially unacceptable proposals and increasing the number of refusals (rather than pursuing lengthy amendments that cost both the proponent and the planning authority) could encourage greater effort from private proponents to ensure proposals are well conceived and well made. This would provide a greater disincentive for private proponents to submit ambit claims or incomplete proposals.

In addition to the issues identified in the Discussion Paper, Council regularly receives feedback from private proponents that they prefer to receive notification of all the issues once, as early as possible, with the assumption that thereafter no new issues should be raised and the matter should simply rubber stamped. Requests to address issues that arise during the process upon more detailed assessment, or from consultation, are often met with dissatisfaction based on this expectation. It is surprising that this is not listed as a concern raised during the Department's consultation with industry groups. The implications of this issue with respect to potential improvements to the process is discussed in more detail in relation to the proposed new steps.

2b. Inconsistencies

The Discussion Paper explains that the Department received feedback across stakeholder groups that there are inconsistencies across the planning proposal process in the following:

1. documentation requirements,
2. the availability and rigour of pre-lodgement processes,
3. consultation requirements before the gateway determination,
4. assessment requirements,
5. how 'strategic merit' is interpreted, and
6. the roles and responsibilities of different government authorities.

Council broadly agrees that the above elements of the planning proposal process are varied and are interpreted and applied differently across councils. Council agrees that greater clarity and standardisation could be beneficial.

Point 1 – Documentation requirements

Council has often experienced significant opposition from private proponents when advising on the document requirements for lodging a planning proposal. It is noted that the issue is twofold, private proponents dispute the need for certain supporting information outright, and/or provide supporting information that is incomplete, does not provide sufficient detail, uses invalid or out of date evidence, or is in an inappropriate format (such as traffic models that are not consistent with those used by Council and Transport for NSW).

Council agrees that greater clarity could be provided to manage the expectations as to what information will be required to support proposals and guidance as to the quality and format of that information. As noted in the discussion paper, these matters are generally raised pre-lodgement, but there is currently no obligation for the private proponent to address pre-lodgement advice.

It is also noted that this difficulty also arises after lodgement, whereby issues identified after an initial assessment require additional information to be provided and provision of this information is often resisted by the proponent. This is particularly an issue given proponents have the option to seek a rezoning review, so rather than provide the information requested by Council, some private proponents wait for rezoning review trigger to elapse in the hope of receiving a different assessment. This is also an issue that should be identified, noting it is a significant risk that should be considered when proposing new appeal elements to the process.

Point 2 – Pre-lodgement

As noted above, Council offers pre-lodgement meetings with prospective private proponents who are interested in lodging a planning proposal. Many private proponents in Ryde engage in this voluntary phase of the process, and it is very rare that a planning proposal is lodged without some form of pre-lodgement meeting or discussion. As part of this process, Council provides advice on lodgement documentation requirements and other advice in line with the plan making guidelines. However, these are not mandatory and there is no obligation for private proponents to ensure their proposal is consistent with pre-lodgement advice.

Points 3 – 6

The Discussion Paper indicates that transparency and trust issues arise when proposals rejected by Council subsequently approved by panels. While Council agrees this is case, it should also be noted that this is not simply a procedural matter, it is a qualitative matter, and it is not limited to proposals subject to review. Communities distrust the process when they do not understand the link between an outcome and the strategic imperatives that informed that outcome. It is important to acknowledge that any new process needs to maintain the quality of decisions and clearly communicate the merit of approvals and the issues with refused proposals in terms that that the community can understand.

Council agrees that inconsistent approaches to strategic merit and site-specific merit are a current change and would welcome measures that effectively addressed this issue.

Council notes that the new LEP Plan Making Guidelines include detail on the approach to strategic merit and technical requirements for the lodgment of a planning proposal. However as these were made by the Department it is unclear whether this is within the scope of this review. Council would welcome the opportunity to enhance the Guidelines further and considers this a necessary component of the review.

Council recommends that the Department:

- **Undertake detailed consideration of the number of proposals that are eligible for review and undergo review is undertaken to inform future decisions on how to effectively utilise appeal**

or review mechanisms in the process. The details should be communicated to stakeholders to inform consultation on the review.

- Undertake detailed consideration of the number of DAs that are eligible for deemed refusal appeals, and the number of DAs that are subject to deemed refusal appeals is undertaken to inform future decisions on how to effectively utilise appeal or review mechanisms in the process. The details should be communicated to stakeholders to inform consultation on the review.
- The issue of speculative proposals adding time to the process and draining resources be acknowledged and considered.
- The issue of private proponents seeking to avoid providing further information or amend their proposals to address Council concerns, instead seeking to utilise the rezoning review process to circumvent local issues be acknowledged and considered.
- Acknowledge more explicitly that the quality of decisions and community perception that some decisions are not consistent with the strategic framework is a current issue that needs to be addressed. It should be noted that this is not say that the community perception is always justified, but rather to acknowledge that where that perception is not justified, there may be an issue with respect to how the outcome of the proposal process or the surrounding strategic framework has been communicated to the community.
- Acknowledge the opportunity to further review and improve the LEP Plan Making Guidelines, particularly with respect to how they define strategic and site-specific merit and the role they play in the process.

2c. Council resourcing

The Discussion Paper outlines that some councils expressed they do not have adequate resourcing and funding for strategic planning, progressing planning proposals, or for taking part in court proceedings. This presents a challenge for some councils in completing LGA wide or precinct wide planning reviews.

As Councils can vary significantly in structure, size and context, and subsequently resource challenges manifest themselves differently across different Councils. Part A of the Discussion Paper would benefit from greater discussion on how the different experiences of Councils across NSW have been considered and accounted for in the design on the new approach. In addition, removal of Department involvement in certain types of planning proposals (see section 3b of this submission) is conflicting with the feedback from some Councils that have limited resources and welcome more support from the Department through the planning proposal process.

The Discussion Paper indicates that spot rezonings arise in the absence of adequately resourced forward planning; a more nuanced discussion of the varied challenges facing Councils would allow for a more balanced consideration of the role spot rezonings have within the current process. While spot rezonings at odds with the strategic framework or seeking to precede structured forward planning efforts are undesirable, spot rezonings may be appropriate in a range of circumstances and in these instances they can assist the resourcing challenges faced by Councils. This would also help clarify and articulate the role of proponents in the strategic planning framework.

The cost of assessing planning proposals is currently split across Councils, the State Government, and private proponents. The Discussion Paper does not provide any details as to the nature of the current split and what would be considered an acceptable split of cost between the private proponent and communities.

Council recommends that the Department:

- Explore and consider the nuanced resourcing challenged facing Councils, not just in terms of the unique challenges facing regional Councils, but also in terms of the different challenges facing differently sized Councils, and Councils with varied planning challenges (infill vs Greenfields, specialised precincts, different growth profiles, etc.).
- Council recommends consideration be given to the way the process is currently funded, reviewing the current fee and cost landscape in more detail and considering what an appropriate split of funding should be.

2d. The role of the proponents

The Discussion Paper outlines that private proponents do not feel they are adequately recognised or represented in the current planning proposal process. It continues to say that the existing legislation does not directly acknowledge private proponent-initiated planning proposals as Council takes on ownership of the proposals as it moves through the Gateway process. The Discussion Paper states that around 45% of all planning proposals finalised between July 2018 and June 2020 were private proponent initiated. Proponents want reform that “*acknowledges their role, provides greater access to state agencies and gives clearer, more consistent timeframes*”.

Council acknowledges that private proponent-initiated Site-Specific Planning Proposals (SSPP) are common across many Councils in NSW. However, Council does not agree with the proposition that private proponents are not adequately recognised as being the initiator of a planning proposal within the current process. They are identified throughout the Local Environmental Plan Making Guideline and their role and responsibility is specified in the current process is explicitly articulated in that document. Further, when a planning proposal under the existing framework is reported by Council staff with a recommendation to Council for a decision on how it should proceed, the assessment report specifies whether it is a private proponent-initiated planning proposal or whether it is a council-initiated planning proposal. Whilst this is considered sufficient in acknowledging the role of the private proponent within the relevant planning framework documents, it is accepted that clearer messaging to the community during consultation could be achieved in some circumstances.

While a proposal may be initiated by a private proponent, it must be remembered that the planning instruments remain the community’s and that Councils and State Government are the custodians of those instruments on the community’s behalf. As such, Council considers it appropriate that once initiated, Councils take on the proposal. It should be noted that these proposals should not be considered to only be undertaken on the behalf of the private proponent, the appropriate management of land use is in the interest of the wider community, and Council progresses proponent initiated proposals on behalf of both the proponent and the community.

2e. State agency input

The Discussion Paper outlines that state agencies have flagged that they would like earlier involvement in the planning proposal process to help promote integrated planning. In addition to the perceived challenges described, often the point of contact or referral officer within an agency changes during the process leading to inconsistencies in advice; this can also extend from the planning proposal process into the DA process. Council supports collaboration across state agencies to deliver integrated land use planning aligned with the State Government’s ethos of creating sustainable, productive and liveable cities across Greater Sydney and agrees that this is an issue that should be addressed by the review.

3. PART B: New approach

The ‘Introduction’ section of the Discussion Paper states that the new approach to planning proposals has been designed to align more closely with the development application (DA) process. The DA process has its own strengths and weaknesses and it is questionable as to whether it is fit for the different purpose of strategic land use planning.

The Discussion Paper states that “Concurrent applications bring about greater economic benefits as development can happen more quickly.” This is only true where concurrent applications can be processed without compromising the quality of assessment. Where this is not possible, concurrent applications lead to poorly implemented instrument changes and lower quality developments that compromise the productive use of land.

It is agreed that the concurrent lodgement and assessment of a planning proposal with a development application (DA) in certain cases can help accelerate the delivery of the specific planning outcome. For example, a planning proposal intended to instate an existing use ancillary to the primary land use zone to enable expansion or modifications would allow for the planning proposal and DA processes to be run concurrently. The limited scope and ability to ascertain to a higher degree of certainty that the rezoning has strategic merit at the outset of the process, given the desired land use currently exists, lends itself to a concurrent DA process. The DA assessment report and recommendation could be completed, and once the planning proposal is gazetted, the Notice of Determination could then be issued very closely to the planning proposal being gazetted. This presents a streamlined process and can be suitable for planning proposals with a limited scope that presents certainty in the outcomes the proposal is facilitating.

However, for planning proposals with a wider scope a combined planning proposal and DA process is not supported. This is to ensure the private proponent does not undertake unnecessary expense developing more detailed DA level plans and supporting information only for the underlying planning proposal to be rejected, or for the proposal to require amendment such that the DA documents require substantial or complete revision. The investment in putting together a high-quality DA requires a degree of certainty that cannot be provided prior to the finalisation of the underlying controls.

3a. New terminology

Planning Proposal vs Rezoning Applications

Part B of the Discussion Paper outlines that the new approach seeks to clarify definitions and terminology relating to the planning proposal process. The Discussion Paper states that *“a proponent-initiated application to amend an LEP is currently known as a rezoning request. It is only known as a planning proposal once a council supports it. All council-led processes are called planning proposals”* (p.15).

Council notes that the term “rezoning request” is not used in this manner in the current Local Environmental Plan Making Guideline. Indeed, the Guideline states “A developer, landowner or third party who initiates a proposal, prepares a planning proposal and submits it to the relevant council” (p. 4 of the Guideline) and further “Where the planning proposal has been initiated by a private proponent, council is to review and assess the planning proposal and decide whether to support and submit it to the Department for a Gateway determination” (p. 16). When a private proponent-initiates an application to amend an LEP they submit a “planning proposal” to council that has been prepared in line with the former state government guides to preparing a planning proposal and an LEP amendment, and with reference to the EP&A act and Regulations. This is not considered unclear or complicated.

The Discussion Paper suggests that *“all these processes should simply be called rezoning applications”* (p.15). Whilst Council understands the Department’s intention to rename the process to make the overall aim and purpose of the planning proposal process clearer to various stakeholders (particularly the community), renaming the process to ‘rezoning application’ is considered less accurate than using the term ‘planning proposal’.

A planning proposal encompasses any change that is made to an LEP, not just a change in land use zone. Not all planning proposals include a rezoning, and some are seeking a change in density via an increase in FSR and height, or simply seeking to amend a textual provision in an LEP. Therefore, using the term rezoning application is likely to be misleading in many cases.

Similarly, “Rezoning authority” is also not considered appropriate given in many cases the task being undertaken may not be best described as rezoning.

Council recommends that the Department:

- **Consider continuing the use of “Planning Proposal” and explore other names and workshop these with various stakeholder groups. A suggested alternative to explore is to refer to them as LEP Amendment Proposals and LEP Amendment Authority.**

Whilst the Discussion Paper uses the term 'rezoning application' to implement the proposed terminology change within the new approach, Council for the purposes of this submission will continue to use the term 'planning proposal' as this is the current applicable term, and as discussed above, is considered appropriate as not all planning proposal involves a zone change.

3b. New categories and timeframes

The Discussion Paper asserts that a priority of the new approach is to provide clearer timeframes for each step of the rezoning process. This is to give stakeholders certainty and encourage better performance.

Categories

The Discussion Paper outlines the four categories that have already been introduced into the LEP Plan Making Guideline. The table below contains the categories along with the description provided within the Discussion Paper and a comment from Council.

| Department categories | Description | Council comment |
|-----------------------|--|---|
| 1 - Basic | <p>Administrative, housekeeping and minor local matters such as:</p> <ul style="list-style-type: none"> • listing a local heritage item, supported by a study endorsed by the department's Environment, Energy and Science group • reclassifying land where the Governor of NSW's approval is not required • attaining consistency with an endorsed local strategy, such as a local housing strategy • attaining consistency with section 3.22 (fast-tracked changes of environmental planning instruments of the EP&A Act). | <p>This aligns closely with Council's existing first category of planning proposals titled 'Minor / Administrative'. The purpose of this category is to manage low impact proposals seeking to change planning controls of low policy significance, low scope, and of an administrative nature such as existing clause clarifications or corrections.</p> <p>Council is generally supportive of the 'Basic' category put forward by the Department.</p> |
| 2 - Standard | <p>Site-specific rezoning applications seeking a change in planning controls consistent with strategic planning, such as:</p> <ul style="list-style-type: none"> • changing the land-use zone if a proposal is consistent with the objectives identified in the LEP for that proposed zone • altering the principal development standards of the LEP • adding a permissible land use or uses and/or any conditional arrangements under Schedule 1 Additional Permitted Uses of the LEP • ensuring consistency with an endorsed strategic planning or local strategic planning statement • classifying or reclassifying public land through the LEP. | <p>This aligns broadly with Council's second category of planning proposals titled 'Minor'. This purpose of this category is to manage low to medium impact proposals that are of a policy nature in that they are changing lane use and/or FSR and height. However, they have limited scope or impact as they are consistent with the surrounding land use and built form; reflective of an endorsed council strategy or study; or are reflecting the current land use of the site. These are proposals like to have low community impact and interest due to the scale of the proposal change.</p> <p>Council is generally supportive of the 'Standard' category put forward by the Department.</p> |
| 3 – Complex | <p>Applications that may be not consistent with strategic planning, including any LEP amendment not captured under category 1 or 2. Examples include:</p> | <p>This aligns broadly with Council's third and fourth planning proposal categories titled 'Major' and 'Complex'.</p> |

| | | |
|-------------------|---|---|
| | <ul style="list-style-type: none"> • changing the land use zone and/or the principal development standards of the LEP, which would increase demand for infrastructure and require an amendment to or preparation of a development contribution plan • responding to a change in circumstances, such as the investment in new infrastructure or changing demographic trends • requiring a significant amendment to or preparation of a development contribution plan or a related infrastructure strategy • making amendments that aren't captured as principal LEP, standard or basic planning proposal categories. | <p>Council is generally supportive of this category put forward by the Department even though it represents a fusion of two of Council's categories. Council's distinction between its 'Major' and 'Complex' categories seeks to reflect the increase cost and complexity that arises when dealing with multiple landowners proposing changes to multiple sites or a precinct. This distinction may be less relevant under an improved process.</p> |
| 4 – Principal LEP | <p>A comprehensive or housekeeping rezoning application led by council, proposing broadscale policy change to the LEP for the whole LGA.</p> | <p>Council does not have a planning proposal category that aligns with the Department's 'Category 4 – Principal LEP' noting Council's categories are closely aligned with its fee structure and this category does not apply to private proponents and therefore does not require a fee.</p> |

Timeframes

The Discussion Paper discusses the Department's aim to assign total start-to-end processing timeframes for each planning proposal category. The intention is that during the scoping / pre-lodgement phase of each planning proposal a category would be determined to then inform processing timeframes, technical information required for lodgement, public exhibition requirements, and the fees.

Council does not consider the implementation of benchmark timeframes in and of themselves to be a means to achieving greater efficiency or time savings. However, it is important for the orderly and effective management of the process for clear and reasonable expectations to be set, and they are considered to be a valuable addition in the regard, provided they are monitored and revised when further data on the process is available.

Council currently undertakes these activities during the pre-lodgement stage, advising private proponents on the appropriate category and fee (based on its fees and charges schedule), as well as the technical documentation needed for lodgement. Generally, Council staff provide an estimate of the anticipated timeframe for initial assessment provided the lodged application addresses the issues raised during pre-lodgement and the information is of sufficient quality and completeness. An estimate is also provided of the anticipated time required for the matter to be reported to Council, assuming no additional information is required. Currently, Council does not provide an estimate of the time the Department will take to issue a Gateway determination, but will provide an estimate of the time required to prepare and undertake consultation and then report the results of the exhibition to Council. An estimate is not provided with respect to how long the finalisation will take.

It is noted that the Discussion Paper acknowledges that the timeframes may need to be re-visited as experience with the new approach grows; this is considered to be important, and these timeframes should reflect practical and achievable sound practice to ensure they accurately guide expectations.

Given the intent is for merit assessment to occur after exhibition, consideration should be given for additional time to be afforded at the lodgement stage to ensure the submitted information is not just complete in terms of the submission of required studies, but also in terms of the scope and format of those studies as

provided. For the Basic and Standard applications and 2 weeks should be sufficient to allow a preliminary review confirming the information is sufficient for exhibition, this will also ensure sufficient time is available across holiday periods noting that the statutory timeframes are days and not working days. For Complex or Principle proposals there may be substantial detailed information required and it may require expert technical advice to confirm that information is complete, in the correct format, and that significant additional information is unlikely to be required. In the case of Complex and Principal LEPs, 4 weeks is suggested to allow this document review to occur. This would greatly reduce the risk of deficient information progressing to exhibition and resulting in additional information requests occurring halfway into the process.

Exhibition for Principle LEPs should be extended beyond 6 weeks, noting that often workshops or drop-in sessions are required to ensure the community understands these potentially wide ranging, complex, and high impact proposals.

Consideration should also be given to scaled timeframes for the exhibition stages of Category 2, 3, and 4 proposals within and not just between categories, with timeframes increasing as the number of properties to directly notified and/or the number of submissions received increases.

It is noted that the total timeframe excludes scoping. This is understandable given the time required for scoping will be heavily contingent upon the responsiveness of proponents and the number of amendments to the proposal required. This is outside the control of planning proposal authorities. Council's experience is that the pre-lodgement stage of a planning proposal may vary widely. Rather than benchmarking the overall scoping time, consideration should be given to providing timeframes to meetings to be held following submission of materials and payment of scoping fees, and timeframes for issuing for written feedback after meetings.

Timeframes with associated DCPs and VPAs

The Discussion Paper fails to mention if there is an associated Development Control Plan (DCP) or Voluntary Planning Agreement (VPA) being prepared concurrently with the planning proposal. Both planning documents require time and resources to be prepared, exhibited, and finalised, with the finalisation of a planning proposal often being a form of security to ensure the private proponent upholds their requirements of the associated VPA. Council requests clarification on how these timeframes will work with associated DCPs and VPAs, and concludes with the fact that integrated, holistic planning takes time and the NSW planning system should accommodate for this to ensure suitable decisions and legacies are left for the community.

Given merit assessment of planning proposals is proposed to occur post exhibition, it is less likely that DCPs will be able to be prepared in time to be concurrently exhibited with the proposed planning controls. Exhibition of VPA offers will be possible, but exhibition of proposed agreements would likely not be possible until after the planning proposal has been exhibited.

Council recommends that the Department:

- **Review the benchmark timeframes annually and adjust them as required to ensure they appropriately reflect the sound application of the process.**
- **Extend the lodgement timeframes to ensure the lodged information can be checked in sufficient detail to confirm the required information is provided as required through the scoping process.**
- **Extend the Exhibition stage for Principle LEPs noting that drop-in sessions, workshops or webinars may be required for complex, wide-ranging, or high-impact proposals.**
- **Track the scoping stage of the process from initiation to provision of final scoping advice.**
- **Consider and map how this process is intended to operate when concurrent DCPs and VPAs are also to be undertaken. Consideration may need to be given to changing the current staging and process for exhibition of VPAs and DCPs to better synchronise with the proposed process and minimise the confusion, duplication and delay that is caused by**

separate exhibitions of interrelated matters.

3c. New roles

The proponent

The Discussion Paper identifies that it is Council's that usually make changes to LEPs, rather than private proponents, "to ensure that LEPs give effect to strategic plans" (p. 19). While it is indeed the case that private proponents do not make changes to LEPs, this is not only to ensure that LEPs give effect to strategic plans, but also because Councils and the State Government are custodians of LEPs and as such it is appropriate that they retain sufficient control and oversight of LEPs and the process by which they are amended.

The Discussion Paper states that:

The current rezoning request process shifts responsibility to council to progress a planning proposal, with costs covered by the private proponent. This means that although the private proponent has the cost burden, they are not considered the applicant. They have little control over the processes, or any changes to the proposal.

Our proposed approach aims to recognise private proponents as applicants, as they are in the development application process (p. 19)

Currently, costs are generally not fully covered by the private proponent, fees only partially recover the cost of Council assessment with the rest being covered by ratepayers. Further, while the costs of assessing planning proposals are shared, in the absence of effective value capture mechanisms, the benefits resulting from many planning proposals are not appropriately shared between private proponents and the community.

It is reasonable for the private proponent to be considered an applicant of sorts; however, to suggest that this should align to that of a DA applicant does not reflect the different rights a landowner should be afforded with respect to seeking an approval to undertake an activity within the rights already afforded to that landowner by the community via the planning framework, as opposed to the right of one landowner or group of landowners to amend the community's LEP to increase or alter the rights afforded them by the LEP.

Council considers the role and level of involvement of the private proponent in the current planning proposal process appropriate in managing the interests of the community, Council, and the proponent. When private proponents lodge a planning proposal, they are requesting to amend the statutory planning framework (i.e. Local Environment Plan (LEP)) that has been informed by strategic planning studies and formally adopted by Council. Council has the responsibility to review and manage the planning controls within the LEP as the democratically elected body, and therefore irrespective of who has initiated a planning proposal, Council should remain the custodian to operate in the interests of the community.

The proposed new approach seeks to provide more autonomy and involvement over the proposal. The table below includes the new approach and a comment from Council on its suitability.

| Role of proponent | Council Comment |
|--|--|
| Meet with the rezoning authority (i.e. Council) to discuss a potential request | This is broadly the case in the current process. However, Council notes that particularly during periods where a review of the planning framework is underway or shortly following the completion of an update to the planning framework (be it a master planning process, drafting a new/updated LSPS, or a citywide LEP), affording a statutory right to a landowner to require a meeting to discuss a potential request could be counter-productive and an unnecessary drain on resources. While generally Council endeavours to make staff available to prospective private proponents, there are instances where written or verbal advice is considered sufficient, and a formal meeting is not required. This may be the case when there is already a process underway and wider consultation will be undertaken, or when a meeting is requested for a speculative |

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| | proposal with no merit that is clearly inconsistent with strategic objectives (such as rezoning industrial land to introduce residential uses despite that land being clearly identified for retention within existing, recently finalised or updated strategic documents). |
| Submit a planning proposal and have it assessed and determined after public exhibition | This represents minimal change from the current process. |
| <p>Contribute to/responsible for the public exhibition process and</p> <ul style="list-style-type: none"> engage with state agencies. respond to feedback from submitters. update the planning proposal in response to the exhibition feedback. | <p>The Discussion Paper is unclear with respect to exactly who will be doing what with respect to exhibition of private proponent-initiated proposals. Figure 3 indicates that the private proponent is proposed to be responsible for exhibition and agency submissions. However, the description of the private proponent's role provided on page 19 does not confirm that the private proponent is tasked with undertaking all exhibition activities, it only specifies consulting with state agencies, and reviewing and responding to any submissions received during consultation. It is unclear if the private proponent is proposed to be tasked with other activities such as holding drop-in sessions, workshops, or undertaking letterbox drops. The Discussion Paper does not provide sufficient detail or clarity with respect to exactly what will be required as part of planning proposal exhibitions.</p> <p>Council strongly objects to the private proponent undertaking the exhibition of planning proposals and is of the view that exhibition should be undertaken by the planning proposal authority to ensure impartial and effective exhibition.</p> <p>Allowing private proponents to exhibit their proposals creates a significant risk that exhibitions will be manipulated facilitate favourable outcomes. Further, communities expect Council to advise them of planning matters affecting them and Council has existing resources and processes in place to undertake community consultation effectively. Council also has access to landowner information allowing letters and communications to be sent to landowners and not just residents.</p> <p>With respect to agency submissions as the planning proposal authority will be undertaking the assessment, the authority should also lead engagement with agencies to ensure their concerns are reflected in the subsequent assessment.</p> <p>While the private proponent has an important role in the exhibition, it should be led by the authority.</p> |
| Appeal a decision made about a planning proposal because of a delay or dissatisfaction with a decision. | In principle, Council agrees that some form of review right should be afforded private proponents to ensure the robustness of the process and provide adequate checks and balances. As discussed in Section 4a of this submission which addresses the new approach to appeals, Council acknowledges a review at the end of the planning proposal process has merits. It can help improve public visibility of decision-making and increase the accountability of decision-makers. However, it is important that the nature of that review is given careful consideration to avoid unintended outcomes that undermine the efficacy of the new process. Council is not supportive of the inclusion of a court appeal mechanism within the process. |

Council recommends that the Department:

- **Characterise the role of the private proponent to reflect the nature of planning proposals and their role in the planning proposal process, rather than seek to align planning proposal proponents with development application applicants.**
- **Assign responsibility for exhibition of proposals to the planning proposal authority.**
- **Clarify the private proponent’s role in ensuring sufficient information is provided in an appropriate format for exhibition, engaging with agencies, and addressing relevant concerns raised, while acknowledging that the exhibition process should be led and undertaken by the planning proposal authority.**

Councils and the Department

The Discussion Paper states that the new approach has been designed to give councils greater responsibility and accountability over planning proposals and to remove unnecessary departmental intervention.

Figure 4 from the Discussion Paper included below shows that the Department is proposed to have little to no involvement in planning proposals lodged by a private proponent; with its role in assessment being only for planning proposals where Council is the proponent or for state-initiated proposals.

In essence, the new approach removes the Gateway process; for private proponent-initiated proposals, councils will guide the process, including giving permission to exhibit, which is currently given by a gateway determination. Councils will then review any changes after exhibition and make the final decision. As noted above, it is Council’s firm view that the exhibition of private proponent led proposals should be undertaken by Councils.

| | Type of rezoning | Department role | Council role |
|------------------------------------|---|---|---|
| Department assesses and determines | Public authority proponent | Assesses and determines | Consultation |
| Department has limited involvement | Council proponent (category 3 and 4) | Assesses and determines | Proponent |
| | Council proponent (category 1 and 2) | Conducts scoping and adequacy at lodgement | Proponent + assesses and determines after permission to exhibit |
| Department has no involvement | Private proponent (categories 1, 2 and 3) - inconsistent with specified s91 direction/s | Given notice and opportunity to comment given during exhibition | Assesses and determines |
| | Private proponent (categories 1, 2 and 3) - consistent with s91 directions | No involvement in assessment except support, case management and monitoring | Assesses and determines |

Figure 4. The roles of councils and the department under the new approach

As shown in Figure 4 from the Discussion Paper, the Department is proposed to:

- have no involvement in private proponent led planning proposal that are ‘consistent’ with the ministerial directions;
- have the opportunity to comment on a private proponent led planning proposal that are inconsistent with ministerial directions at exhibition.

Whilst Council is in favour of having more autonomy to make local decisions without multiple reviews and/or approvals from the Department, having the Department involved provides an independent check of a councils’ assessment and decision and could represent an effective alternative to court appeals. Particularly in the instance where the elected Council resolve differently to council staff recommendation, forwarding the

proposal to the Department for review could be beneficial, helping ensure a transparent and ethical process and decisions reflecting best practice / place-based planning. Region teams within the Department have a more understanding of the local matters affecting Councils and LGAs within their region (compared with courts or the IPC) and this could be utilised to ensure that review of Council decisions are undertaken with both sufficient impartiality, and sufficient local knowledge. It is noted that such a mechanism may not leave the final review decision to the Region teams in the Department, but rather, the Department could provide a review report to a Local Planning Panel or Regional Planning Panel.

Alternatively, if the review mechanism was to be limited to a review of procedural matters and to confirm that Council's have undertaken a fulsome assessment (as opposed to a merit review of the proposal), the Department's Planning Delivery Unit could be tasked with these reviews. This more procedural review model would help minimise the risk of corruption and monitor the procedural quality of Council assessments, while avoiding duplication of roles, and the associated issues that arise when Council decisions are overturned on merit grounds.

While unnecessary duplication should be avoided, the proposed process, with minimal/no involvement from the Department in certain assessment streams risks undermining the ethical conduct of the process, and the transparency of decision making, and is a missed opportunity to leverage local planning knowledge to improve outcomes while also avoiding the need to subject the planning proposal process to expensive, time consuming, and less locally informed court involvement.

Council recommends that the Department:

- **Assign responsibility for exhibition of proposals to Councils for private proponent-initiated proposals.**
- **Consider a review mechanism that utilises the procedural, local and regional knowledge of Department staff as an alternative to court appeals.**

Council initiated proposals

The Discussion Paper proposes that if a council is the proponent of a planning proposal of Category 1 and 2 (i.e. low complexity), then the council would continue to be appointed as the planning proposal authority after scoping and once the Department has given permission to exhibit. This appears to be broadly consistent with the current process. However, if a council initiates a planning proposal of Category 3 and 4 (i.e. high risk), then all assessment and determination responsibility reside with the Department. Whilst involvement from the Department is welcomed for Category 3 and 4 proposals to mitigate any conflict of interest, councils are stripped of any plan making delegation for the more sensitive and complex planning proposals within their respective LGAs.

The existing Gateway process is suitable for council-initiated Category 3 and 4 proposals as it strikes the right balance between councils and the Department. Council conducts an assessment and recommendation, it is reviewed by the Department and conditions on the next steps prior to exhibition are issued, and then an assessment is done by both Council and the Department. While this involves some duplication, that duplication ensures Council still has a leading role in the direction of its LEP, while the Department is able to ensure Council's LEP remains consistent with the format and objectives set at a State level.

Councils are well-versed in the planning considerations and issues of their LGAs and should retain a significant role in the assessment and determination of these proposals. With the expanded role SEPPs have taken in the planning framework, and the prescriptive adherence to the Standard Instrument, local communities and Councils are increasingly being sidelined in the formulation and maintenance of their LEPs. The proposed changes further sideline Councils and should be amended to ensure Councils retain control and a central role in managing their LEPs.

Council recommends that the Department:

- **Revise the proposed process to ensure Council's retain a central role in the assessment and determination of Council initiated proposals, with Department providing key review and assessment of proposals to ensure consistency with State requirements and to provide the necessary oversight to minimise the risk of corruption and ensure the quality of outcomes.**

Section 9.1 ministerial directions

Insufficient time was provided for Council to review this element of the Discussion Paper. Council would welcome a future opportunity to consider this in more detail and provide comment.

Council recommends that the Department:

- **Review the timing of its exhibitions to reduce the number of concurrent submissions requested from Councils and to also give consideration to the other changes being implemented when timing consultation.**
- **Provide more substantial review periods and consultation programs for such significant and detailed reform proposals.**
- **Directly brief Councillors and communities on proposed changes by providing briefings, workshops, webinars, and/or question and answer sessions. This would not only reduce the time required to receive feedback (freeing up Council staff to formulate submissions), it would also facilitate a wider understanding of the planning system.**

Public authorities

Council agrees with the Discussion Paper's characterisation of the importance of state agency involvement in the planning proposal process.

The new approach proposes to engage earlier with authorities in the scoping phase. Section 2e of this submission includes detailed feedback around Council's experience to date working with state agencies.

Council supports the principles to be implemented with respect to state agency referrals and would welcome and opportunity to review and comment when more detail is available on precisely what is being proposed to achieve the stated improvements.

It is Council's experience that agency staff are highly motivated to achieve positive outcomes for the community, but are often not familiar enough with the process to understand how it can help them deliver on their agency's aims and objectives. Addressing this underlying issue is crucial in order to ensure agencies are well placed to provide the input required.

Council recommends that the Department:

- **Continue to engage with agencies to ascertain how to best achieve the proposed improvements. These improvements are unlikely to be achieved if they are imposed upon agencies without those agencies having the ability to inform the proposed measures and thereby "buy-into" the proposed process.**
- **Partner with agencies to hold regular education and training sessions (for agency staff) to facilitate better understanding of the planning process, it's role in achieving the aims and objectives of the agency, and how they can engage with it to achieve positive outcomes for the community.**

3d. New steps

The Discussion Paper outlines the new process for processing planning proposals. This includes the addition (or formalisation) of new steps and the reordering of steps.

Scoping

The Discussion Paper explains that the new approach seeks to mandate and formalise a pre-lodgement process for standard, complex and principal LEP proposals (i.e. categories 2-4) in what is called the 'scoping' stage. A scoping stage would be optional for a basic proposal (i.e. category 1). The intention of the scoping stage is to bring the private proponent, council, and relevant state agencies together early in the process to discuss the merit and viability of the proponent's envisaged outcome for the subject site/s and provide feedback and direction before detailed work has progressed.

The Discussion Paper flags that many councils currently provide or offer elements of the proposed scoping stage as part of existing optional pre-lodgement processes; however the new approach seeks to mandate it and proponents will not be able to lodge a proposal without engaging in a scoping process. This process currently operates informally now at Council, where proponents are aware of Council's expectation that a pre-lodgement meeting would be required prior to lodgement, and this is widely accepted by proponents. Its inclusion in the new approach in essence is formalising 'business as usual' and will not fundamentally result in a change to existing practice for the City of Ryde. However, Council appreciates the need to standardise this across NSW and to better leverage pre-lodgement activities in the pursuit of a more efficient assessment process.

The new approach requires councils to issue a scoping report that:

- includes a high-level review of the indicative proposal and intended development outcome,
- outlines how it aligns with the strategic context (i.e. strategic merit),
- explains any planning or site-specific issues,
- allocates a category to help with fee estimates, and
- includes the required studies and technical documentation for lodgement.

A scoping meeting is to be held and written feedback provided, with Council's to provide "*written feedback that indicates:*

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

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

- *intended objectives and outcomes of the proposal*
 - *broad justification/case for change – need, strategic merit and site-specific merit of the proposal*
 - *high-level evaluation against strategic planning (including any relevant SEPPs or s. 9.1 directions)*
 - *any study requirements such as technical reports that demonstrate strategic and site specific merit (the rezoning authority should seek input from relevant state agencies when determining these requirements)*
 - *whether a section 7.11 infrastructure contributions plan is needed (consistent with ministerial directions)."*
- (pp. 24-5)

As noted earlier in this submission, Council regularly receives feedback from private proponents that they prefer to receive notification of all the issues once, as early as possible, with the assumption that thereafter no new issues should be raised and the matter should simply rubber stamped. Requests to address issues that arise during the process upon more detailed assessment, or from consultation, are often met with dissatisfaction based on this expectation.

The proposed process appears to try and deal with this concern by conceiving of a scoping stage where Councils are expected to raise all the relevant and possible in principle issues with a proposal up front and then assess whether these in principle issues have been sufficiently addressed post-exhibition. However, by requiring Councils to provide written feedback on alignment with strategic merit up front, the process is not in fact limiting the initial assessment to in-principle matters and is requiring a quasi-strategic merit assessment.

Should this approach be pursued, it is highly recommended that Council a more limited and fit for purpose scoping test be developed. In the proposed process, alignment with strategic context (i.e. strategic merit), as it is currently conceived, can only reasonably be undertaken post exhibition and cannot be expected to be undertaken at such an early stage before relevant studies have been undertaken. Often the detailed studies scoped at pre-lodgement are required and scoped precisely to provide the necessary detail so an assessment can be made as to whether a proposal aligns with key strategic imperatives.

The Discussion Paper states, *“Early agency input is important to allow agencies to shape proposals early on and avoid problems later in the assessment process by allowing proponents to adapt or change their proposals to address agency issues at the outset.”* (p.24) Similarly, to expect agencies to be able to provide sufficient advice so as to avoid problems later in the assessment, prior to submission of technical studies which contain crucial data and evidence required to inform agencies as to the nature and scale of the impacts of the proposal, is fanciful.

Should this approach be pursued, it is recommended that this expectation be adjusted and that fit a for purpose scoping test is developed for agencies, that is appropriately limited in scope to match the information agencies will have to hand.

The proposed process as currently conceived will place significant pressure on Councils to undertake detailed assessments during the scoping stage to avoid accusations of having missed relevant issues if they are raised later or used later as reasons for refusal. The scoping task as currently conceived, combined with the proposed reduced allowance for information requests during the process appears to be reinforcing an unreasonable expectation that all issues can generally be raised or predicted up-front and the rest of the process will largely be a matter of rubber stamping.

Given the proposed process indicates that strategic merit will be fully assessed post-exhibition, it is clear that the proposed process envisions that issues can reasonably be expected to arise post-exhibition and in the more detailed assessment of technical studies. The scoping stage should therefore be messaged accordingly and not characterised as the main stage for issues to be raised.

It is recommended that the components of the strategic merit test are tabulated and consideration is given to the circumstances where technical studies would be required to ascertain whether a proposal aligns with strategic objectives. Stakeholders should be consulted and invited to provide real world examples from previously determined proposals. This work would assist in clarifying what can reasonably be expected to be ascertained up-front with respect to strategic alignment and what is necessarily subject to post-exhibition assessment.

More precisely defining what is to be assessed when is crucial to improving the process. It would improve certainty in that proponents would have clearer understanding of when issues may arise during the process, it would also improve consistency by facilitating a more consistent understanding of what constitutes merit.

Just as additional information requests add time and request, changes to proposals or to details within proposals during the process require reassessment causing delay and additional cost. Repeated scoping meetings and written feedback on multiple iterations of a proposal are undesirable and should be discouraged. Consideration could be given to a per meeting fee structure. Further, the process should specify that proposals may not be altered between written assessment and lodgement. Amended proposals are to be re-submitted for updated written feedback, attracting the full scoping meeting fee.

Finally, should the proposed scoping approach be pursued, Councils should be afforded the ability to refuse

proposals that do not meet the specified scoping merit prior to exhibition, noting that Council would have already issued a scoping letter confirming that the proposal in its current form is not considered to have sufficient merit to proceed. Consideration should be given to establishing circumstances where refusal to accept lodgement is reasonable, for example where there is an existing masterplan or proposal underway. Consideration could be given to utilising both or either pre-exhibition refusal options (being pre or post lodgement) in specified circumstances.

Council recommends that the Department:

- **Review the current strategic merit test and revise it to create two fit-for-purpose merit tests: a scoping merit test and a merit test to be undertaken post-exhibition, in consultation with Councils.**
- **Specific agency scoping tests be developed to clarify what is expected from agencies at the scoping stage.**
- **Workshop the proposed tests with stakeholders and document how they would have applied for multiple real-world case studies across each category.**
- **Consider a per-meeting fee structure to discourage ambit proposals and ongoing iterative amendment of proposals during the scoping stage.**
- **Prohibit amendment of proposals between issuing of written feedback and lodgement.**
- **Consider specifying circumstances where a proposal could be rejected prior to lodgement or prior to exhibition.**

Consistency of documentation

Council notes that the new LEP Plan Making Guideline's technical requirements have already been made by the Department and that the Discussion Paper confirms that it will be adapted to any changes made to the planning proposal process.

Council recommends that the Department:

- **Further collaborate with councils on the technical requirements for lodgement of the various categories of a planning proposal and adapt these as required.**
- **Allow some discretion for councils in the specifics of a technical document to ensure adequacy and it is 'fit for purpose' in the context of each LGA.**

Lodgement

The Discussion Paper proposes that all planning proposals be lodged on the NSW Planning Portal. Council sees merits in its application for consistency across the state and from the customer experience of proponents working through the planning system from making an LEP amendment to lodging a DA. However, ongoing/regular refresher training is needed for councils to keep up to date with the operation of the portal and to ensure new staff are trained.

It is proposed that councils will have seven days to confirm the adequacy of the lodgement planning proposal from receipt on the portal. Lodgement will trigger exhibition of the proposal on the portal and formal exhibition commences. This is similar to the DA process and presents a significant change from the existing process where exhibition is determined as part of the Gateway process where both the adequacy and strategic alignment is assessed, and conditions are imposed prior to exhibition. As noted above, consideration should be given to extending the timeframes allocated to lodgement to ensure Councils have sufficient opportunity to throughout the year to ensure the information is sufficient for lodgement. It is noted that this is not just a checklist exercises as a brief preliminary review of the information submitted is required to ensure it is in the correct format and attempts to fully address the scope requirements. Where technical information is required this may require confirmation from technical staff.

Given the planning proposal and supporting technical documentation would then be placed on exhibition, seven days is not considered enough time for councils and the specialist teams to review the documentation and ensure its validity and accuracy. This is considered important given the documentation is then being

presented to the public for scrutinising. If the content of the technical studies has not been reviewed by council to confirm its methodology, quality and accuracy, this information is then being presented to the community and could lead to misinformation being widely available.

The Discussion Paper states that if study requirements have not been met and are found to be inadequate, the proposal will be rejected and will need to be resubmitted. The grounds for which a proposal is considered inadequate have not been included in the Discussion Paper, and Council seeks clarity on this and the operation of this process, including the number of times council can reject a planning proposal based on inadequacy.

As previously noted, Council also recommends that proposals that are submitted despite Council providing written advice that the proposal lacks sufficient merit in its current form should be rejected prior to exhibition.

The Discussion Paper seeks comment on options to reassure the community that acceptance and exhibition of a proposal does not imply support. As recommended with respect to the scoping stage proposal, Council recommends further work be undertaken to clarify precisely what has been assessed and scoping and precisely what merit considerations remain to be addressed post exhibition.

There are various pros and cons to the exhibition of planning proposals prior to a more fulsome merit assessment, however insufficient time has been afforded to weigh them up in detail. Broadly, one of the key benefits is that decision makers are able to hear detailed accounts of local conditions that can inform considerations of strategic and site-specific merit. Conversely, proposals exhibited prior to more detailed assessment are more likely to contain errors, omissions, or inaccuracies that may mislead a community with respect to the potential impacts of a proposal.

Should the proposed process be pursued, exhibition templates should be developed and they should include a clear statement indicating that while acceptance of a proposal by staff for lodgement has occurred, submissions may challenge the grounds for that acceptance and that all matters of strategic alignment and all matters of strategic merit are open for comment.

Consideration should be given to a submission template that structures submissions according to each relevant element of strategic and site-specific merit, with additional opportunity for free text to be provided. This would assist the community in understanding what the relevant consideration are for a planning proposal and will also assist in the processing and reporting of exhibition results.

Council recommends that the Department:

- **Acknowledge that lodgement is not merely a check of the presence of specified documents, but also requires a preliminary check that those documents are complete, in the correct format, and attempt to address all the relevant matters. Timeframes and procedures should be designed on this basis.**

Exhibition

The new approach seeks to treat the planning proposal as being on public exhibition as soon as lodgement is confirmed "*and the rezoning application is visible on the NSW Planning Portal*" (p.27).

Council strongly objects to this proposal. The onus should not be on the community to be monitoring the Planning Portal for the appearance of planning proposals and it is grossly inappropriate to consider public exhibition to have commenced before any effort has been made to advise and notify affected community members and direct them to the portal. This is not consistent with the reasonable expectations of the community and would significantly undermine trust in the process.

As noted previously in this submission, it is Council's view that the planning proposal authority should be tasked with ensuring affected residents are notified of a planning proposal having been accepted for assessment and exhibition; exhibition should only commence from the date of this notification having been issued. Development Applications benefit from being subject to previously exhibited planning controls; reducing the exhibition requirements and awareness of LEP changes will have a knock on effect "down-stream" at the DA stage, in that it would no longer be reasonable to rely upon community members having had appropriate time to consider and contribute to the LEPs informing DAs.

We have already seen this with the Complying Development System; the community still overwhelmingly presumes Councils are responsible for the outcomes being delivered under the relevant SEPP. This contributes a significant feeling of disengagement amongst the community with respect to the planning system. There is a significant sense within the community that planning decisions that affect them, are being made without them. The proposed approach would exacerbate this issue and result in entrenched dissatisfaction and apathy towards the planning process, which would make achieving positive outcomes within local communities extremely difficult.

More detail as to the nature of public exhibition of planning proposals is required. Often our increasingly diverse communities require additional assistance to access the planning system. This may be in the form of translated materials, workshops, drop-in sessions; it is important that enough time is afforded for exhibition materials to be prepared to meet these requirements when they arise. While this is generally not necessary for Category 1 and 2 proposals, Council's should have the option to undertake extended exhibition and additional exhibition activities in appropriate circumstances.

If this is not clearly acknowledged in the process, proponents will resist such activities as they increase the number of submissions and the feedback to be processed, and increase the potential for issues to be raised. It should be absolutely clear that effective engagement is the goal of the exhibition process, and reasonable requirements beyond simply publishing a proposal on the portal, extending to translation of materials in languages used widely in affected communities, workshops and drop-in sessions, may be required in appropriate circumstances.

Furthermore, as previously noted, consideration should be given to scaled timeframes to ensure sufficient time is afforded to high-interest proposals and proposals affecting a large number of people. This is required to ensure the additional time involved in such proposals is adequately allowed for to avoid unrealistic expectations.

Council recommends that the Department:

- **Amend the proposed process to more clearly confirm that while the Exhibition Stage commences upon confirmation of lodgement, the Exhibition Period only commences once notification has been provided to affected landowners and residents of the proposal, directing them to the portal (publication on the portal alone should not be considered sufficient to commence the Exhibition Period).**
- **Develop templates for exhibition materials and for submissions in consultation with stakeholders.**
- **Develop templates to exhibition assessment and responses for agencies.**
- **Add provision for planning proposal authorities to determine when additional exhibition elements such as translation of materials, workshops, drop-in session, webinars, and/or information sessions are required.**
- **Consider scaled timeframes for the exhibition stages of Category 2, 3 and 4 proposals within and not just between categories, with timeframes increasing as the number of properties to directly notified and/or the number of submissions received increases.**

Changes following exhibition

As previously noted, it is Council's strong view that the planning proposal authority should summarise submissions and lead agency consultation. The community reasonably expects to be able to make its case to the decision maker, in this case the planning proposal authority. Furthermore, the planning authority is tasked with ensuring relevant matters raised during consultation inform the assessment process appropriately. It is not sufficient nor appropriate for the private proponent to be tasked with processing and responding to submissions.

However, it is agreed that the proponent should be afforded an opportunity to review and respond to submissions. It is also agreed that this may trigger the need for amendments to the proposal. Thus, at the end of the exhibition stage, the planning proposal authority should issue a consultation report to the proponent, who should be given the opportunity to review the report and make amendments to the proposal if they wish. To minimise the time deal and acknowledging that that planning proposal authority still has a

further opportunity to request changes arising from their assessment, this consultation report should not be means for assessment matters to be raised. However, the consultation report should tabulate the issues raised and identify issues that will be considered as relevant to the merit assessment. Proponents should not expect planning authorities to provide more guidance than that noting that a further information request will be issued during the assessment stage if necessary.

Timeframes should also be imposed for the amendment of applications following exhibition. It is not appropriate for extended periods of time to elapse between the exhibition of a proposal and its assessment and determination. This should be scaled depending on the category of application, consideration should also be given to scaling timeframes according to the number of submissions.

Council recommends that the Department:

- **Assign responsibility for exhibition of proposals to Councils for private proponent-initiated proposals.**
- **Consider requiring the provision of a consultation report and developing a template in consultation with stakeholders.**

Information requests

The Discussion Paper states that ongoing requests for additional information can cause delays in the planning proposal process. As previously noted, anecdotally, private proponents are dissatisfied with the possibility in the current process that issues can be raised throughout the process.

Proponents expect to be able to make changes to proposals to address issues and avoid refusal of proposals. Further, it is more efficient to make changes to a proposal where issues can be addressed, than to refuse it and force the amended proposal through a review process or back to the start of the process. As this is not currently occurring, it is not currently a complaint; however, if a more limited approach to information requests is pursued that reduce the authority's ability to have issues addressed, it will likely result in increased refusals, increased reviews, and increased dissatisfaction with the process.

Currently, issues are identified at each stage of the process. Despite the dissatisfaction with multiple information requests, this is natural as the activity at each stage of process brings its own scrutiny to the proposal. The proposed changes to the process do not fundamentally change this. The scoping stage requires preliminary assessment of the proposal which may identify issues requiring the proponent to undertake work on their proposal. The exhibition period may see issues raised by the community and referral bodies that require the proponent to amend their proposal. Finally, the post-exhibition merit assessment may identify issues that require the proposal to be amended.

Given the above, the only way to maximise efficiency is to ensure that planning proposal authorities are able to seek additional information to address issues that arise at each of these stages. If the intent is to allow a single information request during the assessment period, 25 days is not sufficient time for category 2 and 3 proposals. Sufficiently reviewing the materials to identify the issues that need to be addressed and provide sufficient detail as to the nature of the issue to inform the changes required can take up to 90 days. Issues can relate to complex technical matters requiring interpretation of detailed studies and consideration as to whether they are threshold issues or whether they can be addressed. While it is possible to simply identify whether there are any issues faster, it is not possible to provide detailed enough advice to facilitate a single actionable information request.

Timeframes should also be imposed for the amendment of applications following information requests.

Council recommends that the Department:

- **Substantially extend the timeframe for authorities to issue additional information requests to ensure adequately detailed and exhaustive requests can be issued to more effectively reduce the number of requests that will be required.**
- **Set timeframes for the submission of additional information.**

Assessment and finalisation

The Discussion Paper outlines that following exhibition and any amendments made to the proposal by the proponent, Council proceeds to assess the planning proposal. It is Council's view that proponents should be afforded an opportunity to address issues raised during exhibition before assessment commences, and that following a sufficient assessment period, a further opportunity should be provided to amend the proposal and/or provide updated or additional supporting information, to address issues raised during assessment. It would be following this response to issues raised during assessment that a determination should be as to whether re-exhibition is required. Council supports the proposal for the planning proposal authority to be responsible for determining whether amendments require a re-exhibition of the proposal, Council also supports the retention of the planning proposal authority's existing ability to vary or defer any aspect of a proposal if appropriate.

The discussion paper indicates that the assessment process will be guided by the development of standard matters. Given the limited time provided in the context of Council elections, the Christmas holiday period, and the numerous other policy matters concurrently being progressed and implemented, Council has not reviewed the current matters of merit with respect to how they should be transferred to the new process. As previously noted, it's Council's recommendation that the merit test be tailored to the new process to further clarify what is being assessed at scoping and what is being assessed at the assessment stage.

Council recommends that the Department:

- **Clarify that the decision as to whether re-exhibition is required is to be made upon receipt of any changes required as a result of initial assessment.**
- **Review the current strategic merit test and revise it to create two fit-for-purpose merit tests: a scoping merit test and a merit test to be undertaken post-exhibition, in consultation with Councils.**

Conflicts of interest

Council agrees, in principle, that significant conflicts of interest should be managed by the use of an independent determining authority. It would be premature to propose an appropriate body in the absence of clarity as to precisely what conflicts of interest are to be considered significant enough to require an independent determining body, noting some conflicts can be managed by internal separation of assessment staff and a review mechanism where proposals are determined against staff recommendations, while others may benefit from the independence of local or regional panels.

Council recommends that the Department:

- **Develop clear definitions of levels of conflict and propose appropriate procedures to manage the different levels, in consultation with Councils.**

3e. New fee structure

The need for fees

The Discussion Paper explains how ad hoc / 'out of sequence' planning proposals initiated by private proponents are often used to achieve higher development yields than what is permitted under the existing planning controls. This means private proponents stand to realise considerable economic benefits from a planning proposal, with the higher development yields often generating a larger return on investment.

Council agrees with the Discussion Paper's assertion that councils have the right to be adequately compensated for the cost and time of assessing and determining proposals; "*Councils should not be left short-changed or with stretched resources*" (p. 31). Councils rely on these fees to fund staff and resources to assess and process planning proposals. As proponent-initiated planning proposals are often 'out of

sequence' with councils' work program and strategic reviews, occasionally additional resources are needed to process the proponent-initiated proposal to ensure the existing work program can continue.

The Discussion Paper outlines that proponents and industry bodies believe the planning proposal process is costly and at times unreasonable. Site specific planning proposals provide significant yield to proponents such that ensuring fees accommodate the costs of assessment is unlikely to inhibit positive proposals. Proponents who are not willing to pay fees with their lodged site-specific planning proposal have the option to wait for their site to be reviewed in line with a council's work program.

Council disagrees refund of fees not expended follows from the principle of reasonableness noting Councils are not proposed to be able to charge additional fees should costs exceed the statutory fees set. Refunds should be limited to partial refunds, and they should be limited to pre-assessment stage withdrawals. They should not be available with refusals, nor should they be available once an application has been submitted for assessment.

Scoping fees

As discussed above, the new approach seeks to introduce a mandatory scoping phase for the planning proposal process. It is proposed that any scoping fee structure would require a proponent to pay a fixed fee based on the application category (if known) when the scoping meeting is requested, and a scoping report is submitted to the rezoning authority (i.e. Council) for preliminary feedback. Alternatively, the fee would be payable when the rezoning authority confirms the category. The fee would cover the costs for any activity during scoping, including consultation with state agencies and providing written feedback.

While it is Council's preference to determine its own fees, to allow fees to be reviewed and set annually, in line with any resourcing, structural, or market changes that may impact how Council resources this service. If they are to be stator fees, they should be set to allow full cost recovery in most circumstances and should have provision for regular adjustment in line with inflation and regular review to ensure they keep pace with the market for services.

As previously noted, consideration should be given to a per meeting fee structure during this stage, noting many proposals benefit from iterative improvement over multiple meetings.

Council recommends that the Department:

- **Allow Councils to set fees for the Scoping stage.**
- **Consider a per meeting fee structure.**

Exhibition Fees

The Discussion Paper does not propose exhibition fees, as it proposed that the proponent undertake exhibition. This is not supported; it is Council's strong view that exhibition should be undertaken by the authority and not by private-proponents, further even if proponents are able to undertake certain exhibition activities, proposals will generate enquiries to Council, and Council's will also incur costs monitoring exhibitions to ensure they are undertaken appropriately.

Noting that it is Council's strong recommendation that exhibition of private proponent proposals be undertaken by the planning proposal authority Council recommends that the department incorporate exhibition fees into the proposed process. Regardless, Council will incur costs associated with the exhibition of proposals noting that whoever initiates and runs exhibition of a proposal, Council will receive enquires, and would also incur costs monitoring the exhibition process. Exhibition fees should be tiered by category and also within categories to cover the range from minimum exhibition to wider exhibitions that include drop-in sessions, and larger mail-outs or notifications.

Assessment fees

Councils currently charge fees for services under the *Local Government Act 1993* and can structure their fees and charges as they see fit. The Discussion Paper states that because the levying of fees is currently outside of the NSW Planning System, this has resulted in varying payment structures between councils with metropolitan councils charging much higher fees than regional councils.

Due to the variations and inconsistencies across fee structures across Councils in NSW, the Discussion Paper seeks feedback on whether a consistent fee structure and fee schedule be devised for councils, and what cost components need to be incorporated to ensure councils can employ the right staff and apply the right systems to efficiently assess and determine proposals.

The responsibility to determine a Council's fee structures should remain with councils. As per the current legislative framework, Councils should have the ability to determine how they will be accounting for their time, staffing, and resources. These cost components vary per council, and different Councils face different challenges resourcing this service. Councils should retain the discretion to determine its own cost recovery process and the administration of this process. The resourcing and technical needs of each council vary; the fee structure and fees should also vary to accommodate these nuances.

The Discussion Paper includes three assessment fee structures the Department is seeking feedback on. Whilst Council's preference for councils to continue to determine their own fee structure and schedule is clearly asserted above, Council has made the comments below for the Department's consideration should they choose to implement a state-wide approach managed by the NSW Planning System:

| Fee option | Council feedback |
|--|---|
| <p>Option 1: Fixed fees</p> <p>A fixed fee would be charged based on complexity and category. This would incur no additional fees for any necessary reviews; and a refund may be offered depending on the stage of the proposal being withdrawn</p> | <p>Recommended fee structure.</p> <p>A fixed fee structure based on category of planning proposal is what Council currently uses. It provides transparency and predictability for both Council and the proponent. Council has predetermined an appropriate fee based on the complexity and resourcing needed to assess and progress a planning proposal based on its categorisation, and proponents are able to easily estimate fees and project plan knowing the costs are fixed.</p> <p>Fixed fees present ease of administration.</p> |
| <p>Option 2: Variable fees</p> <p>Variable fees would be charged based on actual costs incurred as the planning proposal assessment and process progresses; including staff hours used and any consultant fees or other charges incurred for public hearings and so forth.</p> | <p>More complex fee structures that seek to track actual (hourly) costs incurred involve additional administration and thereby add time and cost to the process and are, therefore, not supported.</p> |
| <p>Option 3: Fixed and variable fees</p> <p>This would be a combination of both Option 1 and 2 and would include a fixed upfront fee based on the categorisation of the planning proposal, then variable fees would be charged once the planning proposal is finalised for staff hours that exceed the fixed fee.</p> | |

Planning guarantee

Comments with respect to timing and refunds are provided earlier in this submission.

Council strongly objects to idea of increasing refund amounts for each week a proposal does not meet a determination timeframe. Councils assess planning proposals in good faith on behalf of their communities. When timeframes exceed benchmarks it is the result of a need to work through challenging issues to achieve improved outcomes. Councils do this at increased cost, investing resources and staff in improving outcomes by improving the proposal during this time. While it is acknowledged there must be a balance between time, cost and quality, such a proposal would represent a gross imbalance at the expense of quality. It is the view of Council that sufficient improvement can be achieved without resorting to such a mechanism.

Council considers refunds to be suitable under certain circumstances, and this needs to be assessed on a case-by-case basis.

Council invests time and resources in progressing a planning proposal to any of the above milestones. The fee paid at lodgement, helps cover the costs incurred during the assessment process. Whilst the proponent may not be in favour of the outcome, Council is still incurring costs associated with the assessment process. Similarly, if a proponent does not have their proposal processed 'quickly' enough, costs are still incurred to deliver a complete, high-quality assessment and a refund under this circumstance is also not warranted.

A partial refund may be suitable subject to when the refund is requested, and the extent of work carried out by council staff. If a refund is requested early in the process (for example, when Council submits a request for more information) then a partial refund may be suitable. Similarly, if a refund is requested before drafting of an assessment report has commenced, a partial refund may be warranted.

It should also be acknowledged that the costs to Council are not simply the hourly rate of staff involved, there is also an opportunity cost. Councils are required to devote finite resources to out of sequence proposals at the cost of pursuing other community priorities that may increase in cost to pursue at a latter date. While Council is not proposing for the process to try and recover these costs, they are real, and it should be the intent to undertake a balanced and reasonable approach to fees and refunds, not an overly exhaustive and administratively intensive process.

Similar to the fee structure and schedule, the way refunds are managed should be at the discretion of councils. Councils are aware of how much time and resources have been committed to a progressing a proposal; is versed in the planning considerations and constraints that the assessment process is attempting to resolve; and is working directly with the proponent and therefore is aware of the level of cooperation from the proponent in their willingness to negotiate on a particular outcome or supply additional information to allow Council to continue its assessment. Therefore, the relevant planning authority carrying out the assessment (in our case, the City of Ryde) should be the body to determine whether a refund is suitable or not.

Council does not support refunds being available for proposals that exceed benchmark timeframes, recommending other mechanisms to ensure an effective and efficient process that will not leave communities out of pocket for work undertaken to improve or protect LEPs in good faith.

4. PART C: New appeals process

Options

The NSW Planning System currently allows for two reviews to be initiated within the planning proposal process. These both occur at the beginning of the process and include the 'rezoning review' (i.e. an appeal when there is a delay or council has not made a decision to forward the proposal for a Gateway determination) and the 'gateway review' (i.e. an appeal where council or the proponent is dissatisfied with the gateway determination). The Discussion Paper outlines that both of these processes occur prior to public exhibition, and there is no opportunity for a review or appeal towards or at the end of the process. It states that an appeal on the final decision delivers a 'real' outcome if successful (for example, an LEP amendment), whereas reviews/appeals earlier in the process only move a proponent a step forward in the process.

The Discussion Paper seeks feedback on some form of appeal mechanism at the end of the process for private proponents if progress has been delayed or if the proponent is dissatisfied with the final decision. Proponents will have a certain timeframe within which to lodge an appeal, similar to the right to appeal a decision about the merit of a development application.

Council strongly objects to the introduction of a court appeal mechanism.

Table 5 of the Discussion Paper outlines many of the key pros and cons of a court appeal mechanism (p. 37)

Table 5. Land and Environment Court

| Advantages | Disadvantages |
|---|---|
| <ul style="list-style-type: none"> • Established processes and procedures relating to merit review could be adapted. • Existing wide-reaching powers enable it to consider fresh evidence and exercise necessary powers. • Opportunity for conciliation allows parties to discuss and resolve issues. • Potential legal proceedings are a strong deterrent against delay or poor decision-making. | <ul style="list-style-type: none"> • Can be costly and time consuming – legal representation is not mandatory but is common. • No historical dealings with the merit of strategic planning decisions and may not currently have the expertise. • Adversarial process may not be suited to rezonings. • The court may have an issue intervening in the making of an LEP, being a form of delegated legislation (which is the role of the Minister for Planning and Public Spaces). |

All of the advantage listed in Table 5 can be achieved through an alternative review mechanism that does not involve the courts. Similarly, a non-court review mechanism could avoid all of the disadvantages listed in Table 5. Given this, it is unclear why a court mechanism would be pursued.

Further refinement of the process is required, particularly with respect to the exhibition stage, before Council can comment on who should be afforded review rights, what should be the scope of reviews, when reviews should be available, and who should undertake the reviews.

Council acknowledges that an appropriate review mechanism can assist in ensuring timely, efficient, transparent, and honest process.

Consideration should be given to as to if and when procedural and/or merit reviews should be available, as well as who should be afforded review rights.

Council recommends that the department explore options that utilise the expertise and independence of department staff, Local Panels, Regional Panels, in addition to the Independent Planning Commission. The appropriate review body may vary depending on the nature of the review proposed and/or the category of application.

As it is the view of Council that the proposed process requires further review and refinement, it would be premature to propose appropriate review triggers. These should be developed in consultation with stakeholders, after key issues with the currently proposed process are addressed.

5. PART D: Implementation

5a. Transparent engagement

The Discussion Paper outlines that the intention of the consultation period is to seek feedback on the concepts or principles of the new approach, rather than just implementing it. It is strongly recommended that a Consultation Outcomes Report be prepared and published for all councils and stakeholders to see the

collective feedback from those involved in the planning proposal process; and how the Department has specifically considered the feedback in preparing the new approach. This will help deliver transparency around decision making, and how the system has been updated to accommodate for the bespoke needs of different Councils across NSW, including regional and metro councils.

Further, it should be acknowledged that the planning proposal process doesn't just serve government and the industry, it also serves the community. The level of community engagement on this matter is manifestly insufficient and significantly greater effort should be made to inform the community of this proposed reform and to seek input onto their views and priorities. It should not be left to Council's to prosecute the case for this reform to Councilors and to the community and publication of the documents on the department portal and website is not sufficient to achieve wider community awareness and engagement. An appropriate promotional budget should be allocated to this reform, and targeted stakeholder activities should be undertaken to ensure a wide variety of voices representing the diversity of our community inform these improvements.

5b. Mechanisms for implementation

The Discussion Paper outlines that applying the new approach could involve both legislative and non-legislative changes. A legislative approach would involve amending the EP&A Act in addition to other mechanisms such as changes to ministerial directions, departmental secretary requirements, standard instrument, new regulations for agency engagement. This would increase the opportunity of the scale of changes and the flexibility in any reform and in principle is supported subject to collaboration with councils on the drafting of any amendments.

5c. Timing of changes

Council requests that the implementation of any new approach will need to be done in stages to allow a smooth transition, minimise disruption and uncertainty, and for councils to adjust their processes and resourcing. In addition, councils will need to be supported with policy guidance and education well in advance of the implementation of any changes.

In addition, Council requests that the Department consider how any changes to the planning proposal process are implemented in conjunction with the array of other reforms and changes that the Department is currently exhibiting or implementing. A well-considered timeline that maps out all the changes being made to planning legislation (whether the EP&A, Regulations or SEPPs) be compiled with dates to assist Council's awareness and understanding, and to help with resource allocation and project planning.