

28 February 2022

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

Via Planning Portal

Dear Paulina,

RE: A new approach to rezonings in NSW

The Urban Development Institute of Australia NSW (UDIA) is the peak industry body representing the leading participants in urban development in NSW. We have around 450 member companies that span all facets of the industry from developers, consultants, local government, and state agencies. UDIA advocates for the creation of Liveable, Affordable and Connected Smart Cities.

UDIA welcomes this opportunity to comment on the Discussion Paper: A New Approach to Rezonings (the Discussion Paper).

NSW has the slowest rezoning process of any state or territory in Australia, which is exacerbating the housing supply and affordability crisis. UDIA supports the intent of the reforms to introduce a more consistent, timely and transparent rezoning process. Any improvements to the process which will make NSW more competitive and ensure the efficient delivery of land for housing and employment is supported. However, the proposal outlined within the Discussion Paper runs the risk of being a more costly, lengthy and combative system, which lacks an empowered public authority to drive outcomes. A slow process will continue to see investment in NSW decrease and worsen the housing supply and affordability crisis.

The Discussion Paper fails to deal with the fundamental issue facing the rezoning process in NSW, the lack of coordination of stakeholders, in particular state agencies, and the facilitation of negotiated outcomes in a timely manner. Given the priority that the Government as a whole has placed on housing supply, now is the time for conversations across Ministers and responsible agencies to determine how best to tackle this fundamental and entrenched issue and to improve the rezoning process.

While the desire to address issues early, before a proposal is lodged and proceeds to exhibition is commendable, this needs to be balanced with the potential for increased costs due to the requirement for more detailed technical studies early in the process. It is not difficult to envisage a scenario where agencies and a planning proposal authority require Development Application (DA) level technical studies just to allow an application to be submitted. This will make the rezoning process unviable in NSW.

UDIA offers the following recommendations to improve the proposed process and deliver on the desired intent, and our submission provides further supporting commentary. Our recommendations are:

- 1. Cancel the current approach to amending the rezoning process and instead undertake a review of other jurisdictions in Australia and beyond to benchmark NSW performance and understand how quicker timeframes are achieved with the view to incorporate best practice improvements.**

2. Invest in a PDU style 'one stop shop' to manage and facilitate all rezoning proposals, providing state leadership and case management to the system. The return on investment through the efficient delivery of land for housing and employment for NSW, will far exceed the cost of resourcing.
3. Do not introduce the proposed terminology 'rezoning application' for proposals which are not related to land use zones as this will create confusion. Continue with the established and well accepted 'planning proposal' terminology.
4. DPE engages in a collaborative design process with industry to map out the scoping stage, including an assessment of strategic merit and level of detail required.
5. To speed up the rezoning process, introduce a mechanism to require state agency engagement and response within a reasonable timeframe during the scoping stage. State government to oversee this as part of the 'one stop shop'.
6. To provide investment certainty, establish a defined standard for information required during the scoping stage. This should include a list of all possible studies required, when they are required, the level of detail to be contained within the study and who can prepare them. Be prescriptive and do not use the terminology 'may be' or 'likely to be' required as is proposed in the LEP Plan Making Guidelines.
7. The regulated fee structure is supported but proponent fees overall should be reduced having regard to the increased role of proponents.
8. If an appeals process is established, then the Land & Environment Court should act as the review body and the existing process and procedures which relate to Development Applications be the foundation for the new process.
9. If the Independent Planning Commission is selected as the appeals body than a government and industry working group be established to co-design the process.

Background

The rezoning process in NSW is the slowest and most costly across all jurisdictions in Australia. This has impeded investment in the state and ultimately the delivery of much needed land for housing and employment. The stated average timeframe of 114 weeks in 2019, now reduced to 89 weeks, is inaccurate and is not a true reflection of the time taken from concept to final rezoning. UDIA NSW has recently undertaken a review of 34 precincts to determine the time taken from investigation to rezoning. For the 5 precincts, which had ultimately been rezoned, the process took on average more than 7 years. UDIA will shortly release a report identifying these issues and recommended solutions.

Many of the failures of the existing system occur due to an inability to get all parties, including state agencies, to agree on priorities and negotiate outcomes in a timely way. This often leads to rezonings becoming stalled in the system, some for many years. The introduction of the Planning Delivery Unit (PDU) in July 2020, was recognition that the system was broken and the significant negative impact this was having on the state's productivity and delivery of housing and jobs. The role of the PDU as a concierge and case manager has led to demonstrable results. Convening relevant parties to work together toward a solution, establishing an agreed mediation process, liaising between the consent authority and applicant, and using the Secretary's legislative step-in powers to decide in place of an approval body, has led to progress for proposals previously stuck in the system. UDIA continues to support the role of the PDU and recommends that this level of leadership be provided for all planning proposals.

Recommendations

The Productivity Commission and Department's own consultations have highlighted that the existing process is broken. And while the intent of the Discussion Paper, to improve rezoning timeframes, is strongly supported the proposed proponent led process will face the same issues as the current council(s) led process. In that engaging with state agencies and resolving issues in a timely and efficient manner is unachievable without State Government facilitation.

Jurisdictional Review

The Discussion Paper acknowledges that the system in NSW is far too slow but fails to benchmark NSW against other jurisdictions. Improved timeframes are welcome but will still keep NSW as the slowest rezoning process in the Country and do nothing to make NSW more competitive. DPE is encouraged to undertake a review of other Australian jurisdictions to understand how they are achieving more timely rezoning process and seek to adopt best practices.

UDIA Recommends:

- 1. Cancel the current approach to amending the rezoning process and instead undertake a review of other jurisdictions in Australia and beyond to benchmark NSW performance and understand how quicker timeframes are achieved with the view to incorporate best practice improvements.**

Role of State Government

UDIA is concerned that the proposed proponent-led approach will face the same, or worse, challenges in coordinating agencies as the existing one. While proponents are best placed to drive planning proposals from concept through to delivery, there remains a necessary role for State Government in facilitating the process, establishing state priorities and using their powers to resolve conflicts and deliver outcomes in a timely and consistent manner. The PDU has demonstrated the success of this facilitation and leadership role.

During the scoping stage of a proposal, which is envisaged as being proponent-led, there is no ability for proponents to compel agencies to meet, let alone negotiate outcomes and agree to priorities. The scoping stage further runs the risk of being derailed by local political agendas and influence without State Government leadership. The new proposed process divests responsibility from the state for the delivery of strategic plans, new housing and employment lands and may lead to a more expensive, slower and even less effective process in NSW.

UDIA recommends:

- 2. Invest in a PDU style 'one stop shop' to manage and facilitate all rezoning proposals, providing state leadership and case management to the system. The return on investment through the efficient delivery of land for housing and employment for NSW, will far exceed the cost of resourcing.**

Terminology

The proposed introduction of the new terminology 'rezoning application' to encompass all amendments to a Local Environmental Plan, irrespective of whether they seek to amend land use zones, is not supported. This is likely to make the process more confusing and does not align with the LEP Plan Making Guidelines. The established and well accepted terminology of 'planning proposal' should remain.

UDIA recommends:

- 3. Do not introduce the proposed terminology 'rezoning application' for proposals which are not related to land use zones as this will be confusing. Continue with the established and well accepted 'planning proposal' terminology.**

Level of detail required upfront

The new approach outlined within the discussion paper appears to heavily frontload the process to resolve issues prior to the lodgement of a planning proposal and the commencement of statutory timeframes. While the desire to address issues early in the process before a proposal is lodged and proceeds to exhibition is commendable, this needs to be balanced with the associated costs and level of certainty that the proposal has strategic merit. It is not difficult to envisage a scenario where agencies and a planning proposal authority require DA level technical studies just to allow an application to be submitted. This will make the rezoning process unviable.

Agencies and the planning proposal authority should determine if the proposal has strategic merit before requiring detailed technical studies. This should be done as an initial step of the scoping stage and facilitated by the state government 'one stop shop'.

The discussion paper includes a mechanism to proceed with a proposal if an agency fails to respond within an appropriate timeframe. However, this mechanism only exists once an application has been lodged. There is no such mechanism to require agencies to respond within a reasonable timeframe during the scoping stage. A mechanism of this nature is essential to ensure the scoping stage genuinely contributes to the improved timeframes. If comments are not received within a reasonable timeframe, the proponent should be able to lodge the proposal and the agency have no ability to comment further.

UDIA recommends:

- 4. DPE engages in a collaborative design process with industry to map out the scoping stage, including an assessment of strategic merit and level of detail required.**
- 5. To speed up the rezoning process, introduce a mechanism to require state agency engagement and response within a reasonable timeframe during the scoping stage. State government to oversee as part of the 'one stop shop'.**

The Discussion Paper proposes to provide greater certainty on when a technical study is required, and the level of detail within it. This would be a meaningful improvement to the process. However, the way this has been addressed within the LEP Plan Making Guidelines does not offer the level of certainty required. For the various complexity levels of a proposal, it includes the wording 'may be' or 'likely to be' required. This will mean planning proposal authorities and agencies still have discretion to decide what studies will be required and the level of detail needed. This will continue to exacerbate investment uncertainty and add significant costs to the scoping stage of the process.

UDIA Recommends:

- 6. To provide investment certainty, establish a defined standard for information required during the scoping stage. This should include a list of all possible studies required, when they are required, the level of detail to be contained within the study and who can prepare them. Be prescriptive and do not use the terminology 'may be' or 'likely to be' required as is proposed in the LEP Plan Making Guidelines.**

Fee Structure

The introduction of a regulated fee structure, which has regard to the LEP category, will improve consistency and certainty. However, this should not be used as an opportunity to further pass on costs to proponents.

The proposed new approach is attempting to simplify and streamline the process, reducing the involvement of local authorities and potentially agencies. In this regard it will require a higher degree of case management from proponents and will come with an increased burden on resources and costs. As such, the regulated fee structure is supported but proponent fees overall should be reduced having regard to the increased role of proponents.

UDIA Recommends:

- 7. The regulated fee structure is supported but proponent fees overall should be reduced having regard to the increased role of proponents.**

Appeals body

The introduction of an appeals process similar to that available for Development Applications is supported with qualifications. If introduced, the Land & Environment Court would be best placed to act as the appeal body. The Court has well established processes and procedures to deal with merit reviews for Development Applications. This could form the foundation for a planning proposals appeals pathway. The Independent Planning Commission, while potentially being quicker and cheaper, does not afford the level of procedural or legal fairness that the court provides and that the process warrants.

The grounds for an appeal could be greatly reduced if the state government took more of a 'case management' role to oversee the 'rezoning application' from start to end, including the management and coordination of state agencies and councils (see Recommendation 2).

UDIA recommends:

- 8. If an appeals process is established then the Land & Environment Court should act as the review body and the existing process and procedures which relate to Development Applications be the foundation for the new process.**
- 9. If the Independent Planning Commission is selected as the appeals body then a government and industry working group be established to co-design the process.**

Conclusion

Recognition by the Department that the rezoning process is broken and needs to be improved, and the preparation of the Discussion Paper are important first steps in creating a better system in NSW. UDIA NSW is supportive of the intent of the reforms to deliver a more timely and consistent rezoning process and we commend the work that has been done to date. While several of the proposals within the Discussion Paper have merit, overall, they fail to tackle by far the biggest single issue, lack of co-ordination, fail to learn from other jurisdictions and will make the re-zoning process worse, exacerbating the housing supply and affordability crisis.

Thank you again for the opportunity to make a submission on Discussion Paper: A new approach to rezoning. UDIA looks forward to continuing to work with the Department and Government to shape the future of the rezoning process in NSW. Should you have any further questions or to arrange a meeting, please contact Michael Murrell, Planning Policy Manager at [REDACTED] or [REDACTED].

Kind Regards,

[REDACTED]
Steve Mann
Chief Executive
UDIA NSW