



NSW Department of Planning and
Environment

**NSW Government Planning
Reform Action Plan,
changing the planning rules on a
particular piece of land – known as
rezoning**

Shelter NSW submission

28 February 2022



About Shelter NSW

Shelter NSW (Shelter) is a non-profit member-based organisation that was founded in 1975. We represent a diverse network of individuals and other organisations who share our vision of a sustainable housing system that provides a secure home for all. To advance our vision, we engage our members, experts, and partners on housing reforms that aim to benefit our economy, our society, and our environment.

Our work is focused on advocating and conducting housing research on behalf of NSW residents in housing need, particularly the third of households who are struggling due to housing affordability. These residents are increasingly found even in locations that are commonly considered “cheaper”, such as Sydney’s outer west and many regional centres across NSW.

Limited access to affordable housing is strongly correlated with those suburbs that have good access to transport, infrastructure, jobs, recreational facilities, and harbour foreshores. This situation is creating a clear divide and income polarisation across greater metropolitan Sydney as well as in some coastal locations.

About our submission

Shelter NSW appreciates the opportunity to comment on the Department of Planning, Industry, and Environment’s (DPIE) proposed changes to the planning rules on a particular piece of land – known as rezoning.

Shelter NSW supports the Government’s objective to provide clear guidance and increase the efficiency and transparency of the assessment process while also improving community engagement standards.

Our submission responds to the growing demand for the NSW planning system to deliver on its promise of a more equitable city, which includes building capacity to deliver affordable rental housing in one of the most expensive housing markets in the world.

Our aims align with the objective of the Environmental Planning and Assessment Act 1979 (d) to promote the delivery of, and to maintain, affordable housing. However, key barriers in meeting this objective and addressing both housing need and affordability are the expanding complexities of the planning system, the multi-layered planning approval pathways, and the lack of real commitment to deliver affordable rental housing options via the planning system.

Our submission is focused on the pressures associated with urban gentrification and the ongoing displacement of middle and lower-income households. Communities in suburbs with good access to infrastructure and services are slowly transforming from those made up of blue-collar workers and a mix of incomes, to high rise residential catering to only those on higher incomes. Access to affordable housing options is limited at best, and in some cases non-existent.

Shelter’s submission reflects the impact of these changes and provides feedback on the current planning reform process - basing our recommendations on feedback from community

organisations and industry stakeholders. We hope these insights help the Government in meeting its overall goals, while also addressing some of the current systemic failures.

A Fasttrack rezoning process should not undermine public confidence in the strategic planning process

Community and stakeholders are told that the prime time for people to get involved in the planning system is when the Local Environmental Planning (LEP) is being reviewed. During this process, all facets of infrastructure capacity (e.g., housing, roads, parking, transport, hospitals, schools, employment, recreational facilities and other amenities) as well as accumulative and social impacts are considered. The LEP review process also involves comprehensive consultation with the community, experts, stakeholders and businesses to deliver the agreed standards for future planning decisions.

While the Government continues to reference the need for greater accountability and transparency regarding the land rezoning process, we are concerned with ensuring that any fast-tracked rezoning process can still meet the object of the Environmental Planning and Assessment Act (EP&AAct) - to provide increased opportunity for community participation in environmental planning and assessment. Additionally, it must not erode community confidence in the LEP planning review process.

Shelter NSW supports the broader aims of the planning system to deliver affordable housing as a public benefit. A primary tool for delivering this public benefit is to capture some of the value generated through the land rezoning system. Our submission will highlight the current lack of consistency to deliver affordable housing, as well as the risks associated with adding 'fast track rezoning' which will further deteriorate the little amount of affordable housing being delivered.

Residential – housing targets

One of the arguments put forward by the development industry in support of a fast-track rezoning process is that Councils across metropolitan Sydney haven't met their housing targets. Conversely, we have checked with a number of Metropolitan Councils who have exceeded their target. One example is Waverley Council which has already met its housing target and is on track to exceed its 2036 target of 3,400 new dwellings. With this in mind, there should be no pressure associated with rezoning proposals regarding housing target requirements.

Shelter does not accept the premise that housing supply alone will deliver appropriate affordable housing, as evidenced in recent research by Dr Cameron Murray called 'The Australian Housing Supply Myth' 2019. The National Housing Finance and Investment Corporation's (NHFIC) recently released 'State of the Nation's Housing 2021-22' research report points out that new net housing supply is expected to outpace demand by 115,300 in 2022, and 35,500 in 2023. It also states that housing affordability for renters and first home buyers is still an issue. With these factors in mind, there should be no pressure connected with a rezoning proposal and the Department's broader housing targets.

Applicant driven planning proposals – delivering better urban planning outcomes

As the Department would be aware, nearly half of all spot rezoning proposals are proponent-initiated. These types of applications are not started by Council in consultation with the community, nor do they align with a formal strategic planning review process. Instead, they are driven by the individual interests of the landowners who stand to acquire substantial financial benefits from the process.

While we understand that there may be some merit in a percentage of applicant-driven rezoning proposals, these proposals lack a broader, precinct-wide, strategic evaluation. Our members have expressed concerns that a fast-track rezoning process would fail to address the intended effect of the land use zoning system and strategic assessment considerations. Therefore, any such fast-track rezoning proposal has the potential to undermine public confidence when it comes to community and stakeholder engagement in the LEP and DCP review processes.

We have provided a summary example and links in Appendix A, related to an applicant driven rezoning proposal in the Waverley Charing Cross precinct. It shows the determination associated with an applicant-driven process and the associated public perception and pushback. It also highlights the conflicts and the problems with the current spot rezoning systems, where applicants use numerous approval pathways. For the reasons evident in the case study, any proponent-initiated rezoning needs to ensure a clear delineation between the landowner and the assessment process so that no conflict of interest can occur. This case also exemplifies the possibility of the Planning Panel treating a land rezoning like it's a development application. As evident in the case study provided, this can further complicate the assessment and approval process and illustrates the potential for conflicts of interest associated with an applicant-driven rezoning proposal.

Rezoning and Affordable Housing – what role does the Government have?

The objective of the EP&AAct is to promote the delivery and maintenance of affordable housing. The Metropolitan and District Plans identify a general 5% affordable rental housing target, and 10% on Government-owned sites for rezoning. Shelter NSW saw the inclusion of an affordable rental housing target as a way to counteract the increasing income-polarisation across metropolitan Sydney.

The Greater Sydney Regional Plan and District Plans affordable rental targets went into operation in March 2018. However, due to a lack of Government commitment and any measurable requirements to implement these targets, the vast majority of rezoning projects across greater Sydney failed to deliver any. Over two decades, a few Councils with a commitment to delivering affordable housing linked with land value uplift have supplied around 1,500 affordable rental units in perpetuity as of February 2022. Of these, over 1000

are owned and managed by City West Housing, linked with the City of Sydney's historic affordable housing program¹.

Shelter NSW wrote to the Department in 2020 raising concerns around this matter and the number of Fastrack Gateway rezoning determinations which had no affordable housing contributions. The concerns we raised related specifically to research by Shelter NSW that showed that in 2020 over 2,000 residential dwellings were approved in the Parramatta LGA through rezoning, though not one affordable housing contribution was made². The Department's response to Shelter's concerns noted that unless the Council had done their affordable housing viability assessment, that they would not require affordable housing contributions.

If the Government had required these rezoning proposals to meet the District Plan target of 5%, this could have translated into approximately 100 affordable rental dwellings in Parramatta. Regrettably, these sites are now all rezoned and any opportunities to deliver affordable rental housing in Parramatta have been lost.

Furthermore, the Department's stated position that if the Council had an affordable housing contribution framework in place that they would then require a contribution to be made has also not been applied. On a number of major rezoning planning proposals within the City of Sydney and Inner West Councils, both of which have an affordable housing contribution system in place, the Government failed to have a consistent approach on these matters.

Even on Government-driven major rezoning sites such as Redfern/Waterloo, the Government has resisted delivering on its 10% affordable housing contribution commitment. They have taken the position that it will instead be included in the 30% social housing renewal target, even after earlier Masterplan statements included a commitment to delivering 10% affordable rental housing on top of the social housing contribution.

A more recent example of this scenario is the Sydney Metro City & Southwest rezoning project which aims to deliver 860 new dwellings and a new metro station in the Hills Shire but again, no affordable housing contribution is required. Another is the Bays West Place Strategy which did not include an overall affordable housing target but instead proposed an action for affordable housing targets to be addressed in the precinct-based masterplans. Conversely, the Northern Beaches Frenchs Forest Precinct Master Plan clearly states upfront that it will deliver 10% and 15% affordable housing targets across the two sites. These examples show an inconsistent approach on these matters when it comes to Government-driven major rezonings.

¹Source: Shelter Research.

² Reference Shelter NSW Submission. Rapid Assessment Framework. NSW Department of Planning, Industry, and Environment. Date 12.2.2021. Appendix A - Case Study: Major Development with no Affordable Housing. <https://sheltersnw.org.au/wp-content/uploads/2021/02/Rapid-Assessment-Framework-Shelter-NSW-submission.pdf>

The whole rezoning and affordable housing contribution system would be better served by a consistent approach from the Department. It is Shelter NSW's view that if it is government-owned land under a government-driven rezoning process it should at a minimum deliver on its own stated affordable housing target of 10%, rather than placing the whole burden on Metropolitan Councils.

Rezoning and Council-led Affordable Housing initiatives

Although many Metropolitan Councils do not have an affordable housing contribution system in place, those few Councils with a commitment have been continually frustrated by the length of time (years) and the barriers put in place by the Department regarding their affordable housing schemes. We have been advised that the Department takes years to inform the Council in writing that their scheme has been approved or rejected. Randwick Council, which the Department now points to as the model for delivering affordable housing contributions, was frustrated over the years of negotiation for Gateway approval on their affordable housing contributions connected with the new light rail corridors.

Similarly, Canada Bay, Ryde and Waverley Councils were also in negotiations with the Department for years, trying to get approval for a broad-based affordable housing contribution scheme similar to that now approved by the Department for the City of Sydney. Although Canada Bay historically had an affordable housing program, after drawn-out negotiation with the Department, they commissioned SGS Economics and Planning to do their current scheme. The SGS report was completed in 2019 in line with the Department requirements, but it took until May 2021 to be endorsed.

Another example is Waverley Council. It has had an affordable housing contribution scheme in place since 1996 and has delivered 44 units of affordable housing, 22 in perpetuity and 22 on leases of varying periods. Waverley Council has argued that it has already undertaken all the large-scale land rezoning, primarily in Bondi Junction. Therefore, the only way to deliver on its commitment to affordable housing through value capture is via an LGA-wide framework that would include spot rezoning and the associated planning benefits. However, the Department continues to block this pathway. Council's current Affordable Housing Contributions Scheme (2020) has sat with the Department for years with no written determination.

Ryde Council is another example where it took years for the Department to make a determination on its affordable housing contribution scheme, which resulted in an eventual rejection based on it being an LGA-wide framework, similar to that now approved for the City of Sydney.

It is evident that even for those Councils who have undertaken their 'Affordable Housing Study' and viability analysis, negotiation with the Department takes years. In the meantime, a significant percentage of rezonings are being approved with no affordable housing contributions. As a "workaround", Councils therefore often use a 'Planning Agreement' framework to deliver affordable housing contributions as it's the only avenue available to them.

As a result of the issues outlined above, opportunities to deliver any substantial affordable rental housing stock have not eventuated. In order for all levels of Governments to deliver such stock in perpetuity, the Department should be more flexible and allow councils to take a similar pathway to the City of Sydney Council's affordable housing contribution framework, or to allow for a standard 1% levy on all rezoning over a price range, similar to that being considered in Victoria. The Government should also meet its own commitment to deliver 10% affordable housing on all government-owned redevelopment masterplan sites and, in a situation where a mix of Government and private land is included in the rezoning process, a 5% affordable rental housing contribution should be required.

Recommendations

- Historically, proponent-led rezonings have not consistently produced outcomes for the public interest. Until and unless this changes, any fast-track rezoning process should not be proponent driven.
- Any rezoning Planning Proposals should be assessed (in detail) against the Local Strategic Planning controls, including a requirement for affordable housing.
- Councils should be allowed to implement a similar affordable housing contribution framework to that of the City of Sydney so that a percentage of affordable rental housing stock can be delivered through the rezoning process.
- The Government planning authority should meet its own commitment to delivering at least 10% affordable housing on all government-owned rezonings.

Thank you

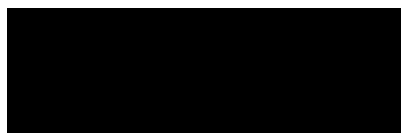
Shelter NSW appreciates the opportunity to comment on the 'NSW Government Planning Reform Action Plan, changing the planning rules on a particular piece of land – known as rezoning'. We hope that our comments provide some valuable insights to our strategic planning work in the housing space. We are also happy to engage with the Department on the issues raised in our submission. If you wish to discuss our submission in more detail, please contact Stacey Miers on [REDACTED] or by email at [REDACTED].

Sincerely Yours,



John Engeler

Chief Executive Officer, Shelter NSW



Stacey Miers

Principal Planning Officer, Shelter NSW

Appendix - Case study example - Charing Square Planning Proposal (PP)

June 2018 - First PP was lodged with a proposed height of 24m and a floor space ratio (FSR) of 2.85:1. Council officers met with the proponent to discuss the initial assessment. Following this meeting the proponent made revisions and submitted an amended PP reducing the proposed height from 24m to 18m and reducing the FSR from 2.85:1 to 2.65:1.

March 2019 - the applicant formally lodged a Rezoning Review to be considered by the State Planning Panel.

Nov 2019 - The rezoning review was held and determined that the PP should not be sent to Gateway as it did not have site-specific or strategic merit. The State Planning Panel indicated a height of around 13m would be better suited to the site and stated that if adjoining sites were included in the Planning Proposal, the strategic merit of the proposal would be improved.

April 2020 - The current PP was lodged with the State Planning Panel in line with the comments of previous Panel.

Dec 2021 - Feb 2022 - Public exhibition of the new PP was lodged with heights ranging from 10m-13.5m. The proposal now includes both the Eastern Suburbs Legions Club and the Reece Plumbing sites. Neither of these sites were owned by the applicant.

Public exhibition finished and Council officers are in the process of reviewing community feedback and preparing a recommendation to Council. Council will consider the proposal, the community feedback and the Council officer's recommendation.

The Community concerns regarding this PP were:

- General confusion over the numerous assessment and approval pathways the application has travelled, resulting in a very disjointed planning assessment process that lacks merit.
- The owner/ applicant perceived to have shown a high level of indifference to the concerns raised as part of the going community and stakeholder consultation.
- This proposal is based on numerous unsuccessful applications suggesting that the owner is prepared to keep accessing different approval pathways until they get their rezoning.
- The site-specific nature of the proposed rezoning includes land not owned by the applicant and this means that the proposed outcomes and deliverables cannot be guaranteed.
- The Planning Proposal ignored the Recommendations in the NSW State Heritage Inventory for the Charing Cross Urban Conservation Area.

Links

<https://haveyoursay.waverley.nsw.gov.au/charingsquareplanningproposal>

<https://www.facebook.com/CharingCrossVillagePrecinct/photos/a.835267523157247/5677831992234085/>

<https://www.savecharingcross.org/>