

10.4. Housing Density and the Housing Crisis - Development Application Process

AUTHOR	Stephen J Beattie Business Unit Manager Development Services
ENDORSED BY	Marcelo Occhiuzzi, Director Community, Planning and Environment
ATTACHMENTS	1. Mayoral Minute - 27 November 2023 [10.4.1 - 5 pages]
CSP LINK	3. Our Innovative City 3.2 North Sydney is smart and innovative 5. Our Civic Leadership 5.2 Strong civic leadership and customer focussed services 5.4 Council services are efficient and easy to access

PURPOSE:

The purpose of this report is to address various aspects of a Council resolution regarding strategic planning at the state level, housing density and affordability, and the Development process.

EXECUTIVE SUMMARY:

- In October 2023, the Minister for Planning wrote to all Councils in NSW requesting that planning controls be urgently reviewed to address the housing crisis in NSW.
- In response, Council considered a Mayoral Minute at its meeting on 27 November 2023, which included a request that:
Council undertake an urgent review of DA (development applications) assessment/determination times with reference to the model put forward by Newcastle City Council at the recent Local Government Conference and collaborate with other councils to adopt best practice.
- This report describes the Newcastle City Council model of development assessment in response to that resolution and provides an analysis of whether such model may be workable and successful in North Sydney.
- It also outlines what progress Council staff have made and are continuing to invest in, to achieve improved determination times and customer service in North Sydney.

RECOMMENDATION:

1. **THAT** Council note the contents of this report.
2. **THAT** a Council briefing be held to discuss opportunities contained within this report.

Background

Council, at its meeting of 27 November 2023, considered a Mayoral Minute (Attachment 1) which was prepared in response to a letter sent to all Councils by the Minister for Planning, Mr Paul Scully, in October 2023. The letter requested that all Councils urgently review their planning controls to enable a more flexible range of housing types and increased densities across their local government areas to address the housing crisis in NSW. Several months later, the Minister for Planning announced some dramatic proposed changes to planning controls in residential areas, which were exhibited during December 2023 to February 2024. This was reported to Council in February 2024.

In response to the Mayoral Minute of 27 November 2023, Council resolved:

1. *THAT Council write to the Minister for Planning seeking an urgent meeting to discuss housing density and the provision of vital social infrastructure.*
2. *THAT Council undertake an urgent review of DA assessment/determination times with reference to the model put forward by Newcastle City Council at the recent Local Government Conference and collaborate with other councils to adopt best practice;*
3. *THAT Council urge the State Government to improve DA assessment/determination times within their control by funding and requiring State Planning Panels to meet more frequently (for example, the Sydney North Planning Panel average assessment times for 2022/23 is 237 days);*
4. *THAT Council urge the State Government to retain the valuable Greater Cities Commission and, in the event that it is abolished, immediately release the draft housing targets prepared by the Greater Cities Commission and commence community consultation;*
5. *THAT Council urge the State Government to use the levers within its control to promote construction and completion of housing projects, including:*
 - a) *introducing a “use it or lose it” provision for development consents, reducing the lapsing provisions from five years to two years from determination;*
 - b) *immediately mandating inclusionary zoning for affordable housing in new residential development;*
 - c) *establishment of a funding model (such as the establishment of a State Housing Development Bank) to give certainty to the development/construction industry during this crisis by underwriting finance for residential construction in return for the transfer of permanent affordable/social housing or community facilities to the State and providing finance for “rent to own” projects;*
 - d) *advocating for changes to Commonwealth taxation policy to exempt the provision of employee housing from Fringe Benefits Tax to encourage the construction and provision of employee housing for schools and universities (both public and private), hospitals, fire service, even councils, so that key workers can live where they work;*
 - e) *focusing on and promote the construction of “rent to own” models;*
 - f) *Development of financial disincentives to halt the practice of land banking and unoccupied housing; and*
 - g) *the exploration and funding of creative pilot projects to address immediate housing need, such as Scandinavian housing models (like including housing for tertiary*

students as part of aged care facilities in return for volunteer hours that both provides housing and combats social isolation).

This report addresses resolution 2 above.

The Newcastle Fast Track system

Details of the City of Newcastle Council's (CoN) fast track system can be found by following this link:

[Eligibility Check - Accelerated Development Application - City of Newcastle \(nsw.gov.au\)](https://www.nsw.gov.au/eligibility-check-accelerated-development-application-city-of-newcastle).

The discussion below describes the various pathways adopted by the CoN to improve determination times. These are designed to enable fast determination of "low risk" applications. Eligible developments deemed to be low risk can include minor residential and ancillary developments, demolition, secondary dwellings, change of use, torrens and strata title subdivisions, signage, modifications, and industrial and commercial developments.

It is noted that the CoN has a mean Development Application (DA) determination time of times of 99 days for DAs and mean of 50 days for Modifications (YTD FY23/24).

Authorised Consultant Pathway

The Authorised Consultant pathway provides a development assessment process which facilitates suitably qualified planning professionals to assess specific DAs as outlined within that Council's authorised consultant DA packages. This allows the CoN to rely upon the information provided by an authorised consultant whilst retaining decision-making powers on DAs. Not all development may be pursued via this pathway and are limited to low impact development which are generally of a lower scale. Such applications are said to be determined within 10 days. Importantly, the initial checklist to determine whether a particular development may be eligible for an accelerated pathway, relies on a self-assessment of certain aspects of the development including whether the proposal exceeds certain development standards and controls such floor space ratio, height, setbacks, and others controls. It is akin to the establishment of a "complying development certificate" (CDC) framework that perhaps does not strictly qualify to be classified as complying development under the Act.

The authorised consultant provides an assessment report which is relied upon by the CoN for determination. The applicant pays the consultant directly. It is unclear as to what allowance is made for notification of DAs, but given the limited determination time and limited impact which is screened with the initial thresholds to be considered in this category of development, such limited timeframes cannot allow for meaningful community notification of DAs. This is the approach also taken with "complying development" which can be privately certified.

Accelerated Lodgement-Ready Pathway

The Accelerated Lodgement Ready (ALR) pathway at CoN is facilitated through the submission of an ALR request.

The ALR request service is provided free of charge and involves a preliminary review of the proposed development prior to lodgement in the NSW Planning Portal. Once reviewed and deemed satisfactory, the lodgement-ready application is eligible for an accelerated assessment, receiving determination within 15 days. Again, it is noted that community notification cannot really occur within such constrained timeframes. It is also not clear how long the preliminary review generally takes prior to the lodgement occurring.

Service Provided by North Sydney Council

North Sydney Council offers a pre-lodgement generally for one-time applicants through our planning advisors to assist by reviewing documents before lodgement and advising deficits or issues. A minimum processing time guarantee, however, is not offered and it is acknowledged that this is not highly patronised.

Formal paid pre-DA meetings are also available and are taken up by many applicants, particularly for larger or more complex applications. The primary outcome of these applications are formal minutes which give guidance on issues and outcomes, as well as providing guidance on submission requirements. Like any interaction of this type, the advice is only useful if acknowledged and subsequently used to refine a proposal. Most applicants amend their DAs following receipt of pre-DA advice and provide amended documentation for review (free of charge) prior to formally lodging their application.

Discussion

Application of the Newcastle model at North Sydney Council

Newcastle's promised 10–15-day turnaround does not allow for community consultation. As discussed above, the Newcastle approach is akin to a modification of complying development that can only be applied to low impact proposals.

The vast majority of North Sydney's DAs are advertised for a minimum of 14 days and occasionally, for more complex applications, 21 days. Modest extensions are granted beyond this, but it should be noted that all submissions received up to determination are considered, particularly when new potentially determinative issues are raised. Community consultation is important at North Sydney, and any decision to remove this component of the process would need careful consideration and discussion.

Whilst accelerated determination times are clearly desirable, the form of self-assessment is of concern and has proven problematic in Complying Development Certificates (CDCs). While this issue not common, it has been the source of considerable community concern in the past.

In the North Sydney environment, the benefit of having such a system is unclear, with its applicability being extremely limited without considerable revision of Council's response to adjoining owner notification and subsequent submissions. The unique character of North Sydney, its heritage, views, slope, and density, makes, what sometimes appear to be straightforward proposals, more challenging than the Newcastle model may be able to deal with.

Current Challenges to Better Processing Times

The NSW Planning Portal

The introduction of the NSW Planning Portal in 2019 (mandated in 2021) has presented several significant challenges in terms of system integration. Council's property and assessment systems are aged and are a significant barrier to a more efficient development assessment process. It is noted that the Portal is subject to ongoing enhancements and improvements to facilitate streamlined lodgement, consultation and decision making. There is an expectation that future portal enhancements will improve use of this mandated platform.

Prior to the introduction of the portal, Council's internal systems which facilitated the DA assessment process, comprised an application management system, a property information system and a document management system. The introduction of the portal introduced an additional system which needed to be serviced during the assessment process.

Prior to the introduction of the portal, all communication was between the applicant and the Council. The portal's role is to facilitate that communication while providing the Department of Planning, Housing, and Infrastructure, the opportunity to gather statistics on comparative performance between Councils. In effect it introduces a third party to what was previously a two-party process.

Council's relationship and integration with the planning portal has been much improved since its introduction but it continues to pose a degree of integration issues which are being worked through.

All applications and formal communication must be lodged through the portal, making it more difficult for one-off applicants to manage their own applications without assistance from planning professionals, architects, and others who are *au fait* with the system. The reach of the portal extends to various post consent approvals and planning proposals and in the future the whole of the planning process may well be facilitated by the portal.

North Sydney's Character

The well-established character of many parts of North Sydney comprises a complex relationship between landscape and tree canopy, heritage, views, vistas, topography, and streetscapes which are often of a modest scale. It is a character that is much loved and valued. Managing change, one of the principle purposes of the development assessment process, is

therefore challenging in North Sydney, especially in the context of accelerating change as is foreshadowed by current NSW Government proposals.

Community Engagement and Expectations

North Sydney has a long and proud history of genuine community engagement. Whilst the consultation that occurs as part of the development assessment process is somewhat limited as constrained by the *Environmental Planning and Assessment Act, 1979* (with a requisite expectation of a 40-day determination for the majority of DAs), engagement remains critically important in the North Sydney community. In this context, any reforms to the development assessment process must be carefully calibrated to balance quicker determination times with appropriate levels of stakeholder engagement.

Skills shortages in the market

Planners and regulatory staff tend to be highly mobile, and the challenges associated with staff movements have been common across many Councils across Sydney. North Sydney has not been immune from this. Needing to train new staff and the lead time for recruitment does not assist in meeting reasonable expectations of the community. It has also contributed to the backlog that staff have steadily broken down over the last six months.

Opportunities for improvement in processing times

Process Improvements

Council staff have embarked on a series of improvement initiatives in the last six months and these initiatives continues to be a priority. An internal working party has been set up to improve customer services responses, to review systems and procedures, and establish appropriate performance targets using other councils as benchmarks. This work is ongoing and has included:

- internal systems improvements by maximising the utility of Council's existing software and systems;
- process and handling improvements to minimise duplication and over-processing;
- Changes to delegations to reduce bottleneck issues arising;
- streamlining internal referrals;
- improved and more proactive customer contact;
- a concerted effort to clear the backlog of older applications in order that greater priority can be given to newer less complex applications that can be dealt with quickly. It is important that more simple applications are not delayed behind the more complex or controversial DAs;
- development of standard condition groups. Currently condition sets are built from a Standard Condition document, and this has led, on occasion, to inconsistency or error;
- standardisation and streamlining of assessment reports.

Changes to service levels

Currently, the approach taken by Council staff is to assist applicants to work towards an approval, including requests for further information and clarification throughout the process. The implication of this is that this process can be time consuming and add to assessment times.

In addition to measures recently implemented , including an improved “DA Clearing House” process which enables council to return poorly prepared or deficient applications quickly, consideration could be given to:

- the development of a process to deal with applications which on first assessment should simply be refused as the proposal is fundamentally flawed;
- Reducing tolerance for incompleteness of information provided on request and timeframes for provision of information.

While nominal performance may be improved by adopting a strict “no chance” or “one chance” to address identified issues policy and short comings in proposals, this is likely to lead to more customer complaints and potentially, appeals. This is, however, likely to be an effective way of reducing processing times and in the current climate of all matters that lead to the slow down of housing supply coming under close scrutiny, may well be a matter that would be worthwhile further exploring.

Review and simplification of Councils Development Control Plan

Council’s planning controls, especially the Development Control Plan, are complex and particularly lengthy, and can make the development application process more complex for both the applicant and the Councils in their assessment, leading to longer assessment times.

The complexity of planning controls also limits the ability of Council to automate application processes.

Council could consider undertaking a comprehensive review with a view to simplifying its Development Control Plan.

Reducing notification times

Council could reconsider its approach to community consultation and notification which would reduce processing times as is characteristic of the Newcastle model. This is a significant matter and one that would require further analysis and discussion.

System Improvement

The development application management system, supporting property system, the planning portal and the document management system do not fully integrate. This results in considerable manual processing.

Improving these systems will require a review of Councils broader enterprise system and will require significant investment. If funding were available, it is not expected implementation would be achievable within 3 years.

The current process mapping initiative being implemented will assist in the scoping and design of any new system.

Artificial Intelligence

The Department of Planning, Housing, and Infrastructure has developed an Artificial Intelligence (AI) Solutions Panel to consider how AI may assist in the development lodgement and assessment process. There is no doubt the use of AI would greatly assist in at least some of the development assessment functions that are currently required to be undertaken.

There is an active discussion occurring at present in this space. There are grants available at present to explore this further, however, North Sydney Council's systems are not yet AI ready and will require significant investment to achieve this.

Funding opportunities

Staff are presently preparing a Federal Government grant application to address some of these issues including the simplification and streamlining of the DCP as well as general assistance in the refinement of processes, systems and protocols that define Council's internal development assessment framework. With regard to the DCP, the intent would be not to fundamentally amend its controls, but merely to simplify and make as accessible and streamlined as possible.

Reconsideration of Authorised Consultant pathway

As implemented at CoN, the Authorised Consultant pathway provides a development assessment process for low impact development of a lower scale.

North Sydney Council offered a similar service in the late 1990s and early 2000s, but the consultant was appointed by Council and paid for by the applicant. At the time, the Department of Planning (DoP) advised that this gave priority to those willing or who were able to pay for the accelerated service and was therefore deemed to not be acceptable on that basis. The service was therefore ceased.

Council could reconsider the feasibility and practicality of introducing a new authorised consultant pathway.

Consultation requirements

Community engagement is not required.

8.3. MM03: Correspondence from the Hon. Paul Scully, MP Minister for Planning re housing density and the housing crisis

The North Sydney Local Government Area is one of the three most dense LGAs in the State (the others are the City of Sydney and Waverley Council). At 10.9km² with 67,558 residents, the density is 6,150 persons/km². For context, compare that to the Blacktown LGA with an area of 247 km² and a population of 336,962 or a density of 1,364 persons/km².

Within the North Sydney LGA, Milsons Point has a population density of 9,549 persons/km² and Crows Nest/St Leonards is currently at 8,858 persons/km². The population density planned just for Crows Nest/St Leonards under the 2036 Plan is 26,000 or 14,400 persons/km².

Council has consistently planned for and is meeting the housing density and employment targets provided by a succession of State Governments. Targets that recognise the proximity to excellent public transport and employment centres, including the North Sydney CBD and St Leonards.

Indeed, Council's Local Housing Strategy provides for sufficient land zoned to accommodate the required number of dwellings set by the State Government under the District North Plan and Crows Nest/St Leonards 2036 Plan.

The current national housing crisis is many decades in the making and the causes are complex and will require a nuanced and collaborative response from all levels of government and the private sector.

The Minister for Planning and the Premier's recent public statements, as reported by the media, seek to blame local government for the failures of successive State governments, over many decades, to provide sufficient social housing stock and to mandate affordable housing targets to accompany re-zonings (aka Planning Proposals) that have given windfall profits to the private development sector without delivering new affordable housing or sufficient social infrastructure such as open space and sporting facilities to accompany the increased population.

It is a combative narrative that dwells only on supply of new housing by the private sector and does not touch on other underlying and associated issues around the taxation system, the current high cost of financing for new development nor the fragile position of the construction industry post-pandemic.

For example, over the past decade, more than 2,000 private dwellings have been constructed along the Pacific Highway between Berry Street and Oxley Street. Far from reducing the prices of apartments, the prices in that corridor are at an all-time high, with no noticeable effect on the price of other housing stock.

It also fails to recognise that development approvals do not equate to completed dwellings.

For example, as at May 2023, Council had completed seven rezoning applications allowing for 887 new apartments just in the Crows Nest/St Leonards precinct alone. Of these, only one is under construction (for 120 units). Three had development applications being assessed and the remaining three had taken no action to seek consent for construction.

Since then, a site on the Pacific Highway at St Leonards that was rezoned in 2019, only just submitted the subsequent development application for 195 units in October 2023. That is, the rezoning took place nearly four years before the application for the building was lodged. Once approved, there is no requirement to commence construction and the development consent is valid for a further five years.

The reality is that rezoning and approvals alone are not the answer – councils cannot mandate commencement of construction nor completion of works.

On 31 October 2023 the Minister for Planning wrote to councils throughout the State and requested that the letter be tabled at the next ordinary Council meeting.

I **attach** a copy of the Minister’s letter dated 31 October 2023.

It is of grave concern that the Government this week announced that it intends to abolish the Greater Cities Commission at a time that they had prepared draft housing and employment targets to be consulted with communities, councils, and all relevant stakeholders.

Instead of an independent body determining targets, decision-making on density and housing targets will be concentrated with the Minister and the Department of Planning reducing transparency and undermining faith in the planning process.

The Greater Cities Commission (and the predecessor Greater Sydney Commission) produced ambitious targets that were not always agreed but were accepted because the process was transparent, rigorous, evidence-based and the subject of real consultation/collaboration with communities and councils.

The fact is that “density done well” starts and ends with trust. Communities will accept significant increases in housing density if they can trust that the that essential infrastructure such as open space, schools, hospitals, upgrades to sewer and water, will be delivered to meet the new population.

It is vital that the State Government stop the “blame game” combative rhetoric and work with councils, including ours, on these issues. There is enormous experience, expertise, and creativity in local government that the Minister should draw on, if only the Government would commit to meeting with LGNSW and councils such as ours.

Nevertheless, Council continues to seek to collaborate with the State Government to meet housing and employment targets.

In the spirit of collaboration and in response to the Minister’s letter, I therefore recommend:

- 1. THAT** Council write to the Minister for Planning seeking an urgent meeting to discuss housing density and the provision of vital social infrastructure.
- 2. THAT** Council undertake an urgent review of DA assessment/determination times with reference to the model put forward by Newcastle City Council at the recent Local Government Conference and collaborate with other councils to adopt best practice;
- 3. THAT** Council urge the State Government to improve DA assessment/determination times within their control by funding and requiring State Planning Panels to meet more frequently (for example, the Sydney North Planning Panel average assessment times for 2022/23 is 237 days);
- 4. THAT** Council urge the State Government to retain the valuable Greater Cities Commission and, in the event that it is abolished, immediately release the draft housing targets prepared by the Greater Cities Commission and commence community consultation;
- 5. THAT** Council urge the State Government to use the levers within its control to promote construction and completion of housing projects, including:
 - (a) introducing a “use it or lose it” provision for development consents, reducing the lapsing provisions from five years to two years from determination;
 - (b) immediately mandating inclusionary zoning for affordable housing in new residential development;
 - (c) establishment of a funding model (such as the establishment of a State Housing Development Bank) to give certainty to the development/construction industry during this crisis by underwriting finance for residential construction in return for the transfer of permanent affordable/social housing or community facilities to the State and providing finance for “rent to own” projects;
 - (d) advocating for changes to Commonwealth taxation policy to exempt the provision of employee housing from Fringe Benefits Tax to encourage the construction and provision of employee housing for schools and universities (both public and private), hospitals, fire service, even councils, so that key workers can live where they work;
 - (e) focussing on and promote the construction of “rent to own” models.
 - (f) Development of financial disincentives to halt the practice of land banking and unoccupied housing and
 - (g) the exploration and funding of creative pilot projects to address immediate housing need, such as Scandinavian housing models (like including housing for tertiary students as part of aged care facilities in return for volunteer hours that both provides housing and combats social isolation).

**COUNCILLOR ZOË BAKER
MAYOR**

The Hon Paul Scully MP
Minister for Planning and Public Spaces



Ref: MDPE23/3451

Clr Zoe Baker
Mayor
PO Box 12
NORTH SYDNEY NSW 2059
via: mayor@northsydney.nsw.gov.au

Dear Clr Baker,

I write to you regarding the need to allow for more housing in our low and medium density zones across New South Wales to help increase supply and diversity of homes we are delivering in our suburbs.

New South Wales is in a housing crisis. Through the National Housing Accord, councils and the NSW Government are committed to working together to look at every opportunity to address this crisis.

Our shared task is to approve and encourage the necessary investment and commencements for 377,000 homes by 2029.

The land use planning and assessment functions of councils and the Department will need to quickly adjust towards approaches that lead to more homes in well-located areas.

As a way to increase our housing numbers in NSW, the NSW Government has identified a number of limitations across the residential zones constraining our ability to deliver this diverse housing in our low and medium density areas. In Greater Sydney these include:

- Terraces, townhouses and 2 storey residential flat buildings (i.e. manor houses) are only permitted in the R2 low density residential zone in 2 of 35 Local Environmental Plans (LEPs) in Greater Sydney – just six per cent. This is despite 77 per cent of residential land being zoned R2. Even though the R3 medium density zones do allow terraces, they only make up 13% of residential land; and
- Residential flat buildings (RFBs) are only permitted in the R3 medium density zone in 47% of LEPs. Even though the R4 high density residential zones do allow RFBs, they only make up 3% of residential land.

The story is more mixed outside of our major cities but there are still opportunities available for the planning system to priorities low and mid-rise housing types in our main residential zones.

We are asking councils to review their local policy settings and approaches in the interests of housing supply. I ask you to identify existing well-located areas where terraces, small unit blocks or well-designed mid-rise apartments can be permitted.

52 Martin Place Sydney NSW 2000
GPO Box 5341 Sydney NSW 2001

02 7225 6080
nsw.gov.au/ministerscully

Research consistently shows that there is unmet demand for additional small apartment and low-rise multi-dwelling housing options as well as purpose-built rental and affordable and social housing.

With this in mind, the Department will be realigning its resources to support councils in these initiatives and is developing a tool kit to help councils and state agencies deliver the outcomes we need. Councils shouldn't wait for this work to happen, rather I am asking you to begin work identifying locations and permitting more low and mid-rise homes immediately.

This urgency for all of us to play our part to approve and deliver housing in all parts of New South Wales brings me to my final point. The upcoming 2024 NSW local government elections are scheduled to be held on Saturday 14 September 2024. The caretaker period will begin 4 weeks before on 16 August 2024.

The NSW local government elections may have an impact on some policy and program timeframes and exhibition dates and may impact on planning assessment timeframe targets.

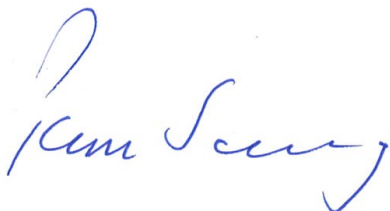
All planning assessments and other council responsibilities and operations should continue as normal until the start of the caretaker period. It is my express view that councils should continue to undertake their legal responsibilities under local government and planning legislation to make sure that we keep up the momentum on delivering the approvals for housing developments across New South Wales.

I would also request that this letter be tabled at your next council meeting so that councillors are clear about the State government's intentions on behalf of the people of NSW to deliver more low and mid-rise homes, while reminding them of their duty during election periods.

We all have a part to play in delivering on the National Housing Accord and a role in helping the next generation into home ownership or long-term rental. I urge you to look at your policy settings with the aim of expanding the number of homes in your LGA.

Should you have any questions regarding the housing reform work or to caretaker conventions for local government elections, please contact the Department at stakeholder.engagement@dpie.nsw.gov.au.

Yours sincerely



Paul Scully MP
Minister for Planning and Public Spaces

20/10/23