

## **Part 4 Development Assessment Guidelines – Consultation Draft UDIA NSW Submission August 2009**

### **General**

UDIA NSW supports the preparation of the Guidelines and appreciates the opportunity to provide comment. It is understood that the Guidelines are intended for use by a broad range of stakeholders and it is therefore important that the information within is clear, unambiguous, and simple to understand. In this regard, UDIA NSW has some concerns with the draft Guidelines.

UDIA NSW believes that the Guidelines reflect the underlying complexity of the NSW Planning System and are unnecessarily verbose. Overall the Guidelines could be improved by:

- more use of graphics and images to illustrate the various processes employed in the legislation;
- demonstrating a clear delineation between mandatory provisions and best-practice or 'rule of thumb' examples. UDIA NSW suggests the use of text boxes or another form of graphic distinction between the two;
- emphasising the need for the assessment process to be facilitative and positive towards applications – for example, on Page 13 *Timeframes where no additional information is required* – the Guidelines advise that 'If no additional information is required, the Council and the Government agency can continue assessing the application'. UDIA NSW recommends that 'can', be changed to 'should'. There are similar examples throughout the document which UDIA NSW believes should be similarly amended; and
- becoming a web based tool.

### **PART A**

#### **Integrated Development**

The rationalisation of referral and concurrence periods with government agencies is strongly supported. UDIA NSW is mindful of the need for Councils to maintain good relationships with Government agencies and this may result in Councils hesitating in making determinations in the absence of agency advice. UDIA NSW recommends that the Guidelines clearly emphasise that if a concurrence or a referral from the relevant agency is not received, the council can assume that the application is approved by the agency and must proceed with determining the application.

#### **Acceptance of the application**

UDIA NSW is concerned that there is no formal procedure identified in the Guidelines whereby a council is required to notify an applicant of the date on which the DA has been formally accepted by the council. As with the current provisions, it creates uncertainty as to when the deemed refusal period commences.

The Guidelines specify that the day of and the day after a DA is lodged in not counted as part of the seven day period within which the DA can be rejected. UDIA NSW understood that the

relevant assessment periods would commence the day after the lodgement of the DA – i.e. day one would be the day after the DA was lodged. This approach is consistent with the reckoning of time for appeal periods under the *Civil Procedure Act* and the *Uniform Civil Procedure Rules*.

With the assessment periods that are proposed in the Guidelines, it is possible that a DA could have been 'accepted' ten days from the date on which it was actually lodged. This would in effect extend the 50, 70, 90 day deemed refusal periods to 60, 80 and 100 days from the day the DA was lodged. UDIA NSW contends that this is highly undesirable and inconsistent with the intent of the reforms to Part 4.

The guidelines also introduce the concept of 'grossly inadequate'. This needs to be explained and examples provided.

### **Political donations**

UDIA NSW recommends that Guidelines provide advice to applicants on procedures relating to the disclosure of political donations. This has been omitted from the draft.

### **Modifications of consents**

The Guidelines state that a s.96(1) modification application which relates to the correction of minor errors or mis-descriptions should be determined within seven days of date of lodgement, which is supported by UDIA NSW. However, on page 22 of the Guidelines it provides that 50 days will be the deemed refusal period for an s.96(1) application. This is unwarranted. The deemed refusal period for a s.96(1) application should be significantly less than 50 days. UDIA NSW recommends that it be limited to a maximum of 20 days.

UDIA NSW contends that the 70 day deemed refusal period proposed for s.96(2) applications is inappropriate. The deemed refusal period for a s.96(2) application should be the same as the deemed refusal period for the original DA in accordance with Table 2 of the Guidelines. It is possible that the modifications sought could be other than minor in the context of the approved development but the whole development itself is not significant. It is therefore inappropriate that a s.96(2) application could have a deemed refusal period that is greater than the deemed refusal period for the original DA.

### **Notifying development applications**

The Guidelines should prescribe that any person making a submission must also disclose any political donations or gifts, consistent with the provisions of the EP&A Act, 1979.

### **Requests for additional information**

The Guidelines state that '*Applicants, Councils and Government Agencies are encouraged to reasonably consider what information is required to assess the DA*' UDIA NSW is concerned that this provision may create an environment where consent authorities request information that is superfluous to what is required to determine the application but leads to additional process time. UDIA NSW is aware for example of cases where a council continues to use the PMF as the basis for flood assessments putting applicants to unnecessary time arguing that this is not appropriate.

The Guidelines suggest that, '*An authority should not put an applicant through the time and expense of preparing additional documentation, plans and reports when the matter could be addressed by way of condition...*'. This is strongly supported by UDIA NSW. It is recommended that this advice be supported by some examples to illustrate the point.

## **Submission of additional information**

The Guidelines prescribe that any additional information requested by the consent authority must be provided within 21 days. While the intent of streamlining this process is supported, there will likely be circumstances where the provision of such information cannot realistically be delivered within the prescribed period, particularly if it was not identified during the pre-lodgement process.

UDIA NSW is not recommending a return to stop-the-clock provisions, but suggests that there must be provision within the Guidelines to account for this issue.

## **Timeframes after receipt of additional information**

The Guidelines provide that the consent authority must forward any public submissions received at the end of the notification period to specific agencies for consideration before the final concurrence or approval is granted. UDIA NSW is concerned that this provision is completely unnecessary, particularly if the submission is unrelated to the agency's portfolio. UDIA NSW recommends that this advice be removed from the Guidelines and if required, the legislation amended to remove such superfluous processes.

## **Conditions of consent**

It is currently common practice, particularly for large scale and more complex applications for councils to issue draft conditions of consent to applicants for review. This process helps to ensure that conditions are workable and reasonable and provides applicants with some certainty as to what expect from the consent and make any necessary arrangements. UDIA NSW recommends that this practice be identified in a positive light within the Guidelines as a optional course of action for consent authorities.

## **PART B**

### **Appendix C**

- Appendix C should include the *Affordable Rental Housing SEPP*.

### **Appendix E**

- UDIA NSW suggests that the DA Form Template include a field to nominate whether a pre-lodgement meeting has taken place and minutes from the meetings are attached to the application.

### **Development Application Supplementary Guide**

- Section 2 of the Guide prescribes that, *'The following plans need to be submitted with the form'*. UDIA NSW recommends that *'need'* be replaced with *'may'*, as some of the plans will not be required to assess and determine the application.

## **PART C**

### **Assessment – Section 79C Evaluation Guide**

UDIA NSW suggests that the guidelines explicitly advise that there is no hierarchy to the questions posed within the sub-sections of the Guide.

## Local Environmental Plans

UDIA NSW recommends that the *consideration of zone objectives* be added to the matters for consideration under Section 79C (1) (a)(i).

## Cumulative Impacts

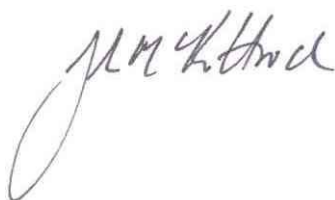
UDIA NSW is not aware that cumulative impacts are a consideration under the provisions of s.79C and is concerned that the issues identified within the Guidelines are onerous and may be subject to questionable and highly subjective assessment. UDIA NSW recommends that the consideration of cumulative impacts should be reasonable, tangible, only measurable against known benchmarks, and in the context of the proposed mitigation measures.

## CONCLUSION

UDIA NSW appreciates the opportunity to comment on the draft Development Assessment Guidelines. Part 4 of the *Environmental Planning and Assessment Act 1979*, is fundamental to the vast majority of development applications received in NSW and it is critical that the key reforms gazetted in 2008 are implemented effectively to deliver the intended benefits to the users of the NSW Planning System.

UDIA NSW would welcome the opportunity to meet with the Department of Planning to discuss any of the issues raised in this submission. In this regard I would invite you to contact Senior Policy Officer Tim Robertson (02)9868 3677 or [troberson@udia-nsw.com.au](mailto:troberson@udia-nsw.com.au) to arrange a suitable time.

Yours sincerely



Judy McKittrick  
**President**