

# Discussion Paper



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## NSW Development Assessment Reform

UDIA NSW is conscious that unreasonable delays and conditions are impeding supply of new dwellings in NSW. This is having a detrimental impact on affordability and is creating a serious disincentive for investors in this state.

UDIA NSW has a solution that would provide certainty, transparency and the timeliness necessary to facilitate sustainable development in NSW. Effectively, UDIA NSW advocates the separation of powers both at State and Local Government levels.

UDIA NSW recommends:

1. separation of powers both at State and Local Government levels. This proposal would create three development assessment streams:
  - i. delegation to local government officer level for small developments;
  - ii. determination of local complex projects by independent panels similar to the South Australian model; and
  - iii. determination of projects of state significance including all large subdivisions by a NSW Planning Commission.
2. a review of complying and exempt development to reduce the number of planning determinations where applications are consistent with the relevant planning instruments.

UDIA NSW's proposal ensures clear roles for elected officials, minimises conflicts of interest and matches skills and responsibilities. Furthermore, separation of powers has the advantage of diffusing adverse perceptions regarding political donations and their alleged impact on the decision making process. Most importantly, it allows governments to focus on strategic planning by reflecting community will through the creation of policy therein allowing expert panels to make decisions guided by those carefully constructed and detailed policies.

### Delays Detrimental to Affordability

UDIA NSW contends that there is considerable compelling evidence supporting the argument for effective assessment reform in NSW. The case for change is provided by industry and Department of Local Government research.

UDIA NSW has demonstrated the impact of delays on development feasibilities using a model 100 unit apartment that could conceivably be constructed in a major regional city centre such as Parramatta. The sensitivity analysis assumed that the project was approved and illustrated the impact on the project as a function of the time taken to determine the application.

DA approval period	60 days	150 days	240 days
Land	\$10,000,000	\$10,000,000	\$10,000,000
Consultants, construction, Council/S94	\$27,455,000	\$27,815,000	\$28,575,000
Land tax, rates, interest costs	\$2,744,500	\$3,380,000	\$3,712,000
Revenue	\$51,500,000	\$51,500,000	\$51,500,000
Gross profit	\$7,740,500	\$6,963,700	\$5,674,300
Development margin	20.2%	17.9%	14.1%
	<b>VIABLE</b>	<b>MARGINAL</b>	<b>UNFEASIBLE</b>

The above describes costs associated with land acquisition, construction costs, consultant fees and holding costs. The model is sensitive to holding costs which increase significantly over time. A perfectly viable project that will house over 200 people can be jeopardised in just 90 days. A request for a masterplan can add 150 days to processing times and alone can threaten feasibility.

UDIA NSW recognises that urban renewal projects are often controversial at the local level. Nevertheless, if there is intent in a council's Local Environmental Plan (LEP) and strategic policies to facilitate such development then the development assessment process needs to reflect that objective in practice and yield consents in a timely manner.

UDIA NSW members consistently report that this is simply not occurring. The Department of Local Government's *Comparative Information on Local Government Councils 2004/05* documents a sustained failure of many Sydney Metropolitan Councils to determine development applications within the 40 days prescribed under *Environmental Planning and Assessment Act 1979* (the Act). The report records that groups 1, 2 and 3 which exhibit most urban renewal activity have a mean time to determine applications of 74 days. The highest recorded mean time elapsed for a determination was 119 days.

These figures are necessarily misleading as they skew the real results for major projects. A majority of DAs would be for minor projects such as carports and renovations. It is the major proposals representing significant investment and risk that are more likely to suffer protracted delays.

### Part 3A

The introduction of Part 3A of the Act has achieved reasonable success in assessing projects of state significance. The *NSW Major Project Monitor 2005-06* reports that 350 proposals collectively worth \$5.8 billion have been assessed in that period. Approximately 60% of these projects were residential, commercial and coastal<sup>1</sup>.

UDIA NSW therefore respects the Minister's determination to expedite decision making in NSW through the adoption of Part 3A. Nevertheless, the fundamental weakness of Part 3A is two fold. Firstly, recent progress can be largely attributed to the Minister's determination to remove impediments to supply. A system that is dependent on the personality of its incumbent may not be so well served by the successor.

Secondly, Part 3A still lacks certainty in that in seeking to improve processing times the government created an additional level of assessment. A significant project must now be determined twice.

<sup>1</sup> Coastal comprises Tourism, Subdivisions, apartment/retail/commercial and Telco infrastructure

A concept plan is determined once to assess its suitability for the Part 3A. It is then determined under Part 3A or by Council depending on its fate. UDIA NSW members have expressed frustration at their application bouncing between council and state government for months before receiving a determination on whether indeed its is suitable for Part 3A. That is before the proper assessment process can begin.

Part 3A does have significant benefits over the preceding arrangement and accordingly retains considerable favour within the industry. Nevertheless, it is likely to have limited long term benefit if it is not amended to address the limitations described above.

## **Separation of Powers**

Greater demarcation is therefore required between state and local government. Increased delineation between the democratically elected representatives and the administrative officers is necessary to improve continuity and transparency

The Development Assessment Forum (DAF) recognised these issues and engaged the University of Canberra to prepare recommendations aimed at delivering a world's best practice development assessment in Australia. *Leveraging the Long-Term* was completed in a September 2003 and presented a leading practice model of development assessment process (see attached).

The paper presented many recommendations including track based assessment practice, single point assessment, defined third party involvement and increased private sector participation. Most importantly it advocated the separation of powers between elected representatives and the administrative officers.

Separation of powers is consistent with other forms of law such as criminal and taxation law. The politicians enact the laws and the bureaucracy and courts make decisions based on those laws. In this case, the politicians would dictate the planning laws through planning policy and development applications would subsequently be determined by officers and expert panels in adherence to those laws.

Presently, most applications are designated to officer level so this does not present many challenges beyond existing practice. UDIA NSW recognises the present acute labour shortage for planners in NSW and acknowledges the Minister's efforts in convening the Planning Professionals Working Group to produce *The NSW Planning Profession - Looking Forward* in November 2006.

To reduce the workload for the planning officers it is recommended that the use of exempt and complying development be increased where such developments are consistent with the relevant planning instruments. The Minister for Planning recently observed that NSW typically determines 120,000 DAs per year while Victoria manages 50,000 DAs in the same period. This suggests the need for a review of what constitutes exempt and complying development.

UDIA NSW appreciates that the use of Independent Hearing and Assessment Panels (IHAPs) is increasing. Nevertheless, their current role merely duplicates the officer's role in providing recommendations to Council. Effectively, IHAPs are reported to be causing delays as they are left with a mediation role, with the Department of Planning often compelled to intervene as an additional mediator to expedite matters.

UDIA NSW advocates that IHAPs or their equivalent be enabled to determine local complex applications. The University of Canberra identifies the South Australian (SA) model as a leading development assessment process. In SA panels typically consist of seven members with the following representation:

- a specialist/independent presiding member (who is not a member of council or council staff);
- at least three other specialist/independent members (who are not members of council or council staff);
- and
- up to three elected council members or council staff.

UDIA NSW does not necessarily advocate seven members but believes the work could be done with either three or five members especially when a single Land and Environment Court Commissioner can achieve similar results.

Separation of powers at local government would then afford the elected Councillors more opportunity to focus on strategic planning. Furthermore, it would negate opportunities for distortion of the planning process created by the perceived impact of political donations by developers. There is little incentive for the misuse of donations, especially at the local government level if the influence of individual councillors on the development assessment process is contained.

Finally, while Part 3A is acknowledged as a critical initiative it does not completely satisfy the industry's objectives of certainty, transparency and timelines for the aforementioned reasons. UDIA NSW therefore recommends the formation of a NSW Planning Commission modelled on the Western Australian Planning Commission (WAPC).

The WAPC consists of up to 15 members. These include an independent chairman, the directors' general of seven government agencies and representatives from economic, social and environmental areas, local government, regional development and coastal management. This infers some degree of independence but more importantly provides separation between the Minister and the application.

UDIA NSW recommends that all subdivisions above 100 lots and all projects of state significance defined by a threshold value exceeding for example \$30 million be determined by the planning commission. This would create a clear demarcation, provide certainty and negate the need for concept plan assessment as is experienced under Part 3A.

Nevertheless, it is expected that the Minister would reserve the right to call in and determine sensitive applications. It is acknowledged that it would be unreasonable for the Minister for Planning to effectively delegate all planning control.

The concept of a planning commission for NSW was advocated by Professor Ed Blakely, former chair of the Metropolitan Strategy Reference Panel. The advantage of a commission would also be to monitor the implementation of the metropolitan and regional strategies over the next 25 years. A centralised commission is therefore necessary to provide that degree of continuity and strategic oversight for such extended timeframes.

## **Recommendations**

In conclusion, UDIA NSW recommends:

1. separation of powers both at State and Local Government levels. This proposal would create three development assessment streams:
  - i. delegation to local government officer level for small developments;
  - ii. determination of local complex projects by independent panels similar to the South Australian model; and
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