

7 April 2021

Mr Rik Hart
Acting Chief Executive Officer
Central Coast Council
PO Box 20, Wyong NSW 2259

By email: ask@centralcoast.nsw.gov.au

Dear Rik,

UDIA Submission on Draft Policy for Development Application Functions

The Urban Development Institute of Australia, NSW (UDIA) is the leading industry body representing the interests of the urban development sector and has over 500 member companies in NSW. UDIA NSW advocates for the creation of Liveable, Affordable and Connected Smart Cities. Our Central Coast Chapter is focused on the delivery of housing, employment, infrastructure, and sustainable development in the region.

UDIA welcomes the opportunity to comment on the draft *Policy for Development Application Functions* (draft Policy). UDIA values the open relationship we have with Central Coast Council (Council), allowing for constructive dialogue between Council and our members on policies that impact the development sector.

Our organisations share a fundamental objective to continually improve the development assessment process for the Central Coast. We share the goal of more efficient, consistent, and effective development assessment services and support Council's intention to encourage the lodgement of high-quality applications. UDIA emphasises that the focus should be on workable approvals to meet the Central Coast's needs for housing and jobs as outlined in the *Central Coast Regional Plan 2036*.

We applaud and appreciate the draft Policy's aim to streamline the Development Application (DA) assessment process. However, we have strong concerns that the intent of the Policy could be lost in its implementation due to certain elements of its structure. Our submission outlines these concerns and offers the following recommendations to alleviate potential negative outcomes:

- 1. The Policy should include Council response times.**
- 2. The Policy's overall focus should be on outcomes. Rather than creating more hurdles and reasons to say no, the Policy should empower Council staff to work with proponents to find solutions.**
- 3. Expand Council's quarterly reporting to include additional development categories as outlined in our submission, development-related Court actions, receipt of contributions and results of a survey on the DA process.**
- 4. Where possible, Council should utilise conditions of consent and/or require full detail prior to Construction Certificate, instead of requiring full detail at DA assessment.**
- 5. Insert "and Schedule 1" so that clause 9 will read: "9. A development application must be made in accordance with Clause 50 and Schedule 1 of the Environmental Planning and Assessment Regulation 2000."**
- 6. Petition the LPP to accurately accommodate demand and ensure timeliness by either considering more than four proposals per meeting without the need to justify special circumstances, and/or planning more meetings as required by the DA pipeline.**

7. Provide the opportunity for at least one (1) request for information (RFI) and its response, with the opportunity to discuss and respond to such matters prior to determination.
8. To improve Agency responsiveness, Council should advise all referral Agencies of its intention to adopt a Policy to streamline the DA process and undertake a performance agreement with Agencies, actively seeking their cooperation and assistance through the timely issue of Agency concurrence; invite relevant Agencies to attend pre-lodgement meetings; note to Agencies that Council has the power to consent to an application under Part 4, Div 4.8 of the Act if the Authority fails to issue its General Terms of Approval within the time provisions provided under Part 6, Div 3 of the Regulations; and exercise its authority under the Act & Regulations where comments have not been provided by referral Agencies within prescribed periods.
9. Consistent with Department's *Best Practice Guidelines*, Council should provide appropriate and adequate resources to the pre-lodgement meeting process so that meetings can be arranged and then minutes issued in a timely manner. Clause 24 should be amended to read: "Council commits to providing clear, consistent *and timely* pre-lodgement advice", and Council should commit to meeting best practice guidelines for response timeframes.
10. Pre-lodgement meetings should emphasise inclusion, specificity, and responsiveness by implementing the following recommendations:
 - a. Key issues should be conveyed to all parties present, and the proponent should leave with a clear understanding of what Council staff are thinking. Council staff need to be clear up front and encouraged to provide their honest opinion as to whether the proposal has merit.
 - b. Council staff should be more site-specific in their comments and refer to policy, particularly in relation to flooding and ecology (e.g., provide updates of green corridors not previously mapped by Council). Council should identify key species for inclusion in any biodiversity assessment.
 - c. In the case of possible variations to DCP or LEP provisions, clear advice should be provided, rather than advising vaguely that "any variations should be properly supported and may be considered".
 - d. The meeting format should be flexible to enable the efficient participation of all relevant parties. Options should be provided for in-person meeting; video meeting; and written advice in lieu of a meeting. Our members have utilised other council pre-lodgement services where advice has simply been done by correspondence, and this can be effective.
 - e. In the event an individual specialist is unable to attend the pre-lodgement meeting, that individual specialist should be provided the opportunity to follow-up separately (similar to Expert Witness in a Court process) and file relevant points back through Council's meeting coordinator. These should be either included in general minutes or referenced as a supplementary.
 - f. It is imperative that the minutes accurately reflect the specific issues, discussion, advice provided and agreed matters. For efficiency, a template of draft minutes could be created where staff can focus on the unique details of the meeting's discussion.
 - g. Proponents should have the ability to seek further timely clarification between the previous meeting and time of DA lodgement.
 - h. Applicants should receive a credit (50%) of the pre-DA fee paid towards any future DA lodged. By the pre-lodgement meeting stage, Council's preliminary assessment should have commenced and typically such matters as relevant flood levels, access site lines, ecological conditions, site conditions from kerbside inspections, etc., have been undertaken. Future assessing officers should be able to rely on this pre-lodgement advice as appropriate input to future DA assessment.

In General

UDIA appreciates Council's attempt to promote more efficiency in development assessment and encourage good-quality submissions. Doing so has the potential to use Council resources more productively to the benefit of the region, including the development sector. We are concerned, however, that the draft Policy focuses mainly on prescriptive requirements for applicants, without commensurate specific commitments from Council.

UDIA understands Council's current unique and unfavourable operating environment, where staff reductions and other processing delays (e.g., information technology challenges) are expected to remain a considerable factor for several more years due to Council's financial position. We recognise that the current situation at Central Coast Council is anything but "business as usual" and we are concerned that Council staff will continue to be constrained for several weeks at a time in their ability to assess and review information submitted for any given application.

We note the draft Policy proposes to offer a withdrawal and refund of fees for DAs lacking information. Although this approach could be appropriate for some smaller-scale development, it is unlikely to be effective for mid-to large-scale DAs where significant costs have been invested in the preparation of the DA package. Council should be mindful that withdrawal does not allow Appeal rights. While Court is not a preferred pathway, it will be the logical pathway for some proponents who find Council to be too inflexible or onerous in its requirements for early information.

Set against this backdrop, UDIA questions whether the four-week turnaround timeframes are reasonable or realistic. The draft Policy applies the four-week time limits only to the applicants, with no undertaking as to Council's turnaround times for assessment. We recommend that Council response times also be outlined in the Policy, but that for both parties, the emphasis should be on meeting housing and jobs delivery outcomes.

Recommendation 1: The Policy should include response times for Council.

The development industry must do its part to work in good faith with Council and within the laws and regulations to propose permissible projects. Both industry and Council should respect the professionalism and time of the other and be mindful to work efficiently together.

Overall, UDIA recommends that Council work constructively with industry and focus on delivery outcomes. Rather than creating more hurdles and reasons to say no, the Policy should empower Council staff to work with proponents to find solutions.

Recommendation 2: The Policy's overall focus should be on outcomes. Rather than creating more hurdles and reasons to say no, the Policy should empower Council staff to work with proponents to find solutions.

UDIA understands that councils have legislative timeframes for DA assessment and that a council's performance is often measured against statewide timeframe averages and Departmental targets as Key Performance Indicators (KPI). These timeframes can be useful for their utility in promoting certainty and timely delivery outcomes, and we fully support their transparent reporting. However, the timeframe KPIs are not the outcome in themselves. Unfortunately, the system can be manipulated, and some councils can find themselves in the perverse situation of having what look like favourable assessment timeframe metrics, but not meeting their

housing and jobs needs. It is also true that for many councils, including Central Coast Council, reporting is skewed by the high numbers of simple, quickly-assessed DAs that mask the lower number of larger, more complex DAs – typical of UDIA members proposing land subdivision or larger urban development – that often fall outside assessment timeframe goals.

To more accurately reflect Council’s performance, UDIA recommends that Council expand its quarterly reporting and provide a deeper analysis of development categories rather than just median/average turnaround times.

Reporting should be broken down to include the following categories:

- Median turnaround times for DA’s >\$5M;
- Median turnaround times for DA’s >\$30M;
- Median turnaround times for DA’s involving the creation of more than 20 lots; and
- Median turnaround times for DA’s involving the creation of more than 100 lots.

Council should also report on the number of:

- Active development-related Court actions for the period;
- Number of resolved development-related Court actions for the period, and their outcomes; and
- Developer Contributions (Sec 7.11, Sec 7.12) and Developer Servicing contributions received.

Council should provide a survey and report on:

- Results of a survey of all mid- and large-scale applicants at determination, including questions on how constructive Council was through the DA process. UDIA would appreciate the opportunity to offer suggested questions for the survey.

Recommendation 3: Expand Council’s quarterly reporting to include additional development categories as outlined in our submission, development-related Court actions, receipt of contributions and results of a survey on the DA process.

The changes proposed in the draft Policy could require proponents to spend more money earlier in the planning process to make DAs more thorough and meet the expectations of Council. While in some instances this may be justified, our members already report examples at Central Coast Council where additional information was requested which could have been either conditioned in any consent, or full details provided at Construction Certificate (CC) stage. We recommend that where possible, Council utilise conditions and/or require full detail prior to CC, instead of requiring full detail at DA assessment. We would be pleased to work with Council to develop guidance on what information should reasonably be provided and when.

Recommendation 4: Council should utilise conditions of consent and/or require full detail prior to CC, instead of requiring full detail at DA assessment.

Amendment to Clause 9

We recommend amending clause 9 as follows. The draft Policy states:

9. A development application must be made in accordance with clause 50 of the Environmental Planning and Assessment Regulation 2000.

Recommendation 5: insert “and Schedule 1” so that clause 9 will read: 9. A development application must be made in accordance with clause 50 and Schedule 1 of the Environmental Planning and Assessment Regulation 2000.

Activity of Local Planning Panel

UDIA notes that at its meeting in December 2020, the Local Planning Panel (LPP) resolved to only consider four proposals per meeting. We are concerned that this arbitrary limit will constrain timely determinations on the Central Coast. We encourage Council to petition the LPP to accurately accommodate demand and ensure timeliness by either considering more than four proposals per meeting without the need to justify special circumstances, and/or planning more meetings as required by the DA pipeline. In other jurisdictions, panels have been known to meet several times a week at peak times, the key being responsiveness to real demand.

Recommendation 6: Petition the LPP to accurately accommodate demand and ensure timeliness by either considering more than four proposals per meeting without the need to justify special circumstances, and/or planning more meetings as required by the DA pipeline.

Assessable Applications

The draft Policy states:

13. As a rule, council will not request additional information on an application. The onus is on the applicant to ensure that the application, when submitted, is complete and ready for assessment.

14. Council will assess and determine an application on the information submitted upon lodgement.

16. Council will generally not place on hold an application waiting for information or request amendments or additional information except where, in the opinion of the Manager (or their delegate), minor issues can be resolved in a short timeframe (less than 4 weeks).

UDIA supports the intention to encourage high-quality, assessable applications; however, these clauses should provide reasonable flexibility. All applicants should be given the opportunity for at least one request for information (RFI) in recognition of the complexities of development. Despite best efforts to capture and address all issues identified prior to a pre-lodgement meeting and then prior to lodgement of the DA, it is inevitable that, particularly for larger projects, there is likely to be some refinement along the way – either in response to a concern raised by Council staff at the preliminary assessment stage, or in response to internal or external referrals. UDIA recommends that proponents be given the opportunity to discuss and respond to such unforeseen matters prior to determination.

The 4-week requirement may be unreasonable. For more complex applications, it is not uncommon to have a team of more than 10 specialist consultants involved in the DA preparation process. A change in one specialist report may result in consequential changes in other reports. Where information requires additional field work,

this takes time to schedule in; compile and document findings; then circulate to other team members to update any relevant plans or reports. We recommend that the proponent be afforded the opportunity to identify the likely time period required to provide the necessary information, or by other means provide some flexibility to the four-week metric – conscious that both parties are seeking a timely and workable determination.

The draft Policy assumes that proponents will follow the practical alternative to allowing a reasonable RFI process, i.e., that the application is withdrawn, the issue addressed, and the application re-lodged. We object to the withdrawal process where a constructive RFI could resolve the issue, particularly given Council's current IT situation which adds several weeks to lodgement while Council staff manually transfer applications from the Planning Portal to Council's computer system. Additionally, we again make the point that many proponents will not want to forfeit their right to Appeal and therefore will not choose to withdraw.

***Recommendation 7:** Applicants should be given the opportunity for at least one RFI and to identify a reasonable time period for response, conscious that both parties are seeking a timely and workable determination.*

Agency Referrals

The draft Policy states:

***19.** Where external agency referral bodies request additional information/amendments to a proposed development, Council officers will review the level of detail required and determine whether in the opinion of the Manager (or their delegate), the matters raised by the referral agency are minor issues can be resolved in a short timeframe (less than 4 weeks). If the issues are unlikely to be resolved within a short timeframe, the applicant may be requested to withdraw the application or the application may be determined based on the information submitted at time of lodgement.*

We support the Department's *Best Practice Guidelines* recommendation for pre-lodgement meetings: "...Have in attendance representatives from other authorities or state agencies where it's anticipated external referrals may require significant issues to be addressed."

Agencies should fully participate in pre-lodgement meetings and ideally issues can be addressed ahead of lodgement. However, new issues could arise during the formal referral process. Please refer to the previous observations regarding the proposed four-week turnaround and the need for some flexibility.

The issue of agency response times can also be problematic. Under the Act, most agency concurrence should be provided within four weeks. Unfortunately, the development industry and councils share a common frustration that external agency referral bodies often do not meet statutory response timeframes. Council staff and proponents are forced to waste precious resources chasing agency input. UDIA supports the implementation of ePlanning as one means to bring more transparency to agency referrals and ultimately drive more efficiency in the process. Currently, Council and development applicants on the Central Coast are not fully benefitting from ePlanning due to local IT challenges. We look forward to Central Coast Council's full integration with the Planning Portal which Council staff have advised may occur toward the end of 2021.

In order to facilitate more efficiency in agency referrals, UDIA recommends:

Recommendation 8: Council should

- Advise all referral Agencies of its intention to adopt a Policy to streamline the DA process and undertake a performance agreement with Agencies, actively seeking their cooperation and assistance through the timely issue of Agency concurrence;
 - Invite relevant Agencies to attend pre-lodgement meetings;
 - Note to Agencies that Council has the power to consent to an application under Part 4, Div 4.8 of the Act if the Authority fails to issue its General Terms of Approval within the time provisions provided under Part 6, Div 3 of the Regulations;
 - Exercise its authority under the Act & Regulations where comments have not been provided by referral Agencies within prescribed periods.
-

Pre-Lodgement Advice

The draft Policy states:

24. Council commits to providing clear and consistent pre-lodgement advice.

UDIA strongly endorses this commitment and commends Council for its inclusion. We recommend inserting the word “timely”, so that the clause reads, “Council commits to providing clear, consistent and timely pre-lodgement advice.”

The Department’s *Best Practice Guidelines* recommend “...Include formal records of the meeting which are to be copied to the property file and provided to the applicant **within two business days.**” [emphasis added]

We encourage Council to commit to meeting this recommended best practice. Unfortunately, many of our members report recent experiences where Council has taken six weeks to provide pre-lodgement meeting minutes.

We are also concerned that it can take up to six weeks to schedule the pre-lodgement meeting in the first place. Therefore, the pre-lodgement process has recently been taking *three months*. For larger and more complex sites, proponents may have entered into a contractual Due Diligence period typically ranging 30 – 90 days. In other words, the Due Diligence period may expire before the pre-lodgement process can be completed, and the agreement may fall over. Such experiences discourage investment on the Coast.

Consistent with the Department’s *Best Practice Guidelines* it is important that Council provide appropriate and adequate resources to the pre-lodgement meeting process so that meetings can be arranged and then minutes issued in a timely manner, so proponents have sufficient time to undertake further specific investigations as a result of pre-lodgement discussions.

If Council will impose timeframes on applicants, it is reasonable that Council should also meet the best practice timeframes. This will promote trust between Council and the development sector and enable more timely delivery of jobs and housing.

Recommendation 9: Consistent with Department’s Best Practice Guidelines, Council should provide appropriate and adequate resources to the pre-lodgement meeting process so that meetings can be arranged and then minutes issued in a timely manner. Clause 24 should be amended to read: “Council commits to providing clear, consistent and timely pre-lodgement advice”, and Council should commit to meeting best practice guidelines for response timeframes.

UDIA recommends the following approaches for pre-lodgement meetings:

- Key issues should be conveyed to all parties present, and the proponent should leave with a clear understanding of what Council staff are thinking. Council staff need to be clear up front and encouraged to provide their honest opinion as to whether the proposal has merit.
- Council staff should be more site-specific in their comments and refer to policy, particularly in relation to flooding and ecology (e.g., provide updates of green corridors not previously mapped by Council). Council should identify key species for inclusion in any biodiversity assessment.
- In the case of possible variations to DCP or LEP provisions, clear advice should be provided, rather than advising vaguely that “any variations should be properly supported and may be considered”.
- The meeting format should be flexible to enable the efficient participation of all relevant parties. Options should be provided for in-person meeting; video meeting; and written advice in lieu of a meeting. Our members have utilised other council pre-lodgement services where advice has simply been done by correspondence, and this can be effective.
- In the event an individual specialist is unable to attend the pre-lodgement meeting, that individual specialist should be provided the opportunity to follow-up separately (similar to Expert Witness in a Court process) and file relevant points back through Council’s meeting coordinator. These should be either included in general minutes, or referenced as a supplementary.
- It is imperative that the minutes accurately reflect the specific issues, discussion, advice provided and agreed matters. For efficiency, a template of draft minutes could be created where staff can focus on the unique details of the meeting’s discussion.
- Proponents should have the ability to seek further timely clarification between the previous meeting and time of DA lodgement.
- Applicants should receive a credit (50%) of the pre-DA fee paid towards any future DA lodged. By the pre-lodgement meeting stage, Council’s preliminary assessment should have commenced and typically such matters as relevant flood levels, access site lines, ecological conditions, site conditions from kerbside inspections, etc., have been undertaken. Future assessing officers should be able to rely on this pre-lodgement advice as appropriate input to future DA assessment.

Recommendations 10 a-h: Pre-lodgement meetings should emphasise inclusion, specificity, and responsiveness by implementing the outlined recommendations.

Conclusion

UDIA appreciates this opportunity to offer our recommendations aimed at improving the development assessment process for the Central Coast. The ultimate success of this Policy will not be measured simply on the

number of development applications determined, but also how those determinations have led to new jobs, housing supply and economic growth in the region.

Should you have any questions or wish to arrange a meeting to discuss further, please contact Elizabeth York, Regional Manager at eyork@udiansw.com.au or 0434 914 901.

Yours sincerely,



Steve Mann
Chief Executive
UDIA NSW



Caine King
Chair Central Coast Chapter
UDIA NSW

cc: Malcolm Ryan
Andrew Roach
Dan Simpkins