

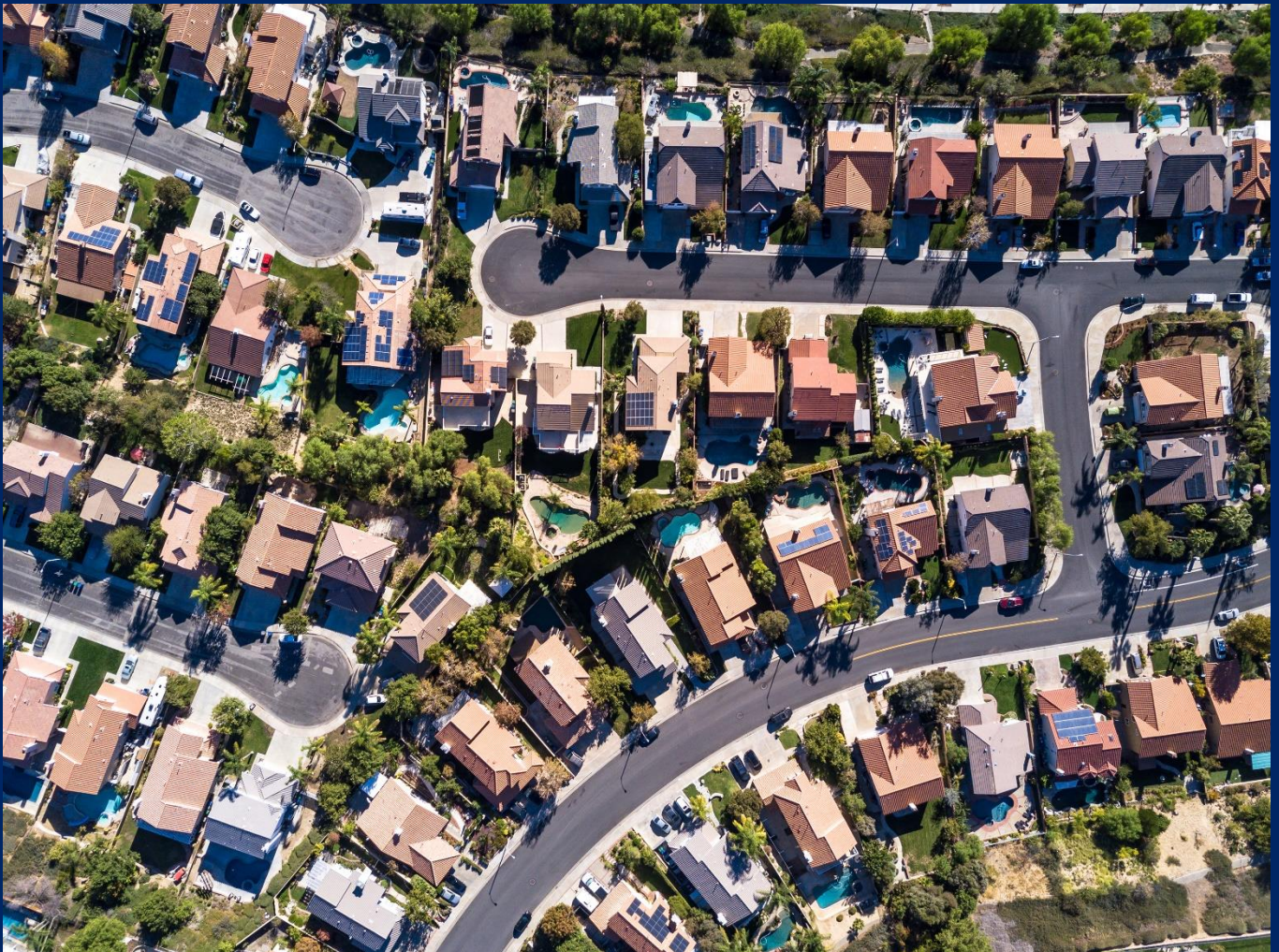
Department of Planning and Environment

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23A Guidelines on the withdrawal of Development Applications

October 2023





Acknowledgement of Country

The Department of Planning and Environment acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

Published by NSW Department of Planning and Environment

dpie.nsw.gov.au

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First published: October 2023

ISBN/ISSN: 978-1-922001-96-2

Department reference number: A871143

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Contents

Introduction and purpose	4
Legislative responsibilities.....	5
Council responsibilities	5
Enforcement of these Guidelines.....	6

Introduction and purpose

The NSW Government recognises the importance of providing more housing opportunities for people to help drive down the cost of housing and boost the economic productivity of the State. Making sure housing is affordable and within the reach of services and infrastructure is a fundamental human right.

NSW councils have an important role to play in housing delivery through their planning and approval processes. Many councils across the State, particularly in regional areas, have identified the need to urgently address growing unaffordability of housing.

Based on projections an additional 900,000 new homes need to be built in NSW by 2041. However, NSW has already projected a housing construction shortfall of 134,000 homes based on data prepared as part of the National Housing Accord.

There are many policies and issues that will play a part in addressing NSW's shortfall in housing. One of those issues will be ensuring the NSW Planning System, including the development assessment processes of councils, is not delaying or hindering the potential pipeline of housing projects.

The Department of Planning and Environment (DPE) reports the processing times for development applications have blown out from an average of 69 days in July 2021 to an average of 116 days in March 2023. Action is needed by all councils to reverse this trend.

The *Guidelines for the Withdrawal of Development Applications* (the Guidelines), issued under Section 23A of the *Local Government Act 1993* (LG Act), require councils to consider and apply all necessary measures to accelerate their development assessment processes. While councils need to be accountable for their speed in decisions, of particular concern is the practice of encouraging applicants to withdraw development applications rather than assessing them.

The Guidelines are issued with the approval of the Minister for Planning and Public Spaces, The Hon. Paul Scully MP, who has been consulted in their development.



Brett Whitworth

Deputy Secretary, Local Government

Legislative responsibilities

The Guidelines support councils' legislative responsibilities and provide sector-wide guidance on how to manage the withdrawal of development applications.

The lodgement and consideration of development applications (DAs) is regulated by the *Environmental Planning and Assessment Act, 1979 (EP&A Act)*.

Development applications assessed under the EP&A Act are required to meet and follow the processes set out in the *Environmental Planning and Assessment Regulation 2021 (EP&A Regulation)*.

The Guidelines support a range of key legislative provisions about the lodgement, rejection, and withdrawal of DA's including:

1. Clause 24 of the EP&A Regulation which sets out the content, form and information that is to be provided with a DA
2. Clauses 24 and 36 of the EP&A Regulation which sets out the process of lodgement of a DA
3. Clause 39 of the EP&A Regulation allows a council to reject a DA if it is illegible or unclear as to the development sought, or does not contain the information required by the EP&A Regulation to enable assessment, and
4. Clause 40 of the EP&A Regulation allows an applicant to withdraw an application.

Council responsibilities

NSW Councils have an important role to play in housing delivery through their planning and approval processes. The Guidelines require councils to consider and apply all necessary measures to accelerate their development assessment processes.

The Guidelines are intended to supplement DPE's Development Assessment Best Practice Guide.

Under the *Guidelines for the Withdrawal of Development Applications*, councils must be satisfied that the request to withdraw a DA is consistent with the following principles:

1. Councils in NSW can contribute to the challenge of addressing the State's housing shortage through their responsibilities as local planning authorities.
2. The expeditious assessment and determination of DAs creates a pipeline of development proposals with housing opportunities.
3. Councils in NSW are required to devote appropriate resources to their planning and assessment teams to ensure development applications are assessed and determined within reasonable timeframes, consistent with the *Environmental Planning and Assessment (Statement of Expectations) Order 2021* as issued under section 9.6(9) of the EP&A Act.
4. Councils are not to engage in practices of delay in assessing applications, including unnecessarily asking applicants to provide information not necessary for the assessment of the proposal or seeking the applicant to withdraw the proposal.
5. The request to withdraw a DA is consistent with the Best Practice Guide and the request is not intended to enhance council's performance data outcomes.

6. Data from the NSW Planning Portal will continue to be used to show the performance of councils in the assessment of development.

Enforcement of these Guidelines

The Guidelines issued under section 23A of the LG Act require councils to consider the Guidelines in exercising its function.

Council's performance in the assessment of DAs against these s23A Guidelines can be taken into account by the Minister for Planning and Public Spaces when considering whether council's performance against the *Environmental Planning and Assessment (Statement of Expectations) Order 2021* has been satisfactory.

The Minister for Planning and Public Spaces retains the power to review how a council exercises its planning powers when considering the issue of Directions under Division 9.1 of the EP&A Act to a council or the exercise of intervention powers, including the removal of planning powers.

A council's failure to act in accordance with the Guidelines could inform the Minister for Local Government decision to exercise intervention powers under the LG Act, including the issue of performance improvement orders (PIOs).