

Department of Planning, Housing and Infrastructure


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Prioritising rezonings that deliver social and affordable housing

Program Guideline

May 2024



Acknowledgement of Country

The Department of Planning, Housing and Infrastructure 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.

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Overview

The NSW Government is committed to ensuring every person in NSW has access to a safe and secure home. Housing affordability and availability is one of the biggest pressures facing the people of our state. Responding to the housing crisis is a matter of state and regional significance for environmental planning. We need to do everything possible to find homes for people, working more effectively to deliver more social and affordable housing to support those in need.

To support this delivery, the NSW Government is introducing a clear and streamlined rezoning process for the state's housing agencies to deliver a strong pipeline of social and affordable homes.

More effective, streamlined planning of appropriate sites will deliver more social and affordable homes in NSW sooner. Beginning in 2024, the NSW Department of Planning, Housing and Infrastructure will accelerate strategically important rezonings that are designed to deliver social and affordable housing. The process will be managed by a dedicated project delivery team within the Department of Planning, Housing and Infrastructure.

About the rezoning pathway

The Department of Planning, Housing and Infrastructure (the department) is implementing a new pathway for rezoning proposals by the state's housing agencies within Homes NSW (NSW Land and Housing Corporation and the Aboriginal Housing Office) and Landcom. The department will lead the assessment of proposals by Homes NSW's housing agencies and Landcom, rather than councils. This will be for sites that deliver an increase in social and affordable housing in NSW.

The process is consistent with the objectives of the *Environmental Planning and Assessment Act 1979* (NSW). The Act allows the Governor of NSW to make environmental planning instruments that can amend local council planning controls for matters that – in the opinion of the Minister for Planning – are of state or regional significance for environmental planning (Section 3.29 *EP&A Act 1979*).

Key objectives

The objectives of the rezoning pathway are to:

- accelerate the delivery of more social and affordable homes in NSW
- ease pressure on social and affordable housing waiting lists in NSW
- increase investor confidence in social and affordable housing projects in NSW.

Definitions of housing and income

- **Social housing** is secure, affordable housing for people on low to moderate incomes who have a housing need. It includes public housing properties managed by the Department of Communities and Justice/Homes NSW (Land and Housing Corporation and the Aboriginal Housing Office), and community housing properties managed by the not-for-profit, non-government registered community housing organisations¹. The rent is subsidised by the housing provider and most tenants pay between 25% to 30% of their income on rent if they meet the income eligibility. Tenancies are managed by social housing providers in line with the *Residential Tenancies Act 2010* (NSW).
- **Affordable housing** (and applicable households) is defined in section 1.4(1) of the *Environmental Planning and Assessment Act 1979* (NSW) and section 13 of the *State Environmental Planning Policy (Housing) 2021* (NSW) as:

¹ [Applying for social housing | Family & Community Services \(nsw.gov.au\)](https://www.nsw.gov.au/family-community-services)

- in section 1.4(1) of the *Environmental Planning and Assessment Act 1979* (NSW) – housing for very low-income households, low-income households or moderate-income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument; and subsequently
- in section 13 of the *State Environmental Planning Policy (Housing) 2021* (NSW) – a household is taken to be a very low-income household, low-income household or moderate-income household if:
 - a. the household –
 - i. has a gross income within the following ranges of percentages of the median household income for Greater Sydney or the rest of NSW –
 - (A) very low-income household – less than 50%
 - (B) low-income household – 50% to less than 80%
 - (C) moderate-income household – 80% to 120%
 - ii. pays no more than 30% of the gross income in rent, or
 - b. the household –
 - i. is eligible to occupy rental accommodation under the National Rental Affordability Scheme, and
 - ii. pays no more rent than the rent that would be charged if the household were to occupy rental accommodation under the scheme.

According to section 13 of the *State Environmental Planning Policy (Housing) 2021* (NSW):

Greater Sydney means the area that the Australian Bureau of Statistics determines from time to time to be the Greater Sydney – Greater Capital City Statistical Area.

National Rental Affordability Scheme has the same meaning as in the *National Rental Affordability Scheme Act 2008* of the Commonwealth.

Rest of NSW means the area that the Australian Bureau of Statistics determines from time to time to be the Rest of NSW – Greater Capital City Statistical Area.

In other words, applicable households are those people on very low, low and moderate incomes who are tested against household income thresholds. A household is considered to be a very low-, low- or moderate-income household if:

- **Very low-income household** – the gross income is less than 50% of the median household income for Greater Sydney or the Rest of NSW
- **Low-income household** – the gross income is 50% to less than 80% of the median household income for Greater Sydney or the Rest of NSW
- **Moderate-income household** – the gross income is 80% to 120% of the median household income for Greater Sydney or the Rest of NSW

- the household pays no more than 30% of the gross income in rent, **or**
- the household is eligible to occupy rental accommodation under the National Rental Affordability Scheme, and pays no more rent than the rent that would be charged if the household were to occupy rental accommodation under the scheme.

Who is eligible to use the pathway

State housing agencies that deliver social and affordable housing including NSW Land and Housing Corporation and the Aboriginal Housing Office – both within Homes NSW – and Landcom.

Required documentation

Agencies are to submit high-quality applications, with the required studies. The department will provide support by giving technical planning input and advice. Where necessary, the department will also assist in leading the engagement with councils and other key stakeholders.

This accelerated rezoning pathway relies on applicants developing high-quality documentation and technical studies to support the proposed rezoning. This differs from a state-led rezoning pathway, where the Department leads the master planning and procurement of technical experts to drive the rezoning forward.

The department will manage the streamlined, end-to-end rezoning process from concept review to lodgement, exhibition, final assessment and making of the instrument.

Eligibility criteria

To be eligible, applicants must satisfy the following criteria:

- The applicant must be a **representative of**:
 - NSW Land and Housing Corporation, or
 - the Aboriginal Housing Office, or
 - Landcom
- **Not currently in the planning system.** The project is not the subject of an active planning proposal lodged in the system

- Active implies that the project is at any stage from 'lodged' through to 'finalisation'. The department may, in its sole discretion, determine whether the project is active
- An applicant cannot withdraw a current planning proposal to pursue this pathway
- Projects may be submitted for sites where a previous planning proposal was lodged but refused or withdrawn. However, the applicant must demonstrate that the project submitted is new. The department may, in its sole discretion, determine that the project is not new and not eligible
- **Aligned to the state and national housing priorities** in the delivery of social and affordable housing
- **Readiness to lodge.** The applicant is to provide commitment to formally lodge the planning proposal with the department preferably within 60 working days after scoping proposal review feedback is given.
- **Comply with relevant planning legislation, policies and Ministerial directions:** The project is compliant with all relevant applicable legislation, plans, policies and/or master plans and any Ministerial Directions imposed under section 9.1(2) of the *Environmental Planning and Assessment Act 1979* (NSW) (also known as local planning directions), as updated from time to time.

Rezoning process

A dedicated project delivery team within the department will manage the assessment process.

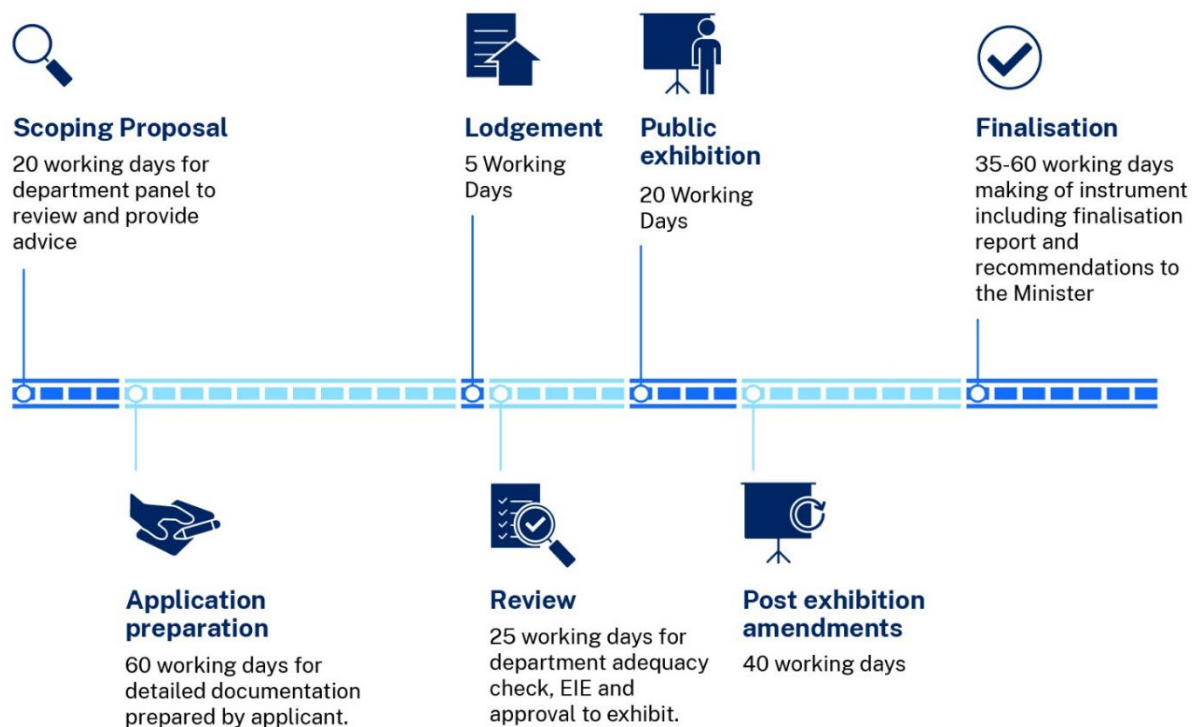


Figure 1. The assessment process

Key: EIE refers to an explanation of intended effect

1. Scoping proposal

Eligible applicants must prepare and submit scoping rezoning proposals for review and advice by the department before proceeding to lodgement of the planning proposal. The department will give advice such as:

- planning controls
- availability and requirements for critical infrastructure
- other agency referrals
- any potential impediments to delivery, including known council and community concerns
- site selection considerations to prioritise the efficient sequencing of projects.

The intent of the review of the scoping rezoning proposal is to make sure the applicant addresses key matters before lodging a planning proposal.

Expectation of the scoping proposal

The scoping proposal is to include an overview of the planning proposal, providing:

- an outline as to how the proposal aligns with the strategic context
- any planning or site-specific issues
- copies of any draft studies that may be required to be submitted with lodgement.

The material applicants provide is to be consistent with the scoping proposal template, as outlined within the Local Environmental Plan Making Guideline – Attachment A. This may include:

- a summary of the proposal
- identification of key issues and matters that the planning proposal will need to address
- justification as to why the proposal has strategic merit
- an analysis of site-specific merit, including required technical inputs
- identification of key supporting studies
- a clear outline of proposed amendments to environmental planning instruments being sought and any other statutory changes needed to support the project
- identification of agencies and authorities that may need to be consulted during the preparation of the planning proposal. The applicant is encouraged to conduct early consultation with relevant agencies and authorities in the preparation of the scoping proposal. This may include an invitation for council to comment on the scoping proposal.

Review of scoping proposal

A department advisory group consisting of internal technical and subject matter experts – including an independent adviser as an observer – will:

- review the scoping proposal against the eligibility criteria and the scoping proposal template (Local Environmental Plan Making Guideline – Attachment A)
- invite local council and relevant agencies to comment on the scoping proposal
- give early feedback on the rezoning application.

Feedback to the applicant will include standard study requirements, including:

- any comments on any draft studies that were lodged with the scoping proposal
- additional site-specific information that the applicant must address in the planning proposal application.

The department will circulate the scoping proposal for input from agencies and consolidate feedback to the applicant in line with Local Environmental Plan Making Guidelines – Authority and Government Pre-agency lodgement².

Advice and input to the applicant may also include matters such as:

- planning controls, relevant master plan scheme and consistency of the proposal with strategic planning principles
- availability and requirements for supporting infrastructure
- agency referrals and early agency feedback
- any impediments to delivery, including known council and community concerns
- any recommended changes to the proposal and technical reports to be included in the application

As each planning proposal is different, the technical reports for each proposal may differ.

The intention is to identify issues and expectations of the planning proposal documentation early in the process.

2. Application preparation

Applicants are to prepare comprehensive and detailed documentation that will include:

- a clear outline of public benefit and alignment with national, state and local planning priorities, as well as a demonstration of strategic importance and alignment with local and regional social and affordable housing need
- an outline of how any preliminary issues that the department advisory group may have raised at concept review have been addressed
- social and affordable housing outcomes that the rezoning will achieve
- availability of critical infrastructure
- demonstration of early agency involvement in scoping, outlining preliminary views and evidence of consultation and how this has informed the preparation of the planning proposal
- understanding and ability to resolve impediments to delivery, including known council and community concerns
- if known, the role of any community housing provider in the provision and management of the social and affordable housing.

² <https://www.planning.nsw.gov.au/sites/default/files/2023-03/lep-making-guideline.pdf>

Relevant technical studies as listed within the Local Environmental Plan Making Guideline: Attachment C Supporting Technical Information.

3. Lodgement

Applicant to lodge proposal.

4. Review

The department will review the documentation. This will include an adequacy check, ensuring that the applicant has provided all required studies and supporting information.

The department will also seek review by the relevant council and agencies. After the adequacy check, the department will prepare an explanation of intended effect for public exhibition. This will give details about changes to planning controls and how the land-use aligns to relevant strategies. The department will seek ministerial approval (or with delegation) to determine if the proposal can proceed to public exhibition.

5. Public exhibition

Community participation and public exhibition is integral to the process. The department will evaluate and assess comments on the proposal to determine if the instrument is to be made.

Public exhibition and assessment will happen in keeping with the required statutory timeframes.

The department will notify relevant stakeholders of the planning proposal. We will describe or identify:

- the objectives or intended outcomes of the planning proposal
- the land affected
- where people can view the proposal
- contact details for the submissions.

At the discretion of the department, we may do more consultation, which may include community information sessions, public forums and/or online engagement.

6. Post-exhibition amendments

The department will give copies of the submissions received to the applicant. The applicant must respond to issues raised in public exhibition and amend documentation as required. If amendments result in significant changes to the proposal, it may be necessary to re-exhibit the proposal.

7. Finalisation

The making of the instrument is likely under a self-repealing state environmental planning policy, given the state or regional significance for environmental planning. The department is to prepare drafting instructions and instruct the Parliamentary Counsel's Office to prepare the required plan.

The department is to prepare the finalisation report and package, including a recommendation for the Minister for Planning (or delegate) to make the instrument. The finalisation report is to include:

- a summary of the final planning proposal
- a summary of public exhibition and post-exhibition changes, including advice from authorities and government agencies.

Once the plan is approved by the Governor of NSW at an Executive Council meeting, the department will publish it on the NSW Legislation website. The plan will apply from the day the instrument is published on the NSW Legislation website, or a later date as specified in the instrument.

Probity

The rezoning process will be subject to strict governance and probity to ensure a fair and transparent assessment process. The department will make all decisions under the process, in keeping with relevant guidelines, policies and plans.

An independent probity adviser will, as an independent observer, monitor key aspects of the process and give guidance on issues concerning integrity, fairness and accountability that may arise throughout the submission, assessment, and decision processes. This will help ensure decisions are made with integrity, fairness, and accountability while delivering value for money.

Requirements and conditions

The department will review each application to ensure it is complete. We will ensure that each application includes all the information necessary for the project delivery team to progress to public exhibition and later assess the application.

Applicants must give enough information for the department to clearly identify the applicant as a legal entity.

Where an application is incomplete or not accompanied by the required information, but otherwise meets the objectives of the application process, the department may, in its absolute discretion, accept the application, provided that the department is satisfied that doing so does not affect the integrity of the process.

Non-conforming applications

The department expects all applications to conform with the requirements in these guidelines. Any application that is incomplete or that modifies the requirements in these guidelines will be a non-conforming application and will be set aside.

The department reserves the right, but is not required, to consider or accept a non-conforming application.

Communication and program contacts

Applicants may ask the department questions by email to the project delivery team at rezoningpathways@dpie.nsw.gov.au

A departmental representative will respond in writing by email. We will share any clarifications with applicants.

No legal relationship

No legal relationship exists or will arise between the department and any applicant in respect to this process.

No applicant submitting an application shall have any claim for compensation of any kind whatsoever as a result of participating in this process and by submitting an application, each applicant shall be deemed to have agreed that it has no claim.

Readiness to lodge: undertaking

The applicant is to formally lodge the planning proposal with the department, preferably within 60 working days of receiving feedback on the scoping proposal. If the applicant fails to formally lodge within this period, without reasonable justification, the department may, in its absolute discretion, elect to not proceed with assessing the applicant's planning proposal.

Memorandum of understanding

To improve collaboration between agencies, the planning proposals are to progress in keeping with the requirements of a memorandum of understanding established with the applicant, providing clear governance and procedural matters within a consistent framework. This will include the clear articulation of:

- the rules of engagement and that information exchanged by the department during the scoping stage does not constitute approval of the planning matter
 - probity considerations
 - appropriate communication channels
 - confidentiality of information.
-

The department's rights

The department has, in addition to any other rights or discretions, the right, in its absolute discretion, and at any stage of the application and selection process and without giving reason to:

- issue addenda to these guidelines and any addenda issued will become part of the guidelines and must be addressed by applicants in their applications
 - change, vary or amend the guidelines
 - suspend, amend, vary or discontinue the process
 - have regard to the department's (or another NSW Government agency's) knowledge and previous experience and dealings with any applicant and information about the past or
-

current performance of an applicant under any contract, arrangement or agreement with the department or other government entity.

The department's decision in such matters will be final, and the department will not be liable to an applicant because the department has exercised any or none of its rights.

Disclosure of information

Information submitted in applications may be shared with other NSW Government departments.

Any information an applicant gives may be used for promotional material prepared by the department or the NSW Government.

The department or the NSW Government may use information provided in applications to develop case studies.

Confidentiality

If an applicant considers that any information disclosed during the process is confidential, the applicant must clearly indicate that such information is confidential. The department has an obligation to protect confidential applicant information. The department, in its sole discretion, shall determine if the information is confidential in nature and, if it considers that the information is not confidential, it will give the applicant the opportunity to withdraw the information.

Any information that is made available on condition that it is treated as confidential (**Confidential Information**) by the applicant must not be disclosed, copied, reproduced, distributed or passed to any other person at any time except for the purpose of enabling an application to be made.

An applicant may disclose the Confidential Information to its insurers or professional advisers for the purpose of enabling a response to a question to be made, provided they have each given an undertaking at the time of receipt of the Confidential Information (and for the benefit of the department) to keep such Confidential Information confidential.

Government Information (Public Access) Act 2009 (NSW)

The department may make information in applications and all related correspondence, attachments and other documents publicly available under the *Government Information (Public*

Access) Act 2009 (NSW), also known as the GIPA Act. The GIPA Act sets out provisions for making government information accessible to the public by:

- requiring government agencies to make certain sorts of information freely available
- encouraging government agencies to release as much other information as possible
- giving the public an enforceable right to make access applications for government information and
- restricting access to information only when there is an overriding public interest against disclosure.

Acknowledgements

Submitting an application means the applicant has accepted these conditions.

More information for applicants

For more information on these guidelines or any related matter, email the department at rezoningpathways@dpie.nsw.gov.au

Visit the Rezoning pathway website at www.planning.nsw.gov.au/rezoning-pathways