

Campaign brief 6

State environmental planning policies and affordable housing

What we want

A state environmental planning policy that enables local affordable housing schemes.

The situation we face

Those NSW local government councils that might want to encourage provision of affordable housing in their area by requiring a certain proportion of new housing to be built or provided as affordable housing are unable to do so. This is because, even though the *Environmental Planning and Assessment Act* in principle allows them to do so, the state government minister for planning has not introduced an appropriate state environmental planning policy (SEPP). This is necessary because, while that Act has provisions that would allow a local government council to require a certain proportion of new housing to be built or provided as affordable housing, it does so with provisos – and a key proviso is that there is a state environmental planning policy that validates the council's processes.

Why are we concerned about this?

Local governments potentially have powers – under the relevant law, the *Environmental Planning and Assessment Act* – to encourage provision of affordable housing in their area by requiring a certain proportion of new housing to be built or provided as affordable housing. This housing could be required where there is a new housing estate or a multi-unit development (flats), if the development is likely to lead to a loss of affordable housing or a need for affordable housing. Or it could be where there is a rezoning.

A council can only use those provisions of the Act (which are sections 94F-94G) in certain circumstances:

- It must have a local environmental plan that authorizes it to impose conditions on developers to provide a contribution for affordable housing. Councils' local environmental plans are made by the minister for planning on the advice of the relevant council, and he does not have to accept their advice.
- It must have a local environmental plan that sets out or adopts a scheme for dedications or contributions (i.e. a local government affordable housing scheme) that authorizes those conditions.
- It must get the minister for planning to include a statement in a state environmental planning policy that makes requirements about imposing conditions and that identifies a need for affordable housing in the council's local government area.

Of course, not all local governments are interested in production of affordable housing. Provision of housing assistance is a core state government responsibility and many local governments are thinly stretched to provide the current services they have responsibility for. Nevertheless, where local conditions have called for it, some councils have developed affordable housing strategies and some (though not many) have developed affordable housing schemes.

The easiest legal mechanism available to councils to get contributions for affordable housing from developers is by negotiating a 'planning agreement' with the developer under which the developer

voluntarily offers land, money or dwellings to the council. This mechanism has been used by a handful of councils in inner Sydney (Waverley, Randwick, Canada Bay).

This mechanism is rather ad hoc, since it involves one-by-one and case-by-case negotiation between a council and developers, about whether a developer wants to offer some affordable housing units and what it expected back from the council. Waverley council is working to make its scheme more systematic by linking it to density bonuses on multi-unit development.

The other mechanism, referred to above, has a broader sweep, and could apply to all developments of a certain size, whether new blocks of flats or new private housing estates. This mechanism is used, in similar ways but with local variations, in only two parts of the state – the City of Sydney and Willoughby local government areas. In those two areas, the local affordable housing schemes are validated by a state environmental planning policy, State Environmental Planning Policy no. 70 – Affordable Housing (Revised Schemes). The government has refused to amend this SEPP, introduced in 2002, to allow new schemes in other council areas.

What could be done?

The state government (Department of Planning) is currently reviewing two state environmental planning policies, State Environmental Planning Policy no. 10 – Retention of Low-cost Rental Accommodation, and State Environmental Planning Policy no. 70 – Affordable Housing (Revised Schemes). No public information is available on this review apart from the fact it is happening. It possible the Department of Planning might release an options paper for consultation. A new draft SEPP will have to go on public exhibition.

It is possible the Department of Planning will propose the amalgamation of SEPP 10 and SEPP 70 and the introduction of a new State Environmental Planning Policy (Affordable Housing). If so, this will raise questions like:

- Will the protection that State Environmental Planning Policy 10 currently offers to affordable rental housing in the private housing sector be retained?
- Will the enabling function that State Environmental Planning Policy 70 currently offers to affordable housing schemes in the City of Sydney and Willoughby be readily applicable to schemes in other local government areas?
- If the new Policy is heralded as a reform, what ‘stings in the tail’ will there be, given the Government’s reluctance to allow local governments to use their planning and development assessment powers to promote affordable housing?

Would this work?

The affordable housing schemes in parts of inner Sydney have generated a small, but welcome, contribution to the supply of affordable rental housing managed by nonprofit providers.

Councils who want to be able to use section 94F of the *Environmental Planning and Assessment Act* to implement affordable housing schemes based on developer contributions should be assisted by a state environmental policy that is enabling, not obstructive.

Note

A state environmental planning policy (SEPP) is an environmental planning instrument, i.e. a policy document that deals with a matter of environmental planning. It is made by the NSW Governor, on the advice of the minister for planning, and its legal basis is the *Environmental Planning and Assessment Act*.

Question

What provisions should a State Environmental Planning Policy on affordable housing have to enable local governments to collect developer contributions for affordable housing?