



**Section 94 Contributions and Development Levies
Taskforce**

**Submission from
Shelter NSW**

January 2004

About Shelter NSW

Shelter NSW is a community-based, State-wide, peak housing body, which aims to advance the housing interests of low-income and disadvantaged people in NSW. It is also part of a national network of Shelter organisations in each State and Territory, and is a constituent member of National Shelter.

Shelter NSW was established in 1975, and was involved in advocacy and campaigning in support of public housing and in the development of community-based alternatives like housing co-operatives (not lending agencies, but groups of people interested in co-operative housing living and management).

Shelter's vision is to work for a just and equitable housing system, where housing for all is a right, not a privilege.

Shelter's role is to:

- Promote a coordinated response within the community sector to housing issues affecting housing low-income and disadvantaged people;
- Work with and influence government and relevant community sector organisations so that they develop housing policies and programs which meet the needs of low-income and disadvantaged people;
- Increase public awareness of housing issues and support for adequate and sustainable responses;
- Research and develop responses to housing issues;
- Provide quality information, assistance and support to the community sector, members and other stakeholders.

Shelter has 112 organisational members and 37 individual members. Organisational membership includes specific-interest peak groups (e.g., tenants, youth, community housing, etc.), a wide range of housing providers, public and private tenant groups, local government councils, regional housing bodies, community services agencies, etc.

Recommendations from Shelter NSW

- Amend Section 94 of the Environmental Planning and Assessment Act so that contributions for social affordable housing become a requirement for all new developments.

And/or

- Incorporate mandatory affordable housing targets or quotas within an Affordable Housing State Environment Planning Policy so that all local government areas provide a proportion of social and/or affordable housing as part of their social plan.

Shelter NSW's submission

Shelter NSW welcomes the review of Section 94.

Shelter NSW limits our comments to only one term of reference:

- 2. Examine and report on the original policy basis and rationale for the introduction of Section 94 contributions and whether it remains a legitimate basis for levying development at a local level.*

We will limit ourselves to discussing the provisions of the Environmental Planning and Assessment Act relating to Affordable Housing contributions that is Section 94F and G and related Schedules.

Term of reference 2

- 2. Examine and report on the original policy basis and rationale for the introduction of Section 94 contributions and whether it remains a legitimate basis for levying development at a local level.*

Policy Basis and Rationale

The Environmental Planning and Assessment Act was enacted in 1979. Under **Division 6 - Conditions requiring contributions towards public amenities and services**, Section 94 allows local government to levy property developers for a contribution towards the provision or improvement of amenities or services. These levies are either in the form of the dedication of land free of cost, monetary contributions or both.

Shelter NSW supports the taxation of wealth created as a result of property development and the application of those taxes or levies to the provision of services and improvement of amenities. It is reasonable to levy property developers so that the cost of providing services is shared between the ratepayer and the developer. Our reasons are as follows:

- The true cost of a property development should include the provision of services and improved amenity;
- Councils incur additional costs as a result of property development because a rise in population necessitates greater use of existing, or requires new, social and physical infrastructure;
- The attractiveness and hence the profit margin of a property development is enhanced by the provision of services and improved amenities.

The original policy basis and rationale for allowing levies to be imposed still hold. When land is rezoned, developers automatically gain. Where amenities are required, developers should contribute in some way.

We note that some Councils have used Section 94 to fund affordable housing as well as the provision of services and improvement of amenities. While noting that this is a

contentious issue with many developers, we wish to indicate our support for the currently existing mechanisms that exist in the Act under Section 94 F and G and have argued that the provisions be extended to enable a mandatory (variable) levy to be collected and used to fund affordable housing in all LGAs in NSW.

Creating a legitimate basis for levying for affordable housing

As Sydney grows and becomes more expensive for low and moderate income people, the issue of affordable housing becomes more pressing. This issue was discussed at a recent seminar hosted by Willoughby Council and Shelter NSW. Several Councils in attendance expressed interest in including affordable housing in section 94 plans and levying developers for this purpose. In most LGAs in NSW there is a perceived and documented need for a greater supply of affordable housing. However current legislative arrangements impede this goal.

The current situation where some Councils are entitled to levy developers for a contribution to affordable housing and others can't is inequitable. At present, only certain schemes are listed in the Act under Schedule 2. This excludes all other existing or future schemes that are not listed in Schedule 2 from the protection provided by the Act. Our reasons for arguing for a consistent and statewide approach are:

- There is a proven need for a greater supply of affordable housing;
- Without affordable housing in Sydney in particular, essential workers cannot afford to live near where they work. If current trends continue, Sydney will become dysfunctional;
- Property development and gentrification are major contributors to loss of affordable housing yet developers are not required to provide affordable housing or cash contributions.

The Act is currently inadequate because:

- The current provisions are arbitrary and inconsistent. The provisions validate already-existing schemes (listed in Schedule 2) rather than provide a consistent mechanism that can be used by all Councils to levy for affordable housing;
- SEPP 70 covers only three schemes and there is no way to 'opt in' to the SEPP although some Councils may want to have their schemes included;
- Similarly, the Act covers only a limited number of schemes;
- Justifying the need for affordable housing is often a long and arduous process with each council having to prepare a strategy after research. This process could be streamlined;
- Section 94 F refers to initial zoning or rezoning as a precondition for imposing a levy, which is unreasonable given that any development may cause the loss of affordable housing.

Shelter NSW believes that developers who are gentrifying areas should contribute to affordable housing provision, as a supplement to other modes of housing provision (such as through the Department of Housing and community housing and co-op schemes). Affordable housing however has a broader role to play than public

housing (which is highly targeted) because it is available to moderate income earners, assists in maintaining labour supply in high cost areas, and allows long standing residents to remain in their communities.

Internationally, there are many precedents for requiring quotas of affordable housing as part of new developments with required proportions ranging from 25% (Paris) to 50% (some London boroughs). As Sydney becomes more of a sub-global city within the region and the world, housing prices will continue to rise (at different rates depending on the overall economy)¹. Using planning mechanisms to fund affordable housing is one way of ensuring that there is a supply of housing that is affordable for working people. Affordable housing is not only an issue for Sydney but increasingly for the whole of NSW. The Act should allow all LGAs to have access to levy/inclusionary zoning mechanisms in a way appropriate to housing need in their areas.

Shelter NSW recommends that Section 94 be amended to require all NSW Councils to provide for affordable housing by levying property developers for a cash contribution or units. SEPP 70 should also be amended to allow for the detail of the policy which may include the setting of affordable housing targets for all LGAs.

Recommendations

- *Amend Section 94 of the Environmental Planning and Assessment Act so that contributions for social affordable housing become a requirement for all new developments.*

And/or

- *Incorporate mandatory affordable housing targets or quotas within the Affordable Housing State Environment Planning Policy so that all local government areas provide a proportion of social and/or affordable housing as part of their social plan.*

Shelter NSW contact details:
Mary Perkins, Executive Officer
Shelter NSW
Ph. 9267 5733 ext. 14
mary@shelternsw.org.au

¹ Housing price inflation in Sydney (and Australia) has escalated recently and has been driven by (i) easy access to credit (ii) increased speculative activity by investors (iii) low interest rates (iv) tax breaks to investors (v) increase in population (vi) increased building costs (vii) divergence in incomes pushing prices up (viii) perceived attractiveness of living in Sydney (ix) land supply issues.