



Local Government, Planning and Affordable Housing Supply in NSW

Shelter NSW analysis and briefing November 2018

Introduction

This update provides a brief outline of current opportunities and imperatives in the NSW planning system for local governments to increase the availability of *affordable housing*¹ in their localities. It assumes councils across New South Wales are already well versed in the process of considering current and projected demand for housing at the local level. Councils should also by now be familiar with the need for this to include housing that is affordable to very low, low and moderate income households.² This update does not attempt to provide a methodology for such analysis.³

Rather, it offers a broad explanation of some of the strategic and technical planning tools that are currently available, and can be put to use by local councils to increase the availability of affordable housing stock in connection with future housing supply. It explores the opportunities presented by new strategic planning requirements for local councils, the Greater Sydney Commission's proposed *Affordable Rental Housing Target* and the recent inclusion of five additional local government areas in *State Environmental Planning Policy No. 70 – Affordable Housing (Revised Schemes)*.

¹ There is a growing tendency amongst some media and developer groups to refer to lower-cost housing, delivered via mechanisms designed to promote "housing diversity" and "housing choice", as affordable housing. This update is not concerned with such housing. "Affordable housing" here refers to a range of non-market or sub-market options that are explicitly developed with affordability in mind, as per the definition at section 1.4 of the *Environmental Planning and Assessment Act 1979* (NSW), and associated instruments.

² See Lawson et al *Social Housing as Infrastructure: an investment pathway* AHURI Final Report 306 (2018) available at <https://www.ahuri.edu.au/research/final-reports/306>

³ Some councils have recently undertaken comprehensive analyses of their local need for affordable housing and as such there is considerable expertise within the sector – see commentary on SEPP 70 and note 29, below.

A note on context

Shelter NSW notes motion number 72 in the record of decisions from the 2018 Local Government NSW Annual Conference, concerning housing affordability.⁴ The motion resolves to support planning reform in favour of affordable housing targets and inclusionary zoning, and to develop strategies to support local councils in New South Wales to increase affordable housing in their local government areas.

These resolutions are timely, as recent public meetings across Sydney suggest a growing community interest in the delivery of more affordable housing throughout the metropolitan region. It is significant that this interest is being demonstrated in areas such as Penrith, Ryde, Hornsby and Parramatta, where housing costs might be regarded as “relatively affordable”; and where local government has not traditionally pursued a strategic or technical interest in affordable housing. Rising unaffordability in inner- and middle-ring Sydney suburbs pushes many households further towards the fringes and out into the regions, which makes increasing the supply of affordable housing both a city- and state-wide concern.

Similar interest can be seen in the NSW Legislative Assembly Committee on Environment and Planning’s report into Land Release and Housing Supply in New South Wales,⁵ which was published in late October. The Committee’s inquiry found unanimous in-principle support for more effort to secure affordable housing, and recommended the New South Wales Government use this opportunity to identify and implement ways to increase supply.⁶

Notwithstanding the need for further policy work to clarify, align and consolidate these complementary points of view, there are currently a number of imperatives for local government in New South Wales to consider affordable housing strategies and specifics as part of the urban planning process. This is particularly so for councils in Sydney’s greater metropolitan region that fall under the Greater Sydney Commission’s Region and District Plans,⁷ but it is also true of regional councils who wish to take steps to increase the supply of affordable housing in their local area.

Some of these imperatives are summarised below.

Local Strategic Planning Statements

Coming out of the 2017 amendments to the *Environmental Planning and Assessment Act 1979* (the Act), councils are now required to prepare Local Strategic Planning Statements (LSPS).⁸ Greater Sydney based councils are to have draft LSPS ready for exhibition by July 1st 2019, with final plans in place by December 1st 2019. Regional councils have until July 1st 2020 to finalise their LSPS.

⁴ LGNSW Annual Conference 2018 *Record of Decisions* available at https://www.lgnsw.org.au/files/imce/uploads/90/Record-of-Decisions-2018-LGNSW-Annual-Conference_.pdf, 32

⁵ Legislative Assembly of New South Wales Committee on Environment and Planning *Land Use and Housing Supply in New South Wales* Report 2/56 available at

<https://www.parliament.nsw.gov.au/ladocs/inquiries/2446/Land%20release%20and%20Housing%20Supply%20in%20NSW.pdf>

⁶ *Ibid*, 79-80

⁷ See <https://www.greater.sydney/strategic-planning>

⁸ See <https://www.planning.nsw.gov.au/Policy-and-Legislation/Environmental-Planning-and-Assessment-Act-updated/Guide-to-the-updated-Environmental-Planning-and-Assessment-Act-1979/Part-3-Strategic-planning>

The LSPS must identify the longer-term planning priorities for an area, in line with existing Region and District Plans, and explain how these are to be delivered. Ideally they will include both a high level commitment to increasing the stock of affordable housing across the local government area (assuming such a need is identified) as well as some indication of how, when, where and by whom any new affordable housing might be provided. Including such information in the LSPS will make it easier for a council to attract and encourage longer-term growth of social and affordable housing portfolios in the area, negotiate around voluntary developer contributions to an affordable housing program, and/or seek inclusion in *State Environmental Planning Policy No. 70 – Affordable Housing (Revised Schemes)* (SEPP 70) that would allow council to levy mandatory affordable housing contributions in approved development schemes.

Local Housing Strategies

The *Greater Sydney Region Plan: A Metropolis of Three Cities* and associated District Plans,⁹ published in March 2018 by the Greater Sydney Commission (GSC), provides two housing related objectives for Metropolitan councils to pursue under the “liveability” banner.¹⁰ These are “greater housing supply” (at objective 10),¹¹ and “housing is more diverse and affordable” (at objective 11),¹² which are to be pursued through the development of local housing strategies (LHS).

The “greater housing supply” objective sets out a series of principles for councils to follow in developing LHS that will be given effect through local environmental plans (LEPs).¹³ It also requires councils to prepare such strategies to demonstrate how medium-term housing targets that are set out in the District Plans will be met, and how any required growth will be managed, in accordance with those principles. Councils are required to update their LEPs within two or three years, depending upon the level of priority assigned by the GSC in the plans.¹⁴

The GSC’s principles for LHS¹⁵ refer to affordability in a couple of ways – most notably by flagging that strategies should take account of the potential displacement of communities as areas of lower-cost housing face renewal, but also by noting that further specific and technical work will be needed for LHS to improve affordability and choice (to be supported by “a new planning circular and guidelines to be prepared by DPE”).¹⁶ Affordable housing requires particular attention as both a strategic and technical priority where displacement of very low and low income households is anticipated as the result of market-lead growth.

NSW Department of Land and Environment (DPE) have since published a LHS guideline and template¹⁷ that identifies inclusionary zoning as a potential mechanism for councils wishing to increase the

⁹ Above, note 6

¹⁰ Greater Sydney Commission *Greater Sydney Region Plan A Metropolis of Three Cities – connecting people* (March 2018), 58-72

¹¹ *Ibid*, 58-67

¹² *Ibid*, 68-72

¹³ *Ibid*, 64-66

¹⁴ *Ibid*, 67

¹⁵ *Ibid*, 12

¹⁶ *Ibid*, 64

¹⁷ Available at <https://www.planning.nsw.gov.au/Policy-and-Legislation/Housing/Local-Housing-Strategy-Guideline-and-Template>

availability of affordable housing within their local areas. It recognises SEPP 70 as a pathway to an appropriate mechanism to increase the local stock of affordable housing, and invites councils to seek inclusion in SEPP 70 as part of their LHS.¹⁸ The guideline states that “by addressing any proposed inclusionary zoning in the LHS, council will give the market advanced notice of the proposed changes”.¹⁹ This allows property developers to factor in the cost of an affordable housing contribution as part of their initial feasibility study, so that they may offset the contribution against the price they are willing to pay for developable land.

There is no strict timeframe for completion of a LHS, although it is intended that the LHS should inform a review of metropolitan councils’ LEPs within two or three years. As noted there is a shorter timeframe for the completion of council LSPS and it makes sense for councils to engage these strategic planning processes simultaneously. Regional councils are also invited by DPE to pursue a local housing strategy using the LHS guideline and template.

Local Environmental Plans

As discussed above, the “greater housing supply” objective of the GSC plans requires metropolitan councils to update their LEPs within two or three years, depending upon the level of priority assigned by the GSC.²⁰ LEPs set the zoning and development controls for each local government area, and are part of the legal framework under which land can be put to a particular use. Rezoning will be an integral component of any housing supply decision in the LHS.

Where a council identifies a need and includes affordable housing as a priority within its strategic planning framework (the LSPS and LHS), a review of the LEP provides the opportunity to link development and growth within its precincts to the capacity to deliver new affordable housing. This can be done by setting local zoning and development controls to favour the development of new residential housing, where appropriate. But because developers of affordable housing produce explicitly non-market or sub-market products, they occupy a disadvantaged position in the marketplace with regard to the price they can pay for developable land. Financial subsidies or other forms of assistance are required before affordable housing developers can compete with private developers.

To some extent local councils’ planning mechanisms can assist here. An LEP can identify particular areas or precincts for development and, as the LHS guideline suggests, incorporate inclusionary zoning schemes under which councils may levy or negotiate with developers (who wish to operate in those areas) for contributions towards an affordable housing program. Currently such schemes can be either voluntary or mandatory depending upon a council’s inclusion in SEPP 70. For those councils not included in SEPP 70 the ability to negotiate voluntary contributions will depend upon the strength of their commitment to affordable housing as outlined in the LSPS and LHS, as well as perhaps the clarity and precision of a Voluntary Planning Agreement policy.

¹⁸ Department of Planning and Environment *Local Housing Strategy Guideline – A step by step process for producing a local housing strategy* (2018), 15

¹⁹ *Ibid*

²⁰ Greater Sydney Commission, *op cit*, 67

Affordable Rental Housing Targets

As noted above, the “greater housing supply” objective of the GSC plans²¹ sets out a series of principles for councils to consider in preparing local housing strategies,²² and notes further specific and technical work that will be required to improve affordability and choice.²³ The “housing is more diverse and affordable” objective²⁴ outlines the form some of this work is expected to take, and recommends the implementation of local “Affordable Rental Housing Targets [ARHT] to deliver an additional supply of affordable housing for very low and low income households in Greater Sydney”.²⁵

The Region and District Plans indicate the parameters that are expected to apply to these targets. Critically they are to be based upon the uplift in land value created through rezoning decisions, subject to a viability test and other “core assumptions”; and weighed against other contributions that developers may be required to make, for example for local community infrastructure. Taking into account these and other factors outlined in the plans, it is indicated that an ARHT within Greater Sydney is likely to be considered viable where it is “generally in the range of 5-10% of new residential floor space”.²⁶

The Region and District plans say that ARHT will be applied to “defined precincts prior to rezoning”,²⁷ and that the GSC and DPE will work together to develop the mechanisms required to implement the proposed ARHT.²⁸ To date no such precincts have been defined and no specific mechanisms for implementation have been proposed. Shelter NSW expects it will be a matter for councils to nominate their own defined areas and determine local implementation strategies in accordance with existing processes.²⁹ For instance, a council might identify a local area for rezoning and define it as an ARHT precinct, to which a contribution scheme would apply, via an amendment to their LEP. To be successful the proposed scheme would need to demonstrate how it aligns with the ARHT parameters set out in the District Plan.

Even so, if implementation of ARHT schemes is pursued immediately and vigorously across the metropolitan region there is no doubt the impact would be minimal, given the extent of need for affordable rental housing across Sydney.³⁰ Since ARHT schemes will be restricted to uplift and subject to viability their eventual affordable housing output will be limited. Shelter NSW has asked Sydney University to model the potential for new affordable rental housing as an outcome of ARHT based on

²¹ Ibid, 58-67

²² Ibid, 64

²³ Ibid, 64-66

²⁴ Ibid, 68-72

²⁵ Ibid, 70

²⁶ Ibid

²⁷ Ibid, 67

²⁸ Ibid, 71

²⁹ Despite our expectation, this remains unclear from information and material that is currently in the public domain. Shelter NSW recommends continued monitoring of GSC and DPE communications for clarity on the question of ARHT implementation.

³⁰ Shelter NSW will call on the next Government of NSW to commit to targets of 18,000 new social housing homes and 9,000 new affordable housing homes, each year for the next ten years, to meet current and projected demand for housing that is affordable to very low and low income households across New South Wales.

the uplift created by recent rezoning events across Sydney; our report will be published in early December,³¹ but we do not anticipate the numbers will be high.

Local councils looking to increase the availability of affordable housing in their area should be considering ARHT implementation as part of their LSPS and LHS work. Specifically, they should be looking at ways to ensure contribution schemes become integrated into their LHS and revised LEPs.

While ARHT schemes will provide an additional vehicle for the increased supply of affordable housing, they are unlikely to produce a solution on their own. There are other options that pro-active councils should be pursuing, both in the meantime and in addition to potential ARHT schemes, as part of the planning processes.

SEPP 70 – inclusionary zoning and mandatory contribution schemes

The most decisive and immediate step a metropolitan council can take towards implementing ARHT and increasing affordable housing in the local area is to seek inclusion in SEPP 70. To be clear, inclusion in SEPP 70 does not impose any immediate obligation on a council, nor does it result in the immediate growth of an affordable housing program; rather, it enables councils to create mandatory contribution schemes that could assist in increasing the availability of affordable housing at the local level over time, subject to the relevant provisions of the Act.³² Councils who identify and include an increase in locally available affordable housing as a strategic goal within their LSPS and LHS (and wish to implement an ARHT) should also make an approach to DPE for inclusion in the SEPP.

Specifically, SEPP 70 does three things. First, it “identifies that there is a need for affordable housing within certain local government areas”.³³ Currently there are seven council areas so identified, being Canada Bay, City of Randwick, City of Ryde, City of Sydney, City of Willoughby, Inner West and Northern Beaches.³⁴ Of these, five are recent inclusions, indicating a level of willingness on the part of Government to consider new applications. It also means that a number of local councils have recently produced public documents to demonstrate need at their local level – these will be of use as a reference for other councils seeking inclusion.³⁵

Second, it “describes the kinds of households for which affordable housing may be provided”,³⁶ being very low, low and moderate income households with reference to the “median household income for the time being for the Greater Sydney (Greater Capital City Statistical Area) according to the Australian Bureau of Statistics”.³⁷ Note this indicates a broader application than the proposed ARHT, which would only deliver additional affordable housing for very low and low income households (see above). In addition to being more socially beneficial, the ability to provide housing that will be affordable to

³¹ Phibbs, P, King L. A. *Potential affordable dwelling yields from a NSW Inclusionary Zoning Scheme*, Report prepared for Shelter NSW The University of Sydney, (Dec 2018)

³² *Environmental Planning and Assessment Act 1979* (NSW) Division 7.2

³³ *State Environmental Planning Policy No. 70 – Affordable Housing (Revised Schemes)* cl 3.2(a)

³⁴ *State Environmental Planning Policy No. 70 – Affordable Housing (Revised Schemes)* cl 9

³⁵ Available at http://planspolicies.planning.nsw.gov.au/index.pl?action=view_job&job_id=8960

³⁶ *State Environmental Planning Policy No. 70 – Affordable Housing (Revised Schemes)* cl 3.2(b)

³⁷ *State Environmental Planning Policy No. 70 – Affordable Housing (Revised Schemes)* cl 8

households on moderate incomes as well as to very low and low incomes will make an affordable housing program more financially viable as it would generate more rental revenue than a program that is specifically targeted to the bottom two income quintiles.

Third, it “makes a requirement with respect to the imposition of conditions relating to the provision of affordable housing”, in accordance with the Act.³⁸ In summary, levied contributions must be put towards affordable housing programs to produce mixed and balanced communities that are socially diverse and representative of all income groups, where affordable housing is available to very low, low and moderate income households who are appropriately qualified, at an appropriate rate of household income. Where land and buildings are provided for affordable housing as part of such a scheme, they must be so used, and rents from affordable housing dwellings must be put towards the management of an affordable housing portfolio.³⁹

Neither SEPP 70 nor the relevant provisions of the Act are prescriptive as to how a mandatory contribution scheme is to apply, or what a levying council’s preferred affordable housing program might look like. These elements need to be designed at the local level as part of a scheme for approval and inclusion in the LEP. There are few examples of such schemes in practice, but those that are currently proposed or in operation demonstrate a level of diversity. For instance, the City of Sydney’s schemes⁴⁰ do not include council retaining funds to construct rental housing stock, instead passing these on to community housing partners to build and manage portfolios according to their own programs. Conversely, the City of Randwick’s⁴¹ and City of Willoughby’s⁴² programs see those councils retain ownership of buildings within their portfolio, outsourcing only their management to community housing partners. Schemes can and should be designed to suit local needs and conditions.

Shelter NSW argues that all metropolitan councils should be automatically included in SEPP 70 and that regional councils should be invited to seek inclusion, but this is not presently the case. The SEPP is limited in its application to land inside the Greater Metropolitan Region, which means that regional councils with an interest in increasing supply of affordable housing will need to consider alternatives such as a clear and precise Voluntary Planning Agreement policy that includes contributions for affordable housing. Such a policy could be based on similar principles to those set out in SEPP 70, and attached to defined areas or precincts as identified in a council’s LEP. Of course, this would be subject to DPE approval, so councils looking to improve the provision of affordable housing in their area should be clear about this in their LSPS and LHS, with reference to their Regional Plan.

³⁸ *State Environmental Planning Policy No. 70 – Affordable Housing (Revised Schemes)* cl 3.2(c)

³⁹ *State Environmental Planning Policy No. 70 – Affordable Housing (Revised Schemes)* Schedule 2 Affordable housing principles

⁴⁰ See <https://www.cityofsydney.nsw.gov.au/development/planning-controls/development-contributions>

⁴¹ See http://www.randwick.nsw.gov.au/_data/assets/pdf_file/0003/13674/Affordable-Housing-Strategy.pdf, 29 (note the affordable rental housing program itself was established prior to the City of Randwick’s inclusion in SEPP 70, and has relied to date on voluntary contributions negotiated under Voluntary Planning Agreements)

⁴² See <http://edocs.willoughby.nsw.gov.au/DocumentViewer.ashx?dsi=4640748>, 8