



## Housing diversity and affordable housing: a description of urban policy measures in New South Wales



This *Shelter NSW Update* outlines current policy and program activities in land-use planning and development where there is a direct implication for provision of affordable housing.<sup>1</sup> The first section is about government programs for fast-tracking and intensifying development (including housing). The second section outlines the state of play with opportunities for establishment of inclusionary housing schemes, in a socio-political context where such schemes remain an exception rather than the dynamic example they could be.

As with the previous government — whose 2005 *City of cities* strategy for metropolitan Sydney promised an affordable housing strategy<sup>2</sup>, which was never done — the present government has no affordable housing strategy. However its *Plan for growing Sydney* (2014) promised to ‘develop a comprehensive approach to this issue that involves all stakeholders — the Government, local councils and the private and community sectors’.<sup>3</sup> The Department of Planning and Environment is also preparing guidelines for local government housing strategies, and is believed to be developing a policy framework for affordable housing on government-owned land.<sup>4</sup> The Department of Family and Community

Services has released a social housing policy framework which includes an approach for increasing the supply of social housing by the Land and Housing Corporation redeveloping public-housing sites linked to planning gain.<sup>5</sup> UrbanGrowth NSW commissioned a study on housing diversity for its ‘urban transformation’ projects, and ‘diverse and affordable housing’ is one of the outcomes proposed for its urban renewal projects.<sup>6</sup>

The Government’s major focus has not been on affordable housing, however, but instead, on housing affordability to be achieved by greater *supply* of dwellings. The 4 prongs for affordability have been:

- A push for release of more land for housing, on the edges of Sydney and regional cities
- Financing provision of local economic infrastructure that supports development of dwellings
- Encouraging densification in Sydney and regional cities, in particular through changes to planning controls and through urban renewal projects
- Changing development-approval systems to allow for easier approval of development

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## Turbo-charged dwellings through the planning system

The current government, as with its predecessors, has pursued a housing policy linked with pro-growth economic policies and support for more extensive and intensive development of land, including for housing. These approaches have included a concern for ‘housing affordability’ or

‘housing choice’ more generally; but with respect to ‘affordable housing’ the number of initiatives since the Coalition government was elected in 2011 has been few, and not all of them positive. The big *negative* was the attempt in 2013 to eliminate provisions in planning law that allowed (subject to

constraints) mandating developer contributions for affordable housing, an attempt that was thwarted by the Legislative Council.<sup>7</sup> More positive have been some initiatives — outside of the planning system — to increase the supply of affordable rental housing provided by government and nongovernment agencies.<sup>8</sup>

### Land releases on the fringes of cities

The major policy document indicating the locations for new land releases in Sydney is the regional plan for greater Sydney, the latest version being *A plan for growing Sydney* (December 2014). The major program for release of land is the Department of Planning and Environment’s

urban development program, which focuses on rezoning of land from non-urban to urban uses and installation of infrastructure necessary for dwellings and neighbourhoods, in Sydney. The key areas for which this work is done are in outer Sydney, to the northwest and the southwest; these areas were called the Northwest and Southwest growth centers but the terminology now in favour seems to be ‘release area’. The Department is also identifying more rural land that could be used for housing south of the Southwest land release area, in the Macarthur region.<sup>9</sup> It is also working on a release area at Ingleside in north eastern Sydney. See Table 1.<sup>10</sup>

Table 1: Priority growth areas, Sydney

Northwest priority land release area	Southwest priority land release area
Greater Macarthur land release investigation	Ingleside release area

The key instrument guiding the development of the Northwest and Southwest growth centers is the *State Environmental Planning Policy (Sydney Region Growth Centers) 2006*. This coordinates the release of land for residential, employment and other urban development in the two growth centers, and establishes precinct plans for a number of precincts with an aim of promoting housing choice and affordability by encouraging small-lot dwellings or minimum lot sizes for dwellings.

A 2011 initiative to allow a number of specific developers to leapfrog the planned growth areas seems to have faded away.<sup>11</sup>

In the regions outside the Sydney region, the government’s intentions for land release

areas are indicated in the regional plans, six of which have been released in draft (Central Coast, Hunter, North Coast, Central West/Orana, Riverina–Murray) or final (Illawarra–Shoalhaven) versions to date (April 2016) — as well as a draft subregional plan for Hunter city.<sup>12</sup> These plans generally are predicated on estimates of future demand for new dwellings based on demographic factors like population growth and new household formation, and a requirement that the local councils in the region contribute to meeting that demand by changing local planning controls to provide for more land for residential purposes (at the expense of existing uses) and for more intensive use of land already used or usable for dwellings. The plans typically respect or acknowledge other land uses that compete with housing such as

farmland and land that has biodiversity or conservation values.<sup>13</sup> Notwithstanding this acknowledgment it is possibly fair to say that these plans are based within a 'growthist' framework.<sup>14</sup>

The Illawarra–Shoalhaven regional plan anticipates at least 40% of urban growth will be around connected centers, with the major areas for land releases to continue to be west of Lake Illawarra and at Nowra–Bomaderry. The government considered that no new release areas are required for the Wollongong, Shellharbour and Shoalhaven local government areas, beyond those already identified, but there was a need to determine whether there was a need for additional release of greenfield land in Kiama local government area.<sup>15</sup>

The draft Central Coast regional plan focuses new land release development opportunities primarily in the Warnervale–Wadalba land release area and elsewhere in the North Wyong area.<sup>16</sup>

The draft Hunter regional plan indicates that the Hunter already has a sufficient supply of land available in established and new release areas to meet anticipated demand over a 20-year period.<sup>17</sup> The Department of Planning and Environment will be looking for opportunities for more dwellings in regional towns and villages. In Hunter city, the new land that has already been released or identified, combined with infill and renewal in established areas, is expected to meet projected demand over the next 20 years.<sup>18</sup>

The draft North Coast regional plan noted that that major growth in the region has been at Tweed Heads, Coffs Harbour and Port Macquarie. Smaller towns identified for an increased number of dwellings in the

future include Cumbalum, Kings Forest, Cobaki, Brimbin, and Thrumster. The draft plan estimates that the land that has been identified in designated 'urban growth areas' will have capacity to meet a forecast demand for 72,000 additional dwellings, and more, by 2036.<sup>19</sup> In the case of Byron and Bellingen local government areas, the draft plan considered that their urban growth areas did not have sufficient capacity to accommodate the estimated demand for new dwellings over the Plan's 20-year timeframe, and the Government will be working with their councils to identify more land that could be used for dwellings.<sup>20</sup>

In the Central West and Orana, most of the anticipated growth in demand for extra dwellings, some 13,600, is expected to be met in and around the 3 regional cities in this region, Dubbo, Orange, and Bathurst. The Department of Planning and Environment expects that there is generally sufficient land across the region to cater to that estimate.<sup>21</sup>

In the *Draft Riverina--Murray regional plan*, population growth is expected to focus on Albury and Wagga Wagga, with the population in other parts of the region remaining stable or declining. The Department of Planning and Environment estimates the region will need 7,650 extra dwellings over the next 20 years to meet the needs of both a growing population and an aging population. There is already sufficient land zoned for housing to accommodate that number, and most of the extra dwellings will be in land release areas in and around Albury, Wagga Wagga, and Griffith.<sup>22</sup>

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## Provision of local and regional infrastructure

The types of economic infrastructure that underpin development of new dwellings in greenfield, brownfield and grayfield locations — local roads, water cycle management, biodiversity corridors, open space, community facilities, etc. — are the responsibility of local governments. These capital works are financed from the local government's general sources (including a property tax, called a 'rate') and from infrastructure levies (under sections 94 and 94A of the *Environmental Planning and Assessment Act*, and in the case of water supply, sewerage and stormwater drainage works and facilities, under section 64A of the *Local Government Act*<sup>23</sup>).

The ability of local governments to raise finance from these sources is constrained by state government controls. In the case of a local government's ordinary rate, the amount it may increase the tax level is pegged by the state government (though the council has a right of appeal to the Independent Pricing and Regulatory Tribunal).<sup>24</sup>

The state government's Local Infrastructure Renewal Scheme was a program that began with the 2011-12 State Budget, which was to operate for 5 years. It provides interest concessions to local government councils, which will be worth \$100 million over that period.<sup>25</sup> There were 3 rounds of interest subsidies for local governments' works, comprising 166 individual projects by 96 councils, to 2014, valued at \$111 million.<sup>26</sup> There are no further rounds. A key feature of this program was financing for the maintenance and renewal of existing local-government infrastructure.

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## Section 94 and section 94A levies

In the case of the impact levy known as Section 94 contributions, the amount these may be levied at is also capped by the state government. The contributions have been capped (since August 2012) at \$30,000 for each dwelling, in developments of one or more dwellings, and at \$30,000 for a subdivision into residential lots, in greenfield areas, and capped at \$20,000 for each dwelling, in developments of one or more dwellings, in infill areas. (Again, a council has a right of appeal to the Independent Pricing and Regulatory Tribunal.<sup>27</sup>) When the Government introduced caps to the section 94 mechanism, in 2010, it said its aim (with the caps) was 'to increase housing supply by lowering development costs'.<sup>28</sup>

There is an associated levy to the levy allowed by Section 94, and that is one allowed by Section 94A. With this levy, which offers an alternative financing approach to section 94 (and may not be charged in addition to a section 94 levy), there does not *need* to be a demonstrated link between a development and the infrastructure funded from the developer's contribution. The levy is charged as a percentage of the estimated cost of development. The pegged rates at which this levy may be charged are 1% of the development cost for a development estimated to cost more than \$200,000, and 0.5% of the development cost for a development estimated to cost more than \$100,000 and up to \$200,000.<sup>29</sup>

In the case of both section 94 and the section 94A levies, the purpose for which developer contributions may be required is 'public amenities' and 'public services'.<sup>30</sup>

It is sometimes suggested that the payment of these levies, being a cost to developers, is passed on by them to consumers (homebuyers) in the form of higher house prices. This notion assumes a direct nexus between costs and price. However, academic researchers have debunked this myth. They argue that developers already charge the maximum the market will bear. In fact, the costs of meeting infrastructure levies could *decrease* house prices. Murray argues:<sup>31</sup>

... the developer or previous landowner bears the full cost of the charge, and not the home buyer. These more properly controlled results are consistent with the political actions of the property industry who oppose developer charges because they bear the full cost.

Why is all this important? Vested interests benefit from any illusion of unsettled academic debate. In the case of developer charges the property lobby can maintain an intelligent-sounding “Goldilocks” view in public debates that goes something like this: “The research is not settled. But it is likely that we don’t pay the full charge, nor do we pass it on completely in home prices. The cost is probably shared between us and the homebuyer.” They capitalise on this apparent uncertainty by claiming that their interests are aligned with the home-buying community; a seductive “Goldilocks” view that is hard for politicians to ignore.

Where a local government council can convince the Independent Pricing and

Regulatory Tribunal that the contributions it gets (at the pegged rate) do not allow it to pay for the public amenities that a development will generate a demand for, it may seek gap-funding from the state government.<sup>32</sup> The funding scheme for this, the Local Infrastructure Growth Scheme, got an allocation of \$77.6 million in the 2015-16 State Budget.

In 2014-15 the Government allocated \$60.6 million for new release areas in the Blacktown and The Hills local government areas.<sup>33</sup>

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### **Voluntary planning agreements**

Some local governments have used voluntary planning agreements as an alternative path to getting contributions for economic and social infrastructure from developers.<sup>34</sup> This path is a bit tricky because the section of the *Environmental Planning and Assessment Act* that regulates these, section 93F, makes it clear that contributions under these agreements are to be voluntary on the part of the developer. However, a consent authority may require a planning agreement to be entered into as a condition of development consent if that planning agreement is in the form of the offer made by the developer through a development application or through a change in planning controls sought by the developer.<sup>35</sup> This scenario has led some developer lobby groups to argue that some planning authorities are ‘gaming’ their planning controls in order to be able to negotiate away environmental standards in return for the developers’ offers of community benefits (i.e. the allegation is that councils set planning controls lower than what would be environmentally acceptable, knowing they can liberalize

those controls as a trade-off for contributions from developers for various public purposes).<sup>36</sup>

While voluntary planning agreements under section 93F are an alternative path to getting developer contributions to the mechanisms established by section 94 and section 94A, there is another difference apart from the key one (being that the former involve voluntary contributions and the latter allow mandated contributions).

And that is that the purposes for which contributions may be used under section 93F are *wider* than the activities allowed under section 94 and 94A. And those activities may include recurrent costs *as well as* capital costs. Voluntary planning agreements may be made for the provision of public amenities or public services, and of transport or other infrastructure relating to land; and they may also be about the provision of affordable housing; the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure; the conservation or enhancement of the natural environment; and the monitoring of the planning impacts of development.

It is not unusual for councils to incorporate an assessment of planning gain where a developer submits a planning proposal while offering a contribution to the council under a proposed planning agreement. Many of these agreements seem to draw on a common template, and have clear commitments such as these in the draft policy on planning agreements of Woollahra Council in inner Sydney, on exhibition in early 2016: 'planning decisions will not be brought or sold through planning

agreements'; the council 'will only use planning agreements for a proper planning purpose'; the council 'will not allow the interest of individuals or interest groups to outweigh the public interest when considering planning agreements'; and the council 'will not improperly rely on its statutory position in order to unreasonably extract public benefits from developers under planning agreements'.<sup>37</sup>

In some cases, councils have used a value-capture approach to assess what a reasonable community benefit might be when considering a planning proposal from a developer (a proposal typically involving a request for changes of planning controls in favour of the development, such as upzoning and liberalization of development controls). This approach seems to have been pioneered in New South Wales by Parramatta Council.<sup>38</sup> In Woollahra council's draft policy on planning agreements, land value capture is referred to as a 'public financing mechanism' based on capturing a share of unearned increment to developers from increases in land value that follow from amendments to planning controls that facilitate development or from approval or modification of development consent that exceeds otherwise-permissible development controls. The draft policy sees this mechanism as different from section 94 and section 94A developer contributions in that it is not linked to recouping or paying costs of infrastructure linked with or associated with development; rather, it is about a sharing of the unearned increment of increases in land value, and the public purposes to which financial contributions will be put are the wider purposes allowed by section 93F.

Following the example set by Parramatta council, capturing a 50% share of the value uplift seems to be reasonable: this share is proposed in Woollahra' council's draft policy on planning agreements, and it was also adopted by Leichhardt council in its policy on planning agreements.<sup>39</sup>

The state government also uses this mechanism to finance infrastructure in its areas of responsibility (typically related to major development projects where the local government council is not the consent authority). It appears, from the Register of planning agreements on the Department of Planning and Environment website, that as at April 2016, the number of these that have been entered into and concluded has been 7; the number that have been executed (i.e. a negotiated agreement has been finalized and is still active) is 123; the number that are in the process of being finalized is 15; and the number of new agreements proposed and are on notification is 6.<sup>40</sup> In financial year 2014-15, the state government was a party to 21 voluntary planning agreements, which secured \$109.1 million in developer contributions towards state-government infrastructure through the dedication of land for environmental, emergency services and education purposes, as well as the construction of roads and affordable housing.<sup>41</sup>

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### **Levies for regional infrastructure**

The Department of Planning and Environment is also responsible for collecting contributions from developers for regional infrastructure in a number of growth centers. These contributions are imposed by a directive of the minister for planning, under the Special Infrastructure Contributions program. The contributions

partially fund state or regional roads and land required for social infrastructure.

There are currently 3 Special Infrastructure Contributions levies: those are in the Western Sydney growth centers, Warnervale Town Center, and Wyong Employment Zone.<sup>42</sup> In 2014-15, the Department collected \$42.2 million in contributions, for the North West and South West Growth Centres in western Sydney, and the Balmoral Road, Elderslie and Spring Farm urban release areas.<sup>43</sup>

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### **Housing Acceleration Fund**

The State government established the Housing Acceleration Fund in mid 2012, as a component of a number of initiatives packaged as 'Building the state' for the State Budget for 2012-13.<sup>44</sup> The purpose of this Fund is to finance local infrastructure in greenfield areas, particularly, to enable housing development.

In its first year (2012-13), the Fund financed 10 infrastructure projects to accelerate the production of 76,000 new lots for dwellings. The first round of spending under this Fund was estimated to cost \$181 million.

The Government indicated, in October 2012, that future rounds of funding, expected to be cost \$300 million (in 2013-14), would be financed from the sale of a number of government-owned commercial buildings. The 2013-14 Budget papers indicated that a second round of funding in that year would have 3 components: \$99 million for interim arrangements for section 94 local government contributions; \$70 million to support upgrades to Old Wallgrove Road in Sydney; and \$141.5 million to 11 other infrastructure projects supporting 42,000 new dwellings.

The 2014-15 State Budget indicated that the Fund would continue, but gave no details. The 2015-16 Budget indicated that \$400 million would be reserved in the Restart NSW Fund for the Housing Acceleration Fund.<sup>45</sup> It gave no details of projects. The Department of Planning and Environment said the funding would be for essential infrastructure, including water, road and electricity networks, and would speed up the delivery of new dwellings and jobs, and would also help to put downward pressure on housing prices. It mentioned the benefit from funded infrastructure for new dwellings in Cudgegong Road Station in Sydney's north-west within two years, a 'vibrant new area' of 4,500 dwellings close to the train station on Sydney's new metro rail system, while also enabling people to live close to parks, sporting fields, new shops, restaurants and cafes. It reported that the \$400 million would take total funding for the Fund to \$966 million since 2012.<sup>46</sup>

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## Densification

Support for more 'compact city' shapes (particularly with reference to Sydney) have been dominant in public-policy circles for some 3 decades. This began with the Wran government in the early 1980s (under the label 'urban consolidation'), but had a precedent in the encouragement of '3-storey walk-up' apartment buildings in the 1960s and 1970s. The current government has maintained policy continuity, with the *Plan for growing Sydney* of 2014 — the first strategy for greater Sydney prepared by the Liberal-National coalition since their re-election in 2011 — maintaining the twin-pronged approach of its predecessor: expansion on the fringe and densification in

established suburbs. The previous government had put a target for the contribution of the established suburbs to estimated demand for new dwellings, of at least 70%.<sup>47</sup> The new government balked at this preciseness: *A plan for growing Sydney* simply gave strong support for 'urban renewal'.<sup>48</sup> Strategy documents produced by the Department of Planning and Environment have continued to emphasize densification of established suburbs. And Landcom, rebranded as UrbanGrowth NSW, has changed its main game from land-and-housing packages in greenfield areas to master planning major 'urban transformation' projects in established areas. Some of the sites that are UrbanGrowth's focus are 'brownfield' sites (e.g. The Bays precinct aside Port Jackson,) but some are 'grayfield' (e.g. Macquarie Park, Waterloo).

There is a similar policy dynamic for regional New South Wales, in large regional cities like Newcastle and other regional cities like Tweed Heads, Orange, and Wagga Wagga. In regional New South Wales, government plans for densification are often linked to a particular mechanism to achieve that aim, namely a 'diversity' of dwelling types — this means encouragement of medium-density and high-rise density dwellings. A number of the draft regional plans for regional New South Wales link a need for diversity of dwelling types to an expectation that an aging population (and one that is 'aging in place') would be more suitably housed in dwellings that are more compact and less dispersed.<sup>49</sup>

There is an expectation from some policy commentators and market analysts that some sections of housing consumers are favoring more compact types of dwellings,

especially in locations close to the ocean and other waterways and to transport nodes, employment centers, etc.<sup>50</sup> There is also an emerging critique from some other policy commentators that developers' preference for smaller dwellings (especially apartments) — except at the luxury end — has a perverse impact in that the sort of dwellings preferred by younger families with children are not being built in those more desirable locations.<sup>51</sup> Some governmental mechanisms do seek to encourage a range of dwellings with different numbers of bedrooms and a range of features along an adaptable/accessible continuum, in expectation that different households will have changing needs over a dwelling's lifetime. Provisions of the *State Environmental Planning Policy 65—Design Quality of Residential Apartment Development* and its accompanying *Apartment design code* (2015) can be interpreted in this light.<sup>52</sup>

The densification agenda has been expressed in a number of strategic plans,

coded as 'housing choice', 'housing diversity', or 'urban renewal'. *A Plan for growing Sydney* (2014) indicated that promoting 'housing choice' in Sydney would involve:<sup>53</sup>

- introduction of planning controls that increase the number of dwellings in established urban areas, and
- encouragement of 'further innovative, well-designed, smaller homes to suit lifestyles and budgets'.

Density through dwelling diversity is a feature of planning frameworks for some greenfield areas, such as the 2 main growth centers in Sydney<sup>54</sup>, but it is particularly stressed in locations where the Department of Planning and Environment has actively worked to override local planning controls considered unfit for the government's purpose. Most of these were initially badged as 'urban activation precincts'.<sup>55</sup> They are now generally called priority precincts or urban renewal areas. See Table 2.<sup>56</sup>

Table 2: Priority growth areas and precincts (Department of Planning and Environment), Sydney

<b>Land release</b>	
Northwest priority land release area	Southwest priority land release area
Greater Macarthur land release investigation	Ingleside release area
<b>Urban renewal</b>	
Western Sydney employment area	Western Sydney priority growth area
Greater Parramatta to Olympic peninsula urban renewal area	Sydney Metro Northwest priority urban renewal corridor
Sydenham to Bankstown urban renewal corridor	Glenfield to Macarthur urban renewal corridor
Epping and Macquarie Park	Arncliffe and Banksia

In these areas, the Department of Planning and Environment has undertaken (or is undertaking) planning studies to change the planning controls so that more intensive

development is permissible, and has given effect to those new controls by overriding the pre-existing controls of local environmental plans.

Table 3: Urban renewal projects (UrbanGrowth NSW)

<b>Inner Sydney</b>	
Central to Eveleigh urban transformation and transport program	Green Square town center
The Bays precinct Sydney urban transformation program	Parramatta Road urban transformation program
Waterloo (public-housing estate)	
<b>Western Sydney</b>	
Claymore (public-housing estate)	East Village at Spring Farm
Ivanhoe estate at Macquarie Park (public-housing estate)	Lachlan’s Line at Macquarie Park
Macarthur Heights	Newbrook at Airds (public-housing estate)
Oran Park town	Parramatta North urban transformation area
Riverstone scheduled land	Sydney Metro Northwest urban transformation projects
Wentworth Point	The Ponds
Thornton	
<b>Newcastle</b>	
Newcastle East End	Newcastle urban transformation and transport program
Sanctuary	
<b>Country</b>	
Renwick at Wingecarribee	Vantage at Port Stephens

In some signature brownfield and grayfield locations, UrbanGrowth NSW has undertaken (or is undertaking) master planning exercises, as a precursor to changes to planning controls. See Table 3.<sup>57</sup>

In some of these precincts there is a link between densification and social/tenure mix, but it appears to be equivocal. *None of the settled plans for urban activation precincts has incorporated a component of affordable housing.*

In one of UrbanGrowth NSW’s urban renewal project areas, that proposed for Parramatta North, there will be a 3% component of affordable housing.<sup>58</sup> In the North Eveleigh precinct of the Central to Eveleigh urban transformation area, UrbanGrowth NSW is proposing a 11% component of affordable housing.<sup>59</sup>

In two of the urban transformation areas — where there is already a significant presence of affordable rental housing — the ratio of non-market housing to market housing will change as the affordable-housing estate is redeveloped. In the case of the Ivanhoe estate at Macquarie Park, an estate of some 290 public-housing dwellings will be redeveloped to some 2,470 dwellings. Instead of having 100% nonmarket housing, there will be a mixed-tenure split of 70:30 market housing to nonmarket housing. Of the new total number, some 1,800 dwellings will be market housing, some 550 (22%) social housing (but community housing, not public housing) and 120 (5%) ‘affordable’ rental housing.<sup>60</sup> Here, at least, the number of social housing dwellings would increase after redevelopment (from the 290 to 550). In the case of the Waterloo estate, currently

with some 2,000 public-housing dwellings, the estate could be redeveloped to have about 7,000 dwellings. This would involve a 250% jump in density. Of those 7,000 dwellings, up to 70% would be for private homeowners.<sup>61</sup> This number is about 4,900 dwellings of the possible 7,000 total. The balance, some 30%, would be for social and 'affordable' rental housing: this would be 2,100 dwellings (that is, pretty much the same as the number of social-housing dwellings on the estate now).

In both of these redevelopment areas, the Land and Housing Corporation is, and will be, undertaking redevelopment within the framework of its Communities Plus program. A key feature of this is the Corporation taking advantage of the planning uplift being driven (at those sites, and elsewhere) by the densification measures of other state government agencies (Department of Planning and Environment, and UrbanGrowth NSW). The approach is being taken against a backdrop of a lack of any ongoing, consistent subsidy program from the state government to allow the Corporation to grow its portfolio with such assistance.<sup>62</sup>

The approach of densification contained in *A plan for growing Sydney* has been reaffirmed in regional plans and draft regional plans for other regions in New South Wales. The Illawarra–Shoalhaven regional plan (2015) indicated that the Government is to work with the 4 councils of this region, especially Wollongong, to review planning controls in existing urban areas to identify opportunities to increase the range of dwelling types (e.g. higher-density apartments).<sup>63</sup>

The draft regional plan for the Central Coast proposes creating a greater diversity of dwelling types in and around Gosford city center, the Somersby to Erina corridor, and the Tuggerah to Warnervale corridors, and local centers like Toukley, The Entrance, Long Jetty, Terrigal, Woy Woy, Umina, and Ettalong. It indicates the range of options for dwelling types could include apartments, villas and townhouses.<sup>64</sup>

The draft regional plan for the Hunter indicates a need for dwellings to meet varied needs of communities, and expects a range of dwelling types to be identified by local councils' local housing strategies. The same sentiments are indicated for Hunter city.<sup>65</sup>

Likewise, the draft North Coast, Central West and Orana, and Riverina–Murray regional plans all support housing diversity, understood as a variety of dwelling types, and in particular the construction of more multi-unit dwellings (including townhouses, villas, and apartments) in established urban areas.<sup>66</sup> In the case of the North Coast, the draft plan proposes that 40% of dwellings in the region should be multi-unit dwellings by 2036. In both the Central West and Orana, and Riverina–Murray regions, construction of multi-unit dwellings on an infill basis is seen as important for housing aging populations.

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### **Housing diversity**

As is clear from *A plan for growing Sydney* and the other regional plans, as well as the draft plan for Hunter city, densification involves more intensive land use and a range of dwelling types. This range of dwelling types, with a focus on medium-density and high-density buildings, is the

usual slant given to ‘housing diversity’ in those documents.

The notion ‘housing diversity’ is not new, and follows on from concepts like housing mix, housing choice, and a range of dwellings, which were used in the mid 2000s. In her study of provisions for ‘housing diversity’ in local environmental plans and development control plans in the greater metropolitan region, Dukinfeld refers to a paper by Nicole Gurrán of 2009, in which Gurrán defines housing diversity against 4 characteristics: dwelling size, density and scale, location, tenure.<sup>67</sup> Dukinfeld herself uses 6 characteristics: dwelling type, size, affordability, bedroom mix, tenure, accessibility and adaptability. Notwithstanding this broader perspective, in practice it seems that local environmental plans in recent years that have adopted the term have had a ‘narrow’ focus, on building type and form — lot sizes, types of buildings (flats, townhouses, etc.), height and floor space ratios, range of bedrooms sizes, and accessibility and adaptability.

This approach is also that reflected in the regional plans. (See page 11, above.)

In the case of greenfield areas ‘housing diversity’, while referring to aspects of built form, hones in on a smaller number of planning and development controls. Landcom’s *Housing diversity guide* for new residential areas indicated that housing diversity should be promoted by smaller dwellings on compact lots — as an alternative to medium-density and high-density apartments and to detached homes on larger lots.<sup>68</sup> This concept continues with the Government’s planning for greenfield areas — where the core elements of housing diversity in the Sydney growth centers are: a

wider range of permitted dwelling types in residential zones, and lot sizes with minimum density requirements (enabling a mix of lot sizes in subdivisions).<sup>69</sup>

A quick scan of a number of local environmental plans finalized in the last few years, and a review of the high level objectives of those plans, give some insight into the current stress being given to ‘housing diversity’ (and variant terms). Of 12 local environmental plans checked for this purpose (in April 2016), 9 had an objective to promote housing diversity. Those were Bankstown LEP 2015 (a range of housing opportunities), Bathurst Regional LEP 2014 (greater housing choice), Blacktown LEP 2015 (diversity of housing choice), Campbelltown LEP 2015 (diverse housing opportunities), The Hills LEP 2012 (a range of housing options), Penrith LEP 2010 (diversity of housing types), Pittwater LEP 2014 (a range of housing in appropriate locations), Ryde LEP 2014 (a range of housing types), and Wyong LEP 2013 (a range of housing). The 3 that had an objective of promoting affordable housing were Lake Macquarie LEP 2014 (a range of accommodation types throughout the Lake Macquarie City so that housing stock meets the diversity of human needs and is affordable to as large a proportion of the population as possible), Shellharbour LEP 2013 (diversity of housing types, and also, as a separate aim, retain affordable housing opportunities as a way of ensuring a sustainable and inclusive community), and Wingecarribee LEP 2010 (‘a range of new housing and housing choice ... including opportunities for the provision of affordable and adaptable housing’).

With respect to affordable housing, we might as easily conclude that ‘housing

diversity' does not include affordable housing *as that it does*, and we might even wonder whether the focus on housing diversity is a way of appearing to address affordability issues without establishing strong mechanisms to provide affordable housing.

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### Compact dwellings

Landcom, in its guidelines for new released housing estates published in 2011, used the term 'compact housing' for various types of dwellings that would be, well, more *compact* as a result of development controls with regard to floor space ratios, minimum lot sizes, 'integrated housing' controls, site coverage, landscaped area, etc.<sup>70</sup> The sorts of dwellings that could fit the descriptor are secondary dwellings, strata-titled studio housing, cottage lot detached dwellings, zero lot detached dwellings, duplexes or semi-attached dwellings, triplexes and 'manor homes', terraces and townhouses.

These are the sort of dwellings that 'housing diversity' provisions are aimed to encourage. While there is some policy focus on 'housing diversity' in greenfield areas, there is greater policy emphasis on housing diversity (and compact dwellings) in established areas on an infill basis, as is clear from the regional plans that have been finalized or drafted.

There has been some interest in compact dwellings in homeownership submarkets for reasons of affordability. The American phenomenon of 'small housing' has had some boutique impact in Australia.<sup>71</sup> But more significant has been a greater tolerance by homebuyers of smaller (and hence *cheaper*) apartments in established areas.<sup>72</sup>

The *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development* of 2002, which aims to improve the design quality (and public acceptability) of flats, has minimum sizes for floor plans of apartments, varying by the number of bedrooms. These minimums are contained in the *Apartment design code* released in tandem with amendments of that SEPP in July 2015.

However, some policymakers, and UrbanGrowth NSW in particular, are interested in promoting compact housing units, especially for private rental housing, and where targeted to sole-person households who might be content with this. In UrbanGrowth NSW released a summary report of an as-yet unreleased housing diversity strategy for the Central to Eveleigh urban transformation project (inner Sydney), which suggests there should be innovation in design of apartments for long-term rental where 'personal rooming accommodation may be smaller on the basis that excellent shared spaces provide high amenity'.<sup>73</sup> This notion was also proposed in the draft urban transformation strategy for the Parramatta Road corridor (Sydney).<sup>74</sup>

It is clear that private developers are moving to develop smaller units for rental in submarkets where the householder will accept a small unit, e.g. students.<sup>75</sup> These developments, in part or whole, can meet the classification of a boarding house, where (under the Affordable Rental Housing SEPP) the floor area for the *bedroom component* of the dwelling must be at least 12m<sup>2</sup> if it is to be used by a single resident.

Table 4 gives the minimum or typical floor areas for a number of compact dwellings, from New South Wales and overseas (2

models that have been canvassed for implementation in Australia). SEPP 65 (or rather, its *Apartment design guide*) sets a minimum of 35m<sup>2</sup> for a studio in an apartment building and 50m<sup>2</sup> for a 1-bedroom flat in an apartment building. These minimums were set in 2015, following an extensive period of public debate, during which some local government councils were keen to be less generous (minimalist) than implied under the previous guidelines.

In the case of a dwelling in a boarding house, the minimum floor area of the dwelling's bedroom to be occupied by 1 person must be 12m<sup>2</sup> and the maximum 25m<sup>2</sup>. A boarding-house dwelling occupied by a single resident may be larger than this maximum (for the bedroom) if the dwelling includes a private kitchen or bathroom facilities. With this maximum floor area for a bedroom, plus floor area for a private kitchen or bathroom facilities, the boarding-house dwelling could easily match the minimum floor area used for 1-bedroom flats in the 'Commonspace' model of

Syracuse, USA.<sup>76</sup> Indeed, the current boarding house controls could be used to build multi-unit dwellings of a type that were built in parts of Sydney and Melbourne in the 1920s and 1930s. One of these, in the 'Ballina' units in Darlinghurst (Sydney), with 27m<sup>2</sup>, has won a number of design awards.<sup>77</sup> The 'Pocket Living' model in London, another overseas model that is being presented as 'innovative', applies a floor area of 38m<sup>2</sup> for its 1-bedroom dwellings<sup>78</sup>, which is actually larger than the minimum area for a studio under SEPP 65.

Compact dwellings might have some benefit for housing affordability in the short run (compared with larger dwellings sharing the same sub-market), but in high-demand locations it is unlikely they will avoid price inflation, and this benefit will evaporate in the medium-term. Where these dwellings can trade off excess floor space without unacceptable loss of amenity, they provide another choice-option for some households. But they can only be a micro component of a housing-affordability strategy.

Table 4: Minimum floor areas for small dwellings in multi-unit dwellings

Dwelling type	Minimum floor area, m <sup>2</sup>	Source
Studio in in block of flats	35	SEPP 65 ( <i>Apartment design guide</i> )
1-bedroom unit in block of flats	50	SEPP 65 ( <i>Apartment design guide</i> )
1-bedroom in boarding house for a single occupant	12, for the bedroom; no minimum set for separate bathroom/toilet or kitchen in the unit, which if, provided, would increase total floor area of the unit	ARH SEPP
1-bedroom unit in block of flats	38	'Pocket Living' (London, England)
1-bedroom unit in block of flats	28	'Commonspace' (Syracuse, USA)
Studio in block of flats	27	'Ballina' flats (Darlinghurst, NSW)

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## Fast-tracking processes

NSW governments have not only put a high policy focus on densification, they have also introduced various mechanisms to ensure changes to planning controls and assessment of development proposals are done faster.

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## Priority precincts and state significant sites

The priority precincts program — introduced as the urban activation precinct program in 2013 — is designed to fast-track redevelopment in established suburbs by having the state government reimagine a suburb, propose new planning controls, and override existing controls of a local environmental plan via a special SEPP. The program was introduced as part of a ‘Building the state’ package in the 2012-13 Budget.

An initial suite of 8 ‘urban activation precincts’, all in Sydney, was announced in March 2013. The planning work has been finalized in 5 of those initial precincts (Epping town center, North Ryde railway station, Wentworth Point, Macquarie Park, and Carter Street Lidcombe). *None* includes a planning mechanism to generate new affordable housing. Three of the initial 8 have disappeared off the radar for various reasons (i.e. Mascot, Randwick, and southern Maroubra). The Department of Planning and Environment currently indicates that it is working on new planning controls, as priority precincts or urban renewal areas, in a number of locations in Sydney, including North West Rail Corridor and Bankstown–Sydenham corridor.

The current government inherited the concept of state significant sites from the former government. The key environmental

planning instrument covering them is *State Environmental Planning Policy (State Significant Precincts) 2005*, which operationalizes the Act’s provisions on ‘state significant precincts’ and also provides land-use planning and development controls.<sup>79</sup> That SEPP currently covers 17 sites, including the Redfern-Waterloo Authority sites (Sydney), Kings Forest (Tweed), Barangaroo (Sydney), Sydney Olympic Park (Auburn), Sandon Point (Wollongong), Edmondson Park South (Campbelltown/Liverpool).<sup>80</sup>

A related SEPP, the *State Environmental Planning Policy (State and Regional Development) 2011*, designates development as ‘state significant’ if they are proposed at a number of 19 named sites, the import being that the consent authority for development on these sites is the minister for planning.<sup>81</sup> This SEPP currently covers Honeysuckle (Newcastle), the Bays precinct (Sydney), Redfern-Waterloo sites (Sydney), Barangaroo (Sydney), North Penrith (Sydney), the Rocks (Sydney), and on certain Land and Housing Corporation sites (yet to be identified).

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## Urban transformation

‘Urban transformation’ is the moniker used by UrbanGrowth NSW for its redevelopment activities at a number of major sites, among them Parramatta North, Parramatta Road, The Bays Precinct, Macquarie Park, Central to Everleigh, Waterloo, and Oran Park in Sydney and central Newcastle in Newcastle. Its key role in these locations is ‘master planning’ — a process of reimaging the area in general and proposing new planning controls (land-use zones, height controls, etc.) in particular.

In some parts of the state where it is a landowner, UrbanGrowth has other roles, such as developer, as with ‘Sanctuary’ at Newcastle and with ‘Vantage’ at Port Stephens. At some other locations, such as Airs–Bradbury where the public-housing estate is being redeveloped as a mixed-tenure estate (with 12% social housing), UrbanGrowth has a developer function.

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### Complying development

The Government has a general commitment to minimizing the proportion of development applications that are assessed on a ‘merit’ basis.<sup>82</sup> The mechanism it is currently using to do this is to extend the range of development that may be

categorized as ‘complying development’, and as such may be assessed by a certifier of the developer’s choice (either a private certifier or the local government council) against standards set out in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.<sup>83</sup>

In early 2016 the Government consulted on options and proposals for extending the complying development process on 2 matters:

- low-rise medium-density housing (attached dual occupancies, ‘manor houses’, terrace-houses, multi-dwelling complexes)<sup>84</sup>
- dwellings in inland New South Wales<sup>85</sup>

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## Affordable housing through the planning system

The land-use planning system (what it aims to do, and how it works) can influence housing affordability through its impact on the supply of land for dwellings, location, and the like.

Most of these matters are the subject of high-level plans and documents, some of which cover the whole state and some of which apply to particular regions (including the Greater Sydney Region).

Provision of affordable housing — as a specific intervention to address housing unaffordability for lower and moderate-income households — is also touched in in these documents (indeed, one of the objects of the *Environmental Planning and Assessment Act* is ‘the provision and maintenance of affordable housing’).

But a crucial question is whether there are actually mechanisms in state policies and

local environmental instruments that allow action to be taken (legally) and that provide clear and simple processes.

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### Strategic planning

As indicated, at the highest level, the Act signals that one of the objects of the land-use and development-assessment system in New South Wales is to provide and maintain affordable housing.

This object is also mirrored in the objects of the Greater Sydney Commission, which has as a principal objective promotion of the supply of housing, including affordable housing. The Commission has responsibility for the main planning strategy for the Greater Sydney Region, and will be reviewing the current plan, *A plan for growing Sydney*.

*A plan for growing Sydney* gave 3 important commitments on affordable housing.<sup>86</sup> They were to:

- develop a comprehensive approach to this issue that involves all stakeholders — the Government, local councils and the private and community sectors;
- provide affordable housing in government-led urban renewal projects and on government-owned sites to meet the shortfall in affordable housing; and
- require local councils to include affordable housing in their local housing strategies, to respond to local demand.

None of them has been acted on (at least publicly) in the year since the plan was released.

The development of a ‘comprehensive approach to affordable housing’, specifically for greater Sydney, is also referred to in the regional and draft regional plans for the regions other than Sydney that have been released from late 2015.

The regional plan that gives us somewhat more information about what this ‘comprehensive approach’ might include is the *Draft regional plan for Riverina–Murray*. This plan refers to ‘comprehensive approach to affordable housing’ as ‘a whole-of-government strategy for affordable housing’, which will ‘assess the need for social, public and affordable housing across NSW, provide greater planning certainty and facilitate complementary activities, such as partnering with community housing providers.’<sup>87</sup>

The Illawarra–Shoalhaven regional plan acknowledges a significant proportion of

households in the region as experiencing housing stress (some 27%), but gives no indication of an action specific to the region to help redress it, but, rather, it refers to the ‘comprehensive approach to’ this issue being developed by the state government in consultation with all stakeholders.<sup>88</sup>

The Central Coast draft regional plan indicates that the state government will work with councils to implement locally responsive affordable housing strategies.<sup>89</sup>

The draft regional plan for the Hunter and the draft subregional plan for Hunter city both indicate that the NSW Government will require councils in the region to prepare a local housing strategy. The local affordable housing strategies will identify the housing needs of the community, the range of housing types required to support the future population, and related infrastructure needs; and they will also identify affordable housing needs and strategies for delivery.<sup>90</sup> The ‘integrated housing strategy’ for the Hunter City subregion will be about increasing the supply of smaller dwellings; increasing the supply of affordable housing; and delivering dwellings for special-needs groups (e.g. students, short-term visitors, visitors accessing health services older people).<sup>91</sup>

The draft regional plan for the North Coast is better than the Illawarra–Shoalhaven regional plan and the other draft plans released before it, in that it has a bolder commitment to the delivery of more opportunities for affordable housing and it raises options for action mechanisms.<sup>92</sup> The specific actions suggested are that that councils in the region could include model controls that require affordable housing to be included in developments (with bonuses

in the form of waiver of development standards in return for developers delivering a percentage of affordable housing in a development). The way this is presented is a bit confusing (to me) because it seems to be referring to provisions such as exist in local environmental plans in Waverley and Sydney City (for 2 sites) where development bonuses are available in return for delivery of affordable housing. However, these are incentives, not 'requirements'. (See 'Incentives in planning controls', below.) Where a requirement, or 'mandatory', approach is taken, as in Willoughby and Sydney City (3 precincts), there are no development bonuses, and no trade-off of environmental standards is necessary.

The draft regional plan for the Central West and Orana has proposals for this region that are similar as those proposed for the North Coast region. It suggests that councils can help to improve affordable housing by including controls that require the inclusion of affordable housing in developments (through bonuses) in their planning strategies and local environmental plans. It also proposes the region's councils consider development controls and reduced contributions, or other development incentives that might boost construction of secondary dwellings as alternative affordable housing. Cryptically, it suggests councils could also consider planning incentives under the *State Environmental Planning Policy (Affordable Rental Housing) 2009*. And it suggests councils' planning controls could promote new caravan parks and manufactured home estates on unconstrained land in existing settlements, and new land release areas in the urban growth areas. The draft plan, as with other draft regional plans, indicates that the state

government will prepare guidelines for local housing strategies; work with councils to prepare local housing strategies that plan for a range of housing types and to consider local affordable housing needs and strategies; and consider amendments to relevant environmental planning instruments informed by updated strategies.<sup>93</sup>

Likewise, the draft Riverina–Murray regional plan. The actions proposed for this region are similar as those proposed for the North Coast and Central West/Orana regions. It suggests that councils can help to improve affordable housing by including controls that require the inclusion of affordable housing in developments (through bonuses) in their planning strategies and local environmental plans. It also proposes the region's councils consider development controls and reduced contributions, or other development incentives that might boost construction of secondary dwellings as alternative affordable housing. It suggests councils could also consider planning incentives under the *State Environmental Planning Policy (Affordable Rental Housing) 2009*. And it suggests councils' planning controls could promote new caravan parks and manufactured home estates on unconstrained land in existing settlements, and new land release areas in the urban growth areas. The draft plan, as with other draft regional plans, indicates that the State government will prepare guidelines for local housing strategies; work with councils to prepare local housing strategies that plan for a range of housing types and to consider local affordable housing needs and strategies; and consider amendments to relevant environmental planning instruments informed by updated strategies.

These commitments to developing local and regional housing strategies and considering changes to planning controls are really terrific because they take us *back* to where we were about 15 years ago, around the year 2000, when the state government was encouraging councils to prepare local housing strategies, to include a high-level aim in their LEPs of promoting affordable housing, and to establish schemes based on mandatory developer contributions where there was value uplift. We are not quite where we were then, though, because none of the plans and draft plans explicitly asks the councils to develop value-capture based schemes under section 94F of the *Environmental Planning and Assessment Act*, and nor do they promise the Government will identify any of the local government areas in any of the regions as an area with ‘a need for affordable housing’ (by amendment to SEPP70).

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### Urban renewal and urban transformation

As already indicated, it’s been characteristic of urban renewal and urban transformation projects (to date) to *not* include any, or significant, provision of affordable housing. Some recent measures that do need to be acknowledged are the 3% commitment to affordable housing in the Parramatta North urban transformation precinct.<sup>94</sup> (But note that is 3%, not 15%, or 20%, or 30%.) And another is UrbanGrowth’s commitment to develop an affordable housing target for housing development along the Parramatta Road corridor (Sydney).<sup>95</sup>

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### Planning agreements for affordable housing

While it is clear that planning agreements have been and become an important mechanism to finance provision of economic and social infrastructure by local governments, their use for provision of affordable housing in this sphere of government has been limited.<sup>96</sup>

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### Incentives in planning controls

There are 2 councils that have LEP provisions that give development concessions in return for provision of affordable housing. Those are Sydney City (for 2 sites) and Waverley.

Sydney City changed the planning controls for a Land and Housing Corporation owned site in 2011 to facilitate affordable rental housing, through an ‘incentive’ for developments to incorporate social housing premises (*Sydney Local Environmental Plan (Glebe Affordable Housing Project) 2011*). The floor space ratio for a building on the site may exceed the maximum floor space ratio of 1.3:1 by up to 0.6:1 if the total floor area of a building that is to be used as social housing premises is equal to or greater than 110% of the site area. The site had been used for public housing. The new planning controls were a mechanism to allow the landowner (a government trading enterprise) to ‘unlock’ the value of its land and capture the betterment for state-government purposes.

Another large site in Sydney City, at Forest Lodge, had new planning controls established in 2011 to allow largely for private residential development (*Sydney Local Environmental Plan (Harold Park)*

2011). The developer, through a planning agreement with the Council, is required to dedicate 1,000 square meters of land for affordable housing. The amendment to the *Sydney Local Environmental Plan*, allows for additional floor space over the maximum floor space ratio (which is 1.15:1) by up to 500 square meters, if the development includes one or more buildings for the purposes of group homes, respite day care centres, seniors housing or residential accommodation that is affordable housing. In this case the new planning control was part of a negotiation with the developer, and the affordable housing was seen as a community benefit from the extra floor space in the total development.

*The Waverley Local Environmental Plan 2012* has a clause whose objective is 'to increase the supply of affordable rental housing for very low, low and moderate income earning households by providing incentives for the development of new affordable rental housing'. That mechanism applies to development for the purposes of residential flat buildings, or a mixed use development that contains shop-top housing, on land specifically identified on the Plan's floor space ratio map. Where such a development comprises at least one affordable-housing dwelling, it may get an additional 15% of the maximum gross floor space than would normally be got (this extra floor space is called 'the affordable housing incentive'). At least 50% of the additional gross floor area must be allocated to one or more dwellings providing rental affordable-housing in the development, for at least 3 years, with the dwellings to be managed by a registered community housing provider.

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## Affordable rental housing SEPP

The Affordable Rental Housing SEPP formally links to urban policy by encouraging greater density of dwellings in design and location. A greater floor space ratio is available to multi-unit dwellings containing at least 20 percent affordable-housing if the development, being in Sydney, is in an accessible area, or being outside Sydney is within 400 meters walking distance of local center or mixed-use zones.<sup>97</sup>

With new secondary dwellings, the SEPP allows for their development in a wide-range of residential zones.

With new boarding houses, the SEPP allows for their development in a wide-range of residential zones and 3 other zones. It also stipulates that new boarding houses in low-density residential zones have to meet the accessibility criteria that multi-unit dwellings (under the SEPP) do.

With new group homes, the SEPP allows for their development in a wide-range of residential zones and 3 other zones.

In this way, the SEPP allows for intensification of land use.

This SEPP has seen more than 8,000 dwellings approved through it since 2009.<sup>98</sup>

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## Promoting implementation of 'inclusionary housing' in New South Wales

Inclusionary housing is a mechanism to require contributions for affordable housing from developers during the development assessment process (under planning law), with or without concessions on planning and development controls in return.<sup>99</sup> It is a

separate matter to setting targets for production or provision of affordable housing through the land-use planning system, but is one mechanism that might assist any such targets being achieved. Inclusionary housing is provided for by planning law in New South Wales, now, and a small number of environmental planning instruments contain provisions of an inclusionary housing nature.

Key features of the current arrangement in New South Wales are that it is:

- evidence-based — a local housing market/needs study assesses whether there is a need for affordable housing in the area, and in this way establishes a nexus between the need and the solution
- consultative — a strategy for affordable housing is developed by a local government council using an open decision-making process including consultative on draft strategy documents and other community engagement
- locally-based — it gives a primary role for designing a scheme to the local government councils who will be managing it
- discretionary — local governments are not required to have such a scheme, but they may develop one if their housing market/needs/choice studies show a need for it and their affordable housing strategies identify it as a useful mechanism in their area
- centrally-controlled in terms of its framework — the parameters (including the legality of such a scheme) are set by the Parliament

through legislation and by the Government through a state environmental planning policy, and in this way provide legitimation

- responsive to change — it can be amended by a local government council that establishes a scheme council, through amendment of an LEP (subject to minister's consent) and amendment of a scheme/program document
- flexible — it allows for local variations in program implementation (e.g. level of developer contributions, allocations policies to the affordable housing)
- based on value capture (and therefore not a tax on development or a disincentive to development)
- based on a logic (for developers) of a residual value model for assessing the viability of a proposed development, under which a developer makes a decision to engage in a development on a site affected by the affordable housing levy on the basis of the value of the land and profitability development after taking into account all costs; the cost of bearing the levy is pushed back to the landowners as a lower selling price, which manifests as a lower purchase price by the developer for this reason — the cost of the levy should not be passed on by the developer to the purchasers of market-priced dwelling-units in the development

The relevant law is the *Environmental Planning and Assessment Act 1979*, and the relevant section is section 94F.<sup>100</sup> (This is backed up by Section 94G.) Section 94F of

the Act allows consent authorities, such as local governments, to establish inclusionary housing schemes requiring contributions for affordable housing.

To do this, the local government council must:

- Be satisfied that the proposed development (i) will or is likely to reduce the availability of affordability housing within the local government area, or (ii) will create a need for affordable housing within the area, or (iii) is allowed only because of the initial zoning, or rezoning, of a site.
- Include the consent conditions in a local environmental plan.
- Authorize the consent conditions in accordance with a scheme for dedications or contributions that are

set out or adopted in a local environmental plan.

- Impose consent conditions that are reasonable having regard to the extent of the need in the area for affordable housing, the scale of the proposed development, and any other contribution the developer might be making under section 94F or section 94.
- Consider any previous contributions the developer has made for affordable housing in the area that were not made as conditions of consent.

Box 1 indicates the output, in terms of dwellings completed since inclusionary housing was given a legal basis in Section 94F and SEPP70.<sup>101</sup>

**Box 1: Inclusionary housing contributions, Sydney City and Willoughby**

In the City of Sydney, the inclusionary housing schemes in Ultimo-Pyrmont and Green Square have delivered 548 affordable rental housing dwellings to be held in perpetuity, with another 300 dwellings scheduled for completion by 2016. The Department of Planning and Environment collected and allocated over \$25 million of affordable housing funds to City West Housing from section 94F contributions during 2014-15.

In Willoughby, the Council owns 10 dwellings (managed for it by Link Housing), has another 13 negotiated and about to come online, and another 10 are being negotiated (as at April 2016).

With only 3 local government areas (Sydney City, Willoughby, Leichhardt) currently identified as having a need for affordable housing, and with only 2 local councils (Sydney City, Willoughby) having inclusionary housing schemes in their area, there is a case for more councils to initiate the steps needed to have such a scheme (a 'local affordable housing scheme').

To able to give effect to a scheme under this law, a council will need to have:

- their area identified as having a need for affordable housing in a state environmental planning policy (the SEPP that does this for the existing schemes is *State Environmental Planning Policy 70 – Affordable Housing (Revised Schemes)*, which is readily amendable<sup>102</sup>); and

- a state environmental planning policy in existence that has requirements for conditions of consent under section 94F(3)(a) of the Act (this is so, and that SEPP is SEPP 70, and the relevant clause of the SEPP is clause 10).

Local governments can move towards being able to levy developer contributions for affordable housing, by:

- asking the minister for planning to amend clause 9 of SEPP 70 to have their area identified as an area with a need for affordable housing — on the basis of the research by FACS’s Centre for Affordable Housing, which has identified 28 areas as having a ‘high’ need and 35 areas as having a ‘moderate high’ need for affordable housing.<sup>103</sup> In the case of local governments in areas where the FACS’s Centre for Affordable Housing has not identified their area as having a high, moderate high, or moderate need for affordable housing, those councils would need to do their own research to investigate and identify the need for affordable housing.
- preparing a local housing strategy that considers the matters suggested in Actions 2.3.1 and 2.3.3 of the Government’s *Plan for growing Sydney* (2014)<sup>104</sup>;
- including an affordable housing scheme based on seeking dedication of land and/or monetary contributions from developers as elements of that strategy;
- amending their LEP to authorize conditions of consent for affordable housing in accordance with the affordable housing and to include provisions setting out or adopting a scheme for dedications or contributions; and

- getting the minister for planning to agree to approve the amendments to their LEP.

Note that there are 2 matters where the planning minister’s approval is needed before a council can start an affordable housing scheme. She/he must:

- recognize — through a state environmental planning policy (i.e. SEPP 70) — their local government area as an area with a need for affordable housing (see s.94F(1) of the Act); and
- approve their proposed amendments to their LEP (see s.59 of the Act); in the case of LEPs in the Greater Sydney Region, this power will shift to the Greater Sydney Commission (see s.24(2) of the *Environmental Planning and Assessment Act*).<sup>105</sup>

An argument for greater use of inclusionary housing could be put forward on 4 foundations:<sup>106</sup>

1. Recognition that government-led upzonings and increases in urban density are likely to *lead* to higher values and prices for land in affected localities in NSW cities — with new high-rise and medium-density housing developments targeted to higher-income households and with more intensive gentrification of neighbouring suburbs.
2. Recognition that *capture* (sharing) of some of the land-value uplift is a *reasonable* ask by government.<sup>107</sup> A mechanism to capture landowners’ planning gain is not a tax, and nor is it a disincentive to redevelopment.<sup>108</sup> It is also preferable to use of voluntary planning agreements, which have the risk of unacceptable trade-offs of environmental standards.<sup>109</sup>

3. Recognition of an active commitment to affordable-rental housing to *offset social-exclusionary market pressures* is a *reasonable* ask of governments.
4. Recognition of the existing statutory basis, in the *Environmental Planning and Assessment Act 1979* (at section 94F), as the *right* ('true and tried') sort of planning mechanism to promote and provide affordable-rental housing on a value-capture model, and local

governments *should actively* pursue the mechanisms this law allows.

Actions that the *minister for planning* could take to extend opportunities for local inclusionary housing schemes, and actions that a *local council* could take to establish and implement an inclusionary housing scheme in its area, are indicated in 'Attachment: Turbo-charging inclusionary housing'.

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## Attachment: Turbo-charging inclusionary housing

For inclusionary housing to be implemented more generally than its extent now (which is extremely limited), there are actions that would need to be taken by the minister for planning, and actions by those local councils that wanted to promote and provide affordable housing in their area through this mechanism.

### **7 actions the minister for planning could take**

The minister for planning could:

- Give clear policy support for bespoke affordable housing through strategic planning documents (including the district plans to be developed by the Greater Sydney Commission) by identifying an aspirational target of at least 15% affordable housing as a subset of the projected dwelling targets for the districts and regions. This target figure is based on the targets used in South Australia (Government of South Australia, *Housing strategy for South Australia 2013–18*, 2013) and Western Australia (Government of Western Australia, *Affordable housing strategy 2010–2020: opening doors to affordable housing*, 2010).
- Adopt a target of 15% of the new dwellings to be developed in urban renewal precincts and greenfield release areas to be provided as affordable housing to give effect to Action 2.3.3 of the Government's *Plan for growing Sydney*.
- Amend SEPP 70 to identify land as having a need for affordable housing being land in the 26 local government areas identified by the FACS Centre for Affordable Housing as having a 'high need' for affordable housing (and not already identified in that SEPP as having a need for affordable housing).<sup>110</sup>  
*Alternatively:* Amend SEPP 70 to identify land as having a need for affordable housing being land in the 60 local government areas identified by the FACS Centre for Affordable Housing as having a 'high need' or a 'moderate high need' for affordable housing (and not already identified in that SEPP as having a need for affordable housing).<sup>111</sup>
- Release guidelines for affordable housing strategies, as per, in the case of the Greater Sydney Region, Action 2.3.1 the Government's *Plan for growing Sydney*
- Encourage the councils for areas that have a high need for affordable housing to prepare affordable housing contributions scheme pursuant to section 94F of the *Environmental Planning and Assessment Act* and to prepare amendments to their LEPs that would operationalize such schemes (pursuant to section 94F(3)(b)).
- Approve amendments to local environmental plans to include affordable housing contributions scheme/provisions pursuant to section 94F of the *Environmental Planning and Assessment Act*, where requested by councils outside the Greater Sydney Region.
- Encourage the Greater Sydney Commission to approve amendments to the local environmental plans to include

affordable housing contributions scheme/provisions pursuant to section 94F of the *Environmental Planning and Assessment Act* where requested by councils.

### ***6 actions local government councils could take***

Local government councils could:

- Give clear policy support for bespoke affordable housing through their strategic planning documents (community strategic plan, affordable housing policy/strategy).
- Adopt an ‘aspirational’ target of 15% of the new dwellings to be developed in urban renewal precincts and greenfield release areas to be provided as affordable housing.
- Request the Minister to seek amendment of SEPP 70 to identify the council’s area as having a need for affordable housing.
- Adopt provisions in their comprehensive LEP to establish an ‘inclusionary

housing’ scheme pursuant to Section 94F of the Act:

- Amend its LEP to include an aim to ‘promote and provide housing diversity, including affordable housing’.
- Amend its LEP to include a provision authorizing the imposition of developer contributions as development-consent conditions – use Sydney LEP clauses 7.13(1)-(3) as model.
- Amend its LEP to adopt a scheme for developer contributions for affordable housing – use Sydney LEP clause 7.13(4) as a model
- Request the minister (or Greater Sydney Commission, if relevant) to approve the amendments to the LEP.
- Adopt an Affordable Housing Program to indicate the operational and management aspects of the adopted scheme for developer contributions for affordable housing.<sup>112</sup>

## Notes

<sup>1</sup> In this paper, 'affordable housing' means housing services that are provided to a resident at a price that does not place the resident in housing stress. The sole criterion for classifying the housing services to be affordable is the price point in relation to the resident's capacity to pay; whether the housing service is based on owner-occupation (paying a deposit, paying off a mortgage) or rental (paying a bond, paying a rent) is not relevant: the term is cross-tenure. On this basis, rental housing that is branded as 'affordable housing', but rented out at a submarket rent after the payment of which the tenant is paying more than 30% of their income in rent, does not meet the definition. The definition of 'affordable housing' contained in the *Environmental Planning and Assessment Act*, which focuses on the incomes of the households to whom housing is provided for (namely, very low, low, and moderate income households) without regard to any affordability indicator (s.4 of the Act), *misses the point*. The Affordable Rental Housing SEPP supplements the Act's definition by adding a criterion, for affordable rental housing, that the household pays no more than 30 per cent of that gross income in rent in that housing (cl.6(1)(a)), and this is much more helpful. The definition used in this paper is not that used in some NGO and local government policy documents, where the term is more narrowly identified with a particular rental product branded as 'affordable housing', or with housing provided for key workers, or with housing provided by community housing providers. But a wider definition has resonance with policies of some governments that actually have an affordable-housing strategy, e.g. 'Affordable Housing refers to dwellings which households on low-to-moderate incomes can afford, while meeting other essential living costs. It includes public housing, not-for-profit housing, other subsidised housing under the National Rental Affordability Scheme together with private rental and home ownership options for those immediately outside the subsidised social housing system.' (Government of Western Australia, *Affordable housing strategy 2010-2020: opening doors to affordable housing*, December 2010); 'Affordable Housing: refers to rental homes or home purchases that are affordable to low income households, meaning that the housing costs are low enough that the household is not in housing stress or crisis' (Tasmanian Government, *Tasmania's affordable housing strategy 2015-2025*, September 2015).

<sup>2</sup> Department of Planning, *City of cities: a plan for Sydney's future*, December 2005. Action C4.1.2 was 'Prepare an initial NSW Affordable Housing Strategy by mid 2006' (p.145).

<sup>3</sup> NSW Government, *A plan for growing Sydney*, Planning and Environment, Sydney, December 2014, p.77.

<sup>4</sup> The development of guidelines for local government housing strategies is an action commitment in *A plan for growing Sydney* (p.77) and is also referred to in land-use plans for regional New South Wales. Work on these guidelines had begun, if not completed, while Brad Hazzard was minister for planning.

Developing a policy framework for affordable housing on government-owned land would follow from the action commitment, in *A plan for growing Sydney*, to 'provide affordable housing in Government-led urban renewal projects and on Government-owned sites to meet the shortfall in affordable housing' (p.77).

<sup>5</sup> NSW Government, *Future directions for social housing in NSW*, n.d. (2016); B Hazzard MP (Minister for Family and Community Services, Minister for Social Housing), 'Communities Plus boosts social and affordable housing', media release, 22 October 2015; B Hazzard (Minister for Family and Community Services Minister for Social Housing), 'New life for Telopea: plan for new mixed community in \$2.5 billion project', media release, 22 February 2016. The 'Communities Plus' program involves demolition of public-housing dwellings, sale of the land, rebuilding dwellings mostly for homeownership with some social housing (community housing), and the Land and Housing Corporation buying the completed social-housing dwellings from the developer. The first release of sites comprises sites at Macquarie Park, Telopea, Seven

Hills, Liverpool, Glendale, Gosford, and Tweed Heads; the second release comprises sites at locations in Penrith, Bankstown, Liverpool, Parramatta, Lane Cove, Wagga Wagga, Port Macquarie, and Wollongong local government areas. The redevelopment of the Waterloo public-housing estate is also a 'Communities Plus' project.

<sup>6</sup> HillPDA with N Gurran and P Phibbs, 'Study focus: Draft housing diversity study and strategy review', information sheet, UrbanGrowth NSW, Sydney, 2015, online at [www.centraltoeveleigh.com.au/download\\_file/38/267](http://www.centraltoeveleigh.com.au/download_file/38/267), viewed 9 March 2016; UrbanGrowth NSW, 'Sustainability compact: developing world leading transformation outcomes', draft, February 2016.

<sup>7</sup> 'Urban development and affordable housing measures: some current policy measures', *Shelter NSW Update*, v.3.1, 18 April 2013; 'New NSW planning regime and affordable housing', *Around the House*, June 2013; 'What's in the Planning Bill about affordable housing?', *Around the House*, December 2013.

<sup>8</sup> Specifically, the Government's Social and Affordable Housing Fund which aims to contribute to the development of 3,000 social-housing dwellings in its first phase, and is funded by \$1.1 billion seed capital to be invested by TCorp to provide a revenue stream for up to 25 years (G Berejiklian (Treasurer) and B Hazzard (Minister for Family and Community Services, Minister for Social Housing), 'Strong interest in \$1.1 billion social and affordable housing boost', media release, 2 May 2016), and the Communities Plus program which aims to add 6,000 additional social-housing dwellings to the Land and Housing Corporation's portfolio over a 10-year period ('The "Communities Plus" approach to increasing social housing', *Around the House*, December 2015).

<sup>9</sup> *A plan for growing Sydney*, pp.78-79; M Kembrey, 'Planning minister Rob Stokes unveils plans to create three new communities south of Campbelltown', *Sydney Morning Herald*, 23 September 2015, [www.smh.com.au/nsw/planning-minister-rob-stokes-unveils-plans-to-create-three-new-communities-south-of-campbelltown-20150922-gjs8ev.html](http://www.smh.com.au/nsw/planning-minister-rob-stokes-unveils-plans-to-create-three-new-communities-south-of-campbelltown-20150922-gjs8ev.html), viewed 23 September 2015.

<sup>10</sup> Table adapted from Department of Planning and Environment, 'Priority growth areas and precincts', [www.planning.nsw.gov.au/Plans-for-Your-Area/Priority-Growth-Areas-and-Precincts](http://www.planning.nsw.gov.au/Plans-for-Your-Area/Priority-Growth-Areas-and-Precincts), viewed 14 March 2016.

<sup>11</sup> For a brief summary of this initiative see 'Urban development and affordable housing: some current policy measures', *Shelter NSW Update*, 2013, p.7. There seems to be no information on it at the DPE website (16 March 2016) and there is no mention of it in the Department's *Annual Report 2014-15*.

<sup>12</sup> NSW Government, *Illawarra–Shoalhaven regional plan*, Planning and Environment, Wollongong, November 2015; NSW Government, *Draft Central Coast regional plan*, Planning and Environment, Newcastle, November 2015; NSW Government, *Draft Hunter regional plan*, Planning and Environment, Newcastle, November 2015; NSW Government, *Draft North Coast regional plan*, Planning and Environment, Grafton, March 2016; NSW Government, *Draft Central West and Orana regional plan*, Planning and Environment, Dubbo, April 2016; NSW Government, *Draft Riverina–Murray regional plan*, Planning and Environment, Dubbo, April 2016; NSW Government, *Draft plan for growing Hunter city*, Planning and Environment, Newcastle, November 2015. The concept for a 'Hunter city' is an agglomeration of Newcastle, Maitland, Raymond Terrace, and northern towns around Lake Macquarie like Toronto and Swansea.

<sup>13</sup> For example, *Illawarra–Shoalhaven regional plan*, p.38, 47, 51; *Draft Central Coast regional plan*, p.23; *Draft Hunter regional plan*, p.66; *Draft North Coast regional plan*, p.48; *Draft Central West and Orana regional plan*, p.45, 48, 61; *Draft Riverina–Murray regional plan*, pp.20-21,29.

<sup>14</sup> On the concept — Clive Hamilton, *Growth fetish*, Allen&Unwin, 2003; on its application (and related approaches) to urban and regional planning — I Wright and S Cleary, 'Are we all neoliberals now? Urban

planning in a neoliberal era', paper presented to Planning Institute of Australia national congress, Canberra, 25 March 2013, online at [www.planning.org.au/documents/item/5004](http://www.planning.org.au/documents/item/5004), viewed 9 April 2016.

<sup>15</sup> *Illawarra–Shoalhaven regional plan*, pp.34-35.

<sup>16</sup> *Draft Central Coast regional plan*, p.22.

<sup>17</sup> *Draft Hunter regional plan*, p.63.

<sup>18</sup> *Draft plan for growing Hunter city*, p.12.

<sup>19</sup> *Draft North Coast regional plan*, p.36.

<sup>20</sup> *Draft North Coast regional plan*, p.56.

<sup>21</sup> *Draft Central West and Orana regional plan*, p.80.

<sup>22</sup> *Draft Riverina–Murray regional plan*, p.61.

<sup>23</sup> Section 64A of the *Local Government Act* gives powers to require development contributions for water works to councils that have responsibility for these functions, on the same basis as water supply authorities; the power of these authorities is indicated in the [Water Management Act 2000](#), which indicates they may require contributions from developers towards the cost of water management work (in certain conditions).

<sup>24</sup> The minister for local government may make an order specifying the percentage by which a council's general income for a specified year may be varied (section 506 of the *Local Government Act*); the percentage is set by the [Independent Pricing and Regulatory Tribunal](#), to which a council may apply for a [special variation](#) of the statewide percentage peg in its case.

<sup>25</sup> NSW Government, *Infrastructure statement 2012-13 (Budget paper 4)*, 2013, p.2-5.

<sup>26</sup> Office of Local Government, 'Local Infrastructure Renewal Scheme', online at [www.olg.nsw.gov.au/strengthening-local-government/infrastructure-renewal/local-infrastructure-renewal-scheme](http://www.olg.nsw.gov.au/strengthening-local-government/infrastructure-renewal/local-infrastructure-renewal-scheme), viewed 22 April 2016.

<sup>27</sup> The minister for planning may make an order about the public amenities and public services in relation to which a condition under section 94 may be imposed, and about the maximum amount of monetary contributions from developers (section 94E of the *Environmental Planning and Assessment Act*). A council may seek a review of its contributions plan, from the [Independent Pricing and Regulatory Tribunal](#), if its proposed development contributions are above the relevant cap, and if it is seeking a gap funding from a special variation or funding through the Local Infrastructure Growth Scheme. (The Local Infrastructure Growth Scheme is not the same as the Local Infrastructure Renewal Scheme mentioned on page 4 of this *Update*.)

<sup>28</sup> NSW Government Planning, 'Development contributions', *Planning Circular PS10-025*, 23 November 2010.

<sup>29</sup> *Environmental Planning and Assessment Regulation 2000*, section 25K. This levy may not be charged on a development estimated to cost less than \$100,000. A number of sites in some local environmental plans have different maximum caps.

<sup>30</sup> L O'Flynn (*History of development contributions under the NSW planning system*, e-brief 3/2011, NSW Parliamentary Library Research Service, 2011) notes that the term 'public amenities and public services' is not defined in the *Environmental Planning and Assessment Act*, but that water supply and sewerage services are specifically excluded from these activities by section 93C of the Act. The view of the Land and Environment Court on the concepts is possibly best illustrated by comments made by Justice Paul Stein, in concluding that Council administrative offices and a technical services department qualified (*Stockland (Constructors) Pty Ltd v Shellharbour Council* [1996] NSWLEC 125 (24 April 1996), online at [www.austlii.edu.au/cgi-bin/sinodisp/au/cases/nsw/NSWLEC/1996/125.html](http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/nsw/NSWLEC/1996/125.html)): 'Should the phrase public services or amenities be construed in a broad or narrow fashion? It is reasonable to note that the services

and amenities provided by local government over the last 100 years have changed dramatically, mirroring the changes in society and its growing complexity. What may not have been regarded as a public service or amenity 20 years ago may today be readily accepted as such eg. a child care centre. ... In my opinion, so long as a facility is operated or used for the benefit of the public, it provides a public service or public amenity. It seems to me to be illogical to exclude facilities which may enable the provision of a public amenity or public service merely because they emanate from council administrative offices or a technical works depot. Taking the applicant's argument to its logical conclusion would mean that part of, say, a child care centre or library which housed administration, would not qualify under s94 as a public service or amenity but the balance of the facility would. This highlights the illogicality of applying a narrow construction to the phrase. It appears to me that infrastructure which enables the provision of a public service or public amenity is part and parcel of the public service or public amenity and are authorised by s94. Council administration offices usually offer, provide and facilitate a range of services and amenities to the community. A technical works depot facilitates the construction and maintenance of many diverse public amenities and services. Indeed, I see little difference between a works depot and a waste treatment plant, which unquestionably is included within s94(1). A broad construction of the phrase "public amenities and public services" should not be a matter of concern because of the extensive accountability provisions built into the Act.'

The concepts 'public amenities and public services' do not include *affordable housing*. Affordable housing is not a 'public amenity', a 'public service', or 'public infrastructure' in terms of planning law, though it is a 'public purpose' for which planning agreements may be entered into (section 93F(2) of the *Environmental Planning and Assessment Act*). The Land and Environment Court's view against affordable housing being covered by section 94 is contained in a 2000 court case between Meriton Apartments Pty Ltd and the Minister for Urban Affairs and Planning, in which Justice Dennis Cowdroy stated that provision for low-income families was 'a purpose not contemplated by s94' and that the use of the section for such purpose was 'invalid' (Meriton Apartments Pty Ltd v Minister for Urban Affairs and Planning & Or [2000] NSWLEC 20 (18 February 2000), online at [www.austlii.edu.au/au/cases/nsw/NSWLEC/2000/20.html](http://www.austlii.edu.au/au/cases/nsw/NSWLEC/2000/20.html)). This judgment stated: 'New legislation will be required if it is sought to maintain a scheme for affordable housing'. The Government's response to the case was to amend the Act to allow requirements of developer contributions for affordable housing — the provisions contained in sections 94F and 94G.

<sup>31</sup> C Murray, 'Property developers pay developer charges, that's why they argue against them', *The Conversation*, 8 September 2015, [theconversation.com/property-developers-pay-developer-charges-thats-why-they-argue-against-them-46816](http://theconversation.com/property-developers-pay-developer-charges-thats-why-they-argue-against-them-46816), viewed 10 September 2015. Murray's article draws on results from empirical analysis in 2 American studies, G Burge and K Ihlanfeldt, 'Impact fees and single-family home construction', *Journal of Urban Economics*, vol.60, 2006, pp.284-306, and SB Billings and TG Thibodeau, 'Financing residential development with special districts', *Real Estate Economics*, vol.41, no.1, March 2013, pp.131-163.

<sup>32</sup> Department of Planning and Environment, 'Local Infrastructure Growth Scheme', [www.planning.nsw.gov.au/About-Us/Our-Programs/Local-Infrastructure-Growth-Scheme](http://www.planning.nsw.gov.au/About-Us/Our-Programs/Local-Infrastructure-Growth-Scheme), updated 17 September 2015, viewed 9 April 2016.

<sup>33</sup> Department of Planning and Environment, *Annual Report 2014-15*, p.20.

<sup>34</sup> The key relations between voluntary planning agreement contributions and section 94 contributions are regulated by [section 93F](#) of the *Environmental Planning and Assessment Act*. Section 93F(d) states that a planning agreement must state whether the agreement excludes (wholly or in part) or does not exclude the application of section 94, 94A or 94EF to the development subject to the planning agreement. Section 93F(3)(e) states that a planning agreement must indicate, if the agreement does not exclude the

application of section 94 to the development, whether benefits under the agreement are or are not to be taken into consideration in determining a development contribution under section 94. Section 93F(3A) states that a planning agreement cannot exclude the application of section 94 or 94A in respect of development unless the consent authority for the development or the Minister is a party to the agreement. Section 93F(5) states that, if a planning agreement excludes the application of section 94 or 94A to particular development, a consent authority may not impose a condition of development consent in respect of that development under either of those sections (except in respect of the application of any part of those sections that is not excluded by the agreement).

<sup>35</sup> See section 93I(3) of the Act. Of relevance here is section 93F(9), which prevents a planning agreement from imposing an obligation on a planning authority to grant development consent or to change an environmental planning instrument; and section 93F(1), which voids any planning agreement that breaches the provisions of an environmental planning instrument or a development consent.

<sup>36</sup> Urban Taskforce Australia, 'Growing trend for councils to sell planning decisions through Value Capture', media release, 30 March 2016.

<sup>37</sup> Woollahra Council, 'Draft Woollahra voluntary planning agreement policy' (exhibition version), 8 February 2016, online at [www.woollahra.nsw.gov.au/\\_data/assets/pdf\\_file/0004/163543/1\\_Woollahra\\_Voluntary\\_Planning\\_Agreement\\_Policy\\_-\\_Exhibition\\_version\\_of\\_8\\_February\\_2016.pdf](http://www.woollahra.nsw.gov.au/_data/assets/pdf_file/0004/163543/1_Woollahra_Voluntary_Planning_Agreement_Policy_-_Exhibition_version_of_8_February_2016.pdf), viewed 26 April 2016.

<sup>38</sup> Described in C Johnston, *Capital value uplift and affordable housing*, Shelter NSW Update, January 2014, p.7, 22, online at [www.shelternsw.org.au/publications-new/policy-papers/urban-policy-planning/381-capital-value-uplift-affordable-housing-shelter-update](http://www.shelternsw.org.au/publications-new/policy-papers/urban-policy-planning/381-capital-value-uplift-affordable-housing-shelter-update).

<sup>39</sup> Leichhardt Council, 'Voluntary planning agreement policy', 11 August 2015.

<sup>40</sup> Department of Planning and Environment, 'Voluntary planning agreements', [vparegister.planning.nsw.gov.au/index.pl?action=home](http://vparegister.planning.nsw.gov.au/index.pl?action=home); data as at 9 April 2016.

<sup>41</sup> Department of Planning and Environment, *Annual Report 2014-15*, p.20.

<sup>42</sup> Department of Planning and Environment, 'Infrastructure funding', online at [www.planning.nsw.gov.au/Policy-and-Legislation/Infrastructure/Infrastructure-Funding](http://www.planning.nsw.gov.au/Policy-and-Legislation/Infrastructure/Infrastructure-Funding), viewed 20 April 2016.

<sup>43</sup> Department of Planning and Environment, *Annual Report 2014-15*, p.20.

<sup>44</sup> NSW Government, *Budget statement 2012-13 (Budget Paper no.2)*, 2012, pp.1-14-1-15.

<sup>45</sup> The Restart NSW Fund was established by the [Restart NSW Fund Act 2011](#) to fund major infrastructure projects that would enhance the state economy and assist mining-affected communities.

<sup>46</sup> Department of Planning and Environment, 'Housing Acceleration Fund', [www.planning.nsw.gov.au/About-Us/Our-Programs/Housing-Acceleration-Fund](http://www.planning.nsw.gov.au/About-Us/Our-Programs/Housing-Acceleration-Fund), updated 13 August 2015, viewed 14 March 2016. This total and the announced figures for years, where known, mean that the spending in 2014-15 would have been \$74.5 million.

<sup>47</sup> The state government's *Metropolitan plan for Sydney 2036* (2010) proposed that at least 70% of new dwellings be built in existing areas (p.114). *A plan for growing Sydney* (2014) does not mention a percentage target, while putting some emphasis on 'urban renewal' (pp.70-83).

<sup>48</sup> The Coalition, when in Opposition, had expressed disagreement with the 70% target, but, in government, found that market forces were favoring densification of established suburbs (see J Tovey, 'O'Farrell won't move to populate city fringe', *Sydney Morning Herald*, 26 June 2012, online at [www.smh.com.au/nsw/ofarrell-wont-move-to-populate-city-fringe-20120625-20ymc.html](http://www.smh.com.au/nsw/ofarrell-wont-move-to-populate-city-fringe-20120625-20ymc.html)), viewed 11 February 2013).

<sup>49</sup> See page 9 and 22 of this *Update*.

<sup>50</sup> J-F Kelly, B Weidmann, and M Walsh, *The housing we'd choose*, Grattan Institute, Melbourne, 2011, online at [grattan.edu.au/report/the-housing-wed-choose/](http://grattan.edu.au/report/the-housing-wed-choose/).

<sup>51</sup> B Birrell and D McCloskey, *The housing affordability crisis in Sydney and Melbourne — report one: the demographic foundations*, Monash University, 2015, online at [theaustralianpopulationresearchinstitute.files.wordpress.com/2014/12/housing-affordability-crisis-in-sydney-and-melbourne\\_part-1.pdf](http://theaustralianpopulationresearchinstitute.files.wordpress.com/2014/12/housing-affordability-crisis-in-sydney-and-melbourne_part-1.pdf); B Birrell and D McCloskey, *Sydney and Melbourne 's housing affordability crisis — report two: no end in sight*, Monash University, 2016, online at [tapri.org.au/wp-content/uploads/2016/02/Sydney-Melbourne-Housing-Report-No-2-No-End-in-Sight-6-Mar-2016-std.pdf](http://tapri.org.au/wp-content/uploads/2016/02/Sydney-Melbourne-Housing-Report-No-2-No-End-in-Sight-6-Mar-2016-std.pdf).

<sup>52</sup> Relevant provisions of the *Apartment design guide* include Objective 4K-1, Objective 4Q-1 and Objective 4Q-2. Objective 4K-1 indicates that a range of apartment types and sizes should be provided to cater for different household types now and into the future, and gives 3 guides for design to achieve this objective: a variety of apartment types is provided; the apartment mix is appropriate; the current market demands and projected future demographic trends; the demand for social and affordable housing; different cultural and socioeconomic groups; and flexible apartment configurations are provided to support diverse household types and stages of life including single person households, families, multi-generational families and group households (p.107). Objective 4Q-1 indicates that universal design features should be included in apartment design to promote flexible housing for all community members, and gives a guide for design to achieve this objective: developments should achieve a benchmark of 20% of the total apartments incorporating the Livable Housing Guideline's silver level universal design features (p.119). Objective 4Q-2 indicates that a variety of apartments with adaptable designs should be provided, and gives 2 guides for design to achieve this objective: adaptable housing should be provided in accordance with the relevant council policy; and design solutions for adaptable apartments include convenient access to communal and public areas; high level of solar access; minimal structural change and residential amenity loss when adapted; larger car parking spaces for accessibility; parking titled separately from apartments or shared car parking arrangements (p119). The high-level 'outcomes' nature of these objectives underscores the importance of local environmental plans and development control plans containing stronger provisions on dwelling 'diversity' (e.g. apartments with different mixes of bedroom numbers, proportion of apartments that should be adaptable or accessible).

<sup>53</sup> NSW Government, *A plan for growing Sydney*, p.76. A 3<sup>rd</sup> element was to encourage 'universal housing'.

<sup>54</sup> Department of Planning and Environment, 'Housing diversity: Sydney's growth areas — finalization report', 2014, online at [growthcentres.planning.nsw.gov.au/PrecinctPlanning/HousingDiversity.aspx](http://growthcentres.planning.nsw.gov.au/PrecinctPlanning/HousingDiversity.aspx).

<sup>55</sup> C Johnston, *Urban activation precincts: the concept and implementation*, Shelter NSW Update, 2014, online at [www.sheltersnsw.org.au/publications-new/policy-papers/urban-policy-planning/398-update-urban-activation-precincts](http://www.sheltersnsw.org.au/publications-new/policy-papers/urban-policy-planning/398-update-urban-activation-precincts).

<sup>56</sup> Adapted from Department of Planning and Environment, 'Priority growth areas and precincts', [www.planning.nsw.gov.au/Plans-for-Your-Area/Priority-Growth-Areas-and-Precincts](http://www.planning.nsw.gov.au/Plans-for-Your-Area/Priority-Growth-Areas-and-Precincts), viewed 14 March 2016.

<sup>57</sup> Table 3 adapted from UrbanGrowth NSW, 'Projects', [www.urbangrowth.nsw.gov.au/work/projects.aspx](http://www.urbangrowth.nsw.gov.au/work/projects.aspx), viewed 14 March 2016.

<sup>58</sup> Department of Planning and Environment, *Parramatta North urban renewal area state significant site assessment report*, Department of Planning and Environment, 2015, pp.61-62. The original, exhibited planning proposal (November 2014) contained no affordable housing at all, a scenario which was objected to by a number of organizations (including Shelter NSW). In response to that feedback, UrbanGrowth NSW proposed a 3% target, and the Department of Planning and Environment included this target in its [assessment report](#) for the site. The site is expected to yield some 3,900 dwellings, which means that the number of affordable-housing units should be some 117.

- <sup>59</sup> UrbanGrowth NSW, 'Frequently asked questions: North Eveleigh 2016 FAQs', [www.centraltoeveleigh.com.au/about/frequently-asked-questions](http://www.centraltoeveleigh.com.au/about/frequently-asked-questions), viewed 27 April 2016.
- <sup>60</sup> Communities Plus, 'Ivanhoe estate: registration of interest', 2015, p.3.
- <sup>61</sup> Brad Hazzard MP (Minister for Family and Community Services, Minister for Social Housing), 'Exciting era for Waterloo public housing', media release, 16 December 2015.
- <sup>62</sup> The need for such ongoing subsidies for the growth of the social housing in New South Wales was highlighted in a report commissioned by Shelter NSW (E Ferrer, *The cost of increasing social and affordable housing supply in New South Wales*, Sphere Company, 2014). The Government has begun a procurement process for delivery of some 3,000 units of social housing and 'affordable housing' from community-housing providers and other nongovernment organizations, through its [Social and Affordable Housing Fund](#). This Fund is an ongoing growth fund for new social-housing dwellings.
- <sup>63</sup> *Illawarra–Shoalhaven regional plan*, p.37.
- <sup>64</sup> *Draft Central Coast regional plan*, p.21.
- <sup>65</sup> *Draft Hunter regional plan*, p.69; *Draft plan for growing Hunter city*, p.13.
- <sup>66</sup> *Draft North Coast regional plan*, p.58; *Draft Central West and Orana regional plan*, p.80, 83; *Draft Riverina–Murray regional plan*, p.62.
- <sup>67</sup> Nicole Dukinfeld, 'Housing for the "modern" life cycle: an evaluation of housing diversity mechanisms in local government', thesis, Faculty of the Built Environment, University of NSW, 2009, pp.20-21.
- <sup>68</sup> Landcom, *Housing diversity guide*, May 2011, p.4.
- <sup>69</sup> Planning and Environment, *Housing diversity: Sydney's growth centres — finalisation report*, 2014.
- <sup>70</sup> Landcom, *Housing diversity guide*, p.17.
- <sup>71</sup> A Barnes, 'Tiny house movement sparks interest in Australia', *Domain*, [www.domain.com.au/news/tiny-house-movement-sparks-interest-in-australia-20141216-1280zv/](http://www.domain.com.au/news/tiny-house-movement-sparks-interest-in-australia-20141216-1280zv/), posted 16 December 2014, viewed 16 February 2016.
- <sup>72</sup> E Clarke, 'Clever ways to transform a small space into a stylish and liveable area', *Domain*, [www.domain.com.au/advice/clever-ways-to-transform-a-small-space-into-a-stylish-and-liveable-area-20160215-gmua6k/](http://www.domain.com.au/advice/clever-ways-to-transform-a-small-space-into-a-stylish-and-liveable-area-20160215-gmua6k/), posted 16 February 2015, viewed 16 February 2016; T Croaker, 'Clever 27 square metre unit named 'Best Apartment' in Australia', *Domain*, [www.domain.com.au/news/clever-27-square-metre-unit-named-best-apartment-in-australia-20150731-gio44t/](http://www.domain.com.au/news/clever-27-square-metre-unit-named-best-apartment-in-australia-20150731-gio44t/), posted 1 August 2015, viewed 2 March 2016; J Duke, 'How studio apartments became the new one-bedder', 2015, *Domain*, [www.domain.com.au/news/how-studio-apartments-became-the-new-onebedder-20151105-gkit4c/](http://www.domain.com.au/news/how-studio-apartments-became-the-new-onebedder-20151105-gkit4c/), posted 27 October 2015, viewed 5 November 2015.
- <sup>73</sup> HillPDA with N Gurran and P Phibbs, *Study focus: Draft housing diversity study and strategy review*, information sheet, UrbanGrowth NSW, Sydney, May 2015, online at [www.centraltoeveleigh.com.au/download\\_file/38/267](http://www.centraltoeveleigh.com.au/download_file/38/267), viewed 29 April 2016.
- <sup>74</sup> UrbanGrowth NSW, *Draft Parramatta Road urban transformation strategy: volume 1*, September 2015.
- <sup>75</sup> Su-Lin Tan, 'New player in Sydney student market', *Australian Financial Review*, 4 May 2016, p.34.
- <sup>76</sup> See [www.commonspace.io/](http://www.commonspace.io/).
- <sup>77</sup> Croaker, 'Clever 27 square metre unit named 'Best Apartment' in Australia', [www.domain.com.au/news/clever-27-square-metre-unit-named-best-apartment-in-australia-20150731-gio44t/](http://www.domain.com.au/news/clever-27-square-metre-unit-named-best-apartment-in-australia-20150731-gio44t/).
- <sup>78</sup> See [www.pocketliving.com/homes/our-homes](http://www.pocketliving.com/homes/our-homes). Pocket Living does not present its product as 'micro' apartments: "We hate the word micro, so we don't use it," says co-founder Marc Vlessing. "When I think micro, it's 15-25 square metres and that's what they do in Tokyo. I don't like micro because that is really asking people to compromise too much." (quoted in I Fraser, 'Deceptively big ideas for small spaces', *The Telegraph* (London), 26 March 2016, [www.telegraph.co.uk/business/2016/03/27/deceptively-big-ideas-for-](http://www.telegraph.co.uk/business/2016/03/27/deceptively-big-ideas-for-)

[small-spaces/](#)). Pocket Living apartments are built for owner-occupation and are linked to planning agreements for affordable housing with local government councils.

<sup>79</sup> This SEPP was originally called *State Environmental Planning Policy (Major Development) 2005*; it was amended and renamed in March 2016.

<sup>80</sup> The number of 17 sites was current at 1 June 2016.

<sup>81</sup> The number of 19 sites was current at 2 May 2016.

<sup>82</sup> NSW Government, *A new planning system for NSW: white paper*, Department of Planning and Infrastructure, 2013.

<sup>83</sup> Department of Planning and Environment, 'Complying development', [www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Systems/Complying-Development](http://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Systems/Complying-Development), viewed 29 April 2016.

<sup>84</sup> NSW Government Planning and Environment, *One part of the 'missing middle': options for low rise medium density housing as complying development, vol.1: Discussion paper November 2015*, 2015, online at

[majorprojects.affinitylive.com/public/31922c38b4c605365677eaf713b0dfbe/Expanding%20Complying%20Development%20Discussion%20Paper.pdf](http://majorprojects.affinitylive.com/public/31922c38b4c605365677eaf713b0dfbe/Expanding%20Complying%20Development%20Discussion%20Paper.pdf). The Shelter NSW submission on this is online at [majorprojects.affinitylive.com/public/fa702eea8636a2d9e6607a3e426d38cf/sub1601complyingdev-mediumdensity\\_sheltersnsw.pdf](http://majorprojects.affinitylive.com/public/fa702eea8636a2d9e6607a3e426d38cf/sub1601complyingdev-mediumdensity_sheltersnsw.pdf).

<sup>85</sup> See Smith & Tzannes, *A review of complying development for inland NSW: background paper*, NSW Department of Planning and Environment, March 2016, online at [planspolicies.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=7373](http://planspolicies.planning.nsw.gov.au/index.pl?action=view_job&job_id=7373).

<sup>86</sup> *A plan for growing Sydney*, p.77.

<sup>87</sup> *Draft Riverina–Murray regional plan*, p.66.

<sup>88</sup> *Illawarra–Shoalhaven regional plan*, p.35.

<sup>89</sup> *Draft Central Coast regional plan*, p.22.

<sup>90</sup> *Draft Hunter regional plan*, p.69.

<sup>91</sup> *Draft plan for growing Hunter city*, p.15.

<sup>92</sup> *Draft North Coast regional plan*, p.61.

<sup>93</sup> *Draft Central West and Orana regional plan*, p.86. 'Consider' is not the same as 'approve'.

<sup>94</sup> See note 58.

<sup>95</sup> UrbanGrowth NSW, *Consultation outcomes report: draft Parramatta Road urban transformation strategy*, UrbanGrowth NSW, May 2016, p.10.

<sup>96</sup> C Johnston, *Capital value uplift and affordable housing*, pp.18-24, 30-31.

<sup>97</sup> The favorable development standards for dual occupancies, multi-dwelling housing and residential flat buildings apply if the development is within 400 meters walking distance of land within zone B2 Local Center or zone B4 Mixed Use (or within a land-use zone that is equivalent to either of those zones), or — in the case of development *in Sydney* — if the development is in an 'accessible area' (i.e. accessible to mass transit).

<sup>98</sup> Department of Planning and Environment, *Annual Report 2014-15*, p.19.

<sup>99</sup> What is "inclusionary housing"?, *Shelter NSW factsheet*, 2014, online at [www.sheltersnsw.org.au/publications-new/policy-papers/urban-policy-planning/388-what-is-inclusionary-housing](http://www.sheltersnsw.org.au/publications-new/policy-papers/urban-policy-planning/388-what-is-inclusionary-housing).

<sup>100</sup> This section 94F is not section 94, an entirely different section of the Act about a different matter.

<sup>101</sup> Department of Planning and Environment, *Annual Report 2014-15*, p.19.

<sup>102</sup> A SEPP is made and amended by the Governor on the advice of the minister for planning.

<sup>103</sup> The Centre identifies 28 local government areas with a 'high' need for affordable housing. Those are Auburn, Bankstown, Blacktown, Campbelltown, Canterbury, Fairfield, Gosford, Holroyd, Hornsby, Lake Macquarie, Liverpool, Marrickville, Mid-Western Regional, Newcastle, North Sydney, Orange, Parramatta,

Penrith, Randwick, Rockdale, Ryde, Sutherland, Sydney, Warringah, Waverley, Willoughby, Wollongong, and Wyong. The Centre identifies 35 local government areas with a 'moderate high' need for affordable housing. Those are Armidale Dumaresq, Bathurst Regional, Baulkham Hills, Blue Mountains, Botany Bay, Burwood, Canada Bay, Cessnock, Coffs Harbour, Dungog, Eurobodalla, Gloucester, Great Lakes, Gunnedah, Hurstville, Kogarah, Ku-ring-gai, Lane Cove, Leichhardt, Maitland, Manly, Moree Plains, Mosman, Muswellbrook, Narrabri, Pittwater, Port Macquarie–Hastings, Port Stephens, Shellharbour, Shoalhaven, Singleton, Strathfield, Tweed, Wingecarribee, and Woollahra. ('Where do we need affordable housing?', [www.housing.nsw.gov.au/centre-for-affordable-housing/for-planners-of-affordable-housing/where-do-we-need-affordable-housing](http://www.housing.nsw.gov.au/centre-for-affordable-housing/for-planners-of-affordable-housing/where-do-we-need-affordable-housing), viewed 15 March 2016) Of those 63 areas, 3 are already identified by SEPP70 as having a need for affordable housing: those are Sydney, Willoughby and Leichhardt.

<sup>104</sup> Those matters are how the council will deliver a range of building forms and types, aligned with market demand, minimum household projections and development capacity; housing for people at different stages of their lives, for example, families and individuals (referring to the Livable Housing Guidelines); and local affordable housing needs, and strategies to provide affordable housing.

<sup>105</sup> The power to set or determine the contents of a local environmental plan is with the minister for planning; in the case of local government councils within the Greater Sydney Region this power will be had by the Greater Sydney Commission when that body is fully operational.

<sup>106</sup> As, for example, in 'Capital value uplift and affordable housing', *Shelter NSW Update*, January 2014; 'What is "inclusionary housing"?', *Shelter NSW factsheet*, June 2014; '2 ways to facilitate affordable rental housing', *Shelter NSW Factsheet*, September 2015.

<sup>107</sup> Value capture is a process of recouping all or part of the increase in land value that follows from a government intervention, to be used for public purposes.

<sup>108</sup> Planning gain refers to the unearned 'windfall' going to a landowner whose land increases in price due to amended planning schemes (upzonings being is a type of betterment).

<sup>109</sup> HillPDA & others, *Facilitating affordable housing supply in inner city Sydney*, Inner City Mayors Forum, 2011, p.7.

<sup>110</sup> Those are Auburn, Bankstown, Blacktown, Campbelltown, Canterbury, Fairfield, Gosford, Holroyd, Hornsby, Lake Macquarie, Liverpool, Marrickville, Mid-Western Regional, Newcastle, North Sydney, Orange, Parramatta, Penrith, Randwick, Rockdale, Ryde, Sutherland, Warringah, Waverley, Wollongong, and Wyong. ('Where do we need affordable housing?', [www.housing.nsw.gov.au/centre-for-affordable-housing/for-planners-of-affordable-housing/where-do-we-need-affordable-housing](http://www.housing.nsw.gov.au/centre-for-affordable-housing/for-planners-of-affordable-housing/where-do-we-need-affordable-housing)) There are 3 areas already identified by SEPP70 as having a need for affordable housing: those are Sydney, Willoughby, and Leichhardt.

<sup>111</sup> The Centre identifies 26 local government areas with a 'high' need for affordable housing. See note 110. The Centre identifies 34 local government areas with a 'moderate high' need for affordable housing. Those are Armidale Dumaresq, Bathurst Regional, Baulkham Hills, Blue Mountains, Botany Bay, Burwood, Canada Bay, Cessnock, Coffs Harbour, Dungog, Eurobodalla, Gloucester, Great Lakes, Gunnedah, Hurstville, Kogarah, Ku-ring-gai, Lane Cove, Maitland, Manly, Moree Plains, Mosman, Muswellbrook, Narrabri, Pittwater, Port Macquarie–Hastings, Port Stephens, Shellharbour, Shoalhaven, Singleton, Strathfield, Tweed, Wingecarribee, and Woollahra. ('Where do we need affordable housing?', [www.housing.nsw.gov.au/centre-for-affordable-housing/for-planners-of-affordable-housing/where-do-we-need-affordable-housing](http://www.housing.nsw.gov.au/centre-for-affordable-housing/for-planners-of-affordable-housing/where-do-we-need-affordable-housing))

<sup>112</sup> Of the 4 existing schemes (3 of which are in the City of Sydney, and 1 in Willoughby), the most recent scheme document is the Sydney City Council's 'Employment lands affordable housing program' (30 March

2015), online at [www.cityofsydney.nsw.gov.au/data/assets/pdf\\_file/0010/236980/Employment-Land-Affordable-Housing-Program-accessible.pdf](http://www.cityofsydney.nsw.gov.au/data/assets/pdf_file/0010/236980/Employment-Land-Affordable-Housing-Program-accessible.pdf).



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