SHELTER NSW FACTSHEET

# What is 'inclusionary housing'?

Inclusionary housing is a planning mechanism to ensure affordable housing is not excluded from a particular location because of environmental-planning controls or market forces (dwelling costs). It does this by requiring contributions from land developers as a condition of development consent, with the contributions being either units of affordable housing or an equivalent monetary amount. Where the planning instruments require a minimum proportion of affordable units to be provided in new housing developments, those units are often referred to as 'set asides' in the USA.

An inclusionary housing approach does not necessarily require the need to establish a strict 'nexus' between a particular development and demand for affordable housing. It might be associated with incentives (development concessions) to the developer, or it might not; where it is not associated with incentives, it is often argued for on the basis of betterment or value capture. It is sometimes called 'inclusionary zoning', because the provisions are included in the planning instrument that sets the zones for land use in the relevant locality.

## The situation in New South Wales

Provisions that allowed for 'inclusionary housing' in certain specified circumstances exist in New South Wales. They were inserted in the *Environmental Planning and Assessment Act* in 2000 (sections 94F and 94G).[1]

As well, a state environmental planning policy (*State Environmental Planning Policy 70 — Affordable Housing (Revised Schemes)*) was introduced in 2002 to validate some existing schemes of this nature. This state environmental planning policy has a continuing importance because it names certain local government areas as having 'a need for affordable housing', and this naming is required by section 94F of the Act.

The effect of the 2000 amendments is that, where a consent authority considered a proposed development (i) will or is likely to reduce the availability of affordability housing within the local government area, (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, it may (if it wishes) require a contribution of affordable housing (or money in lieu). There are, however, some constraints on whether this action can be operationalized.[2]

A small number of local council affordable-housing schemes have been established under this section. Three of them are in the City of Sydney local government area and one is in Willoughby. The

Redfern-Waterloo affordable housing scheme (now managed by UrbanGrowth NSW Development Corporation) also has its legal basis in this section.[3]

However, successive NSW governments have declined to allow local councils (apart from the two indicated) to use the provision. In 2004, Parramatta council had proposals stymied inside the Department of Planning. Surprisingly, the notion popped up in 2005 in a state government document, the Sydney metropolitan strategy: *City of cities*, released in December 2005, provided for inclusionary zoning (an affordable housing levy from development) where there was a value increment as a result of a zoning, rezoning or increase in density (Action C4.3.3[4]). However, this Action was never acted on, and it disappeared with the Sydney metropolitan strategy of 2010, *Metropolitan plan for Sydney 2036.* (And did not reappear in 2014 in *A plan for growing Sydney*.)

There was a change in attitude by policymakers towards the legislative provisions, and while they were not repealed, they became 'dead letter' in some respects. So, we have had a situation for the last 15 years where NSW planning law allows consent authorities to require developer contributions for affordable housing in circumstances, and some few local schemes were introduced on this basis, *but* attempts by other councils to introduce similar schemes were thwarted.

## How the NSW inclusionary-housing schemes work

Inclusionary housing is a separate matter to setting aspirational targets for production or provision of affordable housing through strategic planning, but is one mechanism that might assist such targets being achieved.

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 link 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 consultation 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 and amendment of a scheme 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 developer should not pass on the cost of the levy to the purchasers of market-priced dwelling-units in the development

To establish inclusionary housing schemes requiring contributions for affordable housing, 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.

## Planning agreements: the unofficial alternative to inclusionary housing

In 2005, the *Environmental Planning and Assessment Act* was amended to (among other things) provide a basis for an alternative approach to developer contributions: the *Environmental Planning and Assessment Amendment (Development Contributions) Act 2005* established a regulatory framework for voluntary planning agreements between local councils and developers that enable contributions for certain economic and social infrastructure *and* for affordable housing (section 93F).[5]

Development consent authorities (e.g. local government councils) may use section 93F to negotiate for contributions for (among other things): provision of or the recoupment of the cost of providing affordable housing (s.93F(2)(b)), or the funding of recurrent expenditure relating to providing affordable housing (s.93F(2)(d)).

The key difference between the 'planning agreements' approach (section 93F) and the 'inclusionary housing' approach (section 94F) is that the former relies on private developers voluntarily offering affordable housing to the planning authority for no benefit to themselves (the developer). Whereas the latter allows the consent authority to require contributions for affordable housing where the developer gets a benefit (from, for example, upzonings) or the development has affordable-housing related impacts (such as generating a need for affordable housing or reducing supply of affordable housing).

There has been an extensive debate in the USA over the merits of 'inclusionary housing'; in particular whether it has a disincentive effect on private-sector investment in dwelling construction and on house-sale prices, drawing on case studies, and it is fair to say that neither side has conceded.

There has not been substantial case-study based assessment in New South Wales, possibly because of the limited and small nature of the existing schemes. Whether one prefers one option over the other, or a mix of both depending on the case, appears to be a political one.

## Planning mechanisms: 'housing affordability' versus 'affordable housing'

There has been some public debate in Australia about whether planning law (and the mechanisms and practices it authorizes) have a negative impact on development generally, on construction of dwellings particularly and on house prices. A number of reports from academic researchers have rejected claims of negative impacts.[6]

From the viewpoint that the land-use planning system can have a *positive* role in facilitating affordable housing, Shelter NSW has supported and advocated measures of *both* a 'strategic planning' and 'statutory planning' type to do this.

In terms of 'strategic planning', it has supported the principal piece of land-use planning legislation (currently, the *Environmental Planning and Assessment Act 1979*) having provisions that:

- contain a high-level object on the provision of affordable housing — as is the case with the current Act;
- include aspirational targets for affordable housing in regional and subregional strategic plans;
- allow local environmental plans to include provisions on encouraging, providing, maintaining and retaining affordable housing — as is the case with the current Act.

In terms of 'statutory planning', it has supported the planning Act having provisions that:

- give consent authorities flexibility on the circumstances in which they may negotiate acceptance of voluntary offers of affordable housing from private developers — as is the case with the current Act;
- allow local environmental plans to include provisions of an 'inclusionary housing' nature particularly where there has been planning uplift — as is the case with the current Act.

The reigning trend on provision of affordable housing through planning instruments seems to be a hostile one. A scan of the most recent comprehensive local environmental plans and development control plans shows that the term 'affordable housing' is usually avoided and if there is anything instead, it is a term like 'housing choice and housing diversity' or 'housing affordability and housing choice'. These terms in practice tend to narrowly refer to two forms of intervention in local housing markets:

- active rezoning and release of land for supply of new dwellings; and
- removal of disincentives to (or regulations to promote) a range of dwelling types (e.g. flats as well as cottages) and a range of bedroom numbers.

Neither of these actions is a *direct* intervention to have affordably-priced housing (especially for rental) provided.

## An approach to inclusionary housing: 'betterment' and 'value sharing'

The argument against 'inclusionary housing' has been based on a perceived negativity of anything that looks like a tax, and possible disincentives to development that might follow.

The way that 'inclusionary housing' schemes have been applied in New South Wales aims to put some balance into the Great Australian Debate about the Evil of Taxation, by linking the application of mandatory contributions to specific situations and by requiring very modest rates of contributions. The key linking issue is that the NSW legislation requires a development to be likely to lead to a loss of affordable housing, or to a demand for affordable housing, or to be allowable only because of a change in zoning, for a contribution to be required. The few schemes that operate seek to *share* in some of the developer's benefit from a change in land-use or development controls — from a 'planning gain'.

This approach has been used in a number of large-scale redevelopments of brownfield precincts in inner Sydney, the 'City West' regeneration in Ultimo and Pyrmont and the 'Green Square' redevelopment in Zetland. In each precinct, where there was potential for better land uses, changes were made to land-uses and development controls to allow new residential developments. In the 1990s, the prevailing winds were favorable to inclusionary housing, and state government and local government councils established affordable-housing schemes that shared in some of the benefits big developers got from the planning changes, the 'public' share taking the form of contributions for affordable housing.[7] The contribution rates are not excessive.[8] Since those schemes began, they have generated a small amount of affordable-housing units, in locations that are attractive for high-income households, and contribute to retention of social mix in rapidly gentrifying neighborhoods.

Compulsory contributions for affordable housing in these brownfield regeneration precincts are applied —

- in recognition of the uplift in value of the land from government intervention (regeneration planning, including changes in land use and liberalization of development controls),
- on the basis of a very small proportion of the value of the land,
- with a redistributive effect, to serve nonfiscal public-policy goals.

In March 2015 the Sydney City council expanded its inclusionary housing model to employment-zoned lands in the southern part of its area. And in July 2016 it adopted a proposal for a similar scheme that would require affordable-housing contributions from most developments in the central business district of its Council area.

This model is also used in Willoughby local government area. The Willoughby scheme was established in the late 1990s. As originally introduced, it was not a 'voluntary' scheme or an incentive-based scheme: it applied to applications for rezoning and the council could require, as part of its consideration, a contribution of 4% of the floor space of the development to be allocated to affordable housing. The legal basis for this scheme became section 94F of the Act, in 2002, through

the *State Environmental Planning Policy 70 — Affordable Housing (Revised Schemes)*. The provision only applies to certain pockets of land identified in the local environmental plan, but nevertheless has generated some affordable-housing units.

## Incentives as an alternative to requirements?

There is another model through which an element of value uplift gained by a developer can be shared by a consent authority, and that is through various mechanisms that offer favorable changes to zonings (upzonings) and/or liberalized development controls, in return for units of affordable housing *without* any requirement (mandatoriness) that the developer develop beyond the standard controls. The particular mechanisms available and in use in New South Wales appear to be three:

- provisions in the *State Environmental Planning Policy (Affordable Rental Housing) 2009*
- provisions in local environmental plans
- arrangements under a planning agreement

The *State Environmental Planning Policy (Affordable Rental Housing) 2009* offers a liberalized development control, in the form of a higher floor space ratio than would normally apply to the development site, if the development

- is for a block of flats, another sort of multi-unit dwelling, or a dwelling with dual occupancy;
- is within an accessible area, in the case of a development in Sydney, or, in the case of a development outside Sydney, is within 400 meters walking distance of land zoned 'local centre' or 'mixed use'; and
- has at least 20% of its gross floor area used for affordable housing — which housing has to be used as such for 10 years and has to be managed by a registered community housing provider.[9]

A very small number of local governments' local environmental plans do have provisions that offer a liberalized development control, in the form of a higher floor space ratio than would normally apply to the development site, if the development includes a proportion of affordable housing. Each of the local governments involved has an engagement with affordable-housing supply dating well before the 2002 amendments to the Act.

Waverley council's scheme was the 'original' scheme that applied an incentive, in the form of a *density bonus*. Established in the mid 1990s, for many years the scheme was embedded in a development control plan. After the introduction of the voluntary planning provisions of the Act (section 93F), the scheme was recast as a planning agreement arrangement. These days its provision are included in the Waverley local environmental plan. *Waverley Local Environmental Plan 2012* allows an additional area of 15% of the maximum gross floor area normally to be given to the developer where at least 50% of this additional area is allocated to dwellings providing affordable housing in the development; these dwellings are to be available for rent as affordable housing for at least 3 years, and are to be managed by a registered community housing provider.

There are a number of site-specific mechanisms in the City of Sydney that involve density bonuses. In the City of Sydney, at Forest Lodge, for the Harold Park redevelopment, an additional 500 square meters may be permitted above the gross floor area of the buildings on the site if the increased floor

area is distributed among buildings used for group homes, respite day care centers, seniors housing or residential accommodation that is affordable housing. While the mechanism is worded similarly to the mechanisms of an incentive type, in this case the provision (involving an amendment to the Sydney local environmental plan) was part of a planning agreement that contained a number of community benefits in exchange for new controls for a brownfield site. In Glebe, at a site owned by the Land and Housing Corporation and formerly occupied by public-housing dwellings (now demolished), the development controls in the local environmental plan were changed to enable greater density and to facilitate redevelopment of housing on a mixed-tenure basis. The new controls allow a building used for social housing to exceed the site's maximum floor space ratio of 1.3:1 by up to 0.6:1 if the total floor area of that building is equal to or greater than 110% of the site area.

Some of the debate around the use of incentives has been about their implications for the integrity of the development assessment and decisionmaking process, and in particular on the integrity and justness of the 'baseline' development controls that are being traded off as incentives. This concern is addressed in the Act, in relation to planning agreements: the Act indicates that a planning agreement may not impose an obligation on a planning authority to grant development consent, or to exercise any function in relation to a change to an environmental planning instrument (s.93F(9)). Moreover, a planning agreement is void to the extent to which it requires or allows the provisions of an environmental planning instrument to be breached (s.93F(10)). A number of councils' policies on planning agreements include statements along the lines: 'Planning decisions will not be bought or sold through planning agreements', and 'Development that is unacceptable on planning grounds will not be permitted because of planning benefits offered by developers that do not make the development acceptable in planning terms.'[10]

This concern about integrity of the development control was addressed by the Inner City Mayors Forum, a network of mayors in inner Sydney, who indicated that an approach to planning concessions that links them to value capture is better than one that links them to incentives. The mayors stated that a value-capture approach had a benefit of allowing development controls to be established at their environmental limits, whereas an incentive approach allows for certain types of development to challenge the integrity of those limits.[11] Moreover, since the developer contribution is funded by a newly-created value, it comes at no real cost to the developer, and landowners would be able to factor the contribution into the feasibility of development proposals.

Nico Calavita and Alan Mallach distinguish density increases resulting from an upzoning based on a planning process that takes into account the issues arising from an increase in land use intensity, from density bonuses superimposed on existing zoning with the potential to have a significant but unanticipated impact on neighborhoods.[12] They argue that density bonuses, when superimposed on an existing planning framework, undermine existing regulations, effectively undoing land-use planning and zoning regulations without the associated processes that usually accompany zoning changes. That is, they distinguish between an approach where the existing development controls for a precinct are taken as a given for everyone else except for the developer who is prepared to incorporate affordable-housing units in exchange for loosening of those controls (a density bonus) — on the one hand; and an approach that redraws development controls for a site or precinct based on an assessment of better (acceptable) land uses and controls and asks the developer to give back a portion of the betterment they get from the redrawing (value-uplift sharing) — on the other.

It appears that planning agreements that include affordable housing could be more effective in achieving environmental and social wellbeing objectives if the contribution offered by the developer was linked to an estimation of the capital-value uplift generated by liberalization of planning controls. A number of NSW local government councils (e.g. Sydney City, Parramatta, Clarence Valley) have considered or introduced such an approach. Those approaches do not seek to 'requisition' all of the capital-value uplift. There is an (implicit or explicit) acceptance that land value is the result of both private and governmental investments and actions and each entity is entitled to some portion of this value.[13] The value-uplift calculator used by Parramatta council, for example, in capturing a component of planning gain, does not generate undue pressure on development costs and hence on affordability (of housing developments); the development costs will not be any larger than normal developments.[14]

## The white paper on the planning system

The Government's white paper, *A new planning system for NSW,* released in April 2013,explicitly rejected the use of development consents as a mechanism for promoting affordable housing.[15] In line with this intent, the *Planning Bill 2013* introduced into Parliament on October 22 did not contain equivalent provisions to sections 94F and 94G of the current Act. However, these were inserted into the *Planning Bill* by the Legislative Council when the Bill was debated in that chamber in November 2013. The Legislative Council inserted a new division, Division 7.5 on affordable housing contributions, into the Bill, to keep them there. That Bill was not proceeded with by the Government as a result of various changes made to it by the Legislative Council.[16] The Government (re-elected in March 2015) is now undertaking another process for changing planning legislation.[17] And it is also reviewing the state environmental planning policies. It is not clear yet how changes to the Act and the SEPPs will affect the provisions in the Act and in SEPP 70 that underpin inclusionary-housing mechanisms in this state.

## Taking action

Inclusionary housing mechanisms have been criticized on the basis that they are a tax (and therefore, presumably, 'bad' by definition) or that they will discourage development. The tax argument does not hold much weight where mandatory contributions are linked to government-initiated changes to planning controls, as they have primarily been in Sydney, and where a sharing of value uplift is not unfair.

The disincentive argument is less clear, because the literature on these schemes in the USA seems to be quite polarized, and there are no direct studies of the impact of the existing schemes in New South Wales. However, a 2008 assessment of a Sydney City Council proposal (not proceeded with) for an affordable-housing levy across the City of Sydney area concluded that the impact of this levy would not be very large, 'generally-speaking', because the target number of dwellings was small compared to the size of the City's housing market and projected increases in supply of housing in the City.[18]

A scenario in which developer contributions may be mandated, *where development can only be carried out after amendments are made to the local environmental plan*, would continue to provide a clear legal basis for using the concepts of 'capital value uplift' and 'value sharing' to get community

benefits from appropriate private developments. The idea here is a simple one. If the value of a piece of land increases as a result of an action undertaken by someone other than the landowner, then the value of that increase should not necessarily all go to the landowner. So, for example, if the planning authority changes planning controls to allow for denser development on it, or rezones marginal farming land on the city fringe to residential, then *some* of the increase in value of the land should be shared between the landowner (who can sell their land at a higher price) and the planning authority (whose action enabled the increased value). A developer contribution to affordable housing in these situations is a sharing of the value of the uplift.

An argument for greater use of inclusionary housing could be put forward on 4 foundations:[19]

- 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.
- Recognition that *capture* (sharing) of some of the land-value uplift is a *reasonable* ask by government.[20] A mechanism to capture landowners' planning gain is not a tax, and nor is it a disincentive to redevelopment.[21] It is also preferable to use of incentive-based mechanisms, which have the risk of unacceptable trade-offs of environmental standards.
- Recognition of an active commitment to affordable-rental housing to *offset social-exclusionary market pressures* is a *reasonable* ask of governments.
- 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.

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 local affordable housing scheme. 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.

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.[22] 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)[23];

- including an affordable housing scheme based on seeking dedication of land and/or monetary contributions from developers as elements of that strategy;
- adopting 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,
    - Amend its LEP to adopt a scheme for developer contributions for affordable housing;
- adopting an Affordable Housing Program to indicate the operational and management aspects of the adopted scheme for developer contributions for affordable housing;
- requesting the minister (or Greater Sydney Commission, if relevant) to approve the amendments to the LEP.

### 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, with a higher proportion on government-owned land.
- 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).[24] *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).
- 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.
- 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.[25]

- 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 in greater Sydney.

Notes

[1] The amendments in 2000 were necessary because a number of inner Sydney councils, including North Sydney, Waverley and Randwick, had been using section 94 of the Act, which enables the requiring of developer contributions to contribute to the cost of providing certain economic and social infrastructure (so, a type of impact fee), to require contributions for affordable housing; the use of section 94 for this purpose was declared illegal by the Land and Environment Court in 2000.

[2] These are: (i) consent conditions must be authorized by a local environmental plan (s.94F(3)(b)); (ii) the consent conditions must be authorized in accordance with a scheme for dedications or contributions that are set out or adopted in a local environmental plan (s.94F(3)(b)); (iii) the consent conditions must be 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 (s.94F(3)(c)); (iv) the consent conditions must consider any previous contributions the developer has made for affordable housing in the area that were not made as conditions of consent (s.94F(4)); (v) a state environmental planning policy must identify there is a need for affordable housing in the local government area (s.94F(1)); and (vi) a state environmental planning policy exists which has requirements for conditions of consent under this section of the Act (s.94F(3)(a)).

[3] This section also provides the legal basis for developer contributions to mitigate the loss of certain affordable housing, under Part 3 of the *State Environmental Planning Policy (Affordable Rental Housing) 2009*, but that matter is not discussed in this information sheet.

[4] Department of Planning, *City of cities: a plan for Sydney's future*, 2005, p.149.

[5] C Johnston, 'Planning law enables developer contributions for affordable housing', *Around the House*, 61, June 2005, p.12.

[6] N Gurran & others, *Counting the costs: planning requirements, infrastructure contributions, and residential development in Australia*, Australian Housing and Urban Research Institute, 2009; N Gurran & others, *Quantifying planning system performance and Australia's housing reform agenda*, Australian Housing & Urban Research Institute, 2012; N Gurran & P Phibbs, 'Evidence-free zone? Examining claims about planning performance and reform in New South Wales', *Australian Planner*, September 2013.

[7] In the case of the 'City West' scheme in Ultimo-Pyrmont, the scheme (and its vehicle, City West Housing) were also the beneficiaries of certain Commonwealth and state government fiscal measures.

[8] In the case of development on land at Ultimo-Pyrmont, the affordable housing contribution is levied at a rate of 0.8% of the total floor area to be used for residential purposes and 1.1% of the total floor area that is not intended to be used for residential purposes. In the case of development on land at Green Square, the affordable housing contribution is levied at a rate of 3% of the total floor area to be used for residential purposes and 1% of the total floor area that is not intended to be used for residential purposes.

[9] *State Environmental Planning Policy (Affordable Rental Housing) 2009*, clauses 10, 13 and 17. An 'accessible area' refers to land within certain walking distances from transport nodes, defined in clause 4(1). The extent of floor space ratio to be allowed depends on the existing floor space ratio controls and the proportions of gross floor area to be used for affordable housing, defined in clause 13. A 'registered community housing provider' is a nongovernment organization that provides housing for people on a very low, low or moderate income or for people with additional needs, and that is registered with the Registrar of Community Housing, under the *Community Housing Providers (Adoption of National Law) Act 2012*.

[10] Wollongong City Council, 'Planning agreements policy', July 2011, p.3.

[11] HillPDA & others, *Facilitating affordable housing supply in inner city Sydney*, p.7.

[12] N Calavita & A Mallach, 'Inclusionary zoning, incentives, and land value recapture', *Land Lines*, January 2009, p.20.

[13] G K Ingram & Yu-Hung Hong, 'Land value capture: types and outcomes', in G K Ingram & Yu-Hung Hong (eds), *Value capture and land policies*, Lincoln Institute of Land Policy, Cambridge MA, 2012, p.4.
[14] Epic Dot Gov, 'Handbook for Parramatta City Council: value uplift calculator', October 2012, p.12.
[15] NSW Government, *A new planning system for NSW: white paper*, 2013, p.168.
[16] S Nicholls, 'Mike Baird's cabinet reshuffle a preparation for next election', *Sydney Morning Herald*, 22 April 2014, <www.smh.com.au/nsw/mike-bairds-cabinet-reshuffle-a-preparation-for-next-election-20140422-371g9.html>.
[17] R Stokes (Minister for Planning), 'Legislative changes to simplify the planning system', 6 May 2016, <www.planning.nsw.gov.au/News/2016/Legislative-changes-to-simplify-the-planning-system>.
[18] PPM Consultants, 'Affordable housing levy — impact analysis', final report for City of Sydney, 2008.
[19] As, for example, in 'Capital value uplift and affordable housing', *Shelter NSW Update*, January 2014; '2 ways to facilitate affordable rental housing', *Shelter NSW Factsheet*, September 2015.
[20] 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.
[21] Planning gain refers to the unearned 'windfall' going to a landowner whose land increases in price due to amended planning schemes (upzonings being a type of betterment).
[22] The Centre identifies 28 local government areas with a 'high' need for affordable housing, and 35 local government areas with a 'moderate high' need for affordable housing ('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, viewed 15 March 2016). The local government areas named are those before the recent (mid 2016) amalgamations of a number of council areas. Of those 63 areas, 3 are already identified by SEPP70 as having a need for affordable housing — Sydney, Willoughby, and Leichhardt.
[23] 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.
[24] There are 3 areas already identified by SEPP70 as having a need for affordable housing: those are Sydney, Willoughby, and Leichhardt.
[25] 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.