



Comment on ***Proposed amendment to State Environmental Planning Policy No. 70 – Affordable Housing (Revised Schemes) - statewide application*** and ***Draft Guidelines for Developing an Affordable Housing Contribution Scheme***

Shelter NSW submission
December 2018

Shelter NSW is pleased to comment on the NSW Government's ***Proposed amendment to State Environmental Planning Policy No. 70 – Affordable Housing (Revised Schemes) - statewide application*** and ***Draft Guidelines for Developing an Affordable Housing Contribution Scheme***.

About Shelter NSW

Shelter NSW has been operating since 1975 as the State's peak housing policy and advocacy body, with a vision of a secure home for all. We pursue this vision through critical engagement with policy and practice, and thought leadership. We provide systemic advocacy and advice on NSW policy and legislation to resolve housing inequality.

About SEPP 70

SEPP 70 is a NSW planning instrument that identifies a need for affordable housing in specified local government areas – currently Canada Bay, City of Randwick, City of Ryde, City of Sydney, City of Willoughby, Inner West and Northern Beaches councils.

Being included in SEPP 70 allows a council to require an affordable housing dedication (of land or dwellings) or contribution (of money) as part of the development approval process in specified precincts. This requires a scheme that is authorised and included in a council's local environmental plan/s, which must be approved by the Department of Planning and Environment per the requirements set out in the *Environmental Planning and Assessment Act 1979* (the Act, at section 7.32).

Inclusion in SEPP 70 does not impose any positive obligation upon a council. It enables a council to consider and apply to use the Act's inclusionary zoning provisions that would otherwise not be available to them.

Shelter NSW supports the proposal for statewide application of SEPP 70

The current limitations of SEPP 70's coverage means councils that are not yet identified as being in need of affordable housing (that is to say, not yet specified in SEPP 70) are discouraged from seeking inclusion. Councils with a genuine need for the Act's inclusionary zoning provisions must undertake complex and costly analyses of affordable housing demand, and demonstrate how a contributions scheme would operate in their local context. However there is no guarantee of approval and inclusion in SEPP 70.

If approved, the proposed expansion means councils will no longer be required to seek inclusion in SEPP 70. The administrative burden and uncertainty of seeking inclusion will no longer be a barrier to councils developing inclusionary zoning schemes.

Shelter NSW strongly supports the proposal.

Specific comments on the Proposed SEPP 70 clause amendments

1. Amend clause 8 to include a definition of affordable housing that applies to the "Rest of NSW", in addition to the current definition that applies only to Greater Sydney. Affordable housing is defined at section 1.4 of the Act as housing for very low, low or moderate income households as provided for in an environmental planning instrument. Clause 8 of SEPP 70 then provides for its application in inclusionary zoning schemes by setting the benchmarks of affordability (and thus income related eligibility requirement for prospective tenants) for very low, low and moderate income households. These are set against the median income for the Greater Sydney (Capital City Statistical Area). The proposed amendment would also provide a definition that applies outside of the Greater Sydney area.

We note there is some diversity across both regional and metropolitan areas, such that the median income in some regions falls well below and others well above the median income for the "rest of NSW" as captured by the Australian Bureau of Statistics; and the same observation can be made of metropolitan areas as compared to the "Greater Sydney" median. The effect of this is that some areas are likely to have a larger proportion of the local population who would be eligible for affordable housing delivered through an inclusionary zoning scheme, at each of the income thresholds, than others.

Shelter NSW does not see this as an inherent problem, but we are concerned that councils in areas with generally higher incomes should not use this as the basis for declining to establish an inclusionary zoning scheme, or preferencing the development of affordable housing for moderate income households at the expense of housing for very low or low income households.

We recommend the Department establish a state-wide system for monitoring the development and output of Affordable Housing Contribution Schemes.

2. Amend clause 9 to ensure that SEPP 70 applies to all local government areas in New South Wales. This is the substantive change that will give effect to the intention of state-wide application for SEPP 70. We support this proposed change.

We note that clause 6 will also require amendment, as this clause limits the application of the Policy to land within the Greater Metropolitan Region.

3. Amend Schedule 2 to add that principle 3, which states that affordable housing is to be made available to a mix of very low, low and moderate income households, applies to “any combination of these households”. Shelter NSW is concerned that this proposed amendment could encourage some councils to develop programs that give preference to housing for moderate income earning households at the expense of very low and low income households. However the need for rental affordability is likely to be felt most acutely in very low and low income households, particularly in the broader policy context of declining social housing portfolios and a protracted lack of investment in new supply.

Councils should be encouraged to prioritise, wherever possible, the delivery of housing for very low and low income households in their affordable housing programs.

Comments on the Draft Guideline for Developing an Affordable Housing Contribution Scheme

Shelter NSW is pleased to see the draft Guidelines on exhibition along with the proposed amendment to SEPP 70. The draft clarifies that there could be a range of potential responses to the expansion of SEPP 70's coverage, and that its implementation would not follow a set pattern across all parts of New South Wales. It sets out quite clearly what would be required of councils who do wish to develop an Affordable Housing Contribution Scheme, and levy developers for this purpose once approved.

There are four areas for comment that we have identified in the draft Guidelines:

1. Identifying areas for rezoning: the draft suggests a council should identify, as part of the strategic planning process, sites within their local government area that may be subject to significant or large-scale upzoning. This should then inform the development of an Affordable Housing Contribution Scheme. However, if potential rezonings are announced before an Affordable Housing Contribution Scheme is finalised or approved, speculation on land values and potential uplift could be encouraged. This would be to the detriment of a council's ability to capture the real uplift in value.

Shelter NSW would like to see councils expressly encouraged to consider areas to which an Affordable Housing Contribution Scheme might apply, and ensure that information about this is included with any announcements regarding rezoning, potential rezoning, or plans to introduce infrastructure projects into the area that are likely to require rezoning. Communities and potential developers should be on notice that, even where an Affordable Housing Contribution Scheme is not yet in place, developable land within precincts that are likely to be upzoned should be purchased with the likelihood of such a scheme being applied in mind.

2. Affordable housing needs analysis: the draft provides a reasonable set of considerations for determining the need for affordable housing in any given area. However, it would be improved by drawing particular attention to the likely impact of urban renewal on “affordable housing supply gaps”. We note the Greater Sydney Commission’s District Plans identifies the potential displacement of affordable housing as a principle for consideration in Local Housing Strategies – we suggest it all the more important to consider when developing an Affordable Housing Contribution Scheme.

Shelter NSW recommends the specific inclusion of “potential displacement caused by urban growth and renewal within the local government area, as well as other nearby areas including areas within reasonable traveling distance that are identified or earmarked for redevelopment” as a matter for consideration with regard to projected population changes and existing gaps between existing stock and future residents’ affordable housing needs.

3. Viability considerations: the draft is clear that when determining an appropriate rate for an Affordable Housing Contribution Scheme “a developer’s ability to achieve an investment return is key to maintaining a sustainable development market and continued housing supply”. To that end the draft draws particular attention to the need for councils to “consider how it might impact development feasibility in places where greater housing supply is needed, taking into account such matters as construction costs, average profit margin, risk margin and other local and State infrastructure charges that are in place or being considered”.

Shelter NSW suggests this approach adds uncertainty for developers, as it is likely to result in different contribution rates applying across a variety of schemes in different parts of the state. As a result affordable housing contribution costs will be difficult to predict and will likely vary across local government areas. If developers are unable to accurately predict the costs of their proposed projects, they will be less able to capitalise the cost of affordable housing contributions into the price of land when they buy. Ultimately, this will mitigate the success of Affordable Housing Contribution Schemes.

As a matter of principle, Shelter NSW suggests the impact of development on private rental market conditions is also of critical importance when considering the viability of development, particularly in areas with a high need for housing. A potential development may be viable for a developer precisely because it will deliver more expensive housing into an area, making it more

difficult for very low, low or moderate income households to retain access to local private rental market housing. In such circumstances, what is viable for developers could make communities unviable for very low and low income households, forcing them to leave the area altogether.

Regardless, we understand a “viability tool” is in development to assist councils in making assessments about the viability of proposed Affordable Housing Contribution Schemes, and setting appropriate contribution rates. Shelter NSW has not been approached for feedback during the development of this tool, but we understand some demonstrations have been given. It is important to ensure all councils are aware of this tool, and given proper demonstrations and instruction in its use.

Shelter NSW recommends the viability tool be made generally available by placing it in the public domain, and ensuring councils are provided with appropriate training and resources as may be required for its use. The Guidelines should clearly state that DPE will provide all assistance required to ensure councils can access and use this tool.

4. Monitoring and review: the draft sets out the need for councils to review and monitor their Affordable Housing Contribution Schemes, to ensure they remain effective and that their mechanisms and outcomes are transparent. This is appropriate. However, it may be preferable for councils to fulfill specific reporting requirements to enable statewide monitoring of the schemes. This could be done along similar lines to the monitoring of social and affordable housing produced with Government assistance through the Department of Families and Community Services and the Registrar of Community Housing.

Shelter NSW recommends the state-wide monitoring and review of affordable housing outcomes produced through Affordable Housing Contribution Schemes. We note there is an established office of Registrar of Community Housing, reporting to the Minister for Families and Community Services. DPE should investigate the potential for tasking and resourcing the Registrar’s office with the ongoing monitoring of affordable housing outcomes delivered through the planning system, to the extent that this is additional and complementary to its current responsibilities.

Please do not hesitate to contact Shelter NSW’s Senior Policy Officer, Ned Cutcher, on (02) 9267 5733 or ned@shelternsw.org.au should you wish to discuss these comments.

Regards,



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