What an Inclusionary Housing Policy Should be

Considerations for designing inclusionary housing approaches for NSW

A Research Report for Shelter NSW

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Glossary

ABS:	Australian Bureau of Statistics
CHP:	Community Housing Provider
DPE:	Department of Planning and Environment (NSW)
FAQ:	Frequently Asked Questions
IH:	Inclusionary housing
NYC:	New York City
SEPP:	State Environmental Planning Policy

1.0 Introduction

Housing unaffordability is a persistent and worsening challenge across Sydney, with the city now consistently ranking as one of the least affordable in the world (Committee for Sydney 2023). At the last Census (2021), an estimated 49% of very low income, 38% of low income and 23% of moderate income renters living in Greater Sydney were experiencing housing stress, defined as paying more than 30% of their household income on housing costs (NSW Department of Communities and Justice 2023). Since that time, rents have escalated rapidly (DCJ Statistics 2023), however the stock of social and affordable housing remains consistently low at around 4% of overall housing stock (ABS 2021).

There is growing consensus that an ambitious and multifaceted response is needed, and that a fundamental part of the solution must be the delivery of more new affordable housing at scale. This will require Government taking direct responsibility for building and subsidising new social housing, at volume, but also requires effective use of the planning system to augment and support this scaling up. The recent implementation (on 14 December 2023) of a new amendment to the state-wide density bonus incentive for affordable housing inclusion in NSW (NSW Government 2023f) signifies a renewed government interest in using the planning system to support the production of affordable housing. While this is a positive step, international practice and research evidence demonstrates that the effectiveness of planning requirements and incentives for affordable housing inclusion is highly dependent on the details of policy design (Wang and Fu 2023).

In this short research report, commissioned by Shelter NSW, we examine evidence of how different policy design features relate to the effectiveness of planning policies to support affordable housing inclusion, in order to (1) provide a constructive critique of the provisions of the new density bonus policy in NSW; and (2) consider more broadly how inclusionary housing policies in NSW could be designed going forward. We consider how the current policy in NSW might be further developed in the future, to ensure it delivers meaningful public benefit outcomes while managing potential risks and unintended consequences. This short report is designed to inform community and policy debate and, ultimately, to assist the NSW Government in its development of effective inclusionary housing policies.

2.0 Background on December 2023 SEPP Housing Reforms

On 15 June 2023, three months into their new term in Government, New South Wales Premier Chris Minns and Minster for Planning and Public Spaces Paul Scully announced that new planning rules would be introduced to amend previous inclusionary housing provisions to incentivise uptake and encourage inclusion of more affordable housing within market developments (NSW Government 2023b). This proposed policy would now grant developers a 30% floor space ratio bonus and a 30% building height bonus over and above the current Local Environment Plan development standards where their project incorporates at least 15% affordable housing. The policy builds on a state-wide density bonus provision introduced into the NSW planning system in 2009 via then State Environmental Planning Policy (Affordable Rental Housing). The new density bonus incentive is intended to increase the amount of affordable housing available as well as increase the supply of new housing overall. This policy sits alongside other proposed housing policy initiatives and announcements, including a revised State public housing program (NSW Government 2023e), changes to land use permissibility in residential zones to increase housing diversity across Sydney (NSW Government 2023c), and the rezoning of land around metro and heavy rail trains stations to increase housing densities in proximity to transport (Rose 2023).

Whilst seemingly ambitious, a lack of detail in the announcement of the new density bonus provisions raised uncertainties about the potential effects of the policy. Stakeholders questioned some of the key policy details, in particular, how 'affordable housing' would be defined in this context and whether the affordable housing would be provided in perpetuity (Rachwani 2023).

In July 2023 the Department of Planning and Environment (DPE) released a seven page Frequently Asked Questions (FAQ) document to address some of these questions and provide a fuller explanation of the intended social and affordable housing planning reforms (Department of Planning and Environment 2023b). Local government and professional stakeholders expressed concern about the interaction of the planning bonus mechanisms with other existing planning controls and the potential for unanticipated built form and amenity impacts (Snow 2023), whilst the developer lobby argued their members would not be enticed into the proposed system, questioning the practicality and feasibility of the policy as proposed (Maddison and McGowan 2023).

In late September 2023, the DPE circulated for limited ('targeted') exhibition a draft amendment to State Environmental Planning Policy (Housing) and a draft amendment to the Environmental Planning and Assessment Regulation, accompanied by an Infill Affordable Housing Practice Note.[1] These documents generally confirmed the contents of the FAQ and provided additional detail along with the proposed technical policy wording. Other than the requirement for a percentage of the development to be delivered as affordable housing, and bonus floor space ratio and height to both accommodate as well as 'pay for' this extra built form, key aspects of the revised density bonus policy design included that:

- the policy would remain as voluntary
- the policy would continue to apply state-wide, but developments utilising the density bonus must be located in accessible areas near to transport
- rents for affordable dwellings delivered under the policy would be set so that households pay no more than 30% of their gross income

[1] Planning Institute Australia, 'Member Update | Housing SEPP and Planning Systems SEPP', Email, 4 October 2023. The documents did not appear to be generally available to the public online.

- the affordable housing component would remain affordable for a minimum of 15 years
- the affordable housing dwellings must be managed by a registered Community Housing Provider (CHP)
- all applications would still require a full merit assessment against the relevant local development standards as expressed in a Local Environmental Plan and Development Control Plan.

Several submissions to the selective consultation process that were published online, including those of Shelter NSW (Shelter NSW 2023) and Local Government NSW (Local Government NSW 2023), expressed caution and criticism of these aspects of the policy, particularly with regard to the scale of the bonus and the inadequacy of the 15-year timeframe compared to the permanency of the built form benefit (Gorrey 2023).

On December 14, the Government formally made its changes to the Housing SEPP (NSW Government 2023f) as well as publishing a practice note to guide consent authorities and applicants on the application of the new provisions (Department of Planning and Environment 2023c). Several amendments to the exhibited version were made in response to the selective consultation feedback, primarily to improve incentives for developer participation. These included technical adjustments to incorporate a ‘sliding scale’ down to 10% for the percentage of affordable housing that must be included, the application of the bonus to the entirety of the development including non-residential parts, and the suggestion of further flexibility in the planning assessment of development applications (Maddison and Koziol 2023). However, the concerns of other stakeholders went largely unaddressed. We will return to these after examining the research literature and international practice.

3.0 Features of Inclusionary Housing Policies and their Implications for Performance: Targeted Research and Practice Review

'Inclusionary housing' (IH) policies work through the planning system to require or incentivise the provision of affordable housing as part of otherwise private (market-rate) developments. They are designed to capture some of the land value uplift that occurs when land is rezoned, or when planning rules are varied (for example through the allowance of additional density) to support the production of affordable housing (Calavita and Mallach 2010). By supporting the provision of affordable housing in areas where new development is occurring, inclusionary housing policies can help to counter gentrification and foster or maintain mixed income communities in areas experiencing growth and re-development. Further, they can play a role in addressing socio-spatial inequalities by supporting the provision of affordable housing within 'high-opportunity' areas close to jobs and services (ibid, Schwartz et al 2012; Jacobus 2015) where land and construction costs often present challenges for the development of affordable housing by government or the not-for-profit sector alone (Jacobus 2015).

IH policies have been widely utilised internationally for decades (Calavita and Mallach 2010). While sharing common goals and features, IH policies vary considerably in their design (Wang and Fu 2023). Research has found that these different structural elements and policy design choices have important implications for the type and volume of affordable housing produced (Wang and Fu 2023), its location, and the extent to which programs increased socio-economic inclusion (Schwartz et al 2012). Important policy design considerations include:

- Whether contribution requirements are mandatory or voluntary
- The geographic scope of the policy – where it applies
- The scale of the contribution requirement and which income group(s) are targeted

- Delivery options for affordable housing contributions (i.e. whether affordable housing must be delivered on-site or if there are allowances for off-site provision or cash payments in-lieu)
- The term of the affordability requirement (i.e. duration of time the housing is required to be affordable)
- How affordability is maintained and compliance managed (including who owns and operates the dwellings), and
- Design, locational and dwelling mix requirements.

These factors are explained in more detail below, drawing on international and Australian research and select, longstanding practice examples. We consider these findings in relation to the elements of the new density bonus policy for NSW in the section that follows.

3.1 Mandatory versus voluntary

Whether an IH policy mandates affordable housing inclusion on applicable sites, or incentivises voluntary contributions of affordable housing, has important implications for policy outcomes (Schwartz et al 2012; Gurran et al 2018; Randolph et al 2018).

Mandatory inclusionary zoning embeds affordable housing contribution requirements within the zoning rules for the site as a requirement to obtain development consent. If implemented at the time of rezoning, the cost of meeting mandatory inclusionary zoning requirements should be factored into the price paid for the land, meaning that the cost is borne by the landowner (i.e. detracted from 'windfall' profit on land sale). When widely applied, this approach can be seen as fair, creating a "level playing field", while providing certainty to inform project feasibility assessment (Benedict et al. 2022 p.34).

Under wholly voluntary IH policies, developers are incentivised, rather than required, to contribute affordable housing. Participation is encouraged by offering statutory incentives that have potential to increase development revenue (for example, by allowing for additional units beyond what is permitted under planning rules) or to reduce development costs (for example, through reduced fees or charges, expedited assessment and or exemptions from other development standards such as car parking) or a combination of both (Randolph et al 2018). Incentives will only motivate voluntary developer participation where the impact of incentives on overall revenue exceeds the cost of IH policy compliance (i.e. there is scope for net additional revenue beyond the baseline scenario).

In the case of a density bonus, participation is encouraged by offering developers who contribute affordable housing capacity to build additional floorspace that would not otherwise be permissible. In this scenario, the cost of compliance is not factored into landowner profit, but is offset through additional development revenue. The impact of a density bonus on the cost of land over time is likely to be quite different to a mandatory inclusionary zoning requirement. As Phibbs explains, for developers who have already paid for land or have a fixed-price option on land when the policy is introduced, a density bonus can constitute a significant windfall gain (Phibbs 2023). Over time, the real value of the bonus, however, may be eroded as landowners seek a share of the value of the bonus uplift and it becomes capitalised into land prices (ibid). This has been documented in the case of Toronto (Phibbs 2023; Biggar and Friendly 2022).

It is also important to note that while a density bonus has potential to off-set the cost of affordable housing production, the approach is not without public costs. Ultimately, the receiving community must bear the costs (infrastructure, services etc) associated with accommodating additional population (Calavita and Mallach 2009; Jacobus 2015). For this reason, density bonuses can be politically contentious and difficult to implement in locations where growth and density are tense or contested issues (Jacobus 2015).

In the US, research has found that mandatory inclusionary zoning requirements are more prevalent than wholly voluntary IH policies (Jacobus 2015; Thaden and

Wang 2017), and that they tend to produce more units of affordable housing (Mukhija et al 2010; Hamilton 2021; Wang and Fu 2023). In their recent analysis of annual affordable housing production rates across US schemes, Wang and Fu (2023) found that the likelihood of an IH policy producing any affordable housing was higher for mandatory programs (Wang and Fu 2023). While research in the Australian context is comparatively limited, Gurran et al (2018) found that as of 2015, South Australia's inclusionary zoning scheme had resulted in about 17% of new housing supply being affordable housing. By contrast, affordable rental units delivered under the NSW density bonus policy, constituted less than 1% of new supply over a similar period at the time the research was conducted (Gurran et al 2018).

This discrepancy in performance is perhaps unsurprising given the voluntary nature of incentive-based policies. As research on IH policy design in the US highlights, "there is no guarantee that a voluntary program will produce a significant volume of affordable housing, even when the incentives are potentially significant" (Jacobus 2015 p.24). In practice, utilisation will depend on the perceived value of additional density; the opportunity costs associated with including affordable housing in a project; the decisions and preferences of individual developers; and, site-specific feasibility considerations. Research conducted in the City of Seattle found, for example, that while a density bonus was available to developers, many elected to forgo the bonus and build to lower densities due to the significant cost of moving to steel frame construction when building additional storeys (David Paul Rosen and Associates 2014). Similar considerations will be at play in NSW, where developers will have to consider both the potential net value and feasibility of utilising the density bonus in relation to local housing markets; other development controls for the site; and National Construction Code requirements and their cost implications, which vary for different scales of development (Phibbs 2023).

Focusing specifically on the comparative performance of density bonus incentives for affordable housing production, research in the US has found that jurisdictions that set their density bonus and affordable housing contribution requirements based on detailed cost-benefit analysis saw greater developer utilisation of the incentive compared to jurisdictions that did not (Homsy and Kang 2023). Understanding the value of incentives and cost implications of utilising a density bonus across different sites and development typologies is important not only for gauging feasibility, but for understanding the scale of value uplift relative to the scale of public benefit required in different contexts.

Key take-aways

- Mandatory IH policies are seen as 'fairer' than voluntary IH policies as affordable housing requirements are 'built into' planning controls to provide certainty with an agreed built form outcome.
- Mandatory IH policies have tended to deliver more affordable housing that wholly voluntary policies
- Even when incentives are generous in voluntary IH policies, developers may choose not to take them up
- Density bonus policies that are designed based on detailed evidence of the costs and benefits of participation have resulted in more take-up

3.2 Geographic scope of the policy

In practice, IH policies have been applied to broad geographical areas (such as a whole city or state) as well as confined to specific precincts. While NSW has historically confined the use of mandatory inclusionary zoning to specific locations, the NSW density bonus that was introduced in 2009 has applied state-wide. The state of California also has a longstanding state-wide density bonus incentive.

Research from the US has found that IH policies that apply to broad geographical areas have tended to deliver more affordable housing per annum than more geographically confined policies (Wang and Fu 2023). In the case of mandatory inclusionary zoning, a broad geographic application is generally considered more equitable (Benedict et al 2022) and avoids the risk of developers avoiding areas where mandatory contribution requirements are localised.

While broad geographic application of an incentive-based policy, such as a density bonus, could, in theory, increase scope for utilisation, the suitability of different locations for additional density is an important consideration. While the US state of California has a longstanding state-wide density bonus, other jurisdictions have taken a much more selective approach to application. For example, New York City's (NYC) Voluntary Inclusionary Housing Policy, which offers a density bonus for affordable housing inclusion, only applies to areas zoned for the highest density residential (equivalent to the R4 zone in NSW) and to mapped locations where higher density development is being planned for (NYC Department of Housing Preservation and Development (n.d.)). As Jacobus notes, targeting density bonus provisions only to areas were redevelopment and densification is being planned for can support wider spatial development goals, such as fostering transit-oriented development (Jacobus 2015), while helping to avoid issues arising from unplanned density in more sensitive or infrastructure constrained locations.

It's also important to recognise that even where wholly voluntary IH policies, such as density bonus schemes, apply to broad geographical areas, take-up may be uneven in practice. While there has been comparatively little research on the locations where density bonus provisions have been utilised, a study of the performance of California's state-wide density bonus in the City of San Diego found that developers utilised that State's density bonus more in lower socio-economic areas. While still resulting in some new affordable housing supply, the policy has not significantly contributed to the policy goal of producing income mix development in high value, high opportunity areas (Ryan and Enderle 2012). Recent modelling by Phibbs (2023) shows that the value of the NSW density bonus differs across Sydney's housing market areas which will likely impact the geography of take up. This highlights the importance of understanding the value and costs of utilising a density bonus provision in different market contexts, as well as the need to monitor geographical patterns of utilisation where IH policies are voluntary.

Key take-aways

- Widespread application of inclusionary zoning can maximise affordable housing supply, while making contribution requirements equitable across sites;
- The geographical application of a density bonus incentive should be carefully considered in relation to the spatial development goals of a locality or region;
- The voluntary nature of incentive-based policies can result in geographically uneven take up and need to be monitored.

3.3 Scale of contribution requirement and targeted income group(s)

Another important factor in IH policy design is the income or demographic groups targeted under a policy. Longstanding international IH policies require or incentivise affordable housing production for households earning incomes in the very low to moderate income range (variously defined in relation to area median income). Most policies require developers to produce affordable housing targeted to more than one income group. For example, in England, there is an expectation that affordable housing units delivered through mandatory planning requirements (S106) include a mix of social or affordable rental housing as well as housing in 'intermediate' affordable tenures targeted to moderate income households. Target thresholds are defined in planning policy (see for example Greater London Authority 2021, Policy H4 Delivering Affordable Housing).

To prevent developers from targeting units to the upper end of the income eligibility range, many schemes specify the proportion of affordable dwellings that must be affordable to different income groups. This approach is evident in some of the longstanding IH policies reviewed (Appendix). Under Miami-Dade County's Workforce Housing Development Program, for example, which offers a density bonus in exchange for on or off-site affordable housing provision, dwellings must be affordable to households earning 60-140% of county median income, with thresholds adjusted for family size. Within that range, the policy requires that no less than 25% of affordable dwellings are for households earning 60-79% of County median income and no less than 50% of affordable dwellings are for households earning 80-110% of County median income (Miami-Dade County 2016). NYC's density bonus policy requires dwellings to be affordable to low income households, defined as earning up to 80% of area median income (with rents capped at 30% of 80% of area median income). The policy only allows for the density bonus to be used to generate dwellings for moderate income households in mapped 'special districts' (NYC Department of Housing Preservation and Development (n.d.)).

Some international policies scale obligation requirements based on the income groups the housing delivered through the program is affordable to. California's state-wide density bonus for affordable housing inclusion is scaled based on the percentage of affordable units included and the income groups units are affordable to (ranging from very low income to moderate income) (Southern Californian Association of Governments (n.d.)). Under NYC's mandatory IH scheme, contributions requirements range from 20 – 30% depending on whether units are required to be affordable to very low, low or moderate income households (as defined at zoning amendment) (New York City Council 2023). This acknowledges that, in the absence of other funding, a greater subsidy (or 'set aside') is required to make housing affordable to lower income versus moderate income households and avoids targeting of a single group within a broad range.

Within some IH policies, contributions are also scaled based on the availability of other sources of public subsidy to support affordable housing production. The London Plan specifies that expectations regarding the proportion of affordable dwellings defined in planning policies constitute a minimum expectation in the absence of public subsidies and that larger contributions are expected where subsidies are available (Greater London Authority 2021, Policy H4 Delivering Affordable Housing). NYC's voluntary inclusionary housing program also scales the contribution requirement on the basis of whether the project has other sources of public subsidy versus if the units are being produced without public subsidy (NYC Department of Housing Preservation and Development (n.d.)).

Although potentially appearing complex, these differentiated contribution requirements and scaled density bonus provisions attempt to ensure that policies address diverse housing needs while recognising different costs of delivering affordable housing for different income groups, with and without public subsidy. Allowing for this within the policy design, however, requires detailed evidence of housing needs and development feasibility.

Key take-aways

- IH policies can support the provision of affordable housing specifically for very low to moderate income households;
- Contribution requirements or incentives within IH policies can be structured in a way that supports the provision of affordable housing for different needs groups and or to require provision for a mix of low and moderate income households.

3.4 Delivery options for affordable housing contributions

The form of developer contributions for affordable housing is another important element of IH policy design. In practice, contributions generally take three forms: delivery of affordable housing on-site, meaning within the development or elsewhere on the development site where the requirement is triggered; off-site provision (i.e. contribution of dwellings on an alternative site); and or a monetary contribution in lieu of the provision of completed dwellings. In practice, many schemes offer multiple options and or allow for a combination of delivery modes (see Appendix).

On-site provision requirements most directly support the creation of mixed income communities and social integration goals (Schwartz et al 2012). The London Plan, for example, states that affordable dwellings delivered through inclusionary housing programs should be delivered on-site unless there are exceptional circumstances in order to foster “mixed and inclusive communities” (Greater London Authority 2021, Policy H4 Delivering Affordable Housing). While on-site provision can be in the form of a mixed tenure building with strata-title affordable dwellings ‘salt-and-peppered’ throughout, in some instances, delivery of affordable housing in a discrete stratum, or a physically separate building on site, or even on a subdivided part of the same site may be appropriate or preferable, for example, where high strata fees may challenge affordability, or where clear responsibility for maintenance and shared communal facilities is desirable.

Research has found that mixed income communities may still be achieved where units are provided off-site, as long as they are delivered within the same local area (Jacobus 2015). To ensure off-site units provided by developers are proximate to the principal development site, NYC, for example, requires units delivered off-site under its IH schemes to be delivered within the same mapped ‘community district’ or within a short radius into an adjacent district (NYC Department of Housing Preservation and Development (n.d.)). Likewise, Miami-Dade County requires that any off-site contributions be met within a two mile radius of the obligation site (Miami-Dade County (n.d.)).

While the flexibility offered by a monetary contribution option may appeal to the development industry, or be appropriate in some circumstances, placing the requirement on the public sector to produce affordable housing can create practical challenges. As Jacobus points out:

> “Effective use of fees relies on the presence of a number of key resources, which are not necessarily available in every community. These include the availability of other locally controlled financing sources to leverage inclusionary housing funds, the capacity of public agency staff, the availability of local non-profit or private partners with affordable housing development experience, and the availability of land for development of

affordable housing. Even when all these elements are present, successful off-site strategies require careful attention to where units are located if a program aims to achieve some level of economic integration." (Jacobus 2015 p.29)

While some NSW jurisdictions have well-established process for receiving contributions, and affordable housing delivery partners (such as City of Sydney), in many places, these would need to be developed or mechanisms for contribution pooling established to reduce administrative burdens (Benedict et al 2022).

As research in the Australian context also highlights, access to well-located land at reduced cost can play a very significant role in the viability of affordable housing projects (Randolph et al. 2018). An important consideration in designing IH policies for NSW should, therefore, be whether and how they can support non-profit housing providers to access land and units in high value, high opportunity areas. It is also important to recognise that the real value of monetary contributions can decrease over time when held in wait for a development opportunity. This reinforces the potential value of requiring contributions in the form of dwellings or land, particularly in locations with limited land supply and high land costs.

Key take-aways

- On-site affordable housing contribution requirements directly support the goal of fostering mixed income communities.
- There are options for how on-site affordable housing contributions can be physically arranged in response to ownership and management demands.
- While offering an element of flexibility, monetary contributions delivered in lieu of contributions of land or completed units may be difficult to translate into affordable housing in practice and depend on factors such as public sector capacity and development expertise; the availability of other financial resources to support development; and public sector access to land that is suitable for affordable housing.

3.5 Term of affordability requirement

Another important factor in inclusionary housing program performance is the length of time that affordable dwellings must remain affordable and available for target groups. If dwellings are only required to be affordable temporarily, and then revert to market-rate, the cumulative impact of the program will be smaller as dwellings are lost from the program at the same time that new affordable dwellings are produced. This has been documented in Montgomery County Maryland, which was one of the first US counties to adopt mandatory inclusionary zoning. Between 1973 and 2005, the county's inclusionary zoning scheme produced over 12,000 affordable dwellings. But as of 2005 only 3,000 affordable dwellings were still in the program. The short, 10-year affordability term was not supporting significant growth in affordable housing stock over time (Schwartz et al 2012; Jacobus 2015). A similar issue is arising in NSW with properties delivered under the former National Rental Affordability Scheme now reverting to market-rate housing. In response to the above discovery, Montgomery County extended the duration of the affordability requirement for dwellings delivered through their inclusionary zoning scheme to 30 years (Jacobus 2015). As Jacobus (2015) points out: "in booming housing markets, it [does] little good to require affordable homes or apartments without providing a mechanism to ensure that the units remain affordable over time" (p.34).

In the UK, affordable housing delivered through the planning system is owned by registered community housing providers, ensuring it remains affordable in perpetuity. Across the US, over 90% of inclusionary housing schemes have affordability terms of at least 30 years (Wang and Fu 2023). Dwellings delivered under NYC's voluntary inclusionary housing program, which offers a scaled density bonus incentive for the provision of affordable units for low income households, must remain affordable indefinitely (NYC Department of Housing Preservation and Development (n.d.)) (Appendix, Table 1). In the state of California, the state-wide density bonus requires units delivered under the policy to remain affordable for a minimum of 55 years (Southern Californian Association of Governments (n.d.)) (Appendix, Table 1). Mandatory IH policies in South Australia and NYC (Appendix, Table 2) require the provision of permanently affordable housing. In NSW, the government has announced its intention to require affordable housing delivered in transport oriented precincts identified for state-led accelerated rezoning to remain affordable in perpetuity (NSW Government 2023g; the Premier, Minister for Planning and Public Spaces). But, at the time of writing, a policy had not yet been implemented. Comparing IH policy features and affordable housing production, Wang and Fu (2023) found that having a longer affordability term (e.g. 50 years) was not associated with lower rates of unit production.

Key take-aways

- IH policies with longer affordability terms for units delivered have a greater cumulative impact on affordable housing supply over time.
- International IH policies (both mandatory and voluntary) tend to have affordability terms of 30 or more years, and many jurisdictions require dwellings to remain affordable permanently.
- Research in the US has found that longer affordability terms are not associated with lower unit production

3.6 How affordability is maintained and compliance managed

How affordability requirements are maintained and enforced is a less researched, but nevertheless important, element of policy success. While monitoring and enforcement has been identified as a challenge across many IH programs (Schwartz et al 2012), recent research in the US has found the IH programs that have produced more units over time also tend to have more established systems in place to track affordable units (to ensure compliance with affordability and eligibility rules) and have third-party managers in place (Wang and Fu 2023).

One of the ways to secure dwellings delivered through IH programs for affordable housing in perpetuity is through transfer or sale to registered non-profit housing providers. This approach is used across the UK. Draft guidance on implementation of the London Plan for example, states that affordable units should be sold to registered housing providers approved by the relevant Local Planning Authority "to ensure that the affordable housing is provided at an affordable price for future eligible households" (Mayor of London 2023 p.22). Under South Australia's IH policy, affordable dwellings can be sold to community housing providers or institutional affordable rental housing providers (Government of South Australia, SA Housing Authority 2023). As Benedict et al have documented, ownership by CHPs supports affordability in perpetuity, while the ability to sell units to the sector aligns with developers' build to sell development model (Benedict et al. 2022). As the CHP sector is subject to strict regulations and accountabilities, any surplus generated has to be reinvested in pursuing the organisations' social purpose (Randolph et al 2018).

At the development application stage, some jurisdictions require proposals subject to affordable housing contribution requirements or proposing to include affordable housing to be referred to special government agencies for compliance assessment. In South Australia, relevant development applications are referred to Housing SA (Government of South Australia 2022). As part of the assessment, Housing SA requires developers to submit an affordable housing plan (Government of South Australia, SA Housing Authority 2023). In NYC, applicable applications are referred to the Department of Housing Preservation (Carroll 2019). As part of the development assessment process, developers have to confirm the third party, not-for-profit monitor who will monitor initial rentals and re-rentals (ibid).

Issuing or withholding of occupancy certificates is used in some jurisdictions to enforce compliance with IH requirements. For example, under NYC's inclusionary housing programs, occupation certificates for some market-rate units are not released until affordable units have been leased at affordable rents with lease riders confirming they are to be leased at affordable rents, stabilised in perpetuity (Carroll 2019). Likewise, in England, S106 Agreements can include restrictions on the occupancy of market rate housing until a proportion of affordable housing has been completed and disposed of to a council or a registered housing provider (Mayor of London 2023).

Legally defining affordability and eligibility requirements for dwellings delivered under IH policies is critical. But capacity to monitor and enforce compliance over time is also important. Creating and maintaining digitised databases of applicable projects, dedicated resources and clear responsibilities for monitoring compliance play an important role in longer term enforcement of IH policies. In London, data on development applications, including S106 agreement requirements, is recorded in the Planning London Datahub, and for transparency, Local Planning Authorities are required to publish annual monitoring reports from the data. Local planning authorities are also tasked with monitoring compliance with S106 obligations, the cost of which is covered by the applicant as part of the obligation structure (Mayor of London 2023). Housing SA in South Australia requires developers of projects including affordable housing to submit a final report of sales to illustrate compliance with IH requirements (Government of South Australia, SA Housing Authority (2023). In 2016, NYC's Department of Housing Preservation created a special compliance and enforcement unit to receive and pursue complaints about non-compliance with affordability restrictions on units delivered through IH programs or tax abatements or other incentives. Penalties for non-compliance can include fines, requirements to let alternative units as affordable housing and revoking of occupation certificates (Carroll 2019).

Key take-aways

- Ownership of units produced through inclusionary housing schemes by government or the non-profit housing sector can help to ensure dwellings are maintained as affordable housing for target groups over time.

- Capacity to enforce compliance with eligibility and affordability requirements over time is critical to program success. This can be supported through:
  - referrals to, and compliance checking by, specialised agencies / departments at the development application and occupancy stages;
  - enshrining site-specific contribution requirements and affordability and eligibility requirements for applicable dwellings in legal documents;
  - establishing clear responsibilities for monitoring and enforcement; and,
  - allocating or generating resources to support monitoring and enforcement within the policy structure.

3.7 Design, locational and dwelling mix requirements

Design standards and requirements refer to the detailed rules within IH policies that define how affordable units should be designed, their size, and (if applicable) where within a building they should be located. These specifications help to ensure that units delivered through inclusionary housing schemes are appropriate to target needs groups; and, support social equity by minimising differences in amenity between market-rate and affordable dwellings.

NSW's existing density bonus policy requires contributions on the basis of floor area and does not specify any special requirements for how affordable units should be designed or where they should be located within a mixed-tenure development. Dwelling mix requirements only apply if specified in applicable local planning policies. By contrast, NYC's IH Policies, prescribe standards for the size and number of bedrooms of affordable units. At the time of reviewing, requirements were that 75% of affordable dwellings have one or more bedrooms; and at least 50% have two or more bedrooms. Alternatively, the bedroom mix must be equivalent for market-rate and affordable units. This is intended to minimise the provision, for example, of studio apartments (rather than larger units) and helps to ensure that affordable housing delivered through the program is appropriate for target needs groups.

NYC's IH policies also include standards for horizontal and vertical integration of affordable housing units that are delivered within mixed-tenure buildings. No one floor can have more than 33% of affordable units, and affordable units must be distributed across at least 65% of the building's storeys (NYC Department of Housing Preservation and Development (n.d.)). This avoids clustering of affordable units in less desirable parts of a building and helps to foster equitable levels of amenity between market-rate and affordable units.

Key take-aways

- In addition to specifying the amount of floor area or number of affordable units required, many IH policies also set standards for the size, mix, quality and location of affordable dwellings within a building to ensure they are suitable for target needs groups and address equity goals.

4.0 Consideration of December 2023 SEPP Housing Amendments

The stated intention of the NSW Government's new inclusionary housing policy is to 'encourage private developers to boost affordable housing and deliver more market housing' (NSW Government 2023a). This aim is to be achieved by increasing the attractiveness of the policy to private developers through an uplift in the available floor space bonus from 20% to 30%, the introduction of a new bonus allowing 30% additional height, and the reduction of the percentage of affordable housing that needs to be delivered from at least 20% to at least 10%.[2] In practice, the new policy is an adjustment to a previous policy which has

[2] Based on comparison to SEPP Housing Clause 16 and 17 prior to adoption of amendments (historical version for 10 November 2023 to 13 December 2023

historically had a relatively low uptake since its introduction under SEPP (Affordable Rental Housing) 2009 (Department of Planning and Environment 2023a). The rationale for the new policy is seemingly that keeping the policy design largely the same but making the provisions more lucrative to developers will incentivise greater use of the provisions. The success of this strategy, only time will tell.

The research literature and international practice examined in the preceding section shows that there are other elements of policy design, apart from the increase in development bonuses, that can be employed in working towards the delivery of more new affordable housing through inclusionary housing policies. Below, we compare the Government's new policy against the key features of inclusionary zoning policies as highlighted by the research.

4.1 Mandatory versus voluntary

The new policy, like its 2009 precursor, remains a voluntary IH policy rather than a mandatory IH policy. This means that developers must 'opt in' to the policy; there is no 'requirement' to use the policy under any planning controls. This in turn means that there is no firm guarantee of the policy delivering a consistent or coordinated outcome, or indeed any outcome at all.

The research shows that mandatory IH policies have been, by and large, more successful than voluntary IH policies in delivering affordable housing because they are compulsory. Mandatory IH policies are also perceived to be 'fairer', as they apply to all redevelopment evenly across an area and can be factored in upfront to the price paid for land. They are also more equitable in that the planning system they are part of can anticipate the number of dwellings forthcoming and ensure that adequate infrastructure is in place to service the additional population. Further, more certainty is provided over the resultant built form, as affordable housing requirements can occur 'within' the planning controls, rather than 'on top of' them as in the case of a density bonus. Together, these attributes suggest that future inclusionary housing mechanisms in NSW may benefit from being mandatory, both from the perspective of increasing affordable housing supply, as well as broader community acceptance of any IH policy.

4.2 Geographic scope of policy

The new policy generally maintains the geographic scope of the previous iteration. The policy applies to land on which residential development is permissible and that is within an 'accessible area', defined as being within 800m walking distance of a railway station, light rail station or ferry wharf, or within 400m walking distance of a bus stop with a regular service (Clause 15C and Schedule 10 (current version for 14 December 2023)). There are no other specific geographical requirements directing the location of affordable housing delivery. Whilst not without sense, as affordable housing will be delivered in areas with good transport to employment, education and services, in practice, the urban area where utilisation of the policy is possible is very large and disparate.

The research shows that whilst the application of IH policies to large areas such as this could theoretically increase uptake due to the scale of opportunity and availability of sites, it also means that distribution of any affordable housing built could be erratic, and not necessarily where it is most needed. This suggests that the policy could potentially be more spatially targeted to where affordable housing is in greatest demand and additional density most appropriate. It also points to a need for monitoring outcomes so that the policy can be revised or better tailored to specific locations and housing market areas in the future.

4.3 Scale of contribution and targeted income groups

The new policy continues to target affordable housing to households with a very low, low or moderate gross income when measured against the median household income, and requires that the household should pay no more than 30% of this gross income in rent (Clause 13 (current version for 14 December 2023)). Whilst a range of household income types could be housed by choice, there is no further requirement within SEPP Housing to ensure that this occurs.

The research shows that many longstanding IH policies internationally do require that a range of household income groups are housed to avoid targeting of the upper end of the income range for the highest rents. Whilst specifying proportional requirements or scaling the incentive and contribution requirement based on the income group(s) housed would add complexity, there is precedence for this type of policy structuring. This suggests there is an opportunity to further 'fine-tuned' the policy to ensure diverse housing needs are addressed where the bonus is taken up.

4.4 Delivery options for affordable housing contributions

The new policy, consistent with the previous one, requires that affordable housing be delivered as an intrinsic component of the development (Clause 15B and 15C (current version for 14 December 2023)). The policy makes no provision for the affordable housing component to be delivered off-site or via monetary contribution. The research broadly supports the delivery of affordable housing on-site, and points to potential shortcomings and delivery challenges when off-site provision or a monetary contribution in lieu is used. In this regard, if taken up, the policy may assist to achieve positive planning outcomes such a mixed income communities, at least at a site level.

Whilst the on-site requirement is clear, no further guidance is provided as to how the housing must be physically integrated within the building. Commendably, however, the new Practice Note now provides guidance that 'amenity is (to be) maximised across a development, and that affordable dwellings are not subject to a lower standard' (Department of Planning and Environment 2023c p.14-15). The policy could further benefit, however, from additional guidance around affordable dwelling distribution and titling within a building, or throughout a development, to take into account various ownership and management preferences of both private developers and community housing providers.

4.5 Term of affordability requirement

The new policy continues the requirement for any affordable dwellings provided to be used for affordable housing for at least 15 years from the day an occupation certificate is issued (Clause 21 (current version for 14 December 2023)). Compared to international and other longstanding IH policies this is a short period of time. Practically, this means that over the life of the policy, dwellings will be exiting the scheme at the same time new dwellings are entering it, meaning the overall stock of affordable housing will not effectively increase over time. The private development benefits of additional floor space and height will significantly 'outlive' the public benefit of affordable housing. The shortness of the timeframe also maintains the problem of affordable housing tenants being frequently displaced, with no guarantee of alternative affordable housing being available nearby.

Longer affordability terms provide a more sustained public benefit. The overseas IH policies reviewed and covered in the research typically have a minimum term of 30 years, with many being longer, including in-perpetuity. Research on IH policies across the US has found there is no correlation between longer affordability terms and a decrease in affordable dwelling production. This suggests that there is significant scope to increase the length of time that the policy requires housing to remain affordable for. A requirement for ownership of these dwellings by CHPs could be one way to ensure that affordability is maintained over the longer term, and that security of tenancies is not impacted.

We note that in December 2023, the NSW state government announced an intention to require affordable housing delivered on eight, state master-planned transport oriented development precincts to be in perpetuity (NSW Government 2023g; The Premier, Minister for Planning and Public Spaces 2023). This is a positive direction, but needs to be applied to all inclusionary housing policies and programs in the state.

4.6 How affordability is maintained and compliance managed

The new policy maintains the requirement for the affordable housing component of the development to be managed by a registered community housing provider (Clause 21 (current version for 14 December 2023)). This is a positive aspect of the policy as the CHP sector in New South Wales is well-regulated and monitored and provides some certainty that affordable housing dwellings will be tenanted and managed appropriately. As described above, the policy could potentially deliver further benefit by requiring that CHPs own the dwellings rather than just manage them, as this would capture affordability benefits for the longer term.

Research has found compliance and enforcement to be a shortcoming of many IH policies and is something that should be further considered in relation to the Housing SEPP. It is currently unclear whether or how take up will be monitored; whether records of projects opting to utilise the density bonus will be collated or maintained; and, how compliance will be enforced or breaches managed.

4.7 Design, locational and dwelling mix requirements

The new policy continues to set a range of non-discretionary development standards which assist this state-wide policy to deliver a minimum standard of development across varied local jurisdictions, each with their own controls. These standards include requirements for landscaped area, deep soil area, solar access to dwellings, car parking, minimum unit areas, and for compatibility with the character of the local area (Clauses 19 and 20 (current version for 14 December 2023)). SEPP Housing also requires the consideration of other housing design guidance including the Apartment Design Guide and the Low Rise Housing Diversity Design Guide where relevant (Clauses 13A and 20 (current version for

14 December 2023)). The policy however, does not provide any guidance *specifically* for affordable housing dwellings, such as the desirable number of bedrooms, how many of each unit type (mix), or their location within the development.

The research suggests that specific design considerations around the delivery of affordable dwellings may be a beneficial additional element to the policy to ensure the affordable housing delivered is suitable to the needs of occupants and equity between tenures within mixed income communities is maintained.

5.0 Recommendations

Based on the preceding analysis, we recommend the following principles for implementing and scaling up inclusionary housing policies in NSW:

1. Prioritise the broad, geographically wide-reaching implementation and scaling up (at the point of rezoning) of **mandatory inclusionary zoning**.

In refining existing and implementing new IH policies:

2. Set contribution requirements based on **robust analysis of the costs and benefits** of compliance or program participation in different housing markets in order to **maximise the public benefit sought**;

3. Require dwellings allocated as affordable housing under IH policies to **remain as affordable housing in perpetuity**;

4. Continue to require affordable housing **contributions in the form of completed dwellings, or as dedications of land**.

5. Require affordable housing **contributions to be delivered within the site or development precinct** where the requirement is triggered to ensure

policies support the creation and maintenance of mixed income communities.

6. Within the overall floor space or dwelling contributions requirement, define the **proportion of floor area or dwellings that must be allocated as affordable at different income ranges** to ensure a proportion of units are also allocated to low income households.

7. Monitor housing delivery under IH programs and **specify policy requirements for unit size and other design and locational requirements**, if necessary, to ensure affordable housing is appropriate to needs groups and amenity is equitable across tenures.

8. At a minimum, ensure all dwellings delivered through IH programs are being **managed by registered Community Housing Providers** and consider moving to full ownership by the sector. CHP ownership would ensure dwellings are made available to target needs groups and provide affordable housing in perpetuity.

9. Maintain a publicly accessible **registered of projects** utilising the density bonus, including the affordable housing commitment for each project. A **register of individual units dedicated as affordable housing** (linked to title) should also be maintained to support monitoring and enforcement.

10. Define responsibilities and allocate resources for **monitoring compliance** with IH requirements over time.

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Appendix

Table 1: Density bonus policy examples

Policy / program	Geographical application	Affordable housing contribution requirement and density bonus	Affordability requirement	Length of affordability requirement	Location of affordable housing	Standards for affordable housing
NYC Voluntary Inclusionary Housing Policy (Introduced in 1987)	Applies only in R10 zones (high density residential) and designated mapped areas Can apply to new construction, substantial rehabilitation or preservation of affordable housing	Bonus / contribution scaled according to type of development and whether the site receives a source of public subsidy . Lowest minimum is 1.25 square feet for every 1 sq foot of affordable housing	Units must be affordable to low income households earning up to 80% of AMI, with rents capped at 30% of 80% of AMI Provision of affordable housing for moderate income households (125-175% AMI) only permitted in some 'Special Districts'	Permanent	Can be located on or off site If off-site, must be within the same mapped 'Community District' or within 0.5 mile into an adjacent district	Minimum unit size requirements specified Standards for vertical and horizontal integration within building specified Bedroom mix requirements i.e. at least 50% affordable units mist be 2 or more beds and 75% must be one or more beds

						Or Bedroom mix between affordable and market rate units must be proportional
California's Density Bonus Law (Introduced in 1979)	State-wide	Density bonus is on a sliding scale depending on % of affordable units and household income category of units, as well as other waivers and concessions utilised by the developer.	Units must be affordable to very low to moderate income households or be housing for seniors (no affordability requirement) Cap on proportion of moderate income units in 100% affordable schemes	Min. 55 years	On-site units or dedication of land with access to public facilities, permits for construction of very low income housing and proximate to principal development	
Miami Workforce Housing Development Program (Introduced in 2007)	County-wide	Scaled bonus for proposals of 20 or more units ranging from 5-25% for provision of 5-10% of units as affordable workforce housing Requirement that no less than:	Housing must be affordable to households earning 60% to 140% of County median income (adjusted for family size) Can be for rent or purchase. Purchase housing includes a	20 years If housing sold to eligible households at a prescribed price is re-sold during the control period it must be re-sold to eligible	Can be provided on or off site. Policy provides for monetary or land contributions in lieu; off-site provision within a 2 mile radius of the DB site; rehabilitation of properties in infill	

		- 25% of WHUs target households earning 60-79% of County median income. - 50% of the WHUs target the 80-110% County median income A 3% additional density bonus (not exceeding the 25% range) applies to developments targeting the remainder of units to the 60-79% County median income range	shared equity agreement with the County	households at the maximum affordable price prescribed by the County.	housing area and transit corridors within a 3 mile radius of the DB site.	

Source: authors, information derived from Miami-Dade County (n.d.); Miami-Dade County (2016); NYC Department of City Planning (2011); NYC Department of Housing Preservation and Development (n.d.); Southern Californian Association of Governments (n.d.)

Table 2: Mandatory inclusionary zoning policy examples

Policy / program	Minimum affordable housing contributions	Affordability requirement	Length of affordability requirement	Location of affordable housing	Standards for affordable housing
South Australia Inclusionary zoning policy (Introduced in 2005)	15% of dwellings on land with a designated affordable housing overlay and with 20 or more dwellings or allotments	Intended to affordable to households with low to moderate incomes (defined as not exceeding 30% of their gross income) Must be offered for sale to eligible households or community housing providers at or below defined prices	Permanent	Dwellings required to be distributed throughout development to avoid concentration	New affordable housing must be 'turnkey'
NYC Mandatory Inclusionary Housing (Introduced in 2016)	20-30% of residential floor area (depending on income group targeted) on land zoned for Mandatory Inclusionary Housing (implemented when zoning is changed either as part of a government led process or private rezoning application). Applies to developments with more than 10 apartments. Projects of 11-25 apartments have	Rental housing that is affordable to households earning between 40% and 115% of area median income (target income group(s) determined from four options at time of implementation (zoning change)	Permanent	For units delivered on site, requirement that units are provided on at least 65% of floors.	Unit size / bedroom mix requirements (i.e. must meet defined standards or be consistent with mix and size of market-rate units)

	the option of paying a financial contribution				
Inclusionary housing (S106) expectations in the London Plan (Approach in place since 1990s with varying targets)	Minimum 35% of gross residential development (measured in habitable rooms) on significant private sector sites (higher expectations for public sector land)	A minimum of 30% must be delivered as social or affordable rental housing for low income households; a minimum of 30% must be delivered as 'intermediate' affordable housing for moderate income earners (e.g. below market rent or shared ownership) (balanced to be specified by applicable local authority)	Permanent	On-site; off-site provision or financial payments in lieu only accepted in exceptional circumstances	Affordable housing contribution calculated on the basis of 'habitable rooms' with an expectation that sizes are comparable across market and affordable dwellings

Source: authors; information derived from Carroll 2019; Government of South Australia 2022; Government of South Australia, SA Housing Authority 2023; Greater London Authority 2021; New York City Council 2023; PLAN SA Planning and Design Code.