



Department of Planning, Homes and Infrastructure

Shelter NSW position on Low- and Mid-rise housing reforms

A secure home for all

23 February 2024



About Shelter NSW

Shelter NSW has been operating since 1975 as the State’s peak housing policy and advocacy body. Our vision is to create a sustainable housing system that provides secure homes for all. We provide systemic advocacy and advice on policy and legislation for the whole NSW housing system to resolve housing inequality.

We are especially concerned for low-income households which struggle to afford good-quality and well-located housing in the private market. We consider a sustainable housing system one that delivers what we call Triple-A housing and Triple-P outcomes.

Affordable and diverse homes Housing supply and demand Tenure forms and rights Housing types and sizes	Accessible, well-located housing Proximity to jobs and services Access to public transport Accessibility and adaptability	Appropriate, high-quality development Amenity and aesthetics Energy and environment Standards and maintenance
Productive cities and regions Access to jobs and services Housing costs and consumption Financial and economic stability	Poverty-free communities Housing stress and homelessness Physical and mental health Education access and attainment	Protected neighbourhoods Energy use and consumption Urban heat Climate resilience and adaptation

At Shelter NSW, we believe that all people deserve to live in housing that delivers these priorities and objectives. Ahead of the NSW 2023 State election, Shelter NSW developed a comprehensive policy platform:

Shelter NSW
2023 - 2027
Priorities for NSW
A secure home for all

- 1** | **Restore the social housing safety net to 5% by 2027, 10% by 2040. Build/acquire 5,000 dwellings per year**
 Includes maintenance, upgrades + 3 youth foyers
- 2** | **Increase Specialist Homelessness annual funding by 20%**
 Move beyond crisis. Focus on women, aged and First Nations
- 3** | **Make the planning system deliver Affordable Rental Housing for lower income people**
 Rezoning targets: 10 – 30/45%
- 4** | **Build more accessible & climate ready dwellings**
 Minimum standards set & met for rental dwellings
- 5** | **Support Renters and Renting**
 Remove *No Grounds Evictions*
 Create a *Home at Last* service
 Create a standing hardship fund & protocol for times of crisis
 Get the balance right between housing for tourists and housing for locals

Shelter NSW logo

In more recent times, we have joined in with the Planning Institute of Australia (NSW) to [call for inclusive renewal in planning reforms](#) targeted at increasing housing supply and density.

About our submission

Shelter NSW thanks the Department of Planning, Homes and Infrastructure for the opportunity to comment on various planning reforms currently being considered to increase housing supply, density, and affordability across Greater Sydney (and beyond, in some instances). As we understand it, formal exhibition and feedback is sought on:

1. Low- and Mid-rise housing planning reforms (Explanation of Intended Effect 'EIE').

Targeted consultation is underway for:

2. Transit-Oriented Development Program ('TODP').

And future consultation work will occur for:

3. Pattern Book of housing design

This submission is intended to respond to proposal 1 above, with some consideration paid to proposal 2. A more comprehensive response to proposal 2 will be sent directly to the Department within the coming weeks.

Increasingly, communities need to feel they are getting real 'bang for their buck' in how their neighbourhoods are expected to grow. Some neighbourhoods are more affluent and locals have fears of what increased density (and social housing provision) in their surrounds will do to 'property values'. Other neighbourhoods are poorer and dominated by renters, and the value uplift in land from mass-upzoning can create a flurry of private investment activity that disadvantages local low-income renters. **The NIMBY/YIMBY axis does not adequately canvass the full array of factors that underpin community reluctance to increased housing density¹.**

Thus, our submission is rooted in principles of inclusive renewal. It is our firm belief that the only way to deliver genuinely affordable homes and liveable places for households of all income levels is through **mandatory requirements such as inclusionary zoning, State-led social housing expansion, State-led social and physical infrastructure, and community-led urban design and place-making.** We note that the 'community-led' aspect of these requirements can be contentious in some neighbourhoods, however, we hold that community education programs and public guarantees about the end-result quality of urban infill development is well-worth the investment in each community to ensure socially sustainable neighbourhoods into the future.

As we noted in [our submission](#) to the (former) Greater Cities Commission on its *Six Cities Discussion Paper*, community-trust building is imperative in ensuring the 'metropolis' vision can be achieved. The social licence of private developers and private building certifiers wears thin, and confidence in the provision of critical infrastructure (including non-market housing) to accompany increased building and population densities in

¹ Sisson, A. in *The Conversation AU*. (18 January 2024). *The YIMBY movement is spreading around the world. What does it mean for Australia's housing crisis?* Retrieved from <https://theconversation.com/the-yimby-movement-is-spreading-around-the-world-what-does-it-mean-for-australias-housing-crisis-219313>

neighbourhoods is low. **The State Government must expand not only its investment in critical infrastructure, but also its role in enforcing compliance** with design and construction standards as well as consumer protections.

Recent work in policy development

We have undertaken significant and nuanced research into Affordable Rental Housing policy development in recent months. Pertinent to this submission is the work Shelter NSW has commissioned from C Gilbert and M Zanardo², P Phibbs³, our October 2023 submission to the Department on the draft *Housing SEPP (Social and Affordable Housing reforms)*⁴, and our December 2022 submission to the Department on earlier versions of reforms to the *Housing SEPP*⁵. In addition to this work, **we have consulted with our member and supporter network including local Councils, town planners, advocacy bodies (such as PIA NSW), and citizen bodies (such as Sydney Alliance).**

As our research and advocacy deepens on the issue of Affordable Rental Housing, the following key recommendations are reiterated to the Department:

- **Housing needs to be affordable not just in terms of rent**, but also with respect to energy bills and commuting costs (thus we support Affordable Housing in proximity to key transport nodes which is designed to a high-quality, energy-efficient, and resilient to climate change and heatwaves)
- **Mandatory Inclusionary Zoning requirements should apply to all DAs** that will occur on land affected by the low- and mid-rise housing reform changes; that is to say, land value uplift in these areas resulting from more generous planning controls (ie non-refusal standards) being introduced should be captured in a broad-based Affordable Housing Contribution Scheme (as dwelling dedications, land dedications, or **last resort** monetary contributions for small sites and small developments)
- Affordable Housing, as currently defined in the *Housing SEPP* with households paying no more than 30% of gross income on rent, needs to be **retained as Affordable Housing in perpetuity** to ensure benefits from planning uplift accrue to the public
- **A publicly accessible and centralised framework is well overdue for the monitoring of Affordable Housing** approved, built, delivered (searchable by LGA), and with tracking of timeframes for Affordable Housing requirements (if not in perpetuity).

² Gilbert, C. & Zanardo, M. (2024). *What an Inclusionary Housing Policy Should be: Considerations for Designing Inclusionary Housing Approaches for NSW*. The University of Sydney and Shelter NSW. Retrieved from <https://shelternsw.org.au/wp-content/uploads/2024/01/Shelter-report-FINAL-18-January-2024.pdf>

³ Phibbs, P. (2023). *The Affordable Housing Height and Density Bonus Scheme*. EPIC DOT GOV Consultant and Shelter NSW. Retrieved from https://shelternsw.org.au/wp-content/uploads/2023/11/106250_ShelterNSW_FinalPlanningBonus_11pp_A4_1s_PROOF.pdf

⁴ Shelter NSW submission. (18 October 2023). *Department of Planning and Environment – Draft Housing SEPP – Social and Affordable Housing reforms*. Retrieved from https://shelternsw.org.au/wp-content/uploads/2023/10/231018_DPE-Draft-Housing-SEPP-Social-and-Affordable-Housing-Reforms.pdf

⁵ Shelter NSW submission. (22 December 2022). *Public exhibition of the Explanation of Intended Effect – Proposed amendments to the SEPP (Housing) 2021*. Retrieved from https://shelternsw.org.au/wp-content/uploads/2023/01/221219_Submission-on-EIE-DPE-Housing-SEPP-2021-FINAL_PA.pdf

Low- and Mid-rise housing planning reforms

It appears that the intention of the Low- and Mid-rise housing reforms ('L and MR reforms') is to increase development and density potential of homes in certain zones and locations. This is purportedly to assist in tackling the housing and rental affordability crisis that continues to worsen in NSW and especially in and around Greater Sydney.

Shelter NSW recognises the Government's concerns about the environmental and economic costs of urban sprawl, and we agree that thoughtful infill urban development is better for our cities, people, and climate resilience.

Our core concern with the proposal is that the L and MR reforms do not explicitly call for affordable rental housing or social housing to be included in the development/density push. **We at Shelter NSW argue that any planning uplift – such as that proposed through changes to land use tables in the Standard Instrument and introduction of non-refusal standards – should be accompanied by an Affordable Housing Contributions framework.**

Liveable neighbourhoods

Shelter NSW strongly supports the Department's intention for more "missing middle" housing diversity in our cities and towns. In concert with PIA NSW, we agree that better planning processes can only do so much to deliver actual on-the-ground housing uptake. We note that the Greater Sydney Urban Development Program dashboard⁶ records number of dwelling approvals versus completion shortfall, with the gap between approvals and completions ever-widening. For this reason, it must be acknowledged that **housing approvals – even of the right housing typology – do not guarantee homes delivered in a timely manner nor to the cohorts who need it most (low-income renters).**

Even with (hoped for) significant uptake of housing typology diversity, this initiative as a standalone pillar will not deliver affordable quality homes for families, young people, retirees, people with disability, and low-income households. **There are no mandates in the EIE that overlapping proportions of diverse housing will also be a) affordable, b) disability accessible, and c) preceded by physical and community infrastructure upgrades** (funded through local contribution schemes or Regional contribution schemes).

In addition to a lack of internal design standards for accessibility in low- and mid-rise dwellings, the L and MR reforms target areas within 'walking distance' of transport nodes despite no regard being paid to the actual walkability or accessibility of current or planned for pedestrian infrastructure. We note c) is a core concern of local Councils and PIA NSW in delivering more dense, liveable neighbourhoods. It is not known to what extent the *Housing Productivity Contributions Ministerial Order 2023*, will underpin local delivery of

⁶ NSW Government. (accessed 22 February 2024). *Greater Sydney Urban Development Program Dashboard*. Retrieved from <https://www.planningportal.nsw.gov.au/greater-sydney-urban-development-program>

infrastructure upgrades for areas impacted by the low- and mid-rise housing reforms (as well as the TOD Program). Further, Housing Productivity Infrastructure Contributions requirements largely do not apply to areas outside of Greater Sydney, Newcastle, and Wollongong. By contrast, low-rise land use provisions in the EIE apply to all R2 zones in the State.

Urban amenity outcomes must be incorporated into the L and MR reforms in order for density to feel worthwhile to current and future residents. For example, **provisions are necessary for sufficient deep soil zones that will not be undermined by floor space ratio (FSR) non-refusal standards.**

Good Affordable Housing policy

The development/density push of the L and MR reforms may induce **perverse effects in terms of low-cost, older homes being (prematurely) demolished to make way for more luxury-market mid-rise developments**, resulting in a net loss of low-cost rental options. The *Housing SEPP* currently has a merits-process assessing to what extent proposed developments will result in a net reduction of low-rental dwellings and how this loss can be mitigated (sometimes through Affordable Housing contributions). Whilst this merits-process is not perfect (i.e. there are valid criticisms on the financial viability test overly condemning boarding houses to demolition⁷), it provides a mechanism for the planning system to reflect on the gentrification potential of proposed developments that may end up displacing low-income renters. The applicability of Chapter 2, Part 3 of the *Housing SEPP* is quite narrow in terms of existing dwellings and buildings able to be classified as “low-rental residential buildings” (e.g. dwellings used as sharehouses are excluded). With the introduction of the low and mid-rise housing reforms package, we suggest **reviewing the scope and effectiveness of Chapter 2, Part 3 of the *Housing SEPP* in reducing net losses of low-rental dwellings and tempering gentrification effects (low-income renter displacement).**

One surefire way to counter any unintended consequences of premature redevelopment pushing out low-income renters, is to institute a robust Affordable Housing Contributions framework with mandatory inclusionary zoning requirements at its core.

Our understanding of the L and MR reforms is that they do not constitute ‘rezonings’ per se, but **introduction of non-refusal standards for FSR and height of buildings will functionally create planning uplift across numerous sites which should be captured by an Affordable Housing Contributions framework⁸.** The inclusion of ‘dual occupancies’ as a mandatory permissible land use in R2 low density zones is also a form of planning uplift that will accrue to current landholders.

⁷ City of Sydney Council. (23 October 2023). *Item 3.2 Retention of Boarding Houses* – Meeting Minute and Resolution (carried). Retrieved from <https://meetings.cityofsydney.nsw.gov.au/ieDecisionDetails.aspx?AllId=16258>

⁸ SGS Economics & Planning. (28 March 2018). *Development contributions for affordable housing: theory and implementation*. Retrieved from <https://sgsep.com.au/publications/insights/development-contributions-for-affordable-housing-theory-and-implementation>

We advocate for a broad-based Affordable Contributions Scheme that targets DAs (big and small) on land impacted by the L and MR reforms. When it comes to mandatory inclusionary zoning, the preference is for Affordable Housing delivery on-site for larger development projects and paid into a contributions fund for smaller development projects (e.g. dual occupancies)⁹. Accruing Affordable Housing funds over time via several smaller DA projects allows for Councils to ‘chip away’ at Affordable Housing goals in day-to-day planning approvals. Thus, contribution rates should be scaled according to development size:

- **At least 10% for mid-rise housing** made possible on land due to the L and MR reforms¹⁰
- **At least 2% for low-rise housing** made possible on land due to the L and MR reforms¹¹

Formulating contribution rates shall also consider locational aspects; Councils may wish to opt for higher or lower contributions rates, and these **variations should be allowed subject to feasibility testing.**

It is not merely broad-based contributions rates (in-kind or monetary) that make for good Affordable Housing policy; how rents are set, the period within which affordable rent-setting is required, architectural integration of Affordable Housing within communities and developments, and monitoring/compliance of Affordable Housing delivery are all crucial factors that underpin successful schemes. The C Gilbert & M Zanardo *Inclusionary Housing Policy Paper* (2023) on this matter is comprehensive in outlining nuanced recommendations on all these matters. The following is a summary of a few core insights from that Paper¹² in light of the L and MR reforms:

- **Mandatory rather than voluntary Affordable Housing Schemes are overall fairer**, easier to interrogate and implement, and deliver more predictable outcomes in Affordable Housing delivery¹³
- **Specify minimum proportions within the three income bands** (very low, low, and moderate) who should be housed in Affordable Housing to prevent developer or housing provider bias in accepting mostly moderate income tenants

⁹ Gilbert, C. & Zanardo, M. (2024). *What an Inclusionary Housing Policy Should be: Considerations for Designing Inclusionary Housing Approaches for NSW*. The University of Sydney and Shelter NSW. Retrieved from <https://shelternsw.org.au/wp-content/uploads/2024/01/Shelter-report-FINAL-18-January-2024.pdf>

¹⁰ Consistent with NSW Government's *Six Cities Discussion Paper* (2022); and The Constellation Project. (2021). *Establishing a National Framework for Mandatory Inclusionary Zoning*. Retrieved from https://theconstellationproject.com.au/wp-content/uploads/2021/09/Mandatory_Inclusionary_Zoning-Final.pdf

¹¹ Drawing from examples where City of Sydney Council levies 3% for residential DAs; Waverley Council levies 1% for residential DAs; Randwick City Council levies 5% for residential DAs; Georges River Council aiming for 1-3% for residential DAs

¹² Gilbert, C. & Zanardo, M. (2024). *What an Inclusionary Housing Policy Should be: Considerations for Designing Inclusionary Housing Approaches for NSW*. The University of Sydney and Shelter NSW. Retrieved from <https://shelternsw.org.au/wp-content/uploads/2024/01/Shelter-report-FINAL-18-January-2024.pdf>

¹³ Also echoed in Phibbs, P. (2023). *The Affordable Housing Height and Density Bonus Scheme*. EPIC DOT GOV Consultant and Shelter NSW. Retrieved from https://shelternsw.org.au/wp-content/uploads/2023/11/106250_ShelterNSW_FinalPlanningBonus_11pp_A4_1s_PROOF.pdf

- **Careful attention to be paid to design outcomes for Affordable Housing within broader private housing complexes** so these dwellings are not materially subpar or perceived to be subpar by way of location, floor-level, number of bedrooms, strata by-laws, open space, passive heating/cooling opportunities and the like¹⁴
- **If Sydney truly wants to be viewed as a global city, it must require Affordable Housing to be Affordable (*Housing SEPP*: rent-set at no more than 30% of gross income) in perpetuity;** in perpetuity or 50+ year requirements in international cases (the US) have not been shown to significantly affect unit development activity
- **Affordable Housing ownership, operations, and tenancy management should be retained by government agencies, local Councils, or not-for-profit community housing providers**
- **Affordable Housing compliance needs to be instilled in DA conditions of consent** as well as on land titles (examples include requiring Affordable Housing tenancies to be filled prior to Occupation Certificates being issued for private market dwellings)
- **A centralised monitoring framework on units approved, constructed, and operational as Affordable Housing** with clear demarcation of government agencies responsible for compliance and enforcement at each stage in the Affordable Housing lifecycle.

Administration and governance

PIA NSW in their submission rightly note that the Government recently embarked on changes to simplify planning rules and reduce the number of SEPPs in operation. Now, with more reforms announced and new SEPP pathways opening up, there is a lack of clarity on how these new provisions will interact or take precedence over one another. **Most conspicuously is how the proposed reforms will interact with the TOD Program** being rolled out across various geographies (that will overlap with the application of low- and mid-rise housing provisions).

Shelter NSW notes that the Department intends to introduce a 'Pattern Book' of low- and mid-rise housing designs that could guide streamlined approval of such developments. The timeframe for crafting, consulting, and implementing the Pattern Book is unknown. **Pattern Book implementation must coincide with L and MR reforms**, however, to ensure quality urban and architectural outcomes are delivered for infill housing in neighbourhoods (particularly neighbourhoods where this built-form is currently a foreign concept).

We have heard concerns from local Councils that the L and MR reforms, in tandem with provisions that already exist under the *Housing SEPP*, may result in even **less scrutiny of social housing demolition and rebuilds that deliver fewer dwellings and/or bedroom numbers** overall as non-DA ("permitted without consent") development.

¹⁴ Shelter NSW submission. (18 October 2023). *Department of Planning and Environment – Draft Housing SEPP – Social and Affordable Housing reforms*. Retrieved from https://shelternsw.org.au/wp-content/uploads/2023/10/231018_DPE-Draft-Housing-SEPP-Social-and-Affordable-Housing-Reforms.pdf

In terms of the intersection between the L and MR reforms and BASIX requirements, community advocates have pointed out to us that apartment buildings below 6 storeys have been exempted from higher thermal and energy performance standards (e.g. 7-star NatHERS) introduced by the NSW Government in 2023. **We seek an urgent review of this exemption**, to support missing middle housing that will be comfortable and affordable to occupy in the long-run.

Summary of recommendations

Shelter NSW recommendations to the NSW Government on the L and MR reforms are summarized below:

1. **Housing needs to be affordable not just in terms of rent**, but also with respect to energy bills and commuting costs
 - a. There are currently no mandates in the EIE that overlapping proportions of diverse housing will also be a) affordable, b) disability accessible, and c) preceded by physical and community infrastructure upgrades (funded through local contribution schemes or Regional contribution schemes). This must be amended
 - b. It is not known to what extent the *Housing Productivity Contributions Ministerial Order 2023*, will underpin local delivery of infrastructure upgrades for areas impacted by the low- and mid-rise housing reforms (as well as the TOD Program). This must be resolved
 - c. We seek an urgent review of the BASIX exemption for residential buildings below 6 storeys that are presently not required to not meet 7-star NatHERS
 - d. Provisions are necessary for sufficient deep soil zones that will not be undermined by floor space ratio (FSR) non-refusal standards.
2. **Mandatory Inclusionary Zoning requirements should apply to all DAs** that will occur on land affected by the low- and mid-rise housing reform changes; that is to say, land value uplift in these areas resulting from more generous planning controls (ie non-refusal standards) being introduced should be captured in a broad-based Affordable Housing Contribution Scheme (as dwelling dedications, land dedications, or **last resort** monetary contributions for small sites and small developments)
 - a. Introduction of non-refusal standards for FSR and height of buildings will functionally create planning uplift across numerous sites which should be captured by an Affordable Housing Contributions framework
 - b. We advocate for a broad-based Affordable Contributions Scheme that targets DAs (big and small) on land impacted by the L and MR reforms

- i. At least 10% for mid-rise housing made possible on land due to the L and MR reforms delivered on-site preferably
 - ii. At least 2% for low-rise housing made possible on land due to the L and MR reforms, paid into contributions fund
 - iii. Councils may wish to opt for higher or lower contributions rates, and these variations should be allowed subject to feasibility testing.
3. Affordable Housing, as currently defined in the *Housing SEPP* with households paying no more than 30% of gross income on rent, needs to be **retained as Affordable Housing in perpetuity** to ensure benefits from planning uplift accrue to the public
 - a. Mandatory rather than voluntary Affordable Housing Schemes are overall fairer, easier to interrogate and implement, and deliver more predictable outcomes in Affordable Housing delivery
 - b. Specify minimum proportions within the three income bands (very low, low, and moderate) who should be housed in Affordable Housing to prevent developer or housing provider bias in accepting mostly moderate income tenants
 - c. Careful attention to be paid to design outcomes for Affordable Housing within broader private housing complexes so these dwellings are not materially subpar or perceived to be subpar by way of location, floor-level, number of bedrooms, strata by-laws, open space, passive heating/cooling opportunities and the like
 - d. Affordable Housing ownership, operations, and tenancy management should be retained by government agencies, local Councils, or not-for-profit community housing providers.
4. **A publicly accessible and centralised framework is well overdue for the monitoring of Affordable Housing** approved, built, delivered (searchable by LGA), and with tracking of timeframes for Affordable Housing requirements (if not in perpetuity). Clear demarcation of government agencies responsible for compliance and enforcement at each stage in the Affordable Housing lifecycle.
 - a. Affordable Housing compliance needs to be instilled in DA conditions of consent as well as on land titles (examples include requiring Affordable Housing tenancies to be filled prior to Occupation Certificates being issued for private market dwellings).
5. **Close loopholes for perverse effects in terms of net losses of low-cost dwellings** as a result of the introduction of L and MR reforms (ie premature redevelopment of dwellings to realise planning gains and higher rents):
 - a. With the introduction of the low- and mid-rise housing reforms package, we ask for a review into the scope and effectiveness of Chapter 2, Part 3 of the

Housing SEPP in reducing net losses of low-rental dwellings and tempering gentrification effects (low-income renter displacement)

- i. The applicability of Chapter 2, Part 3 of the *Housing SEPP* is quite narrow in terms of existing dwellings and buildings able to be classified as “low-rental residential buildings” (e.g. dwellings used as sharehouses are excluded)
 - b. Allay concerns over how the L and MR reforms, in tandem with provisions that already exist under the *Housing SEPP*, may result in even less scrutiny of social housing demolition and rebuilds that deliver fewer dwellings and/or bedroom numbers overall as non-DA (“permitted without consent”) development.
6. **Clarify how these new L and MR reforms will interact or take precedence over other SEPPs** and instruments.
- a. Most conspicuously is how the proposed reforms will interact with the TOD Program being rolled out across various geographies (that will overlap with the application of low- and mid-rise housing provisions).
 - b. The to-be-created Pattern Book guiding low- and mid-rise built-forms must be widely consulted on and developed in partnership with communities and neighbourhoods expected to be most impacted by L and MR reforms. The Pattern Book must be implemented alongside L and MR reforms, and not after.