

# **Retention of Low Cost Housing**

## **Options for State and Local Governments**

**January 1998**

Prepared by Dr Gary Cox and Stacey Miers  
E3 Group Pty Ltd  
PO Box 603  
Darlinghurst NSW 2010

*Thanks go to Meryl Bishop, Lesley Hall, David Ramsay  
and Will Roden for their comments on earlier drafts.*

*Further copies of this paper are available from Shelter NSW  
Suite 2, Level 4, 377-383 Sussex Street, Sydney, NSW, 2000  
phone (02) 9267-5733, fax (02) 9267 5001  
Email – [sheltnsw.dot.net.au](mailto:sheltnsw.dot.net.au)  
HomePage – <http://www.infoxchange.net.au/shelternsw>*



## **TABLE OF CONTENTS**

<b>Table of contents .....</b>	<b>1</b>
<b>Aim of the discussion paper .....</b>	<b>3</b>
<b>Implementation context .....</b>	<b>4</b>
<b>Policy reform context.....</b>	<b>5</b>
<b>Definitions of affordability .....</b>	<b>7</b>
<b>A summary of low cost housing in the Sydney Metropolitan area .....</b>	<b>8</b>
1996 Census data on housing affordability.....	8
Housing affordability and choice in the IMROC region .....	10
<b>Overview .....</b>	<b>11</b>
<b>Planning mechanisms for the retention of low cost housing .....</b>	<b>12</b>
State Environmental Planning Policy No. 10.....	12
<i>Current operation .....</i>	12
<i>Reform proposals.....</i>	12
<i>Options for SEPP 10.....</i>	14
Section 94 Contributions for Housing.....	15
<i>Current situation.....</i>	15
<i>Betterment taxes.....</i>	16
<i>Options for Section 94.....</i>	17
Other provisions relating to the retention of boarding houses.....	18
<i>Development controls .....</i>	18
<i>Demolition controls.....</i>	19
<b>Planning mechanisms for the promotion of low cost housing.....</b>	<b>20</b>
Linkage programs .....	20
<i>Overseas experience .....</i>	20
<i>Technical aspects of linkage programs.....</i>	20
<i>Australian Experience .....</i>	22
<i>Options for a linkage program.....</i>	23

Inclusionary zoning.....	23
<i>Overseas experience</i> .....	24
<i>Planning Policy Guidance 3 (PPG3) - UK</i> .....	25
<i>City West Affordable Housing Program</i> .....	26
<i>Waverley experience</i> .....	26
<i>North Sydney experience</i> .....	28
<i>Green Square Masterplan - South Sydney</i> .....	29
<i>Challenges for inclusionary zoning programs in NSW</i> .....	29
Development agreements.....	30
<b>Financial mechanisms for retention and promotion of low cost housing</b> .	<b>32</b>
State government financial incentives.....	32
Local government financial incentives .....	33
<b>Possible implications of the Integrated Development Assessment draft proposals</b> .....	<b>34</b>
Implications for local housing initiatives.....	34
<b>Response strategies</b> .....	<b>35</b>
Amendments to the EPA Act 1979 – additional objects.....	35
Amendments to the EPA Act 1979 – development agreements.....	35
Housing affordability SEPP.....	35
Section 94 guidelines.....	36
Inclusionary zoning guidelines .....	36
Inclusionary zoning housing management models.....	37
Integrated Development Assessment White Paper and Exposure Draft .....	37
Housing affordability monitoring.....	37
<b>Key references</b> .....	<b>39</b>
<b>Appendix A - 1996 Census Housing Affordability Data</b> .....	<b>41</b>

## **AIM OF THE DISCUSSION PAPER**

The purpose of this paper is to provide Shelter NSW with details of mechanisms to retain and promote affordable housing in the Sydney private rental market. Affordable housing has been defined as private rental accommodation that is within the first quartile of rents.

The paper will discuss various policy options that have been used or proposed in Australia and overseas. The current State government policy context will be outlined and, with knowledge of this environment, various response strategies will be suggested. The paper will succinctly address the main policy mechanisms.

## **IMPLEMENTATION CONTEXT**

An important aspect of any policy recommendations is the implementation context. In a nutshell, what are the constraints and opportunities applying to these? This implementation context can be thought of as having a number of dimensions:

- Outcome feasibility;
- Economic feasibility;
- Legislative feasibility;
- Political feasibility.

Outcome feasibility is simply an assessment of whether the policy prescription will meet the desired objectives (i.e. the retention and/or promotion of affordable housing). Economic feasibility relates to whether the policy or proposal will work in the market. This is particularly relevant to policies to promote affordable housing, if such proposals rely on the private market. Legislative feasibility relates to whether a change in regulations is consistent with the legislative context into which it will need to be inserted; for instance, is the amended regulation consistent with the objects of the legislation? Political feasibility may be more related to the relative political influence of key stakeholders and lobby groups. Though, some policy proposals are often considered outside of the feasible reform framework, such as rent control. Clearly, in each case, any reform proposals will need to be assessed at some stage in these terms, though in some cases the overall feasibility of a policy change may be more a matter of individual judgement.

## **POLICY REFORM CONTEXT**

Many areas of housing policy are currently under review both at Commonwealth and State level. Changes to the Commonwealth State Housing Agreement may effect widespread impacts across both public and private sector rental housing in NSW. However, these issues are considered beyond the scope of this paper. The most significant policy developments for the retention of low cost housing are a series of projects and reviews initiated by the Department of Urban Affairs and Planning. These initiatives will be briefly summarised below.

- *The Housing Policy Green Paper.* In December 1995, the Minister for Urban Affairs and Planning released a discussion paper on directions for reform in the planning and programs for housing. This paper canvassed a range of issues and policy areas under the following generic headings: reforming housing assistance, better quality social housing, improving service delivery, access and equity, and influencing market outcomes.
- *Green Paper Consultations.* Following the release of the Green Paper, the Department of Urban Affairs and Planning organised a series of regional consultations with stakeholder groups. These were monitored by E3 Group Pty Limited and a report on the consultations was produced, documenting both the discussions and outcomes of the process (E3 Group Pty Ltd 1996).
- *Housing and Metropolitan Division Working Group on Planning Mechanisms for the Retention and Promotion of Affordable Housing.* In 1996, the NSW Housing and Metropolitan Division established a working group to evaluate various mechanisms for the retention and promotion of affordable housing. The planning mechanisms that are being evaluated include: development bonuses, development planning concessions, development agreements, transferable development rights, inclusionary zoning, linkage, and Section 94 contributions for affordable housing. As part of the evaluation, formal legal advice is being sought to ascertain the various mechanisms' applicability in the New South Wales planning system. No final report has been publicly released to date.
- *The Ministerial Task Force on Housing.* This was convened in August 1996 following the completion of the Green Paper on Housing Policy consultations. It is chaired by Professor Julian Disney and includes representatives from the development industry, real estate industry, the financial services sector, State and local government, housing organisations, and recognised experts in the field. The Task Force is both a forum for ideas as well as a vehicle for providing advice to government. The Task Force's aim is to recommend practical measures to satisfying housing needs, particularly measures capable of being taken up by the private sector.
- *The Boarding House Taskforce.* The NSW Government established this body as an inter-departmental committee (IDC) to look into all aspects of the operation of boarding houses. As it is an IDC, it has representatives from a range of State agencies, including the Department of Urban Affairs and Planning, the Department of Housing, the Department of Community Services, and the Department of Health. The IDC delivered a series of recommendations and has not met for over a year.

- *Review of State Environmental Planning Policy No. 10.* This is a review of SEPP 10 that has been initiated by the Department of Urban Affairs and Planning. This is not due to report to the Minister until mid 1998. It is unclear how much community consultation will occur. Currently, it appears that key stakeholders may be invited to comment at various stages of the review. It is unlikely to be a highly publicised review process.
- *Boarding House Survey Project.* The policy directions of the inter-departmental committee on boarding houses will be supplemented by a local government boarding house survey project. This has been funded through the Local Government Housing Initiatives Program and involves North Sydney, South Sydney, Leichhardt, and Burwood councils.
- *The 2000 Olympics and the Residential Tenancy Market.* The NSW Department of Fair Trading has commissioned this study. The objective is to investigate if regulations need to be changed in the lead up to the Sydney Olympics in order to protect tenants from potential evictions or large rent increases occurring as a result of the Games.
- *Integrated Development Assessment White Paper and Exposure Draft Bill.* During 1997, there was a review of Part 4 of the Environmental Planning and Assessment Act 1979. The aim of the review was to investigate procedures to streamline the development assessment and approval processes applying under this Act. The main concern was that many developments could be subject to a more streamlined assessment process. The key proposal was to integrate a number of existing consent processes (subdivision, development approval, and building approval) into a single system. Four categories of development were proposed. These were 'State significant development' (Minister as consent authority), 'local development' (council as consent authority), 'complying development' (certified by predetermined standards by a range of 'accredited certifiers'), and finally 'exempt development' (minor development not requiring any approval, so long as conforming to standards, particularly the Building Code of Australia). The Regulatory Reform Unit of the Department of Urban Affairs and Planning requested submissions to the White Paper and Exposure Bill. A revised Bill was put before State Parliament in the latter half of 1997. The Bill was passed by Parliament in December 1997 and will be gazetted in 1998. There were no significant amendments to the Bill.

In recommending strategies for housing reform, it is essential to fully appreciate the context and direction of reform in the State government arena.



## DEFINITIONS OF AFFORDABILITY

For the purposes of this discussion paper, *affordable housing* has been defined as private rental accommodation that is within the first quartile of rents. This is an indicator based solely on rent levels applying in a particular area. Consequently, applying this standard to different local government areas would produce different indicators of affordability. The stock of affordable housing would be based on a higher rent level in North Sydney LGA than applying in Campbelltown, where median rents are lower. Sydney Metropolitan area data could be used as an average measure. However, rent rises may not be accompanied by similar increases in real average earnings. Thus, rents may increase (and even the stock of rental dwellings in the first quartile) but affordability may decrease due to static wages.

The National Housing Strategy adopted a household income measure as an indicator of affordability (National Housing Strategy 1991). This indicator measures the proportion of an individual's or household's income which is spent on housing. Housing affordability stress is indicated where a household or individual pays in excess of 25% or 30% of gross income on rent or mortgage payments respectively. The National Housing Strategy found that, although the majority of households expend a small proportion of their incomes on housing, certain groups in the community were clearly experiencing affordability problems. These were mainly households in the private rental sector and persons whose main source of income was social security benefits, for instance sole parents. This type of measure has been adopted as the basis of programs such as the City West Affordable Housing Program.

There are problems with all indicators of affordability. The important issue is to be aware of the indicators' function and deficiencies. The first indicator mentioned here is a housing stock measure and could more accurately be termed a *low cost housing indicator*. The second indicator relates to households' ability to pay for housing and is more accurately termed an *affordability indicator*. Both have a valid use in research of this kind. The focus of this study is, however, the housing cost indicator. Therefore, the emphasis is more on the real market cost of rental housing rather than an assessment of households' ability to pay the applicable rents.

The National Housing Strategy lists the following limitations of affordability indicators:

- No account is made of social and physical infrastructure in these measures. Housing is located in a social and physical environment, which may greatly add to a household's overall quality of life.
- No account is made for the appropriateness of the housing. Housing may be affordable but inappropriate in terms of size, quality, condition or location.
- Households may trade appropriateness for affordability. This is often the case with sole parents on benefits, who may accept less than satisfactory housing outcomes so that they can afford additional childcare.
- Housing stress may be masked by the fact that households may be living in marginal accommodation (caravans, tents, or with relatives). Standard affordability measures do not capture these dimensions of housing stress.

When reviewing the following measures to retain and promote low cost housing in the Sydney region, it is important to keep in mind both the distinctions between indicators and their inherent limitations.

## **A SUMMARY OF LOW COST HOUSING IN THE SYDNEY METROPOLITAN AREA**

### **1996 Census data on housing affordability**

The data presented in this section is based on the standard of *30% of gross household income in housing payments* as the threshold of affordability. This is the threshold commonly used in the United States to calculate rental subsidy and has also been recommended by the National Housing Strategy. In the tables below, the median household income range is \$41,600 - \$62,399 (the actual median lies within \$41,600 - \$51,999). The key household income range for housing stress is the first two income quintiles (i.e. the lowest 40% of income ranges: approximately nil to \$31,199 in these tables). Again, this is the range adopted by the National Housing Strategy.

Figure 1 shows housing affordability of all renters (public and private). Figure 2 shows housing affordability for households paying-off a mortgage. These tables are the aggregated data for the Sydney Statistical Division, comprised of all the Local Government Areas in the Sydney metropolitan area. Data for individual LGA is presented in Appendix A.

Both Figure 1 and Figure 2 show data for households making housing payments above the 30% threshold, for renters and mortgagees respectively. The first column shows the proportion of households in each income bracket paying above the 30% threshold expressed as a percentage of total households in housing stress. The second column looks at each income bracket separately to deduce what proportion of those households are in housing stress.

For renters, not unexpectedly, over half of the total households are in the lowest three brackets (53.8%). Less than ten percent (8.3%) of renting households earning over \$41,600 pay above the 30% threshold. Looking at each income bracket separately, over 60% of both the \$15,600 - \$20,799 and the \$20,800 - \$25,999 brackets are in the housing stress category. The data is displayed graphically in Charts 1 and 2.

For mortgagees the pattern is different. Here, the majority of households paying over the 30% threshold are in the higher income categories, with 45.2% in the income brackets \$31,200 to \$62,399. Only 15.9% of total mortgagees paying over 30% are in the bottom three income brackets. However, looking at each income bracket separately, the picture of housing stress is more pronounced than with the renters. Over 50% of mortgagee households in the bottom five income brackets are paying over 30% of their income in payments. In three of these income brackets, the proportion is on or near 60% of households. The data is displayed graphically in Charts 3 and 4.

**Figure 1:****Housing affordability in the Sydney Statistical Division - renters**

<i>Income bracket</i>	<i>Rent is more than 30% of gross household income (proportion of total households in housing stress)</i>	<i>Rent is more than 30% of gross household income (proportion of households in income bracket)</i>
Nil - \$10,399	18.2%	49.3%
\$10,400 - \$15,599	16.6%	55.8%
\$15,600 - \$20,799	19.0%	64.0%
\$20,800 - \$25,999	14.8%	60.4%
\$26,000 - \$31,199	12.2%	45.4%
\$31,200 - \$41,599	11.0%	25.5%
\$41,600 - \$62,399	5.4%	9.6%
\$62,400 - \$104,000 or more	2.9%	4.3%
<b>Total</b>	<b>100.0%</b>	<b>31.7%</b>

Source: ABS Census 1996.

**Figure 2:****Housing affordability in the Sydney Statistical Division - mortgagees**

<i>Income bracket</i>	<i>Mortgage payment is more than 30% of gross household income (proportion of total households in housing stress)</i>	<i>Mortgage payment is more than 30% of gross household income (proportion of households in income bracket)</i>
Nil - \$10,399	4.1%	60.2%
\$10,400 - \$15,599	4.9%	55.7%
\$15,600 - \$20,799	7.0%	60.9%
\$20,800 - \$25,999	8.3%	58.7%
\$26,000 - \$31,199	11.1%	51.8%
\$31,200 - \$41,599	21.0%	41.5%
\$41,600 - \$62,399	24.2%	22.2%
\$62,400 - \$104,000 or more	19.5%	8.9%
<b>Total</b>	<b>100.0%</b>	<b>22.7%</b>

Source: ABS Census 1996.

The 1996 Census data presents a picture of severe payment-related housing stress in the lower five income brackets. Payment-related housing stress is inversely related to income for renters – that is, the lower the income bracket the more likely the household will be in housing stress. For mortgagees, the payment-related housing stress increases with income – that is the largest proportions of those paying over 30% are in the higher categories. This is not surprising given the income test requirements for housing loans.

## Housing affordability and choice in the IMROC region

In 1996, the Inner Metropolitan Regional Organisation of Councils published a report called *Housing Affordability and Choice in the IMROC Region* (BBC Consulting Planners 1996).<sup>1</sup> The purpose of the study was to provide an in-depth analysis of housing need in this region of Sydney. Except for the council areas of Auburn and Sydney City, the region has experienced population decline between 1981 and 1991.<sup>2</sup> The region has a very diverse housing stock and has a relatively large stock of low cost and social housing. One third of Metropolitan Sydney's boarding houses are located in this region. The major findings of the study are summarised in Figure 3.

### Figure 3: Summary of IMROC housing study findings

- Demand for 1 and 2 bedroom accommodation is increasing due to aging of the population and delays in couples having children. One and two person households constituted 58% of all households in the region.
- Despite the trend to smaller households, the number of 3 and 4 bedroom dwellings has increased in the region. However, since the 1991 census, there has been significant development of medium density units, mostly catering for smaller households.
- Housing in the region is becoming less affordable. Between 1981 and 1991, mortgage payments and rents have tripled while incomes have only doubled.
- The deposit gap for a house in the region has been increasing and is unlikely to be attainable on the average weekly wage. Generally, home purchase has become less affordable in the region.
- Growth in rents between 1981 and 1991 averaged 146% across the region. The highest increases were in Sydney City, where growth was over 322%.
- In 1991, 10,600 renting households and 1,500 home purchase households were living in housing stress, as defined by the National Housing Strategy benchmark (8.9% of total households).
- The proportion of households renting is increasing as a proportion of total housing stock. In 1991, 65.4% of all households in the region were owners or purchasers, while 28% were renters.
- The region contains one third of the Metropolitan area's boarding house stock. These provided accommodation for 7,360 low income earners.
- Homelessness and housing for people with special needs were identified as significant issues in the region.

Source: BBC Consulting Planners 1996.

<sup>1</sup> The IMROC region comprises 10 Local Government Areas: Ashfield, Auburn, Burwood, Concord, Drummoyne, Lane Cove, Leichhardt, Marrickville, Strathfield, and Sydney City.

<sup>2</sup> At the time of writing, the full results of the 1996 Census were not available.

## OVERVIEW

The remainder of the discussion paper outlines various measures that directly or indirectly have an impact on the retention or promotion of low cost housing. The structure of this part of the paper is:

- A review of planning mechanisms for the *retention* of low cost housing;
- A review of planning mechanisms for the *promotion* of low cost housing; and,
- A review of *financial mechanisms* for both the retention and promotion of low cost housing.

On face value, there may be a presumption that these planning mechanisms have been devised specifically to achieve affordable housing outcomes. For a number of the mechanisms discussed, the policy or planning mechanism may be poorly targeted. The main reason for this is that most of these mechanisms have not been created with affordable housing objectives in mind. Often they are mechanisms that have been used for other purposes and have been adapted to achieve affordable housing objectives. As in the case of Section 94 contributions, it may have been designed for quite a different purpose (in this case, the provision of social and physical infrastructure in growth areas). Other measures, such as State Environmental Planning Policy No. 10, may have been specifically designed to prevent the loss of low cost housing but in practice the policy may have been largely ineffective in achieving these outcomes. In terms of evaluation, three criteria are usually employed. These are:

- *Efficiency* – Does the program/policy achieve its outcomes in an efficient manner? Are there other means that would achieve the same outcomes at less cost?
- *Effectiveness* – Does the program/policy achieve its stated objectives? What are the outcomes (intended and unintended)?
- *Appropriateness* – Is the program/policy the most appropriate way to achieve the outcomes? Is another level of government or another agency a more appropriate vehicle for delivering the outcomes? Is a financial mechanism more appropriate than a planning mechanism? This may be a subjective or philosophical issue. It may also depend on prevailing views on governance.

While a paper of this scope cannot address all these issues in a systematic manner, indications of efficiency, effectiveness and appropriateness will be provided where possible. Some assessment will be made where there are clear grounds to make such judgements.

## **PLANNING MECHANISMS FOR THE RETENTION OF LOW COST HOUSING**

### **State Environmental Planning Policy No. 10**

#### *Current operation*

SEPP 10 was first gazetted in 1984 to assist in the conservation of low cost rental housing in 15 inner and middle ring LGAs in the Sydney Metropolitan area. The policy also applied to Newcastle and Wollongong LGAs. A total of five amendments have been made to the policy since 1984.

As it currently stands, the SEPP provides for particular matters to be assessed when councils are considering certain development applications for low rental residential flat buildings and boarding houses. The policy excludes single dwellings and buildings containing two dwellings only. It applies to demolition, alterations, and change of use of boarding houses. Strata subdivision applications for existing flat buildings are covered by the policy.

The SEPP stipulates that the council considers the supply of low cost rental accommodation in the area, as well as the demand for such accommodation. A schedule of rents for each council area is provided to give thresholds of affordability. An assessment has to be made of the extent to which the proposed development will impact on the stock of low rental accommodation in the area and the difficulty the displaced residents may have in securing alternative comparable accommodation locally. Other issues to be considered are the general potential adverse social and economic effect of the development and the financial viability of the current use, in the case of a boarding house. For proposals to demolish or redevelop boarding houses, the concurrence of the Director General of Housing is required.<sup>3</sup>

#### *Reform proposals*

SEPP 10 is an example of a poorly targeted and inadequately reviewed planning policy. In practice, few councils have refused applications under the provisions of SEPP 10. Few cases have withstood assessment in the Land and Environment Court on SEPP 10 grounds alone. However, despite this situation, a few councils have established policies of refusing all applications for strata subdivision of residential flat buildings. (Post occupancy survey data reveals that after strata titling, a high proportion of units change from rental to being owner occupied<sup>4</sup>.) Leichhardt Council has been refusing applications since 1987, Waverley since 1995, and North Sydney between the end of 1996 and October 1997.

There have been a number of problems identified with the implementation of SEPP 10. The main points at issue are as follows:

- The most pressing is that the policy relies on the identification of rent levels applying in 1987 (Schedule 2). Though there is now recognition of vacancy rates as a factor in assessments, evidence of rent levels applying in 1987 is now

---

<sup>3</sup> 'Concurrence' is a technical planning term, defined in Section 30(2) of the Environmental Planning and Assessment Act. Practically speaking, where concurrence applies, a council may refuse a development application under its own initiative. However, if it wishes to approve the development, the co-operation of the other body (here the NSW Department of Housing) must be sought. Thus, for redevelopment of a boarding house both the local council and the Department of Housing must both approve the proposal.

<sup>4</sup> For example: North Sydney Council 1993.

extremely difficult to obtain. This is an example of where adequate policy review has not occurred.

- Many councils have had difficulty in defining what constitutes 'comparable' accommodation under the SEPP. The confusion follows inconsistent Land and Environment Court judgements on the matter and the consequent lack of clear case precedents.
- The policy only applies to strata subdivision of residential flat buildings. Substantial upgrading can occur as 'alterations and additions' not subject to SEPP 10; these works will usually lead to rent increases, in some cases, substantial increases. Demolition of residential flat buildings is not covered by the policy. This is a major inconsistency. Waverley Council (1996) has expressed concern about the loss of low cost residential flat building stock through the conversion of Torrens Title properties to Company Title. SEPP 10 does not capture this process.
- For boarding houses, alterations and additions must be assessed under the policy. However, full internal repainting of a boarding house, which would not constitute alterations and additions, may result in displacement of occupants and potentially a change of use to a backpacker hostel. A simple act, such as additional provision of bunk beds, can radically change the operation of a boarding house and hasten its transformation to tourist accommodation, without the intervention of the planning assessment process.
- Alterations and additions to boarding houses, even if they do not lead to a change of use, will usually result in increased rents to occupants. There are no provisions to address this.
- The application of SEPP 10 to low cost pub accommodation, particularly in the City of Sydney, has been an on-going unresolved area.
- It is generally difficult to refuse applications under SEPP 10 when the buildings are in a poor state of repair. This is increasingly becoming a problem.
- Finally, there is a case for expanding the geographical coverage of the policy. Affordability is a problem in all LGAs in the Sydney Metropolitan area. The SEPP could apply to all metropolitan LGAs as well as Wollongong and Newcastle.

There is widespread consensus that SEPP 10 requires a major overhaul and probably a change of focus to be more embracing of the whole range of issues relating to the retention and promotion of affordable housing. The Minister has recently approved a review of SEPP 10. This will address the following issues:

- The provision of guidelines on what constitutes comparable rental accommodation and also how to assess financial viability (in the case of boarding houses);
- Clarification of definitions in the policy; and,
- The desirability of moving the concurrence role from the Department of Housing to the Department of Urban Affairs and Planning.

The details of the review have not been announced. However, it is anticipated that there will only be very limited community involvement in the review process, which is likely to be

confined to key stakeholders. This is due to the sensitivity of the SEPP. The Department of Urban Affairs and Planning is concerned that developers will start to speculate if changes to SEPP 10 are mooted.

#### *Options for SEPP 10*

SEPP 10 is in effect a guideline for the social and economic impact assessment of development applications involving the potential loss of low cost housing. It involves an assessment of negative social impacts (loss of housing stock) and also a financial viability assessment (in the case of boarding house redevelopments). The objective of the policy is the retention of low cost housing. The SEPP is seriously flawed in a number of ways. Primarily, these are:

- The policy needs to more clearly follow the sequencing concept for effective impact management (as contained in the International Association for Impact Assessment's *Guidelines and Principles for Social Impact Assessment*). This sequencing is first to seek to avoid negative impacts, secondly to mitigate if they cannot be avoided, and thirdly to compensate where both avoidance and mitigation are not possible. Avoidance strategies would usually relate to the non-approval of development proposals. Mitigation strategies could include conditions to rehouse long-term residents. Compensation would include both Section 94 contributions for loss of the housing stock and ex gratia payments to tenants for the costs of dislocation. Though some councils have taken the lead in this area, the policy is not strong enough in permitting strategies to avoid or prevent loss of housing stock.
- The financial viability assessment conducted by the Department of Housing was previously based on inappropriate comparisons. This assessment is based on comparing existing use (of boarding houses) with speculative potential uses such as tourist hotels. This type of assessment can only logically result in a recommendation for change to a 'higher and better use' – that is, one with a higher return to investment. It is comparing a case of a lower return investment with a higher return investment. Investments should be made on a comparable basis: therefore, the financial viability assessment should be conducted on the basis of current use only. In individual cases, a true financial viability assessment may be difficult to conduct as there is no power for the Department of Housing to access relevant financial documents from the existing operators. The Department has now tightened up its assessment criteria following a Land and Environment Court judgement (*Payter, Dicksons Constructions v. Randwick Council*).

A number of the stakeholders interviewed as part of this study advocated that SEPP 10 be expanded. They argued that the scope of the policy be broadened to incorporate both the retention and *provision* of affordable housing – especially boarding houses. Some of those interviewed stated that, in some council areas, new boarding house proposals were rejected more on social grounds than on planning grounds. By 'social grounds', the stakeholders referred to what the Land and Environment Court calls 'apprehended fears' – that is largely unfounded fears and prejudices about the occupants of the proposed development. A widened SEPP could include planning criteria for new boarding house developments and model standards to apply uniformly throughout Metropolitan Sydney. Waverley Council has drafted guidelines for boarding house developments in its Development Control Plan No. 12. Also, the Technical Policy Branch of the NSW Department of Housing has produced a technical paper for new boarding house style development (Technical Policy 1995). This publication includes some recent examples of Department of Housing developments in Glebe and Daceyville. It also provides a



comprehensive set of development standards that should apply to such developments. To gain acceptance from local government for these development guidelines, plans of management should be required from developers to clearly state how the boarding houses will be operated, including whether on-site managers are to be employed.

SEPP 10 is appropriately established as a State policy, as affordable housing is clearly a major policy concern of the State government. However, it could be linked more with councils making provision in their own instruments for the retention and promotion of affordable housing. A parallel exists with the option for Metropolitan councils to develop their own *Residential Development Strategies*, consistent with wider State planning objectives. The existence of such a strategy then exempts the LGA from the application of the new SEPP 53, relating to urban consolidation and the requirement to permit town houses in residential zones. Similarly, an *Affordable Housing Strategy* could establish a council's overall strategy to retain and promote low cost housing. This would be implemented via amendments to relevant LEPs and other council policies (e.g. rate policies and Section 94). An exemption to the affordable housing SEPP could then be applied for.

## Section 94 Contributions for Housing

### *Current situation*

Section 94 contributions have been a central part of the NSW planning and development system since 1980. The concept was modelled on the US system of *exactions* or *impact fees* and the British system of *planning gain*. Exactions are in essence a growth control mechanism whereby developers of land (usually subdividers) are required to contribute cash to local government for a range of local physical and social infrastructure services demanded by the new developments. In economic terms, exactions are a *users pays* system of funding infrastructure – as the name implies, the users of urban services pay for their provision. Impact fees are similar to exactions but they are viewed as mitigating the negative impacts of growth, whether this be increased demand for infrastructure or social problems following increased population in an area. In theory, Section 94 contributions in New South Wales are a user pays system of exactions for infrastructure financing. However, the practice of many councils is to levy contributions as impact fees – cases where the contributing development does not *directly* benefit from the contributions but these are used to minimise the impacts of the proposed development on existing residents.

Planning gain, on the other hand, while embracing the growth control aspects of exactions, has a broader role. It has been used both to compensate existing residents for negative impacts of developments and also to enhance the wider social benefits of proposed developments. It has parallels with betterment taxes, though it is more regarded as a planning tool than a benefit capture mechanism. Under planning gain, the new Sainsbury's shopping centre in Camden Town, London, was required to include a childcare centre as well as initiate employment training programs for local minority group youth. A local example of planning gain was the provision of a theatre in the Zenith Centre commercial development in Chatswood.

Since the 1989 Simpson Inquiry into the operations of Section 94 and the subsequent Department of Planning guidelines, the provisions for levying Section 94 contributions have been significantly constrained<sup>5</sup>. The system is now much more an exaction system – that is levying for the demands new development places on council-funded infrastructure. To levy under Section 94, a contribution plan must be made to justify the levels and types

---

<sup>5</sup> References are Simpson 1989 and Department of Planning 1992.

of contributions levied. A clear *nexus*, or link, must be established between the new development and the contributions being levied. Contributions cannot be levied to assist wider council objectives or programs. They are clearly outside the realm of a generalised development tax, which in certain cases the practice prior to Simpson had become.

Before the 1992 reforms to Section 94, around 6 councils in NSW levied for the loss of low cost housing. A contribution rate was set where it was established that a development would *directly* lead to the loss of low cost housing stock, usually from redevelopment of boarding houses or strata subdivision. The Section 94 provisions were usually linked to an assessment under SEPP 10. The new guidelines, however, made a number of councils much more cautious in their approach to levying Section 94. Consequently, only North Sydney, Randwick and Waverley councils currently levy Section 94 for the loss of low cost housing. Details of these plans are summarised in Figure 4. Despite the more restrictive nature of the guidelines, the Land and Environment Court has upheld previous practice as to the legality of levying Section 94 in such circumstances. This indicates that the Court views Section 94 as going beyond infrastructure provision for growth (the exaction model) and has implicitly endorsed the *impact mitigation* model of Section 94.

Confusion exists about whether Section 94 contributions can be levied for the provision of housing where no negative housing impacts occur as the result of a proposed development. Under the current system, this would be 'beyond power', and no such contributions have been tested by the Court. Firstly, such contributions would not relate to infrastructure required or needed by the development. Secondly, there is no cause for such contributions to be levied as a consequence of direct negative impacts occasioned by the new development (though it could be established that the development may contribute to a cumulative impact of rising house prices and rents in a locality). It should be borne in mind that the affordable housing contributions applying in the City West redevelopment area are *not* Section 94 contributions. These contributions are levied under *Sydney Regional Environmental Plan No. 26 – Amendment No. 4 – Affordable Housing*. The justification for levying for the provision of affordable housing is based on the objects of the Environmental Planning and Assessment Act 1979, namely:

the proper management, development and conservation of natural and man-made resources ... for the purpose of promoting the social and economic welfare of the community and a better environment (s. 5(a)(i)).

This aspect of REP No. 26 has not been tested in the Land and Environment Court. The provisions of the REP cannot be said to imply a general power of councils to levy cash contributions for the provision of affordable housing outside of the Section 94 regulations.

### *Betterment taxes*

The affordable housing contribution contained in REP No. 26 is a form of betterment tax. A betterment charge is meant to capture some of the increase in land value or development potential as a result of changes in planning controls. Such betterment levies can be applied to a wide range of community uses, such as provision of affordable housing or community infrastructure.<sup>6</sup> In consultations for the City South Affordable Housing Strategy (Spiller Gibbons Swan Pty Ltd 1997), many developers responded that they could 'wear' a development levy of between \$1000 and \$2000 per residential unit

---

<sup>6</sup> A betterment tax applied in NSW from 1970 to 1973. Its purpose was to tax the 'unearned increment' from the sale of properties which increased in value due to the proximity of a particular development. The tax represented 30% of the increase in value of the land and was applied each time it was sold. Funds were used to finance new urban infrastructure.

<b>Figure 4: Section 94 contribution rates for housing</b>
<p><i>North Sydney Council</i></p> <ul style="list-style-type: none"> <li>➤ \$2,275 per bedspace lost (standard rate)</li> <li>➤ \$4,450 per bedspace lost (applicable in cases of boarding house redevelopment or demolition)</li> <li>➤ The capital works program is based on replacing 1 unit of affordable housing for every 5.6 affordable housing bedspaces lost through development</li> <li>➤ Developers contribute 12% to the capital works program, the State government contributes 64%, North Sydney Council contributes 12%, and 12% derives from previous Section 94 plans</li> </ul>
<p><i>Randwick Council</i></p> <ul style="list-style-type: none"> <li>➤ Levy is \$572 per loss of one affordable bedspace</li> <li>➤ Levies go towards acquisition and provision of replacement affordable housing</li> <li>➤ Developers contribute 25% to the capital works program, the State government (through various funding programs) contributes 70%, and Randwick Council contributes 5%</li> </ul>
<p><i>Waverley Council</i></p> <ul style="list-style-type: none"> <li>➤ Levy is \$3,993 per bedroom lost, if proposed development remains residential</li> <li>➤ Levy is \$6,144 per bedroom lost in all other cases (e.g. redevelopment of boarding houses for tourist uses)</li> <li>➤ Waverley Council contributes a maximum of 30% to the capital works program</li> </ul>
<p>Sources: North Sydney Council 1996; Randwick Council 1997; Waverley Council 1997.</p>

developed. This was provided that there were no associated delays in the development approval process. Some submissions to the Strategy recognised a 'betterment' component to zoning changes. However, some developers did not see this concept as applying to concessions that they had obtained through direct negotiation with councils. In summary, it is clear that some form of betterment levy for affordable housing may be acceptable to the industry but this could not be implemented through Section 94. It would require a similar mechanism to the REP for City West.

#### *Options for Section 94*

There are currently no government initiated reform proposals for Section 94 contributions. The system of requiring contributions plans for the levying of Section 94 is regarded by both the industry and government to work reasonably well. The abuses of the past (such as councils not spending the contributions for the purposes they were levied for) have been largely eradicated. However, in this area, a number of policy options could be considered:

- Firstly, clarification should be sought in new editions of Section 94 guidelines of the permissibility of using Section 94 as a tool for impact management. This should endorse existing practice as well as indicate the conditions where impact management contributions are justified. For instance, many downstream drainage contributions levied by councils are in fact mitigation levies and strictly speaking are not direct infrastructure requirements of the new development. There are examples in the environmental impact assessment (EIA) processes where Section 94 could be more frequently used to mitigate the negative impacts of proposals. Such clarification would allow more cautious councils to implement Section 94 contributions for the loss of low cost housing.
- Since the operation of Sydney Regional Environmental Plan No. 26 (City West), there has been much interest in the use of Section 94 to levy for the *provision* of low cost housing. As discussed above, this is beyond power, given the existing rubrics of the Section 94 system. To permit Section 94 contributions in this context, the objectives of the Environmental Planning and Assessment Act would need to be amended to more clearly place the provision of affordable housing amongst the key outcomes of the Act. The provisions of Section 94 and the associated Environmental Planning and Assessment Regulation would also need to be amended. Finally, clear advice would be necessary in the guidelines to ensure councils were consistent in the quantum of contributions they sought to levy. This would likely require significant consultation with both industry and stakeholder groups. A major argument against such a provision would be that higher development levies would be passed on to the consumer and therefore impact on the overall price of housing and thus be counterproductive.

In the past, Section 94 was an area of contention between the development industry, councils and the State government. The 1989 inquiry and the 1992 reforms extinguished much of this contention and led to greater industry acceptance of the need to contribute to the necessary external costs of growth. It is unlikely that the State government would endorse widespread changes in the system of levying Section 94. However, clarification of current practice in terms of the Section 94 guidelines could have some success.

### **Other provisions relating to the retention of boarding houses**

#### *Development controls*

The other category of mechanisms to assist in the retention of boarding houses has been provisions in the Local Environmental Plans of councils. Two are worthy of mention here. In September 1995, North Sydney Council amended its LEP to designate backpackers' accommodation as a distinct use. The distinction was inserted into the LEP due to the fact that boarding house accommodation was being eroded through conversion to backpackers' accommodation. This could take the form of seasonal variations in short-term as against long-term residents in the same building. However, the long run impact of this would be inevitably a gradual conversion to short-term tourist uses. The additional definition and its insertion into zoning tables means that for boarding houses to accommodate backpackers a change of use needs to be applied for. Consequently, a development application is required.

Waverley Council's Development Control Plan No. 12 is a guideline for the development of boarding houses, backpacker accommodation and bed and breakfast establishments. The plan recognises the importance of both boarding houses as residential accommodation and of backpackers' hostels as a major component of the tourist accommodation market. In relation to retention of boarding houses and other low cost accommodation, the DCP signals that Section 94 contributions will be levied for any loss

of low and moderately priced rental accommodation. The DCP sets out a number of issues that must be assessed in cases where a proposed backpackers' hostel has an impact on low cost accommodation and the potential displacement of residents. Other matters included in the DCP are standards for the development of new facilities, whether tourist accommodation or boarding houses. Amongst these are minimum room sizes, fire safety requirements and car parking provisions. For all developments covered by the DCP, applicants must consider the 'social and economic effects of the development on the community, including the loss of affordable housing'. In essence, the DCP focuses on the social impacts of such developments and the requirement to assess and mitigate these to the satisfaction of the council. However, as mentioned in the discussion of SEPP 10, councils are increasingly having difficulty refusing development applications that involve the loss of affordable housing, where that housing is in a poor state of repair.

### *Demolition controls*

For many years, under many local planning instruments, demolition was a form of development permitted without council consent. In recent years, demolition controls have been increasingly inserted into Local Environmental Plans to control the use of heritage buildings. Such controls are warranted in vulnerable segments of the property market. Some developers have sought to avoid reuse or conservation requirements by prematurely demolishing such properties. Low cost housing and boarding houses are another vulnerable type of property. The lure of high returns on redevelopment can result in similar premature demolition prior to lodgement of development applications. Demolition controls are contained in Clause 17 of Waverley Council's Local Environmental Plan. Many North American jurisdictions have demolition controls for properties having low cost rental units above a certain rental threshold. As mentioned above, demolition of residential flat buildings is not controlled through SEPP 10. This is an area that councils may consider warrants specific clauses to be inserted in planning instruments to control such cases.

## **PLANNING MECHANISMS FOR THE PROMOTION OF LOW COST HOUSING**

There is very little in the current planning system in New South Wales that *directly* targets the promotion of low cost housing. However, three mechanisms, widely used overseas, have become the subject of much discussion amongst housing experts around Australia. The mechanisms are linkage programs, inclusionary zoning, and development agreements. These will be discussed in turn, with a focus on their applicability to the Australian scene.

### **Linkage programs**

#### *Overseas experience*

Linkage is an off-site developer contribution, which can be in cash or in kind. In its usual form it is a requirement that new CBD commercial development contribute funds for affordable housing. This is warranted on the grounds that new office development causes increases in the demand for inner urban housing. This is due to increased employment and also that the commercial development has more direct impacts on adjoining land uses and values (for instance, conversion of residential uses to ancillary office or service uses). The main theory behind linkage programs is that there is a causal connection, or 'nexus', between CBD commercial development (offices, hotels, ancillary services, retail) and the need for low and moderate income housing.

In essence, linkage programs in the United States were a response to both the problems and opportunities of downtown or CBD development in the 1980s. Around 20 North American cities have an established linkage program, where a contribution is made to a Housing Trust Fund based on the inflationary impact of commercial development on the cost of housing. However, it should be stressed that linkage is probably the most controversial contemporary American planning tool, both in a legal and a political sense.

The first linkage ordinance was adopted in San Francisco in 1981 as the Office-Housing Production Program. Other cities followed suit, notably Boston, Santa Monica and Seattle. The cities that elected to implement linkage programs could be characterised as having strong CBD commercial development markets and at least some community or official questioning of growth, if not a desire to slow-down downtown development. Sharing the wealth from the corporate sector to alleviate the city's social ills was a prime motivation behind the coalition of community groups and politicians in Boston, that resulted in a linkage program being adopted. In marked contrast, the fast growth sunbelt cities, like Atlanta, Dallas, Houston and Miami, have not instigated linkage programs. Linkage programs have also been used to fund public transport, employment programs, public art and child care facilities.

Fundamentally, linkage programs are designed as social impact mitigation strategies. The main problems for linkage programs across the US are firstly legal and constitutional and secondly technical, in terms of adequately and convincingly establishing the nexus between new office development and negative housing impacts.

#### *Technical aspects of linkage programs*

One of the most problematic aspects of a linkage program, other than legality, is formulating a rational planning argument. It involves intricate research into a series of indirect links in the urban land economy. One basic structure of a linkage rationale is

shown in Figure 5. More detail can be found in North Sydney Council's *Options Paper* (Cox 1996). The critical linkage is that growth in CBD employment results in increased housing costs in a defined metropolitan area.

<b>Figure 5: Summary of links between CBD jobs and housing</b>
<ol style="list-style-type: none"> <li>1. CBD employment growth results in increased population growth in the city (the extent will depend how much employment is taken up by increases in labour force participation and reductions in unemployment).</li> <li>2. Population growth translates into demands for housing. The type, purchase price or rent, and location of this housing depends on the demographic and income characteristics of the new households.</li> <li>3. The housing market adapts to accommodate increased demand by expanding supply and changing the use of existing stock.</li> <li>4. In the first instance, demand will increase for existing stock so forcing prices up.</li> <li>5. Next, the supply of housing will increase (e.g. through infill development, upgrading of existing dwellings) at higher prices than previously.</li> <li>6. Higher income households will be able to secure their preferred housing. The majority of new households will be unable to compete for the new housing, resulting in a squeeze on the remaining affordable units and general price escalation.</li> <li>7. Higher prices will create pressures to increase occupancy of existing stock. Other options for households on limited incomes would be to move to lower standard housing, which may in effect mean moving out of the area.</li> </ol>
Source: Hausrath 1988, quoted in Cox 1996.

Four categories of linkage effects can be identified (Cox 1996)<sup>7</sup>:

- *Direct housing demand effect:* CBD office development accommodates employees who move to the city increasing demand for housing and driving up house prices and rents for all residents.
- *Indirect housing demand effect:* CBD office development has an employment multiplier effect. Non-office businesses will be started or expanded to service the new office development. Some of these added employees will move to the city, further increasing demand for housing.
- *Direct housing supply effect:* CBD office development increases land prices, making land a more expensive input into the construction of new housing.

<sup>7</sup> See Lawson's review of North American mechanisms carried out for Melbourne City Council (1993). She examines in some detail the Boston Linkage Fee program (p. 48).

- *Indirect housing supply effect:* Non-office businesses and ancillary uses induced by new CBD office development compete with residential uses in neighbourhoods surrounding the CBD. This may limit housing development opportunities in these locations and also increase costs for infill or conversion developments.

In developing any linkage analysis, it is crucial to conduct a large amount of field work data to understand which category of linkage effect is most prominent in any location. A linkage analysis should then be developed to assess the extent of the effect. It should be borne in mind that linkage programs have high data requirements as well as demanding extremely thorough urban land market and employment analysis.

### *Australian Experience*

Australian experience with linkage programs has been extremely limited. A form of linkage program was instituted by Sydney City Council in the early 1980s, requiring 'voluntary' contributions by new CBD commercial development to the council's Public Housing Trust Fund. The levy amounted to 2% of development costs, a not insignificant amount. This was initially accepted by the development industry as the cost of doing business. However, as boom times turned to a market downturn, the Building Owners and Managers Association successfully challenged the legal basis of the levy in the Land and Environment Court. More recently, the Johnstone Shire Council in Far North Queensland has instituted a form of linkage in their latest draft planning scheme. The relevant provisions relate to large-scale tourism developments. Proponents must undertake a housing impact study. If a negative impact is anticipated, the development must provide appropriate staff accommodation to mitigate this impact. However, the more typical linkage programs relate more to universal provisions relating to CBD commercial development.

The decision in the Sydney City Council case is worthy of further comment (*Building Owners and Managers Association of Australia Ltd v. Sydney City Council*, 53 LGRA 54, 1984). In this case, the court held the following:

- that in no sense were the payments voluntary (as the Council's policy claimed);
- that the justification for the contribution had not been established in terms of a direct connection between the development and the amenity being levied for; and,
- that the policy precluded an assessment of individual cases on their merits.

A series of Land and Environment Court judgements clearly indicate that Section 94 is the sole planning power for cash levies under the Environmental Planning and Assessment Act (Cox 1991).<sup>8</sup> Contributions levied under Sydney REP No. 26 – which are not Section 94 contributions – have not been tested through the Land and Environment Court, though it is understood that legal advice obtained by the Department of Urban Affairs and Planning attested to their legality. Consequently, any linkage program would have to meet the fairly stringent requirements for making Contributions Plans. For a linkage program to be valid in terms of Section 94 of the Environmental Planning and Assessment Act 1979 and Part 4 of the Environmental Planning and Assessment Regulation 1994, a number of tests have to be met. These relate to nexus, fair apportionment and reasonableness.

---

<sup>8</sup> The most important cases are *Ligora Pty Ltd v. Leichhardt Municipal Council* (1980), *Henbury Pty Ltd v. Parramatta City Council* (1981), *Collin C. Donges & Associates Pty Ltd v. Baulkham Hills Shire Council* (1987), and *Fitch v. Shoalhaven City Council* (1987).



For the nexus test to be satisfied, a well-researched study would be necessary establishing a causative link between increased office development in a commercial precinct and loss of affordable housing (through increases in prices and rents) within the LGA. Such a study would need to utilise sophisticated Census cross-tabulations for selected collector districts (e.g. journey to work data by household type, occupation and income, including both origins and destinations). The study may also require data from a representative sample survey of office workers in the commercial precinct.

The fair apportionment test would probably not be satisfied by the crude application of a floor space formula. Some degree of flexibility would need to be exercised in relation to the precise type of development being proposed, its location and likely workforce profile. Only in this way would a merit assessment be validly exercised. Reasonableness could be satisfied through the application of a discount factor.

#### *Options for a linkage program*

In the current legislative context, it appears that there is little scope for the adoption of linkage programs by local government. The emphasis in the guidelines relating to Section 94 is to direct effects – a clear nexus. This can easily be established for Contributions Plans aimed at mitigating the direct loss of low cost housing. The complexity of the planning arguments for linkage makes Section 94, as it currently stands, a doubtful mechanism through which to apply linkage fees. The City West affordable housing options study is worth quoting on this issue. This concluded that significant amendments to the Act would be necessary to accommodate linkage programs (Berkhout et al 1992, p. 5.11). Detailed assessment of the nexus between development and the demand for housing was also warranted (p. 5.13). Finally, the study recommended that the government seek detailed legal advice on the mechanisms required to enable development fees to be levied for the provision of housing (p. 5.13).

There appear to be three directions for reform in this area:

- amendments to the Environmental Planning and Assessment Act to facilitate Contributions Plans based on well-founded cumulative and indirect impacts;
- adoption of Regional Environmental Plans, similar to City West REP No. 26, to permit contributions based on linkage studies;
- preparation of specific enabling legislation similar to the Sydney City Council's Car Parking Contributions Act 1992.

In terms of political feasibility, enabling legislation would appear least likely to succeed. Given the precedent of Sydney REP No. 26, the Regional Environmental Plan model would be the most achievable reform path. Such an REP could apply to designated business/retail centres, such as, Sydney City, North Sydney, Parramatta, Chatswood and Bondi Junction.

#### **Inclusionary zoning**

In the section, the term 'inclusionary zoning' has been used in its broadest sense. Thus, inclusionary zoning incorporates a range of density bonuses, development concessions and other incentives that have as their objective an increase in affordable housing provided through a development. The term also includes mandatory planning provisions whereby affordable housing provision is mandatory within the terms of a planning ordinance.

### *Overseas experience*

There have been a number of innovative mechanisms to promote the provision of affordable housing in North American and elsewhere. A fuller discussion of these can be found in Cox (1996) and Lawson (1993).

Inclusionary zoning is either a mandatory condition or voluntary program to include a proportion of low to moderate priced housing in new housing developments. This may be in new release area development or in established area infill development. Practice has varied from on-site provision (integrated within the development site) to off-site provision or cash contributions to a housing fund.

The main pattern of an inclusionary zoning program sets out a minimum proportion or number of affordable units to be provided in new residential development. In the majority of overseas examples, the affordable units have been for purchase rather than rental. Typically, the affordability benchmark to qualify for the *set-aside* housing is defined in terms of a percentage of household median income for the area. Consequently, such units are regarded as selling at below market price. In Orange County, California, the set aside requirement was for 25% of units in new residential development be affordable to households earning less than 120% of the county's median income (Mallach 1984, quoted in Cox 1996). The essential features of an inclusionary zoning ordinance are (Burchell and others 1983, quoted in Cox 1996):

- a triggering specification (size of development, type, location),
- the inclusionary requirement (stated as a set-aside of new housing production, usually 10 to 25 per cent), and
- an affordability control (for example, a deed restriction capping subsequent resale or rental level, monitoring of future occupancy by a local housing authority or other body).

Practice has varied considerably in the overseas experiences. Firstly, many programs permit off-site production of the set aside affordable housing units. Also, some programs permit the developer to pay a fee in-lieu of building the housing. This is justified on the grounds that developers require some flexibility in terms of feasibility and adapting their conventional product to incorporate inclusionary requirements. The principal alternative paths are:

- *On-site development*: This path stipulates that developers literally include the affordable housing provision within the development proposal. This may be a subdivision or release area. In other cases, developers have been required to incorporate low cost units within residential flat buildings. Some ordinances have stipulated that these units be dispersed throughout the building and not merely be the hard to sell units (such as ground floor units and those with no views).
- *Off-site development*: This path permits developers to construct affordable housing units on a site separate from that on which it is proposed to construct the market rate units.
- *Payment in-lieu of development*: This path permits a developer to make a payment to a designated public or non-profit housing body in-lieu of constructing affordable housing units. The housing body will in turn utilise the monies to construct affordable housing.

- *Transfer credits*: This path permits the developer to purchase credits from other developers who have produced an excess of affordable housing units. In Orange County, for instance, this has provided an incentive for developers to produce affordable units over the inclusionary requirement due to the substantial monies other developers are prepared to pay for credits.
- *Donation of land*: This path permits a developer to donate a parcel of land to a designated public or non-profit housing body, similar to the in-lieu payment already mentioned. The land will be used to construct affordable housing units.

Various development incentives and density bonuses have formed an integral part of inclusionary zoning ordinances in North America. These are often discussed as separate mechanisms, but where they are used to encourage the provision of affordable housing, they should more correctly be viewed as variations of inclusionary zoning. Incentives usually apply in the context of voluntary rather than mandatory inclusionary zoning programs, or where a mandatory program forms the basis of a minimum requirement. Density bonuses are the most commonplace form of incentive. Other incentives are reduction in car parking requirements, expedited development application processing, waiving of fees and charges, and the use of public funds to subsidise the development. Density bonuses are often regarded as central to a voluntary program that recognises that the impetus for inclusionary programs are public policy objectives, rather than to mitigate direct negative impacts of development. Case examples are more fully detailed in Cox (1996).

#### *Planning Policy Guidance 3 (PPG3) - UK*

In 1992, the UK Department of the Environment issued *Planning Policy Guidance 3 – Housing* (PPG3) (UK Department of the Environment 1992). Planning Policy Guidance notes set out government policy on different aspects of planning. They are to be taken into account by local councils when they prepare their development plans (similar to LEPs). They can be used to assist in decisions on individual planning matters and also in appeals. PPG3 replaces an existing policy on housing and sets down a number of issues that councils should take into account when preparing Area Housing Strategies (similar to Residential Strategies in NSW). In the guidance, affordable housing was highlighted as a ‘material planning consideration’ that councils should address in formulating development plans. The PPG allows councils to restrict occupancy of new dwellings to local people (a major issue in rural areas is house price inflation due to holiday homes).

A Department of Environment Circular on affordable housing, issued in February 1996, sets out inclusionary zoning provisions that apply to the whole of the UK (UK Department of the Environment 1996). The Circular is a supplementary guidance note to PPG3. It aims ‘to give practical advice to local planning authorities on how to increase the supply of affordable housing in appropriate circumstances in negotiation with developers and others’. The Circular points to the requirement for rigorous research on housing need to justify affordable housing provisions in planning instruments. Where need is established, the Circular indicates that councils ‘negotiate with developers for the inclusion of an element of affordable housing’. The following conditions apply:<sup>9</sup>

- Inclusionary provisions should only be applied to developments consisting of 50 or more dwellings, although these should apply to any residential site of 2 hectares or more.

---

<sup>9</sup> Although the Circular indicates issues ‘to be taken into account’, the planning discourse around inclusionary zoning in Britain clearly regards these as conditions.

- The Inner London threshold is lower, being 25 or more dwellings or 1 hectare and above.
- General quotas should not apply. The inclusionary component should reflect local conditions.
- Care is needed in determining the number of affordable units on one site. Regard should be had to subsequent management of the units.
- Registered housing associations are considered to be the most appropriate vehicles for management of the affordable housing.
- Wherever possible, sites should incorporate a mix of affordable housing types, such as family housing and homes for smaller households.

The debate in the UK has generally centred on the level of the threshold. Many rural areas with high housing need rarely have housing developments over 20 units, let alone 50. It appears that the principle of inclusionary zoning is fairly well accepted across the industry in the UK. PPG3 provides a model for NSW for implementing inclusionary zoning through a SEPP.

#### *City West Affordable Housing Program*

Inclusionary zoning has been slow to be adopted in Australia, despite the importation of many North American planning mechanisms over the years (such as transferable development rights and developer contributions). The most publicised example of an inclusionary zoning program has been the *City West Affordable Housing Program*. The Better Cities Program City West development was the first area in Australia to institute an inclusionary zoning plan. The affordable housing requirements were adopted through *Sydney Regional Environmental Plan No. 26 Amendment No. 4*. The principles behind the Regional Environmental Plan are to promote social mix. This is expressed as a desire to promote and retain, close to the city centre, a socially diverse residential population representative of all income groups by providing different kinds of housing. Thus, this will ensure that low to moderate income households may continue to be able to live in Ultimo Pyrmont.

The central program objective of the City West REP is to provide 600 units of affordable housing in the Ultimo Pyrmont Precinct. Four hundred of these units are to be provided through government programs and the remaining 200 from the inclusionary zoning policy. The main features of the REP are shown in Figure 6. The program discounts contributions by 30% if developments are solely residential. The City West program adopts a Sydney wide benchmark of housing affordability based on three bands of household income (low, low to moderate, and moderate).

A few inner city Sydney councils have recently adopted inclusionary zoning planning instruments. These will be discussed in turn.

#### *Waverley experience*

Waverley Council was the first NSW council to embark on an inclusionary zoning program. A report by Berkhout Planning and Hill PDA was presented to Waverley Council in August 1996. This report recommended amendments to Waverley's Residential DCP regarding zones 2(c1) and 2(c2), which are residential flat building zones. These amendments permit a higher FSR within the building envelope and also reduced car

<b>Figure 6: Main features of the City West affordable housing program</b>
<p><i>Affordability benchmarks (adopted from the National Housing Strategy)</i></p> <ul style="list-style-type: none"> <li>➤ housing costs for low income households should total approximately 25-30% of gross household income</li> <li>➤ very low to moderate income households are defined as those whose gross household income ranges from less than 50% to up to 120% of the Sydney area median annual household income</li> </ul>
<p><i>Contribution formulae</i></p> <ul style="list-style-type: none"> <li>➤ on-site contribution: 1.1% of total floor area if a mixed development or 0.8% of total floor area if solely a residential development</li> <li>➤ in-lieu cash contribution: \$23 per m2 of total floor area if a mixed development or \$16 per m2 of total floor area if solely a residential development</li> </ul>
<p><i>Housing program (all for rent)</i></p> <ul style="list-style-type: none"> <li>➤ City West Housing Pty Ltd established to manage and deliver the program, including housing production, asset management and tenant servicing</li> <li>➤ developers may transfer stock to the housing company for management</li> <li>➤ otherwise, developers have to provide evidence of retention of units as affordable housing</li> <li>➤ rents are fixed at 25-30% of income</li> </ul>
<p>Source: Sydney Regional Environmental Plan No. 26 Amendment No. 4; quoted in Cox 1996.</p>

parking requirements. Specifically, the recommendations were (Berkhout Planning and Development 1996, p. 41):

- general objectives for affordable housing, and Council's preparedness to trade-off some development requirements in return for construction of affordable housing;
- bonuses, which are recommended to reflect an increase in floor space for developments in the 2(c1) and 2(c2) zones, and additional FSR in the commercial zones which already allow bonuses for mixed commercial/residential projects;
- waiving the amount of car parking for one bedroom affordable units provided in any project, and reducing the amount for 2 bedroom affordable units;
- amendment of the building height controls to reflect the additional floor necessary for incorporating affordable housing; and,

- flexibility on setbacks and the amount of landscaping to be provided for each development, based on performance standards.<sup>10</sup>

The key set-aside requirement was expressed as an amendment to the density provisions in DCP No. 2 for residential flat buildings:

Council will consider variations of 20-25% to the minimum site area per dwelling in return for the additional dwellings being devoted to affordable housing.

These provisions are now to be contained in a new DCP for Multi-Unit Housing. The amendments to the 2(c1) and 2(c2) zones have been implemented. Council may consider extending the inclusionary provisions to the business zone through a LEP amendment. The housing management issues remain unresolved at this stage but the favoured option appears to be through the local community tenancy scheme, ESRHA (Eastern Suburbs Rental Housing Association).

The report advised that inclusionary provisions would not be feasible in town house zones (Berkhout Planning and Development 1996, p. 27). This was based on feasibility studies that demonstrated that additional units would need to be accommodated in an extra floor. The design constraints and higher unit construction cost for town houses as compared to flats militated against inclusionary zoning for these developments. This was added to the fact that town house developments generally contain a smaller number of dwellings than flat developments. Furthermore, town houses tend to compete in the market place with single dwellings and are consequently more expensive than flats, with the result that rents fixed at less than market rates would still remain very high. The report concluded that 'the objectives of an affordable housing program would be difficult to achieve within the town house and semi-detached zones, without substantial detriment to the built-form character of those areas' (p. 27).

#### *North Sydney experience*

In March 1996, North Sydney Council commenced a project to investigate planning mechanisms to promote the production of affordable housing. This followed a recommendation in the *North Sydney Affordable Housing Strategy* (1994). Firstly, an options paper was prepared, which evaluated a range of measures used overseas, including inclusionary zoning and linkage (Cox 1996). Following this, the council's Housing Policy Committee resolved to pursue the inclusionary zoning mechanism.

The core of the inclusionary zoning program was the creation of provisions setting out a height limit concession and a set-aside of affordable housing units. The set-aside was determined to be 15%. This recognised that the concession was likely to be a fourth storey only or rooms in the roof. The other concession was a reduced car parking requirements for the affordable housing component of the development.

Initially, a number of sites, mostly zoned 2(c) – which permits residential flat buildings of up to 3 storeys – were selected for the new provisions to apply. These sites were mostly on the fringe of commercial or retail areas. They were considered to be able to accommodate higher density development with little negative environmental impact on existing residents. They were also located close to public transport and local shops and

---

<sup>10</sup> Performance standards relate to the achievement of certain objectives of planning instruments. These are by contrast to the more familiar measurable standards (such as setbacks). The latter standard is achieved when a development conforms to a measurement. However, these may not achieve the overall objectives of the planning instrument in a given case.

other amenities. However, for the first stage of the project, the Housing Policy Committee resolved to trial one location in Cremorne. Currently, amendments to both North Sydney's Local Environmental Plan and Development Control Plan have been drafted and are being prepared for public exhibition. As with Waverley Council's program, issues regarding management of the set-aside units have yet to be resolved. However, the local Community Tenancy Scheme, Community Housing Lower North Shore, appears in principle to have agreed to manage the inclusionary housing units.

#### *Green Square Masterplan - South Sydney*

The Green Square Draft Structural Masterplan identifies social housing as a major issue in the development of the area surrounding the new Green Square railway station (Stanisic Turner 1997). It recommends that a density bonus be provided as a means of achieving a target of 5% social housing across the area of the Masterplan. This is clearly a form of inclusionary zoning involving a density bonus. However, no details of what bonuses are to be provided are given in the Masterplan. There is some indication that the council may negotiate social housing components on a case by case basis. It should be noted that the Masterplan is a separate process to the City South Project, which is also investigating planning mechanisms for affordable housing (Spiller Gibbons Swan Pty Ltd 1997). The City South Project is led by a State and Local Government Task Force and is developing a strategic plan for the future development of the wider City South sub-region.

#### *Challenges for inclusionary zoning programs in NSW*

There are a number of challenges for inclusionary zoning programs in New South Wales. Development levies of various kinds are generally accepted in the development industry. However, inclusionary zoning in the form of direct provision of affordable units (either on-site or on another site) is not yet part of the accepted planning and development landscape. Another significant set of issues relates to the subsequent management of the affordable units. The community housing sector has expressed some reluctance and uncertainty as to the long term costs and management obligations associated with these units. Consequently, a number of issues need resolution:

- inclusionary zoning provision should not delay the development approval process unduly;
- guidelines should be prepared to ensure consistent and transparent negotiations between developers and councils regarding voluntary inclusionary zoning;
- inclusionary affordable housing units need to be promoted as a secure form of small scale investment (they will be cheaper to invest in than standard units);
- management models for the long term head-leasing of affordable rental units need to be developed that provide certainty for the investor and also remain attractive to community housing organisations to manage;
- some community housing organisations may be too small to be able to absorb additional management costs that may occur with inclusionary housing units;
- the Office of Community Housing should provide management guidelines for community housing organisations and other non-government organisations (which may not be primarily housing providers) for the day-to-day and on-going management of inclusionary units;

- developers should not be able to capture development concessions or bonuses that apply to inclusionary zoning programs through other means, either by direct negotiations with councils or through legal challenge;
- developments incorporating density bonuses should not significantly impact on the amenity of existing residents;
- market testing should be conducted to evaluate if affordable rental housing units have any impact on the sale price of other units in the same development.

### **Development agreements**

A development agreement is a legally binding agreement between a planning authority and a developer. The agreement may establish standards, bonuses or concessions that apply to a specific development or a site. The agreement may in effect alter the planning regime or controls for a site. The agreement may be for a fixed period or be in perpetuity.

The practice of development agreements to provide public benefits has been widespread in the UK. Here it is more generally known as planning gain. Officially, the practice of planning gain is discouraged by the UK Department of the Environment, though now guidelines exist as to its application. Planning gain has a two-fold purpose: to provide community benefits and to offset the social costs of development. Planning agreements, as such, are permitted under the Town and Country Planning Act (England & Wales) and this is how planning gain agreements are usually constituted. Development agreements also spawned rapidly in California after the passage of the Development Agreement Act in 1980. Within only 5 years of the enactment, over 30% of all local governments in California were using development agreements. Such agreements have been negotiated for a range of purposes: to compensate for loss of land, to establish responsibilities for maintenance of haulage routes for mines, or for the provision of public benefits (such as open space, affordable housing, training schemes).

There is provision for development agreements under Section 173 of the Victorian Planning and Environment Act 1987. Development agreements under this Act must be lodged with the Minister. The most significant provision in the Act is that stipulating the agreement must not be in conflict with existing planning schemes or planning permits. This affords local residents with a degree of certainty that development agreement will not over-ride the normal planning process. The other provisions in the Act are shown in Figure 7.

The City of Port Phillip in Melbourne has trialed development agreements under Section 173 for a few specific developments. The most successful agreement was for an office development on St Kilda Road. The council permitted access to the site via a rear residential street and the developer transferred to the council a terrace house. The house was subsequently sold to finance an affordable housing project (Spivak 1996). Another project demonstrated the flaws in such agreements. The 70 room Regal Hotel boarding house was proposed to be developed into a three storey retail/commercial development. The agreement permitted the rear of the building to remain in its current use with rents frozen for two years. Ownership of the boarding house changed and, since the development agreement was with the previous owners, the new owners were not tied to the agreement. The new owners wish to sell the whole property. Consequently, the prospects for long term preservation of this affordable housing are bleak (Spivak 1996).



• **Figure 7: Legislative provisions for development agreements**

*Victoria (Planning and Environment Act 1987)*

- prohibition, restriction or regulation of use or development of the land
- conditions subject to which the land may be used or developed
- any matter intended to achieve the objectives of State or local plans
- provisions for bonds or guarantees
- provisions relating to commencement, amendment and termination of the agreement
- the council must register the agreement with the Minister
- agreements may not be in breach of existing planning schemes or permits

Source: Planning & Environment Act 1987 (Vic); ss. 174-180.

## **FINANCIAL MECHANISMS FOR RETENTION AND PROMOTION OF LOW COST HOUSING**

### **State government financial incentives**

There are a number of other provisions that have been designed to assist in the retention of boarding houses. The first category of provisions is financial incentives designed to improve the financial viability of boarding house operations. The first of these relates to Land Tax. The Office of State Revenue (Treasury) administers land taxation provisions for non-owner occupied properties providing low cost accommodation. Currently, there are two relevant Land Tax exemption rulings, called respectively *LT53 Exemption* and *LT54 Exemption*. These exemptions have been in force since 1995, though the terms and conditions may have changed.

The LT53 Exemption applies only to boarding houses. Eighty percent of the accommodation in the boarding house must conform to the following conditions:

- occupation by long-term residents (considered to be of 3 months' duration or longer);
- maximum tariff for full board is no more than \$184 for single accommodation or \$307 for family accommodation (per week);
- maximum tariff for less than full board is no more than \$123 for single accommodation or \$205 for family accommodation (per week).

Where the occupancy conditions are not met, an exemption may still be granted if it can be shown that the accommodation was generally available at these rates. Pro-rata exemptions may apply where only part of a building is used as a boarding house. There are no geographic limitations on the exemption in the ruling.

The LT54 Exemption is for low cost accommodation located within a 5 kilometre radius of the Sydney GPO (encompassing Sydney City, South Sydney, parts of North Sydney, Leichhardt, Drummoyne and Woollahra Local Government Areas). Maximum rentals at 31 December 1996 must be below certain thresholds.<sup>11</sup> A Residential Tenancy Agreement must apply under the terms of the Residential Tenancy Act 1987. The owner has to give an undertaking to pass on a benefit to the tenant broadly equivalent to the value of the exemption.

A more recent financial measure is intended to slow down the depletion of stock through council requirements to meet fire safety standards. The Housing and Metropolitan Division in the Department of Urban Affairs and Planning has recently instituted the Boarding House Financial Assistance Program. The State government has allocated \$1 million for the 1996/97 financial year for the program. It is designed to assist owners and operators of boarding houses providing long term accommodation. The program provides funds to undertake essential fire upgrading work. In conjunction with the Department of Local Government, simpler and less expensive methods of improving fire safety are being promoted at the same time. The program has been developed in response to the increasing number of boarding houses that have had to close in recent years due to inability to carry out required fire safety upgrades.

---

<sup>11</sup> \$123 for a one bedroom unit; \$164 for a two bedroom unit; \$205 for a three or more bedroom unit (per week).

The financial packages are available for both Class 1(b) and Class 3 boarding houses, as defined in the Building Code of Australia<sup>12</sup>. Backpackers and tourist accommodation are excluded from the program. The fire safety works must average more than \$1,500 per bedroom. The financial assistance is provided on the following basis:

- For the first 15 rooms, 70% of the owner's cost per bedroom for the fire safety upgrade is provided;
- For the next 10 rooms, 50% of the owner's cost per bedroom for the fire safety upgrade is provided;
- No assistance is provided after the 25<sup>th</sup> room.

Grants are paid over a 5 year period, with 20% provided on completion of works to the satisfaction of the council. The remainder is paid over the following 4 years, after evidence is provided that the premises continue to provide long term affordable accommodation.

It is too early to evaluate the effectiveness of the Boarding House Financial Assistance Program, though early indications are that few boarding house owners have taken up the financial assistance. The key indicators will be the rate of take-up of the grants (by number of bedrooms and LGA) and also whether there is any appreciable decline in the rate of loss of boarding houses over a 5 year period. It will be important to assess whether the program has had any appreciable impact in high land value locations, where development pressure on boarding houses is especially acute. Another issue to be addressed is assistance with insurance for boarding houses, as this is becoming a major obstacle in their continued use.

### **Local government financial incentives**

The main local government financial incentives for boarding houses are rate rebates. This is in recognition of the social benefit provided by this class of accommodation. Rate rebates are permitted under Section 356 of the Local Government Act 1993. The Act stipulates that a proposed recipient who operates their premises for private profit must not receive any benefit until a 28 day public notice of council's proposal to pass the necessary resolution.

Waverley Council has had a rebate policy for boarding houses since 1989. The financial assistance is targeted to owners of registered boarding houses which provides affordable accommodation for permanent residents. Initially the rebate amounted to 25% of the due amount. The rebate currently stands at 75%. Rental thresholds apply, which give maximum rents for both full board and lodgings only. Premises with rentals above these amounts may qualify for a partial rebate. A partial rebate may also apply if a proportion of the rooms are let to tourists. Around half of Waverley's registered boarding houses received some level of rate rebate in 1996.

---

<sup>12</sup> Class 1(b) boarding houses are those accommodating not more than 12 persons, or where the gross floor area of the premises is not more than 300 m<sup>2</sup>. Class 3 boarding houses are those that accommodate more than 12 persons or have a gross floor area of more than 300 m<sup>2</sup>.

## **POSSIBLE IMPLICATIONS OF THE INTEGRATED DEVELOPMENT ASSESSMENT DRAFT PROPOSALS**

### **Implications for local housing initiatives**

Much of this paper is based on the premise that local government can achieve a great deal in the area of retention and provision of affordable housing. The capacity of local government to make concrete progress in this area is limited or enhanced by the regulatory framework in which it operates, in particular, the Environmental Planning and Assessment Act 1979. Changes to this Act have been proposed in the *Integrated Development Assessment White Paper and Exposure Draft Bill*. These proposals have already been outlined on page 3.

The proposed amendments have the potential to limit the flexibility of councils to effectively use some of the mechanisms outlined in this paper. The key issue is well expressed in the submission of the Local Government and Shires Associations to the White Paper (1997, p. 16):

The proposed implementation of exempt and complying criteria now provides developers with prescriptive, fast tracking options. Such options do not lend themselves to socially focussed planning initiatives and in instances deter the local development industry from taking up performance based, innovative options. The Associations are concerned that there are some activities within the exempt development criteria, such as demolition and internal alterations, that have the potential to weaken councils' capacity to monitor and protect low cost housing.

The White Paper also proposes five generic 'heads of consideration' under which to assess development applications. The current 'heads of consideration' under Section 90 of the Environmental Planning and Assessment Act are not to be dispensed with, but their centrality has been changed. As outlined in the Local Government and Shires Associations' submission (1997, p. 12), the main concern here is the potential decreased weight given to social impacts in the development assessment process. Two studies by Cox and Miers (1995a; 1995b) point to the importance of assessing the social impacts of a wide range of development proposals, both major and minor. A major component of the second study was a survey of council practice in this area (1995b). This highlighted a need for improvements in social impact assessment at the local level but also the necessity of strengthening the legislation and regulations to facilitate this. The Integrated Development Assessment White Paper is likely to weaken social impact assessment, which amongst other things would include the effects of development on affordable housing.

Specific recommendations relating to the White Paper are contained at the end of this paper (see p. 37).

## **RESPONSE STRATEGIES**

The following recommendations are regarded as consistent with the direction of State government policy and are also feasible within the current political and economic climate. Taken together, they would mark an important advance in the ability of councils to retain and promote affordable housing.

### **Amendments to the EPA Act 1979 – additional objects**

*Recommendation:*

The Environmental Planning and Assessment Act 1979 be amended to clearly include the *retention and promotion of affordable housing* in the objects of the Act (Section 5(a)).

*Rationale:*

The objectives of the Act do not identify affordable housing, though the promotion of 'social and economic welfare' is included. Given that the production of housing is a major outcome of the Act, such an objective is warranted. It would also indicate to councils the necessity of considering affordable housing in their Local Environmental Plans and other instruments. It would also assist in defending affordable housing provisions in the Land and Environment Court.

### **Amendments to the EPA Act 1979 – development agreements**

*Recommendation:*

The Environmental Planning and Assessment Act 1979 be amended to permit development agreements along the lines of Sections 174-180 of the Planning and Environment Act 1987 (Victoria). The amendments should include similar safeguards for existing residents as exist in the Victorian legislation (i.e. consistency with current planning instruments).

*Rationale:*

Currently, under the NSW Environmental Planning and Assessment Act, the ability of councils to enter into development agreements with proponents is very limited and of disputed legality. Development agreements could allow creative solutions that promote affordable housing, particularly for large redevelopment sites.

### **Housing affordability SEPP**

*Recommendation:*

State Environmental Planning Policy No. 10 should be revised to incorporate the *promotion* as well as retention of affordable housing. The coverage of the SEPP should be extended to all councils in the Sydney Metropolitan area. It should encourage councils to adopt their own provisions in Local Environmental Plans. This would be through a system similar to that adopted for Residential Strategies, through SEPP No. 53. The Housing Affordability SEPP would encourage councils to adopt their own Affordable Housing Strategies. If these were not in place to the satisfaction of the Director-General of the Department of Urban Affairs and Planning, the provisions of the new SEPP would automatically apply.

*Rationale:*

Consistent with the recommendation to include affordable housing in the objects of the Environmental Planning and Assessment Act, the retention and promotion of affordable housing is a valid and significant planning issue. Given current State government policy, particularly the recent Housing Policy Green Paper, affordable housing is recognised as being a key State planning concern. Consequently, a State policy addressing the retention and promotion of affordable housing is warranted. In order to be effective, this should be much broader in scope than the existing SEPP 10. The provisions for councils to adopt their own Affordable Housing Strategies would both recognise the innovative work carried out in this area by many councils and also promote affordable housing as a key objective of local planning.

**Section 94 guidelines**

*Recommendation:*

The Department of Urban Affairs and Planning should provide advice in their guidelines for the drafting of Section 94 Contributions Plans on the levying of Section 94 for loss of affordable housing.

*Rationale:*

The Department of Urban Affairs and Planning should fully recognise that the practice of levying Section 94 for the loss of affordable housing has consistently been upheld by the Land and Environment Court. Consequently, the Department should provide advice in its guidelines on best practice in developing Section 94 plans in this area. Many joint ventures with the NSW Department of Housing utilise funds levied by councils. It is consistent with a whole-of-government approach that guidelines for Section 94 fully support this practice. Such guidance would then encourage other councils to utilise Section 94 to mitigate the negative effects of new development on affordable housing.

**Inclusionary zoning guidelines**

*Recommendation:*

The Department of Urban Affairs and Planning should produce guidelines for councils on how to adopt inclusionary zoning in their Local Environmental Plans and Development Control Plans. This should be supplemented with detailed advice and start-up financial assistance from the Housing and Metropolitan Division on the management of affordable housing produced through such programs. These guidelines should also address situations where a cash contribution is warranted in lieu of the provision of affordable housing units. The Department of Urban Affairs and Planning should provide guidance as to the legal standing of such cash contributions and, if necessary, formulate a SEPP or REP to facilitate the collection of cash contributions.

*Rationale:*

Inclusionary zoning is a recent innovation in the New South Wales planning scene. The State planning authority has a responsibility to provide appropriate guidance to councils who may wish to adopt such provisions. Without this, there is the potential for duplication of investigatory research and development on the part of councils. Assistance with housing management is also warranted. This is an area that many councils have little direct or indirect experience.

## **Inclusionary zoning housing management models**

### *Recommendation:*

The Office of Community Housing should facilitate best practice options for the long-term management of affordable rental housing units produced through inclusionary zoning policies. As part of this, the Office of Community Housing should develop management models and guidelines for this purpose. It should also address the financial feasibility of these management models for a range of community housing organisations and non-government organisations. The need for State government funding, especially as start-up grants, should also be explored.

### *Rationale:*

The long-term management of affordable rental units produced through inclusionary zoning programs is currently a complex and unresolved issue. Lack of resolution is a major obstacle to the viability of inclusionary zoning as a method of promoting affordable housing. The Office of Community Housing is the responsible section of government in which this matter should be fully addressed.

## **Integrated Development Assessment White Paper and Exposure Draft**

### *Recommendation:*

Shelter NSW should urge the Department of Urban Affairs and Planning to fully investigate, prior to the finalisation of the Draft Bill, the effect on local government initiatives relating to the retention and promotion of affordable housing and, if necessary, develop mechanisms to ensure that such initiatives are not compromised.

Shelter NSW should also urge the Department of Urban Affairs and Planning to prepare comprehensive guidelines to assist councils in assessing the social impacts of developments under the Environmental Planning and Assessment Act. These should include explicit guidance on impacts on housing affordability.

### *Rationale:*

The proposals in the White Paper are likely to limit the scope of councils to implement innovative planning mechanisms for the retention and promotion of affordable housing. The proposals for more generic development assessment criteria are also likely to weaken the social impact assessment process for development proposals.

## **Housing affordability monitoring**

### *Recommendation:*

Shelter NSW should establish a database to monitor housing affordability in the Sydney Region. This could be modelled on the system established by the National Low Income Housing Coalition in the United States. This uses rental and income data to ascertain the number of households above the 30% of income threshold (i.e. deemed to be in housing stress).

### *Rationale:*

While an excellent database of rental data is maintained by the Department of Urban Affairs and Planning in its *Rent Report*, the presentation of the data does not relate to

housing affordability indicators. There is an opportunity for Shelter to monitor movements in affordability from existing data sources. The information could be published on the Internet, similar to the National Low Income Housing Coalition.<sup>13</sup>

---

<sup>13</sup> Their Internet address is: <http://www.nlihc.org/>



## KEY REFERENCES

BBC Consulting Planners 1996, *Housing Affordability and Choice in the IMROC Region*, Inner Metropolitan Regional Organisation of Councils, Sydney.

Berkhout Planning and Development, Glazebrook & Associates, Hill PDA, & Laurie Chiarella 1992, *City West Affordable Housing Study: Evaluation of Options for the Promotion of Affordable Housing*, NSW Department of Housing.

Berkhout Planning and Development and Hill PDA 1996, *Waverley Housing Study*, Waverley Council, Sydney.

Burchell, R., Beaton, W., Listokin, D., Sternlieb, G., Lake, R., & Florida, R. 1983, *Mount Laurel II: Challenge and Delivery of Low-Cost Housing*, Rutgers University Press, New Jersey.

Cox, G. 1996, *Planning Strategies for the Retention and Promotion of Affordable Housing: Options Paper*, North Sydney Council.

Cox, G. 1991, *Financing of Urban Public Infrastructure from Developer Contributions: A Review of New South Wales and United States Practice*, Monograph No. 32, Planning Research Centre, University of Sydney.

Cox, G. & Miers, S. 1995a, *Social Impact Assessment for Local Government: A Handbook for Councillors, Town Planners and Social Planners*, Local Government and Shires Associations of New South Wales, Sydney, & Office on Social Policy, New South Wales Government Social Policy Directorate, Sydney.

Cox, G. & Miers, S. 1995b, *Social Impact Assessment in Local Government - Current Practice and Future Directions*, unpublished report for the Local Government and Shires Associations of New South Wales, Sydney, & Office on Social Policy, New South Wales Government Social Policy Directorate, Sydney.

Department of Planning 1992, *Section 94 Contributions Plans Manual*, NSW Department of Planning, Sydney.

E3 Group Pty Ltd 1996, 'Housing Policy Green Paper: A Report on Community Consultations April – June 1996', *Shelter Briefs*, Shelter New South Wales, Sydney.

Hausrath, L. 1988, 'Economic basis for linking jobs and housing in San Francisco', *Journal of the American Planning Association*, vol. 54, no. 2, pp. 210-16.

International Association for Impact Assessment, Interorganizational Committee on Guidelines and Principles 1994, 'Guidelines and principles for social impact assessment', *Impact Assessment*, vol. 12, no. 2, pp. 107-52.

Lawson, J. 1993, *Low Cost Housing Opportunities: Case Studies from the United States and Canada*, City of Melbourne.

Local Government and Shires Associations of NSW 1997, *Submission on Integrated Development Assessment – Draft Response*, Local Government and Shires Associations of NSW, Sydney.

Mallach, A. 1984, *Inclusionary Housing Programs: Policies and Practices*, Rutgers University Press, New Jersey.

Minister for Urban Affairs and Planning and Minister for Planning 1995, *Housing Policy Green Paper*, New South Wales Government.

National Housing Strategy 1991, *The Affordability of Australian Housing: Issues Paper 2*, Australian Government Publishing Service, Canberra.

North Sydney Council 1993, *Strata Sub-division Post Occupancy Study*, North Sydney Council.

North Sydney Council 1994, *North Sydney Affordable Housing Strategy*, North Sydney Council.

North Sydney Council 1996, *Section 94 Contributions Plan - Affordable Housing*, North Sydney Council.

Randwick Council 1997, *Section 94 Contributions Plans*, Randwick City Council, Sydney.

Simpson, W. 1989, *Report to the Honourable David Hay Minister for Local Government and Minister for Planning: An Inquiry Pursuant to Section 119 of the Environmental Planning and Assessment Act 1979 with Respect to Operation and Practices Associated with Contributions under Section 94 of the Environmental Planning and Assessment Act 1979*, Commissioners of Inquiry for Environment and Planning, Sydney.

Spiller Gibbons Swan Pty Ltd 1997, *City South Affordable Housing Strategy – Outline of Preferred Affordable Housing Mechanisms for City South*, June Draft, Department of Urban Affairs and Planning, Sydney.

Spivak, G. 1996, personal communication 17 May. Gary is a planner for the City of Port Phillip Council (formerly St Kilda).

Stanisic Turner in association with Hassell 1997, *Green Square Draft Structural Masterplan – Final Report*, South Sydney City Council.

Technical Policy 1995, *Ideas for Boarding House Style Development*, NSW Department of Housing, Liverpool.

UK Department of the Environment 1992, *Planning Policy Guidance: Housing (PPG3 – revised)*, Department of the Environment, London.

UK Department of the Environment 1996, *Draft Circular on Planning and Affordable Housing*, Department of the Environment, London.

Waverley Council 1996, *Affordable Housing Study*, Waverley Council

**APPENDIX A - 1996 CENSUS HOUSING AFFORDABILITY  
DATA**

















