18 December 2018

Deborah Brill  
Director, Housing and Infrastructure Policy  
Department of Planning and Environment  
PO Box 39  
SYDNEY NSW 2001

Dear Deborah,

**PIA Submission: Affordable Housing - SEPP 70 Expansion**

The Planning Institute of Australia (PIA) appreciates the opportunity to comment on the amendments to the State Environmental Planning Policy (SEPP 70) Affordable Housing (Revised Schemes) State-wide Application.

**Overview**

PIA regards the delivery of affordable housing stock as essential social infrastructure to be made available alongside (and as a result of) new housing being developed and delivered through the planning system. Having a bigger slice of our state’s population with access to suitable housing near their jobs and communities is critical to the economy and wellbeing of major cities and regional centres alike.

As noted in PIA’s submission on Greater Sydney’s Metropolitan and District Plans ([link](#)), PIA supports applying an affordable (rental) housing target of at least 5-10% of new residential floorspace on all development projects – or its equivalent value. The target should respond to local conditions but be achieved overall – and it should be higher on Government land. These targets can be achieved via development contributions under SEPP 70, Special Infrastructure Contributions (SICs) and Planning Agreements.

PIA strongly supports the expansion of the SEPP 70 to assist in achieving these targets; and to enable development contributions for affordable housing to be levied not only in metropolitan areas, but in any council area in NSW alongside the adoption of an Affordable Housing Contribution Scheme (AHCS) relevant to the LGA, District or Region.

Although the feasibility of development is critical; it does vary over time and place and its calculation creates doubt on the application of an AHCS. Vendor price expectations will change as a result of the adoption of an AHCS in any LGA. As a result, PIA urges DPE not to consider short term feasibility as the paramount consideration in assessing gateway proposals for AHCSs, rather any planning proposal should be required to at least meet the minimum 5% target on increment of extra allowed floorspace (or more where justified via an adopted AHCS and overarching local or district housing strategy).
PIA also argues that if an AHCS and its feasibility assessment can show that a greater rate of affordable housing can be provided than the GSC’s 5-10% target, that scheme should be able to progress through gateway.

PIA acknowledges that the expansion of SEPP 70 is a small but important step in improving the supply of affordable housing. The reform will need to work alongside a range of other measures addressing the supply and diversity of rental housing available for low to moderate income earners.

PIA also notes that the provision of public/social housing for those in extreme need is an additional requirement for Government and that the provision of this housing type in NSW is already tracking well below need.

**Need for Guideline / Ministerial Direction on viability considerations**

The reform proposal places a significant development viability limitation on the potential application of the expanded SEPP. PIA is concerned that using commercial feasibility as a paramount consideration in the gateway process will distort achievement of the goals of the policy. PIA considers that an AHCS that is consistent with a regional or district plan or adopted Local Housing Strategy should not be denied at the gateway stage – and that a viability formula/calculation tool should be made available to councils, checked and followed through.

*Recommendation: There is a need for clear guidelines on how viability would be interpreted amongst other criteria - and what range of tools would be available to Councils. A Ministerial Direction dealing with criteria in considering planning proposals for an AHCS is appropriate.*

**Viability: inappropriate to limit SEPP 70 to ‘upzoning’ situations only**

In light of the fact that feasibility outcomes change over place and time, the premise in the guidelines that ‘feasibility is paramount’ is problematic. That is, any upzoning (i.e. in Greater Sydney) should meet the minimum 5-10% target on the increment of extra allowed floor space regardless. If it is not feasible now it still has the potential to become so in time as either / both vendor’s price expectations reduce or the sales prices of apartments increase. Rezoning land ignoring this reality would mean that a council is severely limited in ever implementing an affordable housing scheme later.

Achieving viability means achieving hurdle percentage for profit margin and internal rate of return. The generally accepted minimum for each is 20%. Viability will depend on when a site was acquired and how much the owner paid. Recent comparison sales in Sydney at least are likely to show many sites with much higher values than the market fundamentals show what can feasibly be developed. This is because there has been much land speculation. The assessment of viability for the application of the SEPP would attempt to draw a reasonable line between recent (possibly inflated) and more realistic benchmark land values. It is possible that in the current climate there would be very few viable affordable housing development scenarios, but markets would be expected to catch-up in time.

There may be situations where current sites in a proposed ‘upzoned’ area may have dropped back in value, and the ‘upzoning’ itself may be needed by the developer to restore something like the status quo value-wise. An affordable housing contribution in this case would make development unviable, but PIA believes it would be inappropriate for that site to receive relief just because the owner may have paid a premium in the first place.
The exhibited guidelines (p15) implies that individual sites can get special relief from a scheme if, in the circumstances of the case (such as the developer paying too high a purchase price), affordable housing is not feasible:

“Councils should also consider individual sites and locations with unique characteristics that could justify exclusion from the scheme. This may be appropriate when the feasibility of the location is not consistent with that of the broader precinct. It may also be appropriate when a feasibility assessment has demonstrated that affordable housing is unviable in a location.”

This opens up the probability that many individual developers will be seeking dispensation – especially given that affordable housing contributions conditions are typically not appealable. The guidelines should be clarified and tightened up.

Recommendation: That the limitation for a SEPP 70 AHCS only proceeding in land that is ‘upzoned’ and subject to a strict viability test where this consideration is paramount be removed – and replaced with guidance on the broader circumstances where an AHCS is justified – especially where consistent with Regional / District Plans and Local Housing Strategy.

Circumstances for SEPP to apply

Concern that changes to SEPP 70 and the draft guideline only allow one mechanism requiring an affordable housing contribution and that it can only be applied to areas that are subject to significant or large scale upzoning. The proposed changes limit the ability to find innovative solutions to meet affordable housing need, particularly in council areas that do not have significant upzoning opportunity - including some regional centres.

Recommendation: SEPP 70 should allow affordable contribution schemes to operate across the whole (or any part of an) LGA where the local authority can demonstrate the need for affordable housing and associated economic impacts are mitigated. Other affordable housing contribution mechanisms (eg via VPA) should be available for areas where upzoning alone would not meet the affordable housing need.

Further clarification is also sought on any circumstances where SEPP 70 might apply to greenfield housing development.

Model Clause in SILEP

Once a council is included in SEPP 70, there should be a more streamlined approach to the council adopting an LEP which enables collection of levies for affordable housing. PIA has advocated for the Department to include a Model Clause for Affordable Housing in the SILEP. Individual Councils can then investigate and insert LGA specific levy settings for floorspace and costs (as a schedule) within this consistent planning and legal framework – in accordance with an adopted AHCS. This would remove the requirement for all Councils to resolve the legal wording separately and individually.

This reform should be phased in to ensure that new development can factor in the cost in taking development investment positions. The recommendation is in line with the communiqué of the 2017 Affordable Housing Forum (SSROC 2017 - link).

Recommendation: Insert a model provision in the SILEP for councils to subsequently insert the amount and value of contribution relevant to development in the LGA.

Affordable Housing required in perpetuity
There is concern regarding the lack of a requirement for the affordable housing to be provided in perpetuity within either of the SEPPs and draft guideline. The 10 year model under the Affordable Housing SEPP allows landowners to benefit from an uplift in development capacity, while in return a given number of dwellings are rented to very low and low income earners for a period of 10 years, at which point the dwelling reverts back to a normal market dwelling.

PIA’s concerns with the 10-year model include:

- The subsidy provided for the affordable housing, being additional development capacity, is lost from the system after 10 years when housing reverts to normal market housing. This value subsidy can be provided in perpetuity without affecting viability is wasted on only a short term gain.
- The shortage of affordable housing is likely to be a long term issue. It is highly unlikely, at least in inner and middle ring Sydney, that there would be a correction of property values that would result in housing being affordable for low income earners. The 10 year model relies on a constant stream of ‘density bonuses’ being available to grow or maintain supply. This is not sustainable.
- Where community housing providers do not own the dwellings, they cannot grow and increase their development capacity.
- Where affordable housing dwellings are not owned by registered community housing providers, there are inadequate systems in place to ensure the housing is being used for target income groups.
- Rental rates are generally established at 25 per cent below market rates, rather than at 25 – 30 per cent of the renters’ income. In inner Sydney this does not ensure that dwellings are affordable for very low to moderate income earners.

**Recommendation:** All affordable housing created under SEPP 70 (and ARHSEPP) be retained in perpetuity.

**Affordable housing for a mix of very low, low and moderate income households**

PIA is concerned that the policy not retreat from its role for the delivery of affordable housing for moderate income earners as part of a mix. PIA is concerned that amending Principle 3 in SEPP 70 relaxes the requirement to ensure affordable housing is available to a mix of very low, low and moderate income households. Key workers are often moderate income earners and they should not be restricted by a narrow interpretation of this principle.

Industry advice communicated at the Affordable Housing Forum (SSROC 2017) was that a mix of income targeted incomes is necessary both to ensure diversity and for moderate income renters to provide a degree of cross subsidisation necessary for viable affordable housing delivery via community housing providers.

The proposed amendment to Principle 3 states that “affordable housing can be made available to very low, low and moderate income households or any combination of these households”. Pathways are provided for key workers who reside in affordable housing to move through the system as their circumstances improve. These residents typically pay rent based on a maximum 30% of their household income. The shift to renting privately, particularly in inner-Sydney often results in key workers of moderate income households moving away predominantly due to affordability reasons.

Key workers who are classified as moderate income households pay an important role in:
• Supporting businesses. If these key workers move out of the area due to high rental costs, it would have a detrimental impact on overall economic performance and productivity, particularly in the inner-city.

• Ensuring integration and mixed communities. A lot of research has shown a mix of income households in an area positively contributes to social cohesiveness, sense of place and general well-being.

• Facilitating the not-for-profit housing sector. The increased revenue received from moderate income households assists to cross-subsidise to the low very and low income households and may also help create more affordable housing supply.

Housing for very low to low income households needs much stronger funding commitments from state and federal governments, and should not be solely sought to be funded through affordable housing contributions.

Recommendation: retain current wording of SEPP 70 principle 3.

Further clarifications sought re exhibited documents - with PIA proposals

PIA members have raised the following queries (with suggested responses) that should be addressed in the review process.

Query 1: When will the contribution scheme and rate tool mentioned on page 2 of the FAQ be available? Will it address the viability issues raised by PIA? Will it be essential for councils to ‘prove’ viability through this tool, or can councils use another method to prove viability?

PIA proposal: Guidelines backed by a Ministerial Direction be made available as soon as possible that clearly set out means of addressing viability.

Query 2: If the affordable housing schemes apply only to ‘upzoning’, then will the contribution rate only apply to the increment of extra GFA that is allowed on a site due to upzoning? PIA notes that this is not practical where the upzoning is merely a rezoning from non-residential to residential and no extra GFA is part of the rezoning.

PIA proposal: that reference to ‘upzoning’ be removed as there are situations where the imposition of a development contribution is appropriate notwithstanding. The term is also difficult to define.

Query 3: What happens to upzonings that are in progress? Will councils be able to defer them until they have an affordable housing LEP in place?

PIA proposal: VPAs for provision of affordable housing should still be able to be negotiated until such time that an affordable housing LEP is made.

Query 4: Thinking of the State-wide application, is it envisaged that affordable housing schemes will apply to greenfield release areas? These areas are already subject to significant developer contributions.

PIA proposal: DPE should clarify any application of SEPP 70 in greenfield areas, defining any situations where it may be appropriate.

Query 5: Can a region / district / ROC / Joint Organisation of Councils collaborate in preparing an affordable housing needs assessment?
PIA proposal: Regional or district collaboration should be encouraged. It doesn’t make a lot of sense for say Lane Cove, North Sydney and Mosman to each do their own needs assessment.

Query 6: How can Councils send a message that an affordable housing contribution is likely to be required in relation to future planning proposals?

PIA proposal: Councils (perhaps through their LHS or LSPS) could have a general policy stating whether they will investigate the feasibility of implementing affordable housing schemes as part of rezonings involving residential uses. This can send a general signal to the market that affordable housing contributions may be required.

Query 7: What does the statement on page 3 of the FAQ mean: ‘Affordable housing contribution schemes can only be developed for areas which have not already been unzoned’?

PIA proposal: DPE are requested to provide clarification (presume meant ‘upzoned’ – in any case this is a difficult to define, inappropriate and should be removed).

Conclusion

PIA strongly supports the expansion of the application of SEPP 70 throughout NSW. However, the guidelines have the potential to inappropriately restrict the scope of an AHCS able to be adopted. PIA looks to the Department to reduce the importance of ‘viability’ as a criterion; and enable AHCS to apply also in situations where there is not necessarily ‘upzoning’.

PIA would be pleased to contribute or host working groups to contribute to reform of the SEPP and guidance on the application of the policy and its guidelines. Please contact me or PIA’s National Policy Manager, John Brockhoff (john.brockhoff@planning.org.au).

Yours sincerely,

Greg New
Chair, PIA NSW Policy Committee

cc. Alison Frame