

NSW Statutory Planning Framework for Housing Provision

This part of the kit outlines the main elements of the [statutory planning framework](#) in place in New South Wales as it relates to housing. It explains the implications for housing that arise as local government exercises its general planning responsibilities. It provides an overview of the NSW planning context, highlighting objectives and specific provisions of key planning instruments that relate to housing or can be used to implement housing objectives.

The section will be useful to those seeking to better understand how the planning framework governs and contributes to housing outcomes and to obtain an overview of its key components. It will be particularly helpful to those who have a limited understanding of the planning system.

Another section of the kit, [Planning Mechanisms for Affordable Housing](#), follows up the advice in this section, and gives concrete examples of ways in which specific planning approaches have been used in some council areas to achieve housing outcomes.

Links between planning and housing outcomes

Many of the urban planning responsibilities of local government have important impacts on housing outcomes within the community. Planning decisions can affect the availability of residential land, the timing and costs associated with development, the design and configuration of new housing, and the preservation of existing sources of low cost housing stock. For instance:

- Land use zoning decisions govern the availability of residential land, and the location of new residential development, in relation to transport, services, employment and educational opportunities;
- Development controls influence the way that new housing is designed and configured, and can affect the appropriateness, affordability and the likely cost and tenure of new developments;
- Major urban renewal processes can result in the loss of existing sources of affordable housing; and
- Development conditions can mitigate the social or environmental impact of approved developments, for instance, through the use of developer contributions to fund community infrastructure, or, potentially, affordable housing.

Thus housing considerations must be taken into account at every stage of the planning process, from the identification of residential land through to setting development controls, and assessing particular developments against these controls.

A local housing strategy provides the framework in which to review the way existing planning provisions promote housing objectives. It can also provide a basis for introducing additional planning mechanisms that are specifically designed to protect, promote, or even generate housing for specific groups in need.

Overview of the NSW planning context

This section sets out the current planning framework, requirements and constraints (including recent reforms).

Councils in NSW exercise their local planning powers within the broader legislative and policy context set by the State Government.

The [NSW Environmental Planning and Assessment Act 1979](#) (EPAA) provides the legislative framework for planning in this State. The EPAA is a general instrument governing the broad scope of planning in NSW — from the overarching objectives of environmental planning through to the arrangements for plan making and development assessment. The EPAA also contains some specific provisions of particular importance to housing policy.

The overall objectives of the EPAA include a commitment to promote and retain affordable housing (s 5 (a) (viii)). The plan making provisions of the Act also state that local instruments may include arrangements for “providing, maintaining and retaining, and regulating any matter relating to, affordable housing” (s 26 (d)).

When assessing a development application, a consent authority is required to consider any environmental planning instrument, or draft instrument, as well as “the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality” (s 79C). Such impacts could include the social impacts of development likely to reduce opportunities for low cost housing.

The EPAA also makes specific provision for development conditions requiring contributions or land for affordable housing (ss 94F, 94G) although these are constrained by the operation of State Environmental Planning Policy – Affordable Housing (SEPP 70), discussed below.

In addition, the EPAA provides for planning authorities to enter into planning agreements with developers to collect contributions for any public purpose, including “the provision of (or the recoupment of the cost of providing) affordable housing” (s 93F (2)(b)). The provisions, which were inserted into the Act in 2005, provide a transparent framework for the use of planning agreements (including requirements for public exhibition) and the capacity to register an Agreement with the Registrar-General and thereby bind successors in title to terms of the Agreement. Agreements must be voluntary and a planning authority cannot require an applicant to enter an agreement as a condition of making an application or of development consent. However, when determining an application, a planning authority is to take into consideration any relevant planning agreement. Significantly, the legislation provides for planning agreements to be negotiated at the rezoning, as well as the development application stage.

Planning NSW provides [practice notes](#) (including a template planning agreement) and information on changes to [public notice requirements](#) for planning agreements. [Canada Bay](#), [Randwick](#) and [Burwood](#) Councils have planning agreement policies which have been used to facilitate affordable housing projects.

The Act provides for three levels of planning: State, regional, and local. While councils have the primary responsibility for preparing and implementing local plans, they must do so within the policy and statutory framework established by State and regional environmental planning instruments.

State planning

State Environmental Planning Policies

State Environmental Planning Policies (SEPPs) relate to matters of significance to NSW, and affect local planning in two main ways. SEPPs may specify directions about the content of local plans (either Local Environmental Plans or Development Control Plans, discussed below). For instance, they could enable or require certain local government areas to include particular housing related provisions in their local plans. SEPPs may also contain directions about the way in which particular types of developments are to be assessed – for instance, matters to be considered or special consultation procedures to be followed.

For further information on SEPPs see:

www.planning.nsw.gov.au/planningsystem/sepp.asp

SEPPs of particular relevance to housing currently include:

- State Environmental Planning Policy (SEPP) 10: Retention of Low Cost Rental Accommodation

This policy aims to retain existing sources of low-cost accommodation (boarding houses, hostels and low-cost rental dwellings), within the Greater Metropolitan region of Sydney, Newcastle and Wollongong. The policy requires the consent of the relevant council and the concurrence of the Director-General of Planning for the demolition, change of use, alteration and strata subdivision of boarding houses and the alteration and strata subdivision of low-rental residential flat buildings. Where consent is granted, mitigation strategies to address the impact of the loss of low-cost housing are often required.

- State Environmental Planning Policy (SEPP) (Seniors Living) 2004

This policy aims to ensure a sufficient supply of accommodation for older people and people with a disability by relaxing local residential development controls, subject to strict locational and design criteria to ensure that such housing is of a high quality, well located, and consistent with the character and feel of local neighbourhoods.

- State Environmental Planning Policy (SEPP) 9: Group Homes

This policy aims to ensure a sufficient supply of supported accommodation by making group homes permissible in residential areas subject to controls contained within the policy.

- State Environmental Planning Policy (SEPP) 21: Caravan Parks

This policy ensures that development consent is required for new caravan parks and camping grounds and for additional long term sites in existing caravan parks.

- State Environmental Planning Policy (SEPP) 36: Manufactured Home Estates

This policy aims to ensure that manufactured home estates (MHEs) are well designed and well serviced, and situated in appropriate locations. It applies to

Gosford, Wyong, and all local government areas beyond the Sydney region. The policy enables MHEs to be established on land where caravan parks are permitted, subject to criteria relating to location, access and the provision of services. The SEPP also permits, with consent, the subdivision of estates by community title or by lease up to 20 years. There is provision for a Council to be excluded from the SEPP if their LEP is consistent with the Section 117 Direction on Manufactured Home Estates and Caravan Parks (see below).

- State Environmental Planning Policy (SEPP) 53: Metropolitan Residential Development

This SEPP required local government within the Sydney metropolitan region to prepare Residential Development Strategies to allow additional dwellings of a suitable type to be developed within existing urban areas. The policy set out the objectives and requirements for these strategies. In developing the strategies, councils undertook housing need assessment and supply analyses for their local areas, and identified opportunities to rezone land for increased residential development. Each local residential development strategy was intended to guide development for ten years or through to 2011, until the sub regional strategy phase of the [Sydney Metropolitan Strategy](#) provides new guidance.

Residential Development Strategies differ from local housing strategies because their focus is specifically on land use planning and development, rather than the broader range of Council's housing policies and initiatives.

- State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65)

This SEPP is intended to improve the design quality of residential flat developments by introducing a series of design principles and providing for the establishment of Design Review Panels to provide independent expert advice to Councils on applications for residential flat developments. In assessing residential flat developments under the SEPP, planning authorities are required to consider Design Principle No. 9 – “Social Dimensions”, which states that: “Good design responds to the social context and needs of the local community in terms of lifestyles, affordability, and access to social facilities. New developments should optimise the provision of housing to suit the social mix and needs in the neighbourhood or, in the case of precincts undergoing transition, provide for the desired future community.”

- State Environmental Planning Policy No. 70: Affordable Housing (Revised Schemes) (SEPP 70)

This SEPP identifies a need for affordable housing in a limited number of local government areas (Willoughby, and parts of the City of Sydney) and amends relevant local and regional environmental planning instruments to enable levying of development contributions to provide for affordable housing. If these provisions were to be extended to other areas of NSW, an amendment to the SEPP would be required.

- State Environmental Planning Policy (SEPP): Major Projects

Provides a streamlined, integrated development assessment process for major projects of “State and Regional significance”. The SEPP defines certain

developments that are major projects under Part 3A of the Environmental Planning and Assessment Act 1979 and determined by the Minister for Planning. The SEPP also lists State Significant Sites.

Section 117 Directions

Also at the State level, Section 117 of the EPAA enables the Minister for Planning to make special directions about the content of Local Environmental Plans. Section 117 Directions guide local plan making by specifying matters to be addressed, included, or retained, in Local Environmental Plans. Currently there are two Section 117 Directions of particular relevance to housing. For further information see: www.planning.nsw.gov.au/planningsystem/pdf/advisorynotes/s117s-1608.pdf

Direction No. 18: Manufactured Home Estates and Caravan Parks

This Direction aims to ensure that councils retain existing zones of land that permit caravan parks, when preparing new Local Environmental Plans, and specifies additional provisions for caravan parks and manufactured home estates.

Direction No. 21: Residential Zones

This Direction contains requirements governing the creation, alteration, or removal of a residential zone boundary or provision. A central requirement is that draft local environmental plans should not reduce the permissible residential density of a zone, rather, as much as possible, provide for a variety of housing forms and increase permissible residential density of land.

Regional planning

[Regional planning](#) in NSW includes the development of strategic regional policies processes as well as formal statutory instruments. Currently each region in NSW is undergoing, or about to commence, a strategic planning process, which will have implications for the formulation of local housing policy. The Department of Planning is preparing regional strategies for the rest of NSW, including the Central Coast, Canberra Corridor, Alpine region, Hunter, Illawarra, South Coast, North Coast, Far North Coast, Mid North Coast, Riverina and Western NSW.

Metropolitan Strategy for Sydney

The [Metropolitan Strategy for Sydney](#) contains a number of housing objectives and actions of specific relevance to local government planning (see summary table below).

The Strategy requires councils to undertake a housing market demand and supply analysis to guide Local Environmental Plans, taking into account the needs of an ageing population, changing demographics and household formation, housing affordability, adequacy of supply, development economics and feasibility and market trends. The information contained in this website will assist councils in meeting these requirements.

Table: Metropolitan Strategy for Sydney: Housing Strategy for Sydney: Actions and implications for local planning

Action	Implication for local planning
C1 Ensure adequate supply of land and sites for residential development	Local councils will assist the State government in identifying appropriate opportunities for residential development in Greenfield and existing areas. Local Environmental Plans will reflect sub regional targets for housing supply.
C2 Plan for a housing mix near jobs, transport and services	Local government will be required to provide a mix of housing types and densities based on a sound analysis of housing capacity and housing needs. Councils will need to identify a range of centres and locations for additional housing. Local Environmental Plans will need to provide for an adequate amount of appropriately located housing for seniors and people with a disability. Local Councils will need to undertake a housing market demand and supply analysis to guide Local Environmental Plans, taking into account the needs of an ageing population, changing demographics and household formation, housing affordability, adequacy of supply, development economics and feasibility and market trends. Councils will need to review existing and proposed planning controls in terms of their effect on housing supply and mix. Councils will need to identify locations suitable for affordable housing projects.
C 4 Improve the affordability of housing	Local councils will be encouraged to include affordable housing in their plans, strategies, and in specific residential development schemes. The standard LEP will allow affordable housing provisions although it only makes reference to affordable housing in the dictionary section.

Regional Environmental Plans

In addition to strategic regional planning processes, many NSW regions are covered by statutory instruments that operate at the regional level. Like SEPPs, Regional Environmental Plans (REPs) affect local planning in two main ways. They may specify directions about the content of local plans (either Local Environmental Plans

or Development Control Plans, discussed below). For instance, they could specify regional housing objectives to be included in local plans. They may also contain directions about the way in which particular types of developments are to be assessed — for instance, matters to be considered or special consultation procedures to be followed.

For further information see:

www.planning.nsw.gov.au/planningsystem/rep.asp

Local planning

Local Environmental Plans

Local Environmental Plans (LEPs) are the main planning instrument at the local level. They are prepared by local Councils but must be approved by the Minister for Planning. Local Environmental Plans typically contain overall planning objectives, a system for land use categorisation such as zoning, significant development controls, and special provisions for certain developments or types of developments.

The NSW State government has recently introduced a template to standardise the format of LEPs. It is envisioned that all NSW local government areas will develop new plans in line with the template over the next five years. The template allows for a mix of types of housing in most residential and mixed-use zones. The template also allows councils to specify their own local planning objectives and provisions relating to housing.

Local Environmental Plans can be important local instruments to protect existing sources of low cost housing and promote additional affordable housing stock within an area.

Some examples:

- [Baulkham Hills LEP 2004](#) (for affordable housing in a Transit Centre development site)
- [Blue Mountains LEP 2005](#) (Part 1)
- [Randwick LEP 1998](#)
- Waverley - [Draft Bondi Junction Centre LEP 2007](#)

Development Control Plans

Development Control Plans (DCPs) contain more detailed development controls than LEPs. They are also prepared by local Councils and do not need to be approved by the Minister for Planning. Many Councils in NSW have numerous DCPs to address specific issues. In future, such controls will need to be consolidated within a single plan for each area. There are opportunities for local councils to use DCPs to promote affordable housing within their area, as discussed further below.