

Planning Mechanisms for Affordable Housing

The land use planning framework can provide important support for the implementation of a local housing strategy. This section looks at how it can be used specifically to protect and promote affordable housing. It identifies and explains the range of planning mechanisms that are available for use in NSW under current and proposed planning legislation and policy, although not all mechanisms are appropriate for every local community.

The following explanatory notes will be particularly useful for kit users who are seeking guidance on planning approaches that can be used to address affordable housing and who would like more technical detail on the planning mechanisms currently available to NSW local governments.

This section also includes a table of concrete examples of ways in which specific planning approaches have been used in some Council areas to achieve housing outcomes.

Planning for affordable housing

Councils may need to adopt specific planning approaches for affordable housing. For instance, the need for additional sources of affordable housing may be indicated in your housing markets study, or your local housing objectives may include a commitment to retaining affordable housing opportunities as a way of ensuring a sustainable, inclusive community. Where a housing market analysis indicates a very high need for new affordable housing supply, the following sorts of approaches can contribute to addressing this need, complementing housing assistance strategies of other levels of government.

Planning approaches for affordable housing may be conceptualised along a spectrum, involving:

- planning to protect existing sources of affordable housing which may be at risk due to redevelopment;
- planning to promote new affordable housing; and
- in some cases, using the planning system to generate or produce new sources of housing, affordable to low and middle income groups.

Protecting existing sources of affordable housing

All local government areas will have a supply of existing affordable housing that plays a valuable role in meeting current housing needs and supporting social and economic diversity. This may include low-cost rental flats, boarding houses, hotel accommodation, shop top apartments and caravan parks. Frequently there will be pressure to redevelopment such housing or upgrade stock to provide a higher standard of accommodation and house a different client group. This is particularly so when there is a clear need to improve the housing quality and amenity of decaying residential areas through urban renewal strategies. Protecting these existing sources of affordable housing in the face of market pressures can be a considerable challenge for local government. However, because urban renewal frequently involves significant private sector interest and investment, there are often opportunities to retain and even create new affordable housing options through the planning process.

Planning mechanisms to protect existing supplies of affordable housing can also target incremental processes of change that may cumulatively reduce the overall availability of particular housing types. Mechanisms to protect stocks of lower cost housing that are currently available to local governments in NSW include:

- Ensuring planning instruments contain an overall planning objective to retain or protect existing sources of affordable housing, and to require impact mitigation strategies where the supply of affordable housing is threatened by development. Randwick Council has introduced such an approach.
- Requiring social impact assessments to be conducted for development that could threaten the existing supply of affordable housing (building on the provisions of Section 79C of the Act). Hastings Council has introduced such an approach.
- Introducing specific controls to preserve particular types of housing stock that may be threatened. For instance, in 2004 Gosford City Council introduced controls to protect caravan parks, camping grounds and manufactured home estates from development that could reduce the supply of low-cost accommodation in the area.
- Ensuring that existing State controls under SEPP 10 are used effectively. This could include training to assist staff to recognise and assess an application that may trigger SEPP 10. For example, Ashfield Council has prepared a “SEPP 10 manual” to guide their staff in assessing SEPP 10 applications. Waverley and Randwick councils reinforce the provisions of SEPP 10 within their LEPs. Other councils could use this approach to address any local contextual issues that might reduce the effectiveness of the policy.

With each of these options it is critical for councils to have accurate and up-to-date information about existing affordable housing stock within their areas. This information is necessary for development assessment officers to identify applications that may threaten sources of affordable housing, and to assess the potential impacts of this for residents in housing need.

Promoting new sources of affordable housing

Promoting new sources of affordable housing means encouraging provision through the private market of housing options that are more likely to meet the needs of low-to moderate-income households now and in the future.

Opportunities to promote new sources of affordable housing through the planning system include:

- Ensuring planning instruments contain overall planning objectives to promote affordable housing. Such objectives are legally useful and provide a basis for councils to encourage applications that contribute to affordable housing or housing choice within an area.
- Facilitating the supply of appropriately zoned residential land, to avoid artificial supply constraints that may affect the cost of housing, by identifying potential housing opportunities such as un-utilised or under-utilised land, areas in need of urban renewal or upgrading, or vacant sites in public ownership. Such land may need to be rezoned for residential development or development at a higher density. Land that is well located in relation to transport and services is a priority.
- Ensuring that zone and locality provisions are sufficiently flexible to promote new affordable housing opportunities. In general, it is desirable to permit

affordable housing types in as many parts of the LGA as possible, subject to appropriate locational considerations. For instance, some councils use mixed use zones to provide more affordable housing opportunities near places of employment that may be of lower residential amenity (therefore less expensive) but well located. It may be necessary to amend planning instruments to ensure they make reasonable provision for the development of affordable housing types, like boarding houses or manufactured home estates, in as many residential and mixed use areas as possible.

- Councils could choose to explicitly permit the conversion or adaptation of appropriate existing dwellings for use by dependent family members as a form of supported aged housing or for adult children. Adapting existing dwellings to enable cohabitation, particularly by seniors, can also contribute to the supply of affordable housing choice within an area. Such approaches make better use of existing housing stock without the need for wholesale redevelopment. For example, [Parramatta Council](#) permits the creation of 'granny flats' in residential zones.
- In some cases, it may be appropriate to reduce excessive development controls that result in housing types that are unaffordable. These controls could relate to housing density, lot size, the size and type of building, materials and finishes. Detailed strategic planning assessment of regulations relating to particular areas is required to support a decision to amend development controls. In some cases, variations on certain controls may be considered for specific types of developments or for certain affordable housing developers. For instance, the [Blue Mountains Local Environmental Plan 2005](#) and the accompanying [Better Living Development Control Plan](#) contain some special provisions for social housing providers who are developing accessible housing (that which is intended to be used permanently for older people or people with a disability).
- Introducing requirements for diverse housing forms. For instance, Leichhardt Council enforces mandatory requirements for diverse multi-unit configurations; and the Blue Mountains has developed specific [development controls](#) for accessible housing, including residential care facilities, hostels, or groups of two or more self contained units intended to be used for older people or people with a disability. These controls include requirements to ensure that such housing is fully adaptable.
- Introducing planning incentives for diverse housing types or for affordable housing. For instance, Waverley Council encourages shop top or mixed commercial / residential developments through floor space incentives.

Producing new affordable housing

Opportunities to produce new affordable housing include planning mechanisms that directly result in the construction of, or dedication of, funds or land for housing that will be targeted for low- to moderate-income earners generally to rent.

Opportunities to directly produce new affordable housing through the planning system in NSW are currently limited, but it is possible to use housing incentives to generate funds for new affordable housing, or reach a planning agreement with developers over specific developments or for certain sites:

- Planning incentives or concessions to generate new affordable housing stock or funds to produce affordable housing can be introduced to local planning schemes under current legislative provisions. For instance, Waverley Council

affordable housing component on site or as a financial contribution. For such incentives to be successful, a council would need to have some fixed planning requirement (i.e. a “non discretionary” development control or standard) that can nevertheless be varied in return for a contribution to affordable housing. Examples of standards include floorspace ratios, height limits, landscaping, parking or open space requirements. It is more difficult to offer an incentive where the standards in a scheme are “performance based” (for example where controls rely on discretionary interpretation of impact on amenity). In all cases, planning concessions are only appropriate when it can be demonstrated that the development will not compromise the overall planning standard or reduce local amenity. Waverley Council addresses this issue by specifying strict design criteria. Such provisions usually operate by calculating the financial value of the incentive and sharing this between the developer and council, which receives a financial or in kind contribution towards the provision of affordable housing.

- Under State Environmental Planning Policy No 70: Affordable Housing (Revised Schemes), some identified local government areas are able to implement mandatory requirements for developers to contribute to affordable housing. These include Willoughby and City of Sydney (Green Square and Ultimo/Pymont).
- There are possibilities to generate voluntary contributions to finance or produce affordable housing stock through planning (or developer) agreements. Planning agreements to provide affordable housing are sometimes reached between councils and developers and operate as a legal contract. The Environmental Planning and Assessment Amendment (Development Contributions) Act 2005 which came into effect in July 2005 provides a legislative process for this approach and added means to enforce the provisions of any agreement against any future owner.
- A council could signal an intention to seek affordable housing contributions when land is rezoned. Willoughby Council currently considers the need for land that is proposed to be re-zoned to provide housing for special needs groups and the impact of the rezoning on the existing and likely future mix of housing stock in Willoughby. Where a need to offset any increased housing need is identified, the council seeks contributions to provide new housing for special needs groups. Randwick Council has used its Local Environmental Plan 1998 to make affordable housing a consideration for master plan development applications. This approach could be used by other councils as a way of supporting negotiations for developer agreements to provide for affordable housing.

Securing housing as affordable in perpetuity

When councils become involved in generating more affordable housing, consideration will need to be given to how that housing will be retained as affordable housing, and for how long. There is no single method for securing affordable housing. The approach that is chosen will depend on a range of factors such as whether the property is for rent or sale; for rented properties, who owns the dwelling (e.g. private owner, council, or a not for profit owner); whether government subsidies have been used and what conditions apply with these; and how much discount is being offered.

The following examples illustrate some of the main issues to be considered depending on the project.

Example 1:

If a house is sold at a discount price it will be desirable to prevent the initial buyer making a windfall gain by on-selling the property at a higher price. Typically this will require the sponsor of the project to place a covenant on the title of the property, which sets the conditions for resale. As a guide, the duration of these conditions should be proportionate to the amount of benefit that has been gained by the buyer. So, for example, if a buyer has received an estimated 20% discount on price, consideration needs to be given to the period of time over which this benefit would be amortised. A typical form that a restriction could take would be to require a resident who is selling to pay the project sponsor a nominated share (e.g. 50%) of any capital gain that they achieve. There could also be other conditions, such as to give the sponsor first right of refusal to buy back the property.

Example 2:

If an affordable rental dwelling is created through a planning scheme Council will need to develop policy for setting the rent cap to apply to the property and monitor the implementation of this over time. If only a few properties are produced this can be an administrative burden. Alternatively, council could encourage the producer of the housing to grant a long term lease on the property (say 10 years) to a community housing provider. Community housing providers operate under policy and regulatory arrangements managed by the Office of Community Housing. These arrangements aim to ensure that housing is allocated to people in need at rents that are affordable to them. Councils that own their own housing could also consider using local community housing providers to manage that housing. In such cases, council can negotiate conditions to apply to the management of their properties - such as target groups to be allocated tenancies and rent setting – and set these conditions out in a Management Agreement with the tenancy manager.

The [Centre for Affordable Housing](#) can provide more advice on these issues.

Selecting planning mechanisms

The following table summarises the range of planning approaches protecting, promoting or producing affordable housing that may be considered by local councils in developing their housing strategies. While it is not suggested that all of the available approaches should be pursued at the same time, many are complementary. For instance, ensuring that LEP (and DCP) objectives consistently refer to the retention and promotion of affordable housing is important to support other approaches, such as requiring a social impact assessment for certain types of developments, or seeking a planning agreement for contributions for affordable housing.

Table: Potential planning approaches for local housing strategies

Planning objective	Approach	Local context	Example
A. Protecting existing sources of affordable and appropriate housing	LEP / DCP contain specific objectives to retain existing sources of affordable housing	Metropolitan & high growth coastal communities	
	Requirement for social impact assessment / impact mitigation strategies to accompany development proposals that may impact on the availability of affordable housing or housing for special needs groups	Metropolitan and high growth coastal communities	Hastings Council
	Specific controls to protect particular types of stock from redevelopment	Metropolitan and high growth coastal communities	Waverley Council, Gosford Council
B. Promoting housing diversity and affordability	LEP / DCP contain specific objectives to promote affordable housing	All	Marrickville Council, Randwick Council
	Facilitate supply of residential land by identifying potential new housing opportunities and rezoning to permit residential development or development at a higher density	Metropolitan & high growth communities (subject to environmental constraints)	
	Ensure zones / development controls sufficiently flexible to permit affordable and diverse housing types	All	Marrickville Council
	Explicitly permit the conversion / adaptation of existing housing for dependent family members or for seniors' "co-housing"	All	Parramatta Council
	Requirements for diverse housing forms (such as smaller and larger dwellings, adaptable or accessible dwellings, and dwellings appropriate for seniors)	All	Leichhardt Council (drop down box) Blue Mountains Council
	Planning incentives for diverse housing types such as shop top housing	High value inner metropolitan	Waverley Council

		suburbs	
C. Producing affordable housing	Planning incentives to generate contributions for new housing stock	Very high value inner metropolitan suburbs and high growth coastal communities	Waverley Council
	Mandatory requirements for developers to contribute to affordable housing	Very high value inner metropolitan suburbs and high growth coastal communities	Willoughby Council (NB: Supported by SEPP 70)
	Planning agreements	Redevelopment and greenfield areas	
	Signal intention to seek affordable housing contributions when land is rezoned.	High value inner metropolitan areas, outer metropolitan growth areas, high growth coastal communities	Willoughby Council

Examples of how different councils are using planning mechanisms to meet housing objectives

A. Protecting Existing Sources of Affordable and Appropriate Housing

- Hastings Social Impact Assessment Policy illustrates the requirement to undertake social impact assessment for applications that might affect supply of or demand for affordable housing.

Hastings Council requires a Social Impact Study to be prepared for rezonings / Draft LEPs / Environmental Studies relating to residential and rural residential rezoning, any other rezoning proposal which may cause positive or negative social impacts, and all environmental studies undertaken as part of a draft LEP process. Social Impact Studies must also be submitted by applicants for a range of matters, including:

- potential displacement of either permanent or holiday accommodation for lower income people
- housing for older people or people with a disability
- caravan parks and mobile home parks
- tourist facilities with a value in excess of \$2 million.

The policy includes a range of social impacts and issues to be addressed by the applicant (which could include the Council itself). Council has prepared a guide to preparing a social impact study. The specific requirements for the Study are determined in consultation with Council planners.

- This excerpt from the Waverley Local Environmental Plan 1996 provides an example of reinforcing the provisions of SEPP 10 in LEP :

S 18 Affordable rental housing:

(1) In this clause, low-rental residential flat building means a residential flat building containing a low rental dwelling.

For the purposes of this subclause, a reference to a low-rental dwelling is a reference to a dwelling that (at any time in the 24-month period prior to the lodgement of a development application to which this clause applies) was let at a rental not exceeding the median rental level for that time:

(a) specified in the Rent Report or Rent & Sales Report NSW published by the Department of Urban Affairs and Planning or the Department of Housing, or

(b) specified in a publication issued in place of those publications by or on behalf of the Government,

in relation to a dwelling of the same type, having the same number of bedrooms and located in the Waverley local government area.

(2) A low-rental residential flat building includes a building:

(a) that, at the time of lodgement of a development application to which this clause applies, is lawfully used as a low-rental residential flat building, irrespective of the purpose for which the building may have been erected, or

(b) that was used as a low-rental residential flat building but has been changed unlawfully to another use, or

(c) that is vacant but the last significant use of which was for a low-rental residential flat building.

(3) Development consent is required from the Council for development affecting a low-rental residential flat building, when such development involves the following:

(a) the demolition of the building, or

(b) a new use of the building.

(4) When assessing a development application required by subclause (3), the Council must consider:

(a) whether there is likely to be a major reduction in the number of households or units of low-rental accommodation on the land to which the application relates,

(b) whether there is available sufficient comparable accommodation in the locality to satisfy the demand for such accommodation in that locality,

- (c) whether the development, if carried out, is likely to cause adverse social and economic effects on the general community,
- (d) whether adequate arrangements have been made to assist the residents (if any) of the building likely to be displaced to find alternative comparable accommodation in the locality,
- (e) whether the cumulative impact of the loss of low-rental residential accommodation in the Council's area will result in a significant reduction in the stock of that accommodation,
- (f) the structural soundness of the building, the extent to which the building complies with any relevant fire safety requirements and the estimated cost of carrying out work necessary to ensure the structural soundness of the building and the compliance of the building with the fire safety requirements.

For the purposes of this subclause, comparable accommodation means accommodation that is comparable with other accommodation provided within the premises the subject of the development application in that:

- (a) it is similar in location because it is in the same or a neighbouring suburb, and
- (b) it has equivalent access to similar services and facilities, and social and support networks, and
- (c) it is at the same rental level, or is not more than 5% higher than that level, and
- (d) it is available for occupation at the date of lodgement of the development application, and
- (e) in the case of residential flat buildings, comprises dwellings with the same number of bedrooms, and
- (f) it has a like standard of accommodation, including state of repair, size of accommodation and general amenity.

- The Gosford Planning Scheme Ordinance illustrates measures to retain Residential Parks :

New Clause LEP 443 27/02/04 : Caravan parks and camping grounds

(2) The objectives of this clause are to:

- (a) ensure the social and economic wellbeing of residents of caravan parks and manufactured home estates at risk of displacement due to redevelopment of caravan parks and manufactured home estates, and 72
- (b) encourage the retention of caravan parks and other forms of low-cost accommodation on certain land in the Gosford local government area, and
- (c) prevent development which would result in a loss of low-cost accommodation on that land unless sufficient comparable accommodation is available elsewhere in the Gosford local government area.

(3) This clause applies to a development application for the carrying out of development on land to which this clause applies for a purpose other than:

- (a) a caravan park, or

- (b) a camping ground, or
- (c) a manufactured home estate, or
- (d) a public utility undertaking, or
- (e) development that is ancillary to a caravan park, camping ground, manufactured home estate or public utility undertaking.

(4) Notwithstanding any other provision of this Ordinance, the consent authority must not grant consent to a development application to which this clause applies unless it has taken into account the following matters in deciding whether or not to grant consent to the application:

- (a) whether the proposed development is likely to reduce the availability of low-cost accommodation on the land to which the development application relates,
- (b) whether there is sufficient available comparable accommodation in the Gosford local government area to satisfy demand for such accommodation in that local government area,
- (c) whether the development, if carried out, is likely to cause adverse social and economic effects on the people who live on the land the subject of the application (if any), or on the general community,
- (d) whether adequate arrangements have been made to assist people who live on the land the subject of the application (if any), to find alternative comparable accommodation in the Gosford local government area,
- (e) whether the cumulative impact of the loss of low-cost accommodation in the Gosford local government area will result in a significant reduction in the stock of that accommodation.

(5) The consent authority must not grant consent to a development application to which this clause applies unless satisfied that accommodation is available in the Gosford local government area that:

- (a) is sufficient to accommodate the maximum number of people capable of being accommodated by existing development on that land the subject of the development 73 application at any point in the 12 months preceding the commencement of Gosford Local Environmental Plan No 443, and
- (b) is comparable to the accommodation that was provided on that land in relation to price, facilities, services and type of tenure.

(6) This clause ceases to have effect two years from the date on which it commenced.

(7) In this clause:

manufactured home means a self-contained dwelling (that is, a dwelling that includes at least 1 kitchen, bathroom, bedroom and living area and that also includes toilet and laundry facilities), being a dwelling:

- (a) that comprises 1 or more major sections that are each constructed, and assembled, away from the manufactured home estate and transported to the estate

for installation on the estate, and

(b) that is not capable of being registered under the Road Transport (Vehicle Registration) Act 1997, and includes any associated structures that form part of the dwelling. *Manufactured home estate* means land on which manufactured homes are, or are to be, erected.

B. Promoting Housing Diversity and Affordability

- The Leichhardt Local Environmental Plan 2000 illustrates mandatory requirements for diverse multi-unit housing configurations:

S6) Diverse housing

Consent must not be granted for development that will provide 4 or more dwellings, unless it provides a mix of dwelling types in accordance with the following Table, to the nearest whole number of dwellings:

Table:

Dwelling type	Percentage to be provided
Bedsitter or one bedroom dwelling	Minimum 25%
Three or more bedroom dwelling	Maximum 30%

- Waverley Local Environmental Plan 1996 illustrates the use of incentives for shop top / mixed commercial / residential housing.

S 27 Floor space ratios

(1) This clause applies to buildings used for non-residential purposes or for mixed development, but does not apply to buildings in the Bondi Beach Precinct.

(2) Except as provided by subclause (3), the floor space ratio of a building erected or to be erected on land within a zone specified in Column 1 of the Table to this clause must not exceed the ratio specified opposite that zone in Column 2 of that Table.

(3) If residential accommodation is or will be provided in a mixed development:
(a) at a level above a ground floor shop or commercial premises, or
(b) in a hotel or motel,

the floor space ratio of a building erected or to be erected on land within a zone specified in Column 1 of the Table to this clause may exceed the floor space ratio specified in Column 2 by the amount specified in Column 3 of that Table. The additional floor space allowed by Column 3 of the Table may be used only for the purpose of residential accommodation forming part of a mixed development.

Column 1 Zone 1	Column 2 Maximum Floorspace Ratio	Column 3 Additional Floorspace Ratio
3 (a)	1:1	1:1
3 (b)	1:1	0.5:1
3 (c)	0.5:1	0.5:1

C. Producing New Affordable Housing

Waverley

The Waverley Council Development Control Plan 1: Multi-Unit Housing illustrates the use of planning incentives to receive developer contributions for affordable housing.

Under this policy, a variation in recommended planning guidelines, such as a floor space bonus, may be granted where the applicant provides affordable housing to Council.

Additional affordable housing floor space ratio is restricted to 15% above the base standard ratio, although each case is considered on its merits (the standard may be exceeded in some cases). Strict design criteria apply and the Council has identified acceptable design solutions to achieve additional density for affordable housing.

Willoughby

The Willoughby DCP came in to force in 2006 and consolidates all Council's existing DCPs into a single document, replacing all previous DCPs. Part G7 "Willoughby Local Housing" contains the original Willoughby Development Control Plan No. 23 provisions, which signalled the intention to include an affordable housing component when rezoning :

The Willoughby Housing Program

Although this is prefaced by an inclusionary zoning scheme underpinned by SEPP 70, in principle it could still be used by another council to signal their attitude to rezoning – and perhaps their intention to seek a developer agreement.

"Therefore before resolving to rezone land within Willoughby City, Council should take into consideration the following:

- The need for the proposed rezoning to provide housing that meets the requirements of special needs housing groups;
- The impact of the proposed rezoning on the existing housing within the City of Willoughby for special needs housing groups; and
- The impact of the proposed rezoning on the existing mix and likely future mix of residential housing stock within the City of Willoughby".

(pg. G46)

Voluntary Planning Agreements

The Environmental Planning and Assessment Amendment (Development Contributions) Act 2005 provides for the use of planning agreements, which may be applied for affordable housing purposes.

Resources:

Planning NSW provides an overview, practice notes and a template planning agreement:

> Practice Notes and Template Planning Agreement

- > Changes to the public notice requirements for planning agreements

Some examples of planning agreements policies:

- > Canada Bay Planning Agreements Policy
- > Randwick Council Planning Agreements Policy
- > Burwood Planning Agreements (Planning Agreements Policy 2005)