



17 October 2023

Ms Sandy Chappel
Director Housing Policy
Department of Planning and Environment
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Dear Sandy

SSROC Submission: Draft Housing Sepp - Social And Affordable Housing Reforms

The Southern Sydney Regional Organisation of Councils (SSROC) appreciates the opportunity to comment on planning reform proposals included in the [draft SEPP Amendment \(Housing\) , Regulation](#) and [Practice Note for In-fill Affordable Housing](#) based on the Department's email of 27/9/23.

SSROC is an association of twelve local councils in the area south of Sydney Harbour, covering central, inner west, eastern and southern Sydney. SSROC provides a forum for the exchange of ideas between our member councils, and an interface between governments, other councils and key bodies on issues of common interest. Together, our member councils cover a population of about 1.8 million, one third of the population of Sydney, including Australia's most densely populated suburbs. SSROC seeks to advocate for the needs of our member councils and bring a regional perspective to the issues raised.

Fundamentally SSROC believes the proposal requires much more dialogue with those most affected who will live with the results of the policy change. Consequently, SSROC requests a formal public exhibition process, prior to finalizing the reforms.

To this end, the SSROC Secretariat has been in discussions with officers of PIA NSW and LGNSW to examine and better understand the detail of the proposal to resolve the real-life challenges of the 30:30:15 Housing SEPP changes to deliver fairer and better outcomes for our communities.

We consider this dialogue and future public consultations can build trust and the necessary social license required to gain widespread support. A better understanding of the cumulative impacts of the new measures can then inform critical modifications and improvements that will minimise unintended consequences and optimise positive long run outcomes for communities.

This should, if adopted, enable more diverse market and affordable housing to be built faster than the policy proposal presented. The current proposed measures without the adjustments recommended have the risk of concentrations of un-coordinated, upscaled residential developments seriously tarnishing our planning system's reputation to deliver well considered outcomes and damaging public confidence in its ability to deliver for communities.

Firstly, the new planning measures need to recognise the value and spatial intent of existing masterplans (and those under development) that coherently incorporate well located housing growth into planned precincts that have already achieved community and government support.

Key among our criticisms of the new measures is that they do not adequately respond to the pressing demand for affordable housing and its need to be long term and enduring.

The current proposed measures provide a one-off boost to affordable housing that will be short lived. For example, a 55 year-old single woman experiencing or at risk of homelessness will be become potentially homeless again at 70 under a 15-year time limited affordable housing. This would be an exceedingly poor outcome. Greater attention is urgently needed to connect and transition this in-fill policy measure to existing State policy of encouraging affordable housing contribution schemes.

For coherence and simplicity our recommendations strongly reflect those being formulated by PIA NSW.

SSROC supports the intent to increase the availability of affordable housing but finds the proposed reforms would not be sufficiently effective in achieving this outcome – nor deliver a broader lasting community benefit.

SSROC recommends that the Department redesigns the reform package with broader stakeholder engagement with a view to:

- better integrate density bonuses with other policies to promote the long-term growth of affordable housing stock;
- reduce the risks of unintended consequences for amenity, living conditions and infrastructure;
- adopt accountability and governance arrangements for the delivery of affordable housing units – in perpetuity; and
- consider the specific recommendations to improve the scheme design proposed in this submission.

The current reform package represents a set of potentially useful tools that need further work to ensure a net community benefit is delivered. SSROC supports the refinement of a floorspace incentive tool for affordable housing - working alongside the long-term delivery of affordable housing via contribution schemes.

The application of affordable housing planning tools to different places should be guided by regional strategic plans. The focus is ensuring that the package strikes the right balance between the costs and benefits of development bonuses and other incentives for affordable housing.

As an extension of our involvement with the affordable housing project work of Resilient Sydney, SSROC would be pleased to contribute not only to the further development and integration of the proposed reforms – but also the shaping of a clearer strategic narrative on the more inclusive growth of our cities and regions.

Our recommendations are listed in **Attachment A**.

SSROC member councils cover a large portion of Greater Sydney and have a direct interest in supporting and advocating for changes to improve and sustain place-making and deliver higher residential amenity.

In order to make this submission within the short timeframe, it has not been possible for it to be reviewed by councils or to be endorsed by the SSROC. I will contact you further if any issues arise as it is reviewed. If you have any queries, please do not hesitate to contact me or Mark Nutting, SSROC Strategic Planning Manager on 8396 3800 or by email at ssroc@ssroc.nsw.gov.au.



Thank you for the opportunity to provide a submission. SSROC looks forward to participating in further consultations.

Yours sincerely

A handwritten signature in black ink that reads "H Sloan".

Helen Sloan
Chief Executive Officer
Southern Sydney Regional Organisation of Councils

ATTACHMENT A – DETAILED RECOMMENDATIONS

SSROC recommends:

1 Achieving affordable housing together with broader strategic outcomes

1.1 Exhibiting a refined affordable housing package alongside the exhibition of the next tranche of region and city strategies for NSW.

1.2 Setting out the means of integration of the suite of measures to boost affordable housing provision (including density bonus, assessment pathway reforms and affordable housing contribution schemes in a coherent affordable housing package).

Comment

Affordable housing density bonuses need to be shaped into a fair deal that gives attention to how and where the bonuses apply in specific places.

SSROC supports the long-term growth in the supply of affordable housing beyond what a ‘one use only’ incentive bonus reform can deliver. This is why the widespread adoption of a mandatory inclusionary rezoning model has a greater ongoing role – to create a ‘superannuation’ scheme for the sustained supply of affordable housing in perpetuity (see [SGCH 2023 report](#)).

SSROC expects the next tranche of region and city plans to set the spatial outcomes and demonstrate how specific planning tools including affordable housing bonuses and inclusionary zoning will contribute together to more socially sustainable growth. At present stakeholders are being asked to comment on planning reforms in the abstract.

An improved and more adequate the consultation process

2 Undertaking a formal exhibition process which includes details of viability modelling, key uptake assumptions and explicit statement of intended policy outcomes – as input to a supporting Regulatory Impact Statement.

Comment

There is no formal exhibition period for the draft Practice Note or the draft Housing SEPP. The Department advises that the reforms will ‘more than likely’ be introduced in November 2023.

All of the issues should be open to scrutiny via an open exhibition process informed by a Regulatory Impact Statement and assisted by the publication of an explanation of intended effects.

The inadequacies of the consultation process exposes the public to substantial risks and costs. Many of these risks can be mitigated by this submission’s recommendations.

More clarity in policy outcomes to enable scheme review and improvement

3.1. Providing more explicit communication of intended qualitative and quantitative outcomes of the policy package to enable program review.

Refining scope for self-assessment and State Significant Development Assessment Pathways

3.2. The threshold for SSD be raised to only include very high value, unique or complex projects which achieve a significant affordable housing bonus.

Comment

Regarding 3.1, without communicating how many affordable units per year and how much additional housing floorspace, it is difficult for councils to undertake integrated infrastructure and service planning – and also consider whether alternative policies could achieve a better result.

Regarding 3.2, SSD pathways do not explicitly address Council DCP controls. These should not be discounted where they are relevant to achieving adopted strategic outcomes. Typically, local strategic planning and master planning address the cumulative impacts of local development through integrated infrastructure planning and development control plans.

There is a risk that making a large number of applications SSD will challenge state assessment resources which already often take 9 months for a determination.

There is a risk that requiring an EIS SSD approach for straightforward assessment will both clog up assessment efforts and erode the specific role of an EIS to consider complex and distinct projects.

Build to rent housing not in commercial cores

4 No residential development (including build to rent) be permissible in B3 Commercial Core.

Comment

Because Build to Rent (BTR) is another form of residential development and does not offer a specific public benefit in the form of affordable housing. It should not receive a windfall gain by being permissible in commercial core areas nor erode the business and employment function of these strategic areas. Commercial cores have been identified based on strategic planning.

Improving design of the '30/30/15' affordable housing incentive mechanism

SSROCs submission focuses on the '30/30/15' proposal for a potential 30% residential floor area bonus and 30% height bonus where affordable housing is delivered (15% by residential floor area for only 15 years). The density and height bonuses are understood to apply to both residential flat building and shop top housing development in zones where these are permissible within 800m of a station or 400m of a bus stop. However, only the density bonus (additional floorspace - not height bonus) applies to other residential development types listed in draft Section 15B of the proposed SEPP amendment (e.g., dwelling houses, dual occupancies, terraces and manor houses).

Gaining a net community benefit from affordable housing density/height bonuses

5.1. Publishing an assessment of the benefits and disbenefits of the bonus floorspace provisions to enable stakeholders to contribute to refinement of the policy package to achieve a larger net community benefit.

5.2 Establish continuous improvement processes for the '30/30/15' reforms – including monitoring and reappraisal of the relative percentage bonuses, typologies and timing – alongside assessment of strategic outcomes and the externalities.

Comment

It is essential that the policy package clearly state the scale, nature and longevity of affordable housing stock to be delivered under the Housing SEPP proposals. The amount of available affordable dwellings is a key metric for evaluating scheme performance – against other potential community costs and benefits.

The aim of the reform to promote the delivery of affordable housing is strongly supported. However, there is insufficient evidence presented to determine whether the proposed statewide '30/30/15' mechanism would be effective.

Ensuring the development bonus of additional floorspace and height incentivise new development

5.3 *In order to monitor and adjust scheme take up, SSROC recommends publishing the accrued amount, timing and location of affordable housing made available through the bonus scheme alongside additional residential floor space generated.*

Comment

Without access to modelling, it is not clear whether the State is offering too great a windfall as an incentive to achieve the unstated quantitative policy outcomes. An excessive windfall can come at a community cost in terms of unplanned infrastructure demands and potential losses in amenity.

Avoiding risks and potential perverse outcomes from applying the '30/30/15' reforms generically

5.4 *Excluding the operation of the '30/30/15' schemes from areas where councils have recently prepared master plans – or will adopt planning proposals based on master plan controls aligned with regional strategy.*

Comment

This recommendation would help to accelerate the delivery of housing.

The proposed mechanism has unfortunately been offered in advance of a spatial context provided in regional or local strategic plans. The location of the incentives on residential / mixed use lands within 800m of rail stations and 400m of bus stations is a generic attempt at targeting the mechanism where there is the greatest potential for the sites to be suitable in terms of accessibility – but does not respond to other key factors that influence site capability for density and height such as traffic and parking or other cumulative impacts on local development capacity or amenity.

Councils will be aware of local capacity constraints for urban density and will consider the impact of the additional density bonus floorspace and height on net loss of existing affordable housing as well as cumulative impacts (e.g., traffic, parking, heritage and infrastructure capacity) when developing masterplans. They may consider compensating for the potential 30% uplift by a corresponding downzoning of some planning controls in transit precincts.

Masterplans enable these issues to be managed by respecting the local spatial knowledge of councils and balancing this with regional strategic planning directions.

Avoiding risks of using clause 4.6 to vary floor space bonus relative to affordable housing dedication

5.5 *SSROC recommends excluding floorspace/height bonuses over 30% from being 'a non-discretionary development standard' that is able to be varied.*

5.6 *SSROC recommends excluding provision of less than 15% of affordable housing floorspace from being a 'non-discretionary development standard' able to be varied.*

5.7 *SSROC recommends further work be undertaken to design an alternative mechanism than Clause 4.6 to manage desirable adjustments to the scheme consistent with stated strategic planning outcomes.*

5.8 *SSROC recommends exploring opportunities for monetary contributions in lieu - to both reduce the need to use development standard variation mechanisms and to potentially improve integration of the scheme with affordable housing contribution mechanisms. This would require legal resolution as it would bring aspects of the '30/30/15' scheme into a contributions plan governed by other powers in the EP&A Act.*

Comment

It will be difficult to achieve exact whole numbers of affordable housing units generated in proportion to an anticipated 30% floor space bonus. For example, it would be undesirable to

achieve say 10% affordable housing floorspace for say a 40% floor area bonus. The risks of CI 4.6 being manipulated unfairly will increase without clear strategic guidance.

Clause 4.6 is likely to be used extensively to adjust the application of the scheme. This is an unnecessarily complicated use of an unsuitable tool. It will probably send more applications to panels and this will result in a further layer of assessment.

Potential imbalance between value of bonus and the value of dedicated affordable housing

5.9 The desired quantity and longevity of affordable housing supply should be published along with modelling to monitor performance of this key policy outcome.

5.10 Establishing affordable housing availability metrics (amount / typology/ location / longevity) for regular monitoring using existing data platforms such as the Metropolitan Development Plan.

Comment

SSROC asks the Department to make available modelling to interrogate the value and externalities of the development incentives offered and the value of affordable housing delivered in different settings and for 15 years versus perpetuity. A metric could be devised for accounting affordable housing outcomes that reports 'equivalent affordable housing years'.

It is not clear what uptake of the scheme is expected or desired in terms of affordable housing units created and additional floor space generated.

Recommendations to reduce risks in the operation of the '30/30/15' reform proposals

In the absence of modelling evidence and place-based outcomes, the following recommendations are made to avoid unintended negative consequences:

5.11 Apply density and height bonuses only to residential flat buildings and shop top housing.

5.12 Do not apply floorspace bonuses to other residential development types (listed in Section 15B – e.g., dual occupancies, detached housing) in advance of exhibited design evidence on how the additional FSR would be accommodated within sustainable design parameters relating to low rise housing typologies (viz deep soil, vegetation, setbacks and privacy).

5.13 Apply the bonus reforms to real precincts not 'circles' - Using available strategic planning insight via DPE, GCC and Council master planning to map the best areas for inclusion (with equivalent or greater yield) – rather than adopting generic 800m / 400m transit stop radii which are likely to be a poor approximation for actual accessibility / liveability and capacity to accommodate uplift.

5.14 Exclude the reforms from recently adopted masterplans and centre LEPs - as a more valid and recent (<5 years) statement of the acceptable capacity for growth of an area – rather than generically proposed transit radii. The exception could be where an adopted Regional/District Strategic Plan specifically identified the recent LEP / masterplan as inadequate and that it was not being up-dated.

5.15 Encourage and enable councils to apply the '30/30/15' reform and / or other planning tools for affordable housing (like contribution schemes) in ways that achieve a better and more locally responsive result. This recommendation would have the additional effect of encouraging councils to proactively up-zone precincts to achieve the affordable housing outcomes of the SEPP.

5.16 Continue to give effect to prevailing council development standards and assessment controls and ADG guidelines. This is important not only to maintain amenity – but to avoid sterilizing or reducing the yield potential of adjoining (overshadowed) sites. The most conservative development standard for greater solar access should prevail.

5.17 Clarify or delete the complicated drafting of S17(2) proposed Housing SEPP - to prevent the gaming of the bonus opportunities beyond 130% of the maximum permissible residential floorspace. The bonus should only apply to residential floor space – not calculated against all floor space.

5.18 Prepare an urban design book for representative blocks – to consider block massing, solar access and other design factors to assist in assessment.

5.19 Publish cumulative impact assessment guidelines (in SEARS) to address how density increases should be assessed in the context of local and regional, traffic, amenity, heritage and infrastructure demands).

5.20 Streamline development assessment processes in master plan areas in response to the reduced strategic and cumulative impact risks.

5.21 Invest in work to resolve cumulative impacts assessment issues in key precincts - so that traffic, parking and heritage is resolved before the DA stage.

5.22 Develop and apply an additional 'no net loss' of affordable rental housing criteria for reform application to ensure that there is no measurable net loss in available affordable rental housing dwellings as lower cost private rentals are progressively demolished as a consequence of redevelopment.

5.23 Maintain and strengthen the independent and additive role of affordable housing contribution schemes alongside the bonus. These serve a distinct long-term role to build up affordable housing stock with a large proportion of resulting affordable housing funded via cost passed back to the landowner.

5.24 Affordable housing should be dedicated in perpetuity.

Comment

An anomaly of the reform package is that it exempts affordable housing floorspace from other development contributions (s7.11/12) even though the affordable housing is proposed to return to the private market after 15 years. A discounted contribution rather than exemption could take this into account – or a contribution could be payable at the time of conversion from affordable housing.

The modelling assumptions about affordable housing provision need to be open to scrutiny. It is unclear what price is applied to the residual value of affordable housing after 15 years – and what assumptions are made on access to finance and costs of management. Clearly affordable housing infrastructure is not a temporary need. The fairest proposition is to hold the affordable housing in perpetuity – as the bonus floorspace is also granted in perpetuity. There is a disconnect between granting permanent bonuses - but only temporary affordable housing. If there is to be an exit by the proponent/owner from affordable housing provision, other measures (like discounted sales to CHPs) need to be put in place to protect the vulnerable residents.

Integration with enhanced affordable housing contribution schemes

SSROC recommends revitalisation of efforts to promote the uptake of affordable housing contribution schemes by:

6.1 Integrating the proposed '30/30/15' reforms with the expanded and progressive uptake of inclusionary zoning schemes - for a potentially smaller affordable housing contribution over a wider area for a longer time.

6.2 Streamlining the process for assessing council proposed affordable housing contributions schemes particularly in areas of upzoning - by nominating candidate areas in regional strategic plans and setting opt out – rather than enabling an opt-in process.

6.3 Assisting councils gather land economic evidence - by making a centralized (DPE) service available to councils to prepare affordable contributions more cost effectively and faster.

6.4 Review and realignment of the different definitions of affordable housing among Australian jurisdictions and NSW Government agencies.

Comment

St George Community Housing has made a compelling review of the proposed '30/30/15' reforms ([link](#)) and makes the analogy of the role of mandatory inclusionary zoning (AH contribution schemes) to build up a 'superannuation for our cities' via the accumulation of affordable housing units and funds derived largely from being passed back to the land owner.

Whereas the floor space bonus ('30/30/15') mechanism as proposed is a one-off localised change in market conditions in which the public fund the development incentive by foregone windfall, denial of strategic planning options, impacts on return on infrastructure investment and some losses in amenity.

Many New South Wales local councils are progressively establishing affordable housing contribution schemes, the new arrangements should seek to coordinate with them and facilitate their integration.

The transition to mandatory inclusionary zoning can be assisted by recognising and providing a link to the existing and future schemes. A smooth transition should also enable affordable housing developer contributions to be added to and mixed with any affordable housing monies and housing opportunities coming from the new bonus provisions. The capacity for Tier One CHPs to be active partners in development projects that bring together finance, bonus and developer contributions and other resources shifts the argument and builds the case for CHPs owning, managing and growing the new affordable housing supply.

Integration with regional strategic plans and targets

7.1. SSROC supports collaboration across State and Commonwealth Governments to apply housing funds to address deficits in amenity, accessibility or social inclusion in precincts where density bonuses (or renewal generally) stretches capacity for sustainable growth.

Comment

The immediate introduction of the '30/30/15' mechanism creates a risk that this reform will not integrate well with current and future strategic spatial plans such as the upcoming GCC Region Plan, and new mechanisms for implementing the National Housing Accord. It cannot yet be considered as part of the Region Plan's strategic directions, nor is it clear what its relationship will be to revised Region and City Plans' LGA targets for affordable rental and market housing supply.

An unintended consequence could be significant delays to getting more diverse housing approved / built, as the planning system will lose opportunities to resolve conflicting and competing objectives (and cumulative impacts) ahead of the development application process. The recommended changes to the scheme would reduce the risk of delays and accelerate the delivery of more diverse and affordable housing supply while still achieving more inclusive renewal.

There is an opportunity to apply State and Commonwealth housing investment funds to address measurable deficits in amenity, accessibility or social inclusion in precincts where uplift stretches the capacity for sustainable growth. This would require investment integration with strategic planning process and funding criteria for State and Commonwealth infrastructure (see NSW Housing Opportunities Plan and Housing and Productivity Contributions; and Commonwealth Housing Support Program and Housing Australia Future Fund).

Delays from DA modifications or resubmissions

8.1 SSROC recommends clear guidance be prepared for determining an acceptable modification of an existing DA rather than awaiting Land and Environment Court Judgements.

Comment

The density bonus scheme and SSD pathway opportunities will motivate many applicants to either seek DA modifications to participate in the scheme or reassess and submit new proposals in new DAs. More of the modifications and new DAs will also include CI 4.6 applications. These approaches will undoubtedly consume additional scarce planning and assessment resources.

Improving governance, accountability (and enforcement) of affordable housing created

9.1 Management of created affordable housing component should be restricted to registered Community Housing Providers – to avoid leakage from ‘for-profit’ providers.

9.2. Resolve a governance regime (in consultation with Local Councils) to register and account for each affordable housing unit created and enable enforcement that it operates as affordable housing on an ongoing basis.

Comment

Using and enforcing conditions of consent alone will be a relatively weak and resource intensive means of ensuring the required affordable housing outcomes are actually delivered by the scheme. Presumably the NSW Community Housing Registrar could play a role in monitoring and coordinating compliance and continued access for eligible households.