

**ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT
(AFFORDABLE HOUSING DEVELOPMENT CONTRIBUTIONS) BILL 2008**

Second Reading

Ms SYLVIA HALE [4.34 p.m.]: I move:

That this bill be now read a second time.

It is critical for our community that the supply of affordable housing increases. This bill is one step towards realising that goal. We cannot leave it to the market to ensure that housing remains within the reach of low- to medium-income earners. We have only to look about us today to see how illusory and delusory that notion is. If affordable housing is to be available to all those in desperate need of it, we must act to promote that outcome. We must plan and legislate for that outcome. The bill is very moderate. All it does is to take one of the Government's existing policies and extend its reach. The bill merely extends the ambit of State Environmental Planning Policy 70 [SEPP 70]. It is fair to say, therefore, that the Government's response to this bill will be a litmus test of just how genuine Labor's commitment to affordable housing actually is. SEPP 70 enables a few councils to levy for affordable housing. Other councils would like to be able to do the same. The question is: Will this Government allow them the autonomy to implement the affordable housing strategies that some of them are so keen to adopt?

At the outset I would like to pay tribute to Brian Howe, the former Labor Federal housing Minister, to councillors and social planners at North Sydney Council and Willoughby City Council, and to the former Mayor of Waverley and current member for Coogee, Paul Pearce. The councils referred to have already established affordable housing schemes. I also thank Shelter New South Wales and the Council of Social Service of New South Wales [NCOSS], which have promoted affordable housing policies for many years.

The legislation I am proposing on behalf of the Greens is by no means novel. Similar legislation was adopted in the United Kingdom and the United States of America years ago. I will discuss overseas experience of affordable housing measures later in this speech. Closer to home, the South Australian Government is mandating 15 per cent affordable housing in new growth areas in that State. Greens members of the Australian Capital Territory Legislative Assembly proposed two very similar bills some time ago. Although the major parties did not support those bills at the time, the former Stanhope Government announced an affordable housing scheme in the new suburb of Mackellar. One can rest assured that the four Greens members of the Australian Capital Territory Legislative Assembly will do all they can to actively pursue the issue.

The bill seeks to amend the provisions of the Environmental Planning and Assessment Act in relation to affordable housing contributions from developers. The bill will allow but not compel local councils to impose an affordable housing levy on developers of new multi-unit developments as a condition of development consent. The bill provides that where a council determines to require an affordable housing contribution, that contribution can take the form of either a dedication to council or other social housing provider of a percentage ranging up to a maximum of 25 per cent of the total number of units in the development, provided that development comprises 10 or more dwellings, or the monetary equivalent. If the developer is a government agency, for example Landcom, the percentage required can be a maximum of 30 per cent. Housing New South Wales is, of course, exempt because it already provides 100 per cent affordable housing in each of its developments.

This bill is not radical; it is modest and reformist in approach. It provides a tool that local governments can choose to use or not to use. Councils can choose the level of contribution required—and that level is capped at 25 per cent—or they can choose just where the levy is to be applied in their local areas. The approach is flexible; it does not stipulate a fixed percentage or specify the areas where the levy is to apply—it is up to councils and local communities to determine what is best for their areas—and developers are not prevented from arguing a case about commercial viability. Councils can formulate developer contribution plans in a sensible manner, and there is no reason why a requirement for affordable housing will necessarily impact so heavily on developers that their projects become unviable.

It is not in council's interest that that be the case; otherwise there will be no new multi-developments in their areas. The evidence from overseas is that such levies work, and that they do not spell doom and gloom for the residential development industry. The measures in this bill are only one part of the answer to a widespread affordable housing problem—there is, I am sure we are all aware, a significant problem. The more policies there are in place to increase affordable housing supply, the better.

According to the Australian Council of Social Service [ACOSS] paper "Response to the National Rental Affordability Scheme—technical discussion paper" of May 2008, nearly 30 per cent of low-income households—that is, 800,500 households across Australia—are in housing stress, that is, they are paying more than 30 per cent of household income on housing cost. The position of low-income private renters is far worse, with 65 per cent of low-income private renters experiencing housing stress. The Australian Council of Social Service attributes this to the decline in public housing stock and the increase in house prices. The most recent Demographia survey rated Sydney the seventh-most expensive city in the world, and the most expensive city in Australasia.

Yates, Kendig, Phillips, Milligan and Tanton, in their February 2000 date study "Sustaining fair shares: the Australian housing system and intergenerational sustainability", found there was a downward trend in home ownership, especially for young to middle-aged people. Between 1981 and 2006, home ownership rates fell about 9 per cent for 25 to 39 year olds. The study also found that between 1951 and 2006 house prices increased from nearly four times average income to more than seven times average income. The study projects that over the period 2006 to 2045 the proportion of households in housing stress will increase from 12 per cent to 14 per cent, and that home ownership will continue to decline.

It is clear that people are borrowing more money than they can afford in a desperate attempt to secure a home. As a result, mortgage default repossessions have increased. The *Australian* reported on 16 May 2007 that 5,363 writs of possession were issued in 2006 in New South Wales, up 10 per cent on 2005 figures. It has been reported that in Sydney the default rate rose by 35 per cent in the 2007 financial year, compared to 2006. Despite interest rates easing, if Australia succumbs to recession, we can expect a further increase in mortgage defaults as unemployment rises. Clearly, the problem is structural and complex.

While this bill does propose a new levy on developers, it is not up to developers alone to provide affordable housing. The Greens recognise that there is no single solution to the problem. Governments should play a much stronger role in capital funding for social and affordable housing, and infrastructure provision. Initiatives such as the Rudd Government's National Rental Affordability Scheme are part of the solution. The scheme will provide incentives for producing rental housing at 20 per cent below market rent. On the other hand, the Rudd Government is encouraging housing price inflation by handing cash to first-home

buyers of existing dwellings. The Greens agree with ANZ economist Saul Eastlake that subsidies should be directed to new housing only.

There is a long history behind the bill. The New South Wales Labor Government has really let down a lot of people over the past decade. There was hope among local government and the housing sector 10 years ago that the Carr Government would introduce a new environmental planning policy to allow all councils to levy for affordable housing. Former planning Minister Craig Knowles made vague commitments, but nothing happened. The Carr Government brought Professor Ed Blakely here from the United States of America to assist with planning. He tried to inject affordable housing provisions into the Metro Strategy. When addressing the Sydney Futures Forum in December 2004, he said:

We have to look at tenure arrangement. We have to look at non-profit organisations and institutions being a party to the housing developments. We have to look at new planning strategies and incentives for affordable housing, including that in innovative delivery.

Despite Professor Blakely's recommendations, we have a Metropolitan Strategy that contains no real affordable housing measures. The Government amended the planning Act in May 2005 to make provision for voluntary planning agreements. New section 93F, however, relies on a council being able to come to an agreement with a developer by offering inducements—perhaps floor space density bonuses, or a breach of height restrictions—in return for a few units of affordable housing. The Government amendment specifically precluded councils from imposing mandatory contributions. Former Premier Iemma, on his first day as Premier, promised that he would take a particular interest in affordable housing. He reiterated that commitment in his address to an anti-poverty week event organised by the Council of Social Service of New South Wales. We have, however, heard very little about affordable housing since then, apart from vague reassurances from the then Premier that he was "looking at it" and that there were "policies before Cabinet".

The former Premier even set up an interagency task force. He promised an affordable housing strategy by August 2006. Nothing emerged. Then we heard it would be released before the 2007 State election. The election came and went. Then there was the claim, in response to a question I asked on 27 February this year, that the affordable housing strategy actually consisted of an announcement of the refurbishing of some public housing units in the inner west, a bit more public housing for older people, and increasing community housing management of housing units. The Government may believe that is an affordable strategy, but most in the New South Wales housing sector do not. Tellingly, there is no affordable housing provision in the new local environment plan template. Many councils are extremely disappointed, none more so than Waverley, which was told by the Director-General of Planning earlier this year that the council must remove the affordable housing provisions from its draft local environmental plan.

Parramatta Council asked four years ago to be allowed to go forward with its affordable housing strategy and to be included in SEPP 70. It is yet to receive a clear answer from the department, a fact of which David Borger, former mayor of Parramatta and current Minister for Housing, is only too well aware. Clearly, the Government has actively thwarted attempts by councils to institute affordable housing programs. In the absence of a genuine affordable housing strategy the Government has taken to claiming that private market housing is "affordable housing". The member for Parramatta announced in the Legislative Assembly on 22 October 2008:

Bonnyrigg will deliver 833 brand new homes for people in need and 1,500 new, affordable homes for private homeowners.

Here she is referring to the redevelopment of the Bonnyrigg housing estate, which involves partial privatisation of public land but no net gain in social housing stock. The 1,500 new houses for private home buyers will be built and sold privately. There is no control on the price at which they are to be sold, and no control on who buys them. How can the Government possibly claim those as affordable housing? As Professor Julian Disney recently said at a cooperative housing conference:

The housing affordability crisis was predictable and was predicted. Yet governments have done very little to address it.

Government can boost the supply of affordable housing in various ways, particularly by adopting the housing through planning mechanism, which Professor Mike Berry describes as using the land use planning system to encourage or require developers to set aside a proportion of the housing they construct for sale or rent at less than market rates. This Greens bill seeks to use this mechanism, by introducing inclusionary zoning throughout New South Wales.

Inclusionary zoning is a method that many governments, including Labor governments, have taken up in other cities. It is a policy tool in common in expensive global cities. Inclusionary zoning is one way of ensuring that there is a supply of affordable housing available to low to moderate income workers, who are excluded from the private market that demands high prices. That is why we need to counteract this exclusion, hence the term "inclusionary zoning". In essence, developers and governments must act jointly to ensure affordable housing is available.

Sydney is rapidly becoming dysfunctional. Labour shortages have developed in certain areas. Essential service workers—rubbish collectors, nurses, bus drivers, childcare workers, train guards, retail workers, hairdressers, trade apprentices and gardeners, and all the others who keep our cities and towns running—need to live somewhere. I am sure that John Robertson, the former head of Unions New South Wales, understands how higher housing costs and long commutes to and from work have impinged on workers' lives. This bill will go part of the way to ensuring that workers on low to moderate incomes will be able to afford to live closer to where they work.

In England thousands of homes have been provided via section 106 agreements, as they are known. Both government and councils allocate affordable housing units to key workers in certain professions. In London, the affordable housing target is 50 per cent of all new housing across the greater London area. Former Labor Mayor Ken Livingstone was a driving force behind this target. At Imperial Wharf in London 50 per cent of new housing is pegged at affordable prices. These units have been set aside for a mixture of people, including moderate income workers, students, elderly people and others who are unable to afford market rents. The British Government has assisted also in some areas by contributing surplus land. Certainly there is scope for such initiatives in this State.

Most United States jurisdictions require an affordable housing contribution of between 10 per cent and 20 per cent, and in some cases even up to 35 per cent. Inclusionary housing programs originated in the Washington DC metropolitan area in the early 1970s when both Fairfax County, Virginia, and Montgomery County, Maryland, adopted inclusionary zoning ordinances. There are now ordinances in about 300 United States jurisdictions requiring developer contributions to affordable housing. In California as of March 2003 there were 107 cities and counties using inclusionary housing, representing one-fifth of all localities in that

State. In Washington State alone inclusionary zoning programs have produced a total of 15,252 affordable units. Inclusionary zoning laws apply in New York, as do rent control laws.

Canadian jurisdictions also use inclusionary zoning mechanisms. Since 1988 the city of Vancouver has required that certain major developments include 20 per cent social housing. In Ontario, many municipalities have adopted inclusionary zoning policies. In our own country, South Australia has introduced planning legislation that includes inclusionary zoning mechanisms. Jay Weatherill, the former South Australian Minister for Housing, released a Housing Plan that specifies a target of 10 per cent affordable and 5 per cent high needs housing in new developments. The then Minister said that his Government would "influence the planning system to achieve this", and the Labor Government amended the planning law accordingly.

In Victoria, 20 per cent of 1,500 new dwellings in a Coburg urban renewal plan will be reserved for affordable housing. Developer Daniel Grollo, whose company Equiset is involved in the scheme, said he could live with inclusionary zoning at the site. At least some Australian developers are getting used to the idea. Federal Minister for Housing, Tanya Plibersek, told the *Age* that inclusionary zoning may become necessary across the country. She was quoted in the *Age* on 8 May saying:

We don't want to end up living in cities where you have really huge distinctions in income levels between areas, so that you can't actually afford to live in some suburbs if you're working in those suburbs.

I have written to the Minister urging her to pressure the New South Wales Government to allow more inclusionary zoning. New South Wales has only a handful of affordable housing schemes. However, we host a pioneering affordable housing scheme at Pyrmont-Ultimo and Green Square, which is managed by City West Housing Limited, a company set up by the New South Wales Government in the 1990s. Much of the credit for this scheme has to go to the former Labor Federal Minister for Housing, Brian Howe. The City West Housing Company scheme was financed from three sources: developer contributions, the New South Wales Government and the Commonwealth through the Building Better Cities program. This seed funding allowed the company to start with enough capital to eventually allow it to expand. The scheme has been a success. As of today, the company owns 491 units that house approximately 1,000 people. The company has development approval to construct an additional 57 units at Greens Square, due to be completed in April 2010.

City West makes a surplus of around \$7 million a year. Therefore it has the money to plough back into new housing developments. It houses a broad range of people, some of whom earn up to 120 per cent of median income. People at the higher end of the income range pay market rents or close to market. They thereby contribute to the surplus and assist in allowing the company to offer lower rents to those less able to pay, such as pensioners. Why can we not and why should we not replicate this model, given that it is so successful? The Greens' major criticism of Labor's current affordable housing programs is that they are limited. The Government has taken a boutique approach to the problem. It currently requires the planning Minister to authorise schemes via listing in State environment planning policy [SEPP] 70. It does not use the planning legislation across the spectrum, which is the aim of this bill.

If the Government fails to support this bill, it must explain why councils should be prevented from acquiring affordable housing, especially if the council deems it necessary and has made provision for it in its contributions plan and local environment plan. The Government must address the problems of the one-quarter of people in this State who rent privately. These are

the people experiencing the highest level of housing stress. These are the people who are making ends meet from week to week, or are leaving New South Wales and moving interstate. Most are not eligible for public housing, and cannot afford to buy. We need policies that meet their needs as well.

I refer to the specifics of the bill. A new definition of who is eligible for affordable housing will be added to the Act. Affordable housing will be for people whose disposable income is in the lowest 40 per cent of household incomes based on the statistical subdivision of Sydney, as identified by the Australian Bureau of Statistics. They will be eligible for affordable housing and pay rent of not more than 30 per cent of their income. The current provisions in the Environmental Planning and Assessment Act that deal with affordable housing are very weak. Section 93F contains provisions that allow for planning agreements between councils and developers, but those provisions cannot be used to require affordable housing provisions as a condition of consent. The current provisions specify that only the affordable housing schemes listed in a State Environment Planning Policy can be funded via mandatory contributions. The schemes listed in SEPP 70 number only three. The Government has shown no inclination to expand that number.

This bill amends the Act so that New South Wales councils can legally levy for affordable housing. The Greens' amendments to the Act will give all councils a general power. In section 116C affordable housing is designated as community and public infrastructure, which will remove the necessity for a scheme to be listed in SEPP 70 and thus removes the necessity for SEPP 70. Proposed new Division 5, Development contributions for affordable housing, contains a new section 116Y outlining the conditions where contributions can be imposed. The conditions are that a local environment plan must identify a need for affordable housing within an area to which the plan applies. This could be part or whole of a local government area.

The conditions further include that there must be a development contributions plan in place; the new development to which the contributions plan applies must comprise 10 dwellings or more; it must be a private development or a development undertaken by a government agency, such as Landcom. Social housing providers are exempted for the reasons already outlined; contributions may be up to 25 per cent in private developments and up to 30 per cent for government developments; and developer contributions can be in the form of housing units. For example, out of 100 new homes planned for a site, 10 could be set aside for affordable housing, or it could be an equivalent monetary contribution based on the value of the development. This is consistent with the provisions governing the already existing affordable housing schemes operating in New South Wales.

The provisions in the bill enable councils flexibility in the quantum and type of contribution they seek. In a large multimillion dollar development, such as the former Carlton United Brewery site on Broadway, the council may place a 25 per cent requirement on the developer. But in a 20-unit development in Coffs Harbour, the council may require only a 5 per cent contribution, which would be one unit. In Dubbo, the council might decide that it does not require any contribution at all. Each council will work out, in its contributions plan, the details that meet its specific local conditions. Proposed section 116ZB specifies what will be done with the affordable housing units or monetary equivalent.

A council may either retain the housing or transfer title and management to a social housing provider, such as the Department of Housing, a community housing or cooperative organisation, or a non-profit affordable housing body, such as City West Housing. Any affordable housing contributions will apply only to development applications that are

received after the commencement date of the bill. They will not apply to development applications that are made but are not yet approved. The bill will also apply to the Redfern-Waterloo area that currently has special provisions in the Redfern-Waterloo Authority Act 2004, but the bill before the House provides for only a very small affordable housing contribution of 1.5 per cent, which will be applied as the Minister sees fit. The general levy power should apply to this area as well. The remainder of the provisions are of a savings or transitional nature.

I anticipate that there will be opposition to this bill from some quarters. Some developers will say that this is an additional tax on developers. It is certainly a levy or, rather, a developer contribution. The Government already imposes that type of levy on developers for affordable housing purposes in a limited number of areas. It is already in force in New South Wales in a few areas. The affordable housing levy has the advantage of working well in high-cost, high-building activity areas where developers build and expect to make profits. It cannot work if the levy is so high that the developer cannot afford to build. Developers capitalise on land. When a council or other authority makes a decision that results in a windfall gain, such as rezoning or a development consent decision—

Debate resumed from 30 October 2008.

Ms SYLVIA HALE [4.28 p.m.]: As I said previously, when a council or other authority makes a decision that results in a windfall gain, such as a rezoning or development consent decision, a developer profits by virtue of that rezoning or development consent. Why should the community not also benefit from a decision of a consent authority? At a meeting the New South Wales Property Council expressed to me the fear that increasing levies will make it more difficult to build in New South Wales. I said at the time and I say now that this bill is drafted in such a way as to leave councils free to set levies at a level the industry can live with. However, we agree with the New South Wales Property Council that consideration of intergenerational equity requires the Government to play a part in funding new infrastructure.

Some developers believe that they do not have any obligation to society at all. Aaron Gadiel of the Urban Task Force, for example, had a somewhat hysterical reaction to the bill, branding an affordable housing levy as "communism incarnate". If we extend that logic, the New South Wales Government is already practising it. According to that logic, taxation—which is, after all, socialisation of private wealth into public assets such as schools, hospitals and the like—therefore is also communism. The argument is infantile.

We do have obligations—to the elderly and to the workers we rely on in times of emergency and for public services. The property industry looks at everything through the prism of self-interest. We Greens look at it from another perspective—asking what we can do to create healthy mixed communities and cities. Building will not stop because of this levy. That has not happened at all the places where inclusionary zoning now operates. Earlier this year housing was at its lowest level of affordability ever. Rents are rising and vacancy rates are tight. However, it is misguided to target the First Home Owners Grant at new housing only. The purchase of existing housing does nothing to increase housing supply and the grant merely serves to increase the purchase price of such housing. Social housing is not keeping pace with the increase in population, and its availability is restricted to fewer than 5 per cent of the population. For example, low-wage workers are not eligible for rent assistance, public housing or Rentstart.

In conclusion, it is completely within the State Government's power to enact inclusionary zoning. There is no plausible reason for the Government to oppose this bill since the

Government already allows limited mandatory inclusionary zoning in New South Wales. The Government already supports inclusionary zoning in principle. It is time to put it into practice throughout the State. I therefore commend the bill to the House.