SHELTER NEW SOUTH WALES

SHELTER NSW **SUBMISSION**

# Select Committee on Social, Public & Affordable Housing inquiry into social public & affordable housing

*Response to supplementary questions and questions on notice from Shelter NSW*

**23 April, 2014**

***1. What consultation or engagement, if any, has Shelter NSW had from the Government regarding the development of the Social Housing Policy, which the Department of Family and Community Services indicated is under the active consideration of the Minister and the Government?***

Shelter has not been consulted on the development of the social housing policy. We have asked for engagement on the policy in the course of a meeting with the then Minister's office, but have had no further communication on the matter. We have been briefed on the very general directions that the whole Department of Family and Community Services might take in the future, but this did not provide any specific indication of the direction the Social Housing Policy might take.

***2. Question on notice from the Hon. PETER PRIMROSE: 'On page 21 of your submission at point three you talk about Waratah bonds. … I was wondering if you could just elaborate on the quantum of funds that you would expect to be received under that.'***

The proposal made in our submission to utilise Waratah Bonds to contribute to the capital funding of social housing was drawn from the NCOSS Pre-Budget Submission 2014-15, *Sharing the benefits – making NSW fairer,* (on which Shelter, as an NCOSS member, was consulted). NCOSS limited its proposal to the investments projected to be received from the 'significant investor visa applicants' market. This was $200 million, all of which NCOSS proposed by hypothecated to new social housing supply. We include section 10.1 of the NCOSS statement below:

***10.1 Include social housing as a form of infrastructure investment and hypothecate proceeds from Waratah Bonds to invest in the development of new social housing supply.***

While the capital works programs of the Land and Housing Corporation (LAHC) and City West Housing are included in the annual Infrastructure Statement (Budget Paper No. 4), social and affordable housing is not included in the definition of social infrastructure for the purposes of Restart NSW or the State Infrastructure Strategy. This is an unfortunate omission.

Analysis of the 2013-14 NSW Budget by NCOSS revealed that only 2% of the $15.5bn infrastructure/capital works budget is devoted to new supply of social housing. Continuation of this approach means that the level of housing affordability stress in the rental sector is likely to deteriorate, rather than improve.

With asset sales playing a larger role in funding the Government's overall infrastructure agenda, it is timely to reconsider the role of Waratah Bonds. With the Commonwealth now designating Waratah Bonds as an eligible investment vehicle for approved Significant Investor Visa applicants, the NSW Government is anticipating receiving investments in excess of $200m from that market alone.

While $200m could make only a small contribution to the Government's planned investment in new billion dollar rail and road projects, it could make a welcome boost to the supply of the additional social housing that we so badly need.

***3. Question on notice from the Chair, the Hon. P. Green: 'On page 22 you comment on planning law changes or reform. I note it also states: 'The greater use of inclusionary housing mechanisms"— talking about the LEP — "while such mechanisms exist under the current Environmental Planning and Assessment Act their use has been greatly restricted." Why has it been restricted? ….I would be encouraged if you could submit a document on notice about what the Committee could do in relation to planning law changes that could help stimulate the market for social, public and affordable housing.'***

***Why has the use of the inclusionary housing mechanisms that exist under the current Environmental Planning and Assessment Act been greatly restricted?***

The *Environmental Planning and Assessment Act* was amended in 2000 to include provisions that allowed for 'inclusionary housing' (sometimes called 'inclusionary zoning') in certain circumstances, including where provided for in a scheme in a local environmental plan and where validated by a state environmental planning policy.

The idea was that, where a consent authority considered a proposed development (i) will or is likely to reduce the availability of affordability housing within the local government area, (ii) will create a need for affordable housing within the area, or (iii) is allowed only because of the initial zoning, or rezoning, of a site, it may (if it wished) require a contribution of affordable housing (or money in lieu). A small number of local council schemes were established under this section (94F). Two of them are in the City

of Sydney local government area and one is in Willoughby; the Redfern-Waterloo affordable housing scheme (now managed by UrbanGrowth NSW Development Corporation) also has its legal basis in this section.

However, apart from the scheme in Redfern-Waterloo, which is part of a state government urban regeneration program, successive NSW governments have declined to allow local councils (apart from the two indicated) to use the provision. In the early 2000s, Newcastle and Parramatta councils had proposals stalled inside the Department of Planning.

There was a change in attitude by policymakers towards those legislative provisions of 2000, and while they were not repealed, they, unfortunately, became 'dead letter' in some respects – though they retained the support of many town planners (e.g. Hill PDA and others, 'Facilitating affordable housing supply in inner city Sydney', Inner City Mayors Forum, 2011; SGS Economics and Planning, 'Infrastructure investment and housing supply', National Housing Supply Council, 2013) and community organizations like Shelter NSW.

In 2005, the Act was amended to (among other things) provide a basis for a new approach to developer contributions: the *Environmental Planning and Assessment Amendment (Development Contributions) Act 2005* established a regulatory framework for voluntary planning agreements between local councils and developers that enable contributions for certain economic and social infrastructure and for affordable housing (section 93F). Councils may use section 93F to negotiate for contributions for: provision of or the recoupment of the cost of providing affordable housing (s.93F(2)(b)), or the funding of recurrent expenditure relating to providing affordable housing (s.93F(2)(d)).

The key difference between the 'planning agreements' approach (section 93F) and the 'inclusionary housing' approach (section 94F) is that the former relies on private developers voluntarily offering affordable housing to the planning authority for no benefit to themselves (the developer), whereas the latter allows the consent authority to require (mandate) contributions for affordable housing where the developer gets a benefit (from, for example, upzonings) or the development has affordable-housing related impacts (such as generating a need for affordable housing or reducing supply of affordable housing).

The key difference might be characterized as a choice between market-led or government-led interventions. A useful article that discusses the merits of the two approaches is Calavita and Mallach, 'Inclusionary zoning, incentives, and land value recapture', *Land Lines*, 2009. There has been an extensive debate in the USA over the merits of 'inclusionary housing'; in particular whether it has a disincentive effect on private-sector investment in dwelling construction and on house-sale prices, drawing on case studies, and it is fair to say that neither side has conceded.

There has not been substantial case-study based assessment in New South Wales, possibly because of the limited and small nature of the existing schemes. Whether one prefers one option over the other, or a mix of both depending on the case, appears to be a political one.

***What could the Committee do in relation to planning law changes that could help stimulate the market for social, public and affordable housing?***

There has been some public debate in Australia about whether planning law (and the mechanisms and practices it authorizes) have a negative impact on development generally, on construction of dwellings particularly and on house prices.

A number of reports from academic researchers have rejected claims of negative impacts (e.g. N Gurran and others, 'Counting the costs: planning requirements, infrastructure contributions, and residential development in Australia', Australian Housing and Urban Research Institute, 2009; N Gurran and others, 'Quantifying planning system performance and Australia's housing reform agenda', Australian Housing and Urban Research Institute, 2012; N Gurran and P Phibbs, 'Evidence-free zone? Examining claims about planning performance and reform in New South Wales', *Australian Planner*, September 2013).

Taking the view, then, that the land-use planning system can have a *positive* role in facilitating affordable housing, we have supported and advocated measures of both a 'strategic planning' and 'statutory planning' type.

In terms of 'strategic planning' we have supported the principal piece of land-use planning legislation (currently, the *Environmental Planning and Assessment Act 1979*, proposed to be replaced by the *Planning Bill 2013*) having provisions that:

- contain a high-level object on the promotion of housing opportunities, including for housing choice and affordable housing — as is the case with the current Act and the *Planning Bill*;
- include aspirational targets for affordable housing in regional and subregional strategic plans (called regional growth plans and subregional delivery plans in the *Planning Bill*) — but this has not been not the case with the regional and subregional strategic plans to date and is not required of regional growth plans and subregional delivery plans by the *Planning Bill*;
- allow local environmental plans to include provisions on encouraging, providing, maintaining and retaining affordable housing — as is the case with the current Act and the *Planning Bill* (in the version as amended by the Legislative Council on 27 November 2013).

In terms of 'statutory planning' we have supported the planning Act (currently, the *Environmental Planning and Assessment Act*, proposed to be replaced by the *Planning Bill*) having provisions that:

- give consent authorities flexibility on the circumstances in which they may negotiate acceptance of voluntary offers of affordable housing from private developers — as is the case with the current Act and the *Planning Bill* (in the version as amended by the Legislative Council on 27 November 2013);
- allow local environmental plans to include provisions of an 'inclusionary housing' nature (i.e. mandated developer contributions for affordable housing) particularly where there has been planning uplift — as is the case with the current Act (section 94F) and the *Planning Bill* (in the version as amended by the

Legislative Council on 27 November 2013, with the insertion of a new Division 7.5).

Under the current Act, through the instrument of State Environmental Planning Policies (of which two are important for affordable housing: *State Environmental Planning Policy 70 (Affordable Housing—Revised Schemes)* and *State Environmental Planning Policy (Affordable Rental Housing) 2009*), there have been a number of 'statutory planning' mechanisms that stimulate affordable housing. These include provisions that:

- remove application of unreasonable standards on new boarding houses that could be a disincentive to such development;
- remove application of unreasonable standards on new secondary dwellings that could be a disincentive to such development;
- remove application of unreasonable standards on new affordable housing in zones where multi-unit dwellings are allowed that could be a disincentive to such development; and
- introduce more rigorous assessment of developments that involve the loss of certain low-rent housing and allow for compensation payments (authorized by section 94F of the Act) where development consent involving the loss of such housing is given.

These provisions will be 'grandfathered' under the *Planning Bill* (which abolishes the notion of a SEPP), but since there will be scope for 'legacy SEPPs' to be amended, it could be more useful for such provisions to be moved across into the standard provisions of local plans.

Our primary concern about planning law changes and the role of planning law to promote affordable housing has been to ensure that the law *does* provide a basis for 'inclusionary housing' mechanisms, especially to allow a sharing of the value of the capital uplift from planning changes and to protect existing sensitive low-rent affordable housing. For this reason, the Committee might consider supporting the new Division 7.5 that was inserted into the *Planning Bill* by the Legislative Council.