



NSW.ACT

**SUBMISSION TO SECTION 94
CONTRIBUTIONS AND DEVELOPMENT
LEVIES TASKFORCE, NSW DEPARTMENT
OF INFRASTRUCTURE, PLANNING AND
NATURAL RESOURCES**

November 2003

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Introduction to UnitingCare NSW.ACT

UnitingCare NSW.ACT is the peak body for all community services, chaplaincy and social justice and advocacy activities of the Uniting Church in the New South Wales Synod. UnitingCare is one of the Boards within the New South Wales Synod and is part of the national network of UnitingCare Australia.

Our work is guided by a belief in a God of love, compassion and social justice, who provides all that people need in order to live. Our view of social justice is guided by the Christian scriptures, theological reflection, insights of social, political and economic analysis, the statements of the Synod and Assembly and our encounters with people and their life experiences in our work.

Belief in the God who works for justice carries a further obligation to work for social and systemic reform, to change the social conditions that produce injustice such as violence, homelessness, unemployment, discrimination, poverty and the unequal distribution of power. UnitingCare bases its community service provision and its advocacy on the principles of access, equity, participation and human rights that should inform all public policy and community services.

UnitingCare NSW.ACT is involved in the direct provision of an extensive range of community services ranging from children's services, to substitute care for children and young people, counselling and support. We are the largest single provider of aged care services in NSW and the ACT, including 33 nursing homes and 57 hostels. Uniting Church congregations auspice 11 Lifeline Centres across NSW.

We have taken a particular interest in service provision to those in housing need, both private tenants, the homeless and low-income groups. We auspice the Tenants' Advice and Advocacy Program provided by the Western Sydney Tenants' Service and provide assistance to the homeless through the Exodus Foundation in Ashfield, Chapel by the Sea in Bondi and Parramatta Mission. We are also involved in the direct provision of housing to the socio-economically disadvantaged, including a joint venture with the NSW Department of Housing at Pymont providing housing for low-income families and the elderly, and a further joint venture housing development for the aged in Chatswood with Willoughby Council and the Department of Housing.

Reason for submission

We wish to provide comments under point 2. of the Section 94 Taskforce Terms of Reference:

“2. Examine and report on the original policy basis and rationale for the introduction of Section 94 contributions and whether it remains a legitimate basis for levying development at a local level”.

Our primary reason for making this submission is to indicate our support for the dedication of land or the payment of a monetary contribution under Section 94 of the Environmental Planning and Assessment Act for the loss of affordable housing. At the present time action is required by the NSW government to establish a clear and consistent legislative framework that facilitates the levying of Section 94 for this purpose.

Purpose of Section 94

Section 94 of the Environmental Planning and Assessment Act (EP & A Act) allows a consent authority to levy developers in the form of a contribution of land, money or both for the provision of public amenities and services in an area. The Act does not specify the types of public amenities and services that can be provided, however sections 94F and G of the amended Act indicate that levying for the provision of affordable housing is permissible under certain circumstances.

Section 94 has typically been used to provide and maintain physical and social infrastructure such as open space, child care centres and community centres needed as a consequence of a new development that brings new residents to an area. Affordable housing can also be regarded as a type of urban infrastructure, the need for which can be directly associated with developments such as the refurbishment of boarding houses and low-cost residential flat buildings. This Section of the Act operates on a user pays principle, which remains a current public policy approach to funding government service provision, particularly in a climate of fiscal restraint¹.

It is possible to argue that there is a legitimate requirement for a Section 94 levy for affordable housing when a development will result in the loss of affordable housing in areas where there is a need for such housing and an inadequate supply. This is manifestly the case throughout metropolitan Sydney, in some regional centres such as Newcastle and in rural areas of NSW, where there may be particularly small rental markets, for example. The importance of levying Section 94 for this purpose was recognised by the NSW Ministerial Task Force on Affordable Housing in proposals made in regard to planning powers. The Task Force proposed that:

- “*NSW planning legislation should be strengthened to encourage local councils and other planning authorities to put greater emphasis on provision of affordable housing.*
 - *The Environmental Planning and Assessment Act should explicitly empower planning authorities to require affordable housing quotas as conditions of approval for particular developments and to ensure maintenance of the quotas over time.*
 - *It also should explicitly empower planning authorities to finance affordable housing projects by requiring contributions from developers whose projects will adversely affect the supply of affordable housing.”²*

Importance of use of Section 94 to address housing need

Levying Section 94 for the loss of affordable housing is important for a range of reasons:

- Monetary contributions under Section 94 have been used by Councils such as Waverley and North Sydney to add to the stock of affordable housing in areas undergoing gentrification. In North Sydney such contributions replace about one affordable bedroom for every 50 lost. However combined with funds from

¹ MacNeill J and Dollery B, (1999), *Equity and Efficiency: Section 94 Developer Charges and Affordable Housing in Sydney*, www.une.edu.au/febl/EconStud/wps.htm (29/10/03).

² Disney Julian, (1998) *Affordable Housing in New South Wales, the Need for Action*, www.ncoss.org.au/bookshelf/conference/download/shifting/jdreport.doc (13/10/03).

other joint venture partners North Sydney Council has used Section 94 funds to replace about one affordable bedroom for every 20 lost³. Funds levied have thus been expended in a timely fashion for a needful and worthwhile purpose. The progressive nature of the approach to affordable housing taken by these two councils was recognised in Minister Scully's recent address to the NSW Urban Task Force. North Sydney and Waverley councils, together with Willoughby, were said to "have led the way" in regard to local government's role in the area of affordable housing.

- Such funds have provided councils with the opportunity to engage in joint venture projects with other parties such as the NSW Department of Housing and community groups for the provision of affordable housing, typically for traditional residents of an area. They have thus enabled local government to leverage additional public dollars for this purpose.
- The contribution of land or money by developers for this purpose makes it more likely that local government will have the capacity to engage in joint venture projects with agencies such as *UnitingCare* for the provision of affordable housing. *UnitingCare* has a history of such involvement with Willoughby Council and we are potentially interested in participating in future joint venture projects of this nature.
- There is an urgent need for further affordable and social housing throughout NSW, particularly in metropolitan centres such as Sydney. Such housing is needed to alleviate the housing stress experienced by low-moderate income private tenants, including pensioners and beneficiaries, due to the high cost of private rental accommodation, an undersupply of social housing and the unaffordability of home purchase.

In 2002 the waiting list for public housing in NSW was 96,000, and 63.7% of low-moderate income private tenants in NSW (n = 152,411) were living in housing stress⁴. In addition there continues to be an ongoing loss of boarding house accommodation, which is difficult to quantify due to factors such as illegal conversion.

- Social and affordable housing provided by local government under Section 94 is often acquired through spot purchase or conversion of a site from another use, such as a car park. It is thus provided locally in inner Sydney areas in close proximity to employment and services, and avoids many of the problems associated with large public housing estates, particularly those that are geographically isolated.
- There are many reasons why such a practice is worthwhile, the most commonly cited being to retain a social mix in a locality. Schedule 2, of *SEPP 70, Affordable housing principles*, notes that affordable housing conditions

³ DUAP, (2001), *Managing Affordable Housing, Fact Sheet 4, Affordable Housing Service*, Department of Urban Affairs and Planning: Sydney.

⁴ Households in the lowest 50% of the statewide income distribution range paying more than 30% of their income in rent, 2001 data, Centre for Affordable Housing: NSW Department of Housing.

should be imposed to create 1. ‘mixed and balanced communities’, so that 2 ‘a socially diverse residential population representative of all income groups is developed and maintained in a locality’⁵.

Current legislative framework

At the present time there is a lack of a proper legislative framework to facilitate the imposition of Section 94 for the loss of affordable housing by local government in NSW. This is a consequence of the repeal of part 7 (1) (d) of the Affordable Housing Amendment Act 2000, SEPP 70’s silence on Section 94 and its failure to recognise the need for affordable housing throughout the Sydney metropolitan region and in other parts of NSW.

The Affordable Housing Amendment Act 2000 was a significant step forward in regard to creating a legislative environment that facilitated the provision of affordable housing by local government. The Amendment inserted Sections 94F and G into the Act, validated three Local Environmental Plans (LEPs) with affordable housing provisions and also validated the Section 94 contribution plans of North Sydney, Randwick and Waverley Councils for a period of two years. Sections 94F and G allow the levying of land or monetary contributions for affordable housing under certain circumstances. These criteria include that a State environmental planning policy identifies the need for affordable housing in an area, the condition is authorised by a regional environmental plan or a local environmental plan, and is in accordance with a Section 94 contributions scheme set out in such a plan.

However the Affordable Housing Amendment Act validated these LEPs and Section 94 contribution plans for a period of two years only, expiring on June 5 2002. *SEPP 70- Affordable Housing (Revised Schemes)* came into force on 1st June 2002, coinciding with the expiry of the Act. The SEPP validated the affordable housing provisions in the Sydney Regional Environmental Plan No26- City West, the Willoughby Local Environmental Plan 1995 and the South Sydney Local Environmental Plan 1998. However the SEPP was silent on Section 94, and did not continue to validate the existing Section 94 Schemes of Waverley, Randwick and North Sydney Councils. A further problem with the SEPP is that it recognised the need for affordable housing in only four local government areas in Sydney (City of Sydney, City of South Sydney, City of Willoughby and Leichhardt). Councils in other are thus not able to impose Section 94 for the loss of affordable housing as a consequence of not being named in the SEPP.

There is evidence that following the repeal of Waverley Council’s Section 94 Scheme in June 2002, that development applications involving the loss of affordable housing escalated. Applications increased from 9 in the year to June 2002, to 17 in the year to June 2003⁶. The charging of Section 94 may have thus functioned as a disincentive for the redevelopment of affordable housing. Alternatively the repeal of Waverley’s Section 94 Contribution Scheme may be regarded as a window of opportunity by developers, prompting an increase in development applications of this nature.

⁵ *State Environmental Planning Policy 70, Affordable Housing, (Revised Schemes)*: 2002: 21.

⁶ Waverley Council (2003) *Low Rental Accommodation in Waverley LGA*, Report from Director Planning and Environmental Services, www.waverley.nsw.gov.au/council/meetings/2003/Minutes/0309/FinanceReports/2.htm (27/10/03).

SEPP 70 does not permit new affordable housing schemes to be developed, and states that a further SEPP will be released permitting the development of new schemes. However no such SEPP has been forthcoming to date. Councils wishing to address affordable housing issues are thus not in a position to develop new mandatory affordable housing schemes. Not only is the current regulatory framework inadequate, there is also a lack of guidance and information to councils about the ways they might go about encouraging the provision of affordable housing through the development process, using both mandatory and voluntary provisions. The proposed additional affordable housing SEPP could provide such guidance.

Conclusion and Recommendation

UnitingCare NSW. ACT regards the practice of levying Section 94 for the loss of affordable housing as an important strategy to address the housing needs of low-moderate income earners, particularly in inner Sydney areas that have undergone gentrification. This is a matter in which the state government should be taking the lead, implementing proposals recommended by the NSW Ministerial Task Force on Affordable Housing. We call on the state government to provide the legislation necessary to validate existing Section 94 Schemes for affordable housing and to allow new affordable housing schemes, including Section 94 Contribution Schemes designed to mitigate the loss of affordable housing, to be developed throughout New South Wales. This will entail amending SEPP 70 to identify the need for affordable housing throughout New South Wales, and the gazettal of a further SEPP setting out the ways that affordable housing can be provided through the environmental planning process, including under Section 94 of the EP&A Act.

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