SHELTER NEW SOUTH WALES

SHELTER NSW **SUBMISSION**

Updates to planning legislation —

submission to Department of Planning and Environment

We provide these comments in response to *Planning legislation updates: summary of proposals* (January 2017) and the *Environmental Planning and Assessment Amendment Bill 2017* (draft Government bill). There are many matters proposed in the package that have implications for better planning (or not) in New South Wales, but we restrict our comments to 5 matters that have a more direct connect with our organization's remit in advocating for housing wellbeing especially for lower-income and disadvantaged households.

Updated objects of the Act

The Government proposes to change the object that indicates the role of the *Environmental Planning and Assessment Amendment Act 1979* in relation to affordable housing. The relevant object, inserted in 1999 says an object of the Act is 'to encourage … provision and maintenance of affordable housing …' (s.5(a)(viii) of Act). The new object would be: 'to promote the timely delivery of business, employment and housing opportunities (including for housing choice and affordable housing)'. This wording is lifted directly from the ignominious *Planning Bill 2013* (lapsed). The new object retains specific mention of affordable housing, and in so doing, implies that affordable housing is a 'good' thing, but the object is no longer about an *outcome* (provision and maintenance of affordable housing), rather, it is about a *throughput* (timely delivery). By identifying housing choice and affordable housing as components of a larger concept, housing opportunities, they become subordinate to a particular agenda around supply of new dwellings and prioritizing fast-tracking of development applications over more considered assessment. This is not a positive change to the objects.

Completing the strategic planning framework

The Government proposes to require local governments to develop local (area) strategic planning statements, on the basis that the absence of such statements is 'a' missing piece of the hierarchy of strategic plans in the Act (*Summary of proposals*, p.10). What the *Updates* package fails to notice, or acknowledge, is that there is another 'missing piece' in the hierarchy of strategic plans: that is the lack of a strategic plan (for ecologically-sustainable development, conservation and heritage, population, households, dwellings, and other land-use related matters) for the *State as a whole*.

Accordingly, we recommend that the Government develop a NSW strategic planning statement for New South Wales, to provide a state-wide context for the regional plans, on an integrated basis with statewide population, transport, infrastructure, and housing strategies.

Operation of local planning panels

Less than 5 percent of development applications determined by local governments are determined by councillors, and there are only 19 local government areas (out of 100+) in which more than 10 percent of development applications are determined by councillors (*Summary of proposals,* p.37). Yet the Government wishes to minimize decisionmaking by elected persons in favor of decisionmaking by officers and by members of local planning panels — whose members would be appointed by a council but approved by the minister for planning (*Summary of proposals,* pp.35-36). The regulations will indicate the expertises that nominees to these panels should have. These (*Summary of proposals,* p.35) do not include expertise in social impact assessment. The proposed expertises are to be given legislative effect by clause 2.18 of the draft Bill. Clause 2.13 of the draft Bill indicates a similar list of expertises for eligibility for appointment to regional planning panels and the Sydney district planning panels.

We suggest that omission of an expertise in social impact assessment would limit the ability of the panels to consider the full range of impacts of proposed developments they will evaluate. We note in this regard that section 79C(1)(b) of the Act requires a consent authority to take into consideration social impacts in the locality (as relevant to the development the subject of the development application). Accordingly, we recommend that the regulations indicate that expertise in social impact assessment be one of the expertises that qualify a person to be appointed to a regional planning panel, Sydney district planning panel, or local planning panel.

Development control orders

The draft Bill indicates a number of circumstances where a development control order (of various types) may be issued by relevant enforcement authorities, such as if premises are being used for a prohibited purpose; premises are being used in contravention of a planning approval; a building is likely to become a danger to the public; the building is so dilapidated that it is prejudicial to the occupants, persons or property in the neighborhood; or lack of maintenance of the premises constitutes a significant fire hazard.

It proposes (Bill, page 93) that the enforcement authority must — where a development control order will or is likely to make a resident homeless — consider whether the resident is able to arrange satisfactory alternative accommodation in the locality. If the resident is not able to do this themselves, the enforcement authority must provide information about the availability of satisfactory alternative accommodation in the locality, and, also, must provide any other assistance the *resident considers appropriate*. It is possible that, if a resident affected by an order in one of the more urgent scenarios (e.g. demolition, dilapidation) is unable to find suitable alternative accommodation, even with adequate information about what is available in the locality, they well might need other assistance.

But it is possible that an enforcement authority might not be in the best position to provide that assistance, and the resident would need support from the Department of Family and Community Services. Unless there is some active link with an agency that is in a position to offer crisis or

transitional support to residents become homeless following an order, the good intent of the proposal is not as effective as it could be. Accordingly, we recommend the regulations address implementation issues with this proposal, including integrated action with other state government agencies.

Definition of 'affordable housing'

The Bill proposes to modify the definition of 'affordable housing' (Schedule 7, clause 7.2). While the 1999 definition (s.4(1) of Act) has been robust enough to be applied to a number of useful purposes, in the provision and maintenance of affordable housing, it has a fundamental flaw. This is that the current definition of 'affordable housing' is peculiar because it only refers to the households to whom the 'affordable' housing should be allocated ('*affordable housing means housing for very low income households, low income households or moderate income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument'*).

This definition does not actually indicate that the housing must be provided on the basis that rents or mortgage repayments *are* affordable. There is no reference to affordability by reference to the critical criterion that the household not pay regular housing payments (rent or mortgage repayments) as a proportion of its income that would place it in housing stress — using the common measure of a stress threshold as more than 30 percent of gross household income. This approach, which puts the primary focus on the pricing and household cost issues, is used, for example, in the Tasmanian Government's affordable housing strategy (*Tasmania's affordable housing strategy 2015-2025*, September 2015); this states that 'Affordable Housing: refers to rental homes or home purchases that are affordable to low income households, meaning that the housing costs are low enough that the household is not in housing stress or crisis.' The proposed modification of the definition, in the Bill, does not address this fundamental issue — the tweaked definition it proposes is: '*affordable housing means (subject to the regulations) housing for very low income households, low income households or moderate income households*'. This merely removes the scope of a particular EPI from have its own distinctive application of the concept (as, for example, the application of the concept in the *Affordable Rental Housing SEPP* which is different from its application in *SEPP 70*, currently).

Accordingly, we recommend that the definition of affordable housing in section 4(1) of the Act be amended to state: 'affordable housing means (subject to the regulations) housing for very low income households, low income households or moderate income households, which is provided on the basis that the household's housing costs are low enough such that the household is not in housing stress'.

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