

# State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes) (2002 EPI 337)

[2002-337]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Authorisation

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# State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes) (2002 EPI 337)



New South Wales

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# State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes) (2002 EPI 337)



New South Wales

Her Excellency the Governor, with the advice of the Executive Council, has made the following State environmental planning policy under the *Environmental Planning and Assessment Act 1979* in accordance with the recommendation made by the Minister for Planning. (S00/01192/Pt3)

ANDREW REFSHAUGE, M.P., Minister for Planning

## 1 Name of Policy

This Policy is *State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes)*.

## 2 Commencement

This Policy commences on 1 June 2002.

## 3 Aim of Policy

- (1) The aim of this Policy is to insert revised affordable housing provisions into environmental planning instruments for land:
  - (a) within the Ultimo-Pyrmont Precinct of City West and subject to *Sydney Regional Environmental Plan No 26—City West*, and
  - (b) within the City of Willoughby and subject to *Willoughby Local Environmental Plan 1995*, and
  - (c) at Green Square and subject to *South Sydney Local Environmental Plan 1998*,  
because of the expiry of savings made by the *Environmental Planning and Assessment Amendment (Affordable Housing) Act 2000*.
- (2) This Policy:
  - (a) identifies that there is a need for affordable housing in the local government areas

within which that land is situated, and

- (b) describes the kinds of households for which affordable housing may be provided, and
- (c) makes a requirement with respect to the imposition of conditions relating to the provision of affordable housing.

#### 4 Definitions

In this Policy:

**Greater Metropolitan Region** means the land declared to be the Greater Metropolitan Region by order published in Government Gazette No 142 of 11 October 1991 at page 8758.

**the Act** means the *Environmental Planning and Assessment Act 1979*.

#### 5 Application of Policy

This Policy applies only to a development application made after the commencement of this Policy.

#### 6 Land to which Policy applies

This Policy applies to land within the Greater Metropolitan Region.

#### 7 Relationship to other environmental planning instruments

- (1) If any other environmental planning instrument, whether made before or after this Policy, contains provisions that are inconsistent with this Policy, this Policy prevails to the extent of the inconsistency, subject to section 36 (4) of the Act.
- (2) This Policy amends the following environmental planning instruments as set out in Schedule 1:

*Sydney Regional Environmental Plan No 26—City West*

*Willoughby Local Environmental Plan 1995*

*South Sydney Local Environmental Plan 1998*

#### 8 Definition of “affordable housing”

For the purposes of the definition of **affordable housing** in section 4 (1) of the Act, very low income households, low income households and moderate income households are those whose gross incomes fall within the following ranges of percentages of the median household income for the time being for the Sydney Statistical Division according to the Australian Bureau of Statistics:

Very low income household	less than 50%
Low income household	50 or more but less than 80%
Moderate income household	80–120%

## 9 Identification of need for affordable housing

Pursuant to section 94F (1) of the Act, this Policy identifies that there is a need for affordable housing in each of the following local government areas within the Greater Metropolitan Region:

City of South Sydney

City of Sydney

City of Willoughby

Leichhardt

## 10 Requirement for imposition of section 94F conditions

Pursuant to section 94F (3) (a) of the Act, the following requirement is prescribed with respect to the imposition of conditions under section 94F of the Act on development consents:

A consent authority is to have regard to the affordable housing principles set out in Schedule 2 before imposing such a condition.

## Schedule 1 Amendments

(Clause 7 (2))

### 1.1 Sydney Regional Environmental Plan No 26—City West

#### Part 4

Omit the Part. Insert instead:

### **Part 4 Affordable housing in the Ultimo-Pyrmont Precinct**

#### **55 What are the “Affordable Housing Program” and “total floor area”?**

In this Part:

**Affordable Housing Program** means an official program with that name, as adopted by the Minister from time to time, for the provision and management of affordable housing in the Ultimo-Pyrmont Precinct in accordance with the affordable housing principles. Copies of the program are available from the Department of

Planning's Head Office.

**total floor area** means the total of the areas of each floor of a building. The area of each such floor is taken to be the area within the outer face of the external enclosing walls, but excluding:

- (a) columns, fin walls, sun control devices, awnings and other elements, projections or works outside the general lines of the outer face of the external walls (other than balconies), and
- (b) ancillary car parking required by the consent authority and any associated internal vehicular and pedestrian access to that car parking, and
- (c) space for the loading and unloading of goods.

## **56 What are the affordable housing principles?**

The affordable housing principles are set out in Schedule 2 to [State Environmental Planning Policy No 70—Affordable Housing \(Revised Schemes\)](#).

## **57 Matters for consideration by consent authority**

Before granting consent to any proposed development of land in the Residential or Residential-Business Zone within the Ultimo-Pyrmont Precinct, the consent authority is to take into consideration the following:

- (a) the planning principles for City West and for the Ultimo-Pyrmont Precinct,
- (b) the affordable housing principles,
- (c) the need for development to provide different kinds of housing, including affordable housing, to ensure that very low, low and moderate income households may continue to afford to live in City West,
- (d) whether land values in City West may reasonably be expected to rise when land in City West is developed in accordance with this plan and whether very low to moderate income households may continue to be able to live in City West,
- (e) the impact of the proposed development on the existing housing within the Ultimo-Pyrmont Precinct for very low, low and moderate income households,
- (f) the impact of the proposed development on the existing mix and likely future mix of residential housing stock within City West.

## **58 Dedication or contribution for purpose of affordable housing**

- (1) Before granting consent to the carrying out of development (other than subdivision) on land in the Residential or Residential-Business Zone within the Ultimo-Pyrmont Precinct, the consent authority must consider whether an

affordable housing condition should be imposed on the consent.

(2) The following are **affordable housing conditions**:

(a) A condition requiring the payment of a monetary contribution to the consent authority by the applicant to be used for the purpose of providing affordable housing in accordance with the Affordable Housing Program that is the value, calculated in accordance with that program, of the following **total amount**:

- (i) 0.8% of so much (if any) of the total floor area to which the development application relates as is intended to be used exclusively for residential purposes, and
- (ii) 1.1% of so much (if any) of that total floor area as is not intended to be used exclusively for residential purposes.

(b) If that total amount is sufficient, a condition requiring:

- (i) the dedication in favour of the consent authority, free of cost, of land of the applicant comprised of one or more complete dwellings with a total floor area of not more than that total amount, each dwelling having a total floor area of not less than 50 square metres, and
- (ii) if the amount of total floor area of the complete dwelling or dwellings is less than that total amount, the payment of a monetary contribution to the consent authority by the applicant that is the value, calculated in accordance with the Affordable Housing Program, of the total floor area equivalent to the difference between those amounts,

to be used for the purpose of providing affordable housing in accordance with that program.

(3) To remove any doubt:

- (a) it does not matter whether the floor area concerned was in existence before, or is created after, the commencement of this Part, or whether or not the floor area concerned replaces a previously existing area, and
- (b) the demolition of a building, or a change in the use of land, does not give rise to a claim for a refund of any amount that has been contributed under an affordable housing condition.

(4) This clause authorises the imposition of an affordable housing condition when a consent authority grants consent to the carrying out of development (other than subdivision) on land in the Residential or Residential-Business Zone within the Ultimo-Pyrmont Precinct, subject to section 94F (3) (c) and (4) of the Act and clauses 59 and 60.

- (5) However, a consent authority is not authorised to impose an affordable housing condition unless at least one of the circumstances described in section 94F (1) (a)–(d) of the Act exists.
- (6) This clause and any condition imposed under it are subject to section 94G of the Act.

## **59 Development excepted from this Part**

Clause 58 does not apply to the following development (or to so much of any mixed development that consists of the following development):

- (a) development for the purpose of public housing, or
- (b) development for the purpose of affordable housing, or
- (c) development for the purpose of community facilities, or
- (d) development for residential purposes that will result in the creation of less than 200 square metres of total floor area, or
- (e) development for non-residential purposes that will result in the creation of less than 60 square metres of total floor area, or
- (f) development for the purpose of a public road, a light rail or railway undertaking or a public utility undertaking or facility,

and no other purpose.

## **60 Affordable housing conditions after initial development**

Clause 58 does not authorise an affordable housing condition to be imposed with respect to an amount of total floor area if the consent authority is satisfied that a condition of consent has previously been imposed pursuant to this Part with respect to the same or an equivalent amount of total floor area.

## **1.2 Willoughby Local Environmental Plan 1995**

### **[1] Clause 5 Definitions**

Omit the definitions of ***special needs housing groups***, ***Willoughby Local Housing***, ***Willoughby Local Housing Precinct*** and ***Willoughby Local Housing Program*** from clause 5 (1).

### **[2] Clause 5 (1)**

Insert in alphabetical order:



**special needs housing groups** means residents of the City of Willoughby who are identified as being in housing need in the *Willoughby City Housing Policy*, being a policy adopted by the Council.

**the Willoughby Local Housing Program** means an official program, set out in the development control plan for Willoughby Local Housing (*Development Control Plan No 23*), as in force from time to time, for the provision and management of Willoughby Local Housing in the Willoughby Local Housing Precincts, in accordance with the Willoughby Local Housing Principles set out in clause 25B.

**Willoughby Local Housing** means affordable housing provided pursuant to conditions imposed under section 94F of the Act that is rented housing occupied by people from special needs housing groups and provided and managed in accordance with the Willoughby Local Housing Program.

**Willoughby Local Housing Precinct** means any of the following parcels of land in the City of Willoughby:

“Local Housing Precinct 1”, being the parcel of land shown edged heavy black on the map marked “Willoughby Local Environmental Plan 1995 (Amendment No 21)”

“Local Housing Precinct 2”, being the parcel of land shown edged heavy black on the map marked “Willoughby Local Environmental Plan 1995 (Amendment No 31)”

“Local Housing Precinct 3”, being the parcel of land shown edged heavy black on the map marked “Willoughby Local Environmental Plan 1995 (Amendment No 30)”

### [3] Clause 25B

Omit the clause. Insert instead:

#### **25B Willoughby Local Housing to be provided in Willoughby Local Housing Precincts**

- (1) **Willoughby Local Housing Principles** For the purposes of this clause, the Willoughby Local Housing Principles are as follows:
- (a) Willoughby Local Housing is to be provided and managed in the City of Willoughby so that accommodation for a diverse residential population representative of all income groups is available within the City.
  - (b) Willoughby Local Housing is to be rented to residents of the City of Willoughby who are from special needs housing groups and whose gross household incomes fall within the following ranges of percentages of the median household income for the time being for the Sydney Statistical Division according to the Australian Bureau of Statistics:

Very low income household	less than 50%
Low income household	50 or more but less than 80%
Moderate income household	80-120%

and at rents that do not exceed a benchmark of 30% of their actual household income.

- (c) Dwellings provided for Willoughby Local Housing are to be managed so as to maintain their continued use for Willoughby Local Housing.
  - (d) Rental from Willoughby Local Housing received by or on behalf of the Council, after deduction of normal landlord's expenses (including management and maintenance costs and all rates and taxes payable in connection with the dwellings), should be used for the purpose of improving or replacing Willoughby Local Housing or for providing additional Willoughby Local Housing within the City of Willoughby.
  - (e) Willoughby Local Housing is to consist of dwellings constructed to a standard which, in the opinion of the Council, is consistent with other dwellings within the City of Willoughby, especially in terms of internal fittings and finishes, solar access and privacy.
- (2) **Principles to be considered** Before granting consent to any proposed development of land within a Willoughby Local Housing Precinct, the consent authority is to take into consideration the following:
- (a) the Willoughby Local Housing Principles,
  - (b) the affordable housing principles set out in Schedule 2 to *State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes)*,
  - (c) the need for development to provide housing that meets the requirements of special needs housing groups,
  - (d) the impact of the proposed development on existing housing within the City of Willoughby for special needs housing groups,
  - (e) the impact of the proposed development on the existing mix and likely future mix of residential housing stock within the City of Willoughby.
- (3) **Affordable housing condition to be considered** Before granting consent to the carrying out of residential development within a Willoughby Local Housing Precinct, the consent authority must consider whether an affordable housing condition should be imposed on the consent.
- (4) The following are **affordable housing conditions**:

- (a) A condition requiring the payment of a monetary contribution to the consent authority by the applicant to be used for the purpose of providing Willoughby Local Housing in accordance with the Willoughby Local Housing Program that is the value, calculated in accordance with subclause (5), of 4% of the accountable total floor space to which the development application relates.
- (b) If 4% of that accountable total floor space provides a sufficient amount of gross floor area, a condition requiring:
  - (i) the dedication in favour of the consent authority, free of cost, of land of the applicant comprised of one or more complete dwellings with a gross floor area of not more than the amount equivalent to that percentage, each dwelling having a gross floor area of not less than 50 square metres, and
  - (ii) if the total amount of gross floor area of the complete dwelling or dwellings is less than the amount equivalent to that percentage, the payment of a monetary contribution to the consent authority by the applicant that is the value, calculated in accordance with subclause (5), of the gross floor area equivalent to the difference between those amounts,

to be used for the purpose of providing Willoughby Local Housing in accordance with the Willoughby Local Housing Program.

- (5) **Calculation of contribution of money for affordable housing** The amount of the contribution required to be paid by a condition described in subclause (4) is the value of the gross floor area concerned calculated by reference to the market value of dwellings of a similar size to those proposed by the development application. That market value is taken to be the most current median sales price of such dwellings for the Willoughby local government area as documented in the *Rent and Sales Report NSW* published by the Department of Housing or, if another document has been approved for that purpose by the Director-General, that document.
- (6) **Dedication or contribution for affordable housing purposes** This clause authorises the imposition of an affordable housing condition when the consent authority grants consent to the carrying out of development (other than subdivision) on land in a Willoughby Local Housing Precinct, subject to section 94F (3) (c) and (4) of the Act and subclauses (7)–(10).
- (7) However, the consent authority is not authorised to impose an affordable housing condition unless at least one of the circumstances described in section 94F (1) (a)–(d) of the Act exists.
- (8) This clause and any condition imposed under it are subject to section 94G of the

Act.

(9) **Development to which this clause does not apply** This clause does not apply to the following development:

- (a) development for the purpose of public housing,
- (b) development for the purpose of community housing.

(10) **Affordable housing conditions after initial development** An affordable housing condition is not authorised to be imposed with respect to an amount of accountable total floor space if the consent authority is satisfied that a condition of consent has previously been imposed pursuant to this clause with respect to the same or an equivalent amount of accountable total floor space.

(11) **Definitions** In this clause:

**accountable total floor space** means the gross floor area to which a development application relates excluding any floor space bonus.

**floor space bonus** means:

in relation to Willoughby Local Housing Precinct 1—any additional amount of floor space that results from consent being granted to development that results in a floor space ratio exceeding 3:1 pursuant to clause 23 (1) (i).

**residential development** means use of land for any form of housing, including that leased on a short term basis, but does not include the use of land for a hotel, serviced apartment or motel.

## 1.3 South Sydney Local Environmental Plan 1998

### [1] Part 4, Division 3

Omit the Division. Insert instead:

## **Division 3 Affordable housing at Green Square**

### **27L Affordable housing aims and objectives**

Because land values in Green Square may reasonably be expected to increase when land in the area is developed in accordance with this plan, development in Green Square should provide different kinds of housing, including affordable housing, to ensure that households on very low to moderate incomes may live in the area.

Development in Green Square should promote and retain a socially diverse residential population representative of all income groups.

## **27M Meanings of “affordable housing”, “affordable housing provisions” and “total floor area”**

In this Division:

**affordable housing** has the same meaning as in the Act.

**affordable housing provisions** means the provisions of the *Green Square Affordable Housing Development Control Plan*, as in force from time to time, setting out a scheme for the provision and management of affordable housing in the Green Square area in accordance with the affordable housing principles. Copies of the development control plan are available from the Council’s administrative offices.

**total floor area** means the total of the areas of each floor of a building. The area of each such floor is taken to be the area within the outer face of the external enclosing walls, but excluding:

- (a) columns, fins, sun control devices, awnings and other elements, projections or works outside the general lines of the outer face of the external walls (other than balconies comprising the minimum balcony area required by the Council, and excluding any additional area), and
- (b) the maximum ancillary car parking permitted by the Council and any associated internal vehicular and pedestrian access to that car parking, and
- (c) space for the loading and unloading of goods.

## **27N Green Square affordable housing principles**

The **Green Square affordable housing principles** are as follows:

- (a) affordable housing should be provided and managed in the Green Square locality so that a socially diverse residential population representative of all income groups is created and maintained,
- (b) affordable housing that is provided is to be made available to a mix of households on very low, low and moderate incomes,
- (c) affordable housing that is provided is to be rented to eligible households at an appropriate rate of gross household income,
- (d) dwellings provided for affordable housing are to be managed so as to maintain their continued use for affordable housing,
- (e) affordable housing is to consist of dwellings constructed to a standard which in the opinion of the Council is consistent with other dwellings in the Green Square locality.

## 27O Matters for consideration by consent authority

Before granting consent to any proposed development of land within Green Square in Zone No 10 (a), 10 (b), 10 (c), 10 (d) or 10 (e), the consent authority is to take into consideration the following:

- (a) the aims and objectives of this Division,
- (b) the Green Square affordable housing principles,
- (c) the affordable housing principles set out in Schedule 2 to *State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes)*,
- (d) the need for development to provide different kinds of housing, including affordable housing, to ensure that households on very low, low and moderate incomes may be able to afford to live in Green Square,
- (e) the impact of the proposed development on the existing mix and likely future mix of residential housing stock within Green Square.

## 27P Affordable housing conditions

- (1) Before granting consent to the carrying out of development (other than subdivision) on land in Green Square within Zone No 10 (a), 10 (b), 10 (c), 10 (d) or 10 (e), the consent authority must consider whether an affordable housing condition should be imposed on the consent.
- (2) The following are **affordable housing conditions**:
  - (a) A condition requiring the payment of a monetary contribution to the consent authority by the applicant to be used for the purpose of providing affordable housing in accordance with the Green Square affordable housing principles and the affordable housing provisions that is the value, calculated in accordance with those provisions, of the following **total amount**:
    - (i) 3% of so much (if any) of the total floor area to which the development application relates as is intended to be used exclusively for residential purposes, and
    - (ii) 1% of so much (if any) of that total floor area as is not intended to be used exclusively for residential purposes.
  - (b) If that total amount is sufficient, a condition requiring:
    - (i) the dedication in favour of the consent authority, free of cost, of land of the applicant comprised of one or more complete dwellings with a total floor area of not more than that total amount, each dwelling having a total floor area of not less than 50 square metres, and

(ii) if the amount of total floor area of the complete dwelling or dwellings is less than that total amount, the payment of a monetary contribution to the consent authority by the applicant that is the value, calculated in accordance with the affordable housing provisions, of the total floor area equivalent to the difference between those amounts,

to be used for the purpose of providing affordable housing in accordance with the Green Square affordable housing principles and the affordable housing provisions.

(3) To remove any doubt:

(a) it does not matter whether the total floor area concerned was in existence before, or is created after, the commencement of this Division, or whether the area concerned replaces a previously existing area, and

(b) demolition of a building or a change in the use of land does not give rise to a claim for a refund of any amount that has been contributed under this clause for use for affordable housing.

(4) This clause authorises the imposition of an affordable housing condition when the consent authority grants consent to the carrying out of development (other than subdivision) on land in Green Square within Zone No 10 (a), 10 (b), 10 (c), 10 (d) or 10 (e), subject to section 94F (3) (c) and (4) of the Act and clauses 27Q and 27R.

(5) However, a consent authority is not authorised to impose an affordable housing condition unless at least one of the circumstances described in section 94F (1) (a)–(d) of the Act exists.

(6) This clause and any condition imposed under it are subject to section 94G of the Act.

### **27Q Development exempted from affordable housing conditions**

This Division does not authorise an affordable housing condition to be imposed in the case of a development application seeking consent for development:

(a) for residential purposes, if the proposed development will result in the creation of less than 200 square metres of total floor area, or

(b) for non-residential purposes, if the proposed development will result in the creation of less than 60 square metres of total floor area, or

(c) for the purpose of public housing, or

(d) for the purpose of affordable housing, if the applicant for consent is a community housing or non-profit organisation, or

- (e) for the purpose of community facilities, or
  - (f) for the purpose of a public road, or a public utility undertaking or facility,
- and for no other purpose.

## **27R Affordable housing conditions after initial development**

An affordable housing condition is not authorised to be imposed with respect to an amount of total floor area if the consent authority is satisfied that a condition of consent has previously been imposed pursuant to this Division with respect to the same or an equivalent amount of total floor area.

### **[2] Schedule 1 Definitions**

Omit the definition of ***affordable housing***.

### **[3] Schedule 1, definition of “Green Square”**

Omit the definition of ***Green Square***. Insert instead:

***Green Square*** means land shown edged red on the map marked “State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes)—Green Square Boundary Map”.

## **Schedule 2 Affordable housing principles**

(Clause 10)

- 1** Where any of the circumstances described in section 94F (1) (a), (b), (c) or (d) of the Act occur, and a regional environmental plan or local environmental plan authorises an affordable housing condition to be imposed, such a condition should be imposed so that mixed and balanced communities are created.
- 2** Affordable housing is to be created and managed so that a socially diverse residential population representative of all income groups is developed and maintained in a locality.
- 3** Affordable housing is to be made available to a mix of very low, low and moderate income households.
- 4** Affordable housing is to be rented to appropriately qualified tenants and at an appropriate rate of gross household income.
- 5** Land provided for affordable housing is to be used for the purpose of the provision of affordable housing.
- 6** Buildings provided for affordable housing are to be managed so as to maintain their continued use for affordable housing.
- 7** Rental from affordable housing, after deduction of normal landlord’s expenses (including



management and maintenance costs and all rates and taxes payable in connection with the dwellings), is generally to be used for the purpose of improving or replacing affordable housing or for providing additional affordable housing.

- 8** Affordable housing is to consist of dwellings constructed to a standard that, in the opinion of the consent authority, is consistent with other dwellings in the vicinity.