Report No. 6.8 State Environmental Planning Policy No 70 Affordable Housing (Revised Schemes) (SEPP 70)

**Directorate:** Sustainable Environment and Economy

**Report Author:** Shannon Burt, Director Sustainable Environment and Economy

**File No:** I2019/446

Summary:

In February 2019, SEPP 70 was further expanded to include all councils across NSW. The purpose of this report is to update Council on next steps now that Byron Shire has been entered into SEPP 70 to investigate and develop an affordable housing contributions scheme under the SEPP.

<https://www.planning.nsw.gov.au/Policy-and-Legislation/Housing/Diverse-and-affordable-housing/SEPP-70-Affordable-Housing-Revised-Schemes>

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| RECOMMENDATION: **That:** **1. Council advise the Department of Planning that it is preparing an affordable housing contribution scheme under State Environmental Planning Policy No 70 Affordable Housing (Revised Schemes).****2. Council fund the expedited preparation of an affordable housing contribution scheme and its associated local environmental plan amendment and planning agreement policy for Byron Shire through an allocation of $20,000 at the March Budget Quarterly review.****3. Subject to 2, Council prepare an affordable housing contribution scheme and its associated local environmental plan amendment which is consistent with the Department of Planning guideline.****4. Subject to 2, Council prepare a planning agreement policy for affordable housing which is consistent with the** **Environmental Planning and Assessment (Planning Agreements) Direction 2019.**  |

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**COUNCIL RESOLVED:**

**Attach the Special Disclosure of Pecuniary Interest Annexure for matters relating to environmental planning instruments #E2012/2815.**

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***19-152*** Resolved:

1. *That Council advise the Department of Planning that it is preparing an affordable housing contribution scheme under State Environmental Planning Policy No 70 Affordable Housing (Revised Schemes).*
2. *That Council fund the expedited preparation of an affordable housing contribution scheme and its associated local environmental plan amendment and planning agreement policy for Byron Shire through an allocation of $20,000 at the March Budget Quarterly review.*
3. *That subject to 2, Council prepare an affordable housing contribution scheme and its associated local environmental plan amendment which is consistent with the Department of Planning guideline.*
4. *That subject to 2, Council prepare a planning agreement policy for affordable housing which is consistent with the Environmental Planning and Assessment (Planning Agreements) Direction 2019.*

REPORT

One of the objectives of the Environmental Planning and Assessment Act 1979 (the Act) is to promote the delivery and maintenance of affordable housing.

The Act enables councils to levy contributions for affordable housing. To do this, the Act requires a council’s local government area (LGA) to be named in a state environmental planning policy. [State Environmental Planning Policy No. 70 – Affordable Housing (Revised Schemes)](http://www.legislation.nsw.gov.au/maintop/view/inforce/epi%2B337%2B2002%2Bcd%2B0%2BN) (SEPP 70) identifies these LGAs.

Once an LGA is named in SEPP 70, a council can seek to amend its local environmental plan (LEP) to have reference to an affordable rental housing contribution scheme and to levy affordable housing contributions.

In February 2019, SEPP 70 was further expanded to include all councils across NSW. The amendment removes the administrative step of entering a LGA into SEPP 70, thereby expediting councils’ ability to investigate and develop an affordable housing contributions scheme. It does so by entering all LGAs into SEPP 70 (thus meeting the Act’s requirements of a council being named in a SEPP).

The next step in the process is for Council to prepare affordable housing contribution scheme and amend the local environmental plan to reference the scheme.

***What can an ‘affordable housing’ scheme do?***

An ‘affordable housing’ scheme allows development consent conditions to be imposed requiring, either:

* the dedication of part of the development site (or other land of the applicant) free of cost to be used for the purpose of providing ‘affordable housing’; or
* the payment of a monetary contribution to be used for the purpose of providing ‘affordable housing’;
* or both.

***What is ‘affordable housing’ under SEPP 70?***

SEPP 70 is founded on the principle that the housing is only ‘affordable housing’ if it meets the following definitions:

*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*

*(as per section 1.4(1) of the Act).*

***Definition of ‘affordable housing’ households:***

*For the purposes of the definition of affordable housing in section 1.4 (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 Greater Sydney (Greater Capital City Statistical Area) or the Rest of NSW (Greater Capital City Statistical Area) 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%*

It should be noted that schemes under SEPP 70 generally only look to provide rental housing (rather than owner-occupied housing). Additionally, there is generally a requirement that that housing be institutional (in the sense that it must be managed by registered housing organisations, rather than traditional ‘mum and dad’ and property investors). Further, buildings provided for affordable housing are to be managed so as to maintain their continued use for affordable housing (in perpetuity).

***How to prepare an affordable housing contribution scheme***

Councils must:

1. Investigate the affordable housing need in their LGAs;
2. Identify the areas to which an affordable housing contribution scheme will apply;
3. Determine a viable affordable housing contribution rate;
4. Prepare affordable housing contribution schemes; and
5. Amend their LEPs through the planning proposal process to reference their affordable housing contribution schemes.

After which, councils can then apply consent conditions that require contributions for affordable housing.

An example of how a new scheme might work is set out in the Inner West Council’s Affordable Housing Policy dated November 2016. The policy provides for a 15 per cent ‘Affordable Housing Contribution’ within new greenfield, brownfield and greyfield sites, and major private and public redevelopments. The policy is directed at developments that meet a threshold of 20 units or 1,700 square metres in gross floor area.

It is important to understand that the proposed ‘15 per cent’ is not a proportion of development profits. It is 15 per cent of gross floor area of the development. So essentially, what is taxed under such a scheme is the gross revenue of the development, rather than the net revenue (as might occur in more conventional taxation schemes).

An important consideration for the contribution scheme is how and when it can be applied. Under Section 7.32(3)(b) of the Act, any condition imposed on a development consent for affordable housing must be authorised by an LEP and must be in accordance with an affordable housing contribution scheme for dedications or contributions set out in, or adopted by, the LEP.

With this in mind it is critical that Council expedite the preparation of a contributions scheme and LEP amendment prior to the completion of any current and anticipated major greenfield / brownfield land rezoning to ensure that a contribution for ‘affordable housing’ can be collected from the development of land identified in the scheme that is being upzoned.

Of note, the rate of contribution can be determined either by a percentage of floor space that can equate to a completed affordable rental unit, or a monetary contribution, or any combination of the above. This provides flexibility to Council to determine when it is appropriate and efficient to receive completed dwellings and when it would be appropriate to receive monetary contributions.



***Voluntary Planning Agreements for Affordable Housing***

Further to SEPP 70.

The Act enables a council to enter into a Voluntary Planning Agreement with a developer for provision of or monetary contribution for affordable housing.

The Minister has issued an Environmental Planning and Assessment (Planning Agreements) Direction 2019 to clarify this. The Direction requires councils to consider a series of matters when negotiating a planning agreement with a developer for the purposes of affordable housing in connection with a development application.

Councils that want to negotiate a planning agreement for the provision of affordable housing, after considered the requirements of the Ministerial Direction, will need to prepare and publish a policy that sets out the circumstances in which it may seek out a planning agreement. This policy will need to be made publicly available.

It is recommended that Council prepare a policy in concert with the contributions scheme.

**STRATEGIC CONSIDERATIONS**

***Community Strategic Plan and Operational Plan***

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| **CSP Objective** | **L2** | **CSP Strategy** | **L3** | **DP Action**  | **L4** | **OP Activity** |
| **Community Objective 4: We manage growth and change responsibly** | 4.2 | Support housing diversity in appropriate locations across the Shire | 4.2.1 | Establish planning mechanisms to support housing that meets the needs of our community  | 4.2.1.1 | Investigate and implement planning controls to encourage an increase in the supply of affordable and inclusive housing stock |

***Legal/Statutory/Policy Considerations***

In February 2019, SEPP 70 was further expanded to include all councils across NSW. The amendment removes the administrative step of entering a LGA into SEPP 70, thereby expediting councils’ ability to investigate and develop an affordable housing contributions scheme. It does so by entering all LGAs into SEPP 70 (thus meeting the Act’s requirements of a council being named in a SEPP).

***Financial Considerations***

An allocation of $20,000 for the expedited preparation of an affordable housing contribution scheme and its associated local environmental plan amendment and planning agreement policy will be considered as part of the March Budget Quarterly review deliberations.