

**EXPLANATION OF INTENDED EFFECT: CHANGES TO CREATE LOW- AND MID-RISE HOUSING**



NSW Department of Planning, Housing and Infrastructure (DPHI)



**Submission issued February 2024**

**Submission Explanation of Intended Effect: Changes to create low and mid-rise housing**

## INFORMATION ABOUT THE INSTITUTE

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- The Australian Institute of Architects (Institute) is the peak body for the architectural profession in Australia. It is an independent, national member organisation with more than 14,000 members across Australia and overseas.
- The Institute's vision is: *Everyone benefits from good architecture.*
- The Institute's purpose is: *To demonstrate the value of architecture and support the profession.*
- At the time of this submission, the NSW Chapter President is Adam Haddow FRAIA, and the Executive Director NSW is Lisa King.

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### About the cover photo

#### **THE AARON BOLOT 2023 AWARD FOR RESIDENTIAL ARCHITECTURE - MULTIPLE HOUSING**

#### **IGLU SUMMER HILL | BATES SMART**

#### **Photographer | Felix Mooneeram**

Traditional Land Owners: The Wangal and Cadigal nations.

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## RECOMMENDATIONS

### Recommendation 1:

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Ensure the height and FSR are correctly calibrated.

Choose from the following options:

- A. Increase height: 2:1 = 21m and 3:1 = 31m, or
- B. Reduce FSR: 16m = 1.7:1, 21m = 2:1

& amend the Standard Instrument to:

- Option 1:** Allow lift overruns, roof terraces, roof forms and plant to exceed LEP heights by 4.5m. This could be achieved by amending clause 5.6 the Architectural roof feature.
- Option 2:** Amend heights in LEP in R4, E1 and MU1 zones to allow 4.5m Ground + 3.2m upper levels.
- Option 3:** Replace height in meters with number of stories.
- Option 4:** Amend the definition of height to be measured to the “underside of the ceiling of the uppermost habitable level.”

### Recommendation 2:

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DPHI reviews the strategy for middle ring sites to improve economically feasible development outcomes. We suggest greater alignment with the findings of the GANSW and the identification of corner sites as opportunities for greater densities and more varied housing typologies.

### Recommendation 3:

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The Manor House typology is not a good use of land within the proximity of town centres and station precincts. We suggest that the DPIE work more closely with GANSW to identify more appropriate development models that are more likely to result in housing delivery targets being met.

### Recommendation 4:

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The Landscape and building bulk controls be reviewed for dual occupancy controls. The Institute recommends that the DPHI inspect the results of dual occupancies already procured under the current LRHD Code provisions to better understand their impact on residents, and streetscapes.

### Recommendation 5:

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Mid-rise housing development rules should require a mix of unit types to address diverse housing needs. No single project should be allowed to deliver more than 60% of a single dwelling type, with a minimum of 3 housing typologies required to be included in every project (excluding terrace house projects).

**Recommendation 6:**

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Precincts allocated for mid-rise housing under the EIE develop on street parking plans to ensure any reduction in car parking requirements for multi-residential buildings does not cause an overflow into local streets.

**Recommendation 7:**

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The EIE adopt minimum EV charging requirements for multi-residential developments of more than 5 dwellings to require at least one EV charging space per 5 car parking spaces.

**Recommendation 8:**

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The NSW government subsidise the cost of EV charging infrastructure in multi-residential developments under the EIE at \$10,000 per 5-car parking spaces. This subsidy to increase to \$15,000 per 5 car parking spaces where more than 15% of the housing type is social and/or affordable housing.

**Recommendation 9:**

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Low and mid-rise developments be subject to minimum tree canopy and deep soil areas.

**Recommendation 10:**

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That all LGA's in NSW be required to review their heritage conservation zones within a 6-month period to ensure that the appropriate level of protection and opportunity is identified.

**Recommendation 11:**

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Affordable housing produced under this EIE to be retained in perpetuity.

**Recommendation 12:**

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Affordable housing percentage for sites taking advantage of bonus height and FSR provisions should start at 15%, with regular uplift in the requirement until it reaches 30% in 2035.

**Recommendation 13:**

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Affordable housing contribution for housing developments produced under this EIE be increased in increments to 10% by 2035.

**Recommendation 14:**

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A percentage of the HPC be set aside to address rainwater runoff and flood mitigation in development precincts set out in this EIE.

## INTRODUCTION

### **Big Picture Principles**

Housing shortages and rent stress are amongst the most pressing issues the NSW Government must address if we are to remain a fair and equitable society. The Australian Institute of Architects welcomes the NSW Government's proactive engagement to try to find solutions.

Housing needs, family sizes and composition have changed, with many Australians living outside the historical idea of a typical family structure. To this end we must deliver new delivery mechanisms and different housing types if we are to deliver socially, environmentally, and economically sustainable solutions. Instead of our historically narrow focus prioritising low density individual housing for an idealized family, and inner city high density high-rise apartments for the urban dweller, we must focus on delivering low and mid-rise environmentally responsible housing at a human scale – terrace houses and small apartment buildings (between 6 and 8 stories) located within reach of existing public infrastructure.

To achieve outcomes that have the potential of being supported by communities we must strengthen place-based planning principles that deliver diverse, safe, and active precincts. Importantly we must promote active transport over private vehicle use and ensure that sufficient public and private amenity in the form of supermarkets, neighbourhood shops, parks, libraries, schools, and community facilities etc. are delivered. If we are to successfully integrate medium density outcomes within existing suburbs, neighbourhoods must be understood as urban ecosystems – ie an investment in housing alone will not deliver outcomes that the community will be happy with.

Higher density built form is generally accompanied by greater extents of hard surfaces that in turn can contribute to a higher number of flash flooding events as a result of global warming. We strongly encourage the NSW Government to undertake detailed modeling to assess the impact that the inevitable reduction in deep soil zones that will occur when you convert single dwellings into apartment buildings. Additionally, we recommend minimum controls requiring, permeable pavements, rain gardens, green roofs and minimum deep soil zones to be explicitly mandated.

While broadly in support of the changes the Government are proposing to deliver low and mid-rise housing, we include a number of recommendations that will help improve outcomes and community buy in.

## Specific Housing Type issues arising from the EIE

### Mid-Rise Housing

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The Institute notes that the first 2 concentric planning zones are reserved for mid-rise housing. We are strong advocates for the development of mid-rise apartment buildings within existing suburban environments – they make good use of existing infrastructure and provide high quality housing with a human scaled built form.

The proposed “non-refusal” standards for residential flat buildings and shop top buildings in the station and town center precincts are:

In the inner part of the precincts within 400 meters of a Station/Centre:

- Maximum Building Height: 21m
- Maximum FSR: 3:1

In the outer part of the precincts from 400 to 800 meters of a Station/Centre:

- Maximum Building Height: 16m
- Maximum FSR: 2:1

While we support the need to improve the height requirements for mid-rise housing, we are concerned that strict rules on height or FSR provide insufficient flexibility to develop effective solutions that are both of a high design standard and commercially viable.

Feedback from our members is that proposed Floor Space Ratio’s and height allowances are misaligned. The proposed heights when considered as part of the suite of controls that define building mass will not allow the accommodation of the desired FSR targets, resulting in both a significant number of 4.6 variations to be drafted, and leading to ongoing conflict with consent authorities and local communities – the outcome of which will be ongoing and costly Land and Environment Court challenges.

As a rule of thumb an FSR of 0.3–0.35:1 for medium density housing is delivered for each building level. For example, a 5-storey building would accommodate an FSR of 1.5–1.75:1.0. Some options our members have canvassed have included increasing the height limit of 2:1 to 21m and 3:1 to 31m, and/or removing height limits for projects outside of heritage conservation areas – instead allowing design responses and maximum FSR controls to dictate the final built form outcome.

### Recommendation 1:

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Ensure the height and FSR is correctly calibrated. Choose from the following options:

- Increase height: 2:1 = 21m and 3:1 = 31m, or
- Reduce FSR: 16m = 1.7:1, 21m = 2:1

Further, we recommend broader changes to the way that height is calculated in the planning system in NSW. The current definition of height, combined with the requirement to deliver quality built form with adequate ceiling heights, active roof terraces, and improved insulation and waterproofing, conflicts with height requirements that are 20-30 years old. The number of cl 4.6 variations required to justify relatively minor height non-compliances bog down the planning system and approval process with unnecessary justifications.

We recommend that the Standard Instrument be amended to:

- Option 1:** Allow lift overruns, roof terraces, roof forms and plant to exceed LEP heights by 4.5m. This could be achieved by amending clause 5.6 the Architectural roof feature.
- Option 2:** Amend heights in LEP in R4, E1 and MU1 zones to allow 4.5m Ground + 3.2m upper levels.
- Option 3:** Replace height in meters with number of stories..
- Option 4:** Amend the definition of height to be measured to the “underside of the ceiling of the uppermost habitable level.”

### Low-Rise Housing Types

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The 3rd concentric zone will permit terrace housing, multi-dwelling housing (villa homes) and manor houses and other low-rise non-detached housing options within station and town centre precincts.

Making these types of housing work both commercially and for residents may prove more difficult than the plans envision. The Institute understands that the LRHD Code will still apply for Complying Development, but requirements will be relaxed for Development Applications (DA) (via the proposed non-refusal standards) on merit. How these provisions dovetail into pre-existing DCP's (for the DA approval process) is not fully clear to our members and could create conflict in the assessment and approval process if not addressed.

### Terraces (& street facing townhouses)

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Previously, Terraces (via the LRHD Code) required a minimum site width of 21 metres for just three (street-facing) Terraces. This was based on 6 metres minimum for each terrace (18m total) with a setback to either side of 1.5 metres. Accordingly, very few projects of this type were built. The EIE reduces this to 18 metres.

The concerns raised by our members are that, without further amalgamation, these design requirements are unlikely to be commercially viable.

One of the principle problems with terrace requirements in the original LRHD Code (and terrace frontages less than 6 metres) is the dominance of the garage doors, which leaves very little scope for passive surveillance of the street.



Whilst this is partially addressed by the proposal to reduce parking rates to 0.5 spaces per dwelling, the Institute believes the problem of site availability, suitable development proponents and viable redevelopment for just 3 dwellings will remain.

Work prepared by the GANSW demonstrates higher-yielding outcomes for Terraces where there is amalgamation of corner lots with basement parking.

By adopting this approach, the GANSW demonstrated higher yield outcomes (well above LRHDC Code capacity) and a greater level of housing diversity – inclusive of independently accessed laneway studios.

### **Recommendation 2:**

DPHI reviews the strategy for middle ring sites to improve economically feasible development outcomes. We suggest greater alignment with the findings of the GANSW and the identification of corner sites as opportunities for greater densities and more varied housing typologies.

### **Multi Dwelling Housing (Villa Homes)**

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The SEPP EIE proposes reenabling ‘Multi Dwelling Housing’ in ‘station and town centre precincts’. ‘Switching on’ low-rise housing types close to amenities is certainly a positive step, however, we are concerned about the resulting form of the associated housing types.

Compared to Terraces, the commonly adopted form for ‘Multi Dwelling Housing’ is the Villa Home, a housing type with historically poor urban outcomes in Sydney and its suburbs.

General issues associated with the Villa Home type are:

- The visual prevalence and proportion of space given over to vehicle circulation.
- Despite dramatically increasing dwelling yields per site, passive surveillance outcomes of streets are generally no better than infill development (i.e. typically only one street-facing dwelling per redeveloped site).
- Existing and future landscape area and tree canopy are substantially diminished.
- Reliance on side boundaries for outlook and the inherent impact to adjoining neighbours – particularly within an otherwise low-density (typically R2) context.

The ‘non refusal standards’ propose reduction of frontage dimensions to as little as 12m, and accordingly allocation of the full width of the site for vehicular, garage turning and reversing manoeuvres (5.4m deep car space + 5.8m width isle).

As currently proposed, the 0.7:1 FSR (420sqm of GFA over a typical middle ring suburban lot of 600sqm being the ‘non refusal standards’ for ‘Multi dwelling housing’) could deliver 4 dwellings on a single lot at 12m width (min). At 1 car/dwelling this would allocate approximately 30% of the site area to vehicles, with building footprints squeezing out



landscape provisions, contesting the EIE minimum stipulated 20% deep soil/tree canopy 'target'.

The Institute believes the proposed policy changes for the 'non refusal standards' will:

- reduce the permissible site area for DA from 600sqm to 500sqm.
- reduce the frontage from 15m to 12m.
- will reduce parking from 1 car / dwelling to 0.5 cars / dwelling.
- Increase FSR from about 0.55:1 to 0.8:1.

It is our opinion that these changes will do little to improve the viability (and use) of this housing type.

### **Recommendation 3:**

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The Manor House typology is not a good use of land within the proximity of town centres and station precincts. We suggest that the DPIE work more closely with GANSW to identify more appropriate development models that are more likely to result in housing delivery targets being met.

### **Dual Occupancies in the balance of the R2 zones**

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The 4th concentric zone is the balance of the 77% of all zoned land that is currently R2. The EIE proposes to uniformly enable Dual Occupancies as a permissible use in these areas. The requirements relative to the LRHD Code are not dissimilar to the non-refusal standards, but the 12m minimum frontage (previously only permitted rear lane and corner variants of the housing type) will bring parking to the face.

Enabling dual occupancy in R2 zones will likely result in significant development by small home builders and 'mum & dad' developers seeking to build two, keep 1 and sell/rent the other to subsidise their new home.

Landscape, streetscape and passive surveillance outcomes, for the same reasons as that outlined for the Terraces outlined above, will suffer as a result of this policy change

The Institute believes the following will arise from the proposed EIE policy as it currently stands:

- Landscape as the backbone of suburban character will lose out, as the result of trying to fit nominated floor space allowances into inadequate height provisions, resulting in poor quality public domain outcomes.
- Streetscape character will suffer because of a focus on Villa Homes and Manor Houses; while,
- Privacy (across side boundary fences), particularly in the Low Density (R2) zones where community expectations are different to Medium Density (R3) zones, will be highly compromised – most notably by the Villa Home (multi-dwelling housing) type.

The Institute does not believe that these will be welcomed outcomes and the EIE does not adequately address the need to ensure that housing is properly designed for residents. If our ambition is to convince more people to live in more dense environments we must focus on the needs and amenity requirements of residents and the long-term impacts to streetscapes and landscape settings.

Removing landscaping, particularly where it is replaced by hard surfaces, increases the heat island effect, impacts airflow and reduces amenity as well as reducing birdlife, insects and other life forms. People and buildings need to be located with respect to the natural world around them, not in contrast to nature and the local environment. The impact of buildings on water tables, soil, erosion, and the like must also be factored into decision making.

The approach outlined by the EIE has the potential to create significant conflict and community backlash. It is our opinion that more specific work needs to be done to identify a variety of density outcomes for different lot configurations and amalgamations – prioritising sites with higher yielding capability while concurrently protecting highly valued neighbourhood amenity – notably landscape character, streetscape, and privacy.

The Institute welcomes the opportunity to work directly with the DPHI and the GANSW to identify positive examples of urban design, planning and architecture that will better inform the development of new and more manageable controls – with the ambition to deliver better quality, higher density outcomes for the people of NSW.

#### **Recommendation 4:**

The Landscape and building bulk controls be reviewed for dual occupancy controls. The Institute recommends that the DPIE inspect the results of dual occupancies already procured under the current LRHD Code provisions to better understand their impact on residents, and streetscapes.

## Broad Issues Arising from the EIE

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### Lack of housing diversity

Much of the building in Sydney and throughout Australia's cities is focused on building detached homes for an idealized 'standard' family, and while there will always be significant demand for such housing, it is leaving many other housing needs unmet. However, delivering housing diversity is not simply building more multi-residential buildings, but insuring that individual units within developments display sufficient diversity in size and room types to address broad societal needs for different types of housing.

The 2021 Census Household data for Greater Capital Cities supports the need for broad housing type beyond the family home. It found the following housing statistics:

- 32.5% of homes were couples with children
- 24.2% were couples without children
- 23.4% lone person
- 10.6% were one-parent families
- 4% group housing
- 5.2% other

It is also important to understand that an individual's housing need often changes over time – as stages in life change housing needs over a lifetime. If developments are not required to deliver a broad range of dwelling types, we will continue to be confronted with a 'one size fits all' outcome – not meeting the communities needs.

The Institute believes that without either mandates or incentives to build a range of unit types, developers will adopt an approach that only suits the largest market sector.

### Recommendation 5:

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Mid-rise housing development rules should require a mix of unit types to address diverse housing needs. Our suggestion is that no single project should be allowed to deliver more than 60% of a single dwelling type, with a minimum of 3 housing typologies required to be included in every project (excluding terrace house projects).

### Car parking

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The Institute believes that reducing car parking to encourage residents to adopt alternate travel options such as public transport and active transport (walking, biking, etc) is beneficial. However, an unintended consequence of reduced car space requirements can be residents using local roads for parking instead. This can create problems with neighbours and local businesses, as well as the flow of traffic.

Therefore, broader issues around neighbourhood car parking need to be addressed.

It should also be recognised that more and more Australians are purchasing electric vehicles, with one of the big advantages of EV is the ability to charge at home at low cost.

However, this is generally not available to multi-resident buildings due to the lack of adequate and safe charging infrastructure. Consideration needs to be given to requiring Mid-Rise buildings to provide charging infrastructure within communal car parking areas. The extra cost of such infrastructure is usually recouped through higher sale and lease prices. However, not including such infrastructure when built can mean that future owners face around three times the cost to install such infrastructure post-completion version when built.

The government could assist with the costs of including such infrastructure by providing a rebate to Mid-rise buildings that include such infrastructure, with a higher rebate for those that provide at least 15% of their housing as social or affordable housing.

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**Recommendation 6:**

Precincts allocated for mid-rise housing under the EIE develop on street parking plans to ensure any reduction in car parking requirements for multi-residential buildings does cause an overflow into local streets.

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**Recommendation 7:**

The EIE adopt minimum EV charging requirements for multi-residential developments of more than 5 units to require at least one EV charging space per 5 car parking spaces.

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**Recommendation 8:**

The NSW government subsidise the cost of EV charging infrastructure in multi-residential developments under the EIE at \$10,000 per 5-car parking spaces. This subsidy to increase to \$15,000 per 5 car parking spaces where more than 15% of the housing type is social and/or affordable housing.

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**Tree canopy and deep soil requirements**

The delivery of housing cannot be at the expense of quality living environments. The balancing of broader urban conditions necessitates the implementation of strict tree canopy and deep soil requirements. Trees provide natural shading, areas for wildlife, and help to reduce the urban heat sink effect that often accompanies large housing developments. Tree canopies not only create a more pleasant environment in which to live, but also adds financial value to property in the long term<sup>1</sup>. Climate change means that our built environment is subject to higher heat extremes across longer periods of time. Removing tree coverage, general foliage, and green spaces, and replacing them with concrete and glass will exacerbate heat extremes, with concrete acting as a heat island, absorbing and retaining heat. Effective tree canopy and deep soil provisions can mitigate this.

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**Recommendation 9:**

Low and mid-rise developments be subject to minimum tree canopy and deep soil areas.

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<sup>1</sup> AECOM A Brilliant Cities Report Value of Green Infrastructure 2017 p4

## Heritage and Local Community Character

While the Institute appreciates the desire to ensure that appropriate developments are not overtly constrained by existing and rigid community character and heritage overlays, we caution against a system that does not take these important issues into consideration. Many cities around the world have lost much of their architectural merit and sense of community. Too often, these are replaced by large developments that are out of scale with the local environment and adopt designs that are indistinguishable from other cities. In the rush to new housing, the importance of character and history must not be thrown away.

People seek to live in areas often because of their character. The cities where people want to live are those that retain a sense of identity and scale in step with their residents. Inappropriate development can lead to housing remaining unleased, local business closures and places where families and individuals do not feel comfortable travelling at night.

Conversely planning controls must have sufficient flexibility to ensure that as the areas developing grow in step with their communities while ensuring that ‘heritage conservation areas’ don’t simply become ‘preservation’ areas.

The NSW Heritage Office and the Australian Institute of Architects publication *Design in Context* provides good examples and creative responses that ensure the protection of heritage fabric is balanced with contemporary development outcomes.

New planning controls should be clear as to the values that are important, and where changes in scale are proposed, provide guidance on how the scale difference is managed. It is also noted that designs that are better integrated into their community are less likely to receive challenges to development applications or protests from local community groups.

We also recommend that DPIE require local governments to review their heritage conservation zones to ensure relevance – we believe some LGA’s use heritage conservation zones as a primary weapon restrict development rather than as they are intended – to appropriately protect heritage fabric.

### **Recommendation 10:**

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That all LGA’s in NSW be required to review their heritage conservation zones within a 6 month period to ensure that the appropriate level of protection and opportunity is identified.

### **15-year sunset date on affordable housing provision**

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The Institute appreciates the government's need to ensure the commercial viability of its housing program; however, we believe that this is a unique opportunity to make real progress in the provision of long term affordable housing stock. Returning affordable housing too quickly to the commercial market risks recreating the problems we are

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experiencing today in 15 years' time. It should be acknowledged that development projects will receive significant bonuses to height and yield in return for the delivery of affordable housing, and it is likely that the uptake of the bonus' will have an impact to both public and private properties – in the form of solar and visual impact. We believe that the impact to communities warrants the affordable housing stock being delivered in perpetuity.

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**Recommendation 11:**

Affordable housing produced under this EIE to be retained in perpetuity.

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**15% affordable housing provision**

The Institute supports the introduction of the 15% affordable housing requirement for sites taking advantage of bonus height and FSR provisions. We believe the 15% requirement should be increased at 1.5% yearly, until a provision of 30% is achieved in 2035. This would have the added benefit of encouraging early delivery of projects.

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**Recommendation 12:**

Affordable housing percentage for sites taking advantage of bonus height and FSR provisions should start at 15%, with regular uplift in the requirement until it reaches 30% in 2035.

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**Mandatory contribution**

While the proposed mandatory contribution of 2% is a good start, the Institute does not believe that it will provide sufficient funding required to address the scale of the problem and the government's housing targets. The Institute appreciates the concerns raised by some in the construction sector about the costs of construction and the ability to provide housing to all, however the reality is the scale of historic underinvestment in social housing is such that significant contributions are required to make up for that prior under-investment.

The Institute would like to see a regular uplift in this figure, particularly as supply constraints and inflationary pressures on the construction sector begin to wane. The Institute believes that the target figure should be 10%, particularly in areas where there is substantial uplift in land value because of changes in planning controls.

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**Recommendation 13:**

Affordable housing contribution for housing developments produced under this EIE be increased in increments to 10% by 2035.

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**Housing and Productivity Contribution**

The Housing and Productivity Contribution (HPC) is designed to replace the former State Infrastructure Contribution and is designed to ensure funding for necessary infrastructure upgrades for education, health services, active transport, and others. The Institute notes that increased rainfall is likely to be a result of our changing climate – creating problems for

rain catchment systems that were not designed for these new realities. The increased urbanisation brought about by the housing reforms will also likely contribute to those risk factors.

We believe it is important that clear direction be provided that the HPC is also to be used to develop infrastructure to reduce the impact of localised flooding from rainwater runoff. This funding would provide detailed mapping of how any new buildings will impact rainwater flow. Stormwater management, permeable pavements, rain gardens, green roofs and other eco-friendly strategies could also be funded, in part through these contributions.

**Recommendation 14:**

A percentage of the HPC be set aside to address rainwater runoff and flood mitigation in development precincts set out in this EIE.