

PLANNING PROPOSAL TO AMEND WAVERLEY LOCAL ENVIRONMENTAL PLAN 2012

1. OBJECTIVES OR INTENDED OUTCOMES OF THE PROPOSED LOCAL ENVIRONMENTAL PLAN

- A. Repeal Clause 4.4B Incentives for providing affordable rental housing of the Waverley Local Environmental Plan 2012.
- B. Remove 'Area 1' from the Waverley Local Environmental Plan 2012 Floor Space Ratio maps.

2. EXPLANATION OF THE PROVISIONS TO BE INCLUDED IN THE PROPOSED LOCAL ENVIRONMENTAL PLAN

The planning proposal is to repeal the provisions of Clause 4.4B (the Clause) and no new provisions are proposed for inclusion in the Waverley Local Environmental Plan 2012 (WLEP2012).

Waverley Council are not pursuing an amendment to existing provisions or any new provisions pursuant to the repeal of Clause 4.4B due to the following:

- i. Further work needs to be done to review and clarify the wording and operation of Clause 4.4B in its current form to ensure the clause is a more effective non-mandatory provision of the Standard Instrument for providing an incentive for development and delivering equitable public benefit;
- ii. With consideration for (i) above, a revised Clause 4.4B may be more effective and suitable for Local Government Areas (LGAs) where it is necessary to provide significant incentives to generate and encourage development - Waverley LGA currently attracts a significant level of development, especially in the Major Centre of Bondi Junction and Town Centre of Bondi Beach (as identified in the draft Metropolitan Strategy);
- iii. If Clause 4.4B was to be amended to provide a more equitable public benefit in the form of affordable rental housing for additional floor space to developers in the Waverley LGA - an approximate lease term of approximately 20 years would be required for the provision of affordable housing units, which would result in a development incentive unlikely to be pursued by developers due to an obligation to provide affordable rental housing on site for a considerable period of time. It is therefore considered that in Waverley's case, greater flexibility would be necessary through the provision of monetary contributions;
- iv. If a new clause was to be drafted for inclusion in the WLEP 2012 that provided for a monetary contribution towards affordable housing, in accordance with section 94F of the *Environmental Planning and Assessment Act 1979*, a monetary contribution for affordable housing may only be imposed if a State Environmental Planning Policy (SEPP) identifies "there is a need for affordable housing within the area." This would require the inclusion of Waverley under Clause 9 of SEPP 70 Affordable Housing (Revised Schemes) as an area with an identified need for affordable housing. SEPP 70 currently applies to City of Sydney (Green Square and Ultimo/Pymont) and precincts within the Willoughby LGA. These areas were included in SEPP70 because of a need for affordable rental housing in set areas experiencing significant large scale gentrification and renewal (Ultimo/Pymont) and commercial development (Willoughby LGA). In future, a proposal to

include the Waverley LGA in SEPP 70 may be pursued. However, at this stage, Council seek to repeal Clause 4.4B as a first step.

- v. The Waverley Affordable Housing Program (WAHP), since its operation from the late 90s, has successfully provided FSR and height bonuses to developers and provided monetary contributions, units in perpetuity and rent-capped units through a voluntary planning agreement process. The best way to continue the success of the WAHP is to repeal Clause 4.4B and subsequently amend Council's VPA policy to allocate monetary contributions towards affordable rental housing.

3. JUSTIFICATION FOR THOSE OBJECTIVES, OUTCOMES AND PROVISIONS AND THE PROCESS FOR THEIR IMPLEMENTATION

A. Need for the planning proposal

1. Is the planning proposal the result of any strategic study or report?

The need for this current planning proposal arose from a Report to Council - 10 December 2013 (refer to Attachment A). Council's reasons for repealing the Clause is that it is not operating in the way that was intended and it is not achieving the same dollar value that the previous voluntary incentive scheme under the Waverley Affordable Housing Program calculator was achieving in terms of public benefit (approximately 50%). This is demonstrated and supported by the valuation advice provided at Attachment B.

The intent of Clause 4.4B, as a non-mandatory provision of the Standard Instrument, is to continue the growth of Waverley's Affordable Housing Program by providing for rent-capped units. However, Council's initial understanding of the Clause was that the inclusion of the term 'at least' in Clause 4.4B(4)(a)&(b) allowed for some flexibility. It was Council's intent under Clause 4.4B that the resultant lease agreement term of the rent-capped units was to be negotiated to provide Council a benefit of equal value to that of the additional floor space to the developer.

The interpretation of the Clause, and specifically the wording of 'at least 3 years', was tested in legal proceedings which concluded that a developer has to provide affordable housing units for only 3 years. The incentives Clause is heavily weighted towards the developer, who is only required to provide affordable housing units for 3 years under the Clause for up to 15% additional floor space.

This is made evident in the valuation advice testing Clause 4.4B at Attachment B, which states;

"The ratio of 2 bonus apartments for one affordable apartment translates to a benefit cost ratio to the development of between 9.5:1 and 19.5:1 in the majority of scenarios in the current Bondi Junction market" (page 10 of Attachment B).

The valuation evidence provided at Attachment B is discussed further in other sections of this Planning Proposal.

2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Council's Strategic Planning officers attended a legal conference on 16 April 2014 to discuss options for redrafting Clause 4.4b to ensure the community benefit is fully realised. As a result of this discussion, Council have confirmed that the most appropriate means to pursue the continuation of affordable housing in Waverley is through Council's Planning Agreement Policy and WLEP 2012

Clause 4.6 Exceptions to development standards. As such, this planning proposal to repeal Clause 4.4B is pursued.

3. Is there net community benefit?

Council officers are of the view that a lease term of 3 years under Clause 4.4B does not result in a comparable public benefit to the benefit of the additional FSR to the applicant.

As demonstrated by valuation advice at Attachment B, under Clause 4.4B Council and the community are currently missing out on a significant public benefit of affordable rental housing. The valuation advice states;

"The ratio of 2 bonus apartments for one affordable apartment translates to a benefit cost ratio to the development of between 9.5:1 and 19.5:1 in the majority of scenarios in the current Bondi Junction market.

Hence a hypothetical development in Bondi Junction would stand to gain 9.5 to 19.5 times more benefit [emphasis added] than the benefit to Council's Affordable Housing Program [i.e. units for 3 years required by Clause 4.4B]. The ratio is higher for higher priced units -generally those apartments just below the penthouse levels in a high rise building with uninterrupted distant water views.

The achieved benefit : cost ratio to the development is well above the target ratio of 2:1. In order to bring the ratio closer to 2:1 either a longer lease term is required or a higher proportion of apartments should be provided for affordable housing.

...

a term of 19 years or more would be required to bring the benefit cost ratio down towards 2:1" (page 10 of Attachment B).

As provided above and further in Attachment B, it is estimated that for every 2 units in additional FSR sought under Clause 4.4B, 1 unit would need to be provided to Council for the purposes of affordable rental housing for a period of approximately 19 years to realise a community benefit equal to 50% of the gross profit gained by the developer from the additional floor space. Attachment B equates a 18-21 lease term of 1 unit for the purposes of affordable housing to value of \$400,000-\$447,000 (refer to page 10 of Attachment B). The monetary amount of the lease term is equal to 50% of the value of the total uplift, i.e. the developer will profit \$800,000-894,000 from each bonus unit approved.

Currently, Clause 4.4B allows a 3 year lease term for half of the bonus units sought, which equates to a rental value of approximately \$82,000 for each unit provided to Council for the purposes of affordable rental housing (refer to page 10 of Attachment B). It is clear from the valuation evidence, Council are missing out on 16 years rent or \$318,000-\$365,000 per affordable housing unit. Clause 4.4B provides significant benefit to the developer and does not provide an equitable benefit to the public.

Repealing Clause 4.4B will allow for Council to pursue a policy position, through the success of Council's VPA Policy, that provides measured community benefit and the delivery of affordable housing.

B. Relationship to strategic planning framework

1. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

The objectives and actions contained in the Sydney Metropolitan Strategy and East Subregion Draft Subregional Strategy were comprehensively addressed during the preparation of WLEP 2012. All of the objectives and actions contained within those plans were complied with.

The repeal of Clause 4.4B will allow for Council to better ensure the delivery of affordable housing within the Waverley LGA, which is consistent with the objectives and actions contained in the Sydney Metropolitan Strategy and East Subregion Draft Subregional Strategy.

2. Is the planning proposal consistent with the local Council's community strategic plan or other local strategic plan?

As part of the preparation of Waverley's Comprehensive Local Environmental Plan 2012, detailed consideration was given to Council's Strategic Plan in force at that time; "Waverley Together" and the WLEP 2012 was consistent with the strategies and directions contained in that plan. Waverley Council's current Community Strategic Plan, "Waverley Together 3" covers the period 2013-2025. The plan was designed to focus Council's attention on identified community need and desires; provide guidance on achieving these elements sustainably; and help maximise efforts to achieve that vision in a timely manner.

The plan is structured according to the 'Quadruple Bottom Line' and has four key result areas;

- i. Sustainable Community ('social' component);
- ii. Sustainable Living ('economic' component);
- iii. Sustainable Environment ('environment' component); and
- iv. Sustainable Governance ('governance' component).

The planning proposal is consistent with the strategic objectives of Waverley Together 3, particularly:

- i. **Sustainable Community** which represents the 'social' component of the quadruple bottom line. Relevant directions include:

C3 - Housing options are available to enable long term residents and those with a connection to the community to remain in Waverley.

- *C3a Promote a mix of housing types in new developments, including housing that is affordable and accessible.*
- *C3b Ensure Council's own portfolio of housing is affordable and accessible.*
- *C3c Investigate and pursue housing initiatives through joint venture and other forms of partnership opportunities.*

Response: The repeal of Clause 4.4B will allow Council to grow Waverley's Affordable Housing Program in accordance with the above directions. Council will pursue a policy position that allows the allocation of developer contributions to prioritised Council projects, such as monetary contributions towards affordable housing. Such monetary contributions will allow Council to

maintain existing affordable housing stock, acquire property for the purposes of affordable housing, and provide further capital to pursue joint ventures or partnerships.

- ii. **Sustainable Governance** which represents the 'governance' component. Relevant directions include:

G1 - Inspiring community leadership is achieved through decision making processes that are open, transparent, corruption resistant and based on sound integrated planning.

– G1a Develop and maintain a framework of plans and policies that ensures open and transparent operations that facilitate equitable benefit sharing and progress towards sustainability.

Response: The intent of repealing Clause 4.4B is to remove an incentives clause that provides significant benefit to the developer and inequitable benefit to the public (as provided in valuation advice at Attachment B). The removal of Clause 4.4B will allow Council to facilitate the delivery of significantly greater public benefit equitable to any developer incentive under Council's Planning Agreement Policy.

G2 - Our community is consulted about Council decisions and informed about Council services and activities.

– G2a Promote and require strategic directions that are inclusive and reflect the views of the community.

– G2b Provide opportunities in a variety of forums for all stakeholders to contribute to community decision making.

Response: The Gateway Determination will specify the minimum consultation requirement for this Planning Proposal and Council will comply fully with these requirements affording an opportunity for community engagement on all aspects of this planning proposal.

3. Is the planning proposal consistent with applicable state environmental planning policies?

This planning proposal is **consistent** with all State Environmental Planning Policy. Attachment C identifies all SEPPs and indicates compliance with those plans.

4. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

This planning proposal is **consistent** with all Ministerial Section 117 Directions. Attachments C and D identify all Section 117 Directions and indicate compliance with those directions.

C. Environmental, social and economic impact

1. Is there any likelihood that critical habitat or threatened species, populations or ecological communities or their habitats will be adversely affected as a result of the proposal?

No. The land which is subject to this planning proposal does not include any land which contains critical habitat or threatened species populations or ecological communities or their habitats.

2. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

No. There are no other likely environmental effects as a result of this planning proposal.

3. How has the planning proposal adequately addressed any social and economic effects?

The intent of repealing Clause 4.4B is to remove an incentives clause that provides significant benefit to the developer and inequitable benefit to the public. The removal of Clause 4.4B will allow Council to facilitate the delivery of significantly greater public benefit equitable to any developer incentive under Council's Planning Agreement Policy and WLEP 2012 Clause 4.6 Exceptions to development standards. The Waverley Affordable Housing Program (WAHP), since its operation from the late 90s, has successfully provided FSR and height bonuses to developers and provided monetary contributions, units in perpetuity and rent-capped units through a voluntary planning agreement process. Monetary contributions received in accordance with Council's VPA Policy will allow Council to maintain existing affordable housing stock, acquire property for the purposes of affordable housing, and provide further capital to pursue joint ventures or partnerships.

D. State and Commonwealth Interests

1. Is there adequate public infrastructure for the planning proposal?

The planning proposal will not affect the quantum of development or demand on public infrastructure in the Waverley LGA.

2. What are the views of State and Commonwealth Public Authorities consulted in accordance with the gate way determination and have they resulted in any variations to the planning proposal?

Apart from the Department of Planning and Environment, no consultation with State or Commonwealth Public Authorities has occurred at this stage. Consultation with relevant authorities will occur in accordance with the Gateway Determination.

4. DETAILS OF THE COMMUNITY CONSULTATION THAT IS TO BE UNDERTAKEN ON THE PLANNING PROPOSAL

Future community consultation will occur in accordance with the Gateway Determination. Notwithstanding this, Council considers that an exhibition period of 14 days would be appropriate to allow the general public to be informed. Council also suggests that:

- Notice be given in the Wentworth Courier being the local paper that services the Waverley Municipal Area;
- The Planning Proposal being advertised on Council's website; and
- The Planning Proposal being exhibited in Council's Customer Service Centre and Library.

5. LIST OF ATTACHMENTS

- A. Report to Council 10 December 2013 and Council Resolution - Waverley Local Environmental Plan 2012 - Clause 4.4B Planning Proposal.
- B. Valuation Advice - Hill PDA (27 August 2014).
- C. Section 117 Directions and State Environmental Planning Policy Compliance Table.
- D. Ministerial Directions - Section 117 Compliance Table.
- E. Proposed Waverley LEP 2012 Floor Space Ratio Maps.
- F. Current Waverley LEP 2012 Floor Space Ratio Maps.
- G. Information Checklist
- H. Project Timeline