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Gateway determination report – PP-2021-3131

Waverley Affordable Housing Contributions Scheme

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Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Planning Proposal
Waverley Affordable Housing Contributions Scheme 2020

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Waverley
PPA	Waverley Council
NAME	Waverley Affordable Housing Contributions Scheme
NUMBER	PP-2021-3131
LEP TO BE AMENDED	Waverley Local Environmental Plan (LEP) 2012
ADDRESS	LGA-wide
DESCRIPTION	Multiple Lots/DPs
RECEIVED	20/04/2021
FILE NO.	IRF22/4428
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The planning proposal seeks to implement the Waverley Affordable Housing Contributions Scheme 2020 (AHCS) which was adopted by Waverley Council in December 2020. The AHCS *‘aims to ensure that lower income households continue to live and work locally within the Waverley LGA, to facilitate a socially diverse and inclusive community.’*

The proposal seeks to amend the Waverley LEP 2012 to introduce an affordable housing contributions clause that would allow Council to collect development contributions for affordable housing on new apartment development and sites receiving uplift through the planning proposal process.

The stated objectives of the planning proposal are to:

- *Provide a transparent framework for development and uplift received through the planning proposal process to make equitable affordable housing contributions*
- *Increase the amount of affordable housing within Waverley LGA to achieve Waverley’s affordable housing targets set out in the Local Housing Strategy for 2036*
- *Ensure affordable housing contribution rates do not impact on development viability*

- *Ensure certainty for landowners and developer seeking to develop land in the LGA in understanding the contribution rates applicable to their development*

The objectives of this planning proposal are clear and adequate.

1.3 Explanation of provisions

The planning proposal seeks to amend the Waverley LEP 2012 to introduce an affordable housing contributions clause in Part 6 Additional Local Provisions that will implement the Waverley Affordable Housing Contributions Scheme 2020 (AHCS). The AHCS provides for in-kind or monetary contribution requirements, however states that Council's preference is for monetary contributions.

The following contribution levies are sought to be imposed:

- A levy of 1% of the total gross floor area (GFA) applying to all new residential apartment development* (at a flat dollar rate per square metre for monetary contribution), and
- A levy of 10% of the total GFA applying to sites receiving uplift through the planning proposal process (at a flat dollar rate per square metre for monetary contribution). Note: Council has provided a draft clause clarifying that this contribution component is 10% of the total gross floor area of the residential component.

*The planning proposal states that for the purposes of the proposal, 'apartment development' refers to residential flat building, shop top housing or mixed-use development with a residential accommodation component.

According to the AHCS, the monetary levy will be calculated based on the market value of residential floor space around the time of the development and will be updated on a regular basis.

The proposal includes a draft additional local provision, as follows. This would be subject to drafting by the Parliamentary Counsel's Office (PCO) should the proposal progress to finalisation.

"6.13 Affordable housing

- (1) [sic] 1. *The consent authority may impose a condition requiring a contribution equivalent to the affordable housing contribution levy being:*
 - a. *for residential flat building, shop top housing or mixed use development with a residential accommodation component, 1% of the total gross floor area of the residential component.*
 - b. *for development where a change in Waverley Local Environment[al] Plan 2012 creates additional residential floor space on the land, 10% of the total gross floor area of the residential component.*
2. *A condition imposed under this clause must satisfy the affordable housing levy contribution –*
 - a. *by way of a monetary contribution to the Council that is the per square metre value calculated in accordance with subclause (1) and subclause (3), or*
 - b. *by way of a dedication in favour of the Council of land comprising 1 or more complete dwellings (each having a total gross floor area of no less than 50 square metres).*
3. *For the purposes of this clause, the per square metre monetary value is to be calculated in accordance with the Waverley Affordable Housing Contributions Scheme*
4. *This clause does not apply to development for the purposes of any of the following –*
 - a. *development for the purposes of residential accommodation that is used to provide affordable housing or public housing*
 - b. *development for the sole purposes of generating employment."*

The proposal and draft provision indicate that the contribution requirement will not apply to development for the primary purpose of social housing and affordable rental housing, as well as employment generation. However, the AHCS itself does not include social and affordable rental housing in section ‘2.3 *Development that is exempt from the affordable housing contribution scheme.*’ This could mean that the AHCS will be charging levies for social and affordable housing; however, Council later clarified that this is not the case.

A Gateway condition is recommended to require Council to clarify the types of development that are excluded from the affordable housing contributions.

1.4 Site description and surrounding area

The planning proposal relates to all land in the Waverley LGA.

1.5 Mapping

No mapping is required to be amended or introduced as part of this planning proposal.

1.6 Background

Section 7.32 of the *Environmental Planning and Assessment Act* (EP&A Act) allows councils to levy contributions for affordable housing if a State Environmental Planning Policy (SEPP) identifies a need for affordable housing in the LGA. In February 2019, SEPP 70 – Affordable Housing (Revised Schemes) (‘SEPP 70’) was expanded to include all LGAs across the state. SEPP 70 has since been repealed with same provisions incorporated into the SEPP (Housing) 2021.

Under section 7.32(3)(b) of the EP&A Act, any condition imposed on a development consent must be authorised to be imposed by a LEP and be in accordance with an affordable housing contribution scheme for dedications or contributions set out in, or adopted by, the LEP. This forms part of the background in which the proposal was prepared.

The proposal is also seeking to undertake actions in the Waverley Local Housing Strategy (LHS) that recommended implementing an affordable housing contributions scheme.

Council prepared a draft AHCS and exhibited this from 7 October to 15 November 2020, along with a draft amendment to the Waverley Planning Agreement Policy 2014. On 1 December 2020, the Waverley Strategic Planning and Development Committee (SPDC) considered these documents, resolved to adopt them and submit a planning proposal to the Department seeking a Gateway determination to incorporate the AHCS into the LEP.

2 Need for the planning proposal

The planning proposal outlines a need to provide affordable housing in the Waverley LGA for very low-moderate income households. The planning proposal and AHCS refer to the scheme applying to ‘low and moderate’ income households, and at other times “very low, low and moderate” income households. The intent of the proposal should be clarified with the scope consistently referred to throughout the documentation. A Gateway condition is recommended to the above effect.

The proposal outlines reasons such as increased house price to income ratios, high rents in the LGA that are beyond the affordable rental range (more than 30% of household income) and current supply of affordable housing only meeting 57% of demand. The proposal also states that an additional 600 affordable dwellings will be required by 2036, equating to approximately 30 affordable rental dwellings per year.

An ‘Affordable Housing Needs Analysis’, which has been taken from the Waverley LHS, accompanies the proposal. The Department agrees and acknowledges that there is a need for more affordable housing in the LGA.

On 26 November 2021, the provisions of SEPP 70 were consolidated into Part 2 of the *State Environmental Planning Policy (Housing) (2021)* (Housing SEPP). Section 14 of the Housing SEPP identifies that *‘there is a need for affordable housing within each area of the State.’* As outlined above, a planning proposal is required for Council to be able to levy affordable housing contributions under section 7.32 of the EP&A Act and the Housing SEPP. This proposal seeks to carry out this legislative requirement and is considered the best mechanism for achieving the objectives and intended outcomes as there is no other means apart from a planning proposal to refer to the AHCS in the Waverley LEP.

The Department supports Council’s intent to deliver more affordable rental housing in the LGA. The preparation of an AHCS would provide the community and development industry with more certainty and transparency about how the contributions are determined. However, Council’s adopted AHCS does not follow the Department’s Guideline and does not have adequate supporting evidence.

Therefore, it is recommended that the Gateway requires Council to re-submit a revised planning proposal to address the issues raised in this assessment.

Guideline for Developing an Affordable Housing Contribution Scheme

The Department’s *Guideline for Developing an Affordable Housing Contribution Scheme* (‘the Guideline’) (February 2019) assists councils with the preparation of affordable housing contribution schemes and provides guidance to satisfy the legislative requirements.

The Guideline provides that affordable housing schemes should be applied where an uplift in land value is proposed to be created through zoning. This is commonly achieved through precincts that could support uplift and then an affordable housing charge is applied to that additional uplift only.

As stated in the Guideline (p. 17), *‘This ensures contributions are drawn from the increase in land value generated by the rezoning and are consistent with the affordable housing targets established in the Greater Sydney Commission’s District Plans.’* By applying contributions to defined areas, it allows for a detailed viability assessment that is specific to the development conditions of the areas being rezoned. The Guideline also recommends that areas suitable for growth should be identified in the Local Housing Strategy (LHS).

As the planning proposal itself acknowledges (p. 9-10), the AHCS is inconsistent with the Guideline as it seeks to introduce an LGA wide contributions scheme, rather than using a precinct-based approach to levying contributions. In addition, the generic and theoretical feasibility analysis submitted in support of the proposal has not adequately demonstrated the viability of the LGA-wide blanket levy proposed, which is a fundamental consideration of the Guideline.

Council’s rationale for the planning proposal

The proposal outlines Council’s reasons for deviating from the Guideline, one of these being that it considers the opportunities for ‘significant’ or ‘large scale’ rezoning / upzoning are limited in the Waverley LGA.

The Department, however, notes that Council’s own *Our Liveable Places Centres Strategy* identifies areas with potential for uplift, such as the Curlewis Street and Bondi Road areas. The Department’s Local Housing Strategy (LHS) approval dated 17 June 2021 requires Council to bring forward planning proposals for these areas, or other centres capable of accommodating additional residential uplift (refer to Conditions 4 – 7 of the LHS approval). There is therefore an opportunity to formulate affordable housing contribution schemes for these and any other identified areas (refer to Condition 8 of the LHS approval).

The planning proposal asserts that there are constraints to support growth above the capacity of the existing planning controls due to reasons such as: high number of strata titled properties, heritage constraints, and single dwellings that attract higher premium or properties that have been heavily capitalised.

The Department's LHS approval has excluded certain actions in Council's LHS (refer to Condition 3). A key exclusion was that the Department did not find sufficient capacity under Council's current planning controls to meet the 6 to 10-year housing target (2021-2026) and 10 to 20-year target (2026-2036). Hence, as per the LHS approval requirements, Council should investigate areas suitable for residential uplift and concurrently use this opportunity to investigate affordable housing contributions for these areas.

Housing SEPP - Explanation of Intended Effect

In November 2022, the Department released an Explanation of Intended Effect (EIE) seeking feedback on proposed amendments to the Housing SEPP. The EIE proposes changes to better enable the planning and delivery of housing for people with particular needs and is on exhibition until 13 January 2023. Among other things, the EIE indicates the need to review the *Guideline to Developing an Affordable Housing Contribution Scheme* to ensure it provides the appropriate guidance and support for councils, so that the process of developing and adopting an AHCS is easier and more efficient. The review would aim to create more flexibility for councils about how they wish to apply an AHCS in their LGAs by outlining alternative pathways. The proposed changes may include using a council-led planning proposal to:

- *Introduce an affordable housing clause in an LEP that identifies potential areas and/or sites to be rezoned in the future. Basic feasibility analysis should be undertaken at this stage to identify a maximum applicable levy for the mapped sites. The contribution would then be triggered by a developer-initiated planning proposal for a mapped site, provided the council, as the consent authority, decides that it is reasonable to impose a condition on the development consent requiring the payment of an affordable housing contribution given the site-specific area. (p. 12 of EIE)*
- *Introduce an affordable housing clause in an LEP that states a contribution rate may be applied for any developer-led planning proposal that seeks uplift on a site. The applicable levy would first need to be calculated by the developer. At the planning proposal stage the council, as the consent authority, would need to review the proposed levy and agree that it is reasonable to impose a condition on the development consent requiring payment of an affordable housing contribution given the site-specific area. (p. 12-13 of EIE)*

Council's current scheme is different from both alternative pathways outlined above, in that:

- When compared against the first alternative pathway, the subject planning proposal does not identify specific sites or areas for both the 1% contribution for residential apartment development and the 10% contribution for sites benefiting from uplift. The proposal seeks to apply a set of blanket contributions across the LGA; and
- The proposal is also different from the second alternative pathway under the EIE, as the latter seeks to allow the proponent to nominate the contribution levy for a site-specific planning proposal, which will be reviewed by the relevant council. The current proposal does not identify specific sites or areas for the purposes of the contribution.

There is an opportunity for a revised planning proposal and AHCS to be prepared based on adequate feasibility testing to ensure the proposed affordable housing contribution would be viable and would not adversely affect development feasibility, in line with the objectives of the Department's Guideline and the Region Plan.

DPE's consideration

1% levy for residential apartment development:

The proposed 1% affordable housing contribution is applied LGA wide and is not consistent with the Guideline's recommended approach, in that it applies to areas where no uplift is proposed. The feasibility analysis that accompanies the proposal is based on a theoretical example and is therefore difficult to test or question its validity. When establishing the proposed rate, Council's approach does not consider the residual land value methodology within the Guideline. This is discussed further in the economic impact in section 4.2 of this report.

However, recognising the need for affordable housing in the LGA, which has been established in Council's AHCS, a low percentage council-wide contribution levy (e.g. the 1% as currently proposed) applying to residential apartment development may be considered, provided robust evidence and feasibility testing are in place to demonstrate the viability of such a levy.

On 14 December 2022, a meeting between Council and the Department was held and the need for adequate feasibility analysis was discussed.

It is recommended that the Gateway determination include requirements for Council to undertake further feasibility testing to support a revised proposal to be re-submitted to the Department for assessment. The testing should include:

- i. Identification of the types of development and/or land use zones or locations to which the proposed levy under the AHCS will be applied (e.g. residential apartment in the relevant residential and business / employment zones).
- ii. Assessment of the potential development capacity for the applicable types of development in the relevant land use zones or locations, based on the existing planning controls.
- iii. Preparation of generic feasibility analysis based on the above, taking into account all applicable fees, charges and development contributions and including sensitivity testing of any future changes to the fees and charges.
- iv. Assessment of the impact of the proposed affordable housing contribution rate pursuant to the baseline feasibility analysis described above.

10% levy for sites benefiting from uplift through the planning proposal process:

For the proposed 10% affordable housing levy for sites benefitting from rezoning, Council's AHCS does not identify defined areas for uplift. This means that it would be applied to proponent-led planning proposals on *any* sites within the LGA. Although the feasibility analysis is based on real sites across different suburbs within the LGA, it is not related to specific sites/areas identified for growth under the scheme, and hence is inconsistent with the Department's Guideline.

Further, the Guideline states that AHCSs should apply to new residential uplift. However, Council's scheme appears to apply the proposed 10% contribution rate to the total floor space (of the residential component, according to the draft clause provided by Council) of development on rezoned sites, rather than the additional floor area resulting from uplift. If the proposed contribution rate is converted to apply to the uplifted floor space only, it would likely be much higher than the 10%. This would also exceed the recommended Affordable Rental Housing Targets of 5 to 10% (for the uplifted residential floor space), subject to viability, under the Region Plan (also see section 3.1 below).

Considering the above, the Department considers this component of the proposal is not supportable in its current form.

Regarding the approach in the EIE, Council has the option to specify its intent to require affordable housing contribution in future site-specific planning proposals in a revised AHCS. The contribution rate could be calculated by the proponent based on a site-specific feasibility analysis for Council's review at the site-specific planning proposal stage. A discussion of this approach may be included in the revised planning proposal to be submitted to the Department for Gateway assessment.

Administration of the affordable housing contributions

During assessment of this proposal, Council has provided further information outlining how the contributions will be administered, as follows:

- Council's affordable housing program is managed by a Category 1 registered community housing provider, appointed through a tender process conducted once every 5 years. (The Department's Housing Policy Team has advised that details on partnership with community housing providers should be included in the affordable housing scheme.)
- The funds collected under the affordable housing program are held in dedicated reserves. The performance of the community housing provider is monitored by Council officers, with quarterly and annual reporting required.

The Gateway determination will require the planning proposal to be revised to include information on administration of the contributions collected.

3 Strategic assessment

3.1 Regional Plan

The following provides an assessment of the planning proposal against relevant aspects of the Greater Sydney Region Plan (Region Plan).

The Region Plan contains *Objective 11: Housing is more diverse and affordable* and recommends Affordable Rental Housing Targets as a mechanism to deliver additional supply of affordable housing for very low to low income households in Greater Sydney (Action 5). The Region Plan states that the targets would be '*applied in defined precincts prior to rezoning.*' The Department's Guideline echoes this approach and acknowledges the Greater Cities Commission's objective, stating that '*Affordable Rental Housing Targets are to be applied in areas where an uplift of land value is created.*'

The Region Plan includes Affordable Rental Housing Targets for very low to low-income households in Greater Sydney that are generally in the range of 5-10 % of new residential floor space (subject to viability). The Targets are to be applied in areas where an uplift of land value is created. The contribution rate needs to be viable when taking into consideration local and state infrastructure charges, and the ability for developers to achieve a reasonable profit margin. The intent is not to inhibit housing supply outcomes.

The planning proposal in its current form is inconsistent with the Greater Sydney Region Plan and the Department's Guideline as it seeks to introduce a clause to levy development contributions for affordable housing that:

- in part (the 1% levy across apartment development), is not tied to upzoning that results in an increase in land value;
- applies to the entire LGA rather than being applied to defined areas identified for growth (note that the 10% levy applies to any areas within the LGA that receive uplift via a planning proposal process);
- does not adequately demonstrate the proposed 1% contribution rate is viable and will not impact feasibility and overall housing supply in the LGA (refer to section 4.2 for further details); and
- the feasibility modelling for the 10% levy does not relate to sites that are identified for uplift (refer to Section 4.2 below).

The Gateway determination will require a revised proposal to be submitted that addresses the above matters with adequate evidence to ensure viability of the proposed contribution rate, taking into account the changing policy context as outlined in the EIE.

3.2 District Plan

The site is within the Eastern City District and the Greater Cities Commission (GCC, formerly the Greater Sydney Commission) released the Eastern City District Plan on 18 March 2018. The plan contains planning priorities and actions to guide the growth of the district while improving its social, economic, and environmental assets.

The planning proposal is consistent with the priorities for liveability in the plan as outlined below.

The Department is satisfied the planning proposal gives effect to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*. The following table includes an assessment of the planning proposal against relevant directions and actions.

Table 3 District Plan assessment

District Plan Priorities	Justification
Planning Priority E4: Fostering healthy, creative, culturally rich and socially connected communities	This Priority aims to foster healthy, resilient and socially connected communities with diverse neighbourhoods through promoting active lifestyles and the arts. The proposal states that it provides a local response to address spatial variations in socio-economic disadvantage as it will provide the supply of affordable housing in various suburbs throughout Waverley. The Department concurs and considers the proposal is consistent with this Priority.
Planning Priority E5: Providing housing supply, choice and affordability with access to jobs, services and public transport	This Priority seeks to provide greater housing supply that is also diverse and affordable. This Priority identifies that councils will be preparing local housing strategies to address housing supply, including to inform Affordable Rental Housing Target Schemes. The planning proposal which seeks to implement Council's AHCS is consistent with Action 17 – <i>'Prepare Affordable Rental Housing Target Schemes following development of implementation arrangements.'</i>

3.3 Local

The proposal states that it is consistent with the following local plans and endorsed strategies. It is also largely consistent with the strategic direction and objectives, as stated in the table below:

Table 4 Local strategic planning assessment

Local Strategies	Justification
Local Strategic Planning Statement (LSPS)	<p>The Waverley LSPS plans for Waverley's economic, social and environmental needs to 2036. The LSPS identifies housing affordability as a key issue that Waverley faces, and to grow and improve the provision of affordable housing is one of the planning principles in the LSPS.</p> <p>The planning proposal responds to <i>Planning Priority 6: Facilitate a range of housing opportunities in the right places to support and retain a diverse community</i> in the LSPS. This Priority includes Action 2 which seeks to increase the avenues that deliver affordable housing, including for Council to <i>'prepare and implement the Affordable Housing Strategy'</i>. The planning proposal implements this Action.</p> <p>Action 3 is for Council to work with the Department to prepare an affordable housing scheme to ensure the then SEPP 70 (now superseded by the Housing SEPP) is effective in Waverley. The planning proposal acknowledges <i>'the scheme requires some exemptions from the guidelines of the scheme but it does so in meeting the</i></p>

	<p><i>objectives of the scheme.</i> Council's LSPS acknowledges that <i>'the premise of SEPP 70 is that it allows Councils to levy new development in areas where significant up-zoning has occurred for affordable housing contributions. Council will undertake work to develop appropriate affordable housing contributions across the LGA.'</i></p> <p>The planning proposal and affordable housing scheme are not consistent with the Department's Guideline, particularly the latter's approach to link contributions with uplift, and therefore is not consistent with Action 3.</p> <p>The Department acknowledges that there is a need for more affordable housing in the Waverley LGA. The Gateway determination will require a revised proposal to be submitted with adequate evidence to demonstrate viability of the proposed contribution rate.</p>
Community Strategic Plan (CSP) 2018-2029	<p>The Waverley CSP 2018-2029 identifies the community's main priorities and aspirations for the future. The CSP's vision is for Waverley to be <i>'a welcoming and cohesive community that celebrates and enhances our spectacular coastline, vibrant places, and rich cultural heritage.'</i></p> <p>The proposal is consistent with Council's CSP for the same reasons as in section 3.2 above, and it implements various strategies including:</p> <ul style="list-style-type: none"> • 2.1 <i>'Create a resilient, caring and cohesive community';</i> and • 5.1 <i>'Facilitate and deliver well designed, accessible and sustainable buildings and public places that will improve the liveability of neighbourhoods.'</i> <p>The proposal will provide the mechanism to secure additional affordable housing. It states <i>'the units provided will be managed by community housing providers and strict conditions for tenants will be used so that the housing is made available only for those on very low, low and moderate housing incomes.'</i></p>
Waverley Local Housing Strategy (LHS) 2020-2036	<p>Local housing strategies are required to link Council's vision for housing with the housing objectives and targets of the Region Plan and District Plan. On 16 July 2021, the Department approved the Waverley LHS subject to a set of requirements and advisory notes.</p> <p>The proposal acts on the LHS <i>Priority H3 'Increase amount of affordable rental and social housing.'</i> The LHS acknowledges that the Greater Sydney Region Plan identifies an affordable housing contributions target of 5-10% of new residential floor space to be mandated as part of any uplift in land value created through rezoning. However, the LHS states (p. 11) this is a <i>'weak response to the affordable housing crisis in Sydney'</i> and considers <i>'a target that is a percentage of the value of the whole development, not only of any uplift should have been considered.'</i></p> <p>The LHS indicates that initial modelling and feasibility suggest that the proposed affordable housing contributions scheme could comprise the following elements:</p> <ul style="list-style-type: none"> • 1% phasing up to 3% over time on all new residential apartment development; and • 10-15% applying to sites that achieve an uplift through amendments to planning controls. <p>The LHS indicates that the LGA will not see significant urban renewal and that it can meet its 6 to 10-year housing target (2021-2026) set by the GCC. On this basis, the LHS does not propose specific rezoning to deliver housing supply. However, the Department's analysis in assessing Council's LHS found that the current pipeline for the Waverley LHS is unable to meet the 6 to 10-year housing target and identified</p>

that there are opportunities for Council to explore for additional housing. The Department's LHS approval advisory notes recommend Council investigate areas with potential for uplift such as those identified in Council's *Our Liveable Places Centres Strategy*, such as Curlewis Street and Bondi Road, and to bring forward planning proposals for these areas.

As previously stated, the Waverley LHS was endorsed by the Department subject to a number of requirements, including requirements 3(b) and 8, which exclude the proposed affordable housing contributions scheme. The LHS advisory notes further stated that the Department does not support the use of SEPP 70 as an LGA wide standard to increase contributions for affordable housing. The LHS includes a requirement for Council to examine the feasibility of levying affordable housing contributions for any new planning proposals that would result in development uplift or an increase in land value in line with the former SEPP 70 and the Department's Guideline.

The Department acknowledges that there is a need for more affordable housing in the Waverley LGA. The Gateway determination should require a revised proposal to be submitted with adequate evidence to demonstrate viability of the proposed contribution rate. Council should also be advised to explore suitable areas for uplift consistent with its *Our Liveable Places Centres Strategy* and the possibility for applying an affordable housing levy for these areas.

3.4 Local planning panel (LPP) recommendation

On 24 March 2021, the Waverley LPP considered a report on the planning proposal to introduce the AHCS into the Waverley LEP.

The LPP resolved that it is premature to proceed to a Gateway determination until the planning proposal is amended to incorporate various amendments, including inserting the intended draft LEP clause into the planning proposal, clarify discussion on a couple of other planning proposals, and *'justify or delete the discussion on how additional development costs will not be passed on to the end user.'*

The planning proposal was updated to incorporate this advice and reported to Council's Strategic Planning and Development Committee on 13 April 2021 who resolved to forward the proposal to the Department for Gateway determination.

3.5 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

Table 5 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
3.2 Heritage Conservation (previously 2.3)	Consistent	<p>Direction 3.2 requires that a planning proposal contain provisions which facilitate the conservation of items, places, buildings, works, relics, moveable objects or precincts of environmental heritage of the area.</p> <p>All listed heritage items, heritage conservation areas and archaeological sites that are listed in the LEP will be retained. The proposal is therefore consistent with this direction.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
5.1 Integrating Land Use and Transport (previously 3.4)	Consistent	<p>Direction 5.1 aims to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve specified planning objectives relating to transportation integration.</p> <p>This Direction applies as the proposal will create a provision relating to urban land. No changes are proposed in terms of zoning and the proposal does not contain provisions that contradict or would hinder the application of this direction.</p>
6.1 Residential Zones (previously 3.1)	Consistent	<p>Direction 6.1 aims to encourage a variety of housing types, make efficient use of infrastructure and service and minimise the impact of residential development on the environment and resource lands. The proposal does not contain provisions that contradict or would hinder the application of this direction.</p>
7.1 Business and Industrial Zones (previously 1.1)	Consistent	<p>Direction 7.1 aims to encourage employment growth and protect industrial and employment lands. This direction applies to the planning proposal as it will affect land zoned B4 Mixed Use (where shop top housing, a type of residential accommodation intended to apply to the scheme, is permitted with consent in this zone).</p> <p>The proposal does not contain provisions that contradict or would hinder the application of this direction.</p>

3.6 State environmental planning policies (SEPPs)

The proposal's consistency with the relevant SEPPs is discussed in the table below.

Table 6 Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
<p>Housing SEPP 2021</p> <ul style="list-style-type: none"> • <i>Former SEPP 70 – Affordable Housing (Revised Schemes) (SEPP 70)</i> • <i>Former SEPP (Affordable Rental Housing) 2009 (ARH SEPP)</i> 	<p>The Housing SEPP consolidated and repealed five previous housing-related policies, including SEPP 70 and the ARH SEPP.</p> <p>Some of the principles of the Housing SEPP relevant to the proposal include <i>'(b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very</i></p>	<p>Generally, Yes</p>	<p>The planning proposal does not include commentary on the Housing SEPP as it had not yet commenced at the time the proposal was sent to the Department for a Gateway determination. However, it includes commentary on SEPP 70 and the ARH SEPP. Any future planning proposal should address the Housing SEPP.</p> <p>The proposal is consistent with the aims around mitigating the loss of existing affordable rental housing. The proposal does not contradict or hinder the application of parts of the Housing SEPP, which were transferred from the</p>

low to moderate income households... and *‘(h) mitigating the loss of existing affordable rental housing.’*

The SEPP identifies a need for affordable housing for the State. The provisions of the former SEPP 70 have been transferred to the Housing SEPP which enables a council to seek to amend its LEP to include reference to an affordable rental housing contribution scheme and to levy affordable housing contributions in accordance with that scheme.

ARH SEPP that provide incentives such as bonuses for various development types to include affordable rental housing and allow for contributions where there is a reduction in affordable housing.

The proposal is consistent with the principles of the Housing SEPP, however as previously mentioned, the AHCS does not adhere to the Department's current *Guideline for Developing an Affordable Housing Contribution Scheme*.

It is recommended that the Gateway determination require the submission of a revised planning proposal and AHCS based on adequate evidence and feasibility testing to ensure development viability.

The planning proposal includes a commentary regarding SEPP 1, which has been repealed. Any revised planning proposal should remove reference to this repealed SEPP.

4 Site-specific assessment

4.1 Environmental

The nature of the planning proposal is not likely to adversely impact on critical habitat areas or threatened species, populations or ecological communities, or their habitats.

4.2 Social and economic

The following table provides an assessment of the potential social and economic impacts associated with the proposal.

Table 7 Social and economic impact assessment

Social and Economic Impact	Assessment
Social	As previously acknowledged the planning proposal identifies the need for more affordable housing for very low to moderate income households in the Waverley LGA. This is further outlined in the attachment to the planning proposal, 'Affordable Housing Needs Analysis'. The Department agrees that the planning proposal would promote positive social impacts by increasing the supply of affordable housing in the Waverley LGA.

Social and Economic Impact	Assessment
Economic	<p>Council has undertaken feasibility analysis of the proposed 1% and 10% levies to support the AHCS. Council's feasibility analysis for testing the viability of the 10% levy for sites benefiting from uplift involved applying data from sites in different suburbs of the LGA. The analysis states that the levy is viable for each suburb. The 1% rate was tested on a hypothetical basis.</p> <p>In response to Council's feasibility analysis, the Department's Housing Policy Team has advised that:</p> <ul style="list-style-type: none"> • There is insufficient information provided to analyse or question the inputs in the feasibility tool created by Council; • Council's approach does not consider the residual land value methodology within the Guideline when establishing the proposed 1% levy rate, as well as the blanket 10% rate for future unsolicited planning proposals; • Additionally, for the 10% levy to be applied to uplifted sites, the modelling is inadequate as feasibility needs to be addressed each time a new site is proposed for uplift (the modelling provided by Council relates to real sites but they are not identified for rezoning and uplift as such); • It is unclear if Council's approach seeks to apply the 10% levy rate to the total floor area of future development on the whole rezoned site or the additional floor area resulting from uplift only. The Guideline specifically states an affordable housing scheme only applies to new residential uplift; and • There is insufficient evidence to demonstrate that the 1% levy proposed to apply to residential apartment development throughout the entire LGA is feasible and can be imposed without impacting the viability of development. <p>The Housing Policy Team has recommended the feasibility testing requirements for the proposed 1% levy, should an updated planning proposal be re-submitted for consideration. These requirements are outlined in section 2 above.</p>

4.3 Infrastructure

The provision or funding of state infrastructure is not considered relevant to this planning proposal. There is no infrastructure demand that will result directly from the planning proposal.

5 Consultation

5.1 Community

The planning proposal in its current form is not recommended to proceed to community consultation.

5.2 Agencies

The planning proposal in its current form is not recommended to proceed to agency consultation.

6 Timeframe

It is recommended that the Gateway determination specifies a timeframe for revising the planning proposal to address the matters raised in this report and resubmitting within **six** months.

7 Local plan-making authority

Council has advised that it would like to exercise its functions as a local plan-making authority. The Department will consider whether Council may be delegated the local plan-making authority when a revised planning proposal is submitted for Gateway determination.

8 Assessment summary

The Department acknowledges the intent of the planning proposal to increase the amount of affordable housing in the LGA and the need for this. It is recognised that an affordable housing contributions scheme prepared under the Housing SEPP would provide more certainty and transparency for the community regarding contributions requirements, compared to through planning agreements alone.

However, the planning proposal in its current form is not recommended to proceed for the following reasons:

- The Waverley AHCS applies to the entire LGA and has not been subject to adequate feasibility testing to apply to local development scenarios.
- For the proposed 10% levy for sites benefiting from uplift through the planning proposal process, it is unclear whether the levy applies to the total residential floor area of development on the whole rezoned site, or to the additional residential floor space created by uplift only. The Department's Guideline states that an AHCS should only apply to new residential uplift. The proposal lacks details of what the proposed rate would translate to when expressed as a percentage of the proposed uplift and the implications on development viability.
- The AHCS is inconsistent with the Greater Cities Commission's *Greater Sydney Region Plan* actions in that affordable housing targets should be applied to defined precincts for uplift, and the approach in the Department's *Guideline for Developing an Affordable Housing Contribution Scheme*, which allows for a detailed viability assessment specific to the development conditions of area/s proposed for rezoning;
- The proposal is inconsistent with the requirements (3b and 8) and advisory notes that the Department placed on the approval of the *Waverley Local Housing Strategy*;
- There is a lack of adequate economic justification and feasibility testing in accordance with the Department's Guideline. Specifically, the proposal does not adequately demonstrate the viability of a 1% contribution levy imposed on all new residential apartment development in the LGA and the viability of a 10% contribution levy on sites proposed for uplift; and
- The AHCS is unclear as to whether development for the purposes of affordable housing and social housing is excluded from the proposed levies and is inconsistent with commentary in the planning proposal.

The Department is committed to supporting and working with Council to develop an alternative scheme that addresses the issues raised in this report.

9 Recommendation

It is recommended the delegate of the Minister determine that a revised planning proposal and affordable housing contributions scheme addressing the following matters should be resubmitted for Gateway determination within 6 months:

- Provide detailed economic justification and feasibility analysis in accordance with the Department's *Guideline for Developing an Affordable Housing Contribution Scheme* to demonstrate the viability of a 1% affordable housing contribution rate imposed on all new residential apartment development across the Waverley LGA. The testing is to include:
 - Identification of the types of development and/or land use zones or locations to which the proposed levy under the AHCS will be applied (e.g. residential apartment in the relevant residential and business / employment zones).
 - Assessment of the potential development capacity for the applicable types of development in the relevant land use zones or locations, based on the existing planning controls.
 - Preparation of generic feasibility analysis based on the above, taking into account all applicable fees, charges and development contributions and including sensitivity testing of any future changes to the fees and charges.
 - Assessment of the impact of the proposed affordable housing contribution rate pursuant to the baseline feasibility analysis described above.
- Remove the proposed affordable housing contribution of 10% of the total floor area applying to sites receiving uplift through separate and future planning proposal processes.
- Justify the inconsistency with the Department's requirements (number 3(b) and 8) and advisory notes of the approval of the Waverley Local Housing Strategy 2020-2036, which require Council's AHCS to be revised to be consistent with the Department's Guideline.
- Include an objective or discussion in the AHCS and planning proposal to indicate that an affordable housing contribution may be applied to any future planning proposal that seeks uplift on a site, with the rate to be subject to feasibility testing and determined at the site-specific planning proposal stage on a case-by-case basis.
- Confirm the types of development that are excluded from affordable housing contributions.
- Clarify whether the scope of the AHCS is to address and clarify the housing needs of "low to moderate" or "very low to moderate" income households.
- Provide further information in the AHCS relating to the administration of the affordable housing contributions collected under the scheme, including:
 - The role of any community housing provider(s) in managing affordable housing units, the appointment process and performance monitoring measures.
 - Information on any affordable housing program to ensure Waverley's affordable housing demand would be met.
- Include updated commentary against the state and local strategic plans, relevant SEPPs and section 9.1 Ministerial Directions.
- Amend the AHCS to align with the revised planning proposal.



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9.1.2023

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