



IRF23/2688

Gateway determination report – PP-2023-2221

Waverley Affordable Housing Contributions Scheme
Planning Proposal

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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
Waverley Affordable Housing Contributions Scheme 2020 & 'Appendix A' Local Housing Needs Assessment (October 2023)
Waverley Council Strategic Planning and Development Committee Meeting Minutes (13 April 2021)
Waverley Local Planning Panel Meeting Minutes (24 March 2021)
AHCS Feasibility spreadsheet (Waverley Council, 2023)

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Waverley
PPA	Waverley Council
NAME	Waverley Affordable Housing Scheme Planning Proposal
NUMBER	PP-2023-2221
LEP TO BE AMENDED	Waverley Local Environmental Plan 2012 (Waverley LEP 2012)
ADDRESS / DESCRIPTION	Waverley LGA (Figure 1)
RECEIVED	5/10/2023
FILE NO.	IRF23/2688
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 explain the intent of the proposal.

The proposal seeks to amend the Waverley LEP 2012, to implement the Waverley Affordable Housing Contributions Scheme 2020 (AHCS) first adopted by Waverley Council in December 2020.

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 enable the collection of affordable housing contributions as part of the development approval process for specified residential development. The proposal seeks to introduce two new additional local provisions and a new Schedule.

The proposed contribution levies include:

- A levy of 1% of the total gross floor area (GFA) of all new residential flat buildings, independent living units, multi dwelling housing and shop top housing development (at a flat dollar rate per square metre for monetary contribution); and
- A target levy of 10% of the total GFA for sites receiving additional development uplift through a planning proposal/rezoning process (at a flat dollar rate per square metre for monetary contribution).

Note: The proposal states that the contribution will be excluded from employment generating only development, and development for the primary purpose of social and affordable rental housing. However, example clause 6.13(6)(b) in the planning proposal was crossed out. This subclause should be reinstated to be clear where the provision doesn't apply to.

The proposal also specifies that 'uplift' relates to instances where there is an increase in site value through increased gross floor area via a change in zoning or planning variation.

The planning proposal includes draft provisions and a draft Schedule to illustrate the proposed intent (see below) and notes that the wording of the proposed clauses are like provisions (Clauses 7.13 and 7.13B) in the Sydney LEP 2012. However, the proposal acknowledges that the proposed provisions will be subject to Parliamentary Counsel drafting, should the proposal proceed to finalisation.

Part 6 Additional Local Provisions

6.13 Affordable housing contribution for certain development

- (1) *This clause applies to all land in the Waverley Local Government Area.*
- (2) *This clause applies to development for the purposes of a new residential flat building, multi dwelling housing, independent living unit, and shop top housing development.*
- (3) *The consent authority may impose a condition requiring a contribution equivalent to the affordable housing contribution levy of 1% of the total new gross floor area of the residential component of applicable development.*
- (4) *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 (5), 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).*
- (5) *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.*
- (6) *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, or*
 - (b) *development for the sole purposes of generating employment, or*

(c) development where a contribution under Clause 6.14 has been paid.

(7) The demolition of a building, or a change in the use of land, does not give rise to a claim for a refund of a contribution.

6.14 Affordable housing contribution on planning proposal sites

(1) This clause applies to development on land identified in Schedule 7.

(2) The consent authority may, when granting development consent to development to which this clause applies, impose a condition requiring an affordable housing levy contribution equivalent to 10% of the total new gross floor area of the residential component of development.

(3) Despite subclause (2), the consent authority may impose an affordable housing levy contribution equivalent to less than 10% of the total new gross floor area of the residential component of development if an applicant can demonstrate to the consent authority's satisfaction that it would be unviable to contribute 10%.

(4) 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 (4), 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).

(5) 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.

(6) 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) - EXCLUDED

(c) development for the sole purposes of generating employment.

(7) The demolition of a building, or a change in the use of land, does not give rise to a claim for a refund of a contribution.

Schedule 7 Planning Proposal Land

Planning Proposal Land

[intentionally blank – future PP lot and dp's would be added here]

The planning proposal contains an explanation of objectives that adequately explains how the objectives of the proposal will be achieved.

1.4 Site description and surrounding area

The planning proposal relates to all land within the Waverley Local Government Area (LGA), which is located within the Eastern City District as shown in **Figure 1**.

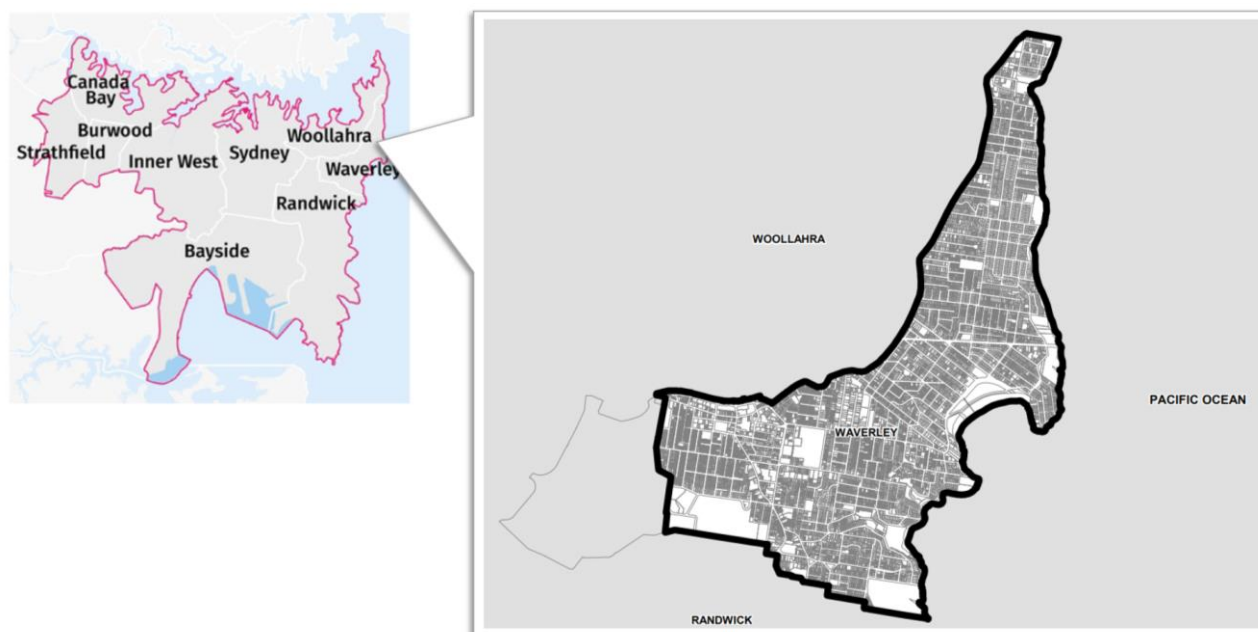


Figure 1: Subject land (Source: Eastern City District Plan 2018 and LEP Land Application Map)

1.5 Mapping

No amendments to the LEP maps are proposed.

1.6 Background

A brief timeline of the proposal is provided in **Table 3** below:

Table 3 Overview of planning proposal history

Date	Event
1 June 2002	The former State Environmental Planning Policy No. 70 - Affordable Housing (SEPP 70) was introduced to identify specific councils as having a need for affordable housing and provide a mechanism for those councils to develop schemes and levy developer contributions for affordable housing.
28 February 2019	The former SEPP 70 was expanded to all LGAs in NSW.
1 December 2020	Waverley Strategic Planning and Development Committee (SPDC) resolved, in part, to adopt the draft Affordable Housing Contributions Scheme (AHCS) and submit a planning proposal to the Department, seeking a Gateway determination to incorporate the AHCS into the Waverley LEP 2012.

Date	Event
24 March 2021	Waverley Local Planning Panel (LPP) advised Council that it was premature to proceed to a Gateway determination until the planning proposal was amended to: <ul style="list-style-type: none"> • insert 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.
13 April 2021	Waverley SPDC resolved to submit the planning proposal, as amended in accordance with the LPP advice, for Gateway determination.
19 April 2021	Planning proposal (PP-2021-3131) was submitted to the Department for Gateway determination.
16 July 2021	The Department gave conditional approval to the Waverley Local Housing Strategy 2020, subject to a set of requirements.
28 July 2021	The Department advised Council that the planning proposal (PP-2021-3131) could not be supported in its current form and requested it be withdrawn.
26 October 2021	Council resolved to seek a Gateway Review. Note: As a Gateway determination had not been issued, a Gateway review was unable to be undertaken.
10 November 2021	Council requested a Gateway determination be issued for the planning proposal (PP-2021-3131).
26 November 2021	SEPP 70 was consolidated into <i>State Environmental Planning Policy (Housing) (2021)</i> (Housing SEPP).
19 November 2022 to 13 January 2023	The Department exhibited an Explanation of Intended Effect (EIE) for amendments to the in-fill affordable housing, group homes, supportive accommodation, and social housing provisions of the Housing SEPP. Note: The Draft Housing SEPP EIE exhibition material included draft updates to the Department's Affordable Housing Contribution Scheme Guidelines; however, these have not progressed.
9 January 2023	A Gateway determination was issued by the Department requiring that the planning proposal be resubmitted after it had been updated to address conditions.
4 April 2023	Waverley SPDC resolved to submit the revised planning proposal subject to amendments.
14 July 2023	Council submitted a revised planning proposal (PP-2021-3131) to the Department for Gateway determination.
19 September 2023	The Department wrote to Council advising of several matters requiring resolution before the proposal can be considered adequate to proceed to Gateway assessment.
5 October 2023	Council submitted a new Affordable Housing Contributions Scheme planning proposal application to the Department for Gateway assessment. A new planning proposal number (PP-2023-2221) was assigned to avoid confusion with previous versions.

2 Need for the planning proposal

The planning proposal seeks to implement the Waverley Local Housing Strategy (LHS), and Waverley Affordable Housing Contributions Scheme (endorsed by Council December 2020); both of which identify a need for more affordable housing in the Waverley LGA and recommend introduction of an Affordable Housing Contributions Scheme.

The planning proposal is supported by the Waverley Affordable Housing Contributions Scheme 2023 which was adopted by Council's committee and updated 31 May 2023 to address previous Gateway conditions and committee meeting minutes. Updates dated October 2023 will need to be adopted by Council prior to legal drafting of the LEP. The scheme includes a Local Housing Needs Assessment (in Appendix A) extracted from the Waverley LHS. This highlights the need to increase the provision of affordable housing in the Waverley LGA. The subject planning proposal states that the Waverley Local Housing Strategy identifies an estimated *"additional 600 affordable dwellings will be required [in the Waverley LGA] by 2036, equating to approximately 30 affordable rental dwellings per annum"* (p.24).

The proposal attributes the rise in affordable housing need in the Waverley LGA to the increase in household income to house price ratios; high rents that are beyond the affordable rental range (more than 30% of household income); and current supply of affordable rental housing meeting only 57% of demand, and new development which may result in the loss of affordable housing.

Section 7.32 of the *Environmental Planning and Assessment Act 1979* (the 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, State Environmental Planning Policy No. 70 - Affordable Housing (SEPP 70) was expanded to include all LGAs across the state. SEPP 70 has since been repealed, with the same provisions incorporated into the Housing SEPP 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 an LEP and be in accordance with an affordable housing contribution scheme for dedications or contributions set out in, or adopted by, the LEP.

A planning proposal is the mechanism to amend the Waverley LEP 2012 to introduce an affordable housing contributions scheme.

The Department recognises that there is a demonstrated need for affordable housing in the Waverley LGA and supports Council's intent to deliver more affordable housing in the Waverley LGA.

Consistency with the Guideline for Developing an Affordable Housing Contribution Scheme

The Department's 'Guideline for Developing an Affordable Housing Contribution Scheme' (the Guideline) (February 2019) provides guidance on the preparation of affordable housing contribution schemes and to fulfill legislative requirements. It states that these schemes are to be applied where an uplift in land value is proposed to be created through zoning, to ensure contributions are drawn from the increase in land value generated by the rezoning.

As outlined in **Section 1.3** of this report, the planning proposal seeks to apply a 1% levy to all new residential flat buildings, independent living units, multi dwelling housing and shop top housing development across the entire Waverley LGA; and specify a target levy of 10% for sites receiving uplift through a planning proposal process, as identified in the AHCS.

However, Council's AHCS is inconsistent with the Guideline (February 2019) as it seeks to adopt an inclusionary zoning approach, by introducing an LGA wide scheme rather than a precinct-based approach to levying contributions.¹

The planning proposal acknowledges that the proposed Scheme is inconsistent with the Guideline and includes the following reasons for Council's departure from the Guideline:

- the Council's adopted Local Housing Strategy does not propose any upzoning in the LGA, as opportunities for 'significant' or 'large scale' rezoning / upzoning in the Waverley LGA are considered to be limited, given the density of development in the LGA (with Waverley identified as having the second highest population density in NSW) and lack of feasible, unconstrained sites available for upzoning;
- the impact of the 1% affordable housing levy is likely to be absorbed by landowners, resulting in lower land price;
- the proposal provides the most appropriate way to secure much needed affordable housing in the Waverley LGA, without stifling development viability; and
- the proposal seeks to emulate the approach of other Councils (i.e. Willoughby and City of Sydney) which have applied a broad, low percentage rate across large areas.

The planning proposal considers the Guidelines "*too narrowly circumscribe the conditions for when affordable housing contributions can be levied by only focusing on the 'rezoning' and not the 'initial zoning'*" (p.9), and identifies consistency with cl.7.32(1)(c) of the EP&A Act 1979 (outlined below), which refers to the 'initial zoning' of a site regardless of whether the site has been a part of a significant rezoning:

7.32 Conditions requiring land or contributions for affordable housing (cf previous s 94F)

(1) This section applies with respect to a development application for consent to carry out development within an area if a State environmental planning policy identifies that there is a need for affordable housing within the area and—

(a) the consent authority is satisfied that the proposed development will or is likely to reduce the availability of affordable housing within the area, or

(b) the consent authority is satisfied that the proposed development will create a need for affordable housing within the area, or

(c) the proposed development is allowed only because of the initial zoning of a site, or the rezoning of a site, or

(d) the regulations provide for this section to apply to the application.

Department's consideration

It is noted that the Department's LHS approval has excluded certain actions in Council's LHS (see further discussion in **Section 3** of this report). In accordance with 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.

The Council's updated testing for the proposed 1% rate of affordable housing is considered satisfactory and addresses the matters previously raised by the Department's Housing Policy team. This position is formed on the basis that this approach is:

- is consistent with the objects of the EP&A Act, specifically Section 1.3(d) "*to promote the delivery and maintenance of affordable housing*";
- has sufficiently demonstrated a high need for affordable housing in the Waverley LGA;

¹ Whilst changes to the Guidelines, to allow flexibility for councils seeking to introduce AHCS were exhibited with an EIE to amend the Housing SEPP in late 2022, these amendments have not been adopted to date.

- includes adequate details to justify the inconsistency with the Department's Guideline for the proposal to proceed to public exhibition; and
- is supported by suitable feasibility testing that adequately demonstrates the proposed 1% contribution rate is viable under both Zone R3 and R4 development scenarios.

Whereas the proposed targeted 10% levy in the LEP for sites benefitting from future proposed uplift through separate planning proposals for rezoning is not supported. The Department's position on this matter, established in the original Gateway determination for Waverley's previous Affordable Housing Contribution Scheme planning proposal PP-2021-3131 (dated 9 January 2023), has not changed. This component of the proposal cannot be supported by the Department as it is not based on feasibility testing of specific sites or areas identified for uplift, nor has the supporting feasibility analysis adequately demonstrated the viability of the proposed provision.

This doesn't preclude feasibility testing and establishment of an affordable contributions' requirement in percentage terms for any site specific or precinct-based rezoning sought as part of a future and separate planning proposal. In the meantime, it is more appropriate for an aspirational target such as the 10% or less be included in local council policies such as the Council's Affordable Housing Contribution Scheme, rather than within the LEP.

On this basis the Gateway determination includes a condition to update the planning proposal prior to consultation, to remove reference to the 10% target being included in the LEP.

Administration of the affordable housing contributions

A Gateway issued on 9 January 2023 for Waverley's previous Affordable Housing Contributions Scheme planning proposal (PP-2021-3131) required updates to address several matters prior to its resubmission to the Department; including the requirement to provide further details in the Affordable Housing Contributions Scheme around the administration of contributions collected under the scheme.

Specifically, the Gateway determination required the supporting AHCS to include detail around:

- the role of any community housing provider(s) in managing affordable housing units, the appointment process and performance monitoring measures; and
- information on any affordable housing program to ensure Waverley's affordable housing demand would be met.

The Affordable Housing Contribution Scheme (dated October 2023) includes adequate information pertaining to the administration and implementation of the contributions scheme along with Councils affordable housing programs; a local housing needs assessment as an appendix; as well as scenario testing as additional background information, with information sources cited.

The updated details regarding the management and appointment of both community housing providers (for management) and tenants (eligibility) to be acceptable.

It is recommended that an FAQ is prepared to provide a plain English explanation of this technical information for the community, to explain the feasibility analysis undertaken, including the inputs and methods used. The Gateway determination also includes a condition requiring the format of the proposal and supporting documentation (including the AHCS) to be updated prior to exhibition.

3 Strategic assessment

3.1 Regional Plan

The Greater Sydney Region Plan – *A Metropolis of Three Cities* (the Region Plan) was released by the NSW Government in 2018. The Plan contains objectives, strategies and actions which seek to manage growth and change across Greater Sydney over the next 20 years.

Objective 11 *Housing is more diverse and affordable* recognises the importance of a range of housing choices across the continuum of housing needs, including social housing, affordable rental housing and private market housing. It identifies SEPP 70 (now SEPP Housing 2021) as an existing measure to increase supply of affordable rental housing.

The Plan recommends setting Affordable Rental Housing Targets in the range of 5-10 % for precincts prior to rezonings, as a mechanism to deliver additional supply of affordable housing for very low to low-income households in Greater Sydney. 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.

As discussed in section 2 of this report, the Guidelines use this precinct-based approach.

The planning proposal is considered inconsistent with this objective as it seeks to introduce affordable housing contribution provisions which levy all new residential flat buildings, independent living units, multi dwelling housing and shop top housing development across the entire Waverley LGA (rather than defined areas identified for growth) which are not tied to upzoning that results in an increase in land value.

As previously outlined in section 2, the Department does not support Council's proposed target 10% levy in the LEP for sites benefitting from uplift as part of this proposal.

Notwithstanding this, the Department considers the inconsistency of the proposed 1% levy to be sufficiently justified as:

- the proposal will deliver on the Plans vision to provide greater housing choice to meet the communities growing and changing needs, by enabling the collection of affordable housing contributions to assist Council in increasing in the supply of affordable housing in the Waverley LGA;
- the proposal will contribute to the diversity of housing choice and affordability within Greater Sydney; and
- the supporting evidence demonstrates the proposed 1% levy to be feasible.

The consistency is justified.

3.2 District Plan

The site is located within the Eastern City District. The Eastern City District Plan (the District Plan), released by the former Greater Sydney Commission in March 2018, sets out the planning priorities and actions to guide the growth of the district while improving its social, economic and environmental assets.

Section 3.8 of the EP&A Act requires planning proposals give effect to the relevant District Plan.

Table 5 provides an assessment of the planning proposal against the relevant priorities and actions of the Eastern City District Plan.

Table 5 District Plan assessment

District Plan Priorities	Justification
Planning Priority E4: Fostering healthy, creative, culturally rich and socially connected communities	<p>This planning priority seeks to facilitate the development of healthy, resilient and socially connected communities.</p> <p>The proposal states that it seeks to provide a local response to address spatial variations in socio-economic disadvantage across the Eastern City District by facilitating affordable housing supply in the Waverley LGA for low and very low-income households.</p> <p>The proposal is consistent with the Priority.</p>
Planning Priority E5: Providing housing supply, choice and affordability with access to jobs, services and public transport	<p>This planning priority seeks to deliver housing supply, diversity and affordability within the Eastern City District, and identifies the need for councils to prepare local housing strategies to address housing supply and inform the Affordable Rental Housing Target Schemes for development precincts.</p> <p>The planning proposal seeks to introduce an LGA wide scheme as opposed to a precinct-based approach to levying contributions. The proposed 1% levy is considered largely consistent with this priority and supporting action as the proposal seeks to implement Council's AHCS through the Waverley LEP 2012. This will assist Council to address the existing housing inequalities by increasing the availability of affordability housing within the Waverley LGA.</p>

3.3 Local

An assessment of the consistency of the proposal with the relevant local strategic plans is included in **Table 6** as follows.

Table 6 Local strategic planning assessment

Local Strategies	Justification
Waverley Local Strategic Planning Statement 2020-2036	<p>The Waverley LSPS plans for Waverley's economic, social and environmental needs to 2036. The LSPS identifies housing affordability as a key issue for the Waverley LGA, and to grow and improve the provision of social and affordable housing is one of the planning principles in the LSPS.</p> <p>The planning proposal is consistent with the relevant priorities and actions of the Waverley LSPS, including:</p> <ul style="list-style-type: none"> • Planning Priority 6: <i>Facilitate a range of housing opportunities in the right places to support and retain a diverse community</i> <ul style="list-style-type: none"> ○ Housing Priority H3: <i>Increase the amount of affordable rental housing and social housing</i> <p>Action 2: <i>To increase the avenues to deliver affordable housing – including for Council to 'Prepare and implement the Affordable Housing Strategy'</i></p> <p>Action 3 <i>Work with the Department of Planning, Industry and Environment to prepare an affordable housing scheme to ensure SEPP 70 is effective in Waverley'</i></p> <p>The planning proposal is consistent with the objectives of the LSPS as it seeks to implement Council's Local Housing Strategy and introduce a mechanism for an Affordable Housing Contributions Scheme into the Waverley LEP 2012.</p> <p>However, the planning proposal and affordable housing scheme are inconsistent with the Department's Guideline, and therefore not consistent with Action 3. As discussed in Section 2 of this report, the Department considers this inconsistency to sufficiently justified for the proposal to proceed.</p> <p>The proposal (as revised by the Gateway conditions) is broadly consistent with the LSPS and the inconsistency with Action 3 has been adequately justified.</p>
Waverley Local Housing Strategy 2020-2036	<p>The Waverley Local Housing Strategy provides the framework to guide the future of housing in Waverley over the next 20 years. The LHS was endorsed by the Department in July 2021, subject to requirements and advisory notes.</p> <p>The Department considers the proposal to be consistent with the relevant local priorities and actions of the Waverley LHS, including:</p> <ul style="list-style-type: none"> • Priority H2 - <i>Encourage a range of housing options to support and retain a diverse community</i> • Priority H3 – <i>Increase the amount of affordable rental housing and social housing</i> <p>The Department's conditional approval of Council's LHS excluded certain actions in the strategy (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</p>

Local Strategies	Justification
	<p>housing contribution rates for these areas/sites that could boost housing supply in the LGA.</p> <p>The Department's LHS letter of approval also included the requirements and advisory notes for Council to revise its Affordable Housing Contribution Scheme to commit Council to examining the feasibility on a case-by-case basis for any new planning proposals that would result in development uplift in accordance with the SEPP and the Department's Guideline. In this regard, Action H3.1 of the LHS (as outlined below) was not approved:</p> <p>Action H3.1 – <i>Develop an affordable housing contributions scheme for all new apartment developments. Initial modelling and analysis suggests the scheme could comprise the following elements:</i></p> <ul style="list-style-type: none"> • <i>A small levy (1-3%) applying to all new residential apartment development;</i> • <i>A higher levy (10-15%) applying to sites receiving uplift through planning controls;</i> • <i>Contributions to offset the loss of affordable housing.</i> <p>While inclusionary zoning AHCS approaches remain inconsistent with the Department's Guidelines, the provision of affordable housing in NSW is encouraged.</p> <p>The proposal does not strictly comply with Departments LHS letter of endorsement requirements and advisory notes or the Guidelines. However, as previously discussed in Section 2 of this report, Council has adequately demonstrated there is a significant need for an increased supply of affordable rental housing within the Waverley LGA, to accommodate the needs of its low-income households and help bridge the gap in housing inequality within the Waverley LGA.</p> <p>The Department acknowledges the significant work has since been undertaken by Council to revise and update the planning proposal, including evidence-based feasibility testing that has adequately demonstrated the viability of the proposed 1% levy.</p> <p>The Department considers that the proposal has provided suitable justification for the proposed 1% LGA-wide levy to proceed given the context that NSW is experiencing a housing crisis, with housing affordability and availability one of the biggest pressures facing NSW residents.</p>
Waverley 2032 – Waverley Community Strategic Plan 2022-2032	The planning proposal includes an assessment against the Waverley Community Strategic Plan 2018-2029. This plan has been superseded by the Waverley

Local Strategies	Justification
	<p>Community Strategic Plan (Waverley 2032), which was adopted by Council in June 2022 and sets out the Waverley community's vision for the next 10 years.</p> <p>The Waverley CSP identifies the community's priorities for the future and includes several objectives and strategies. Those of relevance to this proposal include:</p> <ul style="list-style-type: none"> • Objective 1.7 Housing Needs: <i>Actively drive housing policy to meet the needs of the vulnerable, diverse and growing population</i> <ul style="list-style-type: none"> ○ Strategy 1.7.2 <i>Advocate for increased diversity of housing stock that is affordable and accessible</i> ○ Strategy 1.7.3 <i>Grow the provision of social and affordable housing</i> ○ Strategy 1.7.4. <i>Manage housing supply, choice and affordability with access to jobs, services and public transport</i> <p>The Department considers the proposal is consistent with the CSP as it will support increased supply of affordability housing in the Waverley LGA.</p> <p>A Gateway condition requires the planning proposal is updated prior to exhibition, to address the consistency with <i>Waverley 2032</i>.</p>

3.4 Local planning panel (LPP) recommendation

Waverley Local Planning Panel – March 2021

On 24 March 2021, the Waverley LPP considered a report on a previous related planning proposal (PP-2021-3131) to introduce the AHCS into the Waverley LEP 2012.

The WLPP advised Council that it was premature to proceed to a Gateway determination until the planning proposal was amended to:

- insert the draft clause in the Waverley LEP that will implement the Waverley Affordable Housing Contributions Scheme 2020;
- clarify discussion on a couple of 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 address the recommendations of the Waverley LPP.

3.5 Section 9.1 Ministerial Directions

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

Table 7 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Inconsistent	<p>The objective of this direction is to give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans.</p> <p>Consistency with the Region Plan is assessed in section 3.1 of this report. The inconsistency is justified.</p>
6.1 Residential Zones	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.</p> <p>The proposal does not contain provisions that are inconsistent with the objectives of this direction. The proposal is consistent with this direction.</p>
Direction 7.1 Employment Zones	Consistent	<p>Direction 7.1 aims to encourage employment growth and protect industrial and employment lands.</p> <p>This direction applies to the planning proposal as it will affect land zoned MU1 Mixed Use and E1 Local Centre, as development for the purposes of 'residential accommodation' is permitted with consent in these zones.</p> <p>The planning proposal does not seek to reduce potential floorspace for employment or industrial uses. It will promote an increased supply of affordable rental housing where residential accommodation is permissible providing housing choices for workers.</p> <p>The planning proposal is consistent with this Direction.</p>

3.6 State environmental planning policies (SEPPs)

The Department has considered the proposal against key SEPPs considered of relevance to the proposal. In this regard the proposal's assessment against Housing SEPP 2021 is provided below.

Housing SEPP 2021

Housing SEPP 2021 consolidated and repealed five previous housing-related policies, including:

- Former SEPP 70 – Affordable Housing (Revised Schemes) (SEPP 70)
- Former SEPP (Affordable Rental Housing) 2009 (ARH SEPP).

The SEPP identifies a need for affordable housing for the State. It includes the provisions from the former SEPP 70, which enable 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.

The proposal is consistent with the following principles of the Housing SEPP:

(b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability; and

(h) mitigating the loss of existing affordable rental housing.

The proposal does not hinder the application of parts of the Housing SEPP, which were transferred from the ARH SEPP, that provide incentives such as bonuses for various development types to include affordable rental housing and require contributions if there is a reduction in affordable housing.

As previously discussed in this report, the AHCS's inclusionary zoning approach does not adhere to the Department's current Guideline for Developing an Affordable Housing Contribution Scheme.

However, the Department considers the inconsistency of Council's proposed 1% LGA-wide levy with the Department's Guideline to be adequately justified as the supporting feasibility testing is satisfactory and Council has sufficiently demonstrated a need for affordable housing within the LGA.

4 Site-specific assessment

4.1 Environmental

The proposal does not seek to rezone or change the current development standards that apply to the subject land. It is not expected to have any adverse environmental impacts and is unlikely to adversely impact critical habitat areas or threatened species, populations or ecological communities, or their habitats within the Waverley LGA.

4.2 Social and economic

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

Table 8 Social and economic impact assessment

Social and Economic Impact	Assessment
Social	<p>The planning proposal identifies the need for more affordable housing for very low to moderate income households in the Waverley LGA. This is further supported in the Affordable Housing Needs Analysis supporting the proposal.</p> <p>The planning proposal is expected to have a positive social impact as it will promote increased supply of affordable housing in the Waverley LGA.</p>
Economic	<p>The planning proposal is supported by feasibility analysis which adequately considers land use zones and development types that the proposed AHCS would apply to.</p> <p>The proposal has the potential to generate economic benefits by providing:</p> <ul style="list-style-type: none"> • opportunity for government and community housing providers to deliver affordable housing supply within the LGA; and • greater certainty and transparency around how contributions are determined. <p>The proposed 1% rate is identified as being viable under both Zone R3 and Zone R4 development scenarios.</p>

4.3 Infrastructure

There is no infrastructure demand that will directly result from the planning proposal.

5 Consultation

5.1 Community

Council proposes a community consultation period of 28 days.

The planning proposal is categorised as a standard under the LEP Making Guidelines (August 2023). Accordingly, a community consultation period of 20 working days is recommended and this forms part of the conditions to the Gateway determination.

5.2 Agencies

It is recommended the following agencies be consulted on the planning proposal and given 30 working days to comment:

- NSW Department of Communities and Justice
- NSW Land and Housing Corporation.

6 Timeframe

Council proposes a six month time frame to complete the LEP.

The LEP Making Guidelines (August 2023) establishes maximum benchmark timeframes for planning proposal by category.

Council's proposed timeframe is within the benchmark timeframes for a standard planning proposal.

Section 7 of this report recommends that Council is not authorised as the local plan-making authority. Accordingly, additional time is recommended for finalisation which includes legal drafting and s.3.36(1) consultation processes.

The Department recommends an LEP completion date of 8 months from the date of the Gateway determination, which is in line with its commitment to reducing processing times. A condition to the above effect is recommended in the Gateway determination.

7 Local plan-making authority

Given the inconsistencies with overarching plans and key housing policies, the Department recommends that Council not be authorised the local plan-making authority for this proposal.

8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- It supports increased diversity and affordability of housing supply in the Waverley LGA.
- It will provide greater certainty and transparency around how contributions are determined.
- Council has sufficiently demonstrated the need for affordable housing in the Waverley LGA.
- It is supported by adequate feasibility analysis demonstrating viability of the proposed 1% contribution rate.
- There is suitable justification of the inconsistencies with the Department's Guidelines, particularly within the current housing context of NSW, which is experiencing a housing crisis, with housing affordability and availability one of the biggest pressures facing NSW residents.

Based on the assessment outlined in this report, the proposal must be updated before consultation to:

- ensure the terminology used throughout avoids any confusion about which residential land uses the scheme will apply to, noting that 'residential accommodation' is a group term which includes 'attached dwellings', 'dual occupancies' and 'dwelling houses';
- remove the proposed contribution target of 10% of the total floor area applying to sites receiving uplift through separate and future planning proposal processes;
- address the consistency of the proposal with Waverley 2032 – Waverley Community Strategic Plan 2022-2032;
- reinstate example clause 6.13(6)(b) to reflect that the scheme does not apply to non-residential uses; and
- ensure the format of the proposal and supporting documentation is adequate for public exhibition.

9 Recommendation

It is recommended the delegate of the Secretary:

- Agree that any inconsistencies with section 9.1 Directions 1.1 Implementation of Regional Plans is justified.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal is to be updated to:
 - a) remove the proposed contribution target of 10% of the total floor area applying to sites receiving uplift through separate and future planning proposal processes;
 - b) address the consistency of the proposal with Waverley 2032 – Waverley Community Strategic Plan 2022-2032;
 - c) reinstate example clause 6.13(6)(b) to reflect that the scheme does not apply to non-residential development; and
 - d) ensure the format of the proposal and supporting documentation is adequate for public exhibition.
2. Consultation is required with the following public authorities:
 - NSW Department of Communities and Justice
 - NSW Land and Housing Corporation
3. The planning proposal should be made available for community consultation for a minimum of 20 working days.
4. Given the nature of the planning proposal, it is recommended that Council not be authorised the local plan-making authority for this proposal.
5. The timeframe for the LEP to be completed is on or before 25 August 2024.



19 October 2023

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20 October 2023

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