

REPORT
PD/5.2/24.03

Subject: Planning Proposal - Affordable Housing Contribution Scheme - Post-Exhibition

TRIM No: A04/0302

Manager: George Bramis, Executive Manager, Urban Planning Policy and Strategy

Director: Fletcher Rayner, Director, Planning, Sustainability and Compliance

RECOMMENDATION:

That Council:

1. Forwards the planning proposal attached to the report (Attachment 1) to introduce affordable housing provisions in the *Waverley Local Environmental Plan 2012 (WLEP)*, and the submissions received during public exhibition, to the Department of Planning, Housing and Infrastructure (DPHI) with a recommendation to proceed to finalisation and gazettal.
2. Adopts the amended Affordable Housing Contribution Scheme attached to the report (Attachment 2).
3. Publishes the applicable contribution square metre rates on Council's website, as required by the DPHI Gateway Determination attached to the report (Attachment 3).
4. Requests the DPHI to exercise the delegations issued by the Minister under section 3.36 of the *Environmental Planning and Assessment Act 1979* to amend the WLEP.

1. Executive Summary

Waverley's Affordable Housing Contribution Scheme (AHCS) was first adopted by Council on 1 December 2020. It was established to allow Council to collect monetary or in-kind contributions through the planning system to be used for the purposes of affordable housing, and aims to facilitate a socially diverse and inclusive community by ensuring that lower income households can continue to live and work locally within the Waverley local government area (LGA).

To be able to collect contributions under this Scheme, the Waverley Local Environmental Plan (WLEP) 2012 needs to be amended via a planning proposal (PP) to introduce a new affordable housing contribution clause that allows Council to mandate:

- A contribution on all new residential flat buildings, independent living units, multi-dwelling housing, and shop top housing development of 1% of gross floor area at a flat \$ rate/sqm.
- A contribution of gross floor area (calculated at the time of planning proposal assessment) towards affordable housing for sites that receive planning uplift through planning controls.
- A minor change to the LEP to allow Council to continue to levy for loss of affordable housing contributions under the Housing SEPP 2021.

Based on feedback received from the community and key agencies during public exhibition, it is recommended that the planning proposal (Attachment 1) and the AHCS (Attachment 2) be submitted back to DPHI for finalisation.

2. Introduction/Background

The AHCS was exhibited in September 2020 and subsequently endorsed by Council on 1 December 2020. On 13 April 2021, Council adopted minor amendments to the AHCS and supported the submission of a planning proposal to implement the AHCS to the DPHI, which was lodged with the DPHI shortly thereafter.

On 9 January 2023, Council received a Gateway determination for the planning proposal, requesting that the planning proposal be withdrawn and resubmitted with amendments to both the planning proposal and the AHCS within a period of 6 months. The requested changes were made, supported by Council in April 2023, and resubmitted on 5 October 2023.

A second Gateway determination (Attachment 3) was issued by NSW DPHI on 25 October 2023 permitting the PP to proceed to public exhibition subject to the planning proposal being updated to remove the proposed target of 10% for uplift sites and some other minor changes. These changes were applied, and the planning proposal was placed on public exhibition between 2 November and 18 December 2023. Although the DPHI did not support a clause in the LEP stating that sites receiving uplift would be subject to a 10% affordable housing contribution, Council's Affordable Housing Contribution Scheme still states that 10% will be our target affordable housing contribution to be applied to planning proposals as they are lodged. This would be applied to planning proposals as they are assessed.

3. Relevant Council Resolutions

Meeting and date	Item No.	Resolution
Strategic Planning and Development Committee 4 April 2023	PD/5.4/23.04	<p>That Council:</p> <ol style="list-style-type: none"> 1. Notes that the Affordable Housing Contribution Scheme was adopted by Council in December 2020. 2. Notes that Council previously approved the submission and exhibition of a planning proposal to implement the Affordable Housing Contribution Scheme in accordance with any conditions of the Gateway determination that may be issued by the Department of Planning and Environment. 3. Publicly exhibits the amended Waverley Affordable Housing Contribution Scheme 2023 attached to the report (Attachments 2 and 3) for 28 days alongside an amended planning proposal, subject to the following amendments: <ol style="list-style-type: none"> (a) Throughout the document, replace 'multi-dwellings' with 'multi-dwelling houses'. (b) Throughout the document, replace 'spot rezoning' with 'planning proposal'. (c) Page 73 of the agenda, section 2.2, 'Monetary contribution rates in the LEP' – Amend as follows:

		<ul style="list-style-type: none"> (i) In the first sentence, replace ‘around the time of the development’ with ‘at the time of the planning proposal being assessed and before a Gateway Determination.’ (ii) In the second dot point, add ‘be sought to’ after ‘will’. (iii) After the second dot point, add ‘Sites that have previously received uplift through the planning proposal process and have also provided a contribution in line with Council’s AHCS will not be subject to the prescribed levy of 1% of the total gross floor area at DA stage referred to above.’ (d) Page 70 of the agenda, third paragraph, second sentence – Replace ‘upzoning’ with ‘uplift’ and add the following third sentence to the paragraph: “‘Uplift’ in a planning proposal refers to situations where a site’s value increases through increased gross floor area, a change of zoning or other planning variations.’ <p>4. Officers prepare a report to Council following the exhibition period.</p>
Council 26 October 2021	CM/7.6/21.10	<p>That Council:</p> <ul style="list-style-type: none"> 1. Requests a variation to the Department of Planning, Industry and Environment (DPIE) conditions as follows: <ul style="list-style-type: none"> (a) There are no Council-led planning proposals to increase density on Curlewis Street and/or Bondi Road. (b) Proponent-led planning proposals will continue to be considered. 2. Seeks a ‘Gateway Review’ at the Independent Planning Commission (IPC) for the Waverley Affordable Housing Contributions Scheme planning proposal to: <ul style="list-style-type: none"> (a) Challenge DPIE’s rejection of the Waverley Affordable Housing Contributions Scheme. (b) Advocate to the DPIE to review its Guideline for Developing an Affordable Housing Contribution Scheme to be more in line with the <i>Environmental Planning and Assessment Act</i>. 3. Endorses the draft Waverley Local Housing Strategy Implementation and Delivery Plan attached to the report for submission to the DPIE.

<p>Strategic Planning and Development Committee 13 April 2021</p>	<p>PD/5.2/21.04</p>	<p>That Council:</p> <ol style="list-style-type: none"> 1. Notes that the Affordable Housing Contribution Scheme was adopted by Council in December 2020. 2. Notes that the Waverley Local Planning Panel (WLPP) has reviewed the Affordable Housing Contribution Scheme planning proposal and provided advice, as set out in Attachment 2 of the report. 3. Notes that the updates to the planning proposal based on advice from WLPP include a proposed Waverley Local Environmental Plan 2012 clause. 4. Adopts the amended Affordable Housing Contribution Scheme attached to the report (Attachment 3) for clarification reasons. 5. Authorises officers to forward the planning proposal attached to the report (Attachment 1) to the Department of Planning, Industry and Environment (DPIE) for a Gateway Determination. 6. Publicly exhibits the planning proposal for a minimum of 28 days in accordance with any conditions of the Gateway Determination that may be issued by the DPIE. 7. Requests the role of local plan-making authority from the DPIE to exercise the delegations issued by the Minister under section 3.36 of the Environmental Planning and Assessment Act 1979 in relation to the making of the amendment. 8. Officers prepare a plain English explanation and infographic for the purposes of public exhibition to clarify the application of the proposed policy in various circumstances.
<p>Strategic Planning and Development Committee 1 December 2020</p>	<p>PD/5.1/20.12</p>	<p>That Council:</p> <ol style="list-style-type: none"> 1. Notes the matters raised in the submissions made on the draft Planning Agreement Policy (Amendment No. 3) and the draft Affordable Housing Contributions Scheme during the exhibition period. 2. Adopts the Planning Agreement Policy (Amendment 3) attached to the report (Attachment 1) subject to the following changes: <ol style="list-style-type: none"> (a) Page 13, after clause 8, insert a new clause 9: 'That as part of any VPA report, Councillors be provided with an overview of meetings between applicants and staff, and the rationale for the decision.'

		<p>(b) Page 7, second paragraph, after the sentence ending 'as amended from time to time', insert: 'Council has resolved and committed to implementing and progressing the LSPS in ways that operate to involve and acknowledge that Aboriginal First Nation Peoples have a custodial ongoing spiritual, social, cultural, economic and traditional relationship to looking after country and people.'</p> <p>3. Adopts the Affordable Housing Contributions Scheme attached to the report (Attachment 3).</p> <p>4. Notifies those people who made a submission of Council's decision.</p> <p>5. Submits a planning proposal to the Department of Planning, Industry and Environment seeking a Gateway Determination to incorporate the Affordable Housing Contributions Scheme into the Waverley Local Environment Plan 2012.</p>
Council 15 September 2020	CM/7.8/20.09	<p>That Council:</p> <p>1. Publicly exhibits for 42 days the draft Waverley Planning Agreement Policy 2014 (Amendment No. 3) attached to the report.</p> <p>2. Notes that the updates to the Policy include an update to the VPA split of contributions to affordable housing from a minimum of 10 to 25%, updated benchmark rates and housekeeping amendments.</p> <p>3. Publicly exhibits for 42 days the draft Waverley Affordable Housing Contributions Scheme attached to the report.</p> <p>4. Investigates using the affordable housing reserve for the provision of Social Housing and Waverley Community Living Program (WCLP) Accommodation in addition to our current affordable housing program.</p>

4. Discussion

The Scheme and PP have been prepared to levy contributions on larger scale residential and mixed-use developments in the Waverley LGA and aims to facilitate a socially diverse and inclusive community by ensuring that lower income households can continue to live and work locally within the Waverley LGA. The proposal seeks to introduce a new affordable housing contribution WLEP 2012 clause to allow Council to request:

- A contribution on all new residential flat buildings, independent living units, multi-dwelling housing, and shop top housing development of 1% of gross floor area at a flat \$ rate/sqm.

- A contribution of gross floor area (calculated at the time of planning proposal assessment) towards affordable housing for sites that receive planning uplift through planning controls.
- A minor change to the LEP to allow Council to continue to levy for loss of affordable housing contributions under the Housing SEPP 2021.

Strategic merit

The planning proposal has strategic merit as it is consistent with the affordable housing and housing diversity-related planning priorities and actions from the Region Plan and District Plan, and Waverley's Local Strategic Planning Statement (LSPS), Local Housing Strategy (LHS) and Community Strategic Plan (CSP) which encourage an increase in housing affordability and diversity.

Site-specific merit

The planning proposal has site-specific Merit as feasibility testing has proven that applicants of the development affected by this proposal are able to achieve a minimum 15% profit margin after the contribution in all suburbs and relevant zones—demonstrating economic sustainability. As this planning proposal does not result in any changes to the built form of development, the natural environment and amenity of neighbours to development sites affected by this proposal will not be impacted.

Agency referral

In accordance with the Gateway determination, this planning proposal was forwarded to the NSW Department of Communities and Justice (DCJ) and the NSW Land and Housing Corporation for consultation. Both supported the planning proposal.

NSW DCJ stressed a particular importance on reintroducing the 10% contribution for planning proposal uplift sites 'as feasibility analysis points to this being a reasonable option and there is very strong need for affordable housing provision in the LGA' and as 'Waverley is a high priced location with increasingly high end new development which is displacing housing for lower income households.' NSW DCJ also highlighted the need for affordable housing, making the following observations:

- *Eastern City is a high priced location for both purchase and rent with strong competition within the housing market because of proximity to employment, health, transport, education and other services and infrastructure. In the Eastern City as a whole, low income renters are managing to stay despite high housing costs relative to income. This is not the case in Waverley. Low income renters, including key workers, have been priced out.*
- *Between June 2020 and June 2022, Waverly Council experienced the strongest increases in median rents for one (14.3%), three (30.9%) and four or more bedroom homes (33.3%) and second strongest for studios (10.2%) and two bedroom homes (13.0%) in the Eastern City. By way of comparison, annual wage growth in 2022 was 3.3% in Australia.*
- *In addition, Waverley has a high proportion of Airbnb properties rented out as total homes (73.6%), and a high proportion of Airbnb rentals relative to the total number of rental properties (15.7%) – suggesting short term rentals may be negatively impacting long term rental availability.*

NSW LAHC requested that the term 'public housing' be replaced with the term 'social housing' throughout the planning proposal. This change has been implemented in Attachment 1, being the only post-exhibition changed throughout the document.

5. Financial impact statement/Time frame/Consultation

There have been no upfront or recurrent costs associated with this planning proposal other than staff costs associated with amending the AHCS and preparing the planning proposal. The benefits of implementing this

scheme would serve the community via the ability to charge contributions for affordable housing for new larger scale development.

A review of Construction Certificates registered for the purposes of a new residential flat building, multi dwelling housing, independent living unit, and shop top housing development over the past five years has shown that had a 1% monetary contribution been collected from the developers of these projects, Waverley's Affordable Housing Contributions Reserve could have grown by an additional \$5.76 million.

Time frame

It is estimated that this amendment to the WLEP would be completed by mid-2024 as detailed in Table 2 below.

Table 2. Indicative project timeline.

Tasks	Time frame and/or date
Submission to the Department for finalisation	February 2024
Gazettal of LEP amendment	April 2024

Community consultation

The planning proposal was publicly exhibited between 2 November and 18 December 2023, which included:

- Have Your Say page including a feedback survey.
- Waverley website media release.
- Council e-newsletters.
- Email notifications to Precincts.

Including feedback from agencies, six submissions were in support of the proposal, and three submissions were not. Table 3 details the key messages included in those submissions.

Table 3. Response to key matters raised in the submissions.

Submission	Waverley Response
The proposal is supported, and a minimum 10% contribution should be provided for any developments as developers have a habit of trying to reduce such proposals.	A 10% contribution for new residential flat buildings, independent living units, multi-dwelling housing, and shop top housing development constructed within the existing FSR and height controls – and not subject to recent uplift – was not found to be feasible. However, a 10% contribution for uplift sites was found to be feasible. NSW DPHI forced this target to be removed from the subject planning proposal.
The proposal is not supported because I am not in favour of council being landlord to a very limited number of people who get to access the Affordable Housing scheme. While	The NSW government has permitted Council's to development their own AHCS for the purposes of collecting funds for affordable housing. This system does not allow Council to use the funds

<p>it is expensive to live in Waverley it does not serve the greater good to subsidize a very limited number of residents when the funds could be better used to improve parks, reserves and essential infrastructure which benefits the majority of residents.</p>	<p>for other things, so refusing this proposal because infrastructure upgrades are required will not result in the funds being redirected to anything other than affordable housing.</p> <p>Further, infrastructure upgrades within Waverley are funded by a variety of means, including but not limited to money collected through rates, 7.12 Contributions or grants. In comparison, there are very few ways to collect funds for the purposes of affordable housing.</p>
<p>The proposal is not supported because it will lead to an increase in large developments being constructed.</p>	<p>This Proposal will not result in more development. Whilst it is possible that the funds collected under the AHCS and associated planning proposal can be used by Council to develop units for the purpose of affordable housing, it does not change the developable capacity of sites in the LGA, that would be developed regardless of the AHCS.</p>
<p>The proposal is not supported because the application of local affordable housing contributions has largely proven ineffective in delivering affordable housing. Worse, these levies act as disincentives to the private sector to deliver market housing.</p> <p>The solution to the housing supply crisis requires a drastic step up in housing approvals and completions right across the State – but particularly in those well-located areas with high amenity such as many of the suburbs within the Waverley Local Government Area.</p>	<p>While there has been limited success in delivering affordable and social housing in the LGA in recent years, Waverley does have one of the larger Council portfolios of affordable housing and additional funds under the Waverley Affordable Housing Contribution Reserve will increase the opportunity for affordable housing in the area.</p> <p>There are very few examples of private development resulting in social and affordable housing in perpetuity – proving that the most appropriate approach to long term affordable housing is for government (local and state) to intervene rather than solely relying on the private market.</p> <p>The contributions proposed have been proven to be financially feasible in the local Waverley context, ensuring that developers can continue to provide stock without being financially disincentivised.</p> <p>The Waverley LGA is one of the densest LGA’s in Australia, highlighting that it is already accommodating for large populations. Further, the presence of significantly more DA approvals than completions across the State demonstrates that Council approvals are not restricting housing supply.</p>

Councillor briefing

This matter was presented for discussion at a Councillor briefing on 13 February 2024. Table 4 details the key questions and comments raised.

Table 4. Matters raised at the Councillor briefing.

Question/Comment	Response
Is the delivery of affordable housing better suited to the State Government?	Affordable housing can be successfully delivered by all levels of government. Waverley has a longstanding Affordable Housing Program and a current portfolio of social and affordable housing stock which can be expanded. In 2023, Council unanimously supported investigations into a collaboration project with Woollahra and Randwick Council's to explore opportunities in relation to a shared affordable housing project. Further, actions and priorities within the Waverley Local Housing Strategy, Local Strategic Planning Statement and Community Strategic Plan agree to increasing affordable housing within the LGA.
The contribution will come from somewhere. Will it drive up unit prices?	The contribution will not increase unit sales prices, as sales prices are determined by what the market is willing to pay rather than what the unit cost to construct. Instead, affordable housing contributions would be either borne by the developer or the landowner.
How does the contribution apply where a DA is providing a Voluntary Planning Agreement (VPA) as well?	The VPA Policy and the AHCS are independent of each other, but in their current forms do both levy contributions towards the Waverley Affordable Housing Program. If the AHCS PP is adopted there will be opportunity to update the VPA Policy to prevent 'double dipping' of funds for AH where a contribution is levied under the AHCS and a VPA is offered at the same time. Where a VPA is offered on uplift, the 25% of the VPA that typically goes towards affordable housing would be discounted by the amount of the 1% affordable housing levy.

6. Conclusion

It is a legislative requirement for Council to have an AHCS to levy contributions relating to development and rezoning processes for the purposes of affordable housing. Following the receipt of Gateway determination for the AHCS planning proposal, draft amendments to the AHCS were placed on public exhibition alongside the planning proposal.

It is recommended that the attached planning proposal, with minor amendments following consultation, be submitted to NSW DPHI with a recommendation to proceed to finalisation and gazettal.

7. Attachments

1. Planning proposal - Affordable Housing Contribution Scheme (under separate cover)
2. Affordable Housing Contribution Scheme (under separate cover)
3. Gateway determination (under separate cover) .