



IRF24/1434

## Plan finalisation report – PP-2023-2221

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Waverley Affordable Housing Contribution 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 and present.

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# 1 Introduction

## 1.1 Overview

### 1.1.1 Name of draft LEP

Waverley Local Environmental Plan 2012 (Amendment No.25).

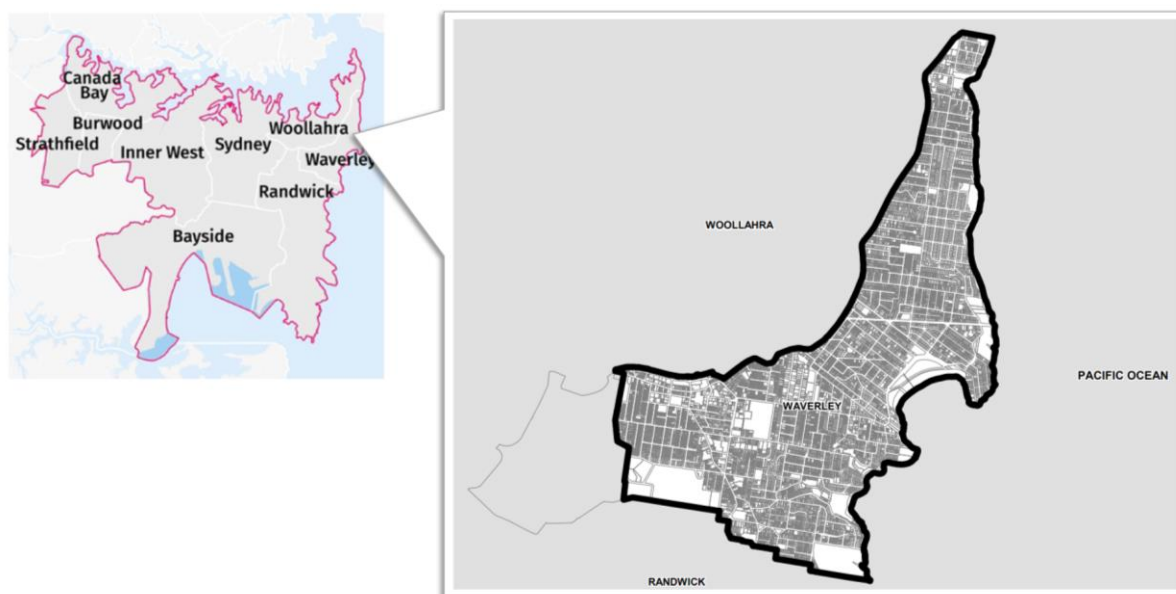
The amendment seeks to implement the Waverley Affordable Housing Contributions Scheme 2020 (AHCS) first adopted by Waverley Council in December 2020.

### 1.1.2 Site description

**Table 1 Site description**

Site Description	The planning proposal applies to the Waverley Local Government Area (LGA).
Type	District
Council / LGA	Waverley

The planning proposal applies 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)**

### 1.1.3 Purpose of plan

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.

To achieve the intended outcome, the planning proposal (as exhibited) seeks to introduce two new additional local provisions and a new Schedule.

The proposed contribution levies include:

- A levy of 1% of the 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 contribution of gross floor area towards affordable housing for sites that receive planning uplift through planning controls, calculated at the planning proposal assessment stage (at a flat dollar rate per square metre for monetary contribution).

**Note:** The proposal states that it does not apply to single-family homes (i.e. detached, semi-detached, attached) or dual occupancies.

1.1.4 State electorate and local member

The Waverley LGA falls within the following state and federal electorates:

Electorate	Member
<b>State electorates:</b> Vaucluse	Ms Kellie Slone MP
Coogee	Dr Marjorie Spooner O'Neill MP
<b>Federal electorate:</b> Wentworth	Ms Allegra Spender MP

To the team’s knowledge, the above MPs have not made any written representations regarding the proposal.

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

2 Gateway determination

The Gateway determination issued on 25 October 2023, determined that the proposal should proceed subject to conditions.

The Department is satisfied that there are no outstanding issues relating to Gateway determination conditions which would prevent finalisation.

3 Public exhibition and post exhibition changes

In accordance with the Gateway determination, the planning proposal was publicly exhibited by Council from 2 November 2023 to 18 December 2023.

Council received 5 public submissions, 2 agency submissions, and one industry stakeholder submission on the proposal during exhibition. A Councillor briefing was held on 13 February 2024.

Council’s post exhibition report contains a summary of submissions and Council’s responses.

3.1 Submissions during exhibition

Council received 5 community submissions and one from an industry group:

- submissions (66%) were supportive of the proposal
- 2 submissions (33%) objected.

Key matters raised in the submissions include:

- the proposed contribution rates,
- management burden to council when funds are needed for local infrastructure,
- the need for housing approvals and completions in well located areas with high amenity to address the housing crisis,
- efficacy of AHCS to address housing affordability and incentive housing delivery, and
- volume of development in the area without the infrastructure to support it.

The Department is satisfied that Council has considered the public submissions received and provided a response.

## 3.2 Advice from agencies

In accordance with the Gateway determination, Council consulted with the NSW Department of Communities and Justice (DCJ) and NSW Land and Housing Corporation (LAHC):

- DCJ expressed support for proposed contribution rates and highlighted the need for affordable housing in the Waverley LGA as well as the benefits of (not-for-profit) community housing provider ownership of affordable housing.
- LAHC's submission recommended the term 'public housing' be replaced with 'social housing' to ensure consistency. Council has recommended this as a post exhibition change (see section 4.1 below).

The Department is satisfied that Council has adequately addressed the matters raised in the agency submissions received. There are no outstanding agency objections.

## 3.3 Post exhibition changes

### 3.3.1 Council resolved changes

On 5 March 2024, Waverley Council's Strategic Planning and Development Committee resolved to recommend the proposal proceed, subject to post-exhibition changes. In summary, Council's post exhibition changes:

- a) Revise terminology to address LAHC's feedback during consultation by referring to 'social housing' rather than 'public housing'.
- b) Allow Council to continue to levy for loss of affordable housing contributions for development subject to Part 3 'Retention of existing affordable rental housing' of the Housing SEPP 2021. It included the following suggested wording:

**6.15 Affordable housing contribution under the Housing SEPP 2021**

*(1) This clause applies to development subject to Part 3 of the Housing SEPP 2021.*

*(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, with the amount calculated in accordance with the formula set out in CI48(2) and (3).*

The planning proposal was submitted on 8 March 2024 for finalisation.

### 3.3.2 Department recommended changes

Following the receipt of the revised planning proposal from Council, the Department has made further changes to the proposal as follows:

- a) The Department recommends Council’s proposed ‘Affordable housing contributions on Planning Proposal sites’ provision (Clause 6.14) and supporting schedule (Schedule 7 Planning Proposal Land) be deferred from the making of this LEP, pursuant to section 3.36(3) of the *EP&A Act 1979* until such time as there is planning proposal land available to list in the Schedule. Publishing a blank schedule is not consistent with the current drafting conventions for LEPs.
- There may be opportunity for Council to seek the inclusion of the deferred provisions when a site-specific rezoning seeks to apply the provision to land and list it in the proposed Schedule. Legal drafting of any such provision would occur at that time.
- Notwithstanding this, any future planning proposal will be subject to the requirements and plan-making process outlined in the *Local Environmental Plan Making Guidelines* (August 2023). Should such a planning proposal be submitted for Gateway it should include an explanation of how it seeks to apply the provision to the site and thereby give effect to the proposed provision.
- b) The Department does not support Council’s post-exhibition change to introduce a new local provision (Clause 6.15) in the Waverley LEP 2012 for affordable housing contributions under the Housing SEPP 2021. This amendment constitutes a significant change to the exhibited proposal which has not been the subject to consultation and has potentially wider implications which will require further consideration.

The Department notes that these post-exhibition changes are justified and do not require re-exhibition.

## 4 Department’s assessment

The proposal has been subject to detailed review and assessment through the Department’s Gateway determination and subsequent planning proposal processes. It has also been subject to a high level of public consultation and engagement.

The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, Regional and District Plans and Council’s Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the proposal.

The Department considers the planning proposal submitted for finalisation (as amended):

- remains inconsistent with Objective 11 of the Greater Sydney Region Plan, Planning Priority E5 of the Eastern City District Plan, and Action 3 of the Waverley Local Strategic Planning Statement per the original Gateway determination report, given the aspiration of 5-10% affordable housing rates and precinct wide approach recommended. However, this inconsistency is considered adequately justified as outlined in Section 3.1, 3.2 and 3.3 of the Gateway determination assessment report;
- remains consistent the relevant section 9.1 Directions as assessed in the Gateway determination assessment report; and
- remains inconsistent with State Environmental Planning Policy (Housing) 2021 however, this inconsistency is considered adequately justified as outlined in Section 3.6 of the Gateway determination assessment report.

The following tables identify whether the proposal (as amended) is consistent with the assessment undertaken at the Gateway determination stage.

**Table 2 Summary of strategic assessment**

	Consistent with Gateway determination report Assessment	
Regional Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

	Consistent with Gateway determination report Assessment	
District Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Local Planning Panel (LPP) recommendation	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Section 9.1 Ministerial Directions	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

**Table 3 Summary of site-specific assessment**

Site-specific assessment	Consistent with Gateway determination report Assessment	
Social and economic impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Environmental impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Infrastructure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

## 5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

**Table 4 Consultation following the Department's assessment**

Stakeholder	Consultation	The Department is satisfied with the draft LEP
GIS	No changes to LEP maps required.	n/a
Council	<p>Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i> on 14/06/2024.</p> <p>Council confirmed on 20/06/2024 that it was satisfied with the draft but reaffirmed that it would like the deferred and excluded provisions included in the LEP. See discussion of Department recommended changes above.</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details



Stakeholder	Consultation	The Department is satisfied with the draft LEP
Parliamentary Counsel Certificate	On 22/07/2024, Parliamentary Counsel issued a Certificate that the draft LEP is in an appropriate form for it to be published on the NSW Legislation website.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

## 6 Recommendation

It is recommended that the Minister's delegate as the local plan-making authority, determine to make the draft LEP (with the Department's proposed post-exhibition amendments) under clause 3.36(2)(a) of the *Environmental Planning and Assessment Act 1979* because:

- The inconsistencies with the Region Plan, Eastern City District Plan, LSPS, Section 9.1 Directions and SEPP (Housing) 2021 have been adequately justified.
- It is consistent with the Gateway determination.
- There are no outstanding agency objections to the proposal.
- It is not expected to generate any adverse social, environmental or economic impacts.
- It supports affordable housing in the Waverley LGA and will provide greater certainty and transparency around how contributions are determined.

It is also recommended that the Minister's delegate as the local plan-making authority, determine to defer inclusion of the proposed planning proposal land local provision and supporting schedule in the LEP under clause 3.36(3) of the *Environmental Planning and Assessment Act 1979* until such time as there is a site to list in the schedule and thereby have a purpose to give effect to. Council may consider implementing this provision as part of a future planning proposal to rezone land which would identify land to apply the proposed contribution to.



Kelly McKellar

Manager, Local Planning and Council Support (North, East and Central Coast)



26 July 2024

Jazmin van Veen

Director, Local Planning and Council Support (North, East and Central Coast)

Assessment officer

Claire Mirow

Senior Planning Officer, Local Planning and Council Support (North, East and Central Coast)