

MEMO

To: Chair, Sydney North Planning Panel
From: Consultant Planner, Peter Wells
Date: 29 January 2025
Address: 1 Walter Street Willoughby
Ref/File No: PPSSNH-526- Willoughby - DA-2024/159
Subject: (a) Updated affordable housing condition.
(b) Clarification of scope of subject amending DA.
(c) Confirmation that the affordable housing dwellings dedicated under DA-2021/300 have not been included in the “affordable housing component” under the in-fill affordable housing provisions of the Housing SEPP.
(d) Clarification on methodology of valuation for affordable housing.
(e) Response to section 7.32(1), (3)(c) and (4) of the *Environmental Planning and Assessment Act 1979*
(f) Response to clause 6.8(3) of WLEP
(g) Updated position on Housing and Productivity Contribution.

Background

The Panel will recall that on 20 December 2024 the determination of this matter was deferred “... to obtain urgent legal advice from the Department on the legality of including condition 103A”.

Council understands the Panel has received the subject legal advice. Council is not privy to this advice.

(a) Updated affordable housing condition.

An updated affordable housing condition 103A (below) was issued to the applicant on 24 January 2025. The applicant has not responded to the updated condition.

The updated condition is consistent with clause 6.8 *Willoughby LEP 2012* (WLEP) insofar as the applicant is given the choice of whether to dedicate dwellings or provide a monetary contribution. Yellow highlight shows additional wording, strikeouts deleted wording. Further information on the methodology of valuation for affordable housing is provided under (d) in this memo.

103A. Affordable Housing Conditions pursuant to clause 6.8 of the Willoughby Local Environmental Plan

In accordance with clause 6.8 of the Willoughby Local Environmental Plan (WLEP) 4% of the residential gross floor area in the development (being the residential component of the development related to this development consent DA-2024/159 i.e. 3,827m²) is to provide for affordable housing. Such provision of affordable housing in accordance with clause 6.8 of the WLEP is satisfied by either (or a combination) of the following:

Monetary Contribution

- (a) The applicant shall pay to Council a monetary contribution (~~prior to the issue of the Occupation Certificate~~) for the purpose of providing affordable housing that is calculated at 4% of the residential gross floor area of the development (which in this case is 3,827m² i.e. 4% x 3,827 = 153.08m²). The amount of the monetary contribution is determined by reference to the market value of dwellings of a similar size to the dwellings in the proposed development, and as set out below:
- (i) **Within three (3) months of the issue of the Construction Certificate**, the applicant is to submit to Council a valuation report (prepared by a registered valuer) identifying the market value of dwellings of a similar size to dwellings in the development by reference to the recent sales prices of such new dwellings of similar size and, in the absence of recent sales prices at the subject development, recent sales price of similar sized dwelling(s) in comparable development(s) within the Willoughby local government area.
 - (ii) Council will consider the valuation report and, acting reasonably, determine the amount of the contribution to be paid.
 - (iii) If it considers it desirable to do so, Council may appoint an independent registered valuer to undertake a separate valuation. The applicant / developer is to pay Council all reasonable costs associated with the service provided by Council's appointed valuer for this valuation.
 - (iv) The applicant is to submit to Council's Director of Planning & Infrastructure the valuation report and documentation to demonstrate how the applicant has calculated the contribution, including identifying the residential gross floor areas used in the calculation. The evidence is to be provided prior to any application being made for an Occupation Certificate, and before any payment of contribution is made. **If this valuation report option is taken, payment shall be made within three (3) months of Council's written acceptance of the valuation report.**
 - (v) **Alternatively to (i) to (iv) inclusive above, a figure (mean) for the market value of dwelling sales in Willoughby is obtained from the most recent (recent at the time of payment) Rent and Sales Report issued by the Department of Communities and Justice. In the event this option is chosen, a date stamped screenshot of the relevant figure within the Rent and Sales Report must be provided, and the payment made within three (3) months of the date displayed**

in the screenshot. A unit size of 100m² may be assumed for the purpose of the calculation.

Evidence of payment of the monetary contribution is to accompany the application for any Occupation Certificate.

Dedication of Affordable Housing units to Council

(b) The dedication of complete residential dwelling units within the development (being the residential component of the development related to this development consent DA-2024/159 i.e. Levels 8 to 10 inclusive for Building D, Levels 7 to 9 inclusive for Building E, and Levels 7 to 9 inclusive for Building F); each having a gross floor area of at least 50m², and equivalent to the mapped percentage of 4% of the residential component of the development related to this consent (residential component is 3,827m² i.e 4% x 3,827 = 153.08m²). Each affordable dwelling must have an appurtenant car space. The affordable housing unit(s) and appurtenant car spaces to be dedicated to Council must be clearly shown on the Construction Certificate plans. A **Housing Transfer Deed** that identifies all affordable housing units for dedication to Council **must be executed prior to issue of the first Occupation Certificate.**

The terms of this Housing Transfer Deed must be to the satisfaction of the Council and must include a provision to the effect that the transfer of the dwellings and appurtenant car spaces to Council's ownership is to be completed within two months of the registration of any subdivision of the development creating the areas to be dedicated, or within two months of the issue of an Occupation Certificate, whichever comes first. The applicant must agree to pay the Council's reasonable legal costs in satisfying itself that the agreement is appropriate, and a provision to this effect is to be included in the agreement.

(Reason: Increase affordable housing supply, Ensure compliance)

(b) Clarification of scope of subject amending DA.

The applicant's Statement of Environmental Effects describes the proposal as:

"The works as part of this application mimic the existing approval on the site for 5 residential flat buildings, with the only external difference being the increase in height of building D, E and F along with the increase in FSR to accommodate additional residential units to take advantage of the recent government incentives.

On 21 November 2024 the applicant confirmed that:

"Generally, what is shown in Grey are the parts that do not change from the approved DA and constructed. The areas that are changing have been shown with Black walls and bubbled in Red. For example the fire stairs in Blocks D,E+F need to be reconstructed as scissor stairs and there are some minor impact to the adjacent units".

The scope of this Amending DA is that part that extends upon the existing consent (upper levels to Buildings D, E and F) and changes that accompany this net increase (as shown bubbled in red). In addition to this scope, the Amending DA also "reaches down" into the (constructed) residential

units approved under DA-2021/300 to make a selection of them affordable rental units (for 15 years) under the Housing SEPP.

For clarity, DA-2024/159 extends upon development consent DA-2021/300 (as modified) in the following ways:

Building D: new Level 8 (4 x 3-bed), Level 9 (4 x 3-bed), Level 10 (4 x 3-bed).

Building E: Level 7 (increase from 2 x 3-bed to 3 x 3-bed), new Level 8 (3 x 3-bed), new Level 9 (3 x 3-bed).

Building F: Level 7 (increase from 2 x 3-bed to 3 x 3-bed), new Level 8 (3 x 3-bed), new Level 9 (3 x 3-bed).

Refer to Table 1 on page 10 of this memo.

- (c) Confirmation that the affordable housing dwellings dedicated under DA-2021/300 have not been included in the “affordable housing component” under the in-fill affordable housing provisions of the Housing SEPP.

A Deed of Transfer has been executed for dedication of the following affordable housing units in perpetuity to Willoughby Council:

Building B

G02 = 92m²

101 = 86m²

105 = 55m²

106 = 61m²

205 = 55m²

304 = 82m²

Building C

102 = 90m²

205 = 90m²

Building F

G02 = 65m²

Total GFA = 676m²

The “affordable housing component” under the in-fill affordable housing provisions of the Housing SEPP (ie rental affordable housing for 15 years) relate to those units identified on Drawing A.011 Rev G, none of which overlap with the dedicated affordable housing units pertaining to DA-2021/300.

(d) Clarification on methodology of valuation for affordable housing.

As updated condition 103A requires in (a) of this memo, an option is given to either dedicate 4% of the residential component as affordable housing in perpetuity to Council (where the residential component of the development related to this consent is 3,827m² i.e 4% x 3,827 = 153.08m²), or provide a monetary contribution - or a combination of both.

The methodology of calculation of the monetary contribution can be one of two ways. The first is covered in condition 103A (a) (i) to (iv) inclusive. If the applicant chooses this option, the applicant submits to Council a **valuation report** that is prepared by a registered valuer. This report identifies the market value of dwellings of a similar size to dwellings in the development by reference to the recent sales prices of such new dwellings of similar size and, in the absence of recent sales prices at the subject development, recent sales price of similar sized dwelling(s) in comparable development(s) within the Willoughby local government area. Council, if it considers it desirable and reasonable to do so, may appoint an independent registered valuer (at the applicant's expense) to undertake a separate valuation to verify the market value provided in the applicant's registered valuer report. It is important that a square metre figure value is identified in any valuation report, which is obtained from recent sales prices of new dwellings *and* the floor area of units. The square metre figure identified in the valuation report is then used in the calculation of the monetary contribution (e.g. square metre value for new dwellings of \$12,610, the monetary contribution will be WLEP cl 6.8 mapped percentage 4% of residential component (3,827m²), as follows:

$$4\% \times 3,827 = 153.08\text{m}^2$$

$$\text{Now, } 153.08\text{m}^2 \times \$12,610 = \$1,930.338.80$$

In this scenario a monetary contribution of \$1,930.338.80 would be required (to be paid to Council within three (3) months of Council's written acceptance of the valuation report).

The second way is covered in condition 103A (a) (v). Under this option the applicant uses the market value (mean) of dwelling sales in Willoughby obtained from the Rent and Sales Report issued by the Department of Communities and Justice (link below).

<https://dcj.nsw.gov.au/about-us/families-and-communities-statistics/housing-rent-and-sales/rent-and-sales-report.html?subject=https://dcj.nsw.gov.au/about-us/families-and-communities-statistics/housing-rent-and-sales/rent-and-sales-report.html>

As there is no square metre figure in the Rent and Sales Report data, Council allows a unit size of 100m² to be assumed for the purpose of the calculation. This is considered a reasonable and just figure to divide the mean dwelling sales figure by, to obtain the figure. For reference, the most recent Quarter shown on the Interactive Dashboard (June 2024) displays a mean figure of \$1,240 as shown below:



As the figure is denoted as “\$’000s” it must be multiplied by 1,000 i.e. \$1,240 x 1000 = \$1,240,000. Now, divide this figure by Council’s accepted average size for a residential unit (100m²), which means that the value per square metre is \$12,400.

So, in the circumstances of this scenario (if this Quarter was used) the total monetary contribution would be:

$$\$12,400 \times 153.08\text{m}^2 = \$1,898,192.00$$

Council will accept either option for calculation of the monetary contribution (valuation report or Rent and Sales). Of course, Rent and Sales is a faster method that does not require a valuation report by the applicant (nor a valuation report commissioned by Council at the applicant’s expense).

- (e) Response to section 7.32(1), (3)(c) and (4) of the Environmental Planning and Assessment Act 1979

Section 7.32(1) of the Environmental Planning and Assessment Act 1979 (the Act) is addressed by clause 14 SEPP (Housing) 2021, which states as follows:

- 14 Need for affordable housing and imposition of conditions—the Act, s 7.32(1)**
This Policy identifies that there is a need for affordable housing within each area of the State.

Section 7.32 (3) (c) of the Act states:

A condition may be imposed under this section only if—

- (3) (c) the condition requires a reasonable dedication or contribution, having regard to the following—
- (i) the extent of the need in the area for affordable housing,
 - (ii) the scale of the proposed development,
 - (iii) any other dedication or contribution required to be made by the applicant under this section or section 7.11.

Responses are provided as follows:

(3)(c) (i)

The following points from Willoughby City Council's Housing Affordability snapshot, produced December 2024, states the following:

- Housing affordability in Willoughby LGA is decreasing and this is impacting on provision of essential services to the local community:
- The lack of affordable accommodation in Willoughby means that fewer essential workers are choosing to live in the LGA.
- In Chatswood CBD, over 40% of households are experiencing housing stress due to rental costs and over 30% of households are experiencing mortgage stress.
- In Willoughby LGA there are half as many affordable housing dwellings than the average for NSW.
- Rental affordability continues to diminish in Willoughby LGA.
- There has been no real growth in the number of affordable rental properties available within the LGA for 15 years.
- The lack of affordable housing for key workers is impacting on the level and cost of providing essential services to the local community.

In addition, the data snapshot expands on housing affordability comparative to other LGAs as follows:

- “The unaffordability of rental accommodation in the LGA is directly impacting on the number of essential workers who can afford to live in Willoughby.

Research conducted by the University of Sydney^[1] shows that housing unaffordability has a direct impact on the local essential worker labour force. Willoughby ranks in the top 10 LGAs with the lowest concentration of essential worker residents, alongside neighbouring LGAs such as North Sydney, Mosman, Ku-Ring-Gai and Lane Cove.

The study determined Willoughby LGA to be ‘very unaffordable’ for many essential workers on indicative salaries to purchase or rent a median-priced home in the area. For example, in Willoughby, the median price for a strata dwelling was found to exceed what would be affordable for an early career Registered Nurse by over \$500,000 in 2023.

^[1] Gilbert, C. Nasreen, Z. & Gurran, N. (2023) Tracking the housing situation, commuting patterns and affordability challenges of essential workers: a report prepared for HOPE Housing, Sydney: The University of Sydney and HOPE Housing.

The increasing unaffordability of housing in the LGA means that less people employed in emergency, health and other essential service sectors are resident in Willoughby. This has impacts for our ability to respond quickly to emergencies that may occur in the LGA and for resourcing and funding these services including for example workforce recruitment and retention costs”.

(3) (c) (ii)

Prior to WLEP (Amendment 34) the LEP currently had a flat percentage rate of 4% applying to specific mapped areas in the Special Provisions Area Map that had been in place since 1999. WLEP (Amendment 34) changed this to a maximum of 10%. SGS Economics undertook a study on behalf of Council to test the feasibility of having a general 10% rate across the Local Government Area. Their conclusions were included in the exhibition material that accompanied the Comprehensive LEP Amendment. The findings concluded the rates of affordable housing contributions to be feasible.

Notwithstanding, the Planning Proposal relating to this site pre-dated WLEP (Amendment 34) and the site is mapped for 4%.

(3) (c) (iii)

Council provides a dispensation for payment of s7.11 contributions for affordable housing dedication under clause 6.8 WLEP.

- (4) Council has taken into consideration that the applicant has dedicated nine (9) residential affordable housing units, which equates to 4% of the original residential component. The additional residential component (the scope of this application, which is 3,827m²) is subject to the mapped percentage of 4% pursuant to WLEP clause 6.8 (5). This clause captures any increase in residential component and multiplies it by the mapped percentage to satisfy the aims of WLEP clause 1.2 (2) (f) (ii) which seeks to facilitate the provision of ... affordable housing.

(f) Response to clause 6.8(3) of WLEP

6.8(3) of WLEP reads as follows:

- (3) Development consent must not be granted to development to which this clause applies unless the consent authority has considered the following—
- (a) the Willoughby Affordable Housing Principles,
 - (b) the impact of the development on the existing mix and likely future mix of residential accommodation in Willoughby.

The Willoughby Affordable Housing Principles are identified in clause 6.8 (1) WLEP:

- (a) affordable housing must be provided and managed to make accommodation for a diverse residential population representative of all income groups available in Willoughby,
- (b) affordable housing must be rented to tenants at rents that do not exceed a benchmark of 30% of actual household income,
- (c) dwellings provided for affordable housing must be managed to maintain their continued use for affordable housing,

- (d) the Council must use the following received by or on behalf of the Council to improve or replace, or provide additional, affordable housing in Willoughby—
 - (i) rent from affordable housing, excluding landlord's expenses, such as management and maintenance costs and rates and taxes payable in connection with the dwellings,
 - (ii) money from the disposal of affordable housing,
- (e) affordable housing must consist of dwellings constructed to a standard that, in the opinion of the consent authority, is consistent with the same type of dwellings forming part of the proposed development, particularly in relation to internal fittings and finishes, solar access and privacy.

This clause deals with affordable housing captured under clause 6.8 WLEP.

Council's Affordable Housing Strategy 2020 to 2026 identifies its commitment to provide for the increased delivery of diverse affordable housing products to those in need. Council's Affordable Housing Policy identifies the benchmark of 30% of actual household income.

Willoughby City Council currently has 37 essential worker housing units (2022) that are managed by Evolve Housing to provide affordable housing to essential workers in our community. Affordable housing stock managed by Council is managed to maintain their continued use for affordable housing. Council uses monetary contributions to improve, replace, or provide additional affordable housing in Willoughby. Council, through its rigorous development assessment process and conditions of consent, ensures that affordable housing is constructed to a suitable standard.

Further, Council has considered the impact of the development on the existing mix and likely future mix of residential accommodation in Willoughby, and is satisfied that the mix is appropriate.

(g) Updated position on Housing and Productivity Contribution

The Housing and Productivity Contribution *does* apply to the subject application.

Schedule 2 of the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023 sets out exemptions from the housing and productivity contribution. Development identified in Schedule 2 is not to be included in the determination of a housing and productivity contribution.

Schedule 2 (1) has the subheading "Public and affordable housing and other specialist accommodation". Under this subheading, section (1) (b) (ii) has the effect of making exempt development for the purpose of affording housing that is required to be managed by a registered community housing provider by conditions of development consent prescribed by section 82 or section 84 of the Environmental Planning and Assessment Regulation 2021. In this case section 82 applies (as the development is permitted under SEPP (Housing) 2021 Chapter 2, Part 2, Division 1 that is not carried out by or on behalf of the Aboriginal Housing Office or the Land and Housing Corporation).

None of the proposed units that are in the scope of this Amending DA are affordable housing units - except some may become so if dedicated pursuant to clause 6.8 WLEP. For reference, the scope of the subject Amending DA relates to the following:

	Building D	Building E	Building F
Level 7	Unchanged	Increase from 2 x 3-bed to 3 x 3-bed	Increase from 2 x 3-bed to 3 x 3-bed
Level 8	New 4 x 3-bed	New 3 x 3-bed	New 3 x 3-bed
Level 9	New 4 x 3-bed	New 3 x 3-bed	New 3 x 3-bed
Level 10	New 4 x 3-bed	-	-

Table 1: Scope of the subject Amending DA as regards to units throughout the development.

The affordable rental units identified under SEPP (Housing) 2021 are shown on Drawing A.011 Rev G, as follows:

AFFORDABLE HOUSING INFILL SEPP RENTAL CONTRIBUTION			
UNIT NUMBER	NET AREA	GFA ACCORDING TO EFFICEINCY(90%)	UNIT TYPE
BUILDING E			
G01	66 m ²	73 m ²	1 BED + S
G02	90 m ²	100 m ²	2 BED + S
101	82 m ²	91 m ²	2 BED
103	78 m ²	87 m ²	2 BED
105	89 m ²	99 m ²	2 BED + S
201	82 m ²	91 m ²	2 BED
203	78 m ²	87 m ²	2 BED
205	89 m ²	99 m ²	2 BED + S
301	85 m ²	94 m ²	2 BED + S
401	82 m ²	91 m ²	2 BED
403	89 m ²	99 m ²	2 BED + S
501	82 m ²	91 m ²	2 BED
503	92 m ²	103 m ²	2 BED + S
601	82 m ²	91 m ²	2 BED
TOTAL: 14	1165 m²	1294	
BUILDING F			
G01	65 m ²	73 m ²	1 BED + S
101	82 m ²	91 m ²	2 BED
103	78 m ²	86 m ²	2 BED
105	89 m ²	98 m ²	2 BED + S
201	82 m ²	91 m ²	2 BED
203	78 m ²	86 m ²	2 BED
205	89 m ²	99 m ²	2 BED + S
301	85 m ²	94 m ²	2 BED + S
401	82 m ²	91 m ²	2 BED + S
403	86 m ²	96 m ²	2 BED
501	82 m ²	91 m ²	2 BED + S
503	86 m ²	96 m ²	2 BED + S
601	82 m ²	91 m ²	2 BED + S
TOTAL: 13	1065 m²	1183m²	
SUBTOTAL 27	2230m²	2477m²	

Image 2: The affordable rental units identified under SEPP (Housing) 2021 on Drawing A.011 Rev G, which only relate to Buildings E and F up to Level 6, and therefore units approved under DA-2021/300.



Accordingly, the HPC Contribution applies in full, except where units (at present unknown) shown in Table 1 are identified as affordable housing.

Peter Wells
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