

RECOMMENDATION:

That Council:

1. Publicly exhibits for 42 days the draft Waverley Planning Agreement Policy 2014 (Amendment No. 3) attached to the report.
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.
3. Publicly exhibits for 42 days the draft Waverley Affordable Housing Contributions Scheme attached to the report.

Executive Summary

There are two pieces of work attached to this Council report for which Council officers seek endorsement to proceed to public exhibition.

The draft Amendment 3 to Waverley's *Planning Agreement Policy 2014* is an amendment that proposes to:

- Update the standardised benchmark rates applied to development applications in line with current market conditions.
- Update the minimum split of VPA funds to affordable housing from 10% to 25%.
- Housekeeping amendments relating to process improvement.

The draft *Waverley Affordable Housing Contribution Scheme* is a legislative requirement of Section 7.32 Environmental Planning and Assessment Act (EP&A Act), with further clarification provided by *Environmental Planning Assessment (Planning Agreements) Direction 2019 (Ministerial Direction)* and *State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes)* (SEPP 70) to allow Councils to collect any monetary or in-kind contributions for affordable housing through the planning system. The draft scheme has two main objectives:

1. Give effect to the Council's current approach of allocating monetary contributions to affordable housing through voluntary planning agreements.
2. Introduce a new affordable housing contribution as requirement in the WLEP 2012, consistent with the recommendations from the Local Housing Strategy:
 - A contribution on all new residential apartment development of 1% of floorspace at a flat \$ rate/sqm.
 - A contribution of 10% towards affordable housing for sites that receive planning uplift through a rezoning process.

The scheme is being reported to Council with the draft *Planning Agreement Policy 2014 (Amendment 3)* as it relates to collecting contributions for affordable housing through Voluntary Planning Agreements (VPA).

Introduction/Background

Planning Agreement Policy 2014

Planning agreements are used across Sydney by Councils such as Parramatta and City of Sydney. It is a standard consideration in Section 4.15 Matters for Consideration under the EP&A Act 1979, meaning it is a standard matter for assessment of all development applications.

Waverley's Planning Agreement Policy 2014 has been successfully utilised to negotiate and draft planning agreements accompanying Development Applications seeking a Clause 4.6 variation to Clause 4.4 Floor space ratio for up to an additional 15% of floorspace.

Prior to the adoption of the Policy, development applications would seek to exceed Council's planning controls, in accordance with clause 4.6 of the LEP. These applications could be approved with no share of the uplift going towards to community infrastructure. In instances where these applications were refused, they were often subject to lengthy and costly court cases. However, the policy is clear that *"development that is unacceptable on planning grounds will not be given consent because of benefits offered by a developer"* and that *"council will not enter a planning agreement unless it is satisfied that the proposed development is acceptable on planning grounds having regard to the general heads of consideration set out in Section 79C of the Act"*. For instance, Council has refused several development applications and s4.55 modification applications involving VPAs on the grounds that these would have unacceptable impacts in planning terms. This includes developments seeking two additional storeys that would have contributed VPAs worth \$4.2 million, \$3.2 million and \$1million.

Where development exceeds the established planning controls, and can do so without having an unacceptable impact, then value sharing can provide the community a net benefit from the development in terms of additional infrastructure and amenity.

Success of the Planning Agreement Policy 2014

The case-by-case value sharing method used in the Policy has been very successful in delivering community benefits. Since 2014, close to \$26m has been raised with \$23.4m for public domain works and \$2.6m for affordable housing. To place this number into context, the section 7.12 developer contributions provided by all development across Waverley LGA for 2019/20 FY was \$2.6million.

Contributions have been dedicated towards several public domain upgrades including Waverley's Complete Streets program in Bondi Junction (for development relating to Bondi Junction) and several upgrades to local parks nearby developments. There have been instances where parks directly adjacent to a subject development have been upgraded as a result of VPA contributions e.g. Seven Ways at Glenayr Avenue. To this extent, the policy ensures that increases in density are associated with an increase in liveability, rather than a decrease.

Waverley Affordable Housing Contributions Scheme

Legislative requirement

In early 2019, DPIE announced that under SEPP 70 all Councils were eligible to impose a condition of consent on new development for contributions to affordable housing. To do this, Council must have an affordable housing contributions scheme referenced in the LEP.

An affordable housing condition of consent would be any condition on a development consent that requires monetary or in-kind contributions to affordable housing. In Waverley, an affordable housing condition of consent includes a condition of consent for VPAs as every VPA allocates funds towards affordable housing. *Environmental Planning Assessment (Planning Agreements) Direction 2019 (Ministerial Direction)* supports this intent of SEPP 70 and requires that Councils who allocate VPA funds to affordable housing must develop an affordable housing contributions scheme. Therefore, to continue allocating VPA funds to affordable housing, it is a legislative requirement that Council prepares this scheme.

Action from the adopted Local Housing Strategy (LHS)

The preparation of the scheme is also in line with actions from the LHS, where it was recommended to implement a contributions scheme that requires a 1-3% base rate monetary contribution on all new residential apartment development and a higher 10-15% monetary contribution on sites receiving uplift. The draft scheme identified that a specific percentage of 1% on all new residential apartment development and 10% on sites receiving uplift would be more appropriate compared to a range, as a test of industry acceptance. It is envisaged that this rate will increase in the future. This component of the scheme is subject to Department of Planning Industry and Environment (DPIE) approval to update the LEP with such a clause via a Planning Proposal.

Attached to this report is the draft *Waverley Affordable Housing Contributions Scheme* that has been prepared in accordance with DPIE's SEPP 70 guidelines.

Relevant Council Resolutions

Meeting and date	Minute No.	Decision
Council 21 August 2018	CM/7.3/18.08	<p>That Council:</p> <ol style="list-style-type: none">1. Adopts the Waverley Planning Agreement Policy 2014 (Amendment No 2) attached to this report subject to the following amendment: (a) The reference to a 25% allocation of funds to affordable housing in sections 2.4 and Appendix 6 of the policy being amended to 10% consistent with Council's current policy and noting that a future workshop will be held with Councillors to discuss increasing the percentage (currently 10%) of VPA funds going towards the Waverley Affordable Housing Program.2. Notes the purpose of this amendment to the Waverley Planning Agreement Policy 2014 is to implement pre-scheduled development contribution rates, implement and clarify the process for applying planning agreements to planning proposals in order to fund public infrastructure needs and housekeeping updates.3. Notes that the proposed amendments relating to standardised, pre-scheduled development contribution rates

Meeting and date	Minute No.	Decision
		<p>are consistent with the value sharing principles that have been applied to Planning Agreements negotiated to date.</p> <p>4. Notes that the proposed amendments relating to a planning proposal are consistent with the principles which have been applied to planning agreements negotiated for development applications, with the latter providing certainty for the community and development industry.</p>
<p>Council 15 May 2018</p>	<p>CM/5.1/18.05</p>	<p>That Council:</p> <ol style="list-style-type: none"> 1. Prepares educational material for public consultation on the process, policy and practice of voluntary planning agreements, including an educational program schedule for precincts and interested residents to commence in the second half of this year in relation to VPAs. 2. Reviews the potential for variation in the clauses of Council's VPA Policy, particularly in regard to increasing the current 10% contribution to Council's Affordable Housing Program 3. Considers the pros and cons of financial versus in-kind contributions for VPAs, including the potential for receipt of property in perpetuity that contributes to Council programs, such as Affordable Housing. 4. Notes the planned Councillor workshop on the subject of VPAs and incorporates consideration of these matters into that workshop.
<p>Council 20 March 2018</p>	<p>CM/8.4/18.03</p>	<p>That Council:</p> <ol style="list-style-type: none"> 1. Prepare a report setting out all voluntary planning agreements (VPAs) adopted by Council from June 2012 to March 2018, with the following detail for each VPA: <ol style="list-style-type: none"> (a) The excess floor space. (b) The excess height. (c) The total dollar amount received by Council. (d) A summary of expenditure of income received as a result of the VPA against the purpose for which it was obtained. 2. Add additional height sought to the Planning Agreement Register. 3. Conduct a Councillor workshop on the report and the Planning Agreement Policy prior to the report coming back to Council.
<p>Council 20 October 2015</p>	<p>CM/7.6/15.10</p>	<p>That Council:</p> <ol style="list-style-type: none"> 1. Notes the key purpose of this amendment to the 'Waverley Planning Agreement Policy 2014' is to identify and capture the increase in value arising from a Planning Proposal in order to fund public infrastructure needs. 2. Notes that the proposed amendments relating to a Planning Proposal are consistent with the principles which have been applied to Planning Agreements negotiated for development applications, with the latter providing certainty for the community and development industry.

Meeting and date	Minute No.	Decision
		3. Further notes that this is the first time a detailed Planning Agreement methodology has been proposed for Planning Proposals, and it would be valuable to advertise the draft amendments to generate community and industry feedback for Council's consideration of issues that may arise. 4. Adopts for the purpose of exhibition the 'Waverley Planning Agreement Policy 2014' (Amendment No. 1). for a period of 28 days, subject to the following:
Operations Committee 7 October 2014	OC/5.2/14/10	That Council resolves to adopt the 'Waverley Planning Agreement Policy 2014' provided at Attachment 1 to this report, which will replace the Interim Voluntary Planning Agreement Policy 2013.
Council 10 December 2013	1312.12.7/13	A. Review Clause 4.4B of Waverley LEP 2012 in conjunction with the Department of Planning and Infrastructure and our legal representatives in order to ensure that... The value of any affordable housing incentive associated with future development is shared equitably between Council and developers...
Finance, Ethics & Strategic Planning Committee 5 November 2013	F-1311.7/13	That Council resolve to publicly exhibit the Planning Agreement Policy 2013 attached to this report (Attachment 1)
Council 18 June 2013	1306.12.8	Council adopt the Interim Voluntary Planning Agreement Policy 2013 attached to this report (Attachment 1).

Discussion

Updates to the Waverley Planning Agreement Policy 2014

Increasing the minimum affordable housing contribution split to 25%

To date, the Policy has mandated that 10% of all VPA contributions are allocated to Waverley's Affordable Housing Program. It was raised at the time of the last amendment, that Council wished to investigate increasing this split to 25%. At the time Council officers were about to undertake the Local Housing Strategy, which would include an analysis of the LGA's affordable housing need and options to address this through the planning system. It was resolved to postpone the decision of an increased split until Council officers undertook a Councillor workshop and completed the LHS so that any change to the split was grounded in an adopted strategy.

Affordable housing is a critical need in Waverley LGA and more funds towards affordable housing would help to alleviate this need. The LHS highlighted that VPAs are currently the only funding source for affordable housing. Greater contribution to affordable housing could benefit a wider geographical area. Therefore, the LHS recommended *"review the VPA Policy to consider an increase up to 100% of VPA contributions towards affordable housing and to develop criteria to determine where this is appropriate."*

It is recommended that at a minimum all planning agreement contributions will allocate 25% to affordable housing. To determine the public benefit, the nexus principle prevails, where if there is a nearby 'strategic opportunity' the VPA will be allocated there. Strategic opportunities have been identified in Council's policies and strategies and examples are listed at Appendix 5 of the policy (Attachment 1). To determine the public benefit, we would apply the following criteria:

- If development is in a centre, then towards dedicated commercial floor space in the first instance with rent hypothecated to affordable housing.
 - This floor space could be used by Council to achieve economic development purposes, such as the creation of an incubator for new start-ups. It would also seek to offset the loss of office floor space (and loss of local jobs) expected with the conversion of office towers to residential. Net income could be hypothecated to the Waverley Affordable Housing Fund.
- If near a strategic acquisition site, then towards the funding of this purchase e.g. in line with the Open Space and Recreation Strategy, VPA funds could go towards to acquisition of key open space.
- Flexibility to allow for unique circumstances e.g. Seven Ways park upgrade at Glenayr Ave.

If the above criteria does not apply, or there is a loss of affordable housing on site, then a higher percentage – up to 100% - of the VPA contribution could go towards affordable housing.

Updated benchmarks

Standardised benchmark rates were introduced in the last amendment to the Policy and have been in place since August 2018. Since then, the benchmarks have been applied to seven VPAs. The VPA benchmarks have overall been a success for both Council officers and the applicants. For applicants, it provides certainty that they can factor into their financing should they wish to pursue a clause 4.6 and VPA. For Council officers, it has reduced the administrative burden of negotiating voluntary planning agreements that can take up to three months.

The benchmark rates were introduced on the basis that they were regularly updated to reflect current market conditions. Attachment 1 outlines the new rates, which vary from no change to a 5-7% decrease from the previous benchmarks. Detailed market research was undertaken using Realestate.com, NSW Valuer General and the Housing NSW 'Rent and Sales Report'. Recent sales were taken from the 19/20 financial year time period. Details on how the new benchmark rates were determined are provided at Attachment 3.

Housekeeping amendments

Housekeeping amendments include:

- Giving regard to the latest draft Planning Agreement Practice Note 2020
- Updated reference to the strategic context in light of the adoption of the LSPS, LHS and supporting environmental strategies to inform the preparation of the comprehensive review of the LEP
- Update to the DA negotiation process reflecting the introduction of the standardised VPA benchmark rates
- Updated notification procedures to include notifying the relevant Precinct Committee

Affordable housing contributions scheme

Objectives

The objectives of the scheme are as follows:

1. Give effect to Council's current approach of allocating monetary contributions to affordable housing through voluntary planning agreements

The NSW Government released a Ministerial Direction requiring that Councils who wish to require in-kind or monetary contributions for affordable housing through a voluntary planning agreement must have an affordable housing contributions scheme. Council wishes to continue allocating planning agreement funds (a minimum 25% as outlined in this report) to affordable housing and hence the preparation of the scheme (Attachment 3).

2. Introduce a new contribution:
 - A contribution on all new residential apartment development of 1% of floorspace at a flat \$ rate/sqm.
 - A contribution of up to 10% of floorspace at a flat \$ rate/sqm will apply to sites getting planning uplift through the rezoning process.

These rates per sqm will differ by suburb due different submarket conditions which are in the policy.

Under SEPP 70 all Councils in NSW were made eligible to start collecting affordable housing contributions where there is uplift in the planning controls, an identified local housing need and where it is viable.

Council has adopted the Local Housing Strategy which does not propose any rezoning in the LGA. This is because it was determined that there was sufficient capacity to deliver the appropriate housing supply to meet housing targets.

Council also receives unsolicited spot rezoning proposals from private industry. It is intended that the scheme will give Council the legislative backing to require affordable housing contributions from proponents that are granted uplift through the Planning Proposal process.

Process

To make these contributions mandatory, an amendment needs to be made to the LEP for a new clause referencing the scheme. This requires Council officers to submit a Planning Proposal to DPIE. Council officers wish to undertake community consultation on the Affordable Housing Contribution Scheme first before proceeding with the Planning Proposal. If the scheme is adopted by Council, then Council officers will prepare and send a Planning Proposal to the DPIE to reference the scheme in the WLEP 2012. Depending on whether the timeframes can be aligned, a new clause could also be incorporated into the comprehensive LEP review negating the need for a separate PP to be prepared. This decision will be determined in the future and be dependent upon the preferred timing option.

Financial impact statement/Time frame/Consultation

Financial impact

The current funding split for planning agreements being 90% to public works and 10% to affordable housing creates a strong nexus between development and the public benefit. The benefits are tangible and are able to be widely used (i.e. park upgrades). However, public domain upgrades can be funded by other sources of revenue, such as rates and NSW Government grant funding.

The funds allocated from VPA revenue in the next two years in the LTFP have been derived from funding that is already committed with existing VPAs. So there will be no changes to public works funding in the next two years (to end of 2022 FY). Furthermore, any VPA is prospective money that would get allocated against a project that is not funded or not fully funded. The whole idea of A VPA is that it would fund new capital works over and above the LTFP.

The draft *Waverley Affordable Housing Contributions Scheme* will not have a negative financial impact on Council's budget as it relies on contributions from developers. It could have a significant positive impact on the Waverley Affordable Housing Fund by increasing the revenue allocated to it.

Time frame and Consultation

Both the draft *Planning Agreement Policy 2014 (Amendment 3)* and draft *Waverley Affordable Housing Contributions Scheme* will go on public exhibition should the recommendations from this Council report be adopted. A post-exhibition report will come back to Council in late 2020 to enable Council to consider adopting the *Planning Agreement Policy 2014 (Amendment 3)* and endorsing the draft *Waverley Affordable Housing Contributions Scheme* to be forwarded as a planning proposal to DPIE.

Conclusion

The draft *Planning Agreement Policy 2014 (Amendment 3)* has been drafted in accordance with legislation, Council's policies, plans and strategies. Subject to Council approval, it reflects a direction from Council to increase the funding split towards affordable housing, updated benchmarks reflect current housing market conditions and housekeeping amendments to ensure the policy remains up to date.

The draft *Waverley Affordable Housing Contributions Scheme* has also been drafted in accordance with the NSW Government's relevant guidelines. It is a legislative requirement to prepare this scheme to continue allocating any contributions to affordable housing through the planning system. It is recommended that it proceeds to public exhibition.