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15 November 2020

Mr Ross McLeod
General Manager
Waverley Council
PO Box 9
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Email – info@waverley.nsw.gov.au

Dear Mr McLeod

Draft Waverley Affordable Housing Contributions Scheme & Planning Agreement Policy 2014 (Amendment 3)

The Property Council welcomes the opportunity to provide comments to Council on the draft Affordable Housing Contributions Scheme (the Scheme) and the draft Planning Agreement Policy 2014 (Amendment 3).

As Australia's peak representative of the property and construction industry, the Property Council's members include investors, owners, managers and developers of property across all asset classes.

We are pleased to provide the attached for your consideration. In the submission we express concerns about the operation and effectiveness of the proposed Scheme and the restrictive nature of the changes proposed to be made to the Planning Agreement Policy. Based on our understanding of the Scheme, we hold strong concerns that it will do very little to increase the supply of affordable housing in the Waverley LGA.

Should you have any questions regarding the content of this submission, please contact Troy Loveday, NSW Policy Manager, on 0414 265 152 or tloveday@propertycouncil.com.au

Yours sincerely

A handwritten signature in blue ink, appearing to read "Adina Cirson".

Adina Cirson
Executive Director
Property Council of Australia

Submission to Waverley Council

**Draft Affordable Housing
Contributions Scheme &
Amendment to Voluntary Planning
Agreement Policy 2014**

15 November 2020

1.0 General Comments on Housing Contributions Scheme

1.1 Lack of housing supply reduces housing affordability

The Property Council champions policies which seek to increase the supply of affordable housing across Sydney. We are aware of and concerned about the negative impacts created by the increasing lack of affordable rental housing stock across the Sydney market. We have supported efforts by local councils and the State Government to identify the need for affordable housing, strategically plan for and consider solutions.

There is no silver bullet to housing affordability, and as such there a range of policy levers must be employed by all levels of government to address the issue. That includes ensuring that the tax settings and their impact on housing supply is a remains a critical area which must be monitored and adjusted according to the market conditions – which currently are particularly challenging in the current COVID-19 induced recession. For example, contribution schemes that levy new development to fund the provision of ‘affordable housing’ can have unintended consequences which can make new development of new housing unviable and accordingly, limit the production of new supply. It can also result in councils holding contributions to develop affordable housing supply that cannot be spent due to insufficient funds being collected to acquire new dwellings.

1.2 Affordable Housing Affordable Housing need in Waverley

Part 1.6 of the draft Scheme indicates that Waverley is one of the most unaffordable parts of Sydney. Rents for all dwellings is 1.3 times higher than the Sydney average and 30% of renting households are in rental stress and 85% of low-income households are in rental stress. There is also a lack of housing suited to key workers such as those workers in health, education and emergency services. Council has estimated that 11% of total dwelling stock in Waverley needs to be affordable to meet demand. Approximately 600 new dwellings are required in the 20 years to 2036, which equates to 30 dwellings each year. It is unclear how Council proposes to achieve this goal when its Local Housing Strategy does not propose any rezoning of land in the LGA. In no way do we support Council applying a new affordable housing levy to development under Waverley’s existing planning controls.

Affordability of housing is a problem that is found across much of Sydney, particularly eastern and northern Sydney and, in our view, it should be resolved at a regional or district level rather than at a local council level. There are nine councils in the Eastern City District and each council developing individual policies and schemes for housing affordability. The Property Council’s preference is a single scheme for either the Eastern District or a scheme covering the entire Greater Sydney Region. This would allow affordable housing resources to be pooled and shared to deliver more immediate and targeted outcomes.

2.0 Draft Affordable Housing Contributions Scheme

2.1 Council's Proposed Scheme

The primary purpose of the Scheme is to give effect to Council's current approach of collecting monetary contributions for affordable housing when it enters into Voluntary Planning Agreements with developers. It responds to a recent change of policy implemented through the Environmental Planning and Assessment (Planning Agreements) Direction 2019 that commenced in February 2019.

Council's draft Planning Agreement Policy 2014 requires a minimum of 25% of all VPA contributions are allocated to funding new affordable housing. The Property Council acknowledges Council's preference to direct one quarter of funds from a VPA towards increasing the supply of affordable housing within Waverley.

The proposal seeks to establish a scheme under *State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes)* (SEPP 70) that will levy a 1% affordable housing contribution on new residential apartment development and 10% contribution on sites receiving density uplift. The scheme is intended to apply to both residential apartment development and mixed-use developments (excluding employment uses).

Part 2 of the scheme indicates that the scheme will be implemented through both conditions on development applications and as part of voluntary planning agreements where uplift is sought (planning proposals and clause 4.6 variations). We note the operation of the proposed Scheme and its intended application. Due to the minor nature of variations to density being sought under clause 4.6, we do not support these variations triggering an affordable housing contribution. Contributions should only be limited to significant uplift arising from planning proposals that increase the FSR applying to a site.

It is noted that development applications for types of residential development to which the scheme applies, will be subject to conditions requiring either the dedication of dwellings (as indicated in 2.2.1 of the draft Policy) or payment of a monetary contribution as indicated in Table 1 of the Policy (ranging between \$14,000/m² and \$21,000/m²). We support proponents being allowed to choose the method of discharging their obligations under the policy. Monetary contributions should also be available in addition to dedication of land/dwellings.

2.2 Consistency with Eastern City District Plan

Council would be aware that the Eastern City District Plan provides a target of affordable housing for very-low and low income households of between 5% and 10% of new residential floor space, subject to viability. Council must ensure that its scheme is consistent with that approach, particularly regarding the test for development viability.

The District Plan indicates that local council should prepare Affordable Rental Housing Target Schemes "following the development of implementation arrangements", however it is not clear what implementation approach was proposed by the Greater Sydney Commission. The Property Council recommends Council confirm that its proposed scheme can be implemented in a way that is consistent with State Government policy.

We understand that guidelines issued for the preparation of SEPP 70 contribution schemes require contributions to only be collected against new residential floor space where uplift is proposed. As Council's Local Housing Strategy indicates (and subsequently confirmed by this Policy) there are no areas to be rezoned for additional housing within the Waverley LGA. On this basis, we argue there is no basis for the establishment of an affordable housing contributions scheme.

2.3 DPIE Guidelines – feasibility testing

In February 2019, the Department of Planning, Industry and Environment (DPIE) released *“Guideline for Developing an Affordable Housing Contribution Scheme”* which sets out the process and considerations for making an affordable housing contribution scheme.

The process of preparing a SEPP 70 scheme will require councils to provide DPIE with evidence and assumptions used to determine the contribution rates to ensure that the proposed rates are viable and do not impact on development feasibility, and the overall supply of housing within the LGA. Council must ensure that any contribution rates it proposes have undergone this viability testing and review.

The Property Council expects Council will ensure that its Scheme will be prepared to be consistent with the relevant sections of these guidelines.

2.4 Implementation and administration

Part 3 of the Scheme outlines the process to be followed for the distribution and management of funds collected through contributions.

Contributions are to be made to Council by an unendorsed bank cheque prior to a Construction Certificate being issued. We would suggest Council also consider allowing for other payment methods, particularly electronic bank transfer or other similar payment methods.

Section 3.5 of the Scheme indicates that *“Council will regularly review this policy and the manner in which it operates”*. We support Council’s intention to undertake regular reviews of the policy with a specific focus on its operation. The Property Council suggests that Council undertake to carry out a full review of the policy after five years, with a focus on its policy objectives and implementation against these objectives and progress is regularly reviewed.

3.0 Draft Amendment to Voluntary Planning Agreement Policy

The Council has proposed an amendment to its current Planning Agreement Policy to:

- Update the standardised benchmark rates applied, in line with current market conditions;
- Update the minimum split of VPA funds to affordable housing from 10% to 25%; and
- Make housekeeping amendments relating to process improvement – largely around recognising the role of strategic planning.

3.1 Value Sharing Approach

Council will be aware that in April 2020, DPIE released revised Secretary's Practice Note on Planning Agreements and Ministerial Direction in draft form for consultation. These remain in draft form and are likely to be finalised after the Productivity Commissioner completes his Review of Infrastructure Contributions later this month.

In respect of value capture, the draft revised Secretary's Practice Note specifically states:

"In general, the use of planning agreements for the primary purpose of value capture is not supported as it leads to the perception that planning decisions can be bought and sold and that planning authorities may leverage their bargaining position based on their statutory powers"

"Planning agreements should not be used explicitly for value capture in connection with the making of planning decisions. They should not be used to capture land value uplift resulting from rezoning or variation to planning controls"

We submit that Council's current Planning Agreement Policy and the updated version as amended, is and would be contrary to the intent of the draft revised Secretary's Practice Note.

It is imperative that Council give careful consideration to completing a review of the policy, and following the review, update the exhibited policy to ensure that it is aligned to the draft revised Secretary's Practice Note.

3.2 Affordable Housing Contributions in Planning Agreements

Council is proposing to amend clause 2.4 of the current policy (Amendment 2) which sets out the types of public benefits that can be delivered under planning agreements. At present Council requires 10% of all planning agreement contributions to be in the form of monetary contributions towards Waverley's Affordable Housing Program fund.

The proposal updates the existing requirement (to be renumbered clause 2.5) to seek *"a minimum 25% of all planning agreement contributions will form a monetary contribution to Waverley's Affordable Housing Program"*.

The Property Council understands that Council is seeking to make a greater impact towards meeting the unmet demand for affordable housing within Waverley LGA by increasing the share of funds contributed through planning agreements from 10% to 25%.

We acknowledge Council's strong policy objective to address housing affordability and the amendment to this policy is a significant sign of its desire to address this issue. However, we are concerned Council may be constraining itself in terms of how it applies monetary contributions by having such a strong position. Council should at all times ensure that funds collected under these planning agreements are allocated towards the highest infrastructure priorities of the Waverley community.

3.3 Comments on housekeeping amendments

The proposal also amends the existing policy by adding a new section that makes reference to the strategic planning context (new clause 2.4). The proposed changes call up reference to Council's Local Strategic Planning Statement (LSPS) that was made in early 2020 and the Community Strategic Plan 2018.

The amended policy suggests that an import role for planning agreements to achieve specific land use planning outcomes with strategic and/or site-specific merit. It specifically states that; *"A Planning Agreement should facilitate the provision of public facilities and amenity outcomes that advance the delivery of Council's corporate and strategic planning objectives and deliver valuable community benefits where appropriate"*.

The Property Council supports this section in-principle, however it is important that Council does not use the planning agreement process to avoid or bypass the use of proper infrastructure contribution mechanisms or strategic planning processes such as undertaking regular reviews of its strategic and statutory plans.