

**INQUIRY INTO NEW SOUTH WALES PLANNING  
FRAMEWORK**

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The Director  
Standing Committee on State Development  
Legislative Council  
Parliament House  
Macquarie Street  
Sydney, NSW 2001

Dear Committee Members

### **Submission to the Inquiry into the NSW Planning Framework**

Waverley Council welcomes the opportunity to provide a submission regarding the inquiry into the NSW Planning Framework which the NSW Legislative Council's Standing Committee is currently undertaking.

Council has prepared the submission with respect to the abovementioned Inquiry. The submission is attached to this letter.

Should you require any further information in relation to this submission, please contact Ines Schmitz, Principal Strategic Planner on 9369 8072 or George Bramis, Manager Strategic Planning on 9369 8050. Please quote the reference number in all correspondence.

Yours sincerely

Peter Brennan,  
**Director Planning & Environmental Services**

# **Submission to the NSW Legislative Council Standing Committee on the Inquiry into the NSW Planning Framework**

## **The need, if any, for further development of the New South Wales planning legislation over the next five years, and the principles that should guide such development.**

Due to the economic circumstances, councils are finding it increasingly difficult to fund community facilities, civic improvements, infrastructure and other social benefits such as affordable housing.

Within the Waverley LGA, working in co-operation with the private sector has proven to be an avenue which has stimulated development and provided integral local community benefits. In order to continue and strengthen these initiatives, appropriate legislation needs to be enacted providing process, transparency and clarity. This would in turn ensure the protection of the community and equitable outcomes. Council emphasises the need to work with the community, supported by the legislative framework to deliver key infrastructure. A key to the delivery of this infrastructure is where incentives are provided to developers, encouraging key infrastructure within a practicable period for a joint public and private long term benefit.

Council would like the committee to investigate the possibility of drafting appropriate amendments to the EP&A Act to allow councils to approve variations to development standards where a defined community benefit is offered and obtained. Such a process would need to work in conjunction with SEPP 1, Section 94, Voluntary Planning Agreements and Council's Principal LEPs. Such mechanisms need greater clarity, not only to process, but the means of measuring and quantifying community benefits and contributions.

It is envisaged that Sec 94 would continue to apply to all relevant developments in order to fund necessary infrastructure upon which a development relies. Minor variations to development standards would continue to be considered pursuant to SEPP 1. Thus, clearly defined terms would need to be established so as not to result in competition between Section 93F Voluntary Planning Agreements (VPA) and Section 94. Variations beyond a specified threshold would need to be accompanied by a SEPP 1 objection and a VPA, or some other mechanism in order to clearly disclose the bonus being sought, the community benefit being offered and the environmental assessment of the likely impacts resulting from the variation. Such a process, however, could not operate without appropriate legislation to ensure that an adequate community benefit is obtained and that the community is adequately protected from any adverse development impacts. Legislation may also be necessary to require assessment of such proposals to be undertaken by independent panels in order to ensure probity and openness.

## **The implications of the Council of Australian Governments (COAG) reform agenda for planning in NSW**

Several reforms undertaken by COAG or the Reform Council which was established by COAG may impact on planning issues in NSW and especially on local government. These planning issues include the transport pricing reform and infrastructure regulation. Waverley Council supports the transport pricing reform which intends to reduce heavy road freight by increasing the use of the rail network. Transport pricing reform could therefore significantly improve the negative impacts currently experienced on arterial roads and on local communities.

## **Climate change and natural resources issues in planning and development controls**

The recent concerns regarding climate change and natural resource issues were not as relevant when the NSW planning system was prepared. Waverley Council therefore suggests that the Legislative Council considers climate change and natural resource issues to form a main part in the revised planning system.

## **Appropriateness of considering competition policy issues in land use planning and development approval processes in NSW**

The current NSW planning system restricts several land uses to certain areas and limits the scale of development. Development under the new standard LEP template will be even more restrictive regarding land uses. Although these planning controls may constrain competition, they are also necessary for improved land use planning, especially where market forces do not work.

## **Implications of the NSW planning system on housing affordability**

Section 5 of the EP&A Act states that the objectives are to encourage the provision and maintenance of affordable housing. Section 26 (1) (d) also states that local instruments may include arrangements for providing, maintaining, retaining and regulating any matter relating to affordable housing.

While the EP&A Act acknowledges the need to retain and encourage affordable housing, there are limited provisions to enact these aims. This is further exacerbated by SEPP 70 – Affordable Housing. Provisions are currently limited to section 94F and 94G of the EP&A Act that allows developer contributions to be levied for the purposes of affordable housing.

### **Section 94 of the EP&A Act and SEPP 70 – Affordable Housing**

The Environmental Planning and Assessment Amendment (Affordable Housing) Act 2000 was gazetted in June 2000. The Act aimed to allow EPIs to allow for the provision, retention and regulation of any matters relating to affordable housing and made amendments to how section 94 contributions are levied for affordable housing. The amendment also provided a two year “sunset” period validating all existing affordable housing schemes, including all LEPs and affordable housing section 94 contributions plans. The two year sunset period was created to enable the preparation of a new affordable housing SEPP that would guide councils in the preparation of the new affordable housing schemes.

State Environmental Planning Policy (SEPP) No. 70 – Affordable Housing (revised schemes) was gazetted in May 2002 and became effective in June 2002. The aim of the policy is to extend the life of affordable housing provisions relating to nominated land. The policy enables levying of development contributions to provide for affordable housing in specific areas.

The SEPP was silent in respect to the three Section 94 affordable housing contributions plans validated, in effect making the plans invalid.

Waverley Council made urgent representations to the Minister of Planning on several occasions outlining the concerns regarding the expiry of the section 94 provisions leading up to the gazettal of SEPP 70. Council also sought to be included in SEPP 70, however, were refused by the DoP largely because the implementation of the new affordable housing SEPP was imminent. Since this time, there appears to have been limited progress or information on, if or when the new affordable housing SEPP will be released. Until this time, local governments are severely limited in their ability to address affordable housing.

### **Waverley Affordable Housing Program**

Due to Waverley Council's exclusion from SEPP 70, the Waverley Affordable Housing Program (WAHP) was created. The WAHP is a social initiative designed to encourage the increased provision of new affordable rental accommodation pursuant to the Waverley Affordable Housing Program Policy 2007. The policy seeks to target and retain low to moderate income households who can demonstrate a connection to the Waverley LGA.

Physical housing stock obtained within the WAHP is managed by South West Inner Sydney Housing (SWISH), a non-profit community housing organisation. The affordable housing units are rented to tenants eligible in accordance with the WAHP criteria set by Council. The rent is set to a level that is 25% below the Rental Review Board median weekly rent in the Waverley LGA according to unit composition and size.

Since the program's inception in 1999, the WAHP has successfully delivered 33 equitable, secure and accessible affordable housing units in mixed tenure throughout the Waverley LGA. The WAHP applies to all new multi-unit residential and mixed use development (comprising of a residential component) within residential zones where a proposed development seeks to exceed the permissible FSR. The WAHP contributions generated are determined in accordance with the Waverley Affordable Housing Program Calculator, designed to determine an equal benefit to a development applicant and the community. Contributions are attained through Council's Voluntary Planning Agreement Policy 2007 designed in accordance with section 93F of the EP&A Act and Regulations 2000.

Section 93F of the EP&A Act provides for planning authorities to enter into VPAs with developers to negotiate contributions for any public purpose, including "the provision of (or the recoupment of the cost of providing) affordable housing". The provisions aim to provide a transparent framework for the creation and advertising of planning agreements.

The key issue with VPAs is that these are fundamentally voluntary. A planning authority can not require an applicant to enter into a VPA as a condition of making an application or of development consent. Given the severe shortages of affordable housing stock, it is considered essential that in the absence of an affordable housing SEPP, provisions be available within the EP&A Act to allow councils to require affordable housing contributions from development rather than on a voluntary basis.

### **Environmental Planning and Assessment Amendment Bill 2008**

Recent amendments to the EP&A Act could potentially have major implications to local councils being able to levy for affordable housing. Section 116I provides that a council's contribution plan can not allow the Council to require a community infrastructure contribution unless the community infrastructure is:

- (a) Key community infrastructure (being community infrastructure prescribed by the regulations as key community infrastructure), or
- (b) Additional community infrastructure (being community infrastructure other than key community infrastructure) that the Minister has approved for the Council under this section.

Section 116M provides that an EPI must not include provisions that require as a condition of development consent or as a precondition to the grant of development consent:

- (a) the making of a development contribution for the provision of public infrastructure of any kind in connection with the carrying out of the development concerned, or
- (b) the making of satisfactory arrangements for the making of such a development contribution.

Under the amendment, a VPA can be entered into with a planning authority and developer to provide physical or monetary contributions towards the provision of public infrastructure or another purpose. However, a VPA cannot be entered into in respect to public infrastructure without the approval of the Minister, unless the infrastructure is key community infrastructure (as prescribed in the regulations).

It is unclear at this stage whether affordable housing could be included within a VPA without the approval of the Minister until the release of the regulations. It is considered vital that affordable housing be considered as key community infrastructure to encourage councils to create affordable housing programs and policies without undue red tape of requiring Ministerial approval.

### **National Strategies**

A number of national strategies have been created in close partnership with state government. These have been developed over the past year in an effort to address housing affordability. Two key strategies include the creation of the Housing Affordability Fund (HAF) and the National Rental Affordability Scheme (NRAS).

The HAF aims to increase the supply of new housing through initiatives to reduce the length of time taken to bring new houses to sale and the impact of infrastructure charges. The fund will target Greenfield and infill development where high dwelling demand currently exists or is forecasted over the next five years.

The NRAS aims to increase the supply of affordable rental dwellings, reduce rental costs for low and moderate income households and encourage large scale investment and innovative delivery of affordable housing. It is expected that around 80 percent of the total allocations will be for proposals which include a minimum of 100 dwellings (across one or more projects) and 20 percent for proposals involving a minimum of 20 dwellings.

The Funds targeting high growth areas, large developments or areas in outer suburbs will have a greater chance of meeting this target. The Waverley LGA has the highest population density in Sydney. As a result, new and infill development is limited. It is unlikely that Council would be able to generate a development site that could provide the overall benefits that a Greenfield or Brownfield site conversion could. However, given the Waverley LGA's major transport links (including a railway line at Bondi Junction), employment and recreational opportunities and location to the city, it is also a highly desirable place to live. These established areas are therefore more expensive. It can be assumed that a large proportion of first home owners have been priced out of the inner Sydney suburbs rather than choosing to live in outer suburbs. Waverley LGA and similar inner suburbs are therefore key locations for affordable housing incentives.

### **General Comments**

Housing affordability is becoming an increasingly important issue at a State and National level. While the EP&A Act provides clear aims to encourage and provide for affordable housing, in practice there are limited opportunities for local councils to provide it.

It is highly questionable as to why the State government has not yet introduced an affordable housing SEPP which applies to all LGA's within NSW.

The absence of the SEPP has effectively prevented councils from implementing an affordable housing scheme. In cases where councils have implemented an affordable housing scheme, the scheme is based on tenuous legal grounds. It is also unclear at this stage as to whether the recent amendments to the EP&A Act will encourage or further impede Council's ability to provide new affordable housing stock.

The NSW planning framework needs to implement planning initiatives that protect existing as well as promote new affordable housing.

Furthermore, it is recommended that the creation of the new SEPP be considered a high priority and affordable housing is considered as “key community infrastructure” as part of the revised EP&A regulations.

## **Recent NSW Planning Reform: Housing Code**

### **Complying Development**

The NSW Housing Code will become effective on Friday, 27 February 2009 without any further community consultation. Waverley Council criticises the lack of community consultation. While Council supports the Housing Code which will simplify the planning system, the following concerns and issues are raised regarding Complying Development:

- FSR: The Housing Code has the potential to permit a Floor Space Ratio (FSR) control of over 0.7:1 on lots over 450m<sup>2</sup> while the Waverley Development Control Plan (DCP) allows an FSR of 0.6:1.
- Carparking: New dwellings must provide at least one off-street car parking space. This is not always consistent with the character of some streets in the Waverley LGA.
- Neighbouring Amenity: The Codes' building heights and setback controls are similar to the Waverley DCP planning controls, however, these are subject to any potential impacts to neighbouring views, privacy and overshadowing. These issues are not addressed in the NSW Housing Code.
- Character: The NSW Housing Code does not include planning controls to preserve the character of a street/area through building design.

### **Exempt Development**

The following concerns and issues are raised regarding Exempt Development:

- The Housing Code does not provide any limitations on the number of exempt developments which can occur on one single property.
- Pergolas, decks and patios etc are exempt which have the potential to impact on privacy, views and overshadowing of neighbouring properties.
- The NSW Housing Code does not include controls to preserve the character of a street/ area through building design.

### **General**

The following issues summarise general concerns of the NSW Housing Code:

- Council criticises the limited time between gazettal and implementation of the NSW Housing Code to enable Council to update section 149 certificates and customer service staff.
- The DoP wants to release a Planning Circular which will advise councils of how to update Section 149 certificates regarding the Housing Code. Council has not yet been advised when this Planning Circular will be published.
- The transition stage included in the NSW Housing Code is confusing and more clarification is required whether the Council or State code applies.
- Some definitions included in the NSW Housing Code are inconsistent with the definitions in the standard LEP template.