

# Increasing affordable housing delivered through contribution schemes





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# Introduction

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## Background

Affordable housing contribution schemes are the most efficient and successful approach local councils might take to providing affordable housing in their local areas. It provides an ongoing funding source to subsidise the delivery of affordable rental housing, certainty for developers, it is transparent, and is administratively efficient.

This submission is to make recommendations to the Department of Planning and Environment (Department) to increase the amount of affordable housing that is being delivered through affordable housing contribution schemes (contribution schemes).

The submission has been prepared by the Southern Sydney Regional Organisation of Councils (SSROC) on behalf of the Resilient Sydney Affordable Housing Committee (the Steering Committee). Resilient Sydney is a local government led program operating on behalf of all the councils of metropolitan Sydney. Action 7 of the Resilient Sydney Strategy advocates for affordable housing for everyone.

The Steering Committee comprises a range of organisations working together to identify solutions to assist local councils to tackle Sydney's housing crisis. The Steering Committee includes representatives from:

- the Resilient Sydney Office
- metropolitan councils;
- Department;
- Greater Cities Commission (GCC);
- South Sydney Regional Organisation of Councils (SSROC), who coordinate the Steering Committee and its activities;
- Community Housing Industry Association NSW (CHIA); and
- industry experts.

The Steering Committee is appreciative of the contributions of the participating NSW Government agencies, however, to ensure clarity of roles, this submission is made by on behalf of Resilient Sydney, its local metropolitan councils and its non-government members. A summary of the Steering Committee activities and terms of reference are provided at Appendix L.

**Recommendation 1:** Continue to collaborate with the Resilient Sydney Affordable Housing Steering Committee in its work with metropolitan councils to increase the provision of affordable housing in metropolitan Sydney.

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## Affordable housing contribution scheme project

In July 2021, SSROC, on behalf of the Steering Committee, hosted an online workshop with metropolitan councils to discuss opportunities for, and barriers to, implementation of affordable housing contribution schemes. The forum was attended by over 80 people, from all but two councils in metropolitan Sydney.

A key action arising from the workshop was for the development of a range of tools to assist councils to prepare and implement a scheme to be developed.

On behalf of the Steering Committee, the South Sydney Regional Organisation of Councils (SSROC) appointed 'Urbanista' in December 2021 to undertake the 'Affordable housing contribution scheme project' (Project). The stated objectives of the Project are to:

- demystify and simplify the process for individual councils seeking to implement contribution schemes;
- build local council capability to establish and expeditiously implement their own contribution schemes;
- develop a package of practical resources and tools for council officers; and
- encourage the implementation of contribution schemes to increase the number of affordable rental housing dwellings for very low to moderate income households across metropolitan Sydney.

Urbanista was asked to achieve these objectives while also:

- aligning with and building on existing planning policies and the strategic planning approach provided through SEPP 70 (now the Housing SEPP), the Greater Sydney Region Plan, the NSW Housing 2041 and Action Plan, the Affordable Housing Guide and Local Housing Strategies;
- finding solutions to barriers for local government in utilising SEPP 70;
- minimising the resource demand on councils developing and implementing affordable housing contribution schemes, by identifying the most effective procedures and approval processes to fast-track the preparation and adoption of compliant contribution schemes, so that schemes can readily be established when Planning Proposals involving development uplift are submitted to Gateway;
- providing an alternative to site-specific voluntary planning agreements in association with site-specific and precinct-wide rezonings where 'new' floor space is being created;
- enabling consistent and efficient assessment of proposed contribution schemes by the Department, so providing more certainty for councils;
- promoting general consistency in approach and process, while providing some flexibility for councils to respond to local issues;
- endeavouring to increase certainty for developers about contribution schemes and how they will be applied;
- helping to demonstrate to NSW Treasury and other parts of government that contribution schemes can be effective and efficient.

The Project was funded by SSROC, Resilient Sydney, Community Housing Industry Association NSW (CHIA) and the Department.

Urbanista has now completed the Project, and has compiled a series of papers, which are Appended to this submission, including:

Appendix	Summary of project paper
Appendix A – Affordable Housing Contribution Scheme Overview and Recommendations, Urbanista, January 2023	Describes the project, its outcomes and recommendations for next steps.
Appendix B - Affordable Housing Contribution Scheme Evidence Base, Urbanista, January 2023	Provides an overview of data that can be used by Council's to establish an evidence base that demonstrates 'need' for affordable housing.
Appendix C - Standard LEP Clause Contexts 1 and 2, Urbanista, January 2023	Provides an approach to developing a Standard LEP Clause

Appendix D - Affordable Housing Contribution Scheme Template, Urbanista, January 2023	Provides a standard template for Councils to use when developing a contribution scheme.
Appendix E - Affordable Housing Contribution Scheme Compendium, Urbanista, January 2023	Provides examples of approaches taken by councils when developing a contribution scheme.
Appendix F - Affordable Housing Contribution Scheme Resources, Urbanista, January 2023	Provides examples of existing LEP clauses for affordable housing provision.
Appendix G - Affordable Housing Contribution Scheme Council Engagement Results, Urbanista, January 2023	Provides an overview of engagement that has been undertaken with councils to inform the Project.
Appendix H - Affordable Housing Contribution Scheme Wider Intervention Opportunities, Urbanista, January 2023	Provides an overview of recommended next steps that could not be addressed in the Project.
Appendix I - Affordable Housing Contribution Scheme Scoping for Standard Method for Setting Contribution Rates, Urbanista, January 2023	Provides draft brief for developing a standard approach to setting and updating contribution rates.
Appendix J - Affordable Housing Contribution Scheme Tracking of Contributions and Outcomes, Urbanista, January 2023	Provides an approach to developing a centralised tracking of affordable housing contributions and outcomes
Appendix K - Affordable Housing Contribution Scheme Directions Paper, Urbanista, June 2022	The mid-way Project report that informed the Stage 2 directions of the Project.

The recommendations of this submission are based on the findings, supporting information and recommendations of the Urbanista project papers, but do not mirror it in every detail.

Nonetheless, the research findings, supporting information and recommendations compiled by Urbanista are extensive, and supported by widespread investigations, and should therefore also be taken into consideration by the Department in exploring approaches to increasing council participation in affordable housing contributions schemes.

**Recommendation 2:** Consider the research findings, supporting information and recommendations, provided by Urbanista and appended to this submission.



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## Definitions

In this submission the following terms take on the following meaning:

Term	Meaning in this submission
Affordable Housing	Has the same meaning as the Act.
Affordable housing contribution scheme (contribution scheme)	<p>This is an umbrella reference to the collection of the requirements and supporting information that guides the collection and expenditure of affordable housing contribution funds (see Section 7.32(3)(b) of the Act).</p> <p>Some requirements and supporting information may be provided in an LEP, with other information being provided in a separate document, which is also typically referred to as the contribution scheme.</p> <p>For clarity in this submission, information to be provided in a separate document will be referred to as the “contribution scheme plan”.</p>
Affordable housing contribution scheme plan (contribution scheme plan)	This is a reference to a document that provides additional information (to what is otherwise provided in an LEP) about the operation of a contribution scheme.
Affordable housing contribution scheme project (Project)	The Project undertaken by Urbanista and appended to this submission.
New floor space	Means floor space that is created as the result of rezoning a precinct or site.
Guideline for Developing an Affordable Housing Contribution Scheme	Means the Guideline as at January 2023

# Streamlining implementation

This section makes recommendations for streamlining the implementation of affordable housing contributions. The recommendations are generally based on the legal and policy context as at January 2023, that is, recommendations pertain to the current requirements of the *Environmental Planning and Assessment Act 1979* (Act), *State Environmental Planning Policy (Housing) 2022* (Housing SEPP), and the Department's Guideline for Developing an Affordable Housing Contribution Scheme (Guideline).

The Housing SEPP amendments EIE (Nov 2022) notes that despite the Department encouraging the establishment of contribution schemes very few local councils have successfully established contribution schemes in recent times.

Establishing more council led schemes will quickly expand the supply of affordable housing across metropolitan Sydney.

Since the release of the Guideline, a robust evidence base and a compelling case for growing affordable housing supply in response to demand has been established and endorsed through the publication of Housing 2041.

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## Update of Guideline

Stakeholders identified the Department's Guideline is confusing and contains insufficient information for councils as to how they should approach the development of a contribution scheme. This was somewhat acknowledged in the Department's recent public exhibition of an Explanation of Intended Effect to amend the Housing SEPP.

- Recommendation 3:** Review in the Guideline to simplify and streamline the process of developing and implementing a contribution scheme, this may include, but is not limited to:
- removing the requirement for land being rezoned prior to development of a scheme, to allow for an established scheme to be added to over time;
  - provide guidance around where exactly contribution requirements can be applied;
  - providing clear instruction about the evidence base required to establish 'need' for affordable housing;
  - providing clearer guidance around how an appropriate contribution rate is to be established;
  - including guidance about what information is required to be included in a contribution scheme, that is, how is Section 7.32(3)(b) of the Act satisfied. This may also include guidance around what must be in an LEP, how contribution funds can be used, and so on;
  - provide clear guidance about how schemes are to be monitored.
- Recommendation 4:** Remove from the Guideline the current impediment to broad based local contribution schemes and provide guidance about how such schemes may be developed.



**Recommendation 5:** Allow in the Guideline councils to work together to develop a shared contribution scheme, where funds can be combined to provide affordable housing. It is noted this may require clarification in the Act.

**Recommendation 6:** Any review of the Guideline should be done in consultation with councils to ensure it is fit for its purpose.

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## Feasibility analysis

Stakeholders identified the need to establish feasibility and identify an appropriate contribution rates on a case by case basis at the single biggest impediment to the introduction of contribution schemes Stakeholders have cited significant concerns with: overall complexity; lack of certainty about what is an 'acceptable' methodology; issues with the Department's feasibility tool, for example; complexity and lack of support for users; cost of consultants; lack of suitably qualified planners the council and the Department to assess findings, and so on.

The current approach creates an environment of uncertainty for both council planners and landowners.

Addressing this issue is critical to support councils to implement contribution schemes.

**Recommendation 7:** Investigate options taking a new and streamlined approach to establish feasibility of development projects.

**Recommendation 8:** Consider developing standard contribution rates that would apply to development, given a certain set of circumstances. An approach such as this is described in Appendix C. These could be set out in a publicly available document and provide certainty for councils and developers.

**Recommendation 9:** While the Department continues with the current approach, consider opportunities to: streamline the online feasibility tool; provide a support function for council officers seeking to use the tool; provide more guidance in the Guideline about the methodology that should be applied to establish an appropriate contribution rate; provide guidance to applicants about the information that is to be submitted with a planning proposal to facilitate transparent feasibility analysis.

**Recommendation 10:** Provide education and ongoing guidance to support to council officers in establishing appropriate contribution rates in contribution schemes.

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## Template LEP clause

Stakeholders have identified that the introduction of a non-mandatory affordable housing contribution clause in the Standard Instrument will remove confusion about how a contribution requirement can be applied through a local environmental plan (LEP) and will ultimately assist councils to implement an affordable housing scheme.

Urbanista, at Appendix D, have provided two draft clauses, to be applied given a certain set of circumstances, such as when additional areas are added, for the consideration of the Department. It is noted these clauses have not been reviewed by Parliamentary Counsel.

Notwithstanding the above, the recent adoption of clause 7.13(B) in Sydney LEP 2012 provides an approach that has received the endorsement of Parliamentary Counsel. The clause reflects the existing policy context, as set out in the Guideline, where contributions can only be applied to 'new'

floor space, and where the contribution rate changes depending on the particular economics of the site. Importantly, the clause all allows for the development of a contribution scheme (that does not specify a contribution rate), and for precincts/sites, together with a bespoke contribution rate, to be added when that precinct/site is rezoned.

**Recommendation 11:** Consider the draft Standard Instrument clauses developed by Urbanista at Appendix D.

**Recommendation 12:** Consider the recently approved clause 7.13(B) in Sydney LEP 2012 as a model for a future Standard Instrument clause.

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## Affordable housing contribution scheme plan template and supporting information

A key barrier for councils to the implementation of contribution schemes is the lack of time and specialised know-how required to do so. When asked what tools might best support them in bridging this gap, broad support was expressed for the development of a template contribution scheme plan.

Urbanista, as Appendix D, have provided a template contribution scheme plan, premised on the current policy framework, to provide councils with what might be in a plan, matters that require consideration, and so on. The template is supported by Appendix E, a compendium of local government examples, and Appendix F, a summary of current LEP clauses.

SSROC will host a workshop for councils in March 2023 to launch a collection of supporting materials for councils to assist them in developing contribution scheme. The materials are to be based on those developed by Urbanista. It would be valuable if the material could be reviewed by the Department and considered for endorsement, noting that they are consistent with the current policy framework, and subject to change where there are policy changes.

**Recommendation 13:** Continue to work with SSROC and the Steering Committee to finalise and update a collection of supporting materials for councils to assist them in developing a contribution scheme.

# Future policy options

This section makes recommendations for a range of alternate policy approaches that require further consideration, and comparative analysis, by the NSW Government, to understand the relative potential benefits, opportunities and risks of different approaches that might be taken to increase the amount of affordable housing resulting affordable housing contributions.

These recommendations are not necessarily constrained by the current requirements of the Act, the Housing SEPP, and/or the Guideline, rather they aim to provide some practical and manageable solutions to accelerate the growth in affordable rental housing supply for further consideration.

More affordable housing should be the key benefit of further policy reforms. Given the dependencies, a more streamlined approach for establishing contribution schemes should also help to accelerate the rezoning proposal approval process and provide greater certainty for developers planning new developments.

A less complex, simpler and lighter touch could best achieve this result.

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## Low rate, state-wide contribution requirement

A low rate, state-wide contribution requirement could provide a base contribution requirement to support the development of affordable housing. This could potentially result in significant amount of affordable housing being developed over time.

Impact on development viability will be minimised where the market is given adequate warning of the contribution requirement.

It is noted that any such scheme must be accompanied by a clear strategy for how funds are to be collected and distributed.

**Recommendation 14:** Consider implementing a low rate, state-wide contribution requirement on *all* development, while maintaining the abilities of councils to apply higher contribution rates on 'new' floor space.

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## NSW Government led contribution requirement

Removing responsibility from councils for determining an appropriate contribution rate could potentially streamline the process by centralising the assessment of feasibility and applying an equitable approach across the state. Responsibility for developing a contribution scheme plan for the collection and distribution of contribution funds or dedications could be developed by individual councils, or default to be used in accordance with a state-wide contribution scheme plan in the absence of a local plan.

**Recommendation 15:** Consider an approach where the Department would be responsible for the application of an affordable housing contribution requirement where land is being rezoned, potentially by conditioning a Gateway determination.

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## Broad based local contribution schemes

Currently, the Department's Guideline impedes the implementation by councils of broad based (LGA wide) contribution schemes. While not based in legislation, this impediment limits how a scheme can be applied.

This may lead to missed opportunities for individual councils, or councils who might want to work together, to development low rate, broad based, local or regional contribution schemes.

**Recommendation 16:** Consider removing the current prohibition in the Department's Guideline to broad based local contributions schemes.

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## Affordable housing on NSW Government Land

Urbanista in their various project papers appended to this submission, made recommendations to establish a minimum requirement for affordable housing on state government land. In addition to the general target for 5-10% affordable housing on all sites, government could commit to more ambitious requirement for affordable housing for its own sites including those used for social housing.

**Recommendation 17:** Consider establishing minimum requirements for the delivery of affordable housing on land being developed by the NSW Government in Departmental policy in state significant precincts, state led precinct planning and on government land.

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## Policy implementation

Urbanista, in their various project papers appended to this submission, made recommendations to improve the overall implementing of affordable housing policy.

The adopted approach should make the assessment and approval of contribution schemes more streamlined, easier and quicker for the Department to assess and the consent authority to approve. Irrespective of any future policy direction endorsed by the NSW government, this submission largely mirrors those recommendations made by Urbanista.

**Recommendation 18:** Ensure the future Region and District plan provide a clear policy direction and affordable housing supply targets, coupled with a detailed implementation plan.

**Recommendation 19:** Provide clear guidance to councils in a well resolved Guideline that has been tested with council and finalized in consultation with them.

**Recommendation 20:** Where councils are required to take action to introduce a contribution scheme, provide appropriate supporting documents, such as the template contribution scheme plan discussed elsewhere in this submission.

**Recommendation 21:** Promote the benefits of affordable housing, and build capacity and understanding across government and the development sector about its importance.

**Recommendation 22:** Consider opportunities to build capacity in local government, such as establishing a professional network platform, hosting regular skills development workshops, and providing experts to work with councils to

develop skills.

**Recommendation 23:** Consider opportunities to adopt indicative timeframes for assessing and approving contribution schemes that comply with the revised guideline, complementing new measures to hasten the supply of market housing.

