



Affordable housing contribution scheme – DRAFT supplementary implementation guide



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1. Introduction

1.1. Purpose

This Affordable Housing Contribution Scheme – A Supplementary Implementation Guide (guide) has been prepared specifically for the use of local government practitioners. It should be read in conjunction with the “Affordable Housing Contribution Scheme Plan - Template” (template). The purpose of the guide and template is to:

- provide councils with information to supplement the Department of Planning and Environment’s (Department) “Guideline for Developing an Affordable Housing Contribution Scheme” (Department’s Guideline).
 - to assist councils to implement an affordable housing contribution scheme (contribution scheme) in accordance with legislation and Department policies (as at the time of publication).
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1.2. Limitations

There is limited case law or Departmental guidance about what an affordable housing contribution scheme plan must include. As such, there is no ‘right’ or ‘endorsed’ way to implement a contribution scheme.

This guide and the template are not intended to demonstrate the only way a contribution scheme may be implemented. However, they are based on other successful schemes currently in operation and as such can point councils to working examples and assist them in identifying the opportunities for their own scheme based on their local context.

This guide and the template are not legal advice, and do not replace the need for councils to seek their own advice when preparing a contribution scheme.

This guide and the template are intended to be consistent with the Department’s Guideline. The information in the guide and the template is supplementary information for council planners only. In the event of any inconsistencies between this guide and the template, and the Department Guidelines, it is the Department’s Guidelines that apply.

This guide and the template are not endorsed by the Department.

This guide and the template were prepared at a point in time and respond directly to the affordable housing legal and policy context as at the date of publication. Where the policies of government change, parts of this guide and the template may be superseded.

It is strongly recommended councils seeking to develop a contribution scheme seek the early advice of the Housing Policy team at the Department. The Housing Policy team can be contacted at email: housingpolicy@planning.nsw.gov.au or phone: 02 8289 6701.

1.3. Background

This guide and template were prepared by the Southern Sydney Regional Organisation of Councils (SSROC) on behalf of the Resilient Sydney Affordable Housing Committee (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.

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.

‘Urbanista’ was appointed in December 2021 to undertake the ‘Affordable housing contribution scheme project’ (Project). Urbanista’s task was to explore barriers to local government implementing affordable housing contribution schemes and making recommendations for improvement.

The project was funded by contributions from Resilient Sydney, the Department (Housing Policy Team), Community Housing Industry Association NSW (CHIA) and SSROC. To ensure that the project is informed by expert knowledge in this field, as well as being practical for councils to use, the overall project structure incorporates:

- an expert advisory group primarily of council planning officers and the Department,
- a metropolitan council user group.

Urbanista completed the project in early 2023 and published a series of background papers and a package of resources for councils that are available for download on the SSROC website.

The Steering Committee made a submission to the Department, referring Urbanista’s findings to them for consideration. The submission is also available on the SSROC website.

This guide and the template are based on Urbanista’s work, that in turn is based on consultation with councils who have implemented affordable housing contribution schemes in their planning controls and other stakeholders.

1.4. Definitions

The following definitions apply to terms used in this guide.

Term	Definition / explanation
Act	<i>Environmental Planning and Assessment Act 1979</i>
Affordable [what is?]	While there is no established definition for what constitutes housing that is “affordable”, a widely accepted benchmark is that it does not absorb more than 25% - 30% of the gross household income of a very-low, low, or moderate income household.
Affordable housing	Has the same meaning as the Act, being housing for very-low income households, low income households or moderate income households (as prescribed by the regulations or) as provided for in an environmental planning instrument.
Affordable housing contribution scheme (contribution scheme)	This is an umbrella reference to the whole package of requirements that guide the collection and expenditure of affordable housing contributions. Key requirements are provided in an LEP, with other information being provided in a separate document (in this guide referred to as the contribution scheme plan). Which requirements are to be contained in an LEP vs. elsewhere is to be determined by an individual council.

Affordable housing contribution scheme plan (contribution scheme plan)	<p>A document that provides additional information (to what is otherwise provided in an LEP) about the operation of a contribution scheme. A template contribution scheme plan is provided in conjunction with this guide.</p> <p>To avoid confusion, it is noted that current examples of this document have different names. For example, the City of Sydney calls their contributions scheme plan their 'Program'.</p>
Community Housing Provider (CHP)	Includes any organisation or entity registered under the National Regulatory System for Community Housing (NRSCH).
Contribution requirement	A contribution requirement is typically expressed in an LEP as a dedication requirement for a proportion of all, or some of, the gross floor area (GFA) in a development in a development application.
Council / council	A reference to Council (capital C) is a reference to the body of elected representatives. A reference to council (small c) is a reference to the organisation.
Equivalent contribution	<p>Contribution requirements may often be satisfied by making a contribution in-lieu of the dedication of physical affordable housing, either as a monetary contribution or as land.</p> <p>Typically a contribution scheme plan would set out the equivalent contribution, for example, by providing an equivalent monetary contribution rate / sqm of GFA.</p>
Guideline for Developing an Affordable Housing Contribution Scheme (Department's Guideline)	Means the Department's "Guideline for Developing an Affordable Housing Contribution Scheme", as at January 2023.
Housing SEPP 2021	<i>State Environmental Planning Policy (Housing) 2021</i>
New residential floor space	Means residential floor space that is created or has been unlocked as the result of rezoning a precinct or site i.e. changing the land use zone to allow residential development and/or increasing development potential.
NSW Ministerial Affordable Housing Guidelines	Means the NSW Ministerial Affordable Housing Guidelines published by the Department of Families and Communities (FACs).
Very low to moderate households	<p>As referenced in State Environmental Planning Policy (Housing) 2021, very low to moderate income households are those households whose gross incomes fall within the following ranges of percentages of the median household income for Greater Sydney or the Rest of NSW:</p> <ul style="list-style-type: none"> • Very-low income household < 50% • Low income household 50% to 80% • Moderate income household 80% to 120%. <p>NSW Ministerial Affordable Housing Guidelines provide the details of these income thresholds.</p>

1.5. Ongoing support

There is no ongoing support to assist council officers in using this guide and the template, although it may be updated from time to time. The latest version will be available on the SSROC website.

2. Implementation

This section sets out the key steps, requirements and considerations of developing and implementing an affordable housing contribution scheme. It also provides further background information and detail to assist with populating the contribution scheme plan template.

Examples from existing contribution schemes and the experience of council's in metropolitan Sydney are provided throughout this document to further explore relevant considerations.

2.1 Applying a contribution

Current NSW Government policy

The Greater Sydney Region Plan, A Metropolis of Three Cities, includes an affordable housing target that 5% - 10% of new residential floor space should be provided as affordable housing, subject to development viability. The inclusion of this target in the region plan led to the amendment of State Environmental Planning Policy 70 (Affordable Housing – Revised Scheme) (SEPP 70), to recognise all council areas in NSW as having need for affordable housing. In 2021, the Housing SEPP 2021 replaced SEPP 70, but made no significant changes to the effect of the legislation.

The Department's Guideline was established to support councils who wanted to prepare a contribution scheme in accordance with the region plan's target.

Importantly, the Department's Guideline makes clear only a contribution requirement on "new residential floor space" will be supported by the Department at this time. "New residential floorspace" is defined as floor space that is created because of a change to planning controls that increases the development potential of a site or precinct.

At the time of publishing, the Department's advice to councils has consistently been that they do not support broad base schemes that apply to broad areas, such as the City of Sydney's local area wide contribution requirement that was put in place prior to the Department's Guideline being implemented.

This guide and the template provide an approach to assist councils in implementing a contribution scheme in accordance with the region plan's target and the Department's Guideline.

Legislation

Section 7.32 of the Act sets out the circumstances under which an affordable housing contribution requirement may be applied to a development application. Specifically, it

(1) ... applies with respect to a development application for consent to carry out development within an area if a State environmental planning policy identifies that there is a need for affordable housing within the area and—

(a) the consent authority is satisfied that the proposed development will or is likely to reduce the availability of affordable housing within the area, or

(b) the consent authority is satisfied that the proposed development will create a need for affordable housing within the area, or

© the proposed development is allowed only because of the initial zoning of a site, or the rezoning of a site, or

(d) the regulations provide for this section to apply to the application.

2.2 Parts of a contribution scheme

To implement an affordable housing contribution scheme, generally in accordance with the approach provided in this guide and the template, the following is required:

- an affordable housing contribution scheme plan, that sets out how affordable housing contributions are to be collected and administered;
- a plan or strategy for how contributions will be used – this may form part of the contribution scheme plan, or may sit outside of the contribution scheme plan as a separate strategy adopted by Council; and
- a planning proposal that inserts a contribution requirement into a local environmental plan (LEP). Appropriate analysis and justification for implementing a scheme, including needs analysis and feasibility analysis, is to be provided as part of the planning proposal.

2.3 Contribution scheme plan

Where do the details of a contribution scheme sit?

Section 7.32(3)(b) of the Act requires that a contribution requirement for affordable housing may only be imposed on development where it “is in accordance with a scheme for dedications or contributions set out in or adopted by such a plan”. This means that the details for how a contribution scheme operate and is administered must either be set out in the LEP or alternatively set out in a separate plan that is referred to, as dated, in the LEP.

The operational requirements of a contribution scheme are complicated and have a number of detailed and inter-related parts, and therefore, in most cases, councils have opted to prepare a separate plan. For the purpose of this guide, that separate plan is referred to as a “contribution scheme plan”.

Where the contribution requirement is included in an LEP (rather than in the contribution scheme plan), the contribution scheme plan is then free to apply to the whole LGA, that is, the contribution scheme plan need not identify sites if the LEP already does. This is because the administrative details of the scheme typically remain constant across all sites / precincts. Notwithstanding this, a contribution scheme plan can be updated with successive planning proposals (that seek to apply a new contribution requirement to a site/precinct) if bespoke arrangements are needed.

The benefits of an LEP clause referring directly to a contribution scheme plan (as dated at the time of Council adoption) is that:

- the contribution scheme plan borrows the legislative weight of the LEP;
- it ensures a transparent and consistent approach to the administration and management of contributions overtime, which in turn promotes certainty in the development sector and the community;
- the contribution scheme plan has been subject to a statutory consultation process that has allowed for the consideration of concerns and issues raised by the community, industry, the community housing provider (CHP) sector and government. As such it has been publicly tested and is highly transparent; and
- the contribution scheme plan cannot be changed without undertaking a planning proposal process, ensuring due process.

When to develop a contribution scheme plan

While the Department’s Guideline describes a broadly linear approach to developing a contribution scheme, and while you need to wait for a site / precinct where you intend to introduce a contribution requirement to come along before you can amend your LEP, councils can do much of

the time-consuming preparation needed for the contribution scheme plan so it is ready when needed.

Developing and agreeing contribution scheme plan can be time consuming and difficult when councils are already under pressure to assess and progress planning proposals quickly. Councils can develop draft contribution scheme plan early to assist avoiding the resourcing crush. This ensures that when a planning proposal is received for new residential floor space, only the contribution requirement needs to be determined for inclusion in the LEP.

What to include in a contribution scheme plan?

While there is no case law or Departmental guidance that clearly sets out comprehensively what a contribution scheme plan must include, and existing local government examples are diverse, they may comprise, but are not limited to:

- objectives and/or principles that describe and guide the application of a contribution requirement and information about how affordable housing is to be provided;
- information about how a contribution can be applied to satisfy legislative and policy requirements, for example, in kind as built affordable housing dwellings; in-lieu as a monetary contribution; and/or as land;
- where a monetary contribution requirement is permitted, an equivalent monetary contribution rate (and an approach to its indexation);
- specifying any development excluded from a requirement to make a contribution;
- an overview of the evidence base and justification for applying a contribution requirement; and
- information about how resulting affordable housing is managed over time.

It is noted that the contribution requirement, that is usually stated as a proportion of Gross Floor Area (GFA) in the development, does not need to be explicitly stated in the contribution scheme plan, if it is in the LEP. Rather the contribution scheme plan could simply point to the LEP as a reference. This means that the contribution scheme plan does not require a planning proposal update every time a new site/precinct, with a bespoke contribution requirement, is inserted in the LEP.

However, the Department's most recent advice is that any update to a contribution requirement must be the subject of a planning proposal. So, if councils chose to include the contribution requirement in the contribution scheme plan (instead of, or in addition to, the LEP), then it must also be updated via a planning proposal process, with the newly updated contribution scheme plan referred to in the LEP, as dated.

The template, that accompanies this guide, provides options and guidance for councils preparing an affordable housing contribution scheme plan. Extra examples are available in the "Affordable Housing Contribution Scheme Compendium", prepared by Urbanista, and available for download on the SSROC website. The Compendium provides further information and examples for the consideration of councils, including:

- examples of approaches derived from councils with an existing scheme; and
- implementation tools to assist councils in:
 - structuring implementation frameworks;
 - managing contributions and affordable housing assets; and
 - partnering with Community Housing Providers (CHP).

2.4 Plan for using contributions

When developing a contribution scheme, it is important a concurrent understanding of how the contributions will be used and managed over time is also developed.

In observing how different councils have approached this, it is clear that decisions around how contributions will be used, who will 'own' the resulting housing, who will manage it, and for whom,

can be one of the more challenging parts of developing a contribution scheme, and often highly politicised. It is recommended that developing this part of a contribution scheme starts early in the process.

How does a plan for using contributions fit in with the overall contribution scheme?

Affordable housing contributions received subject to Section 7.32 of the Act must be used in accordance with the Act. That is, a contribution arising from a condition of consent applied under 7.32 of the Act must be used to provide housing to eligible households (as defined) in accordance with any requirements set out in and environmental planning instruments, such as those requirements provided in Section 15 of the Housing SEPP 2021.

The Department has advised a clear plan for using contributions, and managing them over time, must accompany a proposal for a contribution requirement in an LEP.

Councils can set out a plan for using contributions in their contribution scheme plan or alternatively in a separately endorsed strategy or plan of Council (that is cross referenced in their contribution scheme plan).

Whatever approach is taken, in the interests of transparency and equity, it is recommended that any plan for using contributions, and any subsequent amendment of the plan, be publicly exhibited, with a view to testing its content with the community, industry, the community housing sector and government.

Further advice about what council might consider in developing a plan for using contributions is provided in the template that accompanies this guide.

How can contributions be used?

Who is assisted?

The Act defines affordable housing as “housing for very low income households, low income households or moderate income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument.”

Councils may seek to further refine who may access the affordable housing resulting from a contributions scheme. For example, some councils may have a need for housing for a particular key worker cohort in their community, or to address local lower-income communities facing displacement, others may simply wish to retain socio-economic diversity and as such do not seek to target contributions at any particular group beyond the income eligibility requirements.

Whatever the approach councils take, any affordable housing resulting from an affordable housing contribution scheme should not be allocated to a household that is not a very-low income household, low income household or moderate income household. Where it is, contributions are likely to be considered as being used for a purpose for which they are not collected. How this fundamental requirement is enforced and ensured over time must be considered in implementing a contributions scheme. For example, some councils chose to register a positive covenant on title restricting use, some require regular reporting from managing CHPs and so on.

How contributions can be used

There are many approaches councils take to using contributions to provide affordable housing in their local areas, ranging from retaining ownership of land or properties built and dedicated to council by developers and having them managed by CHPs, to collecting monetary contribution funds and passing them to community housing providers to build and develop affordable housing.

The template, that accompanies this guide, provides options and guidance for councils who are considering how contributions might be used.

2.5 Planning proposal

A planning proposal, prepared in accordance with the Department's Local Environmental Plan Making Guideline (LEP Guideline), is required to amend an LEP to include a contribution requirement on development. The change to the planning controls and the application of a contribution requirement are generally dealt with in the one planning proposal.

What should be included in a planning proposal?

A planning proposal must be prepared in accordance with the LEP Guideline. The initial planning proposal, that is the first planning proposal that introduces a contribution requirement into an LEP, will include the usual information required to rezone a site or precinct (that the contribution plan will apply to), as well as the information required to implement a contribution requirement.

This first proposal is important because it establishes the framework and the LEP clause for future sites and precincts that might follow. If these are set up right in your initial planning proposal – it is easier for successive planning proposals to simply add sites or precincts and an appropriate contribution rate. A separate contribution scheme plan will not be required with successive planning proposals.

Explanation of provisions (drafting instruction)

It is noted that because the Region Plan target only applies to new floor space there can be some confusion about if an LEP clause (or a contribution scheme plan if it is preferred the rate isn't in the LEP) should apply the contribution requirement to all of the floor space in the future development, or only the new residential floor space in the new development.

Understanding early how the contribution requirement will be expressed in the LEP, and how it is applied to the floor space in a development application, for example, is it all of, or only some of the floor space, is critical so it can be factored in in the feasibility analysis.

There are several examples of clauses already in LEPs that can assist councils in their thinking about what should be included in this section of the planning proposal.

Generally, existing clauses set out the following:

- land to which the contribution requirement applies;
- transition arrangements, for example, is the clause to apply to lodged and yet to be determined DA's, or only DA's lodged after the clause commences;
- what triggers the contribution requirement, for example, a certain size or a certain use of the development;
- the contribution requirement that applies;
- in some cases, a requirement for how the contribution may be satisfied;
- a clause that makes clear that there is no refund of an affordable housing contribution to the applicant where there is a subsequent change in use or demolition of floor area; and
- in most cases, a reference to a contribution scheme plan, as dated, which provides further detail.

Current examples of LEP clauses are provided in the "Affordable Housing Contribution Scheme Resources", prepared by Urbanista, and available for download on the SSROC website.

Other council examples

A recent example of a clause, and accompanying Schedule, that has been included in the Sydney LEP 2012, Clause 7.13(B) and Schedule 6B, provides a good model of an approach that is specifically suited to the current policy environment, where a contribution requirement is only permitted on new residential floor space.

The Sydney LEP clause works in conjunction with an LEP Schedule, that allows new sites and precincts to be inserted on it over time, together with a site-specific contribution requirement,

where there is a planning proposal for floor space uplift. That is, a planning proposal is received, a contribution requirement on the new floor space is agreed (with reference to feasibility analysis), and the site is inserted on the Schedule when the new planning controls are made.

The benefit of this approach is that councils can adopt a contribution scheme plan, and have a clause in their LEP, before they have identified sites. This is important because developing a contribution scheme is involved and time consuming and not always possible inside the planning proposal timeframes being enforced by the Department.

While this approach does not negate the challenge of undertaking feasibility analysis and establishing a suitable site-specific contribution requirement when a planning proposal is lodged, it does provide an adopted framework for how a contribution requirement will be applied. For example, in the case of the City of Sydney's contribution scheme plan (called the Affordable Housing Program), an indicative contribution requirement, based on area wide feasibility studies, are included and provide a starting point for discussions with the developer about the appropriate rate. This has the added benefit of providing some measure of warning to the market about the likely contribution requirement that will be applied with any planning proposal.

A link to the City of Sydney's planning proposal that implemented this clause is provided in the resources section of this guide.

Justification for the contribution scheme

The planning proposal should include:

- evidence that establishes the need for affordable housing;
- overview of the legal justification;
- feasibility analysis; and
- an explanation of administrative details.

Establishing need

Establishing the need for affordable housing is often an overcomplicated task, with large amounts of time and energy expended by planners to demonstrate need, where it has already been established in the Housing SEPP, Housing 2031, the Greater Sydney Region Plan, often further in local housing strategies, and is generally accepted to be true in the public's perception.

In the planning proposal, it is recommended a concise and targeted analysis of the need for affordable housing be included. Where possible, it should mirror the affordable housing analysis already undertaken in the local housing strategy, however if additional analysis is required, some key metrics that might be considered for inclusion are provided in the "Affordable Housing Contribution Scheme Evidence Base", prepared by Urbanista, and available for download on the SSROC website.

This evidence base should provide an accurate picture of the affordable housing supply, demand and unmet need for affordable rental housing in the local government area. When exhibited, this evidence will give all stakeholders - councillors, residents and developers, a clear transparent rationale for the decision to provide affordable housing.

More resources

The Department has a range of information about housing affordability provided (and being further developed) at the Housing Evidence Centre data platform at:

<https://www.planning.nsw.gov.au/research-and-demography/housing-evidence-centre>.

The Housing Evidence Centre aims to make it easy to access the housing data and information that councils and other stakeholders need to make accountable evidence-based decisions.

Legal justification

As detailed in section 2.2 of this guide, the Act sets out the requirements where a contribution requirement can be applied to a development application. It is recommended the planning proposal directly address how these requirements are met by the contribution scheme.

Where a contribution scheme is prepared utilising the approach of this guide and the template, some arguments and justifications that may be considered for inclusion in the planning proposal are:

- all areas within NSW are identified in the Housing SEPP as having a need for affordable housing;
- with regards to 7.32(1)(a), where development has replaced other lower cost forms of housing, or the development will contribute to ongoing gentrification processes that may be happening in the area, then this loss of lower cost housing may be applicable;
- with regards to 7.32(1)(b), all development in metropolitan Sydney creates a need for affordable housing. Where it is new residential development, the cost of that housing is unlikely to be considered 'affordable' for low-income households, and therefore affordable housing is required to maintain a socially and economically diverse community. Where it is non-residential development, affordable housing is required for low income workers, such as cleaners and childcare workers, that will support the need for such services generated by the development. This is also relevant to residential development; and
- with regards to 7.32(1)(c), where development occurs on a site that has been rezoned to create additional floor space, this requirement is met.

Feasibility and an appropriate contribution requirement

The Department's Guideline requires the appropriate contribution requirement for a site, or a precinct, be determined when there is a planning proposal that creates new residential floor area. New residential floor space is taken to mean floor space that is created or has been unlocked as the result of rezoning a precinct or site, for example, changing the land use zone to allow residential development and/or increasing the floor space ratio.

The 'target' contribution requirement derived from the Region Plan is 5%-10% of new floor area provided as affordable housing, subject to development viability. More recently the public exhibition of the Six Cities Region: Discussion Paper (September 2022) indicated a different approach may be explored in future.

Where new floor space is being created or unlocked for a residential purpose through the planning process, there is generally opportunity to require an affordable housing contribution. This is because the rezoning process has created value (often unearned). So long as the contribution requirement comes into place when the land is rezoned, some of the new value can be captured for an affordable housing contribution without impacting on the original value of the land.

The Department's Guideline includes some high-level information about how the feasibility analysis should be approached. An online feasibility tool is also available for councils to use. Despite this, establishing the feasibility of a contribution requirement, and an appropriate contribution requirement to be applied to the new floor space, is widely reported by councils as a key barrier to developing a contribution scheme.

This appears to stem from a range of issues, including lack of expertise in undertaking appropriate economic analysis; difficult to use tools and lack of technical support, such as the Department's online viability tools; costly consultancy reports; uncertainty about the appropriate methodology, particularly where there are interactions with other contribution requirements on a site/precinct; time constraints with progressing the planning proposal in a time frame acceptable to the

Department; the contentious nature of the feasibility analysis; and challenges of explaining the results to Councillors and the community.

The Department has recognised this as a key issue in the Housing SEPP amendments EIE (November 2022) and it is expected some action will be taken to help councils more effectively demonstrate the feasibility of a contribution requirement.

Unfortunately, at the time of publication, this guide and the template can offer no resolution or clear way forward to overcome these difficulties. Although, as part of the Resilient Sydney affordable housing project, Urbanista has scoped further work required to develop a more streamlined approach to assessing viability and determining an appropriate contribution requirement.

The recent advice of councils is that generally a site-specific study is the most practical way to establish the feasibility of a contribution requirement. As above, understanding early how the contribution requirement will be expressed in an LEP, and how it applies to the floor space in the development, is critical so it can be factored in in the feasibility analysis and determining the eventual rate.

To assist council officers in understanding the methodology and preparing a brief, links to some example feasibility studies are provided in the resources section of this guide. It is also recommended that you seek early advice from the Department about how to progress with the feasibility analysis.

Other approaches councils have taken to determining a contribution requirement

Low-rate broad-based contribution requirement

The Department's Guideline does not currently support the implementation of a low-rate broad based contribution scheme that applies to all development in a local government area, such as the City of Sydney's LGA wide contribution scheme.

However, it is noted there is no legislative impediment to the introduction of a low-rate broad based contribution schemes, and it may still be an approach councils may wish to explore. In this instance, it is strongly recommended councils seek the early advice of the Housing Policy team at the Department who can be contacted at email: housingpolicy@planning.nsw.gov.au or phone: 02 8289 6701.

Foreshadowing a contribution requirement

Some councils have included in their contribution scheme plan the contribution requirement they intend to apply where there is a planning proposal that includes new residential floorspace. This offers early warning to the market about the contribution requirement that will be applied, but also assists council staff by providing a clear starting point for discussions with the proponent.

Willoughby council, for example, has applied a well-established 4% contribution requirement in identified areas in the LEP for many years. This has avoided the need for site-specific feasibility analyses to be undertaken, making it easier to implement.

The City of Sydney also includes in its Affordable Housing Program an indicative contribution requirement that will apply to new residential floor space in the event of a planning proposal. The indicative contribution requirement is based on a feasibility analysis that was undertaken when the Program was developed. A link to those feasibility studies are included in the Resources section of this guide.

Urbanista's work also explored the possibility of undertaking early feasibility analysis to develop typologies of proposals and setting out a contribution requirement for each typology.

The acknowledged risk in this approach is that feasibility outcomes may change over time. The 'feasible' contribution requirement will alter over time.

It is recommended that should councils explore this approach they should discuss it early with the Housing Policy team at the Department.

Outcomes

It is recommended that modelling be undertaken to understand the likely outcomes of introducing a contribution requirement. Including this information in the planning proposal will ensure the Department and the community is aware of the potential benefits of the proposal in increasing the amount of affordable housing in the area.

Administrative details

The planning proposal should include an overview of how contributions will be administered, ensuring that resulting contributions will be used and managed over time in accordance with Section 7.32(3) of the Act.

These administrative arrangements are generally set out in the contribution scheme plan or some other document adopted by Council.

The template, that accompanies this guide, provides detailed information about how councils can operationalise a contribution scheme.

2.6 Monitoring

Each council must establish a program for reviewing and monitoring affordable housing programs to ensure all contributions are being used to deliver affordable housing outcomes in a timely manner.

While there is no requirement for a monitoring program in legislation, and the Department have not issued guidance about reporting requirements, in the interests of transparency and good governance, it is recommended the outcomes of a contribution scheme be published annually, including details the contributions collected, how contributions have been allocated, and how many affordable housing dwellings have been developed.

3. Other opportunities

While this guide and the template specifically relate to the implementation of a contribution scheme, there are other opportunities in the NSW planning framework to facilitate opportunities for affordable housing.

3.1. Preferential zoning

A key challenge for CHPs seeking to develop affordable housing in Sydney is accessing land as a cost that makes the development viable. A preferential zoning system, that allows only affordable housing on a site/precinct, and not market housing, means CHPs do not need to compete with developers in purchasing land.

While it is important that the land is generally suitable for residential development and does not interfere with other land uses around it, this approach can support the delivery of affordable housing. An example of this approach is in the Sydney LEP 2012, Clause 7.13(A), that allows affordable housing on land zoned for employment uses.

3.2. Planning agreements

The approach described in this guide and the template is generally intended to replace the need for councils to negotiate planning agreements on a case-by-case basis. However, there may be circumstances, where the application of councils standard affordable housing contribution scheme is not appropriate, or agreement has been struck for a greater or lesser contribution requirement, where it is necessary to secure affordable housing through a voluntary planning agreement.

3.3. Incentives

An LEP may include incentives for the provision of affordable housing, such as higher Floor Space Ratios (FSR) or height maximums where the development is by a CHP for the purposes of affordable housing.

Example

The Sydney LEP 2012, Clause 6.60B, that applies to the Botany Road Corridor, establishes alternative height and FSR controls for affordable housing development.

The Housing SEPP 2021 also includes a number of planning incentives that can be leveraged by developers (and CHPs) to deliver affordable housing.

4. Resources

The following provides a list of publicly available resources and example documents to support local government planners in the implementation of affordable housing contributions schemes.

Resource	Link
Guideline for Developing an Affordable Housing Contribution Scheme, Department of Planning and Environment, February 2019	https://www.planning.nsw.gov.au/-/media/Files/DPE/Guidelines/guideline-sepp70-developing-affordable-housing-contribution-scheme-2019-02-28.pdf
City of Sydney – helpful examples	<p>Affordable housing program – https://www.cityofsydney.nsw.gov.au/affordable-housing-contributions/city-of-sydney-affordable-housing-program</p> <p>2017 planning proposal and council report (post-exhibition) to include a clause in Sydney LEP to allow for contribution requirement on new floor space - https://meetings.cityofsydney.nsw.gov.au/ieListDocuments.aspx?Clid=137&Mid=729 (item 7)</p> <p>LEP Clause resulting from 2017 planning proposal – see Sydney LEP 2012 Clause 7.13B</p> <p>2022 planning proposal for change to way contributions are distributed (still under consideration as at February 2023) - https://meetings.cityofsydney.nsw.gov.au/ieListDocuments.aspx?Clid=253&Mid=4061</p> <p>Feasibility studies that supported the 2022 planning proposal (see exhibition materials) - https://pp.planningportal.nsw.gov.au/ppr/post-exhibition/affordable-housing-program-update-2022</p> <p><i>Other information of interest (not related to contribution schemes):</i></p> <p>Affordable and Diverse Housing Fund (City of Sydney Grant fund for affordable housing) https://www.cityofsydney.nsw.gov.au/community-support-funding/affordable-diverse-housing-fund#:~:text=The%20affordable%20and%20diverse%20housing,profit%20and%20for%2Dprofit%20organisations.</p> <p>Preferential zoning clause – see Sydney LEP 2012 Clause 7.13A</p> <p>Incentives clause for affordable housing in the Botany Road Precinct – see Sydney LEP 2012 Clause 6.60B(3) & (4)</p>
Latest version of this guide and the template	<p>Southern Sydney Regional Organisation of Councils (SSROC) website</p> <p>https://ssroc.nsw.gov.au/projects/affordable-housing/</p>
Local Government Housing Kit	The NSW Local Government Housing Kit provides a comprehensive, easily used resource for everyone involved in making the most of housing opportunities:

	https://www.facs.nsw.gov.au/resources/nsw-local-government-housing-kit
NSW Affordable Housing Guidelines 2022/23 (Ministerial Guidelines)	https://www.facs.nsw.gov.au/download?file=332789
Urbanista - Background papers and package of resources	<p>Including:</p> <ul style="list-style-type: none"> • Affordable Housing Contribution Scheme Overview and Recommendations • Affordable Housing Contribution Scheme Council Engagement Results • Affordable Housing Contribution Scheme Evidence Base • Affordable Housing Contribution Scheme Compendium • Affordable Housing Contribution Scheme Resources • Affordable Housing Contribution Scheme Directions Paper • Affordable Housing Contribution Scheme Wider Intervention Opportunities • Affordable Housing Contribution Scheme Scoping for Standard Method for Setting Contribution Rates • Affordable Housing Contribution Scheme Tracking of Contributions and Outcomes <p>Available on SSROCs webpage at: https://ssroc.nsw.gov.au/projects/affordable-housing/</p>

5. Local government network

While not available at the time of publication of this guide and template, it is the intention of SSROC to host a TEAM for local government planners to access resources and examples to assist in the development of affordable housing contribution schemes.

This community of practice will be open to all council officers working in metropolitan Sydney. It aims to facilitate a network that enables the participants to converse collectively in private. Details of how to join the Network can be found on the SSROC website, or you can email SSROC directly at ssroc@ssroc.nsw.gov.au if you are interested to join the TEAM.

