



Affordable housing contribution scheme plan – draft template

A Resilient Sydney Diverse and Affordable Housing
Initiative

Draft template
28 February 2023

Introduction

Purpose

To increase the amount of affordable rental housing in metropolitan Sydney.

Aim

This Affordable Housing Contribution Scheme Plan - Template (template) has been prepared in conjunction with the “Affordable Housing Contribution Scheme - A Supplementary Implementation Guide” (implementation guide). The aim of the template and implementation guide is to:

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

Together this template and the implementation guide are a resource for local government, specifically designed to simplify and demystify the preparation and implementation of a contribution scheme.

The template is based on other successful contribution scheme plans currently in effect, 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.

What is a contribution scheme plan?

A contribution scheme plan (referred to by different councils as their program or strategy) contains the locally specific operational detail (in addition to that already included in the relevant local environmental plan) for the day-to-day management of a contribution scheme.

Seeking early advice

It is strongly recommended councils 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.

How do I use this template?

This template, produced by Resilient Sydney provides a structured, partially pre-populated framework for a contribution scheme plan. It follows the format set out in the Department’s Guideline but provides additional supplementary information that aims to be consistent with the Guideline to assist council officers prepare a contribution scheme plan.

Related LEP clause

A contribution scheme plan works in conjunction with an LEP requirement that certain types of development must make a contribution for affordable housing. This template assumes the related LEP clause includes:

- the 'trigger' for applying the clause, for example, whether it applies to new development, changes of use, and so on;
- an LEP map or identification of site/s where the contribution requirement applies;
- a contribution rate expressed as a proportion of floor space;
- a provision allowing the contribution to be satisfied in-kind (on-site), monetary contributions in-lieu, or as land;
- a provision referring to the related contribution scheme plan, as dated.

See the implementation guide for additional information on how to prepare the drafting instructions for the clause.

How to read the template

The template comprises:

- standard text for councils to use where common wording is applicable across contribution schemes;
- grey shaded text indicating options for inclusion/omission, where locally or regionally specific references/input is required; and
- guidance notes for writers that provide additional information for developing customised local provisions or where locally relevant data is required.

This template is to be read in conjunction with the implementation guide.

Limitations of this template

Due to resourcing constraints, this template and the implementation guide may not be maintained over time, that is, they respond directly to the affordable housing legal and policy context as at the date of publication. Where the policies of government change, parts of the template may be superseded.

There is no ongoing formal support to assist council officers in using this template and the implementation guide.

SSROC is establishing an Affordable Housing Network to enable council planners to exchange information and share practical solutions to issues encountered when preparing contribution schemes. Details of how to join the Network can be found on the SSROC website.

Acknowledgement

This template and the implementation guide have been prepared by the Southern Sydney Regional Organisation of Councils (SSROC) on behalf of the Resilient Sydney Affordable Housing Committee. The template is based on the suite of tools developed by Urbanista, who was appointed in December 2021 to undertake the 'Affordable housing contribution scheme project' (Project).

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.

Finding resources and examples

Local government network TEAM

While not available at the time of publication of this template and the implementation guide, 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. It will also be a place where local government planners can share their experiences.

Please email ssroc@ssroc.nsw.gov.au if you are interested to join the TEAM.

Implementation guide

The implementation guide that accompanies this template provides some helpful advice for the preparation of affordable housing contributions schemes.

Urbanista's background papers

As above, Urbanista published a series of background papers and a package of resources for councils that are available for download on the SSROC website.

Publishing details

Minor updates may be made to the template from time to time. The below table provides publication dates.

Publication dated	Details of publication
1 March 2023	First published as draft

TEMPLATE

[Council name] affordable housing contribution scheme plan

Adopted by Council [date]

[insert image]

Preliminary

Acknowledgement of country

The [council name] acknowledges the [name of Traditional Custodians] as the Traditional Custodians of this place we now call [council / area name], and we acknowledge their continued connection to Country. We pay respect to Aboriginal and Torres Strait Islander Elders past, present and emerging.

Guidance to writer

To be updated as is appropriate for your local area.

Publication details

The publication details of this [name of contribution scheme plan] are provided in the table below.

Publication dated	Details of publication
[date]	Adopted by Council
[date]	[publication details, eg Updated to ...]

Guidance to writer

This section may be updated over time to include a list of past versions, including a short description of how the contribution scheme plan changed with each new addition.

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1. Background and strategic context

1.1. Objectives

The objectives of this [name of contribution scheme plan] (Plan) are to:

- (a) recognise affordable housing as critical infrastructure to support a sustainable and diverse community and local economy;
- (b) contribute to meeting the housing needs of very low to moderate income households who live and/or work in [area to which the levy will apply]; and
- (c) provide the requirements for making a contribution for affordable housing in accordance with the [name of relevant LEP/s].

Guidance to writer

These objectives are relevant to all schemes. Councils may wish to include additional objectives relevant to local circumstances. Extra examples are available in the “Affordable Housing Contribution Scheme Compendium”, prepared by Urbanista, and available for download on the SSROC website.

1.2. Where does the scheme apply?

This Plan applies to land identified in the [name of relevant LEP/s] as being required to make an affordable housing contribution.

Explanatory note

What is not clear from the provisions of the Act, section 7.32, where numerous references are made to an ‘area’, or from the requirements of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP 2021), Section 15, which makes reference to a ‘locality’, is what geographical area a contribution scheme may apply to.

This template assumes an LGA specific model.

Where there is an aspiration for a cross LGA approach, prior legal advice should be sought and early consultation with the Department is recommended.

1.3. Definitions

Terms used in this Plan are defined below:

Term	Definition in this contribution scheme plan
Act	<i>Environmental Planning and Assessment Act 1979</i>
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 Contributions Management Plan	A separate [plan/strategy] that is adopted by Council that sits outside of this contribution scheme plan, that provides details about how affordable housing contributions will be used.
Affordable Housing Contributions Scheme	<p>An umbrella reference to the whole package of requirements that guide the collection and expenditure of affordable housing contributions under Section 7.32 of the Act.</p> <p>Some requirements may be provided in an LEP, with other information being provided in a separate contribution scheme plan.</p>
Affordable Housing Contributions Scheme Plan (contributions scheme plan)	Means this Plan.
Affordable rental housing / dwellings	Affordable rental housing (or dwellings) is defined in this Plan as affordable housing that is owned and managed by government (including local government) or a registered CHP and rented to very low, low or moderate income households or a combination of those households.
Affordable housing levy contribution	Affordable housing levy contribution means the percentage of the gross floor area required to be provided as affordable housing.
Community Housing Provider (CHP)	<p>Includes any organisation or entity registered under the National Regulatory System for Community Housing (NRSCH).</p> <p>Guidance for writer</p> <p>Councils may wish to further define what CHPs will be eligible to receive / manage contributions funds. For example, council may prefer that contributions are received or managed only by Tier 1 or Tier 2 providers.</p>
Contribution/s	A reference to a contribution or contributions resulting from a condition of consent applied under Section 7.32 of the Act requiring a developer/landowner make an affordable housing contribution. The contribution may be built dwellings, land contribution or monetary contribution (or any combination thereof).
Contribution requirement	The contribution requirement is set out in the [LEP acronym].
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.
Development application	References to 'development applications' in this Plan refer to both development applications and any application for the modification of a development consent.

Equivalent monetary contribution rate	Means the \$/sqm rate that is used to calculate the required monetary contribution for a relevant development. The equivalent monetary contribution rate is indexed over time in the manner set out in this Plan.
Housing SEPP 2021	<i>State Environmental Planning Policy (Housing) 2021</i>
[name of LEP] Local Environmental Plan [year] [acronym]	Reference to [LEP acronym] in this Plan also applies to any LEP that replaces it, so long as the affordable housing provisions remain substantially unamended.
Very low to moderate income households	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: <ul style="list-style-type: none"> • Very low-income household < 50% • Low income household 50% -80% • Moderate income household 80% to 120%. NSW Ministerial Guidelines provide the details of these income thresholds.

Guidance to writer

Select / adapt the relevant definitions of terms used in the Plan.

1.4. Legislative basis

This Plan applies in accordance with the requirements in the Act that allows for the collection of contributions for affordable housing where a need for affordable housing is identified in a planning instrument.

The *State Environmental Planning Policy (Housing) 2021* (Housing SEPP 2021) recognises that all local government areas within NSW are areas where there is a need for affordable housing.

Section 7.32(1) of the Act requires that a contribution requirement may only be applied to a development application where:

- the consent authority is satisfied that the proposed development will or is likely to reduce the availability of affordable housing within the area; or
- 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
- the regulations so provide.

[Select relevant justification:]

Condition (a) is met because [select relevant: 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].

[AND/OR:]

Condition (b) is met because all development in the area creates a need for affordable housing. Where it is new residential development, the cost of that housing is unlikely to be ‘affordable’ for low-income households, and therefore affordable housing is required to maintain a socially and economically diverse community. It is also required to ensure lower income workers are available to service residential development, such as childcare workers. Where it is non-residential development, affordable housing is required for housing low-income workers employed directly and indirectly by the development, such as cleaners, hospitality staff and administrative staff.

[AND/OR:]

Condition (c) is met because the [name of relevant LEP] applies a contribution requirement only where new residential floor space has resulted from a rezoning of that land.

[AND/OR:]

Condition (d) is met because [insert if relevant]

Guidance to writer

To make clear section 7.32 is satisfied, it is desirable the Plan set out the provisions of subsection (a) to (d) that are applicable.

The wording provided above includes generalised justification for why the contribution may be imposed to development consents. This may be adjusted and/or supplemented by locally specific information drawn from a local needs analysis.

Extra examples are available in the “Affordable Housing Contribution Scheme Compendium”, prepared by Urbanista, and available for download on the SSROC website.

1.5. Affordable housing need

Housing is critical to basic human needs for shelter, security and connection within communities. The availability of a suitable range of housing is vital to the efficient, equitable, prosperous and sustainable functioning of the area.

Offering more housing choices, including housing that is affordable for very low to moderate income households is needed, to support a socially diverse and inclusive community and to help the local economy function, for example by ensuring sufficient workers are available for local businesses.

In recent decades, continued escalation in house prices and rents across the Sydney Greater Metropolitan Region and in many regional areas of NSW has made it difficult for very low to moderate income households to find housing that is affordable, resulting in increased levels of households in housing stress.

Key indicators demonstrating need in [name of council area] for affordable housing:

- the area is identified in the Housing SEPP 2021 as having a need for affordable housing;
- there is unmet demand for social and affordable housing in the area;
- a significant proportion of very low to moderate income households are in housing stress;
- very low to moderate income households are being displaced because of the lack of affordable housing;
- it is difficult for key workers to meet their housing needs;

- very low to moderate income households cannot afford to purchase or rent housing in the area;
- the amount of affordably priced housing is declining; and
- there is a mismatch between the stock profile and household size.

Specific interventions are therefore needed to ensure that a diversity of housing, including affordable rental housing is provided.

The evidence base prepared to support this Plan is available on [council's website/DPE Housing Evidence Centre (insert links)/local strategic planning statement/local housing strategy/other].

Guidance to writer

While housing needs analysis must be included in the planning proposal to implement an affordable housing contribution scheme, is not required to be provided in the Plan.

Notwithstanding this, it is recommended the Plan still include a high-level explanation about the need in the local area, and an explicit reference to the evidence that underpins it. This may sit in a separate document, be in your local strategic planning statement, be derived from the DPE's data, provided on a council webpage, or some other place).

This approach is preferable because data can quickly become out of date and its inclusion in the contribution plan would likely require frequent, but largely unnecessary, updates to the contribution plan via a planning proposal process.

The reference to the evidence base in the contribution plan provides context to applicants and assessing planners, but may also assist in the event of a court challenge.

The above wording provides for a generalised overview of housing need that *may* be applicable in the local area. The standard wording provided above should be carefully reviewed to ensure its suitability.

1.6. Affordable housing principles

Section 15 of the Housing SEPP 2021 provides guidance about key considerations for how affordable housing resulting from a contribution requirement is to be provided. This Plan provides 'affordable housing principles' that are derived from these considerations.

The affordable housing principles are:

- (a) Affordable housing must contribute to the creation of a mixed and balanced community in [area to which the contribution scheme plan applies].
- (b) Affordable housing must be created and managed in [area to which the contribution scheme plan applies], so that it maintains over time a socially diverse residential population, representative of all income groups.
- (c) Affordable housing must be made available to very low, low and moderate income households, or a combination of the households.
- (d) Affordable housing must be rented to appropriately qualified tenants and at an appropriate rate of gross household income.
- (e) Land provided for affordable housing must be used for the purposes of the provision of affordable housing.
- (f) Buildings provided for affordable housing must be managed to maintain their continued use for affordable housing.

- (g) Affordable housing must consist of dwellings constructed to a standard that, in the opinion of the consent authority, is consistent with other dwellings in the area.

Guidance to writer

The principles help to explain the parameters of the contribution scheme to key stakeholders, such as how the objectives relating to affordable housing in the Act and Housing SEPP 2021 will be achieved, who can access the housing, where housing can be provided and how any additional surpluses from rental income will be expended. They assist in ensuring that housing provided under a Plan is genuinely targeted to lower income households in need of affordable housing.

It is possible that Councils may add principles as relevant to their local circumstances or aspirations for their local contribution scheme, although it is strongly recommended that any local principles do not deviate or detract from the considerations in the Housing SEPP 2021.

For example, a local principle may identify a particular cohort that has been identified in local strategies as being at particular risk that should benefit from the affordable housing, so long as it upholds the consideration that that cohort are very low to moderate income households.

A further example may be a principle for the provision of affordable housing within the LGA or adjacent LGAs (see explanatory note in section 1.2 of this template)

Extra examples are available in the “Affordable Housing Contribution Scheme Compendium”, prepared by Urbanista, and available for download on the SSROC website.

2. Making an affordable housing contribution

This section describes how affordable housing contributions are determined and satisfied through monetary contributions and dedication of dwellings and land.

2.1 Satisfying a contribution requirement

The affordable housing contribution requirement, as it applies to land, is set out in the [name of relevant LEP].

Guidance to writer

Where should the contribution requirement be identified?

Most current examples of contribution schemes include the contribution requirement in the LEP clause (as shown in the wording provided above).

Alternatively, the Canada Bay LEP clause refers directly to the contribution scheme plan for the applicable rates.

The current advice of the Department is that where there is any amendment to the contribution requirement, a planning proposal is required.

There is therefore no clear advantage to providing the contribution requirement in one place or another, though potentially the contribution requirement could be perceived as more transparent and more defensible in an LEP.

How is the contribution requirement expressed?

A contribution requirement is typically expressed in an LEP as a proportion of all, or some of the floor space in a development, to be dedicated to council as completed affordable housing dwellings.

Supplementary information may then be provided in a contribution scheme plan about equivalent ways to satisfy the contribution requirement, for example, as an equivalent monetary contribution or land contribution (see following sections of this template).

For some councils, they may wish to explore implementing a contribution requirement that explicitly requires it be satisfied in a particular way and provide guidance in the contribution scheme plan accordingly (including amending the definitions provided at the front of this contributions scheme plan). For example, the dedication of built floor space may not be an appropriate requirement for land release precincts. It is recommended councils seek the specific advice of the Department if this an approach that is being considered.

Determining an appropriate contribution requirement

In accordance with current Department policy, the appropriate contribution requirement for a site or a precinct is to 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.

Refer to the implementation guide for more information about determining an appropriate contribution requirement.

Warning the market

Economists advise there is a need to give the market warning when a new contribution requirement is to come into effect. The warning is intended to give landowners time to adjust to the new requirement, and for potential new purchasers to factor in the requirement in the purchase price. This is particularly important where the additional cost arising from a new contribution requirement is not offset in any way. For example, if a Section 7.12 developer contribution requirement was to increase from 1% to 3%, it may be appropriate to introduce that rate over time, or at some defined point in the future, to allow for market adjustment.

However, in the context of a contribution requirement being applied to 'new residential floor space', the contribution requirement is presumably more than offset by the significant increase in the residual value of the land being created by the planning proposal. Moreover, the planning proposal that facilitates the new residential floor area is to include details of the contribution requirement, and as such, adequate warning is provided to the landowner.

2.2 Dedication of dwellings

An affordable housing contribution requirement may be satisfied by dedication, free of cost, of affordable rental dwellings to Council, or by applying a condition of consent that requires council be satisfied that those dwellings are transferred to a CHP to be used as affordable housing in perpetuity. Affordable rental dwellings resulting from a contribution are to be provided in the development in accordance with the following requirements:

- affordable rental dwellings are to align with the Affordable Housing Principles set out in this Plan;
- affordable rental dwellings are owned by government or a CHP;
- affordable rental dwellings are provided in the LGA in perpetuity;
- affordable housing must be managed by a registered CHP;
- affordable rental dwellings are rented to very low, low and moderate income households for an absolute maximum of 30 per cent of gross household income;
- where more than 10 affordable rental dwellings are being provided within a larger development (that may also incorporate market dwellings not being used for affordable housing), at least 25 per cent of those dwellings are to be allocated to very low income households and 25 per cent of those dwellings to low income households;
- all rent received from the affordable rental dwellings after deduction of management and maintenance costs will only be used for the purpose of improving, replacing, maintaining or providing additional affordable rental housing. This includes the investment of monies to meet cyclical maintenance costs and all rates and taxes payable in connection with the dwelling;
- affordable rental dwellings are designed and constructed to a standard which, in the opinion of Council, is generally consistent with other dwellings in the LGA, that is, they are not differentiated as affordable housing compared with the design of other housing;
- each affordable rental dwelling is to have a total floor area of not less than 35 square metres, with any remainder being paid as a monetary contribution to council;
- where multiple affordable rental dwellings are provided within a larger development, the amenity benchmarks established by the Apartment Design Guideline (or any subsequent Guideline that may apply from time to time) are to be achieved. For example, 70% of the affordable housing dwellings should achieve adequate solar access;
- the location, size and quality of affordable housing dwellings are to be to the satisfaction of Council and the receiving CHP. If they are not to satisfaction, Council may require changes to

the development application, or that the contribution be made by way of an equivalent monetary contribution;

- where only part of a contribution is satisfied by dedicating dwellings, any remaining floor area must be paid as an equivalent monetary contribution or equivalent land contribution, and
- all floor area to be dedicated for affordable housing is to be allocated as dwellings, that is, common circulation areas are not considered part of the contribution requirement. An exception to this is where all the affordable housing floor area is provided as a full floor of a development or as a stand-alone building.

Information about the process for dedicating dwellings for affordable housing is provided on the council's website.

Guidance to writer

The wording above is generally derived from the City of Sydney Affordable Housing Program and is provided as an example list of requirements. It is noted these requirements were prepared to suit the City of Sydney local context, and as such should be adjusted to suit the local context and justified appropriately in the planning proposal that implements the contribution scheme.

Requirements for affordable housing

While the affordable housing principles provide high level guidance about the ownership and management of affordable housing resulting from levy schemes, it is recommended a contribution plan set out in more detail the requirements that councils will apply where affordable housing dwellings are to be dedicated to council or a CHP.

Requirements should flow from and expand on the affordable housing principles and be consistent with the NSW Affordable Housing Guidelines 2022/23 (Ministerial Guidelines) published by the NSW Department of Communities and Justice and approved by the Minister for Families and Communities and the Minister for Disability Services.

Providing clarity in the contribution plan about the council's requirements is important because it allows a developer / applicant to understand early in the project development phase what will and won't be acceptable to council. This will potentially impact on development cost, so it is important information when a developer is deciding if a project should proceed.

Process mapping

In addition to the above text, it is recommended a process map and/or description of the process for dedicating dwellings be made available on council's webpage. This is preferable to providing this information in the contribution scheme plan because it may require updating from time to time (which if in the contribution scheme plan itself may require a planning proposal).

Being clear about how the contribution requirement works in the development application process is important to assist development application planners, who will be applying conditions of consent to development applications requiring a contribution, but also for proponents. Thinking about this early and having the clear and well resolved processes in place will greatly assist in the implementation phase of a contribution scheme and will ensure it operates smoothly when it commences.

As an example, the City of Sydney Affordable Housing Program includes a process for the steps involved in dedicating dwellings. The Program is available on the City's website.

2.3 Monetary contribution

This section describes the rate at which a monetary contribution is to be taken to be equivalent to floor area for the purposes of the affordable housing levy contribution.

The equivalent monetary contribution rate for the period of [time period e.g. 1 January 2022 to 31 December 2022] is [insert equivalent monetary contribution rate] per square metre.

The equivalent monetary contribution rate is indexed on an annual basis in accordance with this Plan. The council's website provides the current monetary contribution rates as indexed.

Guidance to writer

There are a range of different approaches taken by councils to develop this rate, some as simple as using the average median apartment price in the local area over the proceeding year, as published in the NSW Department of Communities and Justice Rent and Sales report.

An important consideration is that 'equivalency' implies there should be no financial incentive to make a monetary contribution payment in favour of an in-kind dedication of finished dwellings. To this end the equivalent monetary contribution rate should be reflective of what the actual costs would be of providing a finished dwelling. That is, if instead of having dedicated stock, contribution funds are used to buy built dwellings, what would the equivalent contribution amount need to be?

It is strongly recommended that several examples demonstrating a range of different development scenarios are included in this section, showing how equivalent monetary contributions will be calculated. This will greatly assist development application planners in the early days of implementation but will also assist developers understand their contribution requirements.

Extra examples are available in the "Affordable Housing Contribution Scheme Compendium", prepared by Urbanista, and available for download on the SSROC website.

2.4 Dedication of land

This section describes the rate at which a contribution of land is to be taken to be equivalent to floor area for the purposes of the affordable housing levy contribution.

[Include further information about how land is to be valued]

The dedicated land must:

- be used for the purpose of providing affordable rental housing designed and built and managed in accordance with the Affordable Housing Principles;
- be of an appropriate size;
- be zoned for a residential use with appropriate development capacity available under the current planning controls;
- be serviced by regular public transport in close proximity;
- be remediated for residential use;
- be serviced by utilities;
- be serviced by council e.g. garbage collection;
- be serviced by Australia Post; and
- be dedicated in fee-simple.

Guidance to writer

Because CHPs have identified access to land as a key barrier to providing affordable housing, facilitating access to land for affordable housing through a contribution scheme may be an attractive option for councils.

As a starting point, councils may consider that the equivalent contribution of land is where the value of that land is no less than the value of the equivalent monetary contribution. For example, this could be determined by the proponent and the council appointing a joint valuer.

Other approaches might also be considered. For example, councils who especially wish to encourage this approach might offer a discount on the contribution requirement where it is being satisfied by land.

With regards to the important characteristics of land that is proposed to be dedicated, while there are limited examples to draw on, the above wording, that can be adjusted for local conditions, contains suggested requirements.

2.5 Conditions of consent

A contribution requirement forms part of a development consent. Irrespective of how the contribution is made, council will require evidence that the condition of development consent relating to affordable housing has been satisfied prior to the granting of any construction certificate.

In circumstances where no construction certificate is required, evidence that the condition of development consent relating to affordable housing has been met will be required before commencement of use/occupation.

Guidance to writer

The conditions of consent must comply with all relevant requirements made by a state environmental planning policy with respect to the imposition of conditions under this section, as required by Section 7.32(3)(a) of the Act.

While not required for inclusion in the contribution scheme plan, it is recommended council develop standard conditions of consent, for the various ways that a contribution requirement may be satisfied, for the use of assessing officers when determining a development application.

For example, a condition requiring an in-kind contribution may specify: the minimum floor space to be provided; a requirement that the affordable housing is designed and built to the same standard as other dwellings in the building; a requirement the affordable rental housing be provided in the location as set out in the plans; a requirement for a covenant requiring affordable housing be provided in perpetuity (though in practice the covenant will set out how the covenant can only be removed with the agreement of council); and a requirement that prior to the granting of a construction certificate, evidence be provided by way of a written legal agreement to transfer title of the affordable dwelling(s) to the council or nominated CHP.

A condition requiring a monetary contribution may specify: the amount of floor area to be provided as affordable rental housing; the equivalent monetary contribution rate; the method of indexation of the monetary contribution; and a requirement be paid before a construction certificate is issued.

It is envisaged that example conditions of consents and covenants used by other councils may be provided on the local government affordable housing TEAM that is under development at the time of publishing this template. In the meantime, you may wish to reach out to your peers at other councils for assistance.

2.6 Development that may be exempt

The following development may be exempt from the affordable housing contributions scheme:

- [include locally specific exclusions]

Guidance to writer

When councils identify development to which a contribution should apply, Section 7.32(3)(c) of the Act, which sets out the conditions under which a contribution requirement could reasonably be applied to a development, must be taken into account.

It is common in existing examples of contribution schemes that small-scale development is excluded or exempt from a contribution requirement to avoid capturing alterations and small additions. In some cases these might be included in the LEP clause. For example, a number of existing LEP clauses only trigger a contribution requirement where:

- the erection of a new building the gross floor area of which is less than [200] square metres; or
- alterations to an existing building that will result in the creation of less than [200] square metres of gross floor area that is intended to be used for the purpose of residential accommodation; or
- alterations to an existing building that will result in the creation of less than [60] square metres of gross floor area that is intended to be used for a purpose other than residential accommodation; or
- the demolition of existing floor area and the subsequent creation, whether for the same or a different purpose, of less than [200] square metres of gross floor area; or
- a change of use of less than [60] square metres of existing floor area of a building.

Alternatively, or in addition to, the contribution scheme plan may set out where the consent authority may consider waiving the requirement. Example exemptions that are found in current contribution schemes include:

- development of community facilities, public roads or public utility undertakings;
- development for the purposes of social and affordable housing and group homes/supported accommodation;
- secondary dwellings;
- a dwelling house and/or residential development, refurbishment or repair below a specified dollar value or under a certain size;
- development where the contribution requirement is excessive in the context of the cost of the development, for example, the City of Sydney limits a contribution requirement to no more than 15% where the cost of construction is under \$100,000;
- development that council has a particular interest in promoting, for example, certain cultural facilities.

2.7 How to make a contribution

The process for satisfying a contribution requirement is set out on council's website.

Guidance to writer

It is generally recommended a process map and/or description of the processes supporting the administration of the contribution scheme plan, such as how a contribution payment is made, what is the process for working with council to dedicate land, and so on, are set out on council's website. This allows for them to be easily updated over time to meet new or changing administrative requirements.

Notwithstanding the above, councils may wish to include high level principles for satisfying a contribution requirement in their contributions scheme plan. For example, it might articulate that payment of monetary contribution be made in a certain way, such as a bank cheque, or it may establish a requirement that all contributions must demonstrate evidence of being satisfied prior to a construction certificate being issued. It may also set out how contributions are payable in the event development is staged.

Being clear about how the contribution requirement works in the development application process is important to assist development application planners, who will be applying conditions of consent to development applications requiring a contribution, but also for proponents seeking clarity on what is required of them in the development process. Thinking about this early and having the clear and well resolved processes in place will greatly assist in the implementation phase of a contribution scheme and will ensure it operates smoothly when it commences.

2.8 Indexing the equivalent monetary contribution rate

[insert description of preferred approach.]

Guidance to writer

This section should address how and where the details regarding indexing of cost will be located and how indexing is undertaken.

There are a number of different approaches taken by councils to indexing payments. Some councils prefer to use the Consumer Price Index (CPI) which has the advantage of being a highly transparent approach to indexing that is accepted by industry and is reliably published by the Australian Bureau of Statistics. The disadvantage is that movements in CPI are generally not reflective of the changing value of housing over time.

An alternative approach provided in the City of Sydney Affordable Housing Contribution Program is to index contributions using movements in the median price of apartments in the local area, with the data sourced from the NSW Government Rent and Sales Report Table Sales Price – Greater Metropolitan Region (published quarterly). This approach is more closely aligned with the changes in the cost of housing at the local level, however the release of the data is often delayed, and therefore less reliable. In response to this, the City of Sydney indexes once a year using the median sale price in the City of Sydney local government area as published over the proceeding four Rent and Sales Reports.

A third option, and perhaps a good middle ground, is creating an index based on a new report being published by the ABS called Total Value of Dwellings, which includes median prices for Sydney metropolitan area. This report recently replaced the Housing Price Index that used to be published by the ABS, but is unfortunately no longer available.

Whatever the approach, it is recommended that the contribution scheme plan state the day and month in each year that the equivalent monetary contribution rate will be indexed and publish the indexed rate on council's website. This will enable developers to act in the full understanding of

current rates, and for council's administration team to have immediate access to the most up to date rates.

3. Allocation and management of contributions

3.1 How are contributions used

All contributions, including dedicated built affordable rental dwellings, land dedicated for the purpose of providing affordable rental dwellings, and monetary contribution funds collected for the purpose of providing affordable rental dwellings, are to be used in accordance with the [name of area] Affordable Housing Contributions Management Plan [or some other strategy], adopted by Council and updated from time to time.

The [name of area] Affordable Housing Contributions Management Plan is provided on council's website.

Guidance to writer

Developing a plan for using contributions

The affordable housing resulting from a condition of consent applied under 7.32 of the Act must be used in accordance with the requirements of the Act and in accordance with the requirements of Part 1, Section 15 of the Housing SEPP 2021.

There are however a range of approaches councils can take to using contributions that will satisfy the requirements of the Act.

The consistent, fair, legal and equitable allocation and use of contributions (affordable housing or otherwise) can be a highly contentious issue for councils, and lead to criticism, and in some cases action on behalf of the Department, where not being used appropriately. All parties benefit from a clear and transparent approach to using contributions, including developers, who make the contributions, the community, who use the contributions, and government, who administer the contributions.

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).

Where the approach is set out in the contribution scheme plan, the advantage is a higher level of certainty and consistency about how those contributions will be used over successive Councils. This is because any change to the approach would be subject to a planning proposal – a much more extensive process than a Council simply resolving to change their approach.

Alternatively, it may be preferred that decisions about how contributions are used and managed are made solely by the council, and are clearly outside of the planning process, and thus not subject to the Department's approval. The flexibility to change the plan if it is not working, or needs updating, might also be seen as a benefit.

Irrespective of where the plan sits, it is important it sets out: how contributions will be used in accordance with the Act; how they be managed over time; will council or a CHP own the affordable housing; what CHP(s) has been appointed to manage resulting affordable housing (or a process for determining the managing CHP); how will outcomes be monitored over time and made clear to the public; how often and how will the plan be reviewed?

When developing a contribution scheme, working with stakeholders, including Councillors and CHP's, early to build understanding of the comparative advantages and disadvantages of different approaches to managing contributions (and accompanying long-term liabilities) is critical to enabling informed decisions.

Depending on the amount and projected growth of contributions, council may want flexibility to use a combination of approaches, with the most appropriate one chosen to suit the specific circumstance and precinct. Larger CHPs are increasingly forming partnerships or consortia with private developers delivering large scale mixed private and affordable housing developments.

All options will require a commitment to a council system to monitor and report affordable housing contributions and outcomes over time.

Different approaches to using contributions

There is a range of different approaches currently in use by councils.

On one end of the spectrum is the City of Sydney model, where council receives primarily monetary contribution funds, but does not retain them, rather they are gifted to a CHP to develop, to own and manage affordable housing in the area in perpetuity. A funding agreement between the council and the CHP sets out the terms of how funds must be used. Ownership of built affordable dwellings may also be passed to CHPs.

At the other end of the spectrum of arrangements is the more common model, utilised by councils such as Canada Bay, Randwick, Willoughby and Waverley, where the developer is required to build finished units and dedicate them to council. Properties are retained in the ownership of the council and a registered CHP is engaged to manage the properties. The agency arrangement usually provides for the CHP to receive a management fee, potentially with council to receive any surpluses after maintenance and management costs are deducted. Alternatively, subject to the preparation of an agreement setting out the roles and responsibilities in respect to long term asset management and responsibilities under the NSW Residential Tenancy Act, the CHP could head lease dwellings from councils and retain surpluses after expenses for provision of additional affordable housing or related services.

Councils might also seek land dedication to satisfy a contribution requirement. As councils are unlikely to be positioned to develop land as affordable housing themselves, because of lack core expertise in housing development and/or the limited availability of other funding sources to enable development, they may pass ownership to a CHP to develop it for affordable housing or enter into partnership with a CHP to develop it for affordable housing.

Part E of the "Affordable Housing Contribution Scheme Compendium", prepared by Urbanista, and available for download on the SSROC website, provides guidance on partnering with a CHP.

Securing the affordable housing

Councils may wish to apply a restriction of use on the land title that requires ongoing use of the dwellings for affordable housing.

In addition, where councils enter into agreements with CHPs to either transfer ownership of affordable dwellings, the dedication of funds to build affordable housing, or for the management of affordable housing, it may choose to build into the agreement reporting requirements to allow council to monitor the appropriate ongoing use of dwellings for affordable housing. While this is recommended, it is noted that CHPs will also be subject to a range of requirements for managing the affordable housing. Notwithstanding this, councils may well have their own requirements (beyond what would be otherwise required by the NSW Registrar, for how the affordable housing is being allocated and used. For example, their contribution scheme plan may state a requirement for some or all of the housing to be allocate to a particular cohort of the community.

Considerations for councils

When determining the best management option (or options) for using contributions, council should have regard to the following considerations:

- *Supporting local objectives for affordable rental housing* - What approach will best achieve the ambition, scale and scope of council's housing supply objectives that have been set out in the contribution scheme? Which approach has strong alignments with council's vision for housing provision articulated in the Local Strategic Planning Statement and Local Housing Strategy? Is growing the CHP sector a local objective? Is there a focus on who needs to be assisted? For example, if the scheme states a preference to direct all or some contribution to provide housing for certain population groups, e.g., people with disability, Aboriginal households?

- *Leveraging private finance and investment and attracting other funding sources to deliver more affordable housing* - Will the title arrangements enable affordable housing contributions to be leveraged over time to catalyse more affordable housing in your local area? Is this outcome possible if council retains ownership? What do local CHPs say they can achieve in this space, and what have they achieved previously, when they are the asset owners? One of the conclusions of most councils housing need analysis is that the affordable housing produced will fall well short of what is needed. Increasingly affordable housing projects are layering funding and finance. Transferring housing and contributions or partnering with CHPs may provide a better solution if council's objective is to significantly grow the affordable housing supply.

Providing secure long-term housing means the tenants are able to enjoy stable accommodation while creating expectations that the property owner will continue to offer secure affordable tenure and have rehusing responsibilities for households, if needs be. This will nullify many opportunities to realise market asset appreciation. Is holding an appreciating asset an important consideration for council?

- *Local constraints* - The form that contributions take may shape the management options. Where most of the affordable housing come from in-kind housing contributions and there is also a shortage of suitable land in the local area for new affordable housing developments, the relative advantages of CHP ownership may be lessened.

Strata units in mixed developments may well come with high strata fees which impact the ongoing feasibility of the affordable housing. An owner could decide to sell and replace it with another suitable property that does not have the high cost of the strata fees. A CHP owner may be more likely to take this decision for the long-term benefit of the overall affordable housing portfolio because it has a holistic view of all the housing costs relative to revenue.

- *Potential CHP partners in the local area* - Are there real opportunities for partnering to increase the amount of affordable housing resulting from contributions? What types of CHPs does council want to work with? For example, if you want to work with a CHP to develop new housing stock then your Affordable Housing Contributions Management Plan might specify you will only work with Tier 1 and Tier 2 CHPs that have development and procurement capability.

- *Flexibility to meet changing needs* - Whatever the chosen asset arrangement option, there should be flexibility in the distribution plan and/or management agreements with the CHP to enable the CHP to adapt over time to changing population and community needs.

- *Reputational and other operational risks* - Implementing a contribution scheme involves some reputational risks for council where they are the holder of housing assets and where they are the recipient of complaints the housing is not being appropriately managed or that tenants are not being treated fairly.

Where housing is owned by a CHP, direct responsibilities for the development, procurement, property and tenancy matters lies with the CHP and the council may refer issues and appeals to the CHP, or to external probity processes, and if necessary, refer on to their State and Commonwealth regulators and administrators.

The regulator, the Community Housing Registrar, can in extreme and unresolved circumstances, commence de-registering the CHP and ultimately have the regulated affordable housing assets and reserves transferred to another registered CHP and therefore help to safeguard the investment of contributions in affordable housing and maintain tenants' homes.

- *Provisions for property related liabilities* - The asset owner needs to factor in liabilities related to managing properties and meeting regulatory requirements and responsibilities. These include strata levies, staffing costs, property insurances, funding cyclical maintenance, provisions for depreciation and asset renewal. If there was inadequate provisioning, this could result in council meeting these costs from ratepayer revenues.

- *Capitalising on economies of scale* - Councils may receive revenues after allowing for affordable housing management costs. Economies of scale will reduce unit operating costs helping to support the adequacy of budgets for responsive and cyclical maintenance, the funding reserves and the eventual building replacement. However, other significant asset management costs will accrue. Councils have established asset management sections and systems, however, engaged councils would typically have relatively small affordable housing portfolios. Many larger CHPs successfully manage hundreds, if not thousands, of social and affordable housing properties. A larger rental housing portfolio enables them to routinely transfer tenants living in properties no longer suitable for their needs to more appropriate housing. Financial efficiencies achievable by CHPs will provide opportunities for excess revenue to be redirected into further affordable housing outcomes in accordance with their organisational objectives. Mandated tenant satisfaction surveys help to ensure high housing standards are maintained. Many CHPs have access to tax concessions lowering building costs due to their non-profit status.

- *Specialist housing expertise* - Affordable housing asset management is a specialised activity, with professional and building trade contractors working to industry standards, that benefit from operating at scale. Councils also have established administrations and systems that can be used and adapted. Should affordable housing asset management become or stay part of council's core business? CHPs normal operations extend beyond tenancy management to include integrated staff and operating systems for residential rental property management as well as corporate and financial governance, all geared to this rental client group.

- *Sensible asset management* - The terms of any ownership transfers to CHPs should not be so restrictive as to prohibit sensible asset management. The terms covering transfers can be dealt within an Affordable Housing Contributions Management Plan.

Where the contribution is made in the form of dwellings or land and is to be retained by council, it is recommended that land should be categorised as "operational" rather than "community" in order to support flexible and appropriate asset management.

