

Gateway Review GR-2024-13

50 Botany Street, Bondi Junction (PP-2024-104)

Briefing to the
Independent Planning
Commission

Local Planning & Council Support
(North, East and Central Coast)

NSW Department of Planning, Housing & Infrastructure

30 June 2025

Acknowledgement of Country

I acknowledge the Traditional Custodians of the various lands on which we work today and the Aboriginal and Torres Strait Islander people participating in this meeting.

I pay my respects to Elders past, present and emerging, and recognise and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of NSW



Site context



(Figures 1 & 2 Subject site and strategic context (Source: Sixmaps, 2024, and Eastern City District Plan, NSW Government, March 2018, p.11)

The site



Figure 3 View of subject site from Botany Street facing south-east
(Source: DPHI, April 2025)



Figure 4 View of subject site from Council Street facing south-west
(Source: DPHI, April 2025)



Figure 5 View of subject site from Botany Street facing north-east
(Source: DPHI, April 2025)

The proposal (PP-2024-104)

The planning proposal prepared by Council, as the Planning Proposal Authority (PPA), seeks to:

- facilitate the redevelopment of the site for multi-dwelling housing comprising seven terrace style houses and basement parking, and
- allow collection of contribution for the provision of affordable housing in the Waverley LGA.



Figure 6 Ground floor - development scheme for the site (Source: Urban Design Analysis, Smith & Tzannes, December 2023, p.8)

The proposal (PP-2024-104)

The proposal seeks to amend the Waverley LEP 2012 to:

- rezone portion of the site from SP2 Infrastructure (Telecommunications) to R3 Medium Density Residential
- introduce minimum lot size of 232m² to part of the site
- remove a redundant local heritage listing (Item I166 - Telecommunication tower)
- permit the collection of affordable housing contributions and set a rate of 9.27%.

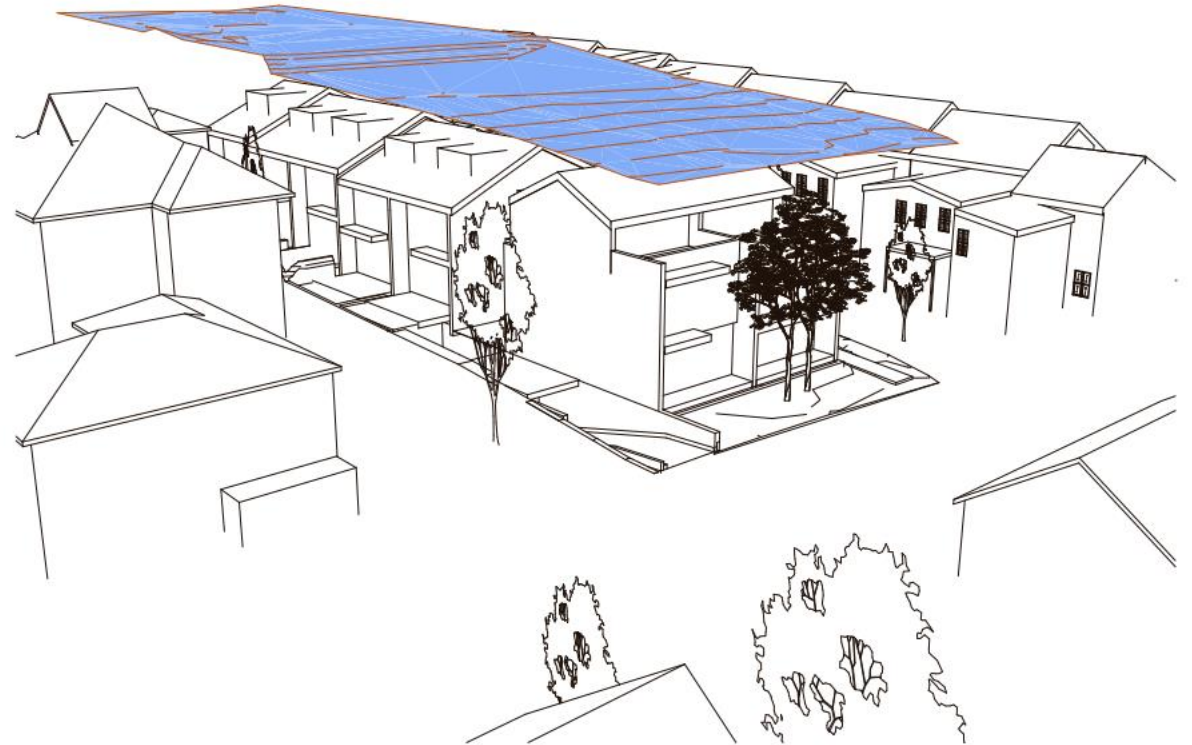


Figure 7 Concept and relationship to proposed height

(Source: Planning Proposal - Urban Design Analysis, Smith & Tzannes, December 2023, p.12)

The proposal (PP-2024-104)

Table 1. Current and proposed controls

Control	Current	Proposed
Zone	SP2 Telecommunications	SP2 Telecommunications R3 Medium Density Residential
Maximum height of buildings	12.5m	No change
Floor space ratio	0.75:1	No change
Minimum lot size	N/A	232m ²
Heritage	Heritage Item I166 (Telecommunication tower) Botany Street Heritage Conservation Area (C3)	Botany Street Heritage Conservation Area (C3)



Figure 8 Proposed land use zoning
(Source: Planning Proposal, August 2024, p.17)

Affordable housing in LEPs

- Section 7.32 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* allows councils to levy contributions for affordable housing if a State environmental planning policy (SEPP) identifies a need for affordable housing within the area.
- State Environmental Planning Policy (Housing) 2021 identifies a need for affordable housing in all LGAs in NSW.
- Under section 7.32(3)(b) of the EP&A Act, any condition imposed on a development consent must be authorised to be imposed by an environmental planning instrument and be in accordance with an affordable housing contribution scheme for dedications or contributions set out in or adopted by such an instrument.

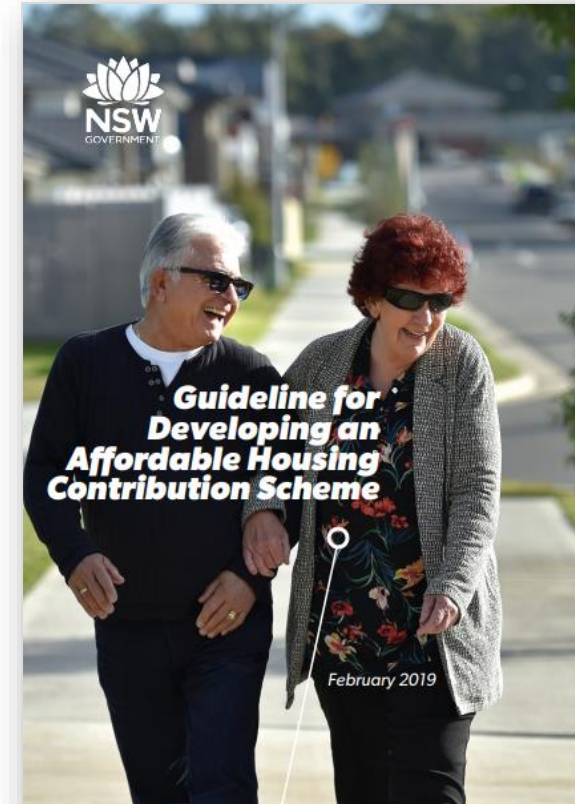


Figure 9 Guideline for Developing an Affordable Housing Contributions Scheme

(Source: NSW Government, February 2019)

Waverley Local Environmental Plan 2012 Amendment No.25 (PP-2023-2221)



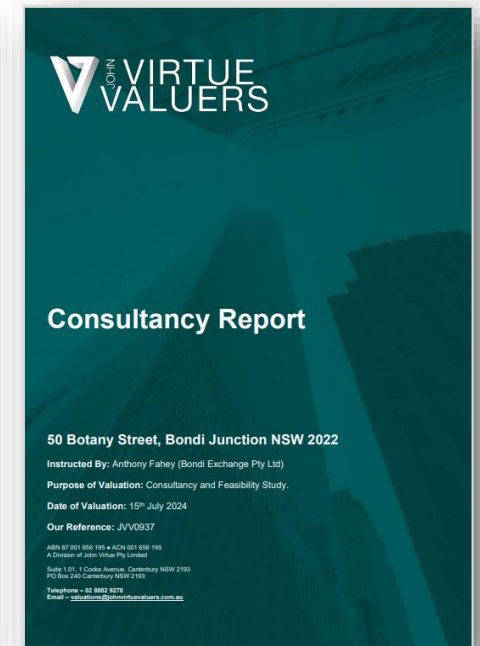
- Waverley LEP 2012 (Amendment No 25) was notified on 16 August 2024 and introduced a 1% levy for affordable housing contributions on certain residential development.
- It implements the Waverley Affordable Housing Contributions Scheme 2020 (AHCS) first adopted by Waverley Council in December 2020.
- The proposal (PP-2023-2221) also sought to introduce a mechanism to set site-specific contribution rates for planning proposal sites receiving residential uplift. This element of the proposal was deferred from the making of this LEP (s.3.36(3) of the Act) until such time as there is land to list in the Schedule and thereby give effect to this provision.
- The Department's Plan finalisation report (PP-2023-2221) noted:

"There may be opportunity for Council to seek the inclusion of the deferred provisions when a site-specific rezoning seeks to apply the provision to land and list it in the proposed Schedule. Legal drafting of any such provision would occur at that time.

Notwithstanding this, any future planning proposal will be subject to the requirements and plan-making process outlined in the Local Environmental Plan Making Guidelines (August 2023). Should such a planning proposal be submitted for Gateway it should include an explanation of how it seeks to apply the provision to the site and thereby give effect to the proposed provision" (p.5).

The proposed affordable housing rate

- The planning proposal, as prepared by the PPA, seeks to apply a 9.27% affordable housing levy to the site.
- It is proposed that the site would be listed in a schedule of the LEP with the contribution rate.
- The rate would be levied on an applicable future development application.
- Council engaged Hill PDA to prepare a feasibility report. It was revised in August 2024 to address the matters raised in the John Virtue Valuers report submitted by the proponent.

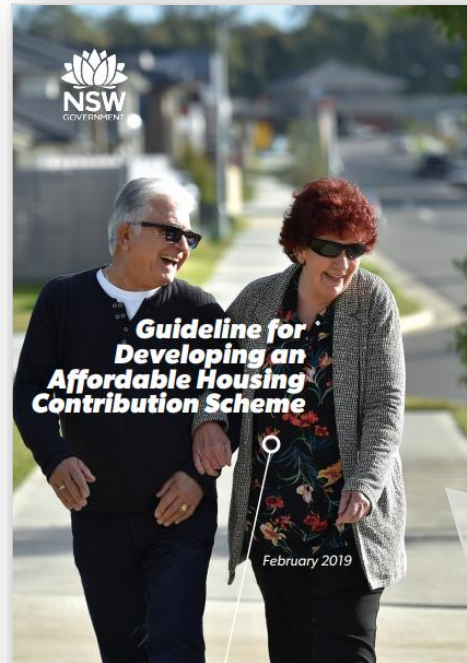


Figures 10 & 11 Feasibility studies

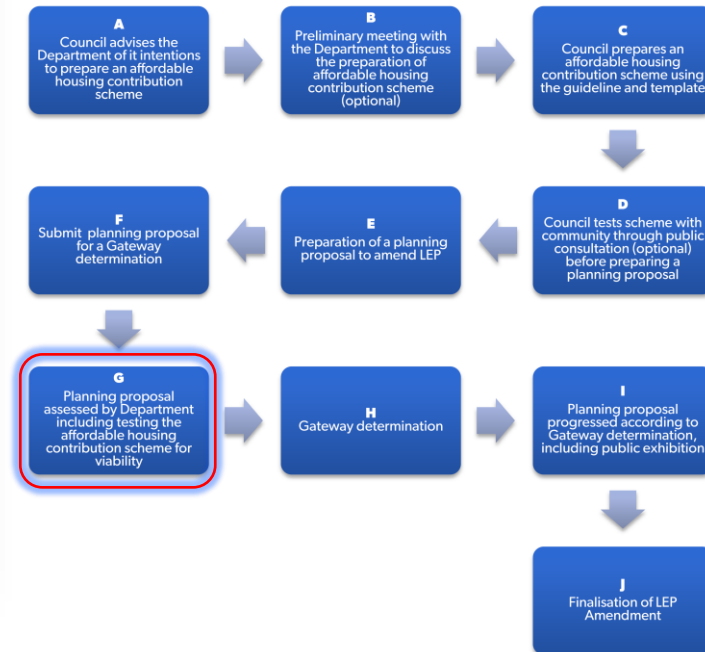
(Source: *Affordability housing feasibility analysis – 50 Botany Street, Bondi Junction*, Hill PDA Consulting obo Waverley Council, August 2024, and *Consultancy and Feasibility Study – 50 Botany Street, Bondi Junction*, John Virtue Pty Ltd, July 2024)

The Department's Guideline for developing an affordable housing contribution scheme

- The Department's *Guideline for Developing an Affordable Housing Contribution Scheme* (February 2019) sets out the process and considerations councils must take into consideration when developing an affordable housing contribution scheme



Process to implement an affordable housing contributions scheme



G. The Department assesses the planning proposal and tests the proposed scheme's viability

The Department will assess whether all required information has been submitted and whether the council has used the correct methodology to prepare the affordable housing contribution scheme. This includes examining the evidence provided as well as assessing viability, data inputs and assumptions, and the proposed contribution rate.

These items will be assessed against this guideline and relevant strategic plans.

The Department may also engage an independent consultant to complete an assessment of an affordable housing contribution scheme. The Greater Sydney Commission will be consulted on planning proposals in Greater Sydney.

Figures 12 & 13 Process to implement an AHCS
Guideline for Developing an Affordable Housing Contribution Scheme
(NSW Government, February 2019, pp.25 & 27)

Gateway determination (PP-2024-104)

11 October 2024

The Ministers delegate determined under section 3.34(2) of the *EP&A Act 1979* that the proposal should proceed for the following reasons:

1. The proposal is generally consistent with the relevant overarching state and local strategic plans and policies and ministerial directions, and inconsistencies have been adequately justified.
2. The proposal will facilitate residential development on underutilised land and will support ongoing use of the telecommunications tower on the eastern part of the site.
3. The proposal will support the provision of affordable housing in the Waverley LGA.
4. The proposal will not result in any adverse environmental, social or economic impact.

Gateway determination conditions (PP-2024-104)



The LEP should be completed on or before 31 July 2025.

Condition

- 1 Prior to exhibition, the proposal is required to be updated to:
 - (a) Provide a plain English explanation of how the affordable housing contribution additional local provision will apply to the site and include a disclaimer that final wording will be subject to Parliamentary Counsel drafting.
- 2 Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:
 - (a) the planning proposal is categorised as standard as described in the Local Environmental Plan Making Guideline (Department of Planning and Environment, August 2023) and must be made publicly available for a minimum of 20 working days; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in Local Environmental Plan Making Guideline (Department of Planning and Environment, August 2023).
- 3 Consultation is required with the following public authorities and government agencies under section 3.34(2)(d) of the Act and/or to comply with the requirements of applicable directions of the Minister under section 9 of the EP&A Act:
 - a) Telstra
 - b) Relevant utility providers, including Ausgrid and Sydney Water.

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material via the NSW Planning Portal and given at least 30 days to comment on the proposal.

- 4 A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

Gateway review

Local Environmental Plan Making Guideline

August 2023



A proponent or council (only when it is the PPA) may request that the Minister (or delegate) alter a Gateway determination where the proponent and/or council disagrees with the determination or conditions of the determination and seeks to alter this decision.

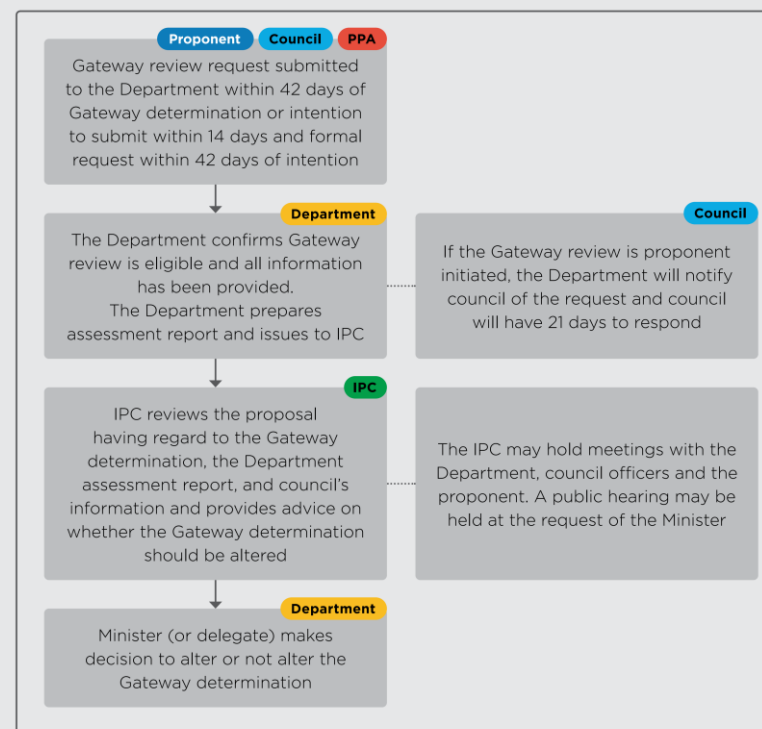
Specifically, this review may be requested when a Gateway determination:

- States the planning proposal should not proceed
- Requires that the planning proposal should be altered and re-submitted to which the proponent or council thinks this should be reconsidered, or
- Imposes conditions (other than consultation requirements) in the Gateway determination or imposes conditions that requires variation to the proposal, for which a proponent and/or council thinks should be reconsidered

Figures 14 & 15 Gateway review requirements and process

(Source: *Local Environmental Plan Making Guideline*, NSW Department of Planning and Environment, August 2023, pp.43-44)

Gateway review overview



Request for advice

The Commission is requested to:

- review the planning proposal; and
- prepare advice concerning the merits of the review request, including a clear and concise recommendation to the Minister's delegate confirming whether, in its opinion, the Gateway determination should be altered.