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Dear DPIE,

Please accept this email as a submission to the Explanation of Intended Effect for a new Housing Diversity SEPP. Apologies for the lateness.

Ballina Shire Council supports the review of the three Housing Policies (SEPP (Affordable Rental Housing) 2009 (ARHSEPP); SEPP (Housing for Seniors and People with a Disability) 2004 (Seniors SEPP); and SEPP70 - Affordable Rental Housing (SEPP 70), resulting in an integrated Housing Diversity SEPP.

Council supports the initiative to provide greater housing diversity through new and innovative housing types to attract investment and provide a broader more stable rental sector. However for real gains to be made in housing affordability, there needs to be a more comprehensive approach by State and Federal Governments, including increased direct investment in social housing and addressing the distorting effects present within the taxation system that boost demand by the household investment sector to the detriment of new generation home ownership.

The reform package does not adequately address the needs of regional areas and locality-specific circumstances, such as the following:

- “Boarding house” and “co-living” are to be defined as being in the one building - this does not necessarily suit the character of localities in regional areas where this form of development may be better suited as occurring with detached typology.
- Requiring a minimum of 50 dwellings to be part of a build to rent model is unlikely to be viable in regional areas and may result in development that is out of character with regional communities.
- The mandatory application of build to rent models in commercial zones should take into account the maintenance of active street frontages, which may otherwise undermine commercial activity in regional areas.
- Regional areas typically lack affordable and reliable public transport. Consequently, there appears insufficient justification for reduced provision of car parking in regional areas in association with SEPP enabled development.

The Royal Commission into Aged Care Quality and Safety and the implications of the Covid-19 pandemic indicate an urgent need for existing aged care and seniors housing models to be reviewed, at the level of basic care. Moreover, the concentration of the elderly into large profit-drive seniors living developments and aged care centres, often on the outskirts of towns and isolated from the rest of the community undermines residents’ health and wellbeing, increases their vulnerability to abuse and neglect and fails in terms of intergenerational integration. Further, from a land use planning perspective, In Council’s experience Seniors SEPP enabled developments have resulted in ad-hoc and poorly integrated development that undermines councils’ local strategic planning for housing, infrastructure delivery, environmental protection and floodplain management.

Council requests that a mechanism be included to exclude lands within regional areas from the policy, similar to clause 4B of the SEPP which excludes rural land in metro areas. This would assist regional local governments in managing growth pressures strategically, through the implementation of managed growth strategies (such as Housing Strategies and Local Growth Management Strategies).

In association with provisions relating to increasing the ability of LAHC to self- assess proposed development and the subdivision of government owned land without consent, Council recommends that further provisions be added to require such projects to deliver affordable housing outcomes to mitigate the risk that units in these projects might be sold for income generating purposes rather than to facilitate affordable housing.

With respect to the build to rent model (BTR), the inclusion of mechanisms to support the transition of this model of housing to strata subdivision is not supported. Not allowing strata subdivision from the outset would send a clear message that the purpose of the model is to provide viable long term affordable rental accommodation and minimize the potential for the model to introduce distortionary incentives for regulatory arbitrage.

Thank you for the opportunity to comment.

Regards,

**Simon Scott**  
Strategic Planner



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## Housing Diversity SEPP Submission

14/09/2020

The existing Affordable Rental Housing SEPP 70 was recently used to propose a DA in the Bangalow Heritage Conservation Area, resulting in a high-density development of 15 apartments with limited parking. Despite substantial community opposition, this development was deemed acceptable by the Land & Environment Court, because it was permitted under SEPP 70 and could not be prevented by the Byron Local Environmental Plan or Development Control Plan. But this development was out of character with the Bangalow HCA and will create an unwanted proliferation of cars in surrounding streets. While both impacts are permanent, density and parking concessions will only support affordable rental accommodation for a 10-year period before returning to full market rental rates. Surely not a reasonable or equitable arrangement.

This is a common issue in small rural towns and villages like Bangalow and throughout the Byron Shire, because adequate public transport is not available for residents to fully meet their employment, social and cultural needs. These inappropriate developments create huge on street parking issues because residents generally have one and sometimes two vehicles per bedroom, yet onsite car parking is only required at a rate of 0.5 car parks per dwelling. Peaceful family neighbourhoods are then transformed into mini ghettos and once quiet suburban streets, where children rode their bikes and played, can become congested single lane streets with bumper to bumper car parking along either curb.

Consequently, BPA opposes the most contentious of the proposed HDSEPP changes, expansion of density bonuses in regional areas by removing the requirement for B2 or B4 zone proximity and allowing the HDSEPP to apply to any land within 800m of railway stations and 400m of regular bus service stops - although the Bangalow bus service does not yet run hourly, this could be a future possibility. This increased accessibility to HDSEPP developments would increase the pressure from cheaply constructed high density developments, already being actively pursued by developers within the Byron Shire. Such developments with limited onsite parking will have a disproportionate impact on the small and perfectly formed heritage village of Bangalow and significantly detract from our work on heritage conservation. The BPA therefore opposes the introduction of the HDSEPP to the Byron Shire

Signed

A handwritten signature in black ink, appearing to read 'Ian Holmes', with a long, sweeping horizontal line extending to the right.

Ian Holmes

President, Bangalow Progress Association

23 September 2020

Mr Jim Betts  
Secretary  
NSW Department of Planning, Industry and Environment  
Locked Bag 5022  
Parramatta NSW 2124

Dear Mr Betts,

**Explanation of Intended Effect - Draft Housing Diversity SEPP  
Submission**

We are pleased to make this submission on the draft Housing Diversity SEPP - Explanation of Intended Effect (EIE). We understand that the public exhibition period has now closed, however given the Covid-19 pandemic BaptistCare has been understandably focused on our operations during this difficult and unprecedented period and have only turned our attention to this EIE recently. Accordingly, we would be appreciative if the NSW Department of Planning, Industry and Environment's (DPIE) would give due consideration to the matters raised in this submission.

BaptistCare is a significant not-for-profit operator of seniors housing, aged care and affordable housing in NSW and Australia. As a not-for-profit provider with a tradition spanning 75 years, BaptistCare has a keen interest in the continued delivery of quality new seniors housing and affordable housing to the people of NSW to meet the continued and growing need in the community for our independent seniors living and residential care.

We remain strongly supportive of DPIE's intent of facilitating more diverse and affordable housing forms, particularly in the current economic climate, and the opportunity to review State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors SEPP) and the State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP).

BaptistCare however holds concerns that the recent adoption of the Metropolitan Rural Area (MRA) Exclusion Zone within the Seniors SEPP and the EIE as currently drafted could reduce the supply of seniors housing and affordable housing to the NSW market at a time when demand is increasing with the baby boomer generation moving into retirement and to house those in need as NSW recovers from the COVID-19 pandemic.



## 1.0 Seniors SEPP use by the Seniors Housing Industry

The Seniors SEPP's predecessor SEPP No. 5-Housing for Older People or People with a Disability (SEPP No. 5) was commenced in 1982. SEPP No. 5 aimed to increase the supply of seniors housing by setting aside local planning controls that would otherwise prevent seniors housing from being developed. This was effectively an intervention by the NSW State Government as councils generally were failing to effectively allow the industry to deliver seniors housing to meet growing demand at the time.

The industry quickly utilised the powers of SEPP No. 5 given the consistency of development standards across the various local government areas (LGAs) of the state and inherent advantages it provided the industry, and particularly the not-for-profit sector, over other (mainly residential) developers who the industry would otherwise not be able to compete with when securing sites. In the years following its introduction SEPP No. 5 was a great success as it substantially bolstered the supply of seniors housing and aged care in NSW thereby achieving its aims.

In 2004, SEPP No. 5 was repealed and replaced with the current Seniors SEPP that retained much of the content of the older repealed instrument. Despite its flaws, complexity and requiring updating to better reflect the modern seniors housing market, the Seniors SEPP (and SEPP No. 5) has provided a level of planning approval certainty and known risks for the not-for-profit industry over the past 38 years and thereby has delivered thousands of seniors housing developments across NSW. This has directly allowed the industry to keep pace with demographic change and growing demand for people to age in place. The Seniors SEPP has been fundamental to the delivery of seniors housing in NSW for nearly 40 years.

There is no evidence that anything has changed since the early 1980s when councils were failing to deliver seniors housing in their LGAs and a state intervention (i.e. SEPP No. 5) was needed. Returning planning powers to local government for seniors housing is considered a backwards step that creates uncertainty, development risk and is anticipated to significantly slow the delivery of seniors housing to the market.

It is important to note that local government has long undertaken the practice of allowing controls and issues covered by SEPPs to be taken out of LEPs and DCPs so as to not duplicate controls between instruments. Indeed, many LEPs do not cater for seniors housing and even do not make it a permissible use within their residential zones as this was not seen as necessary given the permissibility granted by the Seniors SEPP. This approach has also allowed for consistency and certainty in the seniors housing industry with the state-wide approach, as opposed to taking an LGA by LGA approach.

After many years of the industry unsuccessfully asking for SEPP Seniors to be updated to better respond to the modern landscape of seniors housing in NSW, the proposed changes could result in the Seniors SEPP having its power significantly reduced and therefore making the seniors housing landscape more uncertain in NSW.

## 2.0 Concerns with the EIE

### 2.1 LEPs Prevailing over the Seniors SEPP

The proposed amendment for LEPs to prevail over the Seniors SEPP is significant in that it reverses a long-standing legislative planning practice in NSW where, should there be any inconsistency between a SEPP and a LEP, the SEPP will prevail to the extent of any inconsistency, given it is the higher order and state wide instrument. This planning practice gives the Seniors SEPP its power to consistently apply across the state, overriding local provisions where inconsistent and allows it to achieve its first aim in clause 2(1) to:

- (a) Increase the supply and diversity of residences that meet the needs of seniors or people with a disability*

Indeed, clause 2(2) then states how this aim will be achieved by:

- (a) setting aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified in this Policy*

This proposed change will now mean that all development standards of an applicable LEP will prevail over the development standards of the Seniors SEPP where there is an inconsistency. Accordingly, this change fundamentally alters the Seniors SEPP and could hinder the achievement of its aims. BaptistCare is very concerned that the EIE inadvertently will ultimately lead to the opposite of this aim occurring in NSW.

In practice, not only will the building height and FSR development standards of an LEP prevail, but this could lead to councils seeking to impose seniors housing specific development standards (such as access to services, increased parking rates, landscaping etc) to further control or restrict seniors development in their respective LGA, as clause 26 of the Seniors SEPP is a development standard.

Furthermore, many Sydney Metropolitan councils are of the opinion that they provide a disproportionate amount of seniors housing development and therefore have sought to be excluded from the Seniors SEPP or have it amended. Therefore, it is entirely plausible that many Sydney Metropolitan councils could take this opportunity to impose restrictive development standards with the underlying intent to limit the supply of seniors housing in their LGAs.

This is expected to make the provision of seniors housing more difficult than it is already, even for the not-for-profit sector. Seniors housing (both ILUs and residential care facilities) is typically larger than standard residential development due to mobility spatial requirements, and often require provision of onsite services required for elements of communal living and in the case of residential care facilities a sub-acute environment.

Accordingly, seniors housing developments typically generate lower yields when compared to standard residential apartments and are thus less financially competitive in the market. The Seniors SEPP currently compensates for this by offering the floorspace incentives for vertical villages and residential care facilities to make a more level playing field, and prior to the MRA Exclusion Zone

being recently implemented into the Seniors SEPP, it allowed seniors housing on non-urban zoned land (with a SCC) that is not available to residential developers.

The Seniors SEPP was introduced in recognition that our population is ageing and that there is a specific need to plan for this type of accommodation in our communities so that people can age in place and remain connected with their community. At the time it was observed that the local planning provisions did not encourage or cater for the demand for seniors housing and many seniors were being forced to relocate out of their communities to find suitable and affordable accommodation.

To overcome this issue the Seniors SEPP was introduced as a planning intervention which allowed for seniors housing to be delivered where it would have otherwise been prohibited and also to incentivise seniors housing by making it more competitive in the residential market. The ongoing relevance and necessity of the Seniors SEPP is evidenced by the fact that almost all of the development applications proposing seniors housing rely on the provisions of the Seniors SEPP for both permissibility and/or viability reasons. To remove this now when NSW is rapidly aging and demanding these forms of housing could have enormous ramifications that do not seem to have been thoroughly considered in the draft Housing Diversity SEPP.

## 2.2 Maximum Variation for Development Standards via Clause 4.6

Development standards within the Seniors SEPP have always been able to be varied via clause 4.6 or SEPP No. 1 (in the case of a non-standard instrument LEP). This has been an important function of the Seniors SEPP and has allowed for site specific responses to be provided where appropriate with merit. DPIE has provided no rationale for proposing an arbitrary maximum possible 20% variation, which would be moving away from recent case law on Clause 4.6 variations that have reinforced the premise of site specific merit. Again, it is unclear why the Seniors SEPP has been singled out with this 20% maximum development standard variation when no other environmental planning instrument (EPI) in NSW has been. Also, there is a distinct possibility that should this maximum be introduced, it being seen by consent authorities as a rule of thumb when considering variations to development standards in all EPIs.

Further explanation is also required as to how a 20% maximum variation is measured for a development standard such as Clause 26 of the Seniors SEPP, where there are various services, distances and also gradients that need to be achieved to ensure compliance. The application of the arbitrary control could potentially have unintended effects on non-numerical standards, such as preventing a private bus service for a residential care facility being provided in lieu of a public bus service via a Clause 4.6 variation. This has been an alternative for residential care facilities, supported by councils, planning panels and the Court where appropriate.

Another concern is that most R2 Low Density Residential zones have an FSR development standard of 0.5:1 or lower, while clause 48 of the Seniors SEPP provides a non-refusable FSR standard of 1:1. This will mean a reduction in the permissible FSR of residential care facilities in R2 zones from a 1:1 FSR in SEPP Seniors to a 0.5:1 FSR. Even R3 Medium Density Residential zones typically have an FSR development standard of between 0.7-0.8:1, which is still significantly below the 1:1 non-refusable FSR development standard of the Seniors SEPP.

The impacts of this are enormous on the continued delivery of residential care facilities and the continuum of care for residents moving to aged care. If the intention is to improve delivery, this absolutely will do the opposite. For example, on average a residential care facility building in a Residential zoned R2 or R3 for 96 residents will require a site area of 5,000-5,500sqm. The changes as proposed could double the required site area and this will significantly impact the cost of future residential care facilities projects, hindering the supply of aged care beds in NSW and also cripple the feasibility of sites already purchased by providers.

### 2.3 Schedule 1 – Environmentally Sensitive Land

BaptistCare is generally supportive of providing more clarity around this very important, yet quite ambiguous schedule in the Seniors SEPP. Given that Schedule 1 effectively switches off SEPP Seniors' applicability to land, its interpretation has long been the source of much confusion, debate and legal challenge in the industry. As such, any improvement in clarity and consistency is welcomed.

The terms in Schedule 1 need to be far more specific to remove uncertainty and their arbitrary nature. An example of this clause not operating as it should, is all land within SEPP (Sydney Drinking Water Catchment) 2011 is excluded from SEPP Seniors because the term "water catchment" is listed in Schedule 1. This results in almost the entirety of the Southern Highlands being excluded from the operation of SEPP Seniors, which leads to a lack of consistency and additional complexity when proposing seniors housing in towns with urban character such as Bowral, Mittagong and Moss Vale.

Furthermore, BaptistCare is hopeful that this proposed amendment to Schedule 1 will not in fact be used to make the Seniors SEPP excluded from more land in NSW, which appears regrettably to be the direction the Seniors SEPP has already headed with the adoption of the MRA Exclusion Zone.

### 3.0 MRA Exclusion Zone

The MRA Exclusion Zone amendment to the Seniors SEPP was adopted on 29 July 2020 and ceased the operation of the Seniors SEPP on all land identified within the MRA Exclusion Zone. This is a change that affects 13 LGAs in the Sydney Metropolitan Area.

The genesis of this amendment was a Greater Sydney Commission (GSC) investigation report released in October 2019, that came from Hornsby Shire Council and The Hills Shire Council raising concerns over the operation of SCCs on rural zoned land that adjoins urban zoned land. The purpose of the investigation was to review the cumulative impact of the operation of SEPP Seniors on the social, economic and environmental values of rural zoned land, and in particular the MRA. The report provided eight recommendations that were:

1. *Provide a greater balance between incentives for seniors housing and rural values*
2. *Adopt a place-based approach to planning in rural areas*
3. *Strengthen alignment between the Seniors Housing SEPP, the Greater Sydney Region Plan, District Plans and Local Strategic Planning Statements*

4. *Monitor and report on development outcomes to support assessment of cumulative impacts*
5. *Develop design and landscaping guidelines for seniors housing in a rural context*
6. *Strengthen consideration of environmental values on rural land*
7. *Review the viability of planning incentives in the Seniors Housing SEPP and the effectiveness of the SEPP to deliver seniors housing*
8. *Consider a pilot for a council-led place-based approach in The Hills and Hornsby LGAs*

The MRA Exclusion Zone goes well beyond the above recommendations and has effectively shut seniors housing development out of not only rural zoned land, but also a significant amount of urban zoned land within the MRA, that includes existing urban zonings such as all residential, mixed use zonings where SCCs were not previously required. Accordingly, this has taken away a considerable amount of land (both rural and urban) that has been for many years available to the seniors housing industry.

The ability to have SEPP Seniors operate on rural land with the support of a SCC has been a key and long-standing mechanism of SEPP Seniors, and its predecessor SEPP No. 5, that the industry (and the not-for-profit providers) has relied upon to secure sites without having to compete against residential developers (and invariably lose out) and therefore consistently deliver seniors housing in Sydney. Even more concerning for the industry is the exclusion of SEPP Seniors from applying to a significant amount of urban zoned land that is within the MRA, land that did not require a SCC to be issued for SEPP Seniors to apply. This amendment to the Seniors SEPP we understand has been introduced to the industry with minimal warning and without consultation and public exhibition.

This also could mean that many existing seniors housing developments within the MRA must now rely upon the “Existing Use” rights provisions of the Environment Planning and Assessment Act, 1979 as this amendment has made them prohibited development. It is therefore recommended that this part of the Seniors SEPP be updated to only include rural zoned land within the MRA Exclusion Zone, consistent with the recommendations and aims of the October 2019 GSC report.

Whilst BaptistCare typically focuses our delivery of seniors housing within existing urban zones outside of the MRA Exclusion Zone, its implementation has meant though that a significant amount of the industry has been shut out of this land. The ramifications of this are unclear, however we expect increased competition between providers to secure suitable sites, thereby driving up costs and making the delivery of seniors housing less affordable. Furthermore, no incentive mechanisms are proposed that offset the loss of this land to the industry, as discussed below.

## 4.0 Recommendations for seniors housing in the draft Housing Diversity SEPP

### 4.1 Incentives for Seniors Housing Development

The MRA Exclusion Zone amendment has resulted in a considerable amount of potential land on the urban fringe of Sydney being removed from the industry. Coupled with this the expectation that many Sydney Metropolitan councils will use the opportunity of the draft Housing Diversity SEPP to restrict seniors housing development within their LGAs. Further, no alternative has been proposed as part of the

draft Housing Diversity SEPP to provide incentives for seniors housing developers and providers to re-invest in urban zoned land, such as ageing existing villages or in urban centres.

Indeed, it is of concern that whilst the MRA Exclusion Zone and proposed amendments of the EIE embrace and go far beyond the recommendations of the GSC October 2019 report that relate to potentially restricting seniors housing, the only recommendation that could improve the delivery of seniors housing (No. 7) is notably absent from the imposed and proposed amendments to the Seniors SEPP.

Without these incentives enshrined in the Seniors SEPP, the delivery of new seniors housing in Sydney that meets modern amenity and accessibility standards, as well as market expectations, is anticipated to become more difficult and will slow. This is expected to lead to the industry in Sydney struggling to meet the peak challenge of the ageing population over the next 15 years as the baby boomer generation enters older age.

It is therefore recommended that the following also be considered for inclusion within the proposed Housing Diversity SEPP:

**a) Vertical Villages in urban centres**

The vertical villages provision (Clause 45) that provides a 0.5:1 FSR bonus be expanded to include land that permits shop-top housing. This would mean that the 0.5:1 FSR bonus could apply to business zones and therefore within local centres when a SCC is issued. An additional height bonus could also be included with this provision to accommodate the FSR bonus.

The above incentive to develop seniors in accessible locations such as mixed use/local centres could offset the substantial loss of land at the rural fringe of Sydney where seniors housing is no longer permissible on account of the MRA Exclusion Zone. If the intention is to restrict further seniors housing development on the urban fringe, then there must be incentives to bring this investment back into our urban centres and thereby reap the rewards for society by returning older people to urban life.

**b) Renewal of Existing Retirement Villages**

When SEPP No. 5 was introduced in 1982 the industry quickly utilised its powers development in the years following its introduction substantially bolstered the supply of seniors housing and aged care in NSW.

What was clearly a great success in the 1980s in delivering seniors housing and aged care to meet growing demand, is now a growing problem for the owners and operators of these ageing villages and facilities. In the 35 years since many of these retirement villages and aged care facilities were developed, community expectations for the standard and amenity of housing has increased enormously, and even more so have the expectations for seniors housing and aged care in Australia.



As such, many retirement villages and aged care facilities developed in the 1980s are no longer fit for purpose and are reaching the end of their economic life. Not only are these retirement villages substantially lacking in modern design amenity, comfort and quality, but many also do not comply with current accessibility standards. Given that life expectancy in Australia has increased nearly 10 years since the introduction of SEPP No. 5 and the average age of residents in retirement villages is now 80 years, accessibility for older, more frail and impaired residents is of enormous importance.

Renewal and redevelopment is therefore urgently needed to secure the long-term future of these villages and facilities. However, a major barrier for renewal lies in that many of these villages are either at or near the highest development potential afforded to them under the Seniors SEPP. Therefore, there is little or no additional density available under the current planning framework to pay for renewal. This is because SEPP Seniors is in many respects the same fundamental instrument as SEPP No. 5 and typically does not provide any additional density to spark renewal.

The Planning Proposal pathway to increase Local Environmental Plan (LEP) building height and floor space ratio (FSR) development standards applying to the site is typically the only avenue available, however this can be a long and difficult process, with little certainty of success – and highly contingent on the local attitudes to seniors housing that differs from Council to Council. A Planning Proposal to amend an LEP is also not an ideal approach given that SEPP Seniors is the instrument that by design is intended to be used for the development of seniors housing and aged care in NSW, rather than LEPs.

In order to provide financial incentive for owners and operators to renew their ageing villages and facilities, there needs to be a planning mechanism that acknowledges the appropriateness and social benefit of the long term use of sites for seniors housing and provides a density incentive provision that allows for redevelopment beyond what would otherwise be permitted under the Seniors SEPP.

It is therefore recommended to include a new provision in the Seniors SEPP that works in a similar way to the Vertical Villages clause of Seniors SEPP (clause 45). Such a clause could apply to villages and facilities that were mostly (i.e. 50%) constructed prior to say 1992 and meet the site requirements of clause 40. Should a site meet this criterion, then the site would be eligible for a 0.5:1 FSR bonus and a building height bonus, provided a SCC is issued.

To ensure a site can appropriately accommodate the additional density and building height, it is recommended that the provision provide specific matters for consideration to encourage good design, site planning and minimal amenity impacts upon neighbouring properties and the surrounding community. Given the recent changes to the Seniors SEPP where Planning Panels now only issue SCC's, there is additional scrutiny on local context and compatibility for SCC's that will help ensure the renewal of old villages under an incentive provision is appropriate for a locality. However, Planning Panels must be emboldened to issue SCCs. The large number of SCCs that have been refused since Planning Panels have had issuing authority is troubling for the

industry and in our opinion points to a failure in the application of the legislation that needs to be addressed by DPIE.

#### 4.2 Exclusion of Social Housing Providers from Developer Contributions

Whilst “Social Housing Providers” are excluded from the payment of developer contributions under the Section 94E Ministerial Direction dated 14 September 2007, this exclusion is considered best placed within the Seniors SEPP itself to reinforce its status and ensure it is not overlooked by Council’s and not-for-profit providers alike.

### 5.0 Affordable Housing and Boarding Houses

BaptistCare has been providing affordable, social and transitional housing since 1953 to seniors, single parent families and women experiencing domestic violence. As a social housing provider and registered community housing provider, BaptistCare is supportive of DPIE’s proposal to expand incentives for the delivery of infill affordable housing which will assist in the delivery of a range of social and affordable housing types.

We note that some of the changes proposed to the boarding house provisions in the ARH SEPP, as proposed under the EIE, could hinder the ability of BaptistCare to provide this form of accommodation. The removal of boarding houses as a mandated permissible use in the R2 Low Density zone is considered to be a backward step in this regard. The negative connotations associated with the term ‘boarding house’ and a lack of understanding by the community as to what people actually occupy this form of accommodation often results in opposition to such developments. Simply changing the name of this type of accommodation and also undertaking a broader community campaign to explain such developments would go long way to resolving this issue.

In a time where demand for affordable housing is at an all-time high, DPIE should be seeking to facilitate and make the provision of affordable housing as easy as possible. Given some councils attitude and the community’s generally negative perception of boarding houses, allowing local councils decide where this land use is permissible could result in a reduction of permissibility and therefore a reduced ability to deliver this type of accommodation. DPIE has set out that LAHC will be able to deliver a boarding house regardless of permissibility if dwelling houses are permissible. This should be expanded to all community and social housing providers.

Under the current provisions of the ARH SEPP, a bonus of 20% FSR is available for the delivery of boarding houses. Whilst this bonus is a positive step in incentivising this type of accommodation, it is often not possible to realise the FSR bonus because the height and FSR controls are usually closely linked and to be able to achieve the bonus FSR a variation to the maximum height control is required. Councils are often hesitant to approve both height and FSR variations. In order to resolve this, we hope that DPIE would consider height and/or FSR bonus as this would increase the flexibility to be able to incentivise this type of development.



Furthermore, there is no mention in the EIE whether there will be any change to the FSR bonus incentives of clause 13 of the ARH SEPP relating to infill affordable housing. This is a provision that BaptistCare has relied upon for recent development applications, allowing us to deliver affordable housing to those in need. We would recommend this important provision not have its incentive reduced.

Finally, the exemptions relating to lifts and parking as proposed for the LAHC in the Seniors SEPP should be expanded to all social housing providers. Community and social housing providers face the same viability issues as the LAHC and should be afforded the same dispensations to assist with the delivery of affordable housing.

## 6.0 Conclusion

BaptistCare would like to thank DPIE for the opportunity to provide a submission in respect to the draft Housing Diversity SEPP. BaptistCare as a significant not-for-profit provider of seniors housing, aged care, affordable and social housing therefore has a keen interest in planning matters that could potentially impact its delivery.

As such, BaptistCare remains concerned that the amendments proposed in EIE and those already implemented with the MRA Exclusion Zone could have an adverse effect in the delivery of seniors housing and affordable housing in NSW. However imperfect the Seniors SEPP is, it has provided the not-for-profit industry with a level of certainty and known approval risk for almost 40 years and has been extremely successful in achieving its aims. Furthermore, the proposed amendments to the boarding house provisions in the ARH SEPP, as proposed under the EIE may hinder the ability of BaptistCare to provide this form of accommodation.

BaptistCare is hopeful that the above submission and recommendations are considered by DPIE and the integrity of the Seniors SEPP and ARH SEPP is maintained, together with the imposition of incentives to spark seniors living development and affordable housing in our urban centres and the renewal of older villages.

Yours sincerely



**Steven Ball**  
Development Director – Property  
BaptistCare

Submitted on Wed, 09/09/2020 - 16:46

Submitted by: Anonymous

Submitted values are:

Submission Type: I am making a personal submission

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Suburb/Town & Postcode: [REDACTED]

Submission file:

Submission: Just some questions to be clarified and suggestions and also to give support to housing providers from the private sector to assist in maintaining affordable housing. If there will be community housing providers - does that mean that private owners of property who provide low cost accommodation be taken over? Or would they be considered as a "delivery partner"? 2. Various legislations and policies may provide a two edge sword to landlords eg a property that is no longer viable to run as a business be changed but then the owner is penalised with a fine like bill to council for removing the property from the market. Or what would happen if that same property is changed to provide more low cost accommodation being available to more residents (would a fine still be imposed by the council?) Would that fine contribute to the the Council Affordability Contribution Scheme (From the New Housing Diversity SEPP Amend the provisions of the ARHSEPP to: o ensure that councils can continue to mitigate the loss of existing affordable housing by requiring monetary contributions;) 3. Could land tax exemption still be available for operators who continue to provide low cost and affordable accommodation 4. To support Sustainability Action Plans for a business to implement that would include - solar power installation - rainwater tanks - recycling of building materials to be re-used on site - recycling of food wastes (eg compost bins, worm farms) used for lawns and food growing plants - fittings to reduce water and other use - reduced travel/costs for people living on site and close to their workplace. Could education programs (as run by our council) and other incentives be encouraged (eg discounted items, low cost removals for reusable materials for building and trade industries) 5. For low cost/affordable housing already established in certain zones that is, can they still continue to operate 6. Would there be any future expectantions that Boarding houses have co-living features even when it is traditional and established for over 50 years+ 7. If in some cases there may be a cluster of boarding houses - can those that may be in residential areas still be able to stay there despite the zoning 8. What will happen to already established more than 12 room boarding houses - will they still be allowed to still operate. I am assuming that they exist in the inner west of Sydney 9. Is the car parking related to on site or off street parking availability 10. Could there be a change to legislation so that victims/survivors of DV stay in their homes and the perpetrator removed/jailed. This will maintain stability for the family especially when children are involved 11. Allow housing in all areas so that equity is allowed for all eg even prestigious suburbs should be able to provide affordable housing especially to those who are essential workers eg supermarket, healthcare workers etc 12. Does proof of low rental/tariff relate to the suburbs market value rent/tariff or specifically to the same features available.

URL: [https://pp.planningportal.nsw.gov.au/admin/structure/webform/manage/draft\\_plans\\_and\\_policies/submission/93271/resend](https://pp.planningportal.nsw.gov.au/admin/structure/webform/manage/draft_plans_and_policies/submission/93271/resend)

4 September 2020

NSW Department of Planning, Industry and Environment  
Housing Strategy Team  
GPO Box 39  
SYDNEY NSW 2001

Dear Sir/Madam

**Proposed Housing Diversity SEPP**

Council appreciates the opportunity to comment on the proposed Housing Diversity SEPP and offers the following comments.

Council welcomes the Department's review of the suite of SEPPs relating to housing diversity. Council, on a number of occasions, has made submissions relating to the appropriateness of SEPPs in all circumstances and in particular SEPP (Housing for Seniors or for People with a Disability) 2004.

Council understands the housing pressures facing NSW, and the various planning responses proposed to enable a range of housing types to meet that demand. Council raises significant concerns about the applicability of many of these housing initiatives in regional NSW. Council reiterates the inappropriateness of a 'one-size-fits-all' approach to many of these initiatives. Council continues to oppose the imposition of state wide planning controls that are contrary to the long term strategic work that Councils are required to complete. Council urges the Department to consider the implementation of many of these provisions as model clauses for voluntary insertion into LEPs as an alternative to a SEPP.

The comments below have been divided up into different themes.

**Proposed land use definitions**

The introduction of the specific land use definitions of *Student housing*, *Build-to-rent housing* and *Co-living developments* are all variations of a *Residential flat building*. Council impresses on the Department that *build-to-rent housing* and *co-living developments* are not specific land uses, they define how the development is used post-construction and should not be mandated in any circumstances within specific land use zones. Council suggests that if the particular development proposed and housing market demands these types of housing products, the market will drive their production. Planning instruments should not hinder the construction of these housing products.

Council suggests that if the Department wishes to pursue additional land use definitions, a more appropriate method would be to introduce optional SI LEP model clauses, similar to the proposed Natural Disasters clause. Additionally, any new land use definition needs to be very specific in what differentiates the development from a residential flat building, without burdening Councils with unenforceable tenure arrangements.

#### Proposed development types

##### *General comments*

The Department needs to make an assessment of the appropriateness of permitting *Student housing*, *Build-to-rent housing* and *Co-living developments* on bushfire prone land, flood affected land and land within Heritage Conservation Areas particularly if proposed as complying development.

Council notes that elements of SEPP 65 need to be considered for the new housing types. It is suggested that the SEPP 65 Design Guidelines should fully apply, and these developments (student housing, build-to-rent housing and co-living housing) not be seen as a lower-quality product compared to other residential flat buildings. As suggested in the EIE, it is strongly suggested that Design Guidelines be developed and released at the same time as the SEPP provisions apply for *Student housing*, *Build-to-rent housing* and *Co-living developments* to ensure they achieve Theme 4 – Responsive and resilient housing of the Housing Discussion Paper.

Council is apprehensive about the inclusion of the proposed new land use definitions of *Student housing*, *Build-to-rent housing* and *Co-living developments* and the post-consent compliance issues that it may bring. With the increasing popularity of Short Term Rental Accommodation (i.e. Air BnB and the like), there is a risk that these new products are purchased with the intent of being used for this purpose, creating greater community angst and frustration. Proving the property is being used for one of these purposes is inherently problematic for Councils, and is reliant on the goodwill of the developer and subsequent owners not to use it for this purpose.

It is also noted that the Department has conducted several series of consultation concerning Short Term Rental Accommodation with a framework released in June 2018, however, no amendments to the planning framework have been made to date. Council urges the Department to consider delaying the introduction of the new land-use definitions until changes have been made to the planning framework for short term rental accommodation.

### *Car parking*

Council is very concerned about the proposed minimum car parking rates and that they do not appropriately reflect the impacts of these proposed development types on the availability of on-street parking post-construction nor levels of car ownership in regional and rural locations. For developments that are located adjacent to or within 400m of transport hubs, the proposed car parking rates may be appropriate. However, for those developments that are located in regional NSW or not close to a transport hub, the car parking rates are grossly inadequate. It is disappointing that Council cannot refuse consent where appropriate car parking is not provided. Car parking requirements in regional locations should be in accordance with the relevant Council DCP requirements.

With respect to car parking, it highlights a further case where a model clause may be a more appropriate approach to the implementation of these development types.

### *Student housing*

Council supports the implementation of student housing and welcomes that the land use is not compulsory in any zone. However, Council considers that this type of development should be located within a certain radius of an education campus, say 400m which represents a 5-minute walk. Council suggests that given the permissibility of student accommodation under the Education SEPP, an amendment allowing student accommodation off campus within 400m of the campus may be a more appropriate response to providing this housing product. The supporting EIE to this amendment notes that "it is expected that councils will permit student housing in areas that are in close proximity to educational establishments". It is difficult to see from the EIE how Councils will be able to locate student housing without specific location criteria contained in the SEPP.

Note that the Bathurst campus of Charles Sturt University is located within the noise footprint of the Mount Panorama motor racing circuit. Council does not support any SEPP provisions that would enable additional permanent residential accommodation in the vicinity of the Mount Panorama circuit.

Council supports the proposed amendments taking into consideration the Council LEP with respect to height of buildings and floor space ratio.

Will student housing apply to all types of educational establishments or only for tertiary campus? Would this development type apply to a secondary school with boarding facilities?

### *Co-living development*

Council finds it difficult to differentiate this type of product from either a boarding house or a residential flat building. Concerning co-living developments, Council suggests that in regional cities, car parking provision should be in accordance with the relevant Council DCP requirement.

Council is concerned that co-living developments are proposed to be mandated in the B4 Mixed-use, R3 Medium density and R4 High-density zones. The decision whether these uses should be included within these zones should be made by Council rather than a SEPP.

#### *Build-to-rent housing*

Council has significant concerns about this proposed land use. The only differentiation between this development type and a residential flat building appears to be the length of tenure, not a differentiation based on a land-use planning matter.

Anecdotally, this housing product is able to be developed under current planning regulations and the pressure for this type of development seems to revolve around the NSW Treasury incentives rather than achieving improved planning outcomes. It would also appear that the definition for *Build-to-rent housing* is proposed to require long term leases. The private rental housing and security of tenure<sup>1</sup> research paper (2015) concludes that the two key elements of security of tenure for renters are:

- the length of the fixed term of the tenancy and
- the circumstances in which the landlord can terminate the tenancy at the end of the fixed term or during a periodic tenancy after the fixed term.

Council suggests that there appears to be alternative mechanisms to improve housing affordability than using the Planning Scheme to effect these matters.

Council is concerned that build-to-rent housing is proposed to be mandated in the B3 Commercial core, B4 Mixed-use, R3 Medium density and R4 High-density zones. The decision whether these uses should be included within these zones should be made by Council rather than a SEPP, particularly in regional and rural locations.

Council fails to see the benefits of this housing type within regional NSW, particularly given the opportunities for similar developments to be constructed to cater for this portion of the housing market.

#### Updating existing provisions

#### *Seniors Housing SEPP*

Council has recently made representation to the Department in response to the Metropolitan Rural Land amendment to the Seniors Housing SEPP. A copy of the submission is **attached** for your information. In this circumstance, it is considered appropriate that a review should be undertaken in relation to fringe rural land throughout NSW that is currently subject to the site compatibility certificate process. As you would be aware, Councils have recently completed their Local Strategic Planning Statements, setting the growth opportunities for their regions for the ensuing 20 years. Council maintains that the LSPS represents its desired future growth

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<sup>1</sup> <https://www.parliament.nsw.gov.au/researchpapers/Documents/private-rental-housing-and-security-of-tenure/Private%20rental%20housing%20and%20security%20of%20tenure.pdf>

patterns, and the encroachment of residential housing, as enabled by the Seniors Housing SEPP on rural land, is inappropriate.

Council specifically references Action 12.19 of the Bathurst Region Local Strategic Planning Statement which reads "To protect rural lands at the City's edges from inappropriate development and urban land-use encroachment such as seniors housing that is enabled by State Environmental Planning Policies". Action 13.9 reads "To protect rural land from inappropriate development and urban land-use encroachment such as seniors housing". Combined, these Actions sets a clear direction that Council wishes to protect its rural land within the curtilage of the City for high-value agricultural production, scenic and recreation uses.

Council supports the Department updating some of the Seniors Housing SEPP definitions to be consistent with the SILEP. However, the Department should consider a wider and more comprehensive review that takes into account further general updates to ensure the Seniors Housing SEPP is consistent with the SILEP land zones and also an interpretation of those zones which constitute 'land for urban purposes'. In practice, Councils currently rely on the court's interpretation.

Council supports the review of Schedule 1 – Environmentally Sensitive Land of the Seniors Housing SEPP. Council requests further consultation be undertaken to ensure that areas of Environmentally Sensitive Land specific to individual LGA's be considered as part of this amendment. Importantly Bathurst Regional Council requests that rural lands and lands within the noise footprint of the Mount Panorama motor racing circuit be included as Environmentally Sensitive Land for the Bathurst Region.

#### Boarding House Provisions (ARHSEPP)

Council welcomes the Department removing boarding houses as a mandated land-use within the R2 Low-Density Residential zone.

Council is supportive of applying a consistent approach to FSR bonus irrespective of the scale of the development.

#### LAHC Self-Assessment Provisions (ARHSEPP)

The provisions relating to the LAHC self-assessment do not appear to be appropriate, especially with the proposed increases to the self-assessment limits. Council raises significant concerns with the limited timeframes for consideration of the proposed development, generally 21 days, and this should be increased in line with the maximum number of dwellings able to be considered under the self-assessment process.

Council wishes to impress on the Department the importance that LAHC comply with the required car parking spaces that apply to the LGA, the engineering standards that apply to the LGA, especially road widths, utility services and that BASIX compliance apply equally to the LAHC and private developments. With reduced road standards, Council will experience difficulty in collection of garbage services on a weekly basis. This could be compounded with a reduced rate of car parking for the development.

Council is disappointed to note that there are proposed clarifications to concessions relating to the provision of lift access if the housing is provided by or on behalf of an LAHC. This appears to place the developments by the LAHC at an advantage, and the residents will be disadvantaged for this concession.

Subdivision of Government-owned land Provisions (ARHSEPP)

Council raises significant concerns relating to this proposed provision in the ARHSEPP. Council considers that consent should be sought for the subdivision of the land regardless of ownership to ensure that it can be appropriately serviced and complies with the relevant local planning controls. Within the Bathurst region, Council is the water and sewer authority.

Council opposes the insertion of the proposed clause to permit the subdivision of land without consent on any land within the Bathurst region, particularly land in a rural zone and land within the noise footprint of the Mount Panorama motor racing precinct.

If the Department were to pursue this proposed provision further, the subdivision must meet the prevailing Minimum Lot Size as provided for in the relevant Council's LEP.

Amendment to the permissible floor area for Secondary Dwellings in rural zones

Council is supportive of allowing Councils to set the maximum floor area of secondary dwellings in rural areas, however suggests that the Department negotiate a method of amending Clause 5.4 of the SILEP to facilitate this change. Council's should not need to be reliant on a SEPP to facilitate this type of development.

Council awaits your further advice in respect to this matter.

If you have any queries please contact me on 02 6333 6213.

Yours faithfully



Neil Southorn  
**DIRECTOR**  
**ENVIRONMENTAL, PLANNING & BUILDING SERVICES**

Copy to: **NSW Department of Planning, Industry and Environment**  
**Western Region**  
**[westernregion@planning.nsw.gov.au](mailto:westernregion@planning.nsw.gov.au)**





7 August 2020

Ms S Chappel  
Director, Housing Policy  
NSW Department of Planning, Industry & Environment  
GPO Box 39  
SYDNEY NSW 2001

Dear Ms Chappel

**Submission to State Environmental Planning Policy (Housing for Seniors or people with a Disability) Amendment (Metropolitan Rural Areas Exemption) 2020**

Council notes with great interest the recent notification of the abovementioned amendment to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (the SEPP).

Council has long argued, and made a number of representations to the Department, that the application of the SEPP, particularly at the urban interface of the City of Bathurst is inappropriate. This also extends to the Mount Panorama precinct where noise and access restrictions would not be appropriately managed for these types of developments.

State Environmental Planning Policies continue to have an adverse impact on parts of Bathurst's rural edges, including the Macquarie River floodplain, where urban growth, such as seniors housing, has been permitted to encroach onto otherwise rural land in an unplanned way.

Council invests significant resources into the strategic planning of the region, including the recently adopted Vision Bathurst 2040: Bathurst Regional Local Strategic Planning Statement. Action 12.19 of the LSPS reads "To protect rural lands at the City's edges from inappropriate development and urban landuse encroachment such as seniors housing that is enabled by State Environmental Planning Policies", and Action 13.9 reads "To protect rural land from inappropriate development and urban landuse encroachment such as seniors housing". Combined, these Actions set a clear direction that Council wishes to protect its rural land within the curtilage of the City for high-value agricultural production, scenic and recreation uses.

The LSPS sets the strategic direction for the growth of the City and that strategic direction should not be undermined by SEPPs, such as seniors housing SEPP, that enables the unplanned encroachment of residential land uses onto valuable rural lands.

Direction 26 of the Central West and Orana Regional Plan discusses increasing choice for seniors and foreshadows a review of the SEPP in light of regional circumstances.

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**Reference:** NM:LMW:02.00018  
**Enquiries:** Mr N Murphy 02 6333 6514  
Inm NSW DoPIE.docx

NSW Department of Planning, Industry & Environment  
7 August 2020

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Council suggests that now is an opportune time to commence that review, given the recent amendment to the SEPP for metropolitan Sydney.

Council awaits your further advice in respect to this matter.

If you have any queries please contact Mr Nicholas Murphy of Council's Environmental Planning & Building Services Department on 02 6333 6514.

Yours faithfully



Neil Southorn  
**DIRECTOR**  
**ENVIRONMENTAL, PLANNING & BUILDING SERVICES**

CC: NSW Department of Planning, Industry and Environment  
Western Region  
westernregion@planning.nsw.gov.au

1 September 2020

Our Ref: 20/234666  
Contact: Gill Dawson

Mr Jim Betts  
Secretary, Department of Planning, Industry and Environment  
Locked Bag 5022  
PARRAMATTA NSW 2124

Dear Mr Betts,

**Re: Bayside Council Submission – Proposed SEPP (Housing Diversity)**

Thank you for the opportunity to provide comment on the proposed State Environmental Policy (SEPP) - Housing Diversity. Bayside Council has reviewed the Explanation of Intended Effects (EIE) and generally supports the proposed SEPP, however, would like the following matters considered in its finalisation.

**1. Consolidate existing housing related policies**

Bayside Council supports the consolidation of the three existing housing related SEPPs, being:

- SEPP (Affordable Rental Housing) 2009
- SEPP (Housing for Seniors and People with a Disability) 2004
- SEPP No 70 – Affordable Housing (Revised Schemes).

This will simplify the planning framework, however, further consultation on the actual wording of the proposed SEPP would provide further clarity on the intended outcomes.

**2. Introduce new housing types and planning provision for build-to-rent, student housing and co-living**

Council is generally supportive of the introduction of new definitions for these housing types but would like the following matters to be given consideration.

*Build-to-Rent*

The proposed introduction of a development type Build-to-Rent (BTR) is supported as it would diversify the rental choice available with a product that has a minimum three-year lease requirement.

**Postal address**

PO Box 21, Rockdale NSW 2216  
ABN 80 690 785 443

**Bayside Customer Service Centres**

Rockdale Library, 444-446 Princes Highway, Rockdale  
Westfield Eastgardens, 152 Bunnerong Road, Eastgardens

E [council@bayside.nsw.gov.au](mailto:council@bayside.nsw.gov.au)

W [www.bayside.nsw.gov.au](http://www.bayside.nsw.gov.au)

T 1300 581 299 | 02 9562 1666



Bayside Council does not support the mandating of BTR in the B3 Commercial Core Zone under Botany Bay LEP 2013 as it will detract from the objectives of that zone, being to encourage appropriate employment opportunities and provide a wide range of retail, business, office, entertainment, community and other suitable lands uses. High density residential in these commercial core areas detracts from these objectives.

Of specific concern for Bayside Council is the B3 Commercial Core located at Eastgardens (Westfield Eastgardens being located on this site) in close proximity to the Botany Industrial Park (BIP). A Quantitative Risk Assessment for the BIP identifies a societal risk increasing with increasing population. Refer to the link below.

<https://www.planning.nsw.gov.au/-/media/Files/DPE/Reports/quantitative-risk-assessment-2018-botany-industrial-park-report-2020-01-24.pdf?la=en>

The site is currently the subject of a Planning Proposal that includes floor space ratio (FSR) and height uplift. Societal Risk is a major issue for the site and has been the subject of numerous studies, peer reviews and consultation with DPIE Hazards Team as part of the Planning Proposal process. Should a decision be made to mandate BTR in the B3 Commercial Core Zone in this location, consultation should be undertaken with the DPIE Hazards Team and consideration should be given to excluding this land for the purpose of BTR.

Council supports the development of BTR in the R4 High Density Residential and the B4 Mixed Use zones, but does not support mandating BTR in the R3 Medium Density zone as this scale of development would be out of character with the local areas within Bayside. Councils should be able to determine whether this type of housing is permitted within the R3 Medium Density zone in their local area.

The possibility of BTR to transition to a strata subdivided apartment is also not supported, with the preference for this type of housing to remain in the one ownership offering minimum three year leases in perpetuity and providing housing choice in the rental sector over the long term.

The SEPP 65 Apartment Design Guide should apply to this type of development, as good residential amenity should be the same for all homes.

#### *Purpose Built Student Housing*

The proposed introduction of a development type of Purpose Built Student Housing (PBSH) is supported.

PBSH providers currently use the new generation boarding house provisions under the SEPP (Affordable Rental Housing) and receive bonus floor space provisions despite not providing affordable housing. Some of these are major developments. For example, one purpose built student housing development application in Bayside is for 435 rooms.

The development of guidelines for this type of housing is supported and could form part of a revised SEPP 65 Apartment Design Guide.



The removal of bonus provisions for this type of housing is supported, as is the proposal for each Council to determine in which zones they would be permissible and that they would be subject to a Council's Local Environmental Plan height of building and FSR provisions.

### *Co-living*

The proposed introduction of Co-living as a development type is supported.

Currently this type of housing is being assessed under the *New Generation Boarding Houses* provisions of the SEPP (Affordable Rental Housing) thereby receiving bonus FSR provisions despite not being affordable rental housing.

The removal of FSR bonus provisions for this type of housing is supported, as is the proposal that they only be mandated in zones where residential flat buildings are permitted and are subject to a Council's Local Environmental Plan height of building and FSR provisions.

The SEPP 65 Apartment Design Guide should apply to this type of development, with any specific requirements associated with this type of building included in a revised document.

### **3. Boarding House Provisions**

The proposed amendments to the boarding house provisions is supported, namely the definition to require boarding houses to be affordable rental housing, the removal of boarding houses being mandated in the R2 Low Density Residential Zone, the reduction of the FSR bonus to a flat 20% and the requirement that they be managed by a registered not-for-profit community housing provider.

The development of *New Generation Boarding Houses* in low density residential areas has been of concern to many Councils, including Bayside Council, since the introduction of the SEPP (Affordable Rental Housing) in 2009. Issues have included:

- Mandating the development in the R2 Low Density Residential Zone
- The number of rooms in developments
- The bulk and scale of the development
- That they do not deliver affordable rental housing as the SEPP intended, yet they are still gaining a significant bonus FSR as an incentive.

The proposed SEPP will address many of these concerns.

It is noted, however, that boarding houses may continue to be developed in the R2 Low Density Residential Zone on land owned by the Land and Housing Corporation (LAHC). Bayside Council is of the view that any such development be limited to 12 rooms and not be eligible for a FSR bonus to ensure that the bulk and scale of any development is more in keeping with the local character and amenity.

The proposed increase in the number of dwellings that can be self-assessed by LAHC from 20 dwellings to 60 dwellings (with a maximum HOB 8.5m) is not supported as this is a significant increase in the number of dwellings with the potential for adverse impacts on the surrounding residential amenity. This assessment should remain with Councils.

In conclusion, it is considered that the proposed SEPP (Housing Diversity) will address many concerns held by Bayside Council in relation to the proliferation of boarding houses in our low density residential areas without actually providing affordable housing. Council also supports a Council's LEP development standards prevailing to the extent of any inconsistency with the proposed SEPP.

Bayside Council would, however, like consideration to be given to the matters raised in this submission in the finalisation of the proposed State Environmental Planning Policy (SEPP) - Housing Diversity.

If you have any further enquiries regarding this submission, please contact Gill Dawson, Senior Urban Planner on 9562 1660 or [gill.dawson@bayside.nsw.gov.au](mailto:gill.dawson@bayside.nsw.gov.au).

Yours sincerely

A handwritten signature in cursive script that reads "Meredith Wallace".

Meredith Wallace  
**General Manager**







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9 September 2020

NSW Department of Planning, Industry and Environment  
Online submission via: [www.planningportal.nsw.gov.au/proposed-new-housing-diversity-sepp](http://www.planningportal.nsw.gov.au/proposed-new-housing-diversity-sepp)

Dear Sir/Madam

**Re: Submission to the Explanation of Intended Effect for a proposed new Housing Diversity State Environmental Planning Policy (Housing Diversity SEPP)**

Thank you for the opportunity to provide feedback to the EIE for a new Housing Diversity SEPP.

Bega Valley Shire Council (Council) supports the Governments' commitment to "...ensuring that there is an adequate supply of new dwellings that are affordable, well-designed and located in places that people want to live". Council supports consolidation of the three SEPPs, introduction of measures to avoid unintended outcomes and the introduction of new land-use terms to facilitate greater housing diversity.

It is recognised that there is great need for housing solutions that can be applied by families and singles at the local level, and Council would encourage further work in this space such as a broader policy review with the purpose of strategically addressing housing affordability across the state. This could encompass consideration of the draft SEPP in the broader context of the housing needs of metropolitan and regional LGAs, short-term holiday letting exemptions, manufactured housing estate and caravan park legislation, complying development pathways and other state-level housing sector levers.

***New Land Use Definitions***

The introduction of new land-use terms to encourage greater housing diversity is supported, but Council also suggests including definitions for tiny homes and tiny home communities (or low density multi dwelling housing). This would increase the certainty around these land uses including where they are permitted as well as requirements around BASIX, Planning for Bushfire Protection and developer contributions. Complying development pathways could also be developed for these land uses to ensure good quality outcomes.

It is also noted that currently there is confusion around where manufactured home estates are permitted, particularly where they could be considered as multi dwelling housing or an "innominate use". It would be appropriate to address this matter by amending SEPP 36 and including the definition "manufactured home estate" into the Standard Instrument LEP to provide more certainty.

***Minimum Car Parking Provision***

The proposed car parking requirements for each of the three new land uses do not take into consideration the lack of public transport and high levels of private car dependency and ownership of

Regional NSW. It is recommended that a separate, evidence-based regional car parking criterion is established for all three of the new land use definitions.

### ***Build-to-rent housing (BTR housing)***

Council supports a build-to-rent housing definition and suggest that there may be an opportunity to amend the draft SEPP to achieve a minimum proportion of affordable housing units as part of BTR housing. Consideration could also be given to possible benefits of permitting BTR housing as part of a wider multi-tenure development comprising apartments and town houses, some of which are built for sale to increase financial feasibility.

Excluding the incentive of reduced car parking spaces (which Council does not support), the EIE does not make it clear why a developer would choose to use the BTR housing definition over a residential flat building (RFB). Perhaps this land use definition should not be part of this consolidated SEPP so much as an additional definition for the SI LEP.

The proposal to include a minimum number of dwellings (50) in the definition of BTR housing would likely prevent the development type being carried out in regional areas such as Bega Valley Shire because of the requirement for larger sites, higher building limits or higher floor space ratios. It is questioned whether a minimum number of dwellings is necessary.

In addition, Council is concerned that permitting strata subdivision after only 15 years may encourage a lower quality construction standard and provide a disincentive for higher quality design and fittings and better sustainability outcomes.

### ***Student Housing***

The proposal to include development standards in the SEPP for student housing is supported, provided that a separate evidence-based car parking criterion for regional areas is established.

In regional areas, student housing could be permitted in B4 and R3 zones that are within 2kms of a tertiary educational establishment.

It is recommended that all facilities should provide access to an outdoor communal area that complies with a minimum solar access requirement.

### ***Co-living***

The definition of co-living specifically uses the term “adults”. Is the intention that a single parent with a child cannot live in a co-living apartment, and if so, further clarification is required.

It is recommended to retain the 25% communal open space control and include solar access minimum requirements because 4m<sup>2</sup> of private open space per room is not adequate.

### ***Updating existing provisions***

#### ***Boarding house definition***

The proposed definition of boarding house specifically uses the term “adult”. Again, is the intention that a single parent with a child cannot live in a co-living apartment, and if so, further clarification is required.

### *Secondary dwellings*

Support move to allow Councils to set the maximum size of a secondary dwelling in rural zones. In addition, and for consistency, Councils should be able to set the maximum size of secondary dwellings across all rural and residential zones in the Shire.

It is recommended that consideration be given to moving the complying development pathway for secondary dwellings from this SEPP into the SEPP (Exempt and Complying Development Codes) 2008 Low Rise Housing Diversity Code to increase awareness of this approval pathway.

### ***Seniors SEPP – Location and access to facilities provision***

While the purpose of the Seniors SEPP and Site Compatibility Certificate pathway is good in theory, the SEPP is rarely applied in Bega Valley Shire due to the difficulty of achieving the required access grades and the limited public transport in the Shire.

Council would welcome an investigation into the feasibility of application of the Seniors SEPP for regional areas with a view to considering whether a separate criterion is required to encourage development of Seniors Housing in these areas.

Council is grateful for the opportunity to comment on this matter. Anna Bowman, from Council's Strategic Planning section is available on 6499 2384 or [abowman@begavalley.nsw.gov.au](mailto:abowman@begavalley.nsw.gov.au) to discuss it in more detail.

Sincerely

Alice Howe  
Director Community, Environment and Planning

## **Better Planning Network Inc. submission to the exhibition of the Housing Diversity SEPP Explanation of Intended Effects (EoIE).**

The Housing Diversity SEPP (HDSEPP) aims to consolidate the following three existing SEPPs:

- State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARHSEPP)
- State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 (Seniors SEPP)
- State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes) (SEPP 70)

A review of the ARHSEPP is long overdue. Under the ARHSEPP boarding houses have been marketised and financialised in ways that has not delivered ARHSEPP's original intent.

Developers identified market opportunities for student housing that has been a lucrative earner and not produced affordable rental housing for local communities. We welcome the proposal that 'student housing' will be included as a new LEP definition and that student accommodation will not get any bonus FSR.

The marketisation of boarding houses has lately shifted to co living spaces (upmarket boarding houses). currently allowable in all residential zoning. We therefore welcome the proposal that co living spaces will be included as a new definition

The rebranding of boarding houses and market initiatives under the existing SEPP of 'co living spaces' is not about affordability.

It is proposed that co-living development would contain room sizes (30-35 31 metres) that would sit between boarding house rooms (10sq. metres) and studio apartments in terms of size. Room size and location are key drivers of housing affordability.

Creating a separate definition for co living spaces and clearly separating from affordable housing is supported by Better Planning Network Inc. (BPN).

BPN ( Better Planning Network Inc.) supports the requirement for boarding houses to provide affordable housing and the proposed new definitions:

boarding house means an affordable rental building that—

- (a) provides lodgers with a principal place of residence for 3 months or more, and
- (b) is managed by a registered not-for-profit community housing provider (CHP), and
- (c) has some shared facilities, such as a communal living room, bathroom, kitchen or laundry, and
- (d) has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or two adult lodgers,

Reducing the 0.5:1 bonus if the FSR is under 2.5:1 to a maximum of 20% is also supported. In low and medium density FSR zoning the bonuses are even higher.

Removing the blanket application of the SEPP across all zones is welcomed. However, noted that public land is exempted.

The proposed changes still provides the developer incentive of returning developments to the market by charging market rents, strata subdividing BTR, selling whole buildings or units etc. after a period of some years.

How this will be operationalised and monitored remains a concern given the inadequate monitoring under the existing SEPP including insufficient data and reliance on under resourced local councils. Removing the 2000 date and replacing it with a provision

covering the previous 5 years is welcome. This proposal linked to public compensation for any loss of affordable housing sounds like a much needed improvement . However how that will be calculated remains to be seen. Existing Land and Environment court rulings found that the government cannot provide sufficient and reliable evidence. As stated it is essential that calculation criteria and monitoring is consistent and effective to ensure the loss can be demonstrated in the public interest and not organised by developers to minimise costs and maximise profits aided by a gap in public monitoring. Developers have no requirement to protect the public interest. Their brief is to minimise costs and maximise profits. Protecting the public interest is the responsibility of the government. We strongly advocate for sufficient resourcing of the public sector to effectively protect the public interest for now and future generations. We look forward to details of how the public interest will in effect be protected.

This is particularly important given the continuing arrangement allowing housing developed under the SEPP to return to the open market after 10 years and the requirement to compensate for the loss of affordable housing. This proposal will continue to undermine the stated purpose of providing housing that is equitably affordable and not just affordable for the financially well off.

We understand this provision is in effect an incentive for developers however it undermines the continual provision of affordable housing. Supporting Community Housing Providers to manage 100% affordable housing in perpetuity should be seriously considered under the SEPP. Also provisions to protect tenants should be a requirement e.g. offering tenants first right of purchase and retaining a % of units as affordable housing.

We note that proposed provisions in the draft SEPP do not apply to government owned land in any zoning. It is unclear how the government will develop on publicly owned sites. Consideration should be given to affordable and social housing as a priority. Any development should be subject to LEP requirements in the zone and should be kept as affordable or social housing in perpetuity.

The Seniors Housing SEPP is similar to the existing Affordable Housing SEPP in that it applies across all zonings. The proposed changes indicate that despite this the local council LEP will prevail. However how that will actually work is unclear particularly if bonuses are included. Given the lack of clarity for this proposal the risk lies in how it will be interpreted in practice including in the L&E court. Lack of clarity and certainly in the rules provides lots of wriggle room for a developer to argue interpretation to its advantage. Further clarity is requested.

Another issue is the potential loss of green space to seniors housing as developers do deals with golf clubs, bowling clubs etc. for redevelopment proposals that provide cash strapped clubs with funds and new facilities as part of the deal. Examples include Waverley and Eden LGAs. The growing financial viability of many clubs make them prime targets for developers seeking land in areas with high land costs and the potential for good profits. Using the Seniors Housing SEPP offers developers the opportunities that must be managed in the public interest. The lack of clarity in the proposals put that at risk.

#### Build-to-rent (BTR) housing

It is proposed to allow councils to determine height and FSR through local LEP>

Definition for 'Build-to-rent housing' would

- contains at least 50 self-contained dwellings that are offered for long term private rent;
- is held within a single ownership;
- is operated by a single management entity; and
- includes on-site management.

Proposal to make BTR housing a compulsory permitted use in:

R4 - High Density Residential,

B3 – Commercial Core,

B4 - Mixed Use and

B8 – Metropolitan Centre zones.

It will also be permitted in R3 – Medium Density Residential where residential flat buildings are permitted.

Councils could also make BTR housing permissible in other zones through amendments to their LEPs.

Proposed that no strata subdivision in a BTR housing development for the first 15 years in residential zoning and in perpetuity in B3.

BTR will be assessed as SSD in metro and regional NSW if capital investment is over \$100m in metro and \$50m in regional areas. The City of Sydney LGA is exempt.

BTR has emerged as a housing development option over several decades the US and more recently in the UK. It is unclear what the purpose of making BTR compulsory in B3 zoning is. A mix of residential and new employment types is emerging in some areas particularly in cultural, digital and related fields. Examples include the regeneration of old industrial areas in Inner West Council into new work and living areas rather than rezoning and upzoning to full residential. Protecting employment zones is important to retain employment in local communities and to protect employment opportunities overall. While the proposal may be motivated by this objective it lacks the detail to protect the proposal from rapid over exploitation as BTR and the loss of employment areas. The impacts of noise, pollution etc. of traditional industrial lands on residential lands has diminished in recent decades and the zoning arrangements should adjust. However how this is operationalised in the public interest as opposed for quick returns for developers is not at all clear in the proposal. A limit on the % of a B3 zone for BTR should be included and the link between the BTR and the employment opportunities must be clearly demonstrated. In addition a % of BTR should be affordable housing.

Better Planning Network Inc (BPN) will need to see the detail and how the public interest is protected before we can support.

A missing element in the review is the provision of social housing and security of tenure across all housing options. BPN look forward to information on how the proposed SEPP will link to both these elements critical to the basic human right of shelter across NSW.

Thank you for your consideration of Better Planning Network Inc. (BPN) submission and we look forward to your feedback including responses to our queries.

If you require any clarification on our submission please contact Máire Sheehan at: [secretary@betterplanningnetwork.org.au](mailto:secretary@betterplanningnetwork.org.au) or on 0411697041.

Submitted on Mon, 07/09/2020 - 22:10

Submitted by: Anonymous

Submitted values are:

Submission Type: I am making a personal submission

First Name: [REDACTED]

Last Name: [REDACTED]

Name Withheld: Yes

Email: [REDACTED]

Suburb/Town & Postcode: [REDACTED]

Submission:

Dear team, Due to economic situation for the past few year, noticed more people difficult to afford a place to rent. Most of the new built homes are 3-4 bedrooms which not suitable for the new starter, single or couples who only need one room.


This means we need more flexible housing options for these group of people. It is a good idea to introduce the idea of co-living and it can relieve the pressure from the government as well. There should not be a minimum number of 10 private rooms for each property as not many existing houses have minimum 10 rooms.

For the house build prior to May 2011, the government should exempt the universal access though I do recommend for the Pre-Post May 2011 to be approved through a CDC process by private certifier.

The Next Generation Boarding House should still be in some R2 areas as some of the R2 area is very close to the Train station and shopping center. Remove the Next Generation Boarding House in R2 zone does not make the life easier for the tenants. I do not agree the smaller style boarding house to be only managed by community housing providers. I also think the government would always encourage small scale Boarding House instead of the large-scale boarding house which does not create diversify of demographic of residents.

Regards [REDACTED]

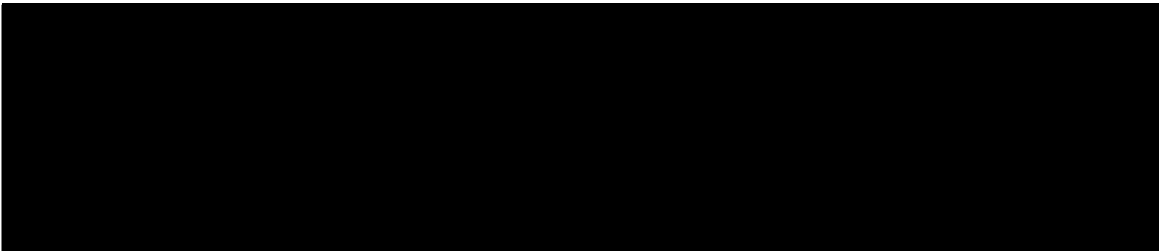
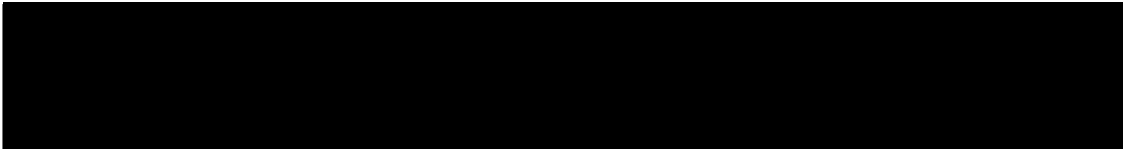
URL: <https://pp.planningportal.nsw.gov.au/proposed-new-housing-diversity-sepp>



9 September 2020

Dear Committee Members,

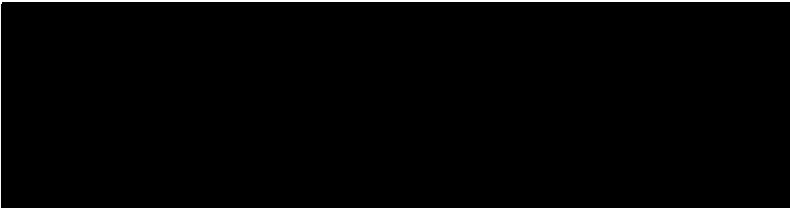
We are writing today in support of the proposed changes suggested by the New South Wales government regarding Build-to-Rent (BTR) residential development in Australia. We believe these changes will provide significant economic benefits, particularly in the context of the ongoing economic response to the COVID-19 pandemic, by supporting and encouraging private sector capital investment.



A fundamental shift toward rental housing has been taking place around the globe, and trends we have seen in other markets such as the UK and United States are now occurring in Australia. These trends include a shift in preference towards rented accommodation. This has been particularly strong in younger generations, however, with the millennial generation ageing, the demand will continue to grow. A range of housing types, tenures, and price points, particularly in urban locations such as Melbourne and Sydney, are needed to address these changing preferences. Blackstone has already announced one BTR project in Victoria, Caulfield Village, in partnership with a local developer, Beck Property Group. This AUD\$300 million investment is only the first of what we anticipate will be significant capital investment in these types of projects.

Our comments on some of the ideas proposed in the discussion paper can be found in the attached appendix A. We would also like to note our position on two federal issues on which we hope the New South Wales government can provide leadership and/or advocacy.

As you know, MITs are the primary vehicle type for investment into Australian real estate by foreign institutional investors such as Blackstone. In September 2017, the Federal Treasurer increased withholding taxes on residential investment from 15% to 30%. This change disincentivizes significant investment in BTR and the economic and societal benefits this investment brings. It also taxes BTR at a higher rate from other real estate asset classes such as office, retail, industrial, student accommodation and even boarding houses, which are considered commercial residential real estate.



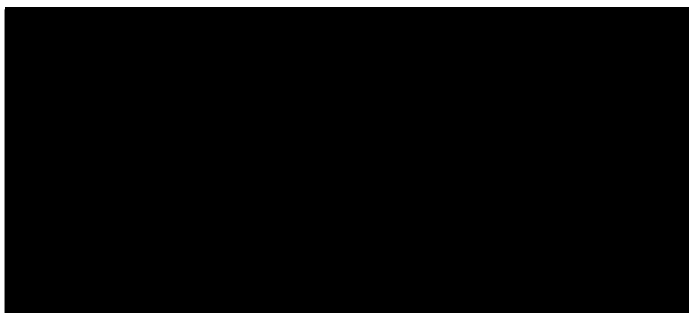


We would like to see BTR taxed at the same rate as these other asset classes, some of which are also rental residential.

We would also like to see the timelines for the Foreign Investment Review Board (FIRB) approval revisited with the aim of encouraging 'shovel ready' projects such as BTR to be fast-tracked. We have enjoyed a positive working relationship with FIRB for the past decade, but we believe streamlining certain projects for reputable Australia-based foreign investors would provide needed economic stimulus even more quickly.

Thank you for the opportunity to comment. We are happy to discuss our position further at any time.

Sincerely,



## Appendix A

<b>Policy Issue</b>	<b>Comment</b>
<b>1) Land tax concession</b>	Supported subject to concession commencing when developer / investor declares intention to develop a site for BTR. Recommend a Claw-back mechanism if BTR development doesn't proceed.
<b>2) Foreign investment exemption from stamp duty and land tax surcharge</b>	Supported subject to the exemption from the Foreign Investment Surcharge applying to BTR properties and land held with the intention to develop for BTR.
<b>3) Definition of BTR in LEP</b>	Supported, however we recommend the minimum threshold be raised to 100 dwellings. This will ensure a higher standard of entry from experienced developers and operators as the nascent market grows, precluding more speculative investment.
<b>4) BTR mandatory permitted use</b>	Supported, although we also recommend mandatory inclusion in additional zones (business development, business park and industrial zones), providing certain criteria can be met (site within 400m of zone where BTR is a mandatory permitted use; within 800m of railway/metro station.)
<b>5) SEPP 65 Apartment Design Guidelines</b>	Supported, noting that the NSW Government should prioritise the development of specific development standards for the BTR typology.
<b>6) Minimum lease term of 3 years</b>	This is not supported, noting that investors and operators must retain discretion to manage their properties and tenancies.
<b>7) Car parking standards</b>	We do not support a minimum standard of 0.5 car parking spaces per dwelling as any minimum is location specific (i.e. around transport nodes). We would however, accept a maximum of 0.5 car parking spaces per dwelling in a BTR development.



File no F15/1234-03

9 September 2020

Ms Margaret Kirton  
Team Leader, Housing Policy  
NSW Department of Planning, Industry and Environment  
GPO Box 39

By email [Margaret.kirton@planning.nsw.gov.au](mailto:Margaret.kirton@planning.nsw.gov.au)

Dear Ms Kirton

**Blacktown Council's submission on the proposed new Housing Diversity SEPP Explanation of Intended Effects**

We welcome the opportunity to comment on the Explanation of Intended Effect for a new Housing Diversity SEPP (the EIE). We note that the proposed Housing Diversity SEPP will consolidate three SEPPs that are currently in use in NSW:

- State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP)
- State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 (Seniors SEPP)
- State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes) (SEPP 70).

We have long been an advocate for changes to these policies, particularly regarding boarding house development and in-fill affordable housing under the current ARH SEPP.

We are supportive of measures that will increase the provision of social and affordable housing in NSW and policy that will meet the needs of the State's growing and diverse population. We are supportive of this EIE being developed with an aim of making the provisions of the relevant SEPPs fit for purpose and aligned with Government priorities set out in the NSW Housing Strategy – Discussion Paper in collaboration with stakeholders such as councils.

We are keen to ensure that these new housing typologies are constructed so that they not only provide opportunities for affordable residential accommodation, but are resource and energy efficient using Australian best practice ecological, sustainable and environmental building design principles. The introduction of the Housing Diversity SEPP should be undertaken in conjunction with the review of the SEPP (BASIX). More rigorous standards need to be introduced to ensure that all new buildings have the best possible efficiency and thermal comfort.

Attached is our detailed comments on the EIE. In summary we request that the Department's review of the EIE and preparation of the new SEPP addresses key concerns raised by us, including:

**Connect - Create - Celebrate**

Council Chambers - 62 Flushcombe Road - Blacktown NSW 2148

Telephone: (02) 9839 6000 - DX 8117 Blacktown

Email: [council@blacktown.nsw.gov.au](mailto:council@blacktown.nsw.gov.au) - Website: [www.blacktown.nsw.gov.au](http://www.blacktown.nsw.gov.au)

All correspondence to: The Chief Executive Officer - PO Box 63 - Blacktown NSW 2148

- Car parking requirements for all development types not being dictated by the SEPP, but being determined by council based on locational criteria and availability of access to public transport.
- Mandating BTR housing in the B3 Commercial Core zone. We believe it should be left up to councils to determine whether this type of development is an appropriate land use in the B3 zone, based on the high-level strategic vision for the centre and the demand for rental housing.
- Ensuring that the SEPP includes a mechanism to ensure that the new housing types have an affordable housing component to address the need for the delivery of affordable housing.
- Ensuring that the SEPP is supported by a design guideline, similar to the Apartment Design Guide for all of the new housing types. The guide should include objectives and controls to ensure that the built form relates to the desired future character and surrounding context and that developments are resource and energy efficient.
- Ensuring that there are no changes to the requirements for self-approval of developments and subdivision of government owned land, by, or on behalf of, LAHC. The self-assessment of development projects as large as 60 dwellings undermines the important strategic work that councils have undertaken as part of the development of their LSPS, housing strategies and LEPs and we are best placed to understand the environmental and amenity impacts including infrastructure capacity and surrounding area needs which may be generated by such developments. We strongly believe that councils need to retain its role as a consent authority in this regard.
- Reviewing existing requirements in the ARH SEPP, specifically the in-fill affordable housing provisions, secondary dwelling provisions and boarding house provisions to remove ambiguity and provide consistency and clarity.
- A review of the SEPP (BASIX) to identify requirements for the proposed new building types to ensure that they are constructed to have the best possible efficiency and thermal comfort outcomes.
- We have also identified suggested amendments to existing provisions in the ARH SEPP which should also be reviewed as part of the preparation of the SEPP. These suggested amendments will ensure that there is clarity in the interpretation of controls.

Should you have any questions or queries regarding our submission, please do not hesitate to contact Rita Vella, Coordinator Planning Policy on 9839 5909 or [rita.vella@blacktown.nsw.gov.au](mailto:rita.vella@blacktown.nsw.gov.au)

Yours faithfully



Chris Shannon  
Acting Director Planning and Development



# **Blacktown Council's submission on the proposed new Housing Diversity SEPP Explanation of Intended Effect**

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## **1. Consolidate existing housing-related policies**

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- a. Council supports the consolidation and repeal of the existing housing related policies subject to further consultation being undertaken on the new draft SEPP (in its entirety), to provide a better understanding as to how the new planning instrument will incorporate the existing and/or updated provisions of the listed SEPPs.

## **2. Introduce new housing types and planning provisions for build to rent, purpose-built student housing and co-living developments**

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- a. Council is supportive of the proposed new housing types for build to rent, purpose-built student housing and co-living developments.

## **3. Build-to-rent (BTR) housing**

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### **a. Build to rent housing in the B3 Commercial Core zone**

- i. We note that BTR housing is proposed as a compulsory permitted use in the R4 High Density Residential, B3 Commercial Core, B4 Mixed Use and B8 Metropolitan Centre zones, and in the R3 Medium Density Residential zone where residential flat buildings are permitted.
- ii. We have no objections to BTR housing being compulsory in those zones where development for residential accommodation is a key objective but we strongly oppose the proposal to make BTR housing compulsory in the B3 Commercial Core.
- iii. The intent of the B3 Commercial Core zone is to preserve land for the promotion of jobs. This is a clear outcome of all of the District Plan and is inconsistent with the intent of the zone. Mandating BTR as a permissible use in the B3 zone will have an adverse effect on land economics and will allow the land to become an easy target for developers trying to get residential development in what has been zoned as a commercial core for a reason. The SEPP proposes that BTR housing remains in one ownership in the B3 zone in perpetuity however we are not confident that this will be the case long term as it is very much dependent on current government policy and pressure from the development industry. There have been numerous examples of developers proposing serviced apartments as a quasi-residential development in B3 zone which undermines the objective of the B3 zone and reduces the ability for the delivery of commercial floorspace and jobs.
- iv. We do not support BTR housing in the B3 zone and oppose that it is mandate. We believe it should be left up to councils to determine whether this type of development is appropriate in the zone, based on the high-level strategic vision for the centre and the demand for rental housing in the particular LGA.

- v. BTR housing should not be strata subdivided at any time. The provision of BTR housing is an important step in establishing a great diversity of housing options and will be built with different design guidance than build to sell. It is understood that BTR housing often includes a greater provision of communal spaces and shared facilities. In order to retain the important market function of BTR, and acknowledging the different design requirements for construction, it should be provided in perpetuity.
- b. Building to rent housing – minimum number of dwellings requirement**
- i. We query the basis for the numerical requirement of BTR housing in that it must contain “at least 50 self-contained dwellings” The EIE does not provide any rationale to this minimum threshold and why couldn’t a lower number apply? We consider that a minimum of 50 units may severely limit the number of sites available for this type of housing and may reduce the availability of rental housing stock in a locality.
  - ii. We note that the EIE is seeking feedback on BTR housing in regional areas that “would generally be of a smaller scale and could take the form of multi-dwelling housing or terraces rather than apartments” and contend that there could also be some appropriate areas within metropolitan Sydney where smaller BTR schemes could be successful. The minimum requirement of at least 50 self-contained dwellings should be further reviewed, with consideration given to leaving this up to councils to determine.
- c. Build to rent housing as state significant development**
- i. We do not support the proposal for BTR housing to be assessed as State significant development (SSD) if the development has a capital investment value of \$100 million or more. While we note that the NSW Government is encouraging this type of development as it responds to the need for more rental housing in the recovery from COVID-19, the CIV for determining whether BTR is SSD applications should be the same as other projects. Councils’ local planning framework is well equipped to assess such residential developments and consider local needs and impacts, and would prefer to be the consent authority for BTR proposals.
  - ii. The EIE states that it is proposed for councils to determine relevant height and FSR controls for BTR housing in their LEPs. We contend that the existing controls in the zones where BTR would be permissible is a more appropriate approach to ensure that development is consistent with surrounding development and the desired future character of the area.
- d. Build to rent housing – car parking requirements**
- i. We do not support the proposed car parking requirements for BTR housing.
  - ii. Car parking requirements for BTR housing should be determined based on locational criteria and availability of access to public transport to jobs and other services. There is no evidence to suggest that the occupants of BTR housing will have a lower rate of car ownership, however the proposed reduced rate of car parking for such developments may have a greater impact on local



neighbourhoods especially if there are more than one BTR development in the same street or if they are developed in close proximity to each other.

- iii. In addition, the proposed car parking requirements do not allow for the cumulative impact of several BTR developments to be considered.

**e. Build to rent housing should have an affordable housing component**

- i. We strongly believe there should be a mechanism to ensure that new BTR schemes in NSW have an affordable housing component, particularly if land tax exemptions are also granted.
- ii. This would provide more stability for affordable housing tenants and promote social inclusivity, particularly in areas experiencing urban renewal. Higher rates of affordable housing should be proposed if the BTR development is on government-owned land or determined through an SSD approval pathway. Notwithstanding, minimum tenancy lengths must be implemented to ensure that BTR development has the desired effect of boosting rental housing stock in NSW.
- iii. We also consider that by not allowing strata subdivision of BTR schemes, a higher quality product may be realised as the entire asset would have to be managed into the future.

**f. Ensure a high standard of design and efficiency for BTR housing**

- i. We consider that the SEPP should be supported by the development of new design guidance similar to the SEPP 65 Apartment Design Guide for all of the proposed developments, including BTR housing to ensure that rooms have adequate amenity and circulation, including shared facilities.
- ii. A key component of the design guidance should be the requirement to provide a character statement to demonstrate that the built form relates to the desired future character and surrounding context to ensure high-quality built form outcome and public/private interface at ground level.
- iii. Any guide should also require that any development be designed to a high standard and quality to enhance the streetscape. The guide should include requirements to ensure that developments are resource and energy efficient using Australian best practice ecological, sustainable and environmental building design principles.

#### **4. Purpose-built student housing (PBSH)**

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- a. We welcome the introduction of a new definition in the Standard Instrument LEP for purpose-built student accommodation.
- b. In relation to development standards and affordability requirements of PBSH, we request that consideration should be given to ensuring that a portion of student rooms within a PBSA are also affordable.
- c. We also request that consideration be given to increasing the minimum room size from 10 sqm to a minimum 15 sqm. There should also be provision for individual or private open space as part of the design of the room.

- d. This type of residential accommodation should only be permissible in accessible locations close to centres and with access to public transport. There should also be some locational criteria identified to ensure that they are located close to educational and tertiary establishments.
- e. The EIE provides that no parking be required for PBSH. For the same reasons as those outlined for BTR housing, car parking should be determined based on locational criteria and availability of access to public transport, jobs and other services.
- f. We support the development of new design guidance similar to the SEPP 65 Apartment Design Guide for PBSH to ensure that rooms have adequate amenity and circulation, including shared facilities.
- g. A key component of the design guidance for PBSH should be the requirement to provide a character statement to demonstrate that the built form relates to the desired future character and surrounding context to ensure high-quality built form outcome and public/private interface at ground level.
- h. As outlined for BTR housing, any guide should also require that any development be designed to a high standard and quality to enhance the visual image of the streetscape. The guide should include requirements to ensure that developments are resource and energy efficient using Australian best practice ecological, sustainable and environmental building design principles.

## **5. Co-living housing**

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- a. We support co-living housing having its own definition in the Standard Instrument LEP and acknowledges that co-living housing replaces the existing new generation boarding houses under the ARH SEPP.
- b. While it is noted that changes to the definition of boarding houses will require this housing to be affordable, the introduction of the co-living housing type could replicate existing issues with “next gen” boarding houses. While room sizes and the like are larger, the provision of this communal living typology with no affordability requirements could see the advent of co-living housing being provided at market rates, despite the lowered amenity.
- c. We also question the need for a minimum requirement of more than 10 rooms. Council’s should be given the ability to determine the appropriate number of rooms for co-living housing. If the aim of the introduction of the definition is to address unmet need of smaller, more affordable types of rental accommodation, then flexibility in allowing smaller developments should be encouraged. Ensuring that new development relates to the desired future character and surrounding context of the neighbourhood is more important than limiting the number of rooms. This requirement should be embedded into the definition or controls.
- d. For co-living developments proposed in the R2 Low Density Residential zone, it is considered that a maximum room limit requirement be included, similar to the current requirements for boarding houses in the R2 zone to ensure that developments are consistent with the character and existing scale of development.



- e. These changes were initiated as a result of the dialogue between councils, LGNSW and the Department and resulted in positive outcomes. We are supportive of the continuance of this dialogue and suggest that Working Groups, similar to the council Boarding House working group be established in the future to assist in collaborative policy development.
- f. We do not support the proposed car parking requirements for co-living development. Car parking requirements for co-living developments should be determined based on locational criteria and availability of access to public transport to jobs and other services.
- g. This housing type should be the subject of detailed design guidance. Similarly, while it is positive to see numeric controls for the provision of communal space, it would be worth determining whether this will be adequate in light of COVID-19 safety requirements.

## **6. Proposed changes to the ARH SEPP and Seniors SEPP**

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- a. We are supportive of changes to the boarding house provisions of the ARH SEPP and the proposed changes to the definition of 'boarding house' to include the requirement that boarding house rooms are affordable.
- b. We consider that the boarding house definition should be amended to provide clarity and remove ambiguity in the definition outlined below. This will create more certainty for assessment officers when a development application is being assessed in mandating the facilities outlined in (c) of the proposed boarding house definition.
- c. We suggest that the definition be amended as follows (changes identified in red):  
*boarding house means an affordable rental building that—*
  - (a) *provides lodgers with a principal place of residence for 3 months or more, and*
  - (b) *is managed by a registered not-for-profit community housing provider (CHP), and*
  - (c) ***must have** some shared facilities, **including** a communal living room, bathroom, kitchen **and** laundry, and*
  - (d) *has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or two adult lodgers,**but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.*  
*Note. Boarding houses are a type of residential accommodation.*
- d. It is also noted that the definitional change for boarding house includes specifying that it can accommodate "one or two lodgers", as opposed to "one or more lodgers" as was previously included. This could be of some concern as people utilising boarding houses may have young children and this definition would exclude children living with their caregivers. Consideration should be given to the wording so as to not exclude more than 1 child from living in a boarding room with a parent or caregiver.

- e. We also support the removal of boarding houses as a mandated permissible use in the R2 Low Density Residential zone. We agree that councils are best placed to determine where boarding house developments are located, and if permitted in their low-density areas, can ensure that they are consistent with local character and streetscape.
- f. The Housing Diversity SEPP EIE suggests that boarding houses may revert to market rates after a period are rejected. Boarding houses are constructed differently, developed using floor space bonuses and play a crucial role in providing housing for low income and vulnerable community members. Boarding houses should be provided as a form of affordable housing in perpetuity, it is critical that affordable housing stock is provided throughout suburbs to avoid vulnerable residents being forced to choose accommodation away from infrastructure and amenities.
- g. We request that the provisions for boarding houses in the SEPP be supported by a design guideline for the design of boarding house development. Again, similar to the other typologies, the guide should require that any development be designed to a high standard and quality to enhance the visual image of the streetscape. The guide should include requirements to ensure that developments are resource and energy efficient using Australian best practice ecological sustainable and green building design principles.
- h. The requirement for boarding houses to be managed by a CHP is welcomed, however we need to understand the incentives for the community housing provider sector to deliver boarding houses. We note that CHPs already do not pay land tax, meaning tax concessions like those provided for BTR schemes are not an appropriate incentive. Across metropolitan Sydney there is an identified need for the delivery of affordable housing. This action is embedded in the District Plans, as well as many councils LSPS'. Further incentives should be considered for CHPs and should be embedded in not only the SEPP, but the District Plans to ensure the delivery of real "affordable" boarding house developments.
- i. There also needs to be clarity of what is defined as a *registered not for profit community housing provider* and clear requirements around ensuring that the boarding house is managed long-term by a CHP.
- j. Consideration also needs to be given as to the mechanism for ensuring that the development is retained and managed by the CHP long term. Similar to the current provisions under the ARH SEPP, there needs to be a requirement for a restriction to be registered against the title of the property on which the development is to be carried out stating that the development must be used as affordable housing and managed by a registered community housing provider in perpetuity.
- k. It is suggested that a planning circular be developed to provide some discussion on the "intent" of the provisions for boarding house developments. This should include a standard condition and notation for the s10.7 certificates to ensure that there is clarity and consistency with respect to the requirement for the property to be managed in perpetuity as affordable housing and managed by a registered not-for-profit community housing provider.



- l. We have reviewed the proposed changes to the Seniors SEPP, and give in principle support to:
- The updating of Schedule 1 – Environmentally Sensitive Land. It is suggested that Schedule 1, as well as other sections of the Seniors SEPP should be monitored and updated more regularly in the future, where appropriate.
  - Changes to the provisions for 'location and access to facilities' in the Seniors SEPP for development in metropolitan Sydney so that point-to-point transport such as taxis, hire cars and ride share services cannot be used for the purpose of meeting the accessibility requirement.
  - Provisions so that site compatibility certificates (SCCs) are valid for 5 years, so long as a development application is lodged within 12 months of the SCC being issued.
  - Amendments to provisions to clarify that development standards in an LEP prevail when there is inconsistency with the SEPP. Similar clarification should also be provided for those councils who have growth areas and may be affected by a SEPP (for example, SEPP (Sydney Region Growth Centres) 2006).
- m. These proposed changes will create more certainty for proponents, the community and councils while ensuring that housing for seniors and those with a disability will continue to be facilitated by the planning system into the future.

## **7. Group homes**

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- a. It is noted that the EIE for the proposed SEPP intends to, "provide a quicker and easier process to allow an existing dwelling to be used as a group home". We are concerned that there is insufficient detail regarding these changes, and these changes should not facilitate transitions to group homes without adequate consideration for accessibility requirements. Group homes must be accessible and considered the varied abilities of future residents, any process which results in less suitable group homes should not be supported.

## **8. Proposed changes to the ARH SEPP and Seniors SEPP to facilitate the delivery of new housing by or on behalf of LAHC on government-owned land**

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- a. We raise concern and do not support the proposed changes which increases the number of dwellings that LAHC can self-approve from 20 to 60 units including the subdivision of government owned land without consent.
- b. While we acknowledge the urgent need for the delivery of social and affordable housing, Council needs to retain its role as a consent authority in the approval of such development projects particularly when they include 60 or more dwellings. This is based on the fact that the environmental and amenity impact including infrastructure capacity of the site and surrounding area needs to be appropriate and the wider community needs to be consulted.
- c. In order to ensure that an appropriate level of services and infrastructure are being provided to meet the needs of the community, councils need to understand the

cumulative impact of development projects, particularly in areas where there is a high concentration of LAHC land ownership. This becomes difficult where Council is not the consent authority, and where increases in density have not been planned for as part of a comprehensive plan for housing growth across the LGA.

- d. The Blacktown LGA has a significant proportion of residential land which is in the ownership of LAHC, so the impact of allowing self-approval for up to 60 units will have a significant cumulative impact on the provision of facilities, services and infrastructure.
- e. The self-assessment of development projects as large as 60 dwellings undermines the important strategic work that councils have undertaken as part of the development of their Local Strategic Planning Statements, Local Environmental Plans and housing strategies.
- f. In addition, there is no guarantee that self-approving projects will consider relevant council requirements such as the need for drainage easements etc or guarantee that the design of future development is consistent with neighbourhood character.
- g. We also raise concern in relation to the proposed provisions to allow subdivision of Government-owned land without consent. This may facilitate the selling off of Government land for commercial purposes without the checks and balances that is required as part of the assessment of a subdivision application that could be provided by the consent authority.

## **9. Request for consideration of additional amendments**

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- a. **Review of Division 1 – In-fill affordable housing provision of the ARH SEPP to provide clarity and remove ambiguity**
  - i. We previously raised this issue with the Department's Housing Policy Team in late 2017. At that time, we were advised that the Housing Policy Team were seeking further advice on the in-fill development provisions with the intention of clarifying the affordable housing requirement for proposals not seeking a bonus FSR under clause 13.
  - ii. We were advised at this time that our concerns would be considered as part of the review of the ARH SEPP, as part of the SEPP Review Program.
  - iii. From the documentation currently being exhibited with the draft Housing Diversity SEPP, it appears that these concerns have not been adequately addressed.
  - iv. We continue to be concerned about the misuse of the dual occupancy provisions in Division 1 by developers to achieve more dwellings/increased density on smaller allotments, with reduced amenity outcomes, while not providing opportunities for increased affordability. This is resulting in a deterioration of the neighbourhood character of some of our low-density areas, as well as encouraging the increased loss of established tree canopy.
  - v. The ARH SEPP provides for a range of incentives for developers to provide for affordable rental housing. Clearly, the intention of the ARH SEPP is not to enable every dual occupancy, multi-dwelling housing or residential flat building to have the benefit of Division 1, and more particularly, the benefit of clause 14.



- vi. Before it was repealed, clause 11(a) provided that, for dual occupancies, “at least 50 per cent of the dwellings in the proposed development will be used for affordable housing”. Following the repeal of that clause, only clause 13 provides for any specific percentage. Clause 13 merely provides an FSR bonus, however if no FSR bonus is sought, then clause 13 does not apply.
- vii. In the absence of a floor space ratio control in the Blacktown LEP, there is no bonus floor space eligible and no minimum or maximum number of dwellings required to be utilised as affordable rental housing under the ARH SEPP. In circumstances where an application is taking advantage of the provisions of the ARH SEPP over those in the LEP, it is considered that all dwellings must be used for affordable rental housing in accordance with clause 17 of the ARH SEPP.
- viii. The fact sheet, *Supporting infill affordable rental housing (August 2014)* prepared by the Department provides information on the ARH SEPP. The information contained in the fact sheet under the infill development provisions states that between 20% and 50% of the gross floor area of the development is to be affordable housing. This is inconsistent with ARH SEPP and creates more confusion around the proportion of affordable housing required to be provided for developments under Division 1.
- ix. This lack of clarity and consistency in advice provided by DPIE, coupled with the ambiguous nature of the requirements in Division 1 is creating significant issues for our development assessment team. We have received, and continue to receive a number of development applications seeking approval for multiple dual occupancies and the subdivision of these dual occupancies using the provisions of Division 1 of the ARH SEPP.
- x. We have, based on legal advice, continued to condition such applications to require that 100% of the dwellings proposed must be set aside for Affordable Rental Housing for 10 years (clause 17). We consider this to be consistent with the aims of the ARH SEPP set out in clause 3 (Aims of Policy) and, in particular, the aim set out in paragraph (b): *“to facilitate the effective delivery of new affordable rental housing by providing an incentive by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.”*
- xi. As a result of this we have had a number of appeals in the Land and Environment Court, seeking amendments to the conditions relating to the 100% affordable housing requirement.
- xii. We request that consideration be given to clarifying the minimum number of dwellings (at a minimum of 50%) for dual occupancy, multi-dwelling housing and residential flat buildings proposed for developments under Division 1 and that this requirement be included in the Housing Diversity SEPP.
- xiii. There also needs to be a strengthening of the local character provisions for in-fill affordable housing (clause 16A). The current provisions do not allow for the cumulative impacts of affordable in-fill housing to be considered.

- xiv. The current provisions also encourage an ad hoc approach to increasing densities in neighbourhoods. If these developments are not appropriately planned for they can also sterilise areas for future planned intensification of density.

**b. Review of Division 2 – Secondary dwellings of the ARH SEPP to clarify whether a minimum lot size requirement applies**

- i. The provisions relating to secondary dwellings are confusing and ambiguous. Consideration should be given to reviewing this Division to ensure that the requirements are clear.
- ii. We are seeking clarification with respect to the following:
  - Can a secondary dwelling can be approved under the provisions of the ARH SEPP if the land on which the secondary dwelling is proposed is less than 450 sqm? Clause 22(4) states that council cannot refuse an application for a secondary dwelling if:
    - the secondary dwelling is located within, or is attached to, the principal dwelling, or
    - the site area is at least 450 square metres, and
    - no additional parking is to be provided on the site.
  - Do the development standards set out in Schedule 1 (as referred to in Clause 20(1g)) apply only to an application for a secondary dwelling made under complying development?
  - If the application for the secondary dwelling is not a complying development, then what development standards apply?

**c. Review of Division 3 – Boarding houses of the ARH SEPP to clarify the requirements for a boarding house manager**

- i. Division 3, clause 30(i)(e) of the ARH SEPP states that 'if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on-site dwelling will be provided for a boarding house manager'.
- ii. This clause only specifies that if 20 or more lodgers are on-site, then a boarding room or on-site dwelling is to be provided for a boarding house manager. It does not specify that a boarding house manager must reside on site. It is assumed that the intention of the provision is to require a boarding house manager to reside at the boarding house premises, however this is not clear.
- iii. We request that the clause be amended to clarify the requirement for not only the provision of a room for a boarding house manager, but also for the boarding house manager to reside full-time on site.

**10. Further engagement prior to finalisation**

- a. We note that there is limited information regarding the timeframe for the making of the proposed SEPP. We are currently finalising our Housing Strategy. We are also contributing to an Affordable Housing Strategy across the Western Parkland City and an Affordable Housing Strategy, which is being prepared regionally, we will need to



take into consideration the implications of the new proposed SEPP into its future planning in relation to land use zone permissibility of the new housing types contained in the proposed SEPP.

- b. The information provided during the exhibition did not provide any detail of the drafted legislation. In order to fully understand the impact that the proposed SEPP may have on our City and local communities, further consultation must be undertaken with councils and other stakeholders.
- c. We will also need to understand the implications of the new SEPP and its impact in relation to providing notations on the planning certificates under s10.7 of the *Environmental Planning & Assessment Act 1979*.
- d. We do not support the inclusion of savings and transition provisions in the new SEPP, particularly for development under the ARH SEPP, and specifically boarding house developments. Since the release of the EIE for the proposed Housing Diversity SEPP, we have already seen an increase in development applications for boarding house developments. This is of significant concern as none of these proposals are delivering “affordable” rental housing and in some cases are inconsistent with the character of the streetscape and locality. Should savings and transitional provisions be included, particularly for boarding house developments, then these should only apply to development applications that were submitted on, or before the date of the commencement of the exhibition of EIE (i.e. 29 July 2020).

**Planning, Industry & Environment**  
**Housing Diversity SEPP – Explanation of Intended Effect**

Submission on behalf of Blue Mountains City Council

**Introduction**

Thank you for the opportunity to provide comment on the proposed Housing Diversity SEPP – Explanation of Intended Effect (EIE), currently on exhibition. Councils overarching position is one of general support for planning policy that facilitates housing affordability and housing diversity, however, forethought is required such that policy is designed to be responsive to local requirements.

Key comments, areas of concern and summary recommendations are provided under themes identified within the EIE as relevant to the Blue Mountains, under the following structure:

- Role of the Housing Diversity SEPP
- Providing for housing diversity through Council's LEPs
- Ensuring approach is not Sydney centric
- Ensuring development standards respond to local context
- Short term rental accommodation implications
- Conversion of existing dwelling to group home as complying development
- Changes to Seniors Housing SEPP
- Changes to affordable housing provisions

**General comments**

Blue Mountains Council has undertaken significant strategic planning and extensive community engagement over the last two years to produce a Local Strategic Planning Statement, *Blue Mountains 2040: Living Sustainably* (LSPS), alongside a suite of supporting studies which includes the Blue Mountains Local Housing Strategy 2020 (LHS). Both documents were adopted by Council on 31 March 2020. This work responded to requirements and timeframes set by the State Government, and actions contained in the Western City District Plan and Greater Sydney Region Plan. This represents a significant body of work which carefully considers the future housing needs of our local community, and includes actions to address issues such as housing affordability and housing diversity.

The need to plan for housing for an ageing population is a central consideration, as well as the need to provide housing choice in our community for all life stages through the provision of housing diversity in suitable locations. Notably, forecasting indicates that by 2036 approximately 60% of households will be couples or individuals living alone without children.

In addition, both Council's Community Strategic Plan 2035 and LSPS priority 6 acknowledges it is necessary to meet the diverse housing needs of our community at different life stages, identifying the need for more diverse housing choice. As identified in the LSPS, "planning for improved housing diversity in an area like the Blue Mountains is a many faceted challenge. Neither expansion of the urban areas of the City, nor wholesale change to established areas is appropriate. A nuanced, place based, and incremental approach is therefore needed to identify where and how additional housing options can be provided".



To that end, Council agrees with the EIE statement that “housing needs and preferences of the community have changed over time and will continue to change” (page 1). Council acknowledges that modernisation of existing State policies may be required and is supportive of the notion of housing diversity and housing affordability. However, caution is raised with regard to the mechanisms utilised.

Whilst Council supports the establishment of a planning framework that is responsive to the needs of the community, concern is raised regarding the potential for new planning provisions to be introduced without consultation with relevant stakeholders. Council wishes to reiterate the importance for any proposed expansion of the planning framework to be undertaken concurrently with relevant stakeholder engagement.

### **Role of the Housing Diversity SEPP**

The EIE identifies that the housing needs and preferences of the community have changed over time and will continue to do so. The need to provide both affordable housing and a diverse range of housing is clear, and has been strongly identified at the local level in Council’s LSPS and LHS strategic work. The EIE also states that the Housing Diversity SEPP aims to support the State’s COVID-19 recovery, through construction industry employment and economic development.

The interrelationship between the proposed Housing Diversity SEPP and other proposed or existing State policy must be made clear. The recently released “A Housing Strategy for NSW – Discussion Paper” also seeks to address both a COVID-19 recovery response and a range of housing needs through a 20 year housing strategy. However, its relationship to the proposed Housing Diversity SEPP is not detailed. Equally, the stated aim of the *Low Rise Housing Diversity Code* is to facilitate a diverse range of housing choice that is responsive to the changing needs and preferences of households, but any connection with the Housing Diversity SEPP has not been made. It is necessary that the interconnectedness between State level policy is clearly articulated and consistent.

There is a lack of resolution between affordable rental housing intention and the need for provision of a range of housing choice being combined within the same policy, given the vast scope of these housing types. To circumvent this, consideration should be given to the Housing Diversity SEPP focusing on affordable housing and housing for particular groups that aren’t appropriately covered by private market housing, such as seniors housing, with diverse housing measure separately addressed. Notably, Councils are already undertaking significant work at a local and regional level with regard to affordability. An example of this is the Western Sydney Affordable Housing Study jointly commissioned by all Western Sydney Councils through the Planning Partnership. A Housing Diversity SEPP must support and be responsive to, rather than undermine or supersede, this important strategic place based approach.

It is recommended that the policy itself is explicit in the aims and objectives of each housing type, especially in relation to newly introduced land uses. This will assist in mitigating some of the potential conflict, such as the use of premises for unintended purposes, as discussed below under the short term rental accommodation implications.

### **Summary Recommendation:**

**It is recommended that for the purposes of clarity, the aims and objectives for each housing type within the Housing Diversity SEPP be made explicit within the policy itself. In addition, the interrelationship between this proposed SEPP and other State policy, such as NSW Housing Strategy and Low Rise Housing Diversity Code, is clearly articulated and consistent.**

### **Providing for housing diversity through Council's LEPs**

The new SEPP seeks to introduce build-to-rent, student housing and co-living development as new land use terms within the Standard Instrument LEP. It is currently proposed that development standards for these land uses will be contained within the new SEPP. Table 1 of the EIE provides a comparison of the different land use terms, including boarding houses, and proposes that with the exception of boarding houses and non-market BTR units, there will be no minimum affordability requirement (with regard to the quantum of affordable units/dwellings) for these new land use terms.

Whilst it is acknowledged that DPIE are seeking to promote diversity within the rental market, Council considers that development standards for these new land uses are most appropriately positioned as provisions within the Standard Instrument LEP, along with the land use definitions. This would allow Councils to incorporate these new uses into their LEP's, and ensure that these new forms of housing are located appropriately to best respond to the needs of the local community, to make best use of existing infrastructure, and to avoid environmental constraints.

This approach is appropriate for outer-metropolitan areas, such as the Blue Mountains, that do not have the same growth pressures as Greater Sydney. Allowance should be made for these low-growth councils to plan for housing diversity in a locally appropriate way to meet the needs of their local communities.

#### ***Summary Recommendation:***

**It is recommended that the proposed land uses for Build-to-rent, student housing, and co-living be included in the Standard Instrument LEP, and associated development standards and controls be managed as local provisions through individual Council LEPs.**

### **Ensuring approach is not Sydney centric**

Council supports the provision of a more stable rental sector, and recognises the need to plan for diverse and affordable forms of housing to meet the needs of the community now and into the future. Recognition of the unique characteristics and constraints of the Blue Mountains is important when planning for future housing, and it is important that an appropriate degree of flexibility is embedded into the SEPP to ensure that it can appropriately respond to the differing priorities between higher growth and outer-metro council areas.

Whilst many areas across Greater Sydney are experiencing significant urban development and population growth, limitations on both the availability of land and the capacity of that land (considering both environmental constraints and bush fire risk) to provide housing, differentiates the Blue Mountains from high-growth areas.

The EIE outlines that the proposed definition for build-to-rent housing within the Standard Instrument LEP would refer to a building or place that contains at least 50 self-contained dwellings. The constraints of the Blue Mountains are such that it is unlikely that a development of this scale would occur. To ensure there is still capability for this form of housing to be delivered, it is recommended that the proposed definition is amended to allow flexibility for Councils in outer metro areas to set their own provisions for the suitable scale for build-to-rent housing for their local areas.

The Blue Mountains is defined within the Western City District Plan as Metropolitan Rural Area (MRA) in recognition of the areas high environmental significance. Areas within the MRA are only expected to accommodate local housing growth, not the growth of Greater Sydney. It is recommended that

further consideration be given to the application of the provisions within the proposed SEPP, and that the instrument recognise the different contexts for providing diverse and affordable housing across NSW. Within Greater Sydney, consideration should be given to Councils' Local Housing Strategies to determine how the new SEPP should apply.

***Summary Recommendation:***

**It is recommended that greater consideration be given to the differing priorities for delivering housing between regional and metropolitan areas across NSW.**

**It is recommended that the proposed definition of build-to-rent housing as requiring a minimum of 50 self-contained dwellings is amended to allow flexibility for Councils in outer metro areas to set their own provisions for the suitable scale for build-to-rent housing for their local areas.**

**Ensuring development standards respond to local context**

The EIE outlines that building heights and FSRs for build-to-rent, student housing and co-living will be in accordance with the relevant LEP. Council supports this approach, however it is important that within low growth and outer metro areas the SEPP also allows Councils to tailor other development standards to the local context through their local planning controls.

Council does not support the proposal to establish a standard minimum car parking rate for build-to-rent housing, co-living and student housing within the SEPP. It is noted that the co-living explanation acknowledges that demand for car parking varies significantly between different areas and that it may be appropriate to have different car parking rates depending on the locational context. The EIE includes proximity to a train station as one such locational criteria, however for outer metro areas such as the Blue Mountains, proximity to a train station does not of itself incentivise reduced car ownership, or result in appropriate mobility within the LGA.

Whilst this goes part of the way, it does not appropriately respond to outer metro areas whereby public transport provision and frequency of services is limited. The Blue Mountains is geographically constrained with a broad distribution of townships across the LGA. This combined with infrequent public transport servicing results in a high dependence on private vehicles. Furthermore, due to the modest population growth projected, it is unlikely that the Mountains will experience public transport investment or servicing to the extent expected for other areas of Greater Sydney.

For low-growth areas outside of Greater Sydney, the responsibility should be with Councils to determine appropriate parking rates for their LGAs for these types of developments, as determined by their Development Control Plans.

***Summary Recommendation:***

**It is recommended that the car parking rates for build-to-rent, student housing and co-living developments and other relevant development standards be determined by local councils, particularly in outer metro areas.**

**Short term rental accommodation implications**

Concern is raised with regard to the potential for some housing types to be utilised for the purposes of short term rental accommodation (STRA) rather than providing diverse and affordable housing

choice, as designed. The EIE indicates that build-to-rent would be subject to minimum lease terms and not be available for short term rental accommodation, however the EIE is silent on the relationship of STRA and other proposed land uses. It is understood that the draft STRA Framework legislation proposes to exclude boarding house, group homes and seniors living from STRA use, however, clarification is required regarding co-living and student accommodation.

In the Blue Mountains setting, where the tourism contributes significantly to the local economy within an environmentally significant World Heritage Area, careful management is necessary. Notably, a considerable portion of visitor growth is domestic visitors from Greater Sydney. Daytrip visitors are forecast to range between 5.2 million-5.5 million visitors annually by 2038, which represents a 40% increase over 2018 levels. As Sydney grows, the Blue Mountains is increasingly a recreation destination for Sydney residents, and is identified as the scenic backdrop to the Western Parkland City. It is anticipated that COVID-19 travel restrictions have the potential to also further impact tourism figures. Parallel to this, it can be more profitable for housing investors to rent to short term visitors than long term residents, creating a gap in the availability of residential accommodation.

Therefore, further information is required regarding the mechanisms proposed to ensure that build-to-rent housing, co-living and student accommodation would not be available for STRA, ensuring stock remains available for its intended use. It is Council's preference that definition of these uses also explicitly exclude STRA. While restrictions on the use of the dwelling could be placed on the land title and/or as a condition of development consent, such restrictions/conditions are often overlooked, and ongoing monitoring would result in a compliance burden for Council.

The stated policy intention of these forms of alternative housing is to meet changing housing needs, not to provide STRA opportunities. It is important that the Diversity SEPP retains this housing stock for long term accommodation and contributes to housing diversity, with additional potential for positive influences on housing affordability or availability of a range of rental accommodation.

#### ***Summary Recommendation:***

**It is recommended that the extent of STRA permissibility be resolved prior to the finalisation of the Diversity SEPP, including any cross relationship that exists with the draft STRA Framework. Clarification is required regarding intended mechanisms to ensure lawful use of new housing types without introducing regulatory burden for Council.**

#### **Conversion of Existing Dwelling to Group Home as Complying Development**

Page 16 of the EIE outlines proposed amendments to the provisions within the ARHSEPP relating to group homes, and proposes to introduce a quicker and easier process which would allow an existing dwelling to be converted to and used as a group home.

Group homes are an important accommodation choice for people with a disability or people who are socially disadvantaged. It is important that where existing dwellings are proposed to be converted to group homes that locational criteria be established to ensure residents can readily access services and are not subject to social isolation. Further, any simplified pathway developed for the provision of group homes should be limited to a community housing provider or other service provider, similar to the proposed boarding house amendments, to ensure their ongoing management.

Further information is required on these proposed changes, including the zones within which the conversion of a dwelling to a group home could be undertaken as complying development, and the

development standards for this form of development. In the absence of such information, it is not possible to support the changes proposed.

***Summary Recommendation:***

**It is recommended that further information be provided on the proposed amendments seeking to allow the conversion of an existing dwelling to a group home, including details of who can carry out these works, and any locational criteria, impacted land use zones, and proposed development standards.**

**Changes to Seniors SEPP**

Concurrent with the release of the proposed Housing Diversity SEPP EIE, on 29 July 2020 the Department also amended *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (SEPP Seniors). There was no notification or exhibition of these changes and they came into effect immediately with no savings provisions (transitional arrangements).

The amendment to SEPP Seniors excludes land within the Metropolitan Rural Area (MRA) of Greater Sydney from the State legislation. As a consequence of this amendment, Blue Mountains LGA is now excluded from the Seniors SEPP, as the whole of the LGA is mapped MRA. Despite the lack of notification about this amendment, Council supports being excluded from the Seniors SEPP and welcomes the opportunity to develop standalone local provisions and controls to best support seniors housing in a way that is appropriate for the Blue Mountains, in alignment with our LHS and LSPS. This has not been able to occur previously as the SEPP overrode local provisions.

Given the cost of resourcing to undertake this work, as well as the need to amend the LEP and DCP, Council would like to ensure MRAs remain excluded from seniors housing permissibility under the Housing Diversity SEPP.

***Summary Recommendation:***

**It is requested that assurance be provided that Metropolitan Rural Areas remain excluded from seniors housing permissibility under the proposed Housing Diversity SEPP.**

**Changes to Affordable Housing Provisions**

Council supports the proposed removal of boarding houses as mandated permissible uses within the R2 Low Density Residential zone. Mechanisms should be incorporated through the finalisation of the Housing Diversity SEPP to ensure boarding houses are removed as permissible uses within existing LEPs without the need for Council to prepare a planning proposal, such as through an amending SEPP or similar.

The EIE outlines proposed changes to the planning provisions used by LAHC to deliver social housing under the SEPP. Council supports these proposed changes.

***Summary Recommendation:***

**It is recommended that arrangements are made when finalising the SEPP to remove the permissibility of boarding houses within the R2 Low Density zone of existing LEPs, without the need for separate planning proposals.**

## Conclusion

Council is supportive of the planning system facilitating greater housing diversity and housing affordability. As raised in this submission, in some instances, a localised place based approach that is attuned to local needs is the most appropriate means of achieving this. In the Blue Mountains context, the existing approach to local housing needs, as informed by the Local Housing Strategy and Local Strategic Planning Statement, is strongly researched, well considered and endorsed.

While Council is of course supportive of measures to improve housing options, areas of concern are raised and the following summary recommendations provided:

- For the purposes of clarity, the aims and objectives for each housing type within the Housing Diversity SEPP be make explicit within the policy itself.
- The interrelationship between this proposed SEPP and other State policy, such as NSW Housing Strategy and Low Rise Housing Diversity Code, must be articulated and consistent.
- The proposed land uses for Build-to-rent, student housing, and co-living be included in the Standard Instrument LEP, and associated development standards and provisions be up to Councils to control through their LEPs.
- Greater consideration be given to the differing priorities for delivering housing between regional and metropolitan areas across NSW.
- The proposed definition of build-to-rent housing as requiring a minimum of 50 self-contained dwellings is amended to allow flexibility for Councils in outer metro areas to set their own provisions for the suitable scale for build-to-rent housing for their local areas.
- The car parking rates for build-to-rent, student housing and co-living developments and other relevant development standards be determined by local councils, in outer metro areas.
- The extent of STRA permissibility be resolved prior to the finalisation of the Diversity SEPP, including any cross relationship that exists with the draft STRA Framework.
- Clarification is required regarding intended mechanisms to ensure lawful use of new housing types without introducing regulatory burden for Council.
- Further information be provided on the proposed amendments seeking to allow the conversion of an existing dwelling to a group home, including details of who can carry out these works, and any locational criteria, impacted land use zones, and proposed development standards.
- It is requested that assurance be provided that Metropolitan Rural Areas remain excluded from seniors housing permissibility under the proposed Housing Diversity SEPP.
- Arrangements are made when finalising the SEPP to remove the permissibility of boarding houses within the R2 Low Density zone of existing LEPs, without the need for separate planning proposals.

**From:** [noreply@feedback.planningportal.nsw.gov.au](mailto:noreply@feedback.planningportal.nsw.gov.au) on behalf of [Planning Portal - Department of Planning and Environment](#)  
**To:** [DPE PS ePlanning Exhibitions Mailbox](#)  
**Subject:** Webform submission from: Proposed new Housing Diversity SEPP Explanation of Intended Effect  
**Date:** Wednesday, 9 September 2020 1:34:58 PM

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Submitted on Wed, 09/09/2020 - 13:33

Submitted by: Anonymous

Submitted values are:

Submission Type: I am making a personal submission

First Name: [REDACTED]

Last Name: [REDACTED]

Name Withheld: Yes

Email: [REDACTED]

Suburb/Town & Postcode: [REDACTED]

Submission file: [webform\_submission:values:submission\_file]

Submission: Dear NSW Planning NSW planning has flagged a change to secondary dwellings to allow a different maximum floor area to be specified. The floor areas permitted for granny flats should be reformed more broadly across LGAs. The current maximum floor area, being a flat 60m<sup>2</sup>, is highly restrictive and in the case of larger homes artificially small. For example under complying development the maximum size of a home for a typical suburban block is 335m<sup>2</sup>. If the maximum size of the secondary dwelling is 60m<sup>2</sup> that is less than 20% the size of the home. It would seem more reasonable if secondary dwellings were broadly permitted up to a maximum of half of the area of the primary dwelling – in this example, 220m<sup>2</sup> primary dwelling and 110 granny flat – or smaller granny flat if the primary dwelling is smaller. A more typical home is about 150m<sup>2</sup>, which would permit a granny flat up to 75m<sup>2</sup> – similar to other states. For comparison, ACT permits granny flats up to 90m<sup>2</sup>. Regards [REDACTED]

URL: <https://pp.planningportal.nsw.gov.au/proposed-new-housing-diversity-sepp>



**Submission on**

**Explanation of Intended Effect for the new Housing Diversity SEPP**

**September 2020**





### ***Acknowledgement to Country***

*Byron Shire Council recognises the traditional owners of this land, the Bundjalung of Byron Bay, Arakwal people, the Widjabal people, the Minjungbul people and the wider Bundjalung Nation.*

*We recognise that the most enduring and relevant legacy Indigenous people offer is their understanding of the significance of land and their local, deep commitment to place.*

Thank you for inviting Council to provide feedback the Explanation of Intended Effect (EIE) for the new Housing Diversity State Environmental Planning Policy (SEPP).

Overall, Byron Shire Council supports the review of the three Housing Policies (SEPP (Affordable Rental Housing) 2009 (ARHSEPP); SEPP (Housing for Seniors and People with a Disability) 2004 (Seniors SEPP); and SEPP70- Affordable Rental Housing (SEPP 70) resulting in an integrated Housing Diversity SEPP.

We support initiatives to deliver diverse, affordable and resilient housing needed in NSW over the next 20 years and look forward to continued discussions with DPIE.

To summarise, Council is seeking:

- a delay in new SEPP until the NSW housing strategy is finalised
- a review of the aims of the SEPP to make diversity the priority not economic recovery
- better recognition of the fact that the population is extremely diverse group and tailored strategies should cater for and acknowledge this diversity in the housing response.
- a recognition of the role and value of Council housing strategies
- an expansion of the scope to cover all state regulations affecting housing diversity, including short term rental accommodation
- greater allowances for local responses and provisions
- better linkage between housing delivery and infrastructure planning and delivery, particular with regard to the allowance of bonuses/concessions.

The following provides the reasoning behind this request:

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### **Timing of the new SEPP**

#### Comment:

Council recognises the important role the planning system will play in helping the NSW economy recover from the current COVID-19 pandemic. The timing and intent behind the Explanation of Intended Effect (EIE) for the new Housing Diversity State Environmental Planning Policy (SEPP) however must be questioned.

Council is highly supportive of the NSW government's shift to a strategic-led planning framework. Tools such as local strategic planning statements and the pending NSW Housing Strategy work to achieve successful consolidation. They help provide a clear line-of-sight between key strategic priorities identified at state and regional scales and the finer-grained local and neighbourhood planning leading to more certainty for all stakeholders in the NSW planning system.

Byron Shire Council recently provided a submission to the Department on the NSW Government's Housing Strategy for NSW discussion paper (NSW Housing Strategy DP). It is understood the NSW Housing Strategy, once finalised, will set, as a pivotal tool for housing delivery, a 20 year vision, key priorities and actions. The NSW Housing Strategy DP submissions need to be addressed and the NSW Housing Strategy Housing finalised, prior to the introduction of a new Housing Diversity SEPP.

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Recommendation:

1. That the NSW Housing Strategy be finalised, addressing the submissions received, prior to the introduction of a new Housing Diversity SEPP to ensure proper alignment and effective delivery of the Housing Strategy.
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**Aim and Intent**

Comment:

The EIE for the new Housing Diversity SEPP identifies four proposed aims:

- Aim 1. will assist the State's economic recovery following COVID-19 (such as the EIE reference to the *'government is encouraging the development of **build-to-rent** housing as it responds to the need for more rental housing during the recovery from COVID-19 and **would generate more construction jobs.**;*
- Aim 2. consolidates existing State level housing-related planning provisions into a single instrument;
- Aim 3. is in a format capable of being expanded and amended as future needs may require; and
- Aim 4. facilitates the delivery of housing that meets the needs of the State's growing population. '

An initial observation is that the order of aims has an effect of prioritising (in the reader's mind) that the key the purpose of the SEPP is to help with economic recovery and that actual delivery of diverse housing is the lowest priority.

Furthermore, Aim 1 has the propensity to undermine Aim 4 and the goals behind the NSW Housing Strategy. Tying housing affordability to the current COVID situation, as the EIE does, downplays (if not ignores) that this issue and a lack of housing diversity — in tenure, choice, type, and accessibility — are both longstanding and on the rise.

As early as 1972, the then NSW Planning and Environment Commission in a Technical Bulletin 10 *Town Houses* recognised *'pressure for living space created the need to investigate forms of dwellings other than the common low density detached cottage.'* Now and into the future, Council sees the pressures of living space extending to a need to investigate how to deliver more housing outside the traditional market driven response. Council holds concern that a linkage to economic recovery may have a propensity to perpetuate a market driven response and to not look at the bigger picture.

To effectively meet current and future needs of the State's growing population, a fundamental policy shift is needed where housing is seen as a significant long term community infrastructure investment. Byron Shire Council is well down the track of preparing a draft Residential Strategy to guide housing delivery in the Shire for the next 20 years. It is a culmination of over three years work and largely well supported by our community. The process has entailed understanding our community and our current housing stock - what is available, how it is being used and by who, where can adaptations or improvements be made for its more effective use (such as in regulations, tenure or build form). This is complemented by investigations into alternative housing delivery models, where these could go, for whom the priority should be and importantly how this aligns with employment patterns and other infrastructure services such as water, transport and social services.

Council's approach is generally consistent with that outlined by the NSW government in the [Local Housing Strategy Guideline](#).

The EIE for the SEPP overlooks the importance of local housing strategies in guiding secure diverse housing delivery for residents (State's growing population) appropriate to each region and local area.

Council's draft Residential Strategy, exhibited in Aug 2019 well before the COVID situation, identified housing affordability and access as key issues. The loss of affordable housing cannot be attributed to the COVID situation, nor should it be a reason for this SEPP as the issues are far broader.

Within the Byron Shire urban area there are some 11,300 dwellings and 22,700 residents, a ratio of around one home for every 2 people. Never-the-less the Shire experiences significant mortgage and rental stress. It is recognised as one of the most unaffordable locations to live. For the Shire, this can be more accurately attributed to factors such as 17.6% of the total Shire's housing stock being listed as online holiday let equating to fewer homes for local residents and that our region's substantially under provided social housing stock. In 2017, Byron Shire attracted more than two million visitors who stayed some 4.5 million visitor nights.

Our residents face living in insecure and/or unaffordable housing due to demands being placed on the available stock by tourist's/holiday home owners and their capacity to pay. For many housing costs do not reflect an affordable share of income.

Whilst in larger centres 'build to rent housing' (BTR) may stimulate the economy and alleviate rental demands, in regional areas, this is unlikely if the SEPP provisions do not enable Councils to tailor regulations suited to the local area. A change is more likely where there is regulatory, financial and community support. For Byron Shire this involves:

- a updated tenancy agreement system that provides renters with long term rental security within a secure rental cost arrangement
- addressing the over representation of properties available for short term rental accommodation

- the current investment attractiveness and availability to small investors in regional areas to undertake small scale 'built to rent' projects being complemented by a 'built to rent to share in home ownership' projects that are supported by larger sector private or government investment in housing options for high risk / vulnerable / low income people/households.
- improved state government investment in regional long term infrastructure planning and delivery for services that go hand in hand with housing such as water supply and public/active transport, this is not a cost smaller Councils can carry on their own.

Byron Shire Council has been endeavouring to address the above at a local level over the last decade as evidenced by the following case study.

#### Case Study: Secondary Dwellings

To help provide a more stable rental environment Council has already implemented what could be considered a hybrid of the state's 'built to rent' program and bonuses. In 2011 Council introduced a waiver on infrastructure contributions for secondary dwellings. The aim of the waiver was to make rental housing cheaper by increasing supply and thereby reducing the median weekly rent for these types of dwellings. The waiver was conditional on approved dwellings being used as affordable rental housing under SEPP 70. Whilst in over 400 secondary dwellings were added to the Shire's housing supply, a review of the program in 2019 found:

- in practice the large majority of these dwellings were being put to short term rental accommodation (STRA).
- the waiver had no impact on the rate of increase of median rents for single bedroom dwellings
- by not collecting developer contributions for secondary dwellings Council has forgone a significant benefit to both the water and sewer fund and the section 94 funds.

Further to this, the program resulted in:

- Council having to devise a compliance strategy to ensure the dwelling is used for its approved purpose. A task made difficult with the current legislative flux on STRA. Council's submission to the NSW government STRA reform package strongly advocated for affordable rental housing SEPP 70 properties to be excluded from the STRA SEPP.
- Members of the community disconcerted, as this program entailed a financial concession for individual property owners at a cost to the greater community; it was felt that Council should be able to set a SEPP 70's maximum period of rental security greater than 10 years. However, the existing SEPP 70 does not enable local Council to do this.

Based on these and other learnings Council in its draft Residential Strategy Council looked at other avenues to provide a more stable rental environment. In particular, the Strategy supports amendments to the Byron Local Environmental Plan (LEP) 2014 to facilitate:

- a) a SEPP 70 Affordable housing contribution scheme – Council has recently adopted an [Affordable Housing Contribution Policy](#) to guide this process
- b) better management of STRA
- c) a new land use - tiny house development – proposed for Council owned or managed land – this housing prioritised for people experiencing (or at risk of) homelessness
- d) a new Residential 1 Zone - proposed for Council owned land (Lot 22 in Mullumbimby) – as a pilot project to potentially gain leverage for larger sector of government/private investment in housing - the R1 Zone facilitating under an integrated structure plan, alternative housing tenure models and types such as micro lot housing, temporary/pop up for tiny homes for the most vulnerable and urban ecovillage (intentional communities).

The EIE outlines a government's commitment to ensuring an adequate supply of new dwellings that are 'affordable, well-designed and located in places that people want to live', however unless on the ground initiative/actions of local councils are supported and enabled by the planning framework, it is unlikely to facilitate the delivery of housing that meets the needs of all Regional NSW's growing population. Whilst it is agreed that *'there are currently no impediments in the NSW planning system to the development of new housing for rental purposes'*, there are significant impediments in the NSW planning system to the retention of housing stock for permanent residents.

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Recommendations continued

- 2. That the new SEPP aims recognise the role local growth management strategies play in local housing delivery and incorporate reference to *"secure and diverse housing delivery for residents (State's growing population) **appropriate to each region and local area**"*.
- 3. The SEPP, whilst setting minimum terms for rental arrangements, should incorporate provisions for Council to extend the minimum duration in circumstances where a landowner/developer has gained from a bonus or contribution waiver that has been provided at a cost to the wider community. (A principle not dissimilar to the upzoning under a SEPP Affordable Housing Contribution Scheme)

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Council supports Aim 2 'consolidate housing-related planning provisions' however as outlined in the EIE this consolidation appears limited and more focussed on affordability rather than truly on diversity. This is because whilst the SEPP theme is 'Housing Diversity', it is difficult to see how it aligns with the NSW Housing Strategy Discussion Paper which describes DIVERSITY as: *"This theme considers different types of housing and looks at how a diverse choice of housing can reflect the needs and preferences of households"*.

The NSW Housing Strategy themes — supply, diversity, affordability, and resilience — and key objective to better coordinate diverse housing policy, largely align with the policy directions of Council's draft Residential Strategy.

The EIE outlines a SEPP containing a select set of housing regulations with a largely metropolitan focus for:

- Housing types
  - o boarding house and
  - o co – living (new generation boarding house)
  - o secondary dwellings (a minor change for rural areas only)
- Housing supply, tenure and delivery arrangements
  - o Built to rent
  - o LAHC
- Household types
  - o group households
  - o seniors
  - o students

The EIE recognises that metropolitan based housing models do not necessarily translate in regional areas however is largely silent on the alternatives. In its submission on the NSW Housing Strategy Discussion Paper Council suggested examination of a variety of housing and economic models that respond to trends of decentralization and regionalization. It also raised concern that responses to Aboriginal and Torres Strait Islander housing and living on country are largely hidden amongst the greater text.

At a glance, it is considered there are two additional SEPPs currently in place to help facilitate the delivery of diverse housing types in NSW, being SEPP No 21 – Caravan Parks and SEPP No 36 – Manufactured Home Estates, with aims including ‘promoting the social and economic welfare of the community’ and ‘encourage the provision of affordable housing in well-designed estates’.

In 2015, the Department with the Office of Local Government prepared a Discussion Paper to seek feedback on proposed improvements to improve the planning and approval process for manufactured homes and estates, caravan parks, and camping grounds. Following exhibition of the Discussion Paper in late 2015 the review has yet to be completed.

Caravan parks and manufactured home estates have a role to play in the delivery of diverse housing types and contribute to housing affordability. They hold capacity for facilitating opportunities for traditional owners to living on country and temporary/pop up homes for the most vulnerable.

Furthermore, the NSW Housing Strategy Discussion Paper described STRA as *an innovative housing activity*. The new Housing Diversity SEPP also provides an opportunity for the Department to incorporate housing-related planning provisions for STRA, such as:

- a BTR not being able to be strata titled for the first 15 years – this could as easily be applied to any new dwelling or any existing dwelling purchased using under a first home buyers grant not being able to be STRA for the first 15 years, regardless of whether current owner was the recipient of the grant.
- *Retention of Low-Cost Rental Accommodation* – where a proposed development contributes to a reduction in the availability of affordable housing, Council is permitted to levy monetary contributions as a condition of consent if they consider that approval of a

proposed development would result in a loss of affordable housing on the land that is the subject of the application. This levy could also be applied to STRA using similar determinant template.

The EIE outlines the government's commitment to ensuring an adequate supply of new dwellings that are 'affordable, well-designed and located in places that people want to live'. However, by not considering SEPP 21, SEPP 36 and STRA as part of this process it is leaving out critical components of housing diversity and affordability.

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Recommendations continued

4. That the Aim 2 of the new Housing Diversity SEPP be reframed to "consolidate all SEPPs and state housing-related planning provisions currently in place to facilitate the delivery of diverse housing types, including State Environmental Planning Policy No 21 – Caravan Parks, State Environmental Planning Policy No 36 – Manufactured Home Estates and STRA", OR
5. That consideration is given to renaming the new integrated SEPP, the **Housing 'Affordability'** SEPP and limit the scope to housing initiatives and types specifically aimed at addressing affordability.

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Aim 3 — a 'format capable of being expanded and amended'— holds significant merit. It is suggested however that the word 'understood' is missing from this aim. Local communities often grapple with understanding the nuances between the many development provisions including the Seniors and Affordable rental housing SEPPs etc. and those pertaining to other low rise medium density development.

The introduction of the NSW government's Low Rise Housing Diversity Code (LRHDC) design guidelines for development has been a step in the right direction, setting out more clear development standard expectations. The community is coming to terms with many of the design guides aspects such as the Design Principles and acknowledgment of the importance of local character via a design verification statement. To this extent Byron Shire Council has taken the time to help the community understand the guide and recently updated its LEP and DCP to integrate with these documents and provide greater guidance around interpretation.

To continue providing the community (and Councillors) with a clearer, more transparent and hopefully one stop document the format the new Housing Diversity SEPP should give consideration to how this can integrate with the low rise housing design guide.

This is particularly relevant with the intent to enable the Land and Housing Commission (LAHC) to can carry out, self assessed, any type of residential accommodation, including manor houses and terraces, where it is permissible under an environmental planning instrument, implement bonuses and self-assess applications for subdivision of government-owned land.



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Recommendations continued:

6. That consideration is given to adding the word 'understood' to Aim 3
  7. That consider be given to a format for the new Housing Diversity SEPP and any associated design guide/s relating to low rise development that could integrate with the low rise housing design guide to provide a one stop style document.
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**The following comments are offered in relation to the locational requirements and development provisions raised in the EIE for the SEPP in relation to local environmental plan (LEP) & development control plan (DCP) provisions:**

Comments:

- i. Support the concept for BTR developments in regional areas to be at a smaller scale and could take the form of multi-dwelling housing or terraces rather than apartments. Potentially this could be appropriate applied at half the metro rate.
- ii. Student Housing - support that it is not proposed to make student housing a compulsory permitted use in any of the land use zones. However further clarity is to be is needed on what constitutes "student".
- iii. Support for the proposed choice of zones for BTR, being: a compulsory permitted use in B4 Mix Use & permitted in R3 – Medium Density Residential where residential flat buildings are permitted. However, should also enable LEPs to set minimum lot sizes for new defined uses, this includes co-living.
- iv. Council's Business and Industrial Land Strategy supports in the B4 Zone, active street frontages - this should be built into the definitions if housing is to be delivered in essentially commercial streetscapes.
- v. Support for BTR permissible in other land use zones at discretion of Council through amendments to their LEPs.
- vi. Support for Councils to determine the relevant height and Floor Space Ratio (FSR) controls for BTR housing through their LEPs. However, provisions need to address LEPs or areas within LEPs where FSR are not applied. Furthermore, the issues that the LRMD design guide FSRs do not always align with LEP provisions needs to be resolved to further confusion.
- vii. Support provision that BTR cannot be strata for first 15 years and mechanisms incorporated into the SEPP to manage the transition from BTR housing to a strata-subdivided apartment or low rise medium density development. The SEPP should be flexible for each Council to determine any minimum percentage of dwellings for sale at the end of the 15 years and

those required to be retained as affordable housing. This could also be interlinked with a SEPP 70 AHC clause /schedule a LEP. Furthermore Council should also be able to apply on those sold a prohibition on use for STRA for a further 15 years.

- viii. Boarding house definition – Unclear if it is meant to limit to accommodating one or two adult lodgers? Does this preclude a parent and child/children? This form of housing in regional areas may be an important short term housing resource for family members escaping domestic violence situations or natural disaster events such a flood and bushfires?
- ix. Boarding houses are designed to short term tenure - they should not have the ability to be strata subdivided as this form of housing is purpose built and in some cases entails a converted house or disused commercial or industrial building.
- x. Support removing the requirement for boarding houses to be mandated within the R2 – Low Density Residential Zone.
- xi. Support for the simplification for the FSR bonus for boarding house development to 20%;
- xii. Term on requiring boarding houses to remain affordable – suggest that where development bonuses have been awarded or contributions concession provided at a cost to the greater community then rooms in new boarding houses should be rented at affordable rates for perpetuity and the land identified potentially in a LEP schedule 1 under an SEPP 70 AHC Scheme clause. If concessions where not granted it is reasonable that after 10 year they could revert to market rates.
- xiii. Support for Councils to have the discretion to set a maximum size for secondary dwellings in rural zones.
- xiv. Support for the intent for the SEPP provisions to clarify that development standards in a LEP prevail to the extent of any inconsistency with the SEPP.
- xv. Support for BRT, student housing, boarding house and co-living a design guide/s to be developed. However there also needs to be a connection with character, local standards and relationship to the Low rise medium density code design guide provisions. Particularly when in the longer term some of these developments may convert/revert to a form of LRMD development.
- xvi. Generally support for quicker and easier process to allow an existing dwelling to be used as a group home. Additional guidance may be needed on standards.
- xvii. Support for the introduction of co-living, though the minimum size of 10 bedrooms is out of step with the regional areas. This form of housing would integrate better with a minimum of 4-5 bedrooms.
- xviii. Generally support co-living locational requirements as mandatory permitted use wherever residential flat buildings are currently permitted however clarity is required on manor houses as to whether this includes manor houses (as a form of residential flat building) if so this will expand the zones available for co-living.

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Recommendations continued

8. That BTR and co-living in the B4 zone should support active street frontages, with this built into the definition.
9. That for BRT: (i) Councils should be able to determine the minimum percentage of dwellings for sale and the percentage to be retained as affordable housing (suggest may be able to interlinked with a SEPP 70 AHC clause /schedule a LEP); and (ii) those sold should prohibit use for STRA for a further 15 years.
10. That for Student Housing, clarity be provided as to what constitutes a “student”.
11. That clarity is provided on for co-living does a residential flat building include a manor house.
12. That Council should be able to set LEP minimum lot sizes for new uses.
13. That the building envelope controls for residential flat buildings under the relevant DCP to apply.
14. That design guidelines for co-living be developed to accompany the new SEPP. The design guidelines could address issues such as built form, internal and external amenity, storage, solar access, natural ventilation, visual and acoustic privacy. See comments on SEPP Aim 3 above.
15. That the boarding house definition should not preclude a parent and child/children residency.
16. That boarding houses should not have the ability to be strata subdivided as this form of housing is purpose built for short term tenure.

## **Comments on the implications of the new SEPP to infrastructure planning including parking ratios & transport accessibility**

### Comments:

Council supports planned for low rise medium density development to help improve housing diversity. In planning for diverse housing delivery Byron Shire Council has sought to integrate the residential strategy with infrastructure planning.

As with our housing, Council is embracing local solutions to more efficient and cost-effective infrastructure delivery. For Byron Shire this includes water recycling, car share schemes, park and ride and solar farms. The implications of the SEPP, particularly potential ad hoc placement of density bonuses, on car parking, water and waste-water servicing in regional areas needs to be carefully managed to avoid undermining sound forward infrastructure planning.

This includes recognising that in regional areas some bus stops with a regular bus service are in semi-rural locations such as park and ride stops. These locations due to other planning considerations are not appropriate to supporting 'bonus' residential development, including the potential to impact on the State and Regional road networks.

[Id profile – community](#), a recognised data provider, found that analysis of car ownership in 2016, indicates 51% of households in Regional NSW had access to two or more motor vehicles, compared to 50% in Greater Capital Cities. Furthermore, the ability of the population to access services and employment is strongly influenced by access to transport. This includes students, not only do they attend the educational establishments; more-often-than-not, students need to work part time to pay their way. In regional areas, where public transport is limited, this means relying on a car.

Council's is trialling a share car scheme as part of sustainable transport initiative. In support of this scheme, the Seniors 'location and access to facilities' provisions should retain accessibility to car share schemes. As this scheme develops car parking needs for other forms of development may be able to be reviewed, at this stage it however would be premature to support a reduction.

Whilst parking rate reductions around boarding houses may seem more acceptable, provided they are near services, inadequate onsite parking provision in medium density developments can have significant impacts on local traffic and amenity.

The car parking rate is a standard that cannot be used to refuse consent under the proposed SEPP, despite the above concerns that may be raised through the development assessment process.

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### Recommendations continued

17. That Seniors "location and access to facilities" provisions should include accessibility to car share schemes.

18. That the SEPP appropriately distinguishes between the different requirements of metropolitan areas versus regional NSW to ensure development does not adversely impact on local traffic and parking and infrastructure.
19. That expanding the density bonus outside of the metropolitan areas for other forms of dwelling types that were introduced with the Low-Rise Medium Density Housing Code in July 2018 is NOT supported.
20. That expanding the density bonus outside of the metropolitan areas to locations that satisfies the definition of 'accessible area' within the SEPP, rather than a limit to within 400 metres of land zoned B2 – Local Centre, or B4 – Mixed Use is NOT supported, unless the location is recognised in a local housing strategy as an area appropriate to residential intensification.
21. That all development is required to provide on site parking for service providers to residents.

## **Review of Seniors SEPP**

### Comments:

One clear example arising from the current COVID situation is the inadequacy of current aged care models and the vulnerability of seniors being grouped together and isolated from the broader populations and community.

The SEPP model should be directed to the delivery of seniors care and appropriate aged care rather than about maximising urban/residential yields where other urban uses may not be permitted (i.e. adjoining a residential zone). The SEPP does not adequately address the specific needs of older or people living with a disability being able to live with communities. Universal/adaptable housing should be a standard particularly in all medium density developments.

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### Recommendations continued

22. That the Seniors SEPP Review recognises that the older population is an extremely diverse group and housing response strategies should accommodate this diversity.
23. Support for provisions of *Schedule 1 – Environmentally sensitive land of the Seniors SEPP* to align with current legislative and planning conditions.
24. That the SEPP provisions clarify that development standards in an LEP prevail to the extent of any inconsistency with the SEPP and that the development standards in the Seniors SEPP could be varied using clause 4.6 of the Standard Instrument LEP, but only to a maximum of 20%.
25. That a minimum threshold be set for providing universal housing in new or refurbished multi-unit development to increase the support of housing suitable for older persons or persons living with a disability.

26. That infrastructure planning to consider the needs of older people – such as location of seniors housing and integrating allied facilities for older people in the expansion of transport networks including continued improvement of pedestrian access to encourage active ageing.
-