DANIAS

173 Victoria Road
Marrickville NSW 2204
www.danias.com.au
info@danias.com.au
02 9550 0809

SUBMISSION: DRAFT HOUSING DIVERSITY SEPP

The Danias Group have sought independent advice and drawn on their own development and planning experiences in preparing this submission on the draft new Housing Diversity SEPP. The Danias Group is currently developing a major mixed-use precinct in Marrickville that has planning approval to develop 1100 dwellings and circa 125,000sqm of commercial space. The dwellings will be a mix of traditional apartments, commercial development and creative industries.

Currently we are seriously exploring both Co-living and Built-to-Rent options for the Precinct as part of the residential component. Accordingly, our submission is based on our knowledge of the sector as well as being in the front line of delivering Co-living and Built-to-rent dwellings. We are engaged directly with existing domestic and international Co-living operators and investors in build-to-rent products.

For more details about our Group and the Victoria Road Precinct in Marrickville please see our website at www.danias.com.au

GENERAL COMMENTS IN SUPPORT OF THE DRAFT SEPP

The Danias group are SUPPORTIVE of the Planning Department recognising the newer forms of housing that currently exist in the market. These new sectors of the housing market are also growing. The current system makes it difficult for proponents and planners alike to assess applications that involve…

- Student housing
- Co-living housing
- Build-to-rent housing

So, we SUPPORT the Department's initiative in capturing these new forms of housing within the planning system. It will assist the sector and the planning assessment officers, by having clear definitions of the housing types and established development standards.

Danias also strongly SUPPORT the draft SEPP's recommendation that Co-living, build-to-rent (BTR) dwellings and boarding houses are mandatory permitted uses in existing residential zones. That is land zoned R3, R4 and B4 and in BTR cases permissible uses in B3 and B8 zones. This initiative provides certainty to developers and planning officers alike. It will be a key element in the success of the SEPP, if it is adopted.

The rationale behind the new SEPP is also SUPPORTED. Housing needs, and the preferences of some people, are changing. There is a demand for affordable, convenient options that are well-located near employment, transport and community hubs. Not everyone desires to live in a large suburban home or a large apartment. There is also a trend towards communal services whereby residents share well designed communal spaces. Co-living, student and boarding houses will never be the main form of housing, but they do service important segments of the market.

So overall, we SUPPORT the initiative to capture these new housing options in one comprehensive SEPP that includes Seniors Living and Affordable Housing. We have no objection to the general provisions that the new forms of housing comply with the relevant LEP standards.

CO-LIVING – GENERAL OBSERVATIONS

The draft SEPP correctly describes the new class of dwellings that can be defined as Co-living. However, it doesn't fully analyse the demand for Co-living. The SEPP assumes the users of co-living are looking for a permanent affordable housing option that is close to work and reliable public transport. However, it fails to acknowledge that many people who are seeking a Co-living residence are doing so on a temporary or medium-term basis.

Co-Living is a viable and sought-after option for the following types of residents…

- Regionally based people who work in the city during the week. Their main residence is in the country and so they only require a small affordable abode in the city during the working week
- Recently separated people
- Nurses and emergency workers
- Country people temporarily located to the city for short term work opportunities or for medical treatments
- Out of area employees on short-term contracts including Monday to Friday fly-in fly-out (FIFO) workers from interstate. Not all FIFO workers work in remote areas
- Those escaping domestic violence environments
- Use as serviced apartments for medium length of stays such as hospital visits, tourism, seniors visiting family and new grandchildren

Accordingly, the prescriptive planning and design controls in the draft SEPP do not reflect the requirements of all the possible users of co-living. They are drafted to reflect a permanent residence scenario. The proposed key development standards for co-living are therefore too prescriptive and too onerous.

Not one of Sydney's current co-living developments in Stanmore and Marrickville etc would comply with this code as it stands. Further the many successful international Co-living developments, like in Hong Kong and the UK, would not comply either.

In short, the development standards do not reflect the market, nor do they meet current development practices for the sector. The proposed standards in the draft SEPP would make Co-living development unaffordable for both the provider and the renter. It would no longer be an affordable housing

product. Simply the draft SEPP does not understand nor reflect this new sector.

SPECIFIC COMMENTS ON THE DRAFT CO-LIVING DEVELOPMENT STANDARD…

- **Minimum Room Size**: 30-35m^2 is excessive and greatly exceeds the current international and local standards. Attached are some examples of room designs ranging from 22m^2 to 30m^2. Those designs adequately service the resident's requirements. Therefore, the minimum room size should be 20m^2. There is no real requirement for a maximum room size, like the proposed 35m^2,

  An alternative development standard could be a control that guarantees a mix of room sizes, like in residential dwellings where there is a control on the number of studio, one-bed, two-bed and three-bed ratios per building. There could be a control allowing a mix of smaller Co-living apartments and some larger ones.

- **Private Open Space**: The SEPP proposes 4sqm per room be built as private open space. As the draft SEPP states this is based on the same ADG requirement for studio apartments. However, studio apartments are not required to provide communal areas whereas the provision of communal space in co-living developments is mandatory. It is double-dipping.

  Accordingly, the guidelines should retain the proposed standard for communal space but remove the requirement to provide private open space. It is an added cost that will achieve little in the way of amenity other than to increase rents and make Co-living less affordable.

- **Design Guidelines**: The SEPP indicates that design guidelines, similar to apartment design guidelines, for Co-living will be developed later. The implication is that they will reflect the guidelines that apply to apartments in terms of storage, solar access, natural ventilation and privacy as well as the built form. Applying similar design guidelines for apartments or just transferring the existing design guidelines will not work. By the very nature of the size of small apartments it will be impossible, on most sites, to strictly comply with solar access, natural ventilation and privacy controls due to the obvious spatial limitations of the room sizes. It should be noted that Co-living apartments do need to

meet high design standards in terms of fit-out, layout and communal spaces to attract tenants and ensure good rental return. Co-living is an affordable housing product but not a cheap built product

- **Communal Open Space**: The proposed standard of 25% of the site area to be dedicated communal open space is excessive when combined with the communal living space requirements of minimum $20m^2 + 2m^2$ per room above 10 rooms. For potential co-living sites in the inner ring of Sydney, it would be difficult to provide both 25% of site area as open space as well as providing large communal areas. Possibly the standard should be amalgamated with the communal living space requirements so that the combined communal space could be a minimum of 25% of the area.

- **Car Parking**: The proposed standard is 0.5 spaces per room. As described above the requirement for parking spaces amongst tenants is not high. Less than 50% of co-living tenants would not require, let alone pay for, a permanent car space. Sydney's current co-living developments would not comply with this code. Yet they are operating successfully without problems and without causing problems in the local community.

  Commercially the provision of on-site carparking is an excessive cost. It will result in higher rents and is thus counter-productive to providing affordable housing.

  Also, in a practical sense, history shows that consent authorities will always impose the maximum requirement possible car parking requirement. In effect the standard of 0.5 spaces per room will become the default position of Councils and planning panels which is contrary to the intent of the Draft SEPP. An alternative approach is to amend the draft SEPP by establishing a lower parking requirement (eg. 0.3 spaces per room) if the co-living development is located within 1km of a train station or 800m off a major bus corridor. This would encourage co-living facilities to be located near major public transport services. This would reflect the current market trend for this housing asset class. All of Sydney's current Co-living developments are located within 800m of train corridors.

- **Short Stay Accommodation:** The draft SEPP proposes a control of a minimum of 3 months stays. We understand the intent of the control and it is in the commercial interest of the operator to have longer rental periods. However, as explained above, there is a need, on occasions, for short term residential accommodation such as someone attending a trainee or internship or for medical treatment. There should be greater flexibility in the minimum length of stay (ie. one week). It will also help with the commerciality of Co-living projects.

As described in the draft SEPP, Student Housing and Co-Living area similar housing asset classes. Both will cater for temporary or medium-term tenants in a communal setting although co-living will be used by people in the workforce. Accordingly, the requirements for student housing and Co-living should be similar. As drafted, the SEPP imposes more onerous conditions on Co-living developments. The final SEPP needs to bring both classes of assets more in line with each other.

Co-living, and similar housing asset classes like student housing and affordable housing, cannot compete for development land against standard apartment development sites. Property developers will always pay premium rates. So, if the detailed design standards requiring bigger facilities drive up the construction costs and rental prices then co-living developments will not be able to compete with private housing developments. In particular the car parking, private open space and communal open space requirements would make most co-living projects uncommercial.

So, if the Government wants to encourage affordable housing options, like Co-living, they need to ensure they are competitive with standard residential developments.

CO-LIVING: KEY RECOMMENDATIONS

In the Co-living section of the SEPP make the following amendments:

- Minimum Room Size: 20m^2

- Private open space requirement: delete as its unnecessary

- Combine the communal living space and open space requirements so that the combined provision is no less than 25% of the area

- Car Parking: reduce the standard to 0.3 spaces per room if the development is within 1km from a railway station or 800m from a major bus corridor

- Ensure any future Co-living design guidelines are adaptable or flexible enough to apply to smaller living spaces

- Delete the requirement that the minimum stay be 3 months or amend it to one week

BUILD-TO-RENT (BTR) – GENERAL COMMENTS

The Danias Group SUPPORT the proposed SEPP guidelines for Build-to-Rent housing. We are encouraged by the statement in the draft SEPP that states… "the Government is proposing to incentivise the delivery of BTR housing through the NSW planning system"

BTR housing is a different form of rental housing only with respect to the fact that all the dwellings in the building must be rented and rented on an on-going permanent basis (or up to 15 years). There can be no private ownership or strata of individual dwellings. Whereas the current dwellings available for rent are usually located throughout an apartment, townhouse or duplex complex. Most apartment buildings have a mix of rental and owner-occupied dwellings. However, the draft SEPP is proposing to impose more stringent conditions on the owners of BTR rental properties than exist for the normal or current rental market. Examples include:

- The draft SEPP proposes a minimum tenancy of 3 years or more. There are no such restrictions in the general rental market. It will work for some tenants in giving them certainty, but many tenants would be deterred by locking into a fixed 3-year rental agreement. So, the provision will make BTR dwellings harder to rent. It is also unnecessary as the planning consent guarantees that the dwellings can only be used as a rental property. So why restrict the term of any tenancy? There needs to be flexibility for both the tenant and the owner

- The draft SEPP mandates that there must be on-site management. Why? Most rental properties are managed by real estate agents off site. Also, strata body corporate management is also off-site. The standards should reflect the current system where the tenants have direct access to a property manager and the body corporate, but these management services do not need to be located on-site. Unlike Co-living, student and boarding house housing products there is no requirement for communal spaces or facilities.

  There is common property but operated under clear rules. Accordingly, there is no requirement to have daily management on-site for rental properties.

  Similarly, with the proposed outright ban on short term accommodation. It is not in the owners' interest to rent BTR dwellings on short term leases. However, it may be necessary on occasions for some housing stock to be leased on short term rentals, say 3 months as minimum. There needs to be some flexibility in the minimum term standards.

  The development standards mentioned above significantly disadvantage BTR housing projects compared to existing rental properties. They will act as a disincentive for BTR projects. Put simply the Draft SEPP tries too hard to create long-term rental housing options and the measures are actually counter-productive.

SPECIFIC COMMENTS ON THE DRAFT BUILD-TO-RENT DEVELOPMENT STANDARDS

- **Minimum Number of Dwellings:** The draft SEPP proposes that any BTR building must contain at least 50 self-contained dwellings. This is too high a threshold. In some inner-city areas BTR products could be established on complexes of 20 or 25 dwellings. On the proposed standard, any BTR product would need to be a 7 to 8 storey building or a twin complex. That is too restrictive.

- **Single Ownership and Single Management Entity**: Support both controls as long as the definition of single ownership can include joint ventures and partnership. The intent of the SEPP should be to prevent the individual dwellings being sold separately or create a Strata subdivision.

- **Strata – Commercial**: The draft SEPP should recognise that if BTR is built in the Business zones (B3, B4 and B8) as proposed, the SEPP is flexible enough to allow the commercial and retail components of the mixed development to be strata subdivided and sold separately. The residential component could still be mandated to be in single ownership.

- **15 Year Term**: The draft SEPP proposes to prohibit subdividing the BTR housing development for a minimum of 15 years. This is too onerous and acts as a disincentive to develop BTR housing. However, we support a minimum period and would recommend 10 years.

- **Parking Controls:** As stated in the draft SEPP "BTR housing is generally… situated in well-located areas, close to transport and amenity". Accordingly, the proposed car parking standard of 0.5 spaces per dwelling is excessive and unnecessary. Increasingly the requirement for car spaces is decreasing. The City of Sydney have approved residential dwellings with zero on-site car parking provision in select areas. It seems to be working. Whilst some car parking provisions are required, we believe the proposed standard of 0.5 per dwelling is too high.

  An alternative approach is to amend the draft SEPP by establishing a lower parking requirement (eg. 0.3 spaces per dwelling) if the BTR dwelling is located within 1km of a train station of 800m of a major bus corridor. This would encourage BTR developments to be located near major public transport services.

- **B5 Zone (Business Development)**: The draft SEPP should be extended to be a compulsory permitted use in B5 – Business Development zones. It would be a compatible land use.

- **Co-living Mix:** Amend the draft SEPP to allow Co-living dwellings to be a component of BTR developments. In this way a BTR could offer a range of accommodation options, including affordable smaller dwellings, as part of the BTR mix. The SEPP should be flexible to allow mixed dwelling options within a separate housing class.

BOARDING HOUSE – GENERAL COMMENTS

This is not an area of speciality or interest for the Danias Group. However, we make the following general observations:

- The proposed new SEPP definition of what constitutes a 'Boarding House' seems to now exclude private sector businesses operating boarding houses. Or at the very least deliberately excludes privately developed and operated boarding houses from the operation of the proposed SEPP and denying the private sector the benefits of the SEPP. Is the intent of the SEPP to now exclude professionally run privately managed boarding houses? If so, why?

- If that is the case, will the SEPP grandfather the current provisions for the existing privately managed boarding houses? If not, what will happen if a current private operator wants to lodge a Development Application to upgrade their existing facility, expand the facility or even replace it as a result of damage (eg. Fire or flood)? Will the private operator be forced to relinquish their operating rights to a not-for-profit community housing provider in these circumstances? Some clarity around this is required.

- Boarding Houses should be retained as a permissible use in R2 Low Density Residential Zones without any qualifications or separate tests as is now proposed.

CONCLUSION

We hope the above comments are helpful to the Department of Planning as they finalise the Housing Diversity SEPP. As stated, the Danias Group is involved in the Co-living and BTR housing sectors and are supportive of the Government's approach to creating a new SEPP to recognise these newer forms of housing. However, we would encourage the Government to adopt a lighter hand rather than over-regulate the fledgling sector so as to incentivise Co-living and BTR operators to invest in the housing sector.

If you have any questions, or would like any further information please contact our Project Director, David Tierney via email at david@titfa.com.au

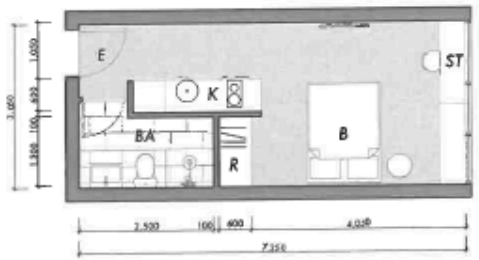
Thank you for considering this submission.

DANIAS GROUP
121 Sydenham Road
Marrickville NSW 2204

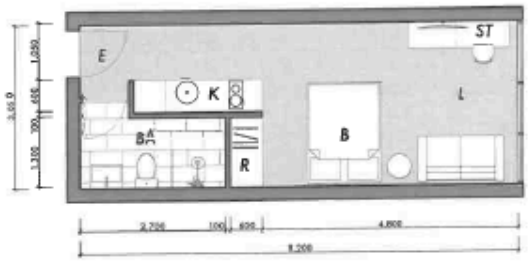
September 2020

ATTACH: Examples of Co-living apartment floor plans.

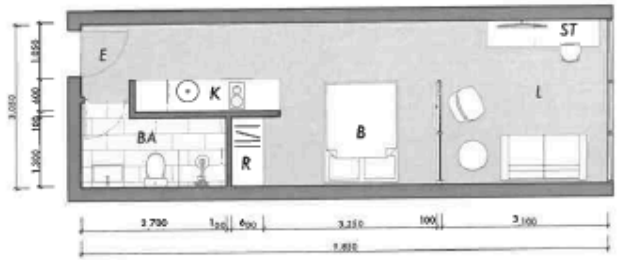
APARTMENT LAYOUTS



22 m²
15 m² habitable



25 m²
18 m² habitable



30 m²
23 m² habitable

BA	Bath
B	Bedroom
E	Entry
K	Kitchen
L	Lounge
R	Robe
ST	Study area

Indicative Typical apartment layouts

Submitted on Tue, 08/09/2020 - 20:51
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: I don’t believe changing the rules for affordable housing, new generation boarding houses in R2 zones should change, we have a housing shortage in this country and reducing the allowable rooms will just put more pressure on the housing crisis we have on our hands. Boarding house have been managed by families in the past so what is the need to change it now. Reducing rooms and increasing management fees will reduce small developers starting projects which will put more pressure on homelessness.

Submitted on Tue, 08/09/2020 - 11:57
Submitted by: Anonymous
Submitted values are:
Submission Type:I am making a personal submission
First Name: David
Last Name: Barrie
Name Withheld: No
Email: duckbarrie@hotmail.com
Suburb/Town & Postcode: WAGGA WAGGA
Submission file: [webform_submission:values:submission_file]
Submission: I would like to argue against the proposed changes to the Housing Diversity SEPP with the main point being not to limit the management of smaller style boarding houses to Community Housing Providers only. There has been private owners doing a great job of investing in and managing this style of accommodation and allows a more diverse style of accommodation to a wider range of tenants. I think the New Gen Boarding house and rooming house policies should be allowed in all areas as they will only be built where they are needed if people due their due diligence. There should be universal access exemptions for existing properties.

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

[redacted]

Submitted on Wed, 09/09/2020 - 23:10
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 file: [webform_submission:values:submission_file]
Submission: Dear Sir/Madam I have read the proposed housing diversity code and it's measures to open new means of housing supply. I am disappointed, however, at the proposals to make boarding houses illegal in R2 zones and to implement a income test to determine who is permitted to occupy these residencies. These measures will reduce the short to medium term accommodation options available to a great many individuals including those in difficult circumstances, while mandating a lost opportunity to utilise the existing housing stock to provide this accommodation. It appears needlessly draconian. Please reconsider these proposed aspects of the housing diversity code.

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

Submitted on Tue, 08/09/2020 - 12:32
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: I am a Town Planner who prepares several applications a year under the affordable rental housing SEPP. This makes up the majority / significant portion of my work. Proposing to change legislation in the midst of a pandemic does not help create certainty and reduces potential investment. Enquiry since the release of this report has dropped off due to worry regarding changes to legislation. My Clients (Private Sector) don't understand why you would try to change something that is already working well. The current controls under SEPP (ARH) 2009 are clear and effective in the delivery of affordable housing. This has already affected my financial wellbeing as well as the wellbeing of my staff, my family and colleagues.

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

Submitted on Tue, 08/09/2020 - 10:21
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: Sydney 2000

Submission:

The Honourable Robert Gordon Stokes MP

Dear Robert, Re: Proposed State Environment Planning Policy in NSW

I am writing to you regarding the proposed changes to the State Environment Planning Policy. As you may be aware there has been a significant drop in new housing commencements in NSW. At the same time there is an increased demand for affordable housing. Many existing homes have at least one bedroom spare and the number of homes with a spare bedroom is likely to increase over time. Further the number of households without children is likely to continue to increase significantly. I believe that we need more flexible housing options.

For share Housing

There should be 2 levels of Share Housing 1/ - Up to 6 people allowable in a R2 Zone 2/ - 6+ people - CDC approval process so can be approved through a private certifier For properties build prior to May 2011 – No universal access is required Share housing must be permitted in R2 residential zones. In properties built pre May 2011, the upgrades need to be in line with 1b Building class. The NSW State government should include an exemption for Universal Access for existing stock including by allowing prior existing uses to remain. For up to, and including, 5 people living together, the minimum standards of the property should reflect the Queensland Development Code (Mandatory Part) MP 5.7 – Building Standards. Share accommodation should be permitted around major education hubs say within between 3 km and 10km of those hubs. This should be allowed within 400m from public transport like the current access requirements for New Generation Boarding Houses in R2 zones. Co – Living The shortfall of affordable homes is increasing. There should not be a minimum number of 10 private rooms for each property. Otherwise this will create more illegal share-housing. For Pre May 2011 dwellings there should be –

- No universal access requirement
- 1b standard should apply
- No more than 6 people should live in the home
- No more than 6 bedrooms should be in the home For post 2011 dwellings – • Universal access is required
- CDC approval up to and including 6 people
- 7+ people not permissible in R2 zone and D.A with council Co-Living In R2 zone • Up to and including a maximum of 7 people
- Maximum of 6 bedrooms
- No unrelated parties to share a room. Pre May 2011
- Exemption of disability access

- Upgrade to a 1b Building Class Post May 2011
- Up to and including a maximum of 7 people
- Requires universal access Both Pre and Post May 2011 dwellings are to be approved through a CDC process by a private certifier Car parking .5 spaces per room, approval by council discretion should be permitted. Residents to have their own bathroom, kitchenette (sink with no fixed cooking equipment) but can also share the facilities within the dwelling (i.e. bathrooms). The dwelling must contain a full working kitchen as a minimum requirement for a communal area

Affordable Rental Housing SEPP (ARHSEPP)

New Generation Boarding House Policy should be allowable in all zones People will rent these properties if the financial and location options are available to them Management by Community Housing Providers I do not agree that smaller style boarding houses should only be managed by Community Housing Providers. Affordability Boarding houses in R2 zones can be removed – only if co-living properties are allowable. Removing boarding houses from the R2 zones does not create a diverse demographic of residents or allow a variety of housing types in certain areas. These proposed changes would make it difficult for private middle-class developers because of the high cost of development. Families have owned and operated NSW boarding houses for generations and should be encouraged to continue to do so to take the burden of providing affordable housing away from the government. Thank you for considering each statement in my submission.

Submitted on Tue, 08/09/2020 - 08:53
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:

This is a terrible idea! 10 units per site and a Community Housing Management in charge? Sounds a bit like a slum of the future / commission housing. I say a maximum of 6 rooms in R2 zones. Please make it easier to build smaller smarter

New generation boarding houses and small time mum and dad investors like me will help to solve this awful problem of homelessness.

For example

Retrofitting an old house to have a disability bathroom that no one uses is ridiculous, expensive and a huge pain. New homes sure, no problems it can be factored in at plan stage. I self manage my properties and any more than 6 people causes problems. They all have their own bathrooms and can choose to interact or not as they have their own private space. It works well just like that.

NSW GOVERNMENT | Department of Primary Industries

OUT20/10405

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

Dear Mr Betts

Submission – Proposed Housing Diversity SEPP – Explanation of Intended Effects

Thank you for the opportunity to make comment on the Explanation of Intended Effects (EIE) for the proposed Housing Diversity State Environmental Planning Policy (SEPP). The NSW Department of Primary Industries (NSW DPI) Agriculture is committed to the protection and growth of agricultural industries, and the land and resources upon which these industries depend.

DPI Agriculture has reviewed the EIE and the supporting documentation and has concerns and recommendations in relation to some aspects of the proposed SEPP as set out below.

Secondary Dwellings

DPI Agriculture does not support the proposal to allow larger secondary dwellings in rural zones. The current provisions allow for the construction of a modest structure to provide accommodation for extended family members without significantly increasing the residential use of rural land. The small size limit which applies to secondary dwellings is one of the reasons why some councils have permitted them in rural zones in preference to detached dual occupancies which have no size limit.

The proposal to increase the allowable size of secondary dwellings in rural areas will increase the utility of secondary dwellings for rental by people unrelated to farming operations in the vicinity and is likely to result in an increase in the prevalence of these structures in rural areas.

Increased urbanisation in rural areas increases the potential for land use conflict with agricultural land uses, decouples the value of the land from its farming value driving out farming businesses, and threatens the efficiency of the agricultural industry in NSW, an industry which is worth $12 billion dollars annually.

Site Compatibility Certificates on agricultural land

The review and update of the provisions in Schedule 1 Environmentally Sensitive Land in State Environmental planning Policy (Housing for Seniors or People with a Disability) 2004 should include important agricultural land as a land type on which site compatibility certificates are excluded.

The current provisions which allow seniors housing on rural land through the site compatibility certificate mechanism has resulted in incremental creep of urban land use into rural areas and enables seniors housing to be located on agricultural land, preventing the

land from being used for food and fibre production. It also introduces new sensitive residential receptors to the urban/rural interface increasing the potential for land use conflict.

The Greater Sydney Commission (GSC) report titled "*Investigation into the cumulative impacts of Seniors Housing in the rural areas of The Hills and Hornsby local government areas*" which has been exhibited with the EIE, recognises that the site compatibility certificate process results in ad hoc planning for rural land which is not consistent with the strategic planning framework. The report also notes that the speculative nature of site compatibility certificates results in land banking and inflated rural land values which undermine opportunities for investment in productive rural activities.

DPI Agriculture strongly recommends that important agricultural land, including state or regionally significant agricultural land be included in the list of land types on which site compatibility certificates and seniors housing are excluded.

Group Homes

Group Homes are currently permitted in a variety of urban zones (prescribed zones) and *any other zone where a dwelling is permissible under another planning instrument*. Dwellings are a compulsory permissible use under the Standard Instrument in all rural zones. As such, Group Homes are permissible in all rural areas.

DPI have received multiple complaints from farmers who live near these homes that occupants have wandered onto properties, sometimes interfering with livestock and infrastructure. There are concerns that these rural locations are not sufficiently serviced to cater for the transport and social welfare needs of these establishments.

Group Homes are more appropriately located in the prescribed zones, or their equivalents, where services and public transport are readily available than in any location across the landscape where dwellings are permissible. It is recommended the provision enabling permissibility in any other zone where a dwelling is permissible be removed.

Should you require clarification on any of the information contained in this response, please contact Mr Paul Garnett, Agricultural Land Use Planning Officer, on 0429 864 501 or by email at landuse.ag@dpi.nsw.gov.au

Yours sincerely

Kate Lorimer-Ward
Deputy Director General
DPI AGRICULTURE

Submitted on Wed, 09/09/2020 - 08:54
Submitted by: Anonymous
Submitted values are:
Submission Type:I am making a personal submission
First Name: Derek
Last Name: Hui
Name Withheld: No
Email: djkmails@gmail.com
Suburb/Town & Postcode: 2121
Submission:

Dear The Honourable Robert Gordon Stokes MP,

As you know there are serious affordability issues in Australia forcing young people who want to move out of their parents home (often in a more desirable location) into an area away from their social network. New generation Boarding houses and coliving properties have been a saviour to this situation, allowing small time investors to invest into a coliving property that provides a safe and affordable solution in more all areas.

For the same reason, New generation houses should be allowable in All areas allowing flexibility of rental options. We do not agree that smaller style boarding houses should only be managed by Community Housing Providers. Families have been providing legal and safe houses for generations. Further, there should not be a minimum number of 10 private rooms for each property.

As this will only force builders to create massive high impact homes in neighbourhoods which will not blend to the surroundings. If enacted, this policy will drive out legal Operators and simply create more illegal and unsafe sharehouses. Please consider these Issues wisely. Regards Derek Hui

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

Dr Devasha Scott
30 Ramsay St
Collaroy NSW 2097

9 September 2020

Re - Submission on the proposed new Housing Diversity SEPP Explanation of Intended Effect

INTRODUCTION

The following submission contains feedback on the Explanation of Intended Effect for the Proposed new Housing Diversity SEPP. I believe that the proposal to consolidate the three housing-related SEPPs is a good one. Review of these SEPPs is long overdue and many of the provisions need to be updated to reflect the community's expectations more closely. Likewise, introduction of new definitions for built-to-rent housing, student housing and co-living will be very helpful in targeting housing for particular needs in the community. Furthermore, I am particularly pleased with the proposed amendments to some of the provisions in the SEPPs, particularly those regarding boarding house developments in low-density residential areas.

Although not addressed in the Explanation of Intended Effect, I wish to bring to your attention a serious concern that I have regarding the inclusivity of affordable housing, with respect to equitable access for people living with disability. It is important to note that I don't hold myself out to be an expert in Planning or Disability Access. Nonetheless, I believe that obligations under the *Disability Discrimination Act, 1992* (DDA) have not been fully recognised in the assessment process of development applications for boarding houses sought under the *State Environmental Planning Policy (Affordable Rental Housing) 2009* (ARHSEPP).

In recent years I have seen a number of development applications for boarding houses proposed in my local area on the Northern Beaches that, due to steep topography, are totally unsuitable for people with mobility impairment, particularly for those requiring wheelchair access to the premises. Specifically, a number of boarding houses have been proposed at the top of steep hills: two have gradients of 1:3, one of which requires navigating a series of 71 steps down an embankment in order to access the bus stop. Both of these are currently under appeal in the Land and Environment Court after being refused by Northern Beaches Council in 2018. That these applications are still under consideration is is problematic to say the least.

Critically, I believe that approval of boarding house developments in such locations would discriminatory and therefore unlawful under the DDA. Having to navigate such a steep terrain, likely on a daily basis in order to access shops and transport, would unfairly disadvantage people with mobility impairment. In my view, boarding house applications in locations such as these should not be able to get this far in the assessment process.

I note that the boarding house development applications referred to above are extreme cases; the locations are clearly unsuitable and I am hopeful that on merit the Court will refuse them. My concern is that there are many boarding houses being proposed and approved in areas that, whilst the topography is not as extreme as above, they are nonetheless inaccessible for people with mobility impairment requiring wheelchair access.

As such, I contend that the new Housing Diversity SEPP needs to contain provisions to ensure people with living with a disability are not subject to unlawful discrimination. The following pages contain my suggestions, as well as my reasoning, by referring to relevant disability legislation. I have used numbered paragraphs for ease of reference.

PROPOSED AMENDMENTS/ADDITIONS TO PROVISIONS

As highlighted on the previous page, I believe that the *accessibility* of the pedestrian route between boarding houses and public transport has been overlooked.

(1) Firstly, the use of the word ***accessible*** in the term ***accessible area*** in the *State Environmental Planning Policy (Affordable Rental Housing) 2009* (ARHSEPP) is not consistent with the definition of ***accessible*** in the Disability Standards under the *Disability Discrimination Act, 1992* (DDA). I believe this must be rectified.

Disability (Access to Premises – Buildings) Standards 2010

A1.1 Definitions

accessible means having features to enable use by people with a disability.

accessway means a continuous *accessible* path of travel (as defined in AS 1428.1) to, into or within a building.

State Environmental Planning Policy (Affordable Rental Housing) 2009

Division 3 Boarding Houses

27 Development to which Division applies

(1) This Division applies to development, on land to which this Division applies, for the purposes of boarding houses.

(2) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone in the Sydney region unless the land is within an accessible area.

4 Interpretation—general

(1) In this Policy:

accessible area means land that is within:

(a) 800 metres walking distance of a public entrance to a railway station or a wharf from which a Sydney Ferries ferry service operates, or

(b) 400 metres walking distance of a public entrance to a light rail station or, in the case of a light rail station with no entrance, 400 metres walking distance of a platform of the light rail station, or

(c) 400 metres walking distance of a bus stop used by a regular bus service (within the meaning of the *Passenger Transport Act 1990*) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.

walking distance means the shortest distance between 2 points measured along a route that may be safely walked by a pedestrian using, as far as reasonably practicable, public footpaths and pedestrian crossings.

(2) Secondly, and perhaps because of the ambiguity surrounding the use of the word ***accessible***, I believe that obligations under the DDA have not been fully recognised in the assessment process for boarding houses under the ARHSEPP. I believe that suitable provisions need to be included the new Housing Diversity SEPP to ensure that people living with disability are not subject to unlawful discrimination.

Specifically, I contend that an *accessible* pathway (one that can be used safely by people with a disability) needs to be available between all new boarding houses and public transport in order to comply with the DDA. It is the reliance on public transport that is fundamental to my argument and I will explain below.

DETAILED REASONING

(3) The *Disability (Access to Premises – Buildings) Standards 2010* (Premises Standards) require boarding houses to be *accessible* buildings. This appears to be well understood and all new boarding houses must provide the requisite number of *accessible* boarding rooms, common areas and *accessible* pathways within the premises.

> ***Disability (Access to Premises – Buildings) Standards 2010***
>
> **D3.1 General building access requirements**
>
> Buildings and parts of buildings must be *accessible* as *required* by Table D3.1, unless exempted by clause D3.4.

(4) It is also true that the Premises Standards don't apply to the pedestrian pathway between boarding houses and public transport. Nonetheless, these footpaths remain subject to the general non-discrimination provisions of the DDA.

(5) I note the Australian Human Rights Commission (AHRC) states:

"At this stage, however, the Premises Standards only apply to buildings covered by the various building classifications found in the Building Code of Australia. Public footpaths do not have a building classification, so while they covered by the definition of 'premises' they are not subject to the Premises Standards, but remain subject to the general non-discrimination provisions of the DDA."

and

"In any case where the DDA is more demanding or broader than the BCA, the DDA has to be complied with."

https://www.humanrights.gov.au/our-work/disability-rights/frequently-asked-questions-access-premises

(6) I aim to demonstrate on the following pages how I believe the *Disability Discrimination Act, 1992* (DDA) applies here.

Why I believe the pedestrian route from boarding houses to public transport must be accessible for people with disability

(7) It is well understood that boarding house residents rely upon the proximate and regular use of public transport.

(8) This reliance on public transport is a central precept in the application of the ARHSEPP. Clause 27(2) stipulates that a boarding house must be within an "accessible area" and Clause 4(1)(c) for example, defines accessible area to be 400m walking distance from a bus stop used by a regular service.

(9) Indeed, the parking concessions given in Clause 29(2)(e) are provided on the basis that boarding houses must be close to regular public transport. Boarding houses under the ARHSEPP are only required to provide 0.5 car spaces per room and so at least 50% of residents in a boarding house are reliant on public transport.

(10) Importantly, the ARHSEPP stipulates that the pedestrian route to the public transport must be safe.

I note Clause 4 of the ARHSEPP:
*"**walking distance** means the shortest distance between 2 points measured along a route that may be safely walked by a pedestrian using, as far as reasonably practicable, public footpaths and pedestrian crossings."*

(11) Therefore, safe pedestrian access to the closest public transport is vital & integral to all boarding house developments.

(12) Crucially, I contend that all boarding house residents must be afforded safe pedestrian access to public transport and this necessarily includes residents with mobility impairment, requiring wheelchair access for example.

(13) As such, I believe that it would be discriminatory under the DDA if safe pedestrian access to public transport were only provided for able-bodied residents and residents with disability were denied equivalent access.

(14) A person who is vision-impaired or someone requiring a mobility aide (such as a wheelchair for example) must also be afforded *safe pedestrian access* from the boarding house to public transport.

(15) On the following pages I have provided what I believe to be the applicable sections of the DDA followed by an explanation of how these sections of the DDA apply to the provision of a safe pedestrian pathway for all.

(16) In addition, I note that the Australian Human Rights Commission (ARHC) publication *Federal Discrimination Law 2016* outlines the scope of the DDA, as well as examples of direct and indirect discrimination. I will also include a number of excerpts from this publication that I believe to be relevant.

Relevant sections of the *Disability Discrimination Act, 1992*

(17) **DDA Section 5 – Direct discrimination**.

Under the DDA a person discriminates against another person the ground of a disability of the aggrieved person if, because of the disability, the discriminator treats, or proposes to treat, the aggrieved person less favourably than the discriminator would treat a person without the disability in circumstances that are not materially different.

(18) I note the following excerpt from *AHRC Federal Discrimination Law 2016 p.178:*

> **5.2.2 Direct discrimination under the DDA**
>
> ***(i) Causation and intention***
>
> *Those sections which make disability discrimination unlawful under the DDA provide that it is unlawful to discriminate against a person 'on the ground of' the person's disability'.[61] Section 5(1) of the DDA provides that discrimination occurs 'on the ground of' a disability where there is less favourable treatment 'because of' the aggrieved person's disability. It is well established that the expression 'because of' requires a causal connection between the disability and any less favourable treatment accorded to the aggrieved person. It does not, however, require an intention or motive to discriminate.*

(19) **DDA Section 6 – Indirect discrimination**.

Indirect discrimination occurs when a requirement that appears to be neutral and the same for everyone in fact has the effect of disadvantaging someone because of their disability.

(20) Regarding indirect discrimination cases, I note the following excerpts from *AHRC Federal Discrimination Law 2016 p 203 & 204:*

> **5.2.3 Indirect discrimination under the DDA**
>
> **ii) Imposition of the requirement or condition**
>
> Prior to the 2009 amendments to the DDA,[241] an aggrieved person was required to demonstrate that a requirement or condition was actually imposed upon them: it did not apply to requirements or conditions with which a discriminator *proposed* to require an aggrieved person to comply.
>
> The definition of indirect discrimination now applies to requirements or conditions with which the discriminator 'requires or proposes to require' an aggrieved person to comply.[242] This is consistent with the approach taken in the SDA,[243] *Age Discrimination Act 2004* (Cth) ('ADA')[244] and the definition of direct discrimination in section 5 of the DDA.
>
> An applicant does not necessarily need to show that the relevant requirement or condition was imposed or is proposed to be imposed by way of a positive act or statement. In *Waters*,[245] for instance, Mason CJ and Gaudron J noted that:
>
> > compliance may be required even if the requirement or condition is not made explicit: it is sufficient if a requirement or condition is implicit in the conduct which is said to constitute discrimination.[246]

…The inaccessibility of premises or facilities may give rise to the imposition of a relevant requirement or condition for the purposes of establishing indirect discrimination.[248] For example, in Access For All Alliance (Hervey Bay) Inc v Hervey Bay City Council[249] ('Access For All Alliance') the applicant organisation complained that certain council facilities (a community centre, concrete picnic tables and public toilets) were inaccessible to members of the organisation who had disabilities. In relation to the community centre Baumann FM found the following requirements or conditions to have been imposed:

> Persons are required to attend and enjoy entertainment held from the stage at the Centre viewed from the outside grassed area without:
> (a) an accessible path and platform; and
> (b) an accessible ramp and path from the grassed area to the toilets situated inside the Centre.[250]

and AHRC Federal Discrimination Law 2016 p206:

(d) Inability to comply with a requirement or condition

Following the 2009 changes to the DDA, the definition of indirect discrimination in section 6(1) requires an aggrieved person to show that 'because of the disability, the aggrieved person does not or would not, is not able to or would not be able to comply' with the relevant requirement or condition.[265]

…In considering whether an aggrieved person is 'able to comply' with a requirement or condition, courts have emphasised the need to take a broad and liberal approach.[267] The relevant question would appear to be *not* whether the complainant can technically or physically comply with the relevant requirement or condition, but whether he or she would suffer 'serious disadvantage' in complying with the requirement or condition.[268]

(21) I also note the following excerpt about what constitutes "safe access" and the application of Australian Standards as a benchmark for compliance;

> *Baumann FM also considered the relevance of the Building Code of Australia ('BCA') and the Australian Standards. His Honour accepted the submission of the Acting Disability Discrimination Commissioner, appearing as amicus curiae, that 'as standards developed by technical experts in building, design and construction, the BCA and the Australian Standards are relevant and persuasive in determining ... whether or not a requirement or condition is "reasonable"'. His Honour accepted that the Australian Standards and the BCA were 'a minimum requirement which may not be enough, depending on the context of the case, to meet the legislative intent and objects of the DDA'.*
>
> *AHRC Federal Discrimination Law 2016 p 217*

(22) Comments by the Australian Human Rights Commission (AHRC) in another publication: *AHRC Frequently asked questions: Access to Premises*

https://www.humanrights.gov.au/our-work/disability-rights/frequently-asked-questions-access-premises

"How does the DDA relate to the Building Code of Australia and to Australian Standards?

See our advisory note on access to premises for detailed comments on this. See also our information on draft Disability Standards on Access to Premises which will harmonise the access provisions of the BCA and DDA

Note that nothing in the terms or effect of the DDA operates to diminish, or excuse non-compliance with, the requirements of other laws. Specifically, the DDA does not operate to import any "unjustifiable hardship" qualification into State or Territory building laws so far as compliance with BCA minimum requirements is concerned. The true position is that both laws have to be complied with in their own terms.

This means that in any case where building law and the BCA impose more demanding requirements than the DDA would, the BCA requirement must nonetheless be complied with. In any case where the DDA is more demanding or broader than the BCA, the DDA has to be complied with."

(23) ***DDA Section 23 Access to premises***

It is unlawful for a person to discriminate against another person on the ground of the other person's disability:

(a) by refusing to allow the other person access to, or the use of, any premises that the public or a section of the public is entitled or allowed to enter or use (whether for payment or not); or

(b) in the terms or conditions on which the first-mentioned person is prepared to allow the other person access to, or the use of, any such premises; or

(c) in relation to the provision of means of access to such premises; or

(d) by refusing to allow the other person the use of any facilities in such premises that the public or a section of the public is entitled or allowed to use (whether for payment or not); or

(e) in the terms or conditions on which the first-mentioned person is prepared to allow the other person the use of any such facilities; or

(f) by requiring the other person to leave such premises or cease to use such facilities

How then does the DDA apply to the pedestrian route to public transport for boarding houses under the ARHSEPP?

(24) Imagine a circumstance where a boarding house is situated on a hill and the only pedestrian route to the closest bus stop and shops is along a pathway that contains a series of steps.

(25) It may be quite straightforward for an able-bodied person to navigate a short series of steps; it is however, not possible for someone with mobility impairment, needing a wheelchair for example, to safely use such a walkway.

(26) It is clearly unreasonable to require someone with significant mobility impairment to navigate these steps in order to access the bus. Indeed, under DDA s. 6 this would be considered indirect discrimination.

(27) At this point, it might be tempting for someone to argue that the ARHSEPP does not actually "require" anyone with a disability to use this walkway to catch a bus… the ARHSEPP doesn't force a resident to use public transport.

(28) If this line of argument was used, then I would respond in the following way: Firstly, I would argue that it is indeed an example of an "imposition of a requirement". I note in particular the excerpts from *AHRC Federal Discrimination Law 2016* provided at paragraph [20] above. Specifically,

"The inaccessibility of premises or facilities may give rise to the imposition of a relevant requirement or condition for the purposes of establishing indirect discrimination."

(29) As stated previously, due to the reduced parking requirements, at least 50% of boarding house residents must rely on access to public transport. A safe pedestrian route to this public transport must therefore be provided for all residents. Significantly, I note here in this instance that the "premises" in question is the public bus stop, not the boarding house.

(30) Secondly, if I were wrong in my interpretation of "imposition of a requirement" in the DDA, then I would make the following argument. If we are not technically "requiring" anyone to use this path, then we are most certainly precluding a group of people from pedestrian access to the bus stop because of their disability and this is discriminatory under DDA s. 5 and s. 23 (see paragraphs [17], [18] and [23] above).

(31) Another argument I have come across is that residents with a disability requiring wheelchair access can simply use a car and the accessible parking provided … Or they can get a taxi or Uber instead of the bus.

(32) Unfortunately, I believe this is also unsatisfactory, for a number of reasons: Firstly, there are usually more accessible rooms than accessible car spaces provided. More importantly however, I contend that it would be discriminatory (under DDA s. 5) to rely on these alternatives in lieu of safe pedestrian access to the bus stop.

(33) Specifically, to impose a requirement that compels one boarding house resident to own a car (or use a taxi or Uber) because of their disability and not require the same of all other residents to do is to treat the person with a disability less favorably – this is direct discrimination (DDA s. 5).

(34) Likewise, it is discriminatory under both DDA s. 5 (direct discrimination) and DDA s. 23 (Access to Premises) to expect that someone requiring wheelchair access to public must simply 'find another boarding house with better pedestrian access' – Because it effectively limits the occupancy of a particular boarding house to persons that do not have mobility impairment (and this is clearly unlawful under the DDA).

CONCLUDING REMARKS

In the last decade, we have come a long way in addressing the needs of people with a disability and moving towards a more inclusive society. Since the introduction of the *State Environmental Planning Policy (Affordable Rental Housing) 2009* (ARHSEPP), the National Disability Strategy (NDS) has been implemented and in NSW the *Disability Inclusion Act 2014* has become legislation.

> *"Committing the NSW Government to making communities more inclusive and accessible for people with disability now and into the future."*
> https://www.facs.nsw.gov.au/inclusion/disability

I contend the new Housing Diversity SEPP must contain provisions that ensure people with living with a disability are not subject to unlawful discrimination. In this way the new Housing Diversity SEPP will help *"foster an **inclusive** society that enables people with **disability** to fulfil their potential as equal citizens" one of the main aims of the NDS.* https://www.health.nsw.gov.au/disability

9 September 2020
Our Ref: 8763B.220KC_HousingSEPPSubmission

planning consultants

Mr Jim Betts
Secretary
Department of Planning, Industry and Environment

Uploaded Via Planning Portal

Dear Mr Betts,

SUBMISSION ON EXPLANATION OF INTENDED EFFECT FOR PROPOSED STATE ENVIRONMENTAL PLANNING POLICY (HOUSING DIVERSITY) 2020

We refer to the Department of Planning, Industry and Environment's (DPIE's) Explanation of Intended Effect (EIE) titled '*Explanation of Intended Effect for a new Housing Diversity SEPP'* and supporting documentation, currently on exhibition until 9 September 2020. We thank you for providing an opportunity to make a submission.

DFP Planning (DFP) has prepared this submission on behalf of our client, Anglican Community Services (Anglicare) who are one of the largest not-for-profit providers of social housing, affordable housing, seniors housing and aged care services in NSW.

DFP's review of the EIE and discussions with Anglicare has raised a number of issues which are outlined in further detail below.

1.0 General Matters

1.1 Consultation

Social housing, affordable housing, seniors housing and aged care service providers should have been consulted directly as part of the development of the EIE and proposed amended provisions. The proposed new draft *State Environmental Planning Policy (Housing Diversity)* (the HDSEPP), has the potential to create a significant impact on the business operations of these kinds of housing providers throughout the State.

The apparent lack of consultation in the development of the EIE and its absence of detailed content raises concern that a rushed policy development process will create otherwise avoidable planning issues in the future once the HDSEPP is operational.

1.2 Further Public Exhibition

The written draft HDSEPP must be placed on public exhibition for comment. The EIE does not provide sufficient information or clarity to fully understand the proposed amendments, and their implications as discussed in this submission. For transparency we request that the draft HDSEPP be exhibited for further comment when it is prepared, including any draft Guidelines referred to in the EIE**.**

1.3 Savings Provision

Savings provisions should be included in any future HDSEPP to ensure existing development applications (and modifications) currently under assessment by consent authorities pursuant to *State Environmental Planning Policy (Affordable Rental Housing) 2009* (ARHSEPP) and *State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004* (SEPP Seniors) are not affected. We understand that *State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes)* (SEPP 70) provisions will generally remain unchanged in the new HDSEPP.

2.0 Seniors Housing

DFP has identified a number of concerns with the intended amendments to the provisions of SEPP Seniors, as proposed to appear in the new HDSEPP:

2.1 LEP to Prevail in the Event of any Inconsistency

Currently, SEPP Seniors allows development for the purpose of seniors housing to be carried out *'despite the provisions of any other environmental planning instrument'*. It is proposed to amend the SEPP provisions such that development standards in a LEP will now prevail to the extent of any inconsistency over the HDSEPP. The HDSEPP must be clear and precise as to which development standards of the current SEPP Seniors are affected where the LEP prevails. The lack of clarity will lead to more confusion in interpretation when implementing the SEPP inevitably leading to more unnecessary court proceedings.

Furthermore, the EIE does not explain if, or how, the amendments will affect the operation of the current 'deemed to comply standards' of SEPP Seniors. These development standards are expressed as *"development standards that cannot be used as grounds to refuse consent"*. The controls are expressed as development standards and potentially, as the EIE indicates, LEP provisions could prevail over these 'deemed to comply standards'.

We strongly recommend that the current *"development standards that cannot be used as grounds to refuse consent"* in SEPP Seniors be excluded from the operation of any new clause which allows LEP provisions to prevail, to the extent of any inconsistency over the HDSEPP. These development standards ensure critical housing such as residential care facilities can be developed (by providers such as Anglicare) across Local Government Areas (LGAs) with a degree of consistency and without unnecessary 'red tape' which can be created by varying development standards.

We recommend that the HDSEPP incorporates a provision to identify which HDSEPP development standards are those over which the LEP will prevail in the case of any inconsistencies.

It must also be highlighted that by allowing Councils to establish development standards that will apply to seniors housing introduces the opportunity for Council's to set controls that might render seniors housing unfeasible or not able to meet the market's requirements. As DPIE would be aware, there is a growing need for affordable housing and seniors housing (or both) in NSW, this needs to be ensured through State-led consistent policy. If left to individual Councils, this opens up the potential for Councils who may not want seniors housing in their LGAs to develop unreasonable land use controls to discourage seniors housing developments.

The written draft instrument should be placed on exhibition so that the community can understand the intended amendment.

2.2 Social Housing Provider Provisions

There are a number of provisions of SEPP Seniors that apply to Development Applications (DAs) "made by, or by a person jointly with, a social housing provider". Those provisions relate to matters such as:

- Lower car parking rates; and
- Exemptions to some accessibility standards for dwellings located above the ground floor.

These exemptions are proposed to be extended to the NSW Land and Housing Corporation (LAHC). The current exemptions for social housing providers should also be retained and not altered as part of the proposed HDSEPP. Alternatively, the same exemptions afforded to LAHC should also be afforded to social housing providers.

2.3 Schedule 1 – Environmentally Sensitive Land

Provisions currently contained in Schedule 1 of SEPP Seniors are proposed to be updated to align with current legislative and planning conditions. The EIE explains that this is due to some terms being obsolete, inconsistent with the Standard Instrument or the subject of debate in the Land and Environment Court.

The EIE however does not provide any further clarity on what amendments are considered necessary to align with "*current legislative and planning conditions."* This should be clarified with an additional exhibition period provided as part of a future public exhibition of the draft HDSEPP, given the significant consequences that will arise in the event that the amendments result in additional land being excluded from the application of the SEPP pursuant to Schedule 1.

2.4 Clause 26 – Access to services

It is proposed to amend the provisions for 'location and access to facilities' from the Seniors SEPP (clause 26) so that point-to-point transport, including taxis, hire cars and ride share services, cannot be used for the purpose of meeting accessibility requirements. It not clear if it is intended that this prohibition of point-to-point transport be extended to regional areas where public transport options are not so readily available, or if a facility's own transport options (i.e. mini bus or community bus) are also excluded.

Seniors housing providers commonly provide and operate their own transport for residents in regional areas due to the lack of public transport options available in comparison to metropolitan areas. Any amendments to the HDSEPP must ensure that seniors housing providers can continue to utilise their own transport options in regional areas.

The EIE provides an opportune time to also review the application of clause 26 to residential care facilities.

Section 21.2 of the *Aged Care Act 1997* (Cth) sets out the criteria for a person to be eligible for residential care. To be eligible the person must meet **all** of the following criteria:

> *(a) the person has physical, medical, social or psychological needs that require the provision of care; and*
>
> *(b) those needs can be met appropriately through residential care services; and*
>
> *(c) the person meets the criteria (if any) specified in the Approval of Care Recipients Principles as the criteria that a person must meet in order to be eligible to be approved as a recipient of residential care.*

The *Approval of Care Recipient Principles* referred to in subclause (c) adds further criteria, namely:

> *(a) the person is assessed as:*
> *(i) having a condition of frailty or disability requiring continuing personal care; and*
>
> *(ii) being incapable of living in the community without support; and*
>
> *(b) for a person who is not an aged person—there are no other care facilities or care services more appropriate to meet the person's needs.*

For a person to reside in a residential care facility the person needs to meet **all** of the above criteria of the *Aged Care Act 1997* and the *Approval of Care Recipient Principles* and a person meeting those criteria is highly unlikely to be walking independently or catching public transport to the services and facilities referred to in clause 26. They are also unlikely to be capable of walking 400m.

In light of the above, it is prudent that the HDSEPP also exclude a residential care facility from the 400m accessibility requirements of clause 26.

2.5 Site Compatibility Certificates

It is proposed to introduce provisions in the new HDSEPP so that a Site Compatibility Certificate (SCC) is valid for 5 years in lieu of the current validity period of 24 months, provided that a development application is lodged within 12 months of the date on which the SCC is issued. We support the extended SCC validity period however request that the 12 month lodgement provision be extended to 24 months. Due to the large scale and often complex nature of seniors housing, this will ensure there is sufficient time in the event of market fluctuations and to allow for comprehensive development applications to be prepared.

We also note that clause 24(3) SEPP Seniors currently allows a consent authority to determine a DA for which there is a valid SCC. This provision also extends to a court (as a consent authority) to determine a DA in the same time period. The proposed change in terminology from 'determination' to 'lodgement' is a positive amendment which we and Anglicare support as it removes the risk of a SCC expiring before the Court can consider the matter.

2.6 Maximum Variation

As stated above in **Section 2.1**, currently SEPP Seniors allows development for the purpose of seniors housing to be carried out '*despite the provisions of any other environmental planning instrument'* and it is proposed to amend the SEPP provisions so that development standards in an LEP prevail to the extent of any inconsistency with the HDSEPP.

It is also proposed that the development standards in SEPP Seniors could be varied using clause 4.6 of the Standard Instrument, but only to a maximum of 20%. This is an unreasonable and unjust planning outcome. Seniors housing developments should not be treated any differently to other housing developments for the purpose of clause 4.6.

An express objective of clause 4.6 is to achieve better outcomes for and from development by allowing flexibility in particular circumstances provided that the requirements for clause 4.6 can be demonstrated. One such requirement is that the development standard is unreasonable or unnecessary in the circumstances of the case. If a standard is unreasonable or unnecessary then applying a 20% limit is arbitrary and will hinder the objective of the clause.

Such a provision might also encourage a Council to lower development standards in the to account for the 20% flexibility provided by clause 4.6.

A 20% limit might not work for development standards such as the 400m requirement of clause 26 of SEPP Seniors. As noted in section 2.4 there are valid reasons for residential care facilities to not be within 400m of the specified services and facilities or public transport. A 20% limit would not assist in such circumstances.

If such 20% limit is implemented, then the clause should specify to which development standards the % limit applies to avoid unintended consequences.

3.0 Boarding Houses and ARHSEPP Provisions

3.1 LEP to Prevail in the Event of any Inconsistency

It has not been made clear if LEP development standards are intended to prevail over the ARHSEPP provisions (as proposed to be amended), in a similar way to the SEPP Seniors provisions. This is further justification for the public exhibition of the draft written HDEPP post completion of the EIE exhibition.

If it is intended that the LEP will prevail in the event of any inconsistency in relation to the boarding house provisions then we also recommend that the HDSEPP incorporates a provision to identify which HDSEPP development standards are those over which the LEP will prevail in the case of any inconsistencies.

Our previous comments in **Section 2.1** of this letter regarding the potential that Council's may impose controls which render developments unfeasible or not able to meet the market's requirements are also of relevance. Affordable housing in NSW needs to be ensured through State-led consistent policy. If left to individual Councils, this opens up the potential for Councils who may not want affordable housing in their LGAs to develop unreasonable land use controls to discourage seniors housing developments.

3.2 Permissibility of Boarding Houses in R2 zones

Proposed amendments will result in boarding houses being no longer mandated as a permissible use within the R2 zone. Councils will have the ability to prohibit boarding houses in the R2 Low density residential zone (the R2 zone) when making or amending their LEPs. Notwithstanding, it is proposed that provisions will be included in the new HDSEPP to ensure the LAHC will still be able to develop boarding houses on government-owned land in the R2 zone, regardless of whether a LEP permits or prohibits boarding houses in the R2 zone.

With boarding houses not being mandated in the R2 zone, this will create a potential reduction in affordable and diverse housing throughout metropolitan LGAs. There are numerous examples where R2 zoned land is conveniently located adjacent and/or in close proximity to business zoned land which would afford a high degree of accessibility for boarding house residents to services.

We recommend that DPIE consider the inclusion of provisions in the HDSEPP which permit boarding houses in the R2 zone when the land is within a specified distance of business zoned land. Consideration should be given to afford registered social housing providers and registered not-for-profit community housing providers the same opportunities to develop boarding houses on R2 zoned land as the LAHC.

3.3 Boarding House Manager

The EIE does not clearly identify whether an on-site boarding house manager will be required for all sized boarding houses or if the threshold will remain as per the current requirement of 20 or more lodgers. Notwithstanding, the current threshold of 20 or more lodgers should be retained as requiring an on-site manager for any boarding house with less than 20 lodgers will impact viability of these smaller boarding houses for not-for-profit organisations such as Anglicare.

3.4 Definition of Boarding House

The EIE is not clear in its proposed definition of *boarding house:*

> ***'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,*
>
> *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.'*

Further information is required as to what an 'affordable rental building' means in the context of this proposed definition. Will there be a cap on rental rates? This should be clarified with an additional exhibition period provided as part of a further public exhibition of the draft HDSEPP.

4.0 New Housing Forms / Land Use Definitions

The following sub-sections highlight areas where further clarity and/or information is required to enable our client (or other stakeholders and the community) to make an informed decision and response to the EIE. We recommend each of the matters below be detailed in the future public exhibition of the written draft HDSEPP.

4.1 Co-Living

Car parking rates

The EIE is seeking commentary from stakeholders regarding the 0.5 car parking spaces/room proposed as a 'must not refuse' development standard. DFP have been involved in a number of 'co-living type' developments (or 'new generation' boarding houses) where a 0.2 spaces/room car parking rate (or less) has been found to be acceptable to Councils and a workable car parking rate. Co-living developments will be typically found in higher-density urban areas where there is greater accessibility to public transport options, services and amenities.

Based on Anglicare's and DFP's experience, the car parking rates should be consistent with the 0.2 spaces/room as currently applicable to social housing providers for boarding houses.

Room Sizes

The EIE states that room sizes for co-living are between 30-35m^2 but it is not clear if this is to be set as a development standard. Room and apartment sizes in co-living developments should reflect whether they self-contained or not and what communal facilities are to be made available to residents.

Communal Open Space
The EIE does not explain the operation of the communal open space requirement and specifically if it is to be provided at ground level consistent with the Apartment Design Guideline. If so, this could be unworkable for small scale sites in business zones where the ground floor is occupied by tenancies, parking and loading areas leaving no room for communal space.

Exhibition of Guidelines
Any Guidelines developed to accompany the draft HDSEPP should also be exhibited as part of a future draft HDSEPP public exhibition process.

4.2 Build-to-rent

Incentives for Build-to-rent
Will there be any State Government incentives proposed to encourage build to rent housing? For example, if the United Kingdom and American models (as referred to in the EIE) have been successful, is this because of some form of incentive?

Room Sizes
Clarification is required to determine if room sizes are to be subject to a minimum and/or maximum size?

Exhibition of Guidelines
Any Guidelines developed to accompany the draft HDSEPP should also be exhibited as part of a future draft HDSEPP public exhibition process.

5.0 Heritage

There is no discussion in the EIE around the intention for the future of clause 4A (relating to heritage conservation areas) of SEPP Seniors which will cease to have effect on 1 July 2021 (cl4A(4)). We consider the current EIE process to be an opportunity to clarify as to whether this clause will be included in the proposed HDSEPP, and if Councils will still be afforded the opportunity to choose if the Seniors Housing SEPP (or the comparable provisions in the HDSEPP) will apply in heritage conservation areas (HCAs) within their LGA. The exhibition of the draft written HDSEPP should clarify DPIE's position on this matter.

DFP considers that through high quality and responsive environmental design, seniors housing developments can not only integrate well within HCAs without impact but make a significant built-form contribution. We recommend that DPIE develop design guidelines in consultation with seniors housing providers, Councils and heritage specialists which would assist seniors housing providers and Councils in the design and assessment of such developments within HCAs.

6.0 Conclusion

DFP's review of the EIE in conjunction with Anglicare has identified several matters of concern in the proposed new and amended provisions of the HDSEPP. Further information is required to allow a fully considered and holistic assessment of the proposed HDSEPP.

We consider it critical that the written draft HDSEPP when completed, be placed on public exhibition for comment. The EIE does not provide sufficient information or clarity to fully understand the proposed amendments and their potential impacts, particularly as it appears key stakeholders such as Anglicare were not directly consulted in the development of the EIE. For transparency we request that the draft HDSEPP be exhibited for further comment, including any draft Guidelines referred to in the EIE.

Overall, the EIE outlines some proposed amendments which will create adverse impacts to the viability of seniors and affordable housing. In turn this will ultimately impact on much needed housing supply throughout NSW.

We trust this submission assists DPIE in the formulation of the draft HDSEPP. We wish to extend the opportunity for DPIE to contact DFP and/or Anglicare directly to discuss any component of this submission, please contact the undersigned or Mr David Kettle, Director of DFP Planning on 9980 6933 or David Edbrooke, Head of Property Development (Anglicare) on 9421 5432.

Yours faithfully
DFP PLANNING PTY LTD

KENDALL CLYDSDALE
PRINCIPAL PLANNER

Reviewed: _____

kclydsdale@dfpplanning.com.au

Submitted on Tue, 08/09/2020 - 10:29
Submitted by: Anonymous
Submitted values are:
Submission Type:I am submitting on behalf of my organisation
First Name: Dharmin
Last Name: Desai
Name Withheld: No
Email: dharmin01@hotmail.com
Suburb/Town & Postcode: Wollongong 2500
Submission file: [webform_submission:values:submission_file]

Submission: R2 zones provide a good location for smaller boarding houses up to 12 rooms and this should remain as it is. The reports used for this study have mainly been by Sydney based groups. It has not taken into account regional areas. Occupancy agreements must remain for fully self contained boarding houses. A residential tenancy agreement is not suitable for boarding houses. Most boarding houses require specialist skills and management. And each boarding house has a different set of occupants. Some are for welfare occupants some are for workers and professionals. The occupancy agreement allows for all types of models. A one size fits all approach of an Residential Tenancy agreement does not work for occupants in boarding houses and will only increase management and making the sector unvialble. Community housing providers are not suitable to manage boarding houses.

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

DNC PROPERTY GROUP
PO BOX 338 Kenthurst NSW 2156
PH: 8705 0852
info@dncproperty.com.au
ABN: 24 144 580 ACN: 144 580 834

8 September 2020

To whom it may concern,

I would like to make the below objections to the proposed changes in the ARHSEPP:

Build to Rent Housing

Why should the changes to ARHSEPP only incentivise the top end of the market? I would like to suggest inclusion of build to rent incentives to a much broader and economically inclusive number such as 10+ unit blocks. Not everyone wants to live in a huge apartment block and small-medium sized unit blocks provide increased diversity of housing choices while working towards the same outcome – increased housing supply. In fact, incentivising a larger range of unit blocks under the build to rent scheme will only further increase housing supply plus support medium sized businesses. Medium sized business is a key part of the Australian economy and should not be left behind in the shadow of big (and often international) institutional dollars.

Removal Of Boarding House Developments From R2 Low Density At A State Level

Like the above, this suggested change will support large boarding house developments but why not also support more, less intrusive buildings dispersed throughout communities. While there is often opposition to boarding houses through a Not In My BackYard attitude, there is research to suggest that these types of accommodation actually have very low issues among tenants residing and impact on neighbours. Rather it is a perception issue.

I propose that the clause of boarding houses (or Co-living developments) within 800m of a train station remain within State Policy. Living within such vicinity of a station, residents should expect increased housing density and rather the issue would be outdated zoning around vital and valuable existing infrastructure. Smaller boarding house/co living developments dispersed, is less impacting, compared to high rise boarding towers and greater consideration should be given to deletion of this clause.

I also believe consideration should be given to implement a policy for complying, small, low impact co-living developments – like what is currently in place in Melbourne. Such an approach would bypass the huge amount of red tape in the NSW approval process and help make a dent in housing supply. There is plenty of high-rise building being erected but such a policy would support medium density housing and the “missing middle”.

Affordability Component

Fixing rental prices for boarding houses assumes that all boarding houses are premium priced, which would be a false assumption. It would be hard to argue they are more affordable compared to similar location and quality but larger units as this would be completely counterintuitive. Rather we are allowing a few poor examples dictate the future of Australia’s housing. Increases in the supply of housing at a range of options will address this issue. If there is ample supply of 1 bedroom units, people will not pay more to live in a smaller boarding house style studio. Rather the market will move away from the boarding houses and to the 1 bedroom’s leaving boarding

DNC PROPERTY GROUP
PO BOX 338 Kenthurst NSW 2156
PH: 8705 0852
info@dncproperty.com.au
ABN: 24 144 580 ACN: 144 580 834

house vacant and therefore prices will need to drop to attract tenants and hence it becomes more affordable. More red tape is not the answer when excessive red tape is what got us into this problem in the first place.

Housing Providers

The proposed change such that boarding houses will be required to be managed by a registered not-for-profit community housing provider will once again add more red tape and may in fact have the reverse effect on housing supply. Is there any evidence to suggest that the private market in incapable of managing a boarding house? Removing the choice of management from the owner/developer is likely to reduce the supply as not everyone is comfortable leaving their hard-earned funds invested in someone else's hands. Will it be similar not-for-profit operators as those currently in charge of many nursing homes? (https://www.smh.com.au/national/non-profit-aged-care-homes-are-making-big-money-but-crying-poor-report-20200812-p55kwg.html) This proposal once again sounds like it supports the top end of town and is an attack on the middle class and small to mid-sized business.

The above changes all appear to support a bigger is better attitude – removing small (max 12 room) boarding houses/co-living and incentivising large unit blocks (50+ units). It sounds like the opposite of housing diversity. I believe it is in everyone's best interest to support small and medium sized multi dwelling housing. Ones that often garner a stronger sense of community and have much more character than 100+ unit blocks can offer.

If the government is serious about meeting the 20-year housing targets – there needs to be significant changes to the currently broken system. Councils are fantastic for local complaints and collecting rubbish however, currently they are inefficient for planning purposes to move us to the required goal line. The legislation provides an applicant who is dissatisfied with Council's handling of the matter a right of appeal to the Land & Environment court (LEC) on the basis of a deemed refusal. If there has been no determination from council, the only way to progress is via Land and Environmental Court wasting both the developers and taxpayer's money. I currently have a DA in with Blacktown Council (lodged the beginning of March) and my planner tells me to stop wasting my time and lodge in LEC. I would prefer to do the right thing and move through the regular channels but the current system does not support or reward this type of behaviour and to date, still have not heard anything back from council post exhibition. The power lies solely with council and there is no wonder there is a line up for LEC. It is worth noting, these are only the ones who can afford to take the matter to court. The planning system needs and overhaul & significant removal of red tape if there is any real chance at meeting housing affordability targets. There needs to be an increase in complying developments or an alternative body introduced who is more capable of handling affordable housing developments. Let's remove red tape, not add it and let's support a diverse range of housing options, not just the big end of town.

Kind Regards,

Blake Wilson

Director, MAppFin

Dominic de Souza

Property Owner and Investor

Contact

446 Pittwater Rd, North Manly
NSW 2100

0408 370751
domdesouza@gmail.com

NSW Dept Planning, Industry & Environment
Housing Diversity State Environmental Planning Policy
NSW

Dear NSW Dept of P, I & E

We are writing to contribute to the discussion on the new SEPP, to speak up for the vulnerable members of the public who require low cost housing, especially in this covid-19 ravaged landscape.

From the Australian Housing and Research Institute (AHURI) Research

- Australia has a need for 212,000 low cost housing options for low income earners
- 40,000 new homes will be needed each year in Sydney for the next 20 years to meet that growth
- there was a shortage of 478,000 affordable and available private rental dwellings for low-income households in 2016
- We believe trends show this low income housing need will increase with the ongoing financial fall out of covid-19.

The shortfall of social and affordable homes will grow from the current number of 651,300 to nearly 1,024,000 by 2036. A third of these will be in NSW. There is a need for single person and couple dwellings in all regions and housing zones in NSW. We do not agree that smaller style boarding houses should only be managed by Community Housing Providers. Families have owned and operated NSW boarding houses for generations. Removing boarding houses from the R2 zones does not create a diverse demographic of residents, and creates “us and them” zones, which does not fit in with a diverse and integrated NSW community.

Thank you for reviewing these points and considering further the needs of ALL of the community in considering your SEPP changes, including low income members of the community.

Sincerely,

Dominic de Souza

[redacted]

Submitted on Thu, 10/09/2020 - 08:05
Submitted by: Anonymous
Submitted values are:
Submission Type:I am making a personal submission
First Name: dominic
Last Name: WYKanak
Name Withheld: No
Email: dominicbondi@hotmail.com
Suburb/Town & Postcode: 2026
Submission file: [webform_submission:values:submission_file]
Submission: Proposed new Housing Diversity SEPP Explanation of Intended Effect: 202099 Dear Parliament and Public Administrators, This Submission to the 'Proposed new Housing Diversity SEPP Explanation of Intended Effect' and related strategy and policy demands that First Nations Peoples be First in Housing Allocation and that Our Inherent Custodial Rights be given 100% Affordable\Social Housing to effect the emended NSW Constitution's Section 2. Housing Our People to 100% to meet Our Mob's Housing Waiting list in existing, newly created strata\subdivision and Brown\Green-Field developments is Justice\Lore to redress Stolen Land\Water & Sky and to address ignored\unconsidered Human Rights as 'Homes for All' beginning with First Owners, then Historically associated Mob then Community.Thanks, dominicWYKanak, 0414492933

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

SUBMISSION ON THE INTENDED EFFECT FOR A NEW HOUSING DIVERSITY SEPP.

SEPTEMBER 2020

BACKGROUND

I am a part owner of a medium size boarding house in Randwick, Sydney, that has been a family owned business since 1951. Over the period that my family has operated this accommodation business there have been many significant changes in the government involvement and requirements for the administration and operation of the boarding house, as well as in the type of residents attracted to this type of accommodation.

The boarding house was originally a large dual residence and more than 70 years ago, was converted into a combination of self-contained and single room living units that have long been a popular accommodation style for the Randwick area. Being located close to jobs and many attractions in the inner urban area of the eastern suburbs there has been a strong demand for this type of rental accommodation.

For more than 70 years our boarding house in Randwick has provided self-contained and single room accommodation at affordable tariffs for a highly varied clientele. The location of the property is highly convenient for employment and nearby activities such as the Prince of Wales Hospital, the NSW University, Randwick, Kingsford and Maroubra Junction commercial centres and Port Botany industrial areas. Easy access to work has always been a key reason for a high occupancy rate at the boarding house along with convenient and highly accessible public transport with light rail and buses making it possible to go to any location in Sydney.

The occupation of residents residing in the boarding house over many years has varied enormously such as managers, tradespeople, teachers, nurses, health carers, truck drivers, maritime port workers, gym instructors, university graduate PHD students, factory workers, cleaners, retired people and many others. These are long-term residents (some have been in the property for a decade or more) in the low-medium to low income range that do not wish to occupy shared style rental accommodation in the general rental house market and they have preferred a more affordable, private, convenient, uncomplicated and individual style of accommodation.

Considerable effort has gone into renovating and upgrading parts of the accommodation over the years but dealing with an old building has resulted in many different and diverse issues to resolve.

COMPLIANCE REQUIREMENTS AND MANAGEMENT

Compliance requirements on the boarding house from both State and Local Governments have varied immensely over the years with changes imposed that attempted to achieve various different objectives. Some changes through the planning or administration systems have been productive while others have not. Some changes tend to be overly complex and attempt to create performance standards that are for many properties and sites extremely difficult or impossible to achieve and can involve additional high construction costs. Most changes have involved significant additional costs. The result is that usually investment groups, individuals and even charities are not attracted to providing and operating new buildings, converting existing buildings or purchasing existing established boarding houses because the requirements are too onerous, expensive and in some cases not practical.

It appears that the State Government is expecting large corporate developers in the private sector to provide “affordable housing” and is providing significant incentives and bonuses. Perhaps small investors should retain adequate bonuses and incentives when providing and operating diverse housing types such as boarding houses.

The proposed changes to the compliance requirements for new boarding houses with a reduction in bonuses will result in the exclusion of small to medium investors leaving them with little role in the housing market except for individual home units or suburban houses.

In recent years general (traditional) and assisted boarding houses are required to be legally licensed by the NSW Department of Fair Trading and comply with a large number of statutory compliance items administered by Local Councils. This is partly an attempt to remove a number of illegal accommodation types that exploit tenants seeking accommodation by avoiding high compliance costs. This continues to be a challenge for Local Government to effectively administer.

Fire safety requirements are also very costly for boarding house owners and include inspections on specified safety items by private fire practitioners required through Local Council certification that is required each year.

The financial management of our boarding house has become extremely difficult in recent times due to increased costs such as building maintenance and repair, estate agent

management, high commercial insurance costs, local government rates, water rates and power costs which are all rapidly rising. A conditional land tax exemption has been available for many years to help ease the financial burden for providing long term low-cost accommodation. Affordable rents are a condition of the tax exemption and are a benefit for both the residents and the landlord. The viability of the business is fully dependent on such financial relief.

In addition, due to the current worldwide pandemic the economy has been radically affected with unemployment widespread causing rent reductions and some people unable to pay rents.

CURRENT PROPROSAL

The State Government is now proposing to introduce a State Environmental Planning Policy which is intended to encourage the provision of housing diversity for different types of housing for the rental market. At this stage it has been labelled an Explanation of Intended Effect for a new Housing Diversity.

I look forward to the State Government's review on a new Housing Diversity SEPP but not in its current form.

My contribution to assist the State Government in its deliberations is as follows:

What is the role of existing traditional boarding houses?

The SEPP document does not address existing traditional boarding houses and the operational issues that current individual private sector owners attempt to cope with and basically focuses on building new generation boarding houses under a different label. The document relies on a previous report produced by an advisory group of Local Government representatives titled "Report to the Minister from the Boarding House Working Group" without providing in the SEPP any comment on the likely effects of the numerous "Recommendations" in that report on existing boarding house owners and new boarding house development applicants.

The effects of the proposed changes on the currently licenced boarding house owners has overlooked a significant range of unintended adverse impacts that will occur.

My impression is that Local Governments are dissatisfied with not being consulted on boarding house changes made by the State Government and want stronger

planning powers to determine where and what is built under the SEPP boarding house controls.

To my knowledge there is little consultation between Local Councils and existing boarding house owners and this could improve communication between the parties and create better outcomes. This is disappointing when Local Governments continuously claim that they want affordable rental accommodation for low income residents to reside in their districts. It appears especially unfair when Local Governments require large monetary contributions to be paid to them if a boarding house licence is removed for alternative land uses after the current owners have provided a service to the community providing affordable housing for many years without significant financial incentives.

Change in definition of boarding houses and their management.

The issue of changing the boarding house definition in the SEPP to require that boarding houses are "affordable" is a significant problem for existing owners. The definition of what is affordable and what conditions are appropriate are also extremely important to owners as is who is to determine these issues. Rent control on privately owned property was abandoned many years ago by governments for a lot of different reasons.

The working group of local government representatives somehow came to a conclusion that boarding houses **must** be managed by a "**registered not for profit community housing provider"** to achieve affordable tariffs**.** I would strongly emphasise that the boarding house that I am involved with is affordable and has provided and will continue to provide accommodation for people on low and low-medium incomes as long as this is viable. Our boarding house is directly well managed by the owners and an estate agent and a registered not for profit community housing provider would not in any way be appropriate. There must be a choice of this proposal and it must not be included in the definition of a boarding house. There must be other alternatives to resolve management issues outside of the definition.

A not for profit management operator is **not a guarantee** to achieve an outcome that is desired unless the outcome is specifically required by licencing or other involved authorities. Also, who is the not for profit provider manager responsible to, as it must be the boarding house owner who will pay for the services. If they are incompetent, they would need to be able to be dismissed.

Monitoring to identify that requirements or licensing conditions are complied with is also needed if a particular outcome is to be achieved. Who manages the property is not the issue. How the property is managed and what accommodation the property provides is most important.

What is an existing boarding house operator meant to understand from this required change in management? That they cannot manage their own property? The land tax exemption ensures that an affordable tariff is achieved without any involvement of a not for profit community provider in management. Compliance with these requirements is assessed annually by NSW Revenue with CPI increases.

The Department of Planning, Environment and Industry must define what outcome is being sought and what objectives are required and then identify how it will be achieved in a fair, equitable and reasonable way for existing boarding house owners.

Does the Department of Planning and Local Government want only new built boarding houses managed by not for profit operators? It appears from this limited view that there is no place for privately owned new purpose-built boarding houses or conversions of existing buildings nor a continuation of existing established successful boarding houses.

Existing Boarding Houses

What are the plans for existing boarding houses?

Will existing boarding houses become non-conforming land uses under a new definition or do they need to become a registered “not for profit operator” to manage and operate a boarding house?

How does an owner deal with a non-conforming land use if it has complex planning and legal implications such as restrictions imposed on them when any changes are required to their buildings by current owners? If a boarding house owner submits a DA to council for any structural changes will a consent be conditional that a registered not for profit manager must be appointed? Will a registered not for profit manager be up to the task of managing small boarding house businesses at an appropriate fee when a private owner is given no choice in management of the business? Our boarding house is very well managed by a local real estate agency who has a good knowledge of boarding house issues.

How will the Land and Environment Court deal with the definition of a boarding house if it ends up in a legal dispute?

Even worse what does an existing boarding house operator do if any dispute occurs with the NSW Civil and Administrative Tribunal (NCAT) if they do not comply with the definition of a boarding house?

What compensation will be provided to existing boarding house owners by the State Government if they are unable to operate the boarding house they own?

What happens when or if a boarding house needs to be sold? Will they only be bought by not for profit operators or charity groups? Removing a boarding house license by a purchaser or owner requires a substantial levy to be paid to local councils in any permitted new use development application and will result in a deflated price of boarding house sites.

To include this management requirement in a boarding house definition is totally inappropriate and a retrograde proposal. There must be further consideration of this in consultation with existing boarding house owners.

Intended effect of housing diversity SEPP.

The intended effect of the Housing Diversity SEPP appears to be to increase and facilitate new construction for the purpose of employment generation and is not to provide dwellings for renters and owners with diverse needs. The report itself states that a new diversity of housing will somehow create employment within the current recession without any real housing, financial and economic analysis.

Types of dwelling and accommodation needs of particular social groups.

Different types of dwellings are poorly defined and the needs of different socio-economic groups needing housing are generally ignored. The new generation boarding houses that have been constructed and include self-contained facilities and community group areas have resulted in expensive rents. Somehow this has been used to degrade the concept of a traditional boarding house. It is obvious that any new building for affordable rents with suitable facilities will be expensive to provide and even more costly with small increments in room sizes. To relabel a new generation boarding house as “co-living” appears to me somewhat inconsistent.

Incentives and support for the operation of existing boarding houses.
The report on housing diversity does not contain any direct government policy on existing boarding houses. Currently it appears that boarding houses are regarded by many as left-over relics from the past and they are not considered a viable part of housing diversity. The current operators are left in a vacuum not knowing what different levels of government consider, and whether they are considered to have any importance or value to the community in the provision of housing diversity.

There are very many government departments involved in the operation and administration of existing boarding houses such as Department of Fair Trading, Department of Planning, Industry and Environment, Department of Local Government, NSW Revenue, NSW Department of Community and Justice, NSW Department of Housing, Land and Environment Court, NSW Civil and Administrative Tribunal (NCAT), NSW Fire and Emergency Services and a multitude of Local Councils.

It is little wonder that owners can feel overwhelmed and sometimes abandoned when dealing with day to day issues that can involve so many government organisations each with a different view of what a boarding house is and how it should be managed and operated. No single State Government group seems to take the lead on boarding houses even though they provide a housing choice to the public that would not be otherwise available.

It would assist boarding house owners and managers if there were clear policy and administration requirements with incentives provided to comply with set objectives. Currently the incentives are rather ad-hoc such as land tax exemption and fire protection finance. It would be helpful if there were some assistance with high operating costs, such as council rates, electricity supply, building maintenance, insurance cover, fire and safety improvement advice, etc. There would probably be other incentives available if a simple working group was established by State and Local governments and boarding house owners were consulted. It appears that the previous Local Government group did not consult with existing boarding house owners or consider various incentives to achieve desired outcomes. The exact same issues are likely to arise with the new co-living developments as they are only marginally larger versions of boarding houses and prone to the same issues.

Conclusion

Perhaps the Local Planning group report was based on the erroneous general public perception that boarding houses are only for very socially disadvantaged groups and that somehow a boarding house is unacceptable in “nice respectable residential areas”. The media and many suburban property owners generally sensationalise any potential problems and strongly object when new boarding house development applications are dealt with by local government even when they have been reduced to 12 occupants in some planning zones. Will co-living buildings be accepted as any different by the general population? Maybe the boarding house term should be removed and this type of accommodation should be re-labelled as co-living accommodation with different development standards for different housing markets, locations and occupants. It appears probable that the local government group recommended that boarding houses must be affordable by being managed by not for profit operators or charity management groups in an attempt to create a difference between co-living and boarding houses.

It is very doubtful that changing and hopefully not destroying the relatively small number of existing licenced boarding houses with their current residents and owners will assist this new diversity housing issue without creating the need for some form of remedies that the Department of Planning, Industry and Environment will need to address.

I hope that the State Government will review whatever they decide to do with the SEPP within two years or less as it appears inevitable that they will proceed with urgency on their proposals on the basis that politicians are desperate to do something on the current housing situation and the economic crisis that we will all be confronted with.

Please give careful and considerate attention to our submission as our future will depend on it. Please contact me if you require any discussion and clarification of the issues raised.

Yours Sincerely,
Don Davison
Architect and Town Planner
Cristine Davison
Economist.

15 October 2020

Housing Strategy Unit
Land and Housing Corporation
Department of Planning, Industry and Environment
Locked Bag 4009 Implementation
ASHFIELD BC NSW 1800

Dear Sir/Madam,

DRIVAS PROPERTY GROUP SUBMISSION IN RESPONSE TO PROPOSED NEW HOUSING DIVERSITY STATE ENVIRONMENTAL PLANNING POLICY

Thank you for the opportunity to contribute towards shaping the new Housing Diversity State Environmental Planning Policy (SEPP). Whilst this submission is lodged after close of exhibition on 9 September 2020, Drivas Property Group have recently been made aware of the draft SEPP. Drivas Property Group are currently considering their options and opportunities for a large landholding in Lidcombe, part of the Parramatta Road Corridor, and a site with significant size and scale to deliver positive rejuvenation of the Parramatta Road Corridor.

Drivas Property Group support the approach of the NSW Government to enable the delivery of more diversified housing options, which will in turn increase the number of jobs and economic output of the state of NSW. The current context of the COVID-19 recovery is an optimal time to realign policy and taxation approaches to support the evolving housing market and to promote economic recovery, while providing greater certainty and choice for housing.

Lidcombe Centre Overview

Drivas Property Group are owners of the Lidcombe Shopping Centre at 92 Parramatta Road, Lidcombe, which is a sub-regional shopping centre. The site is on a large consolidated landholding of some 3.5 hectares.

The shopping centre on the current site was known as Auburn Power Centre and opened in 2005. It was a bulky goods centre that featured Anaconda, Spotlight, Dick Smith Powerhouse, Party Warehouse, a Ten Pin Bowling Alley and around 30 stores. Auburn Power Centre was renamed Lidcombe Power Centre in 2009. Costco opened its second Australian store across the road from Lidcombe Power Centre in late July 2011.

Dick Smith closed its store in the centre in 2012. Despite population growth in the area, Lidcombe Power Centre was facing a decline because it lacked a supermarket and discount department store. On 10 November 2014, Lidcombe Power Centre went through a $120m redevelopment that transformed the centre from a bulky goods centre to a sub-regional centre. Leading retailers including Woolworths, Aldi and Kmart were added to the centre. Anaconda and Spotlight moved to the new part of the centre when the redevelopment was completed. Discount Party Warehouse and Tenpin City have remained at their original locations. Up to 1000 new jobs were created as a result of the redevelopment. The centre is now known as the Lidcombe Centre and opened late August 2015.

The site is an unusually large consolidated landholding in an accessible location, which offers enormous potential to re-plan and masterplan the site. The site has a number of locational advantages including proximity to convenience retail (Costco), proximity to Sydney Olympic Park parklands, as well as being a desirable location close to planned infrastructure including the Sydney West Metro line.

Evolving Retail Sector

The retail sector has always evolved, however, recent structural changes have facilitated the need for a fundamental shift in the retail sector, from business operations through to satisfying changing customer needs and demands – all of this has implications on physical retail facilities and the built form requirements of the sector.

The sector has experienced substantial impacts in recent years including from pressure on household budgets, increased competition from international retailers, and a structural shift through the rise in ecommerce, technology integration and customer expectations around alternative shopping and delivery methods. This has put pressure on the overall retail sector with implications for physical retail assets and business models, through to logistics and

supply chain operations. Combine these cyclical and structural trends with the impacts of the COVID-19 pandemic, and associated social distancing measures - the retail sector is under substantial pressure.

It has become increasingly obvious that retail owners and operators must evolve in order to survive. Those that do not adapt to the new retail environment will not remain viable. The challenges facing the sector have been evident in recent retail data including:

- Reduced retail sales growth for physical retail assets and increased online sales (online sales are up 23% in the year to June and now equivalent to around 10.7% of total retail sales) (NAB).
- Growing number of major retailers closing and entering administration. Major retailers entering administration in 2020 represent 909 stores, with over 2,800 stores impacted by retailer administrations since 2016 (JLL).
- Increasing vacancy rates, which have generally more than doubled in recent years, and are now at the highest level in more than 20 years (JLL).
- Reduction in rental levels, across most retail asset types, and representing up to an 11% reduction in rents over the year to September 2020 (CBRE).
- Impacts to retail asset values, with some major retail owners seeing reduction in retail asset values of 10-15% in 2020.

In order to remain viable, retail formats must reinvent themselves in order to respond to the needs of a growing population and to satisfy changing tenant and customer requirements. The retail sector is increasingly moving towards a 'blended' lifestyle focus, with a greater range of uses and activities, technology connectivity and integration as well as a sustainability focus. Retail assets are increasingly moving towards creating a community destination that can serve as a vibrant live/work/play precinct. The need for this shift has been highlighted during the recent pandemic where the focus on local community amenities, and the ability to provide active and convenient environments that satisfy a range of community needs has been critical.

The pace of change is also increasingly and the 'new generation' of retail embodies flexibility, technological advancements and new, innovative ways of doing business.

Retail planning has been suffering as a result of these significant headwinds, which has been starkly exacerbated by COVID. Drivas Property Group are willing to invest in the future of Lidcombe, to support the local community and the evolution of the retail sector by looking to explore innovative and new ways of thinking about traditional retail assets, by mixing uses, creating community, destinations and placemaking opportunities. The site has significant opportunities to improve local pedestrian accessibility, transport access, and better contribute to the revitalisation and activation of what has emerged as a popular sub regional centre within Lidcombe. To do that, a diversity of thinking, new thinking in terms of mix of uses and place making opportunities may require revisiting traditional and narrowly defined land uses permissible in the Enterprise Corridor zone.

Build to Rent Zoning Opportunities

BTR housing is proposed to be included as a compulsory permitted use in a number of zones, including the R4 High Density Residential, B3 Commercial Core, B4 Mixed Use and B8 Metropolitan Centre zones. It will also be permitted in the R3 Medium Density Residential where residential flat buildings are permitted. We agree with the inclusion of BTR housing in these zones, and the ability for Councils to make BTR housing permissible in other land use zones.

In addition to these zones, there is also an opportunity to provide BTR housing as a permissible use in the B6 Enterprise Corridor zone. BTR housing is a compatible land use to the existing permissible uses in this zone and would enable a use to be provided which supports centres and corridors without fragmenting land through traditional residential strata subdivision, ensuring it will be much easier to be recycled at a later date.

Parramatta Road Corridor Strategy

The inclusion of Build to Rent as a permissible land use in the B6 Enterprise Corridor zone would not be antipathetic to the goals and objectives of the Parramatta Road Corridor Strategy. In fact:

- Any rejuvenated centre would continue to deliver significant employment opportunities consistent with the Corridor Strategy and the B6 zone.
- The large site proportions and location along Parramatta Road, allow a range of environmental impacts to be effectively managed within the master planning process.
- The site is potentially an attractive alternative location for employment uses that relocate from elsewhere along the Corridor (or in a post COVID Sydney), particularly given the larger lot sizes along Parramatta Road which can support redevelopment opportunities.

- The site has the potential to enhance green and pedestrian links between and Parramatta Road and Sydney Olympic Park along Haslams Creek.
- The site has the potential to improve active transport connections to regional recreation and open space facilities.
- A repositioning of the asset with a mix of employment uses, and the build to rent typology would improve activation of the precinct, make better use of existing and planned transport infrastructure and contribute to the goal of a 30-minute city.

Summary

Drivas Property Group supports the NSW Government's response to the COVID-19 pandemic which is seeking to accelerate projects that support employment and economic development. The new Housing Diversity SEPP is a positive step forward in acknowledging and accommodating an emerging range of housing typologies which will ultimately increase the supply of housing, in turn improve housing affordability and supporting a stronger and more productive NSW economy.

Housing typologies such as BTR will continue to gain importance in the housing landscape of NSW, and therefore setting and encouraging an adaptive planning framework for these is important, including expansion of the range of zones where the new typology can be effectively delivered. The location of this form of housing in the B6 Enterprise Corridor zone can generally effectively manage environmental impacts and externalities (such as heritage and overshadowing). The addition of Build to Rent as a permissible use would also not undermine the job creation objectives of the zone, and in fact may better allow further job realisation through complementary land uses on sites like the Lidcombe Centre.

We appreciate the opportunity to provide feedback and would welcome the opportunity to provide further details of our re-imagining the centre as our master planning process progresses. Please feel free to contact me on 0450 823 633 or bill@drivasgroup.com.au.

Bill Gioroukos

Drivas Property Group

CC *Kiersten Fishburn*

Co-ordinator General

DPIE, Planning Delivery Unit

CC Monica Cologna

Cumberland Council

File11/63
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CAO:MLM

9 September 2020

DUBBO REGIONAL COUNCIL

The Director Planning Frameworks
NSW Department of Planning Industry & Environment
GPO Box 39
SYDNEY NSW 2001

Dear Sir/Madam

DUBBO REGIONAL COUNCIL SUBMISSION - EXPLANATION OF INTENDED EFFECT, PROPOSED STATE ENVIRONMENTAL PLANNING POLICY (HOUSING DIVERSITY)

Thank you for the opportunity to comment on the Statement of Intended Effect for the proposed Housing Diversity SEPP.

Dubbo Regional Council is an amalgamated Council incorporating the former Wellington Council and Dubbo City Council. Dubbo Regional Council recognises the importance of housing diversity and supports the provisions of the proposed Housing Diversity SEPP intended to contribute to the supply of genuine 'affordable housing'.

In response to the Department's request for input into the provisions around affordable housing, Council provides the following information and suggestions:

- Single detached dwellings make up 82% of Dubbo housing stock, 8% are townhouses and 10% units, these figures are similar to Wellington with 5% townhouses and 2% units.
- Dubbo has a lower percentage of dwelling ownership than that of regional NSW and NSW.
- Dubbo has the highest percentage of dwellings with mortgages and dwellings being rented due to its relatively young population.
- Wellington has the highest rate of outright ownership due to its relatively older population and affordability in comparison to Dubbo.
- There is a high demand for short term rental accommodation in Dubbo required to service a transient workforce. This demand limits the amount of housing for residents experiencing housing stress and requiring short term or emergency accommodation in the region.
- There are few social housing providers operating in Dubbo or Wellington and very few development applications for 'affordable housing' or seniors living developments are lodged in the Dubbo LGA.

All communications to: **CHIEF EXECUTIVE OFFICER**
ABN 53 539 070 928
PO Box 81 Dubbo NSW 2830
T (02) 6801 4000 **F** (02) 6801 4259 **E** council@dubbo.nsw.gov.au
Civic Administration Building Church St Dubbo NSW 2830
W dubbo.nsw.gov.au

- In the past 3 years, Council has received only one development application for affordable rental housing. Unfortunately this application was then withdrawn as it did not meet the requirements of Clause 10 (3) of the Affordable Housing Rental Housing (ARH) SEPP regarding proximity to the B2 and B4 Zones (or an equivalent zone). However the site was within 130m of the B3 Commercial Core Zone and approximately 190m away from the Dubbo Town Centre (zoned B3).

1. Affordable Rental Housing

With regard to the example of affordable rental housing provided in the last bullet point, it is suggested that the Department investigate broadening the zones referred to in Clause 10 (3) of the ARH SEPP or clarify the meaning of 'an equivalent zone'. Provisions regarding the distance of affordable rental housing to a specific zone should be broad and generally reflective of the broadness of commercial zoning in regional NSW.

2. Secondary Dwellings

In regard to the size of secondary dwellings in rural zones, both the Dubbo and Wellington LEPs permit secondary dwellings of 60 sqm or 40% of the total floor area of the principal dwelling. This clause applies in rural and also urban zones. Whilst these provisions are considered appropriate for rural zones, they are not always appropriate for Council's urban areas.

As such, it is recommended that the Standard Instrument include provisions that allow Council's to nominate the size of secondary dwellings in urban areas and also in rural areas.

3. Build to Rent Housing

Dubbo, like many regional LGAs has few development standards that can be relaxed to incentivise the development of a more diverse or higher density product. As such, the potential incentives for this sort of development in the Dubbo Regional LGA as opposed to residential flat buildings is unclear.

With this is mind it is suggested that the definition of BTR Housing be made as broad as possible in regional NSW and may include the following:

- a minimum of 5 dwellings or 15 bedrooms
- medium density development in the form of town houses, villas etc
- strata subdivision of BTR Housing to be permitted after 7 years and be prohibited in the B3 – Commercial Core zone, in perpetuity
- 5% of dwellings must be retained for affordable rental housing in perpetuity

It may also be beneficial to relax some of the design standards that will apply to this form of development in regional NSW as an incentive for developing BTR Housing.

If you require any further information, please contact Steven Jennings during normal office hours on 6801 4670.

Yours faithfully

Stephen Wallace
Director Development and Environment