

## **Submission re planned new SEPP Housing Diversity:**

Request to ban all new and additional SFPP's in Bayview, Ingleside and Terrey Hills due to high bushfire risks, evacuation risks and safety issues for residents.

### **Include Bayview and Ingleside into the Metropolitan Rural Areas (MRA) in the SEPP HSPD legislation.**

#### **Bush Fire risk too high in Bayview and Ingleside for more Seniors Housing:**

We propose that the Minister and the DPIE work together to amend the SEPP HSPD legislation and ban all new SFPP's (Seniors Housing) from being allowed in high risk bush fire areas.

These areas should be specifically mentioned in the SEPP HSPD legislation, so it is abundantly clear which land is excluded.

Areas such as Terrey Hills, Ingleside, Bayview and Dural (and other high-risk bush fire areas within the Hornsby Council and Hills district areas) should be banned from such SFPP developments.

It is too dangerous to have so many SFPP's already in these areas, specifically Bayview has an abundance of Seniors Housing scattered across the suburb. **Bayview has a very high to EXTREME bushfire danger rating** across the whole suburb and there would be an extreme risk to get all residents out of the Bayview area if a bush fire evacuation was required.

Adding Bayview and Ingleside to the MRA's will ensure the safety of all residents in these areas during Bushfires.

The safe evacuation of all residents during a bushfire is a large concern for residents of Bayview, Terrey Hills and Ingleside. These specific areas (Bayview, Ingleside and Terrey Hills) already have a large number of existing Special Fire Protection Purposes (SFPP's). Any new development should not increase the level of bush fire risk to the existing community. Most of the roads in and out of these areas have a high risk of flame contact during a bushfire. They are rural roads by nature, have steep slopes, turns, tree lined and lined by bushland. Some of the roads are also flood prone.

We support our request to ban new SFPP's in Bayview and Ingleside areas, with information we have gathered from the data made available by the Department of Planning and Industry regarding the cancellation of the Ingleside Precinct plans, which indicate clearly that the Department concludes that adding any new Seniors Housing (SFPP's) into an already dangerous, high risk bush fire prone area, puts existing and future residents lives at risk.

**There is a high risk to life in Bayview** for the many residents of Seniors Housing in Bayview area who would all potentially get cut off by fire during an emergency bushfire evacuation.

The Department's assessment report for the Ingleside Precinct development concludes that such 'ad-hoc' developments should not be undertaken as they increase risk to life too much. (refer APPENDIX A)

**The same issues apply to the Bayview area.**

The logic and reasons used by the Department of Planning to cancel the proposed precinct development in Ingleside, very much apply to any new proposals for Seniors Housing in Bayview as well.

Evacuating residents from so many SFPP's, from rural residences and from residential areas within the Bayview area would have catastrophic consequences and most certainly unnecessarily put many lives at risk.

Note that various residential rural areas in Bayview (and Mona Vale) and AVEO Minkara Retirement resort in Bayview are classified as **extreme risk, bushfire prone areas** where bushfires are both likely or will occur, in the RFS Warringah and Pittwater Bushfire Management Plan.

It would be irresponsible and a large risk to existing and future residents life to add more Seniors residents into such an extreme risk area with little evacuation routes out.

We refer to the recent Ingleside Bush Fire assessment of August 2018, which has some points which apply specifically to the whole Bayview area and parts of Mona Vale as well.

This report also took areas of Bayview Heights into consideration, and there were some overall conclusions which apply to any Seniors Housing proposal within these bushfire prone areas, that would make these type of Seniors Housing proposals a risk to life.

<https://www.planning.nsw.gov.au/-/media/Files/DPE/Reports/Ingleside-Bushfire-RiskAssessment-Part-1-23-11-2018.pdf>

Please also note that the Department of Planning makes the below statement about safety on their website when announcing the withdrawal of the Ingleside draft development plan:

*"Safety is the number one priority when planning for our communities. We listened to the concerns raised about bushfire safety for Ingleside"*

**We request that SAFETY is also the number one priority for planning in Bayview.**

<https://www.planning.nsw.gov.au/Plans-for-your-area/Priority-Growth-Areas-andPrecincts/Ingleside>

We are requesting that the NSW Government and the Department of Planning listen and react to our very real concerns for bushfire safety in Bayview and place a ban on any new SFPP's in these high bushfire prone areas.

Relevant conclusions and points from the 2018 Ingleside Bush Fire Assessment report: (screen shots supplied and attached)

1) Avoid potential for ad-hoc and incremental risk increase over time via discrete planning proposals - i.e. proposals for Seniors Housing under SEPP HSPD.

2) Avoid the introduction of any new Special Fire Protection Purposes (SFPP) - i.e. avoid any new Seniors Housing in an area which is designated in the Warringah and Pittwater Bush Fire Risk Management Plan as having a risk of extreme, a fire likelihood of likely, and consequences of catastrophic. Bayview already has 3 SFPP's within a relatively short distance from each other.

To add yet another into this severely bush fire prone area could prove disastrous.

In the Warringah and Pittwater BFPMP from the RFS, these 3 existing SFPP's are categorised to be at high to extreme risk of Bush Fire with catastrophic consequences. (refer screen shots in appendix A)

In addition residential areas in Bayview are also listed as likelihood 'likely', risk 'extreme' and consequences 'catastrophic'. There are only limited escape and evacuation routes available for all these large Seniors Housing villages and developments. It would be unsafe to add any more SFPP's into this area. This whole Bayview and parts of Mona Vale area is therefore already posing an extreme evacuation risk area for Bush Fires and one more large SFPP Seniors Housing development would cause extreme dangers to life.

3) It is now expected that new master planning processes would inherently consider the magnitude of potential bushfire risk as a precursor.

4) The Ingleside Bush Fire Assessment makes it clear that Cabbage Tree road is one of very few roads which are an exit point from Ingleside as well as Bayview during a Fire. Should there be a fire to the north of Bayview then it is highly likely that there will be a lot of evacuation traffic pouring down Cabbage Tree road towards Pittwater Road and the water. All of which will be trying to escape fire and get to safe areas.

Adding anymore SFPP's into this mix which will come out onto Cabbage Tree road just unnecessarily increases risk to lives.

refer APPENDIX A - Table 5 - Strategic overview of BPM characteristics from this Ingleside assessment document

refer APPENDIX A - Table 14 - which shows that 74.5% of existing roads in Bayview Heights are flame contact effected making evacuation through those areas very problematic.

5) The Ingleside precinct report states that Cabbage Tree Road would require significant design upgrades to function in an emergency considering existing design, grade and construction.

6) the Bush Fire survival map clearly shows parts of Cabbage Tree road are within a zone which is ember impacted and smoke affected.

7) Coronial inquiry into the (1994) bushfire at Cottage Point - had several points which are very important to note for any future proposals:

Note: that the fires came down to the area in and around the Cabbage Tree Road precinct in Bayview in 1994.

Quote: "Mr Gash expressed the view that, for example, radiation or buffer zones should be 0.3 of a kilometre wide between such developments and the bushland interface which should rule out any such development in the Warringah-Pittwater Council areas. "

"In the Courts opinion, having regard to the severity of all bushfires which impacted on residential bushland interfaces throughout the metropolitan area, these witnesses have raised legitimate concerns about this development. Four important issues have been identified to the Court in respect of future interface developments, namely:

1. Adequate radiation or buffer zones between housing developments and bushland with further adequate fuel reduced areas within the bushland perimeters adjoining the buffer zones. Appropriate access, exit and perimeter roads to and around such new housing estates to accommodate emergency vehicles.

2. Adequate water supply throughout the housing estate with the mains on the outer perimeters positioned so that emergency fire service hoses can be connected without obstructing streets.

3. Houses to comply with the Australian Standard (AS 3959) 'Construction of Buildings in Bushfire Prone Areas'. " "Submission P. 36 5.3 – 'with clarity afforded by hindsight, that planning restrictions in developments proximate to natural bushland has not been sufficiently stringent'. It is not the function of this Court to lay the blame at the feet of Council or Government Departments or the Environmental Court process, however what is needed is uniformity of practice throughout the state so as to remove conflict and differing interpretation Councils apply in their consideration of developments."

The Coronial Inquiry report found that where new land (Ingleside) is to be considered for further development, it should be done with caution on the basis of limited access and inadequate roads (Hiatt et al. 1995; Macleod, 1996).

We respectfully request that you consider this information with our request to ban new SFPP's in Bushfire prone areas of Bayview (and Mona Vale) and Ingleside, to ensure a permanent solution to protect all of Bayview from further Seniors Housing and which would also protect the designated high priority wildlife corridor in Bayview from any Seniors Housing.

#### **Protect Biodiversity areas and designated wildlife corridors.**

What will the NSW Government and the Department of Planning do to protect an important biodiversity area in Bayview, which is also in an extreme bushfire risk area?

ALL biodiversity areas, and ANY type of wildlife corridor designation should be protected from Seniors Housing development.

There needs to be a permanent solution to protect this open space land and important wildlife habitat. This is still an important issue for the community who are concerned developers will continue to attempt to develop this important wildlife corridor.

The community needs an urgent solution to permanently protect the Bayview wildlife corridor from further ad-hoc Seniors Housing proposals which would put the lives of existing residents at risk during bushfires and which threaten the habitat of over 10 endangered species.

A ban on SFPP's in Bayview (and parts of Mona Vale) and Ingleside would help achieve this outcome.

#### **Add Bayview and Ingleside into the MRA designation:**

We note that on the 27<sup>th</sup> of July 2020 The NSW Govt made legislative changes to exclude Metropolitan Rural Areas (MRA) from the SEPP Seniors Housing.

We also note that for some reason Bayview and Ingleside were not included in this MRA listing.

This is very surprising and disappointing as Bayview and Ingleside are very similar to Terrey Hills, and other areas in Hornsby which WERE included in MRA's.

Bayview and Ingleside are still:

Rural areas,

most homes are 1 acre or more in land size,

some homes still are not attached to the sewer system in both areas,

Housing density is very low, very few buildings over 2 storeys or over 8 meters,

They are both high risk bush fire areas, (extreme in the case of Bayview where Minkara retirement resort is designated an EXTREME risk.)

they are both high value biodiversity areas,

Bayview and Ingleside are wildlife habitat to over more than 10 endangered species.  
Bayview and Ingleside are connected by a very large interconnecting designated high priority wildlife corridor.  
Bayview has zonings of RE2 where open space is also a designated wildlife corridor in a rural setting.  
Bayview is already over represented by Seniors Housing, Retirement Villages and over 55's apartments.  
The roads in and out of Bayview and Ingleside are rural by nature, winding, steep, with crests and narrow areas. Some escape roads are in the flame zone.

These reasons should be sufficient to ensure that Bayview and Ingleside are included into the SEPP HSPD MRA designation.

**Stop the Site Compatibility Certificate (SCC) process from being an 'Ad-hoc re-zoning':**

The SCC process is often referred to as "re-zoning by stealth" and we note the SMH article on 15 May 2019 where Minister Rob Stokes expresses opposition to 'spot rezoning' of land which goes against the LEP.

<https://www.smh.com.au/national/nsw/the-culture-needs-to-change-stokes-targets-high-rise-development20190511-p51mel.html>

The wider community, especially in areas such as Bayview, Ingleside, Dural, Terrey Hills etc have always considered the SCC process as a 'spot rezoning' process, especially due to the uncertainty caused by this legislation due to the number of vague definitions and loopholes still existing in the SEPP HSPD.

It should also be possible to make the changes to definitions and loopholes which exist in the SEPP HSPD. In the case of the Bayview wildlife corridor, it has always been zoned in the PLEP to protect this land so it could NOT be developed, especially not as higher density Seniors apartments. The SCC process potentially allows such 'ad-hoc' developments to appear in rural and recreational, bushfire prone areas, going directly against what is zoned and planned in the LEP and causing anxiety in the community about so many SFPP's in high bushfire areas.

We would appreciate it if the NSW Government and staff in the Department of Planning and Industry can review these issues and make these relatively simple amendments to the SEPP HSPD which would effectively close the loopholes in this legislation, provide more certainty for the communities and remove the 'ad-hoc' element of this Seniors Housing legislation.

**Protect Environmentally Sensitive Land, by proper SEPP legal definitions. (Biodiversity land and Wildlife Corridors):**

Due to many recent LEC court cases, the SEPP HSPD currently does not properly protect most Environmentally Sensitive Lands anymore because the words and descriptions used in Schedule 1 of SEPP HSPD, no longer relate to words used in the Standard LEP Zones and LEP clauses as dictated to be used by the DPIE and the NSW Government.

This means that a number of Seniors Housing proposals in areas which have genuinely Environmentally Sensitive Lands, have been approved by the LEC as the LEC commissioners are ruling that the descriptions of the LEP zones and clauses do not fall within Schedule 1 of SEPP HSPD.

This is obviously becoming an example where technical legal interpretation and case precedents are making unintended changes to the way SEPP HSPD legislation works in practice.

We are asking the DPIE to change SEPP HSPD Schedule 1 definitions, so that Environmental protection of lands will once again be effective under SEPP HSPD Schedule 1.

**Please refer to Appendix B**

Following requests to ensure a clear, concise and well-defined SEPP HSPD:

**Amendments and definitions in SEPP Seniors legislation for review:**

1. **Height in ALL Zones** which do not permit 'Residential Flat buildings' **restricted to 2 levels**
2. **The definition of 'adjoining land'** should be clearly defined within the legislation
3. **The definition of 'urban land'** should be clearly defined within the legislation
4. **The definition of 'most' in Chapter 1 Clause 4 Land to which Policy applies - (5)(b) should be quantified and not be left to a subjective interpretation.**  
and  
4(5)(b) – **'most of the land that it adjoins is land zoned for urban purposes.'**  
**Zoned for urban purposes'**  
--> **should be modified to read 'zoned for primarily urban purposes'** so it will be consistent with the rest of SEPP HSPD.
5. **Community submissions** should be allowed for Site Compatibility Certificate (SCC) Application.
6. There should be an **appeals process** allowed for Councils to appeal SCC decisions.
7. The SEPP SCC legislation should make it very clear that **an SCC can NOT be amended** during the 24 months that it is current.
8. **SEPP HSPD Schedule 1 – Environmentally Sensitive land should be further clarified**

**Protections which used to prohibit Seniors Housing which were removed by LEC court cases:**

a) Geotechnical Hazard land – no longer considered a "natural" hazard – no longer environmentally sensitive land due to LEC cases.

b) Biodiversity land – no longer considered environmentally Sensitive land due to LEC cases.

c) 400M from a bus stop – This standard no longer needs to apply due to the recent Terrey Hills court case where it was considered ok to have a mini-bus services from the housing proposal. Removing standards or no longer properly enforcing them is not in the public interest. It was also considered ok to have all services in house. This does not create a very "social" community where these Seniors are totally reliant on in-house services. We note that in a submission to the Terrey Hills proposal for 58 Laitoki Road, even Minister Stokes wrote that

the 400M standard should apply (amongst other comments).

The public also thought that this was logical and that it was logical to NOT approve this development where it is planned, yet the LEC courts with their decision effectively NULLIFIED SEPP standards. This should not be possible.

If 400 M is the standard, then this should always apply and not have massive loopholes which then make it possible to isolate Seniors by only offering onsite bus services but no access to public transport whatsoever as it is too far away.

d) Bush Fire evacuation is not considered in a holistic manner by the legislation, it is considered good enough to just make an evacuation plan. These plans to NOT take ALL the surrounding residents, roads and issues into consideration. NO ONE CHECKS these plans are realistic. Allowing Large seniors housing apartment complexes to be built so close to high risk bush fire areas with small rural exit roads puts lives in danger. There are not enough emergency or other resources available to actually implement such evacuations.

e) SEPP HSPD does NOT take ALL other existing or planned Seniors Housing within 1km radius into consideration. Unlike what has been commented upon by the minister himself to the Narrabeen Catchment group who recently had an article in the local magazine, the SEPP HSPD does NOT need to review ALL Seniors Housing in the surrounding areas. This is ONLY REQUIRED when there are OTHER ACTIVE SCC's. If the Seniors Housing is an approved DA already, OR if it has been built already then this does not need to be taken into account under this Oct 2018 amendment.

Therefore this land creep allowed within the SEPP HSPD legislation is still possible, despite the October 2018 SEPP HSPD amendment.

f) Environmental Issues – Due to the new Biodiversity offset laws developers can now use Bio-offsets to BUY their way around environmental issues. The community is shocked to discover that a developer can pay a bio-offset of \$100,000 to then be allowed to destroy environmentally important habitat. Again, the cumulative impact of this is NOT taken into account.

Each single Seniors Housing development is assessed on it's own with regard to bio-offsets.

This means it is apparently completely OK to remove acres of established remnant wildlife habitat, pay the bio offset, and not look at whether the same was done on the land next door, and the land next door to that and so on.

These bio-offsets are allowing whole areas to be denuded of wildlife habitat.

After the bushfires ALL this wildlife habitat has become even MORE important to retain.

As a community we can not afford to lose even more wildlife habitat.

g) Flooding – various new LEC cases have meant that building in flood prone areas is no longer an issue and can be worked around. Again the legislation does not look at how many other developments there are in this flood prone area, how hard it would be to evacuate ALL residents, and whether the evacuation plans created for this as a condition of consent are ever implemented properly or even realistic.

APPENDIX A:

Information extracted from the Bushfire report conducted for the Ingleside Precinct.

Table 5 - Strategic overview of BPM characteristics

Bushfire Protection Measure	Ingleside (existing)	Draft Structure Plan
Access	Roads out of the Precinct include: <ul style="list-style-type: none"> <li>• Mona Vale Road (east and west)</li> <li>• Powderworks Road</li> <li>• Cabbage Tree Road</li> </ul>	No additional roads out of the Precinct are contemplated.  Mona Vale Road is intended to be upgraded to a dual-lane carriageway in either direction.



	<ul style="list-style-type: none"> <li>• Minkara Road</li> </ul>	Other roads will likely undergo design upgrade however, no additional road network connections between Ingleside and surrounding areas is proposed.
	Much of the existing Precinct is not serviced by reticulated water supply and electricity is largely via	Preliminary infrastructure servicing reporting identifies South Ingleside can be readily serviced by

Table 14 - Draft Structure Plan road network exposure to potential flame contact (landscape risk - FFDI 100 scenario)

Element of road network subject to potential flame contact	Bayview Heights	North Ingleside	South Ingleside	Wirreanda Valley
Existing Road	74.5%	37.1%	51.7%	56.9%
Major Road	61.9%	41%	33.5%	20.7%

From North Ingleside, evacuation is intended to be facilitated either via Mona Vale Road, Minkara Road or Cabbage Tree Road. Each of these routes will require significant design upgrades to enable them to function in an emergency given their existing design, grade and construction. From Bayview Heights and that area to the north of Cicada Glen Road, these same evacuation routes are intended to service these locations, in addition to an existing fire trail linking Bayview Heights directly with the suburb of Bayview, to the north.

The figure below illustrates the core evacuation network proposed for Ingleside.

## 12.2 Recommendations

Moving forward, several key recommendations are identified:

1. The planning pathway forward for Ingleside should be clearly identified. If appetite for further development or certain types of development is low, appropriate planning instruments should be implemented to avoid potential for ad hoc and incremental risk increase over time via discrete planning proposals.
2. The existing risk profile of Ingleside must be addressed with a combined range of measures to strengthen community resilience to bushfire. This could be undertaken via a resilience workshopping process to identify key mitigation opportunities and built-in to a revised Warringah Pittwater Bush Fire Risk Management Plan and Local Emergency Management Plans.
3. Avoid the introduction of any new Special Fire Protection Purposes within the Ingleside Precinct into the future.
4. Consider the preparation of a Guidance Manual for conducting strategic land use planning risk assessments / bushfire strategic studies as an addendum / appendix to PBP 2018 to ensure consistency in process, approach and evidence-based reporting is conducted moving forward across NSW (similar to the NSW Floodplain Development Manual).

As bushfire protection planning policy has changed since the planning process for Ingleside first commenced, and new methodologies have emerged, it is now expected that new master planning processes would inherently consider the magnitude of potential bushfire risk as a precursor and build-in bushfire resilient land use planning approaches throughout design processes, where appropriate.

### Information extracted from the Warringah and Pittwater Bush Fire Coordination Committee Plan.

Existing SFPP's AVEO Peninsular Gardens, Bayview Gardens and Minkara Retirement Resort all [categorised as high risk/extreme risk with catastrophic consequences.](#)

### **Note: Minkara Retirement Resort has a likelihood of "Almost Certain" for a bushfire to occur.**

Minkara is just above the area where the new Seniors Housing has proposed in recent time, with the Minkara Retirement Village (Bayview) Southern emergency evacuation route exiting right into where a new Seniors Housing was proposed.

Priority	Map reference number	Asset type	Asset sub type	Asset name	Asset Location	LGA	Likelihood	Consequence	Risk
3C	101	Human Settlement	Special Fire Protection	Peninsula Gardens Retirement Village	Cabbage Tree Road Mona Vale	Pittwater	Unlikely	Catastrophic	High
3C	102	Human Settlement	Special Fire Protection	Bayview Gardens Retirement Village	Cabbage Tree Road Bayview NSW	Pittwater	Unlikely	Catastrophic	High

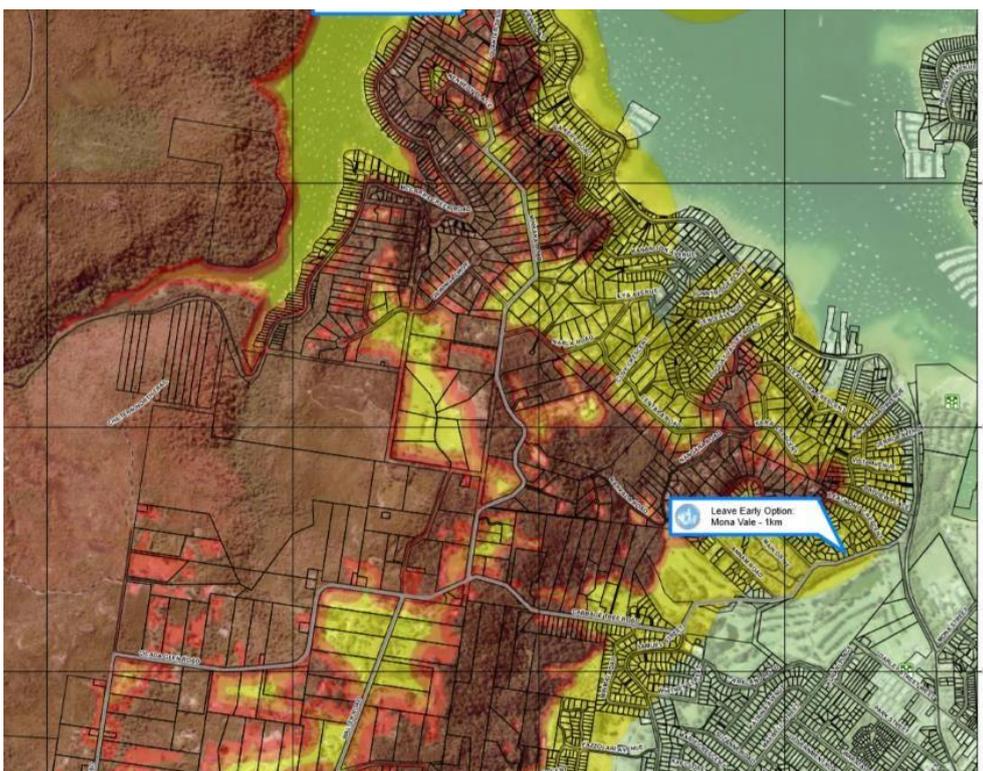
Priority	Map reference number	Asset type	Asset sub type	Asset name	Asset Location	LGA	Likelihood	Consequence	Risk
1A	28	Human Settlement	Special Fire Protection	The John Colet School	Wyatt Avenue Belrose NSW	Warringah	Almost certain	Catastrophic	Extreme
1A	29	Human Settlement	Special Fire Protection	Gleneon Retirement Village	Forest Way Belrose	Warringah	Almost certain	Catastrophic	Extreme
1A	30	Human Settlement	Residential	Forestville Urban North	Lady Davidson / Ferguson Roads Forestville	Warringah	Almost certain	Catastrophic	Extreme
1A	31	Human Settlement	Special Fire Protection	Minkara Retirement Village	Minkara Road Bayview NSW	Pittwater	Almost certain	Catastrophic	Extreme
1A	32	Human Settlement	Residential	Scotland Island East	Scotland Island Pittwater	Pittwater	Almost certain	Catastrophic	Extreme
1A	33	Human Settlement	Special Fire Protection	Sunny Field / Spastic Centre Allambie Heights North West	Aquatic/Allambie Drives Allambie Heights NSW	Warringah	Almost certain	Catastrophic	Extreme

**Bush Fire Coordinating Committee – Policy No 1/2008**  
**Adopted by the Bush Fire Coordinating Committee - Minute No. 24/2008**  
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**Some residential areas in Bayview have a likelihood of “Likely”, consequences of “Catastrophic”, and an “Extreme” risk of bush fire.**

Adding any SFPP Seniors Housing apartment close or even in the vicinity of any residential areas where there is already an extreme danger with catastrophic consequences should be permanently stopped.

The following map clearly shows that the whole Bayview area, including the designated high priority wildlife corridor, areas on the golf course, all Seniors Housing Retirement villages in the area and road ways, are part of an area at high or extreme risk of bushfire danger and are all at risk of ember attacks.



### What is Your Bush Fire Threat?

- Flame Impact** (Red icon): You and your property are likely to be directly impacted by flame, deadly levels of radiant heat, significant embers and smoke from a bush fire. The risk of death and property destruction from bush fire is greatest in this area. Leaving early is your safest option.
- Radiant Heat Impact** (Orange icon): You and your property are likely to be impacted by deadly levels of radiant heat, significant embers and smoke from a bush fire. You and your property must be well prepared if you choose to stay and defend.
- Ember Impact** (Yellow icon): You and your property are likely to be impacted by lower levels of radiant heat, significant embers and smoke from a bush fire. You and your property must be well prepared if you choose to stay and defend.
- Be Aware** (Green icon): Embers can cause fires kilometres from the main fire and can impact on houses up to one hour before the fire arrives and several hours after the fire has passed. It only takes one ember to ignite your house and property. Ensure that you and your property are well prepared and monitor your property carefully during a bush fire.

Extreme Fire Danger Rating. Information provided on this map is not to be used for building / planning purposes.

A well designed and prepared building will provide more protection against bush fire.

- Neighbourhood Safer Place** (Green icon): Neighbourhood Safer Places are a Place of Last Resort during a bush fire. Please see a Neighbourhood Safer Place and Other Safer Locations in your Bush Fire Survival Plan! See attached List.
- Main Road** (Grey icon): Roads may become impassable during a bush fire. Your safest option is to Leave Early.
- Leave Early** (Blue icon): Leaving early means leaving L005 before a bush fire is in your area. On days of Catastrophic fire danger, you should leave early in the morning or over the night before.

### Your Bush Fire Survival Options

Know the Fire Danger Rating → Leave Early OR Stay and Defend a Well Prepared Property → Have a Back Up Plan!

Stay informed about local fire conditions. Check the NSW RFS website or listen to the local radio.

## **APPENDIX B - PROPOSED AMENDMENTS TO SEPP HSPD SENIORS HOUSING to close existing issues.**

### **Changes to Loopholes in the SEPP Seniors and SCC legislation and proposed changes to add clarity.**

Please find a number of areas in the SEPP Seniors Living legislation (SEPP HSPD) which we respectfully request should require better definitions, additions and closing of areas with existing loop-holes .

These problem areas in the SEPP HSPD, loop-holes and lack of clarity are causing inappropriate developments to appear in the wrong places, cause lengthy and costly DA and court processes, and cause anxiety and issues within communities.

Residents in all council areas and owners of properties need to have certainty of title about what can or cannot be built right next door to them.

As the SEPP HSPD legislation is often vague, not clear in definitions or has allowed case law to determine direction of the law, it is now **a random process as to where Seniors Housing might appear.** There is no clear planning, it is not clear which specific land is affected and there is no council or community involvement in determining where Seniors Housing can and cannot be built.

Decisions where large Seniors Housing complexes are built is left to random decisions made by developers who constantly test the SEPP legislation to determine where they can build. These decisions are based on profit motives, not community and social motives, no matter what developers claim.

This causes major anxieties to residents in areas affected by these developer's decisions.

Below we have provided more details on what changes are required, what is proposed and reasons why we believe these changes are required and will benefit the community.

#### **Following changes and definitions in SEPP Seniors legislation for review:**

9. [Height in ALL Zones which do not permit 'Residential Flat buildings' restricted to 2 levels](#)
10. [The definition of 'adjoining land' should be clearly defined within the legislation](#)
11. [The definition of 'urban land' should be clearly defined within the legislation](#)
12. [The definition of 'most' in Chapter 1 Clause 4 Land to which Policy applies - \(5\)\(b\) should be quantified and not be left to a subjective interpretation.](#)  
and  
4(5)(b) – 'most of the land that it adjoins is land zoned for urban purposes.'  
Zoned for urban purposes'  
–> should be modified to read 'zoned for primarily urban purposes' so it will be consistent with the rest of SEPP HSPD.
13. [Community submissions should be allowed for Site Compatibility Certificate \(SCC\) Application.](#)
14. [There should be an appeals process allowed for Councils to appeal SCC decisions.](#)
15. [The SEPP SCC legislation should make it very clear that an SCC can NOT be amended during the 24 months that it is current.](#)
16. [SEPP HSPD Schedule 1 – Environmentally Sensitive land should be further clarified](#)

#### **Detailed information regarding the proposed changes to the SEPP HSPD Legislation:**

1. **Height in ALL Zones which do not permit 'Residential Flat buildings' restricted to 2 levels**

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

##### **Chapter 3 Part 4 Division 1 Clause 40 (4)**

*(4) **Height in zones** where residential flat buildings are not permitted*

*If the development is proposed in a **residential zone** where residential flat buildings are not permitted:*

- We respectfully suggest that the word: **'Residential Zoning'** be replaced with the word **'Zoning'** so that **ALL adjoining residents** for any zoning are offered the same level of protection from excessive high rise development next door.

Height restrictions should apply to ALL zonings where residential flat buildings are not allowed. It is unacceptable that a minor mistake or one missing word in the legislation would allow 4 to 6 storey buildings to appear in zones where normally residential flat buildings are not allowed.

In addition, as per the recent Medium Density 'complying development' proposed legislation, we suggest that Apartment Style Medium Density SEPP Seniors Housing should also not be permitted where the current zoning does not allow medium density.

The style of SEPP Seniors Housing should be matched to the Zoning where the SEPP Seniors Housing is proposed.

People living in R2, RE2 or semi rural zoned areas should not be worried that 3 or 4 storey large apartment buildings can be erected under the ad-hoc re-zoning policy of the SEPP HSPD SCC process.

The zonings should be changed first through a proper rezoning process, involving council, community and planning, rather than via quasi re-zoning using a Site Compatibility Certificate (SCC).

**The community refer to this SCC process as “Rezoning by stealth”.**

This section 40(4) of the SEPP legislation is meant to protect surrounding low rise residential areas from having high-rise Seniors Living apartments (Residential Flat Buildings) being built next door.

A specific height restriction has been imposed to ensure a 2 level, or 8 meter height restriction is in place for these “residential zones”. This same protection should be afforded to all other non-medium density zones.

The intention of this existing clause is specifically mentioned in the legislation under clause b):

***“Note. The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.”***

Note that the actual clause 4 itself, initially only uses the term “Height in zones where residential flat buildings are not permitted”

Were this to be read on it’s own, one would definitely interpret this to mean: “heights in ALL and any zones where residential flat buildings are not permitted”

Due to the one word ‘Residential’, which has been inserted into the second sentence under (4), only very few Zonings are protected by this height restriction.

It basically means that for example any sports club land, RE2 (where also no Residential Flat Buildings are allowed) any number of levels and height is allowed above 8 meters or 2 levels, and that “an abrupt change in the scale of development in the streetscape” is therefore allowed in those circumstances. This appears to be anomaly in this legislation. This needs to be fixed.

Following zonings do not allow Residential Flat Buildings, but the surrounding lots and streetscape are **offered no height restriction protections** under this current version of the SEPP legislation:

B1 Neighbourhood Centre

B2 Local Centre

B4 Mixed Use

SP3 Tourist

RE2 Private Recreation

We do not believe this is the intention of the SEPP Seniors Housing legislation to ‘promote’ such excessive heights in RE2, B1, B4 and SP3 zonings, when the surrounding streetscape is much lower. Height restrictions should be across ALL zones which currently do not allow residential flat buildings.

It is a loophole which allows much higher density in these ‘non-residential’ zonings.

We believe this is **an anomaly and loophole in the SEPP legislation.**

The **wording of 40 (4) should be amended to remove the word ‘Residential’** from the definition of ‘zoning’.

**This would therefore offer the same height restriction protection for all adjoining land owners and residents for any land zonings where SEPP applies and residential flat buildings are not allowed.**

**As per the new MediumDensity Housing Complying Development legislation, SEPP Seniors Housing legislation should also exclude any land which is currently NOT zoned for medium density from having a type of Seniors Housing which resembles medium density apartments.**

The Zoning for medium density should be left to councils, planning and community consultation. After proper and extensive planning and consultation, land that has been thought to be suitable for rezoning to medium density housing, THEN SEPP Seniors Housing medium density apartments could be appropriate.

At the moment this **decision is random, ad-hoc and being left up to developers** to decide where they think it is appropriate to add high rise Seniors Apartments.

This current legislation and SCC process is unfair and against all normal processes for existing communities and owners living in low rise residential and open space and rural type areas.

2. **The definition of “adjoining land” should be clearly defined within the legislation** to counter act current ‘creep’ of SEPP and SCC applications.

The definition of “adjoining land” should be clearly defined within the legislation to counter act current ‘creep’ of SEPP and SCC applications.

We believe the legislation should be written to make a clear, precise and objective interpretation.

The definition of 'adjoining' is currently totally determined by case law, mainly due to one case where a commissioner of the court decided to use a much broader interpretation of 'adjoining' than any other similar legislation has in Australia, or even globally.

This clarification of 'adjoining' can be done by using the definition used nearly everywhere else in NSW legislation, as well as the UK and USA, which is: contiguous, touching or in contact, bordering, meeting and common boundary.

The vague definition of 'adjoining land' in the SEPP legislation has allowed and will continue to allow land which is further and further away from urban land, to be included into the definition of 'adjoining'. This will further the 'creep' of this type of development across areas where it is not appropriate.

The legislation, and the Department of Planning, are more and more interpreting the word 'adjoining' using subjective interpretations, being "near to" or "neighbouring on" or "in sufficient proximity to" land zoned primarily for urban purposes.

We believe the SEPP HSPD legislation should be written to make this a clear, precise and objective interpretation.

This can be done by using the definition used nearly everywhere else in NSW legislation as well as the UK and USA legislation, which is:

contiguous, touching or in contact, bordering, meeting and common boundary.

Currently a very broad and loose interpretation is being used for adjoining, as in 'near to' or in 'close proximity'. Some appeals cases are now getting away with adjoining meaning 70 to 100m away from urban land. This lack of consistent definition of 'adjoining' across all NSW legislation can cause uncertainty with residents because now you are not safe buying into rural or non urban land because at any stage a lot which is 100m away from urban land and physically not adjoining urban land could suddenly be considered appropriate for SEPP Seniors development.

Refer following definitions for numerous applications of the term 'adjoining land' :

<https://legal-dictionary.thefreedictionary.com/Adjoining+Landowners> (common boundaries)

<http://www.dictionary.com/browse/adjoining> (bordering contiguous)

<http://www.wslaw.co.uk/knowledge-centre/industry-news/news-article/1006/case-clarifies-definition-of-adjoining-land>  
(land needs to touch each other - UK law)

<https://definitions.uslegal.com/a/adjoining-landowners/> (common boundaries US law)

<https://www.collinsdictionary.com/dictionary/english/adjoining> (US and UK definition, both mean touching, connected or contiguous)

Refer NSW Supreme Court case: Merrick Tyler Pty Ltd v Commissioner of Main Roads [2014] WASC 166 was delivered by the Supreme Court on 14 May 2014.

[https://www.lavan.com.au/advice/planning\\_environment\\_land\\_compensation/adjoining\\_land\\_in\\_the\\_land\\_administration\\_act\\_1997\\_wa](https://www.lavan.com.au/advice/planning_environment_land_compensation/adjoining_land_in_the_land_administration_act_1997_wa) (adjoining land is contiguous, connected etc)

In addition, SEPP HSPD Chapter 1 Clause 4, (4) makes it clear that the legislation actually already considers land that is 'adjoining' to be "directly" adjoining land. (were it not 'for the presence of a public road') "land that would **directly adjoin land** that is zoned primarily for urban purposes but for the presence of a public road"

It is clear that 'adjoining' in this part of SEPP HSPD means 'directly next to'.

Refer also to the conflicting definitions of legal requirement for a DA to be notified to 'adjoining property owners' :

It was mentioned in the Terry Hills meeting with DPE staff, Minister Stokes and Mr Marcus Ray of the DPE in November 2017 that, the Department of Planning agreed that 'adjoining' property holders were not notified of an SCC, and only council was notified.

However the Department staff stated that when a DA is lodged, all 'adjoining' land holders would be notified of the development by council.

This is however an **incorrect assumption** (that adjoining properties as defined for an SCC would be notified), **as the definition of adjoining for SCC and SEPP Seniors differs from the definition used by other legislations** including that for notifying adjoining properties for a DA.

In this case of a DA for Seniors Housing only properties directly adjoining (bordering, contiguous to) the proposed lot, will be notified by council.

Those other 'adjoining' properties (as defined by SEPP HSPD) who are affected are potentially not notified. Properties within 70 to 100m 'adjoining' a proposed SEPP HSPD will not be notified nor are they required to be notified even though the SEPP HSPD legislation can be applied to such great 'adjoining' properties.

So here 'adjoining' has two differing interpretations which have repercussions to interested parties.

The **SITE definition** for an SCC should also define what the land is to which this SEPP HSPD and these SCC's apply.

SEPP HSPD currently defines that **an SCC certifies that a SITE is suitable for more intense development.**

This is written into the SEPP HSPD legislation under: 24(2)(a)

*(2) A consent authority must not consent to a development application to which this clause applies unless the consent authority is satisfied that the relevant panel **has certified in a current site compatibility certificate** that, in the relevant panel's opinion:*

*(a) **the site of the proposed development** is suitable for more intensive development,*

It is **unclear what a 'site' is** because the legislation also states that 'land' can be adjoining urban land and therefore allow SEPP Seniors.

So what developers are doing is taking a large lot of land which has a small part of that land which 'adjoins' urban land within 100meters away, and then once established that this larger lot of 'land' allows SEPP Seniors, the developer proposes their ACTUAL BUILDING SITE, which is a much smaller piece of land in a far away corner of this land, in the middle of Rural , RE2 recreational or other non-urban land.

If an applicant is planning to sub-divide a small section of a very large lot, and create an isolated island of Seniors Housing within a much larger lot, then **'adjoining' should apply to the actual proposed development site only** and NOT apply to the whole land area where no SEPP Seniors Housing will ever be built.

The current definitions are encouraging developers to buy large lots of rural land, as large as is required to ensure SOME PART of that rural land, is within 70m of urban land. Once this is achieved, they can build Seniors Apartments ANYWHERE on that land.

**This loophole means whole chunks of Rural land and RE2 land, far away from any urban land, can be developed for Seniors Housing purely due to developers amalgamating several lots of rural land.**

**Land the subject of SCC Seniors applications is getting further and further away from actual urban land.**

As the definition is subjective and comes under the control of case law and varying vague interpretations in the LEC, this leaves most applications for an SCC up to the subjective interpretation of the staff of the Department of Planning, Regional Planning Panels, councils or judges in court.

This should not be the case, there **should be a clear objective definition of adjoining** similar to how it is defined in all other legislation.

It is **in the public interest for this definition to be clear and concise** and it is **EASY TO FIX this definition in the SEPP HSPD legislation.**

Due to a number of court cases in the Land and Environment Court, and the fact that there is no clear and precise definition of the term 'adjoining land' in the SEPP legislation, a **clear 'creep'** in application of the SEPP Seniors Housing and SCC legislation is occurring.

Court cases for SEPP legislation are re-defining 'adjoining land' as being a site that is "near to" or is "neighbouring on" or is "in sufficient proximity to" land zoned primarily for urban purposes.

(Signature Gardens Retirement Resort Pty Limited v Cessnock City Council [2013] NSWLEC 1070)

Adjoining is coming to mean further and further away from actual urban land. This has the effect that Seniors Housing is appearing more and more into Rural and recreational areas where it was not envisaged and where property owners never thought their non-urban lifestyle would be disrupted and, in some cases, ruined by such large Seniors developments.

**Recent court cases for other legislation are interpreting the same words 'adjoining land' as : 'contiguous land, that is land touching or in actual contact with the land taken, bordering the land taken or meeting the land taken at a common boundary.'**

(refer above case: Merrick Tyler Pty Ltd v Commissioner of Main Roads [2014] WASC 166 case re determining compensation for 'adjoining land' )

These interpretations from other legislation are in stark contrast with the definition being interpreted and assigned to 'adjoining' in SEPP HSPD.

Much broader subjective definition of 'adjoining' in SEPP:

Signature Gardens Retirement Resort Pty Limited v Cessnock City Council [2013] NSWLEC 1070

Where justice G T Brown provides the arguments based on recent court cases for the definition and interpretation of 'adjoining urban land'.

*"48 For these reasons, I am satisfied that the site is "near to" or is "neighbouring on" or is "in sufficient proximity to" land zoned primarily for urban purposes; "*

From this logic it can be seen that the LEC has been taking a more and more broader approach to the interpretation of land 'adjoining' urban land and it is getting further and further away from the proposed development sites.

This is allowing land creep even where the October 2018 SEPP HSPD changes were meant to stop this.

**Where does this unclear and unprecise definition of 'adjoining' by the courts stop?**

This creates uncertainty for residents near such sites, as it now means any site 100M away from urban land can be developed for Seniors Housing.

Worse... a rural back lot far removed from urban land which has been amalgamated into one large parcel, can suddenly be developed into Seniors Housing. Their rural neighbours suddenly find a large Seniors Housing apartment complex developed right next door, far away from standard urban areas purely due to the definition not being precise.

Residents who have bought houses and rural large lots in good faith, or whom live near RE2 land because of the views, open space and tranquility are suddenly finding that these lots of land are 'adjoining' urban land 100m or even much further away and can therefore have Seniors apartment buildings on them.

**This level of uncertainty is not in the public interest and is unfair to residents nearby.**

The definition they are using is allowing the creep of SEPP Seniors developments to be further and further away from actual 'urban land'. This makes the assessment of SCC and SEPP Seniors applications too subjective and based on personal views, rather than having to be objective and based on clear facts of being contiguous, touching on, bordering or common boundary where there is no doubt about the meaning of adjoining. A clear definition of adjoining will give existing property owners and communities more certainty that such developments may or may not pop up next door.

**We respectfully request that the SEPP legislation be modified to include a clear definition of adjoining land which includes the words, contiguous, touching or in contact, bordering, meeting and common boundary.**

Please note, we do not disagree with the allowance in the legislation where a property is divided by a road from the urban land. This small addition made in recent times is a sensible approach and an objective definition.

3. **The definition of 'urban land' should be clearly defined within the legislation** to counter act current 'creep' of SEPP and SCC legislation by allowing 'subjective' interpretations of what land exactly constitutes 'Urban land'

We believe that this can easily be done by clearly specifying exactly which LEP zones are urban (for 'adjoining urban land' ) and which zones are not.

The Department and NSW Government already has **clear templates for the design of LEP's**.

It should therefore be easy for the Department to define which of the zonings that are allowed to exist and used by councils in their LEP's, are considered urban.

This should not be left to the subjective interpretation of assessing public officers or the LEC.

The Wirrabara Case has clarified that RE2 and RE1 land by itself is not primarily urban land. (although we have read a recent case where even that was again being argued against)

In addition RE2 land on it's own is also already mentioned in the legislation as not meant to be considered urban land.

( Chapter 1 Clause 4 Land to which Policy applies, (5)(b) )

We provide this example as it has taken years of court cases to finally establish that RE2 land is NOT urban land.

It **should not be this hard**, nor take this long, be so costly and take so many resources to establish this.

We believe that this change can easily be done by **clearly specifying exactly which zones are considered to be urban** (for 'adjoining urban land' ) and which zones are not.

The legislation should use a simple list of zones and other definitions to precisely define which are 'urban' for this SEPP legislation.

If this is not specified, then it is left to the subjective interpretation of those making the assessment.

**Communities need to be better protected from such rezoning by stealth.**

The SEPP legislation states that registered club land on it's own, should NOT be treated as urban land.

**Chapter 1 Clause 4 Land to which Policy applies, (5) :**

**(5) Application of Policy to land zoned for special uses and existing registered clubs**

For the purposes of this Policy (and for the avoidance of doubt), a consent authority must not treat:

(a) land on which development for the purposes of special uses is permitted, or

**(b) land that is being used for the purposes of an existing registered club,**

**as being land zoned primarily for urban purposes** unless it is satisfied that most of the land that it adjoins is land zoned for urban purposes.

Take an example of a Sports Club which owns large tracts of land, but some of which does not suit development.

When an SCC is submitted and a Club decides to develop only a part of their land right in the middle, because it is their only suitable land for such development, then they should NOT be able to use the "adjoining urban land" clause for this development site.

It is clear that such a proposed site zoned RE2 (being land used for the purposes of an existing registered club), in itself is not considered to be urban land according to: 4, (5) (b).

As such a proposed **proposed development site** would be totally surrounded by RE2 land, which again is still considered on it's own, not urban land.

**This is an example where there is confusion created by the lack of SEPP definitions of 'land' and 'site'.**

So an SCC application trying to state that a small part of land in the middle of a much larger lot of land is "adjoining", should already be invalid, as it is already in clear breach of Chapter 1, Clause 4, (5)(b) as the development SITE is deeply buried within RE2 land, and totally surrounded by RE2 non urban land.

Similar examples can be imagined for Rural land, where there is a very large lot or rural land, where only part of it is suitable for any housing development of any kind. The "site" which is suitable is buried deep into the rural land and over 100m away from any true "urban land". However through the SCC process, the developer can claim that the "land" is "adjoining" urban land, even though the "SITE" is far away and removed from the actual urban land.

Often the land on which the developer will build, buried deep onto RE2 or Rural land, will get sold off, and subdivided off from the rest of the rural or RE2 land later once the building has been erected.

What you have then is a medium density housing lot, totally surrounded by rural or RE2 land and not at all adjoining any urban land.

This should not be allowed.

The actual BUILDING SITE on which the actual building is being developed subject to the SCC application, should be where the "adjoining primarily urban land" is applied to and NOT the greater larger lot of rural or RE2 land surrounding the building site.

It should not be left to a **subjective interpretation of what constitutes 'urban land' or what is 'adjoining', or what is the actual land vs building site** which justifies an approval.

**4. The definition of "most" in Chapter 1 Clause 4 Land to which Policy applies - (5)(b) should be quantified and not be left to a subjective interpretation.**

This SEPP clause 4(5)(b) – **'most of the land that it adjoins is land zoned for urban purposes.'** should be modified.

**Zoned for urban purposes – should be modified to read 'zoned for primarily urban purposes'** so it will be consistent with the rest of SEPP HSPD. Such as consistent with chapter 2 clause 13(2):

Self contained dwellings - 13(2) In-fill Self-care Housing

In this policy, In-fill Self-Care Housing is seniors housing on land **zoned PRIMARILY for urban purposes.**

The current **lack of definition of 'most'** allows for the assessing staff to loosely interpret this or even ignore it all together when relating to registered clubs.

This clause was created to protect from 'island' developments within sporting fields and clubs.

Without any objective definition of what 'most' adjoining land means in this context, it loses relevance.

It would appear that it was **clearly the intention that for registered clubs there should be a** higher standard of how much of the land should be 'adjoining' urban land.

**Why is this clause actually in the legislation?** And why is it often ignored?

Refer case: **Trustees of the Sisters of the Good Samaritan v Warringah Council [2011] NSWLEC 1181**, point 38 - <https://www.caselaw.nsw.gov.au/decision/54a635173004de94513d89da> where there is a clear references to 4(5)(b) requiring a higher standard than clause 4(4).

In clause 4(5)(b) the clause refers to adjoining land zoned for 'urban purposes'. This is vague.

**Why is the word 'primarily' missing in this sentence of this clause?**

This clause should be changed to add the word 'primarily urban' so that clause 4(5)(b) ensures that MOST of the adjoining land is PRIMARILY urban land.

#### **5. Community submissions should be allowed for a Site Compatibility Certificate (SCC) Application.**

Currently only council can comment on an SCC application.

Communities should be allowed to make submissions to these SCC applications, considering that these SCC applications are actually a request to 're-zone' land which land currently does not permit medium density housing, to allow such housing in future.

A community can pick up errors in the SCC applications which council or DPE have not noticed as they know their area and the properties involved. A Community should be allowed to have a say in what happens in which zonings and areas in their communities.

#### **6. There should be an formalized appeals process for councils and communities to be allowed to appeal Planning Panel SCC decisions.**

Currently there is no appeals process for councils or communities for any SCC which has been issued.

Even if there has been a legal error or a mistake in reviewing the data, the site, land or any of the many issues involved in reviewing an SCC under SEPP HSPD clause 25.

When issuing these SCC's, Council or the public affected by this decision can't appeal the SCC.

It looks like only the applicant can appeal such as decision

There is only a judicial review allowed, but such a review does not look at whether the SCC was issued in error, it does not look at legal errors, it only looks at whether the planning panels did their work properly and followed the correct processes.

It is highly unusual that there is legislation that decides on zoning and on important building activities but has no complete and fair appeals process.

This SCC legislation is the first step in a 'virtual rezoning' decision, yet no appeal is allowed.

This is rare in NSW legislation, and appears nearly unconstitutional that a person, local government, group or community cannot appeal such a legal decision by a govt department or Planning Panel which is governed by this Seniors Legislation.

To not have any appeals process means that **time , effort, resources and money is then wasted by communities, councils and developers** who have to go through a lengthy DA process and then potential appeals court process to fight any legal errors already made early on in the SCC decision.

A lot of these errors cannot be fought until a DA has been decided.

If an SCC has been approved in error or approved where it should have been refused, then councils, communities and developers should not need to waste any resources and time with DA's, when the error can be appealed immediately by the community or Councils. It would stop there.

#### **7. The SEPP SCC legislation should make it very clear that a current and approved SCC can NOT be amended during the time period that it is current.**

If an applicant wishes to make changes, they will need to do so with a new SCC after the current SCC has expired. Amending an SCC would mean even more time and resources from the Department and the Planning Panels would be required for additional reviews and re-reviews.

The SEPP HSPD would need major changes to legislate the whole amendment process.

It should be clearly legislated what the steps are for an amendment to an existing approved SCC, who decides what forms to be filled in, what changes are permitted, that the expiry date of the SCC cannot be varied, what changes cannot be made and minor vs major changes, and when a change is really a totally NEW SCC.

As stated we believe it is **NOT in the public interest** or the interest of the Department of Planning or the Planning Panels **to allow an SCC to be amended** as this will create much more work and more uncertainty as developers will be continuously changing their minds and it will be too easy for them to waste time and resources making changes at will.

8. **SEPP HSPD Schedule 1 – Environmentally Sensitive land should be further clarified** as there are many existing zonings with clear standard definitions which could be used to define what is meant by this.

The Department and the NSW Government have clearly defined templates and standardisation for how an LEP for any council areas should be designed.

Within these definitions there are clear Zones defined and these have been standardised.

It should be easy for the SEPP HSPD legislation for Schedule 1 Environmental Sensitive land to be modified so that it **is made very clear which zones (or zone types) fall within schedule 1 land.**

It should not be left up to the LEC appeals process and case law to define what is and what is not Schedule 1 land.

The Legislation should NOT follow LEC case law – the LEC Case law should follow CLEAR DEFINITIONS IN THE SEPP HSPD.

For example, currently due to one or two court cases and vague interpretations, land in an LEP defined as 'Biodiversity' land is no longer considered Schedule 1 environmentally sensitive land. For a long time, this land WAS considered by both applicants and most councils as being Schedule 1 land excluded from SEPP HSPD. It appeared to be almost logical as the whole terminology and reasons for councils to designate such land as Biodiversity is to protect it from over development.

The SEPP legislation can make such definitions clear as there are only limited definitions allowed in ANY LEP design.

It is shocking that true environmentally sensitive land can avoid falling under ANY definitions of SEPP HSPD Schedule 1 Environmentally Sensitive land.

Some lands are currently defined as a designated high priority wildlife corridor in the DCP, and defined as 'Biodiversity' land in the LEP, zoned as rural or RE2 (recreational non-urban land) which in its zone definition actually has environmental protection an objective.

Add in endangered species habitat and set within a rural context. Such lands often have other hazards defined such as geo-technical hazards, high flooding hazards and high Bush fire risks.

How is it possible that due to flaws and large loopholes in the SEPP HSPD, that such precious and clearly environmentally sensitive land, can STILL NOT be considered to be Environmentally Sensitive land according to the current SEPP HSPD legislation?

**Clearly the definitions for Schedule 1 Environmentally Sensitive land, need to be adjusted to ensure ALL such lands are captured in this definition.**

It should not be possible to build Seniors Housing on land which has been defined a designated high priority wildlife corridor with multiple endangered species living on it.

This is only made possible because the SEPP HSPD Schedule 1 definition specifically IGNORES any DCP's or Wildlife Corridors. It makes no mention of habitat for endangered species. Only land in 'another environmental planning instrument' is considered worth falling into this definition.

The 'Words' and 'definitions' used in SEPP HSPD Schedule 1 Environmentally Sensitive Land, are outdated, vague, unclear in their definitions, do not match any current zoning definitions and have been left up to 'subjective' LEC interpretations to 'define' what does and does not constitute SEPP Schedule 1 land.

For example in the recent case Richard Whittaker vs Northern Beaches Council, the court ruled that 'Geotechnical Hazard' was NOT a NATURAL Hazard !

This was based on the subjective opinion, which reasoned on legal technicalities that Geotechnical Hazards are man-made (mining was given as an example), therefore it could not be said that geotechnical hazards are natural hazards.

This is the most bizarre ruling one can imagine, especially if you live in the Pittwater area where LARGE AREAS of land are designated geotechnical hazard due to the Narrabeen Shale 'ridge' which runs along a considerable area of Pittwater. This geotechnical hazard is not man-made and is definitely a natural phenomenon.

Many properties in the Pittwater area are on this natural hazard and it has been defined as a Geotechnical Hazard to safeguard these properties from sliding down the slopes of Pittwater, that the PLEP Geotechnical Hazard maps were put into place. This Geotechnical Hazard is entirely natural and has no man made elements to it.

Here again, a subjective opinion during a court case has defined the actual SEPP HSPD legislation definition, rather than the law having a clear definition of an existing LEP term and zoning.

It should never have come to a point where a court decided that this is NOT schedule 1 environmentally sensitive land. It should have been made clear from the outset in the SEPP HSPD that this land IS environmentally sensitive land. It IS 'environmentally' 'sensitive' land as the environment has created a hazard which makes this land 'sensitive'.

NOTE: In this specific case, Richard Whittaker vs Northern Beaches Council, the commissioner made no reference at all to the fact that Schedule 1 land is defined as ENVIRONMENTALLY SENSITIVE LAND. A reference was made to the word 'natural' either missing or not applying in the LEP, and to the fact the geotechnical land under the LEP did not prohibit development. This latter argument is not relevant, as nowhere in SEPP HSPD Schedule 1 does it state that the land so defined, should prohibit development.

The intention of Schedule 1 Environmentally Sensitive Land is to protect environmentally sensitive land from being destroyed or degraded by too intense development (by Seniors Housing). This fact is lost in successive LEC cases and moves the developments further and further into truly environmentally sensitive land, and further away from protecting these lands from over development.

**We respectfully request that this whole section of SEPP HSPD Schedule 1, Environmentally Sensitive Land, be reviewed in detail, and more clear, specific and appropriate words and definitions be used which have appropriate references and also directly relate to allowed zonings and other SEPP/LEP legislation.**

#### **Regarding Zonings defining environmentally sensitive land - an example**

As an example of how zonings can be used to what is environmentally sensitive land, refer to:

##### **Department of Planning , LEP practice notes PN2007-001:**

*Environmental overlays*

*Q: Can environmental sub-zones be used? How can multiple natural resources values be managed?*

*A: The Standard Instrument does not allow for sub-zones to be created. Where land has particular environmental qualities that need to be addressed through zoning controls, an appropriate zone is to be selected from the eight Standard Instrument zones that specifically provide for environmental protection as part of their core objectives, ie RU2, RE1, **RE2**, E1, E2, E3, E4 or W1. The choice of zone should reflect the primary intended use of the land.*

**The above types of definitions help to clarify that the legislation COULD define more precisely what Schedule 1 land is.**



7 September 2020

NSW Department of Planning, Industry and Environment  
On-line submission to planning portal  
Via [www.planningportal.nsw.gov.au/draftplans/on-exhibition](http://www.planningportal.nsw.gov.au/draftplans/on-exhibition)

Dear Sir / Madam

**Subject: Submission on the Proposed State Environmental Planning Policy on Housing Diversity**

Thank you for the opportunity to comment on the Explanation of Intended Effect (EIE) for a new Housing Diversity State Environmental Planning Policy (SEPP). Lake Macquarie City Council (LMCC) staff have reviewed the EIE and offer the following comments.

We welcome the intent to facilitate housing diversity, and to simplify and update the existing SEPPs relating to housing. The following comments are provided under the EIE headings.

## 1. Introducing New Housing Types

LMCC staff support the introduction of new housing types. It promotes clarity, and enables more nuanced messages to the community when advertising or notifying proposed developments. Given strong reactions to 'boarding house' developments that sometimes occur, it is helpful to be able to use different terms to define some quite varied housing types and move away from using a term with negative connotations. However, as housing types continually evolve, it may be impractical to try to define all housing types.

### i. Build to Rent Housing

**Support for Parameters:** LMCC staff support the new Build to Rent housing (BtR) definition, a housing type successful in countries that provide tax concessions or financial support. While the standards are generally supported, we suggest a reduction to the minimum number of dwellings in regional areas (eg to 30 dwellings) where justified, as larger dwelling developments are not common in regional locations. We also suggest that different development types (e.g. multi dwelling housing) be included because in growing regional areas like Lake Macquarie, BtR is likely to be taken up as multi-dwelling housing.

Our Ref: F2007/01473-03 Your Ref:

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**Unclear BtR Standards:** It is difficult to comment on the design standards as concessions to the Apartment Design Guide and SEPP 65 are not given. Current standards ensure residents are comfortable and safe and the environment created outside the development is appropriate to the character of its location, these standards of design should be retained.

**Locational Concern:** BtR is to be mandatory in B3, B4 and R4 and permitted where RFBs are allowed in the R3 Zone. Currently in Lake Macquarie, some R3 zones are not close to public transport, and this is likely to be the case in other regional areas. A clause in the SEPP about proximity to transport would be appropriate.

**Operational Concern:** Staff support the intent of BtR housing, but raise concerns about responsibilities. It is unclear how to ensure leases are long term. For example, how Council should proceed with a request for shorter term leases if a developer claimed insufficient demand. Similarly, we raise concern regarding responsibilities to manage lease length; ensuring existing tenants get first offer to buy at a 'fair market price' when strata-subdivided; and ensuring a minimum number of affordable housing dwellings are retained. Some standard condition clauses could assist, for example application via an 88B instrument.

## ii. Purpose Built Student Housing

**Support for Student housing:** The intent to promote student housing is supported but the necessity for a separate definition for 'student housing' is questioned. Parameters around 'principally' are needed in the description '*principally* for students enrolled to study ...'.

**Locational Concerns:** Student housing should be located close to educational institutions or within a maximum 30 minutes public transport trip (regularly occurring). This provision should not be up to each Council.

**Operational and Monitoring Concerns:** The Department is to monitor design and impact retrospectively, this is questioned. Room size of 10m<sup>2</sup> requires careful design. Student housing is described as similar to affordable housing, but it is different as it is generally supported by state government, managed by Community Housing Providers, has support systems in place, and affordable housing residents are required to have a wage higher than many students' wages i.e. 50% - 120% of the median wage.

Operational responsibilities to ensure low rents are unclear. An 88B Instrument under the Conveyancing Act 1919 could work, however this is unlikely to be actively enforced. It would be more practical to set clear standards in consultation with educational institutions, then monitor, rather than leave each separate council to determine an appropriate system, with the Department monitoring an already complex housing market.

## iii. Co-living

**Support for Co-living:** LMCC staff welcome the co-living definition and agree it is appropriate to locate such developments where RFBs are permissible as proposed.

**Co-Living Ownership Concern:** Co-living refers to a building held in single ownership, it should be clear that ownership by a co-operative is an option.

#### **iv. Further Definitions such as Micro -apartments and or Tiny Homes**

LMCC staff suggest a further definition for dwellings that are much smaller and do not necessarily include communal spaces. Developments such as 'tiny homes' that may be for special needs such as the [Gosford Tiny Homes at Racecourse Road](#). An additional definition for "micro-apartments" is recommended that has minimal communal space but is well located. As housing types are continually evolving and innovative built form is being put forward, it may be impractical to unintentionally limit housing types with a finite list of definitions. Alternatively, the standard instrument could enable other housing forms where they meet the character of a place and address other criteria e.g. environmental, social etc.

## **2. Updating Existing Provisions**

### **i. Affordable Rental Housing (ARH) SEPP: Changes to Boarding House Provisions**

**Removal of small boarding houses:** The removing of small boarding houses from low density residential zone is supported. However, it would be preferable to provide locational parameters. Whilst boarding houses to date have attracted community angst, there have already been changes that have rectified many of the issues. Such housing should be limited via a requirement to be within 400m of set daily needs, such as transport.

**Boarding House to be Affordable Housing:** LMCC staff support the requirements for Boarding Houses. It is noted, that new generation boarding houses do not always have success with shared facilities, so changing this aspect to 'must' should be done with clear intent. It is common for someone seeking this housing type to have experienced trauma and can thus hesitate to use communal facilities.

### **ii. Proposed Changes to the ARHSEPP**

**Group homes:** LMCC staff support the proposed change to allow an existing dwelling to be used as a group home for a quicker and easier process.

**Change to Secondary Dwellings:** LMCC staff raise no objection to allowing secondary dwellings in rural zones, where attached to an existing main residence. The building size requirements permitted do not need to change.

### **iii. Proposed Changes to Seniors Housing Provisions**

LMCC staff support changes to definitions to match the Standard Instrument including the refinement of locational requirements. Similarly, LMCC staff support changes that mean that a councils standards relating to height prevail where there is an inconsistency, and with clause 4.6 variations limited to a maximum of 20% of standard.

#### **iv. Support of Social Housing Through Amending ARHSEPP and Seniors SEPP**

**LAHC to partner with private sector:** LMCC staff support the aim to facilitate social housing and partnerships with Community Housing Providers (CHPs) to deliver new housing projects. There are areas of state land that would benefit from replacing 'concentrated areas of disadvantage' with a mix of private, social and affordable housing. This would be a positive outcome for locations.

**Monitoring of Social and Affordable Housing:** With the intent to dilute the proportion of social and affordable housing in concentrated areas, it is important for Council to ensure the overall proportion of such housing is at a minimum retained and preferably increased as the proportion of those needing this housing is rising. This would be best monitored by an overriding body and registered with the state government for clarity.

**NSW Land and Housing Corporation (LAHC) Self Approval:** Concern is raised for the increase from 20 to 60 in the maximum number of dwellings for LAHC to self-approve. Developments over 60 units is uncommon in the LMCC area. We could support a reduced number. It is important that self-approval excludes heritage areas and includes careful community engagement and consultation. Ideally, Council would be informed of such developments as early as possible in the process to assist in change management.

**LAHC Self Approval Concern of Appeal:** LMCC staff raise concern for the size of such self-assessments in regional areas and whether local residents would have appeal rights.

**LAHC Carparking Rate:** LMCC staff raise concern for the car parking rate of 0.5 per dwelling for social, affordable and private dwellings irrespective of location. This is well below rates set in LMCC Development Control Plan. Such controls need to be location specific, e.g. close to town centres and within a set distance of public transport. LMCC area has high car dependency due to the geography and availability of public transport in the area, with many small centres around a large lake.

**ARHSEPP density bonus:** LMCC staff note that expanding the density bonus to include more types such as those in Low Rise Medium Density Housing Code - terraces, manor house etc will have no effect in LMCC area as we don't use Floor Space Ratio maps. It could include a clause that applies where there is no FSR to enable height bonuses in an "accessible area".

**Subdivision of Government Land:** LMCC staff question the ability to self-assess the subdivision of land. Procedures are necessary to ensure drainage and service road connections are adequate as these elements would generally require co-planning. Concern is also raised for any loss of developer contributions, as this is not clear.

Should you require further information, please contact Senior Strategic Planner, Shane Cahill on 4921 0767 or via email at [scahill@lakemac.nsw.gov.au](mailto:scahill@lakemac.nsw.gov.au).

Yours sincerely,

A handwritten signature in cursive script that reads "Wes Hain".

Wes Hain

**Manager Integrated Planning**



# Lane Cove Council

48 Longueville Road, Lane Cove NSW 2066

Tel: 02 9911 3555

Fax: 02 9911 3600

Date: 08.09.2020  
Doc Ref: 46827/20

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

Dear Sir,

## **Re: Proposed new State Environmental Planning Policy (Housing Diversity) submission**

Council thanks NSW Planning, Industry and Environment for the opportunity to comment on the proposed State Environmental Planning Policy (SEPP) Housing Diversity, as revealed in the Explanation of Intended Effect.

A majority of proposed amendments are supported, including most notably the amalgamation of the State Environmental Planning Policy (Affordable Rental Housing) 2009, State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004, and State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes) to more accurately reflect the housing needs and preferences of our community as they change.

Council is particularly supportive of the proposed amendments to boarding houses provisions, including:

- removing the requirement for boarding houses to be mandated within the R2 – Low Density Residential zone;
- amending the floor space ratio (FSR) bonus for all boarding house development to a standard maximum of 20%; and
- specific requirements to ensure affordability of boarding house apartments.

Other **supported changes** in the proposed SEPP include:

- amendment to the definition of height for seniors housing to be the same as the Standard Instrument, as this would increase clarity and consistency;
- a separate Standard Instrument definition for student housing and co-living, which should nevertheless allow councils to adopt standards that may have regard to local demand and context;
- measures to ensure councils continue to address the loss of existing affordable housing by requiring monetary contributions, including allowing councils to levy monetary contributions to offset the loss of dwellings that were low-rental at any time within the 5 years preceding the lodgement of the development application;
- amending the 'location and access to facilities' provisions so that point-to-point transport such as taxis, hire cars and ride share services cannot be used for the purpose of meeting the accessibility requirements. Otherwise, "access" depends entirely on the tenant's capacity to pay for transport;
- amending the SEPP provisions to clarify that development standards in a local environmental plan prevail to the extent of any inconsistency with the SEPP; and

- site compatibility certificates (SCC) to be valid from 24 months to 5 years, provided that a development application is lodged within 12 months of the date on which the SCC is issued.

Notwithstanding Council's support for the above, there are issues which are **not supported** and concerns are raised regarding the following:

- *Build-to-rent*

The proposed Built-to-Rent housing model permitted in B3 Commercial Core areas is a direct land use conflict and would have the potential to undermine the primacy of a commercial core and create unintended land use conflicts including noise, privacy, poor amenity and social disconnection.

Further, this provision would be in direct conflict with the State Government and Council's strategic plans such as the North District Plan and Local Strategic Planning Statement. For example, Planning Priority N10 promotes *Growing investment, business opportunities and jobs in strategic centres*. Permitting what would effectively be residential flat buildings in such centres, most of which are B3 Commercial Core zones, which would undermine the capacity of such centres to encourage commercial (employment) land uses in preference to residential uses.

Council's Local Strategic Planning Statement, in relation to the St Leonards Strategic Centre and Commercial Office Precinct, reiterates this potential land use conflict. Planning Priority 7 aims to:

*achieve a balance between the designated commercial core and residential development in the St Leonards Strategic Centre to manage the impact of residential development in crowding out commercial activity.*

Council's four Pilot Projects were strategically tailored in design to encourage some residential development to activate the public domain of St Leonards Strategic Centre. In line with the St Leonards/Crows Nest 2036 Plan, Council's focus is now on jobs growth near an imminent Metro station. However, to allow build-to-rent development **as a right** for all Commercial Core sites would put at risk a strategic planning tool that serves a vital role and should be available to Council and the Department on merit.

For this reason, Council opposes this change as it would be inconsistent with strategic planning objectives and intent of the B3 Commercial Core zone. However, Council would see merit (when it would be consistent with a Council's LSPS) for built-to-rent developments in areas or zones other than the Commercial Core.

Council also raises concern why there should be any differentiation in the parking rates to that which would apply for other buildings with a residential component, for example mixed use. There is no justification for a reduction in parking as BTR is not designed for a low-income households or students who may not have vehicles. Parking rates are best determined in the local context by councils as part of their DCP which has regard to access to public transport and the demand/capacity to accommodate motor vehicles.

- *Concentration of Seniors Housing*

Council considers that there should be a concentration threshold for the provision of age care development under the seniors SEPP, so that once a certain concentration of developments has been reached within a set area e.g. 2 square km, the SEPP will no longer apply. This is because the SEPP is sometimes used in order to access the concessions granted and areas can ultimately end up with an oversupply of seniors housing, placing demands on services and unintended, out of character built form outcomes.

- *Lift access for Seniors Housing*

Lift access should remain a requirement for new self-contained dwellings for all seniors located on or above the second floor, given that universal access is a standard building code requirement for mobility impaired occupants and mobile-impaired visitors (AS14-28).

Although this is stated as a 'clarification', the exemption from the lift access requirement for development applications made by or jointly with a social housing provider is not supported.

Dignified and convenient access for all is a basic human right that should not be abandoned to save on construction cost or where there is no immediate perception of need.

- *Car parking for Seniors Housing*

Car parking for seniors housing developments should be mandated by Council's Development Control Plans as opposed to a standard control applying across the state. This would enable a localised and effective rate of parking based on the development's proximity to public transport and other factors which are outlined in Council's Development Control Plan.

**Other matters** to be addressed and further matters not supported include the following:

- The SCC process should be open and transparent, giving councils and applicants the opportunity to address the determining authority prior to determination.
- Council would support a generic standard or threshold to moderate the number of seniors housing developments in a given location, especially when seniors housing is addressed under an SCC.
- Council acknowledges that the proposal does not make amendments to the existing standard and bonuses for FSR for Seniors Housing developments. However, Council would support a review of the current floor space bonus clauses to standardise into a singular control that results in outcomes more in keeping with the surrounding environment and context.
- Council acknowledges that the proposal does not make amendments to the definition for the calculation of GFA/FSR for Seniors Housing developments. The current definition should be aligned with the definition contained in the standard LEP instrument as it appears to be a historical matter (the SEPP is older than the standard instrument).

Council would welcome the opportunity to expand and detail any aspect of this submission. Should you wish to further discuss anything raised, please contact the undersigned or Council's strategic planning team on 9911 3627.

Yours faithfully,



Michael Mason  
**Executive Director, Environmental Services Division**



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our ref: EP&D:RH1b1967962

8 September 2020

Planning Policy  
Department of Planning, Industry and Environment  
Locked Bag 5022  
PARRAMATTA NSW 2124

Dear Sir/Madam,

### **Proposed New Housing Diversity SEPP**

The Law Society appreciates the opportunity to comment on the Explanation of Intended Effect (“EIE”) for a new Housing Diversity State Planning Policy (“SEPP”). The Law Society’s Environmental Planning and Development Committee contributed to this submission.

The Department is proposing to prepare a new SEPP to consolidate and update the Government’s housing-related policies. The changes also aim to assist the State’s economic recovery following the COVID-19 pandemic.<sup>1</sup> Build-to-rent (“BTR”) in particular, has been identified as an opportunity for stimulus.<sup>2</sup> We support the aims of the new SEPP, which proposes a complete strategy to address affordable housing in NSW. However, we do not currently have all the information needed to make an informed and complete evaluation of the likely effectiveness of the proposed new SEPP in achieving its aims.

### **General matters**

#### *Savings and transitional provisions*

The practical implications of changing the definition of ‘boarding house’ to require boarding houses to be managed by a community housing provider (“CHP”) will need to be further clarified. It is currently not clear whether these changes will apply retrospectively, as there are no savings and transitional provisions that explain the impact of the changes on existing boarding house developments. If the changes do apply retrospectively, then this will likely mean some costs and investment are lost.

We consider that the changes should not apply to development applications that have already been lodged at the date of commencement of the new SEPP.

While the proposal to have boarding houses managed by a CHP is supported, it is recommended that this requirement be accompanied with a savings and transitional

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<sup>1</sup> NSW Department of Planning, Industry and Environment, *Explanation of Intended Effect for a new Housing Diversity SEPP*, July 2020, 5.

<sup>2</sup> *Ibid* 1.

provision that means that all boarding houses approved prior to the proposed new SEPP eventually coming into force can maintain their current management structure.

#### *Gross floor area*

There are currently different definitions of gross floor area in the *State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004* ("Seniors SEPP") and in the standard instrument under the *Standard Instrument (Local Environmental Plans) Order 2006*. The new SEPP could address this inconsistency.

#### *Consultation using an EIE in place of the SEPP*

We have previously expressed concern about the practice of publishing lengthy "Explanation of Intended Effect" documents in place of the draft amending legislation.<sup>3</sup> We reiterate our view that consultation on proposed legislation in its draft form allows for more nuanced and technical feedback to be provided on the likely anticipated, and unanticipated, impacts. We note that the design guidance intended to accompany the proposed new SEPP is also not yet available.

### **Specific proposals**

Our views in relation to some of the specific proposals in the new SEPP are set out in 'Attachment A' to this letter.

The Law Society appreciates the opportunity to participate in the reform process. If you have any questions about this submission, please contact Liza Booth, Principal Policy Lawyer, at [liza.booth@lawsociety.com.au](mailto:liza.booth@lawsociety.com.au) or on (02) 9926 0202.

Yours faithfully,



Richard Harvey  
**President**

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<sup>3</sup> See, for example, the Law Society submission to the Department of Planning and Environment dated 18 July 2018, available at: <https://www.lawsociety.com.au/sites/default/files/2018-09/Letter%20to%20DPE%20-%20Proposed%20housekeeping%20amendment%20-%20Codes%20SEPP%20-%202018%20July%202018.pdf>.

**Attachment “A”**  
**Responses to specific proposed changes**

<b>Boarding Houses</b>	
Remove the ability for boarding houses to be constructed within the R2 Low Density Residential Zone	<p>We note that the inclusion of boarding houses as permissible development in the R2 Low Density Residential zone has been one of the most contentious aspects of boarding house development. The removal of this option may allay the concerns of some stakeholders. However, we consider that there are situations where a boarding house is suitable in an R2 Low Density Residential zone and that removing this option does not necessarily promote a diversity of residential accommodation.</p> <p>Community objections to boarding houses are usually focused on social issues and the height and bulk of the development. It could be possible to limit the height and bulk of appropriate developments using overriding Local Environment Plan (“LEP”) controls.</p> <p>Some councils may choose to include boarding houses as permissible development in the R2 Low Density Residential zone and may seek to introduce development standards for such development which are not inconsistent with the SEPP.</p>
Include a requirement for affordability of boarding house developments	<p>There is no definition of “affordable”. In our view, the upper end of any definitional range should equate with the lower end of the market range for a studio.</p> <p>With likely Apartment Design Guide<sup>4</sup> type design controls plus affordable housing controls on boarding houses, we question their viability. We suggest that there are boarding houses that have a role to play being at the lower end of market range but perhaps not in the lower range of “affordable” category. For some people unable to afford a one-bedroom apartment, it is a specific preference to be able to afford their own room without having to reside in a shared home. The EIE promotes large scale BTR but not the smaller boarding houses. A mix would ensure a diversity of options.</p> <p>We consider that there is a place for small, privately run, boarding houses that are not necessarily run by CHPs. There are some good examples of boarding houses that support workers such as council workers, and hospital workers, retail workers that have rents at the lower end of the market rate, but provide a more affordable option than a residential flat building and where a person can have their own room and not be obliged to reside in a shared house. The pressure on viability is likely to be compounded by the new proposed SEPP 70 controls and the ability to impose a levy which is not benchmarked against January 2000<sup>5</sup> e.g. the boarding house has to have a 10 year affordable housing criteria and then at the end of the 10 years if the owner wants to, for example, renovate the bathrooms, it could then</p>

<sup>4</sup> “Apartment Design Guide” published by the Department of Planning and Environment on the date of commencement of the *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development (Amendment No 3)* accessed at <https://www.planning.nsw.gov.au/Policy-and-Legislation/Housing/Apartment-Design-Guide>.

<sup>5</sup> Currently Part 3 of the *State Environmental Planning Policy (Affordable Rental Housing) 2009* only applies if the building was a low-rental residential building as at 28 January 2000.

	<p>be subject to a levy because the rooms are no longer affordable.<sup>6</sup> It is not clear what is anticipated will happen at the end of the 10-year period - will there then be a loss of affordable housing stock as the former boarding house accommodation is let out at unaffordable rates?</p> <p>We note that the levy will be payable if the units were affordable <b>at any time</b> in the previous 5 years. This seems onerous - we suggest that consideration be given to its application based on an average rent for the previous 5 years.</p> <p>If there is a restriction on rent to make boarding house accommodation affordable, we query the need for a requirement that it be managed by a CHP.</p> <p>We have long-standing concerns with the concept of boarding houses being permissible under a SEPP designed for affordable housing if they are not in fact affordable.</p>
Co-living	This proposed new category of development is effectively accommodation in a residential flat building with communal facilities. The slightly smaller room size is balanced or outweighed by mandated communal areas. We suggest that the planning system should not be promoting this type of development, but just setting rules for it.
Parking – must not refuse 0.5	We agree that council local policies should be able to mandate less provision for parking, based on locational context e.g. if the building is within 200m of a tram line, railway station or high access bus route.
Room size	We do not consider that the increase to 30-35m <sup>2</sup> room size is likely to represent a viable alternative option. We do not consider that this differs from a residential flat building with mainly studio apartments. The minimum room size in that case is 35m <sup>2</sup> .
<b>Group Homes</b>	
Provide a quicker and easier process to allow an existing dwelling to be used as a group home	<p>We are concerned that there is insufficient regulation of group homes at present, compared to, say, seniors housing, yet the occupants may have much greater accessibility and carer needs than many seniors. We are aware of cases where this type of development has been used as de-facto seniors accommodation.</p> <p>We would be concerned about a process which avoided a comprehensive assessment.</p> <p>Group homes may require certain accessibility or privacy measures which may have impact on character and neighbourhood and there is no detail provided on this.</p>
<b>Seniors</b>	
Update the provisions of Schedule 1 – Environmentally sensitive land, of the Seniors SEPP to align with current legislative and planning conditions	There is no detail provided in relation to this proposal other than it will be updated. We are concerned that this could result in the broadening of Schedule 1 such that seniors housing is not able to occur in areas where it could previously. Many councils have started to prepare LEP overlays which identify potential environmental sensitivity which has not been verified (e.g. through the use of aerial photography) and that would then rule out seniors housing

<sup>6</sup> The proposed SEPP will instead allow a council to levy monetary contributions to offset the loss of dwellings that were low-rental at any time within the 5 years preceding the lodgment of the development application - see the EIE, p17.

	<p>even if it could be shown that the proposed development site does not fit within the environmentally sensitive category.</p>
<p>Amend the 'location and access to facilities' provisions so that point-to-point transport such as taxis, hire cars and ride share services, cannot be used for the purpose of meeting the accessibility requirement</p>	<p>We agree with this proposed amendment.</p>
<p>Introduce provisions in the new SEPP so that a site compatibility certificate ("SCC") is valid for 5 years (rather than the current 2 years), provided that a development application is lodged within 12 months of the date on which the SCC is issued</p>	<p>We are in favour of this extension, although we envisage that some councils may consider that 5 years is too long.</p> <p>Consideration could also be given to addressing the Court's jurisdiction to issue or amend SCCs (as raised in <i>Zhiva Living Dural Pty Limited v Hornsby Shire Council [2020] NSWCA 180</i>).</p>
<p>Registered club - the club must be a registered club at the time the SCC application is made.</p>	<p>This is reasonable, but if a club is no longer operating and the property is then put on the market, the requirement that the club must be a registered club should be extended to the period within 12 months before the SCC application is lodged.</p>
<p>Application of local development standards: It is proposed to amend the SEPP provisions to clarify that development standards in an LEP prevail to the extent of any inconsistency with the SEPP. It is proposed that the development standards in the Seniors SEPP could be varied using clause 4.6 of the Standard Instrument LEP, but only to a maximum of 20%.</p>	<p>This is a major change which does not, in our view, have the effect of promoting seniors housing. The maximum 20% variation using clause 4.6 does not assist, given the threshold for a variation under clause 4.6 can be high. We also query how this would affect existing developments that were approved under the former provisions.</p> <p>The 20% variation seems arbitrary and does not have regard to the type of control or the circumstances which might make a breach of it more likely (e.g. height control in steep topography). Clause 4.6 already provides an appropriate mechanism for variation to provide flexibility in applying certain development standards to a development.</p>
<p><b>Build to rent</b></p>	
<p>BTR is meant to support institutional investment and provide a more stable rental sector</p>	<p>The EIE promotes these changes as a COVID-19 response to encourage construction activity. However, we query the market support for the large institutional BTR model. The larger developments involve more investment risk and may be less likely to be built in a COVID-19 environment. If the idea is to promote construction activity, given the large number of apartments to rent, that could create its own risk of over-supply and reduce the prospect of future construction activity. We suggest that with on-site management and community facilities, the pressure on pricing is unlikely to result in the provision of greater housing choice than at present.</p> <p>We agree that there needs to be specific design guidance on communal facilities.</p> <p>We consider that minimum lease terms may be an issue. Longer lease terms should be offered, but the tenant should not be forced to accept a long-term lease or, alternatively, the lease break consequences should not be substantial. The goal of BTR is to give tenants certainty that they can stay for the long term, but we suggest that tenants also want the flexibility to move if they are obliged to or choose to do so for any reason.</p>

Compulsory permitted use in R4, B3, B4, B8 and R3 where RFBs permitted	This is a major change to allow what is effectively a residential flat building in the B3, B4 and B8 zones. Just because a BTR is commercially run, does not mean a residential use in those zones is appropriate. If the concern is to promote BTR, then the State Significant Development listing should be enough (at the \$100M threshold).
<b>Support delivery of social housing by the Land and Housing Corporation (“LAHC”)</b>	
Two-storey residential – an increase in the size of development that the LAHC can self-assess from 20 to 60 dwellings	We support the increase to facilitate LAHC’s new model for the provision of increased social housing.



**LASA**

**LEADING AGE SERVICES  
AUSTRALIA**

*The voice of aged care*

**HOUSING DIVERSITY SEPP -  
SUBMISSION TO THE NSW  
DEPARTMENT OF PLANNING,  
INDUSTRY & ENVIRONMENT**

**9 September 2020**

*A strong voice and a helping hand  
for all providers of age services*

## Leading Age Services Australia

Leading Age Services Australia (LASA) is a national association for all providers of age services across residential care, home care and retirement living/seniors housing. Our purpose is to enable high performing, respected and sustainable age services that support older Australians to age well by providing care, support and accommodation with quality, safety and compassion – always.

LASA's membership base is made up of organisations providing care, support and services to older Australians. Our Members include private, not-for-profit, faith-based and government operated organisations providing age services across residential aged care, home care and retirement living. 56% of our Members are not-for-profit, 36% are for-profit providers and 8% of our Members are government providers. Our diverse membership base provides LASA with the ability to speak with credibility and authority on issues of importance to older Australians and the age services industry.

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## Focus of this submission

This submission focusses on the impact of proposed amendments to the Seniors SEPP and discusses the following:

- The principle aims of the new Housing Diversity SEPP are supported subject to amendments being made to some of the definitions and rules contained in the body of the SEPP.
- The aspects of the new Housing Diversity SEPP LASA has concerns about.
- Alarming impacts the changes will have on a range of stakeholders, including current and future residents of seniors housing, current and future staff of Aged Service Operators as well as local suppliers to these organisations.
- Alarming impacts the changes will have on Aged Service Operators with RACFs in NSW.
- Suggested further consultation regarding the amendments.

## Support for the aims of the new Housing Diversity SEPP

LASA's membership support the aims of the new Housing Diversity SEPP as set out on page five of the Explanation of Intended Effect for a new Housing Diversity SEPP document in principle.

Specifically in so far as it will assist the State's economic recovery following Covid-19 and it facilitates the delivery of housing that meets the needs of the State's growing population.

Further, as a specific commendation the introduction of provisions in the new SEPP so that a SCC is valid for 5 years (with provisions) is supported.

## Concerns with certain aspects of the proposed new SEPP

There are some suggested changes that we are deeply concerned about. The following six planned changes will have dire consequences for a variety of stakeholders.

1. Definition of height, parking and people with a disability

The EIE indicates definitions will be updated and this is potentially appropriate, but no detail is provided and it is concerning that this could occur without a correct understanding of the implications of delivery as indicated in some of the other amendments proposed. There needs to be

clear consultation with the industry to allow considered feedback on proposed changes. If the desired outcome is improved delivery then this needs to be done in a transparent manner.

Currently the definition of Height is defined from the existing ground to the upper level ceiling. Importantly this definition acknowledges that compared to the adjoining residential development, both ILU and RACF developments require accessible compliant lift access and larger amounts of plant. The height definition to the ceiling ensures the scale of buildings is similar to the adjoining residential 2 storey dwellings but allows for lifts and plant, that are essentially always at the centre of a project but certainly require more height than standard residential buildings. The current definition is critical to this type of housing and linked the definition to the standard height within LEPs will significantly limit development.

## 2. Floor space provisions

It appears that the proposal suggests that floor space will be determined by the LEP, as most low density residential zones have an FSR of 0.5:1 or lower this will mean a reduction in the permissible FSR of seniors development and in particular RACFs which will see a reduction in floor space down from 1:1 to 0.5:1.

If the intention is to improve delivery, this will do the opposite. For example on average a RACF building in a Residential zoned R2 or R3 for 96 residents will require a site area of 5,000-5,500sqm and 7,000-8,000sqm for 144 residents. The changes as proposed could double the required site area, this will significantly impact the cost of future RACF projects and also cripple the feasibility of sites already purchased by providers. The suggested Cl4.6 path to a potential maximum 20% increase is uncertain as there is a significantly high bar to satisfy the requirements. The uncertainty will have a real impact on appetite to pursue future projects.

## 3. Limit of Clause 4.6 variations

Development standards within the Seniors SEPP have always been able to be varied via clause 4.6 or SEPP No. 1. This has been an important function of the Seniors SEPP and has allowed for site specific responses to be provided where appropriate and of merit. The rationale for proposing an arbitrary maximum possible 20% variation, which appears to be moving away from recent case law on Clause 4.6 variations that have reinforced the premise of merit is uncertain.

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

## 4. Changes to Schedule 1

The provisions contained in Schedule 1 of the current SEPP are an important consideration for our members when it comes to acquisition of land for the purpose of provision of housing.

Our membership supports any amendments to the Schedule that aligns it with the terminology in the standard instrument but require to better understand any additional limitations proposed to be added to the Schedule.

## 5. Access to Services

Councils and planning panels have allowed, where appropriate, different forms of transport and other services based on the type of facility and type of resident proposed to reside at a facility.

The way we read the proposed changes are that the rules will become less flexible and more rigid in the provision of services. It is the view of our membership that more flexibility is required and not less.

LASA notes the comments of Robson J in *Principal Healthcare Finance Pty Ltd v Council of the City of Ryde [2016] NSWLEC 153* and the importance he puts on the consideration of the type of resident when it comes to the assessment of the development standards at clause 26 of the existing SEPP.

Without expanding on the determination in the aforementioned matter, our membership considers that greater flexibility is required when considering the mechanisms used to ensure residents of their facilities have access to the appropriate means of accessing services that they require.

A blanket ban of means of access including taxis, hire car and ride share facilities as well as private bus shuttles and the like would critically impact upon the type and location of sites and potentially make existing sites unviable and limit future sites.

We ask that the department reconsider this position and seek for your feedback on the type of services that are more used and most useful when providing for each type of care typology.

## 6. Access to Housing with Improved Affordability and Stability

The proposed Housing Diversity SEPP incorporates changes that would seem to directly contravene the goals and aims of the proposed Housing Strategy for NSW released by the Minister for Housing at May 2020.

Theme 3 of the Housing Strategy highlights the focus of the NSW Government to deal with the issues of improved access to stable, affordable housing options. In so far as theme 3 of the strategy follows theme 2, which deals with the need for diverse housing options, in particular for older people; the proposal to change the primacy of the SEPP Seniors in relation to local Council LEP's will harm the pursuit of these valid aims.

Many of our member providers have very high proportions of "concessional" residents within their Residential Aged Care facilities. The provision of care to residents of facilities housed utilising concessional places relies on both federal government funding and in some cases, offsets from full paying residents in the same or other resident facilities.

The economic reality is that should proposed Aged Care developments be subject to site yields governed by a Council LEP rather than the provisions of the SEPP Seniors, the cost of providing Aged Care throughout NSW will naturally increase, due to the increase in land costs associated with each aged care room, and viability of land banked sites generally.

## Shared concerns with the UDIA and Aged Services Operators

LASA share concerns about changes with the UDIA and support their submissions in so far as their submissions pertain to the Seniors SEPP. The LASA submission can be read in conjunction with and in reference with the examples set out in their submission.

A range of LASA members have also made individual submissions and others have also worked with the PCA and UDIA in their submissions. We draw your urgent attention to the concerns our members have expressed through these channels as well.

The submission by Cranbrook Care is a very good example of the specific concerns of Aged Services providers and your attention is drawn to the content of that submission.

## Impact on Stakeholders (other than Aged Services Operators)

1. Impact on current residents
  - a. Potential redevelopments will be rendered unviable, therefore the possibility to move to a single room may never become a reality for many current residents.
  - b. Many current residents of older facilities will be denied the possibility to live in a newly redeveloped home.
2. Impact on future residents
  - a. Some seniors in the community that have been waiting for the redevelopment of a local RACF will now never have the opportunity to move into a new home as the redevelopment project may not any longer be possible.
  - b. In other cases seniors have been waiting for the development of a home in their area will have to move away as the expected home will never be developed.
  - c. When a local facility is indeed redeveloped or developed the operator will only be able to offer high priced rooms and there will be very little diversity in stock. (Only the most expensive offerings will ensure projects are viable)
  - d. Some seniors will have to move out of local area to find a room in a home that is affordable.
  - e. Housing stock provided will not be able to meet the market
3. Impact on current staff
  - a. If a home is no longer viable as a multi-bed-per-room home the facility will close and jobs will be lost
  - b. The opportunity to work in a new redeveloped home may never become a reality if redevelopments cannot be achieved.
  - c. When facilities are redeveloped retention rates of staff are higher and the older cohort of staff stay in their positions longer because they want to experience the new facility before retiring.
4. Impact on future staff
  - a. If new developments are not viable, new facilities won't be developed and jobs that could have been created for staff working in the home will not eventuate.
  - b. Jobs will not be created in areas where staff live but they will have to find opportunities in areas further from their homes.
5. Impact on local suppliers
  - a. When a redevelopment is not viable the local suppliers (supermarkets, butchers, Greengrocers and many more) will lose this local business.
6. Development project jobs lost
  - a. New job opportunities that would be created in the development process (planners, designers, furniture and equipment suppliers, builders and many other) will not be created if projects aren't viable.

## Impact on Aged Services Operators

1. Impact on viability of redevelopments
  - a. The yield on land in terms of rooms per square meter will be severely impacted if suggested changes are implemented. This will mean that redevelopment projects will often not be viable.
  - b. In certain cases redevelopments may be possible but only by supplying the highest possibly priced rooms to the market. This will impact diversity of products offered to the market.
2. Impact on viability of new developments
  - a. Similar to the redevelopment business cases, the viability of new developments will also be negatively impacted.
  - b. Many planned projects will not be viable any longer with all the flow on impacts on other stakeholders as set out above.
3. Impact on pricing of stock available on the market
  - a. When a project is being considered developers will be forced to only offer the highest possible pricing, as the yield will prevent a wider price range of rooms made available to the market. This has a direct impact on diversity of possible housing in a given area.
  - b. If diversity was the intent it will surely not be achieved by the suggested changes to the SEPP
4. Impact on locations where developments may be viable
  - a. Developments may only become viable in areas further from the CBD and therefore in areas with less appropriate infrastructure with regards to RACFs.
5. Impact on land-banks
  - a. As can be appreciated land purchased to develop a RAC Facility will devalue considerably if the viability of projects on this land is diminished.
  - b. Not only will the land-banks of current operators devalue but future operators will be discouraged to enter the industry with dire consequences on the future availability of homes in those areas where older Australians currently live.

## Suggested consultation regarding amendments

The quote below from one of LASA's members summarise our concerns succinctly:

"We have built 6 facilities and relied on the SEPP each time. If these changes got up I am not sure we would be able to build another facility in Metro Sydney."

We urge the NSW Department of Planning, Industry & Environment to consult with the Aged Services industry further and LASA is here to help. We would like to discuss the process further and invite correspondence to Ian Poalses, State Manager – LASA NSW/ACT ([ianp@lasa.asn.au](mailto:ianp@lasa.asn.au); 0427 332 857).

Submitted on Tue, 08/09/2020 - 21:56  
Submitted by: Anonymous  
Submitted values are:  
Submission Type:I am making a personal submission  
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Submission file:

[housing-diversity-sepp-20.docx](#)

***I 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. New Generation Boarding House Policy should be allowable in all zones. People will rent these properties if made available to them.

**Removing boarding houses from the R2 zones does not create a diverse demographic of residents within the area.** These proposed changes would make it difficult for private middle-class developers because of the high cost of development. Boarding houses in R2 zones can be removed – only if co-living properties are allowable.

Family household numbers are declining while Single-person households are increasing. The 2016 Census found that in NSW, 24% of households had one person and 33% had only two people. The Census data should be utilised to guide informed alterations that enhance the everyday lives of the population. We don't need higher density housing, nor do we need concentrated cookie cutter style accomodation which misses the mark, we need diversification within our urban sprawl. The Australian Housing and Research Institute found that “..... there was a shortage of 478,000 affordable and available private rental dwellings for low-income households in 2016”ABS' key statistics (2017-18) show that more than three quarters (79%) of households had **at least** one bedroom spare.

At the end of 2019 demand for affordable rental properties for the bottom 20% of income earners, exceeded supply by around 212,000. The government estimates around 40,000 new homes will be needed each year in Sydney for the next 20 years to meet that growth.

**The number of households without children increased by 69,183 between 2011 and 2016. There is a shortage of housing stock for singles and couples, we need more flexible housing options:**

## Share Housing

I believe 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 that it can be approved through a private certifier.

Share housing should be allowable in R2 residential zones. The NSW State government should include an exemption for Universal Access for existing stock.

Properties build prior to May 2011 – No universal access. In properties built pre May 2011, the upgrades need to be in line with 1b Building class.

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.

This option should be set up around major education hubs and 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 social and affordable homes will grow from the current number of 651,300 to nearly 1,024,000 by 2036 , with a third of that number is in NSW alone.

There should **not** be a minimum number of 10 private rooms for each property. This will create more illegal share-housing. There needs to be regulations that state the minimum standards for clarity:

Pre May 2011 –

- No universal access requirement
- 1b standard
- No more than 6 people
- No more than 5 bedrooms

Post 2011 –

- Universal access required
- CDC approval up to and including 6 people
- 6+ people not permissible in R2 zone and D.A with council

### Co-Living In R2 zone

- Up to and including a maximum of 6 people
- Maximum of 5 bedrooms
- No unrelated parties to share a room. To be a couple or siblings

Pre May 2011

- Exemption of disability access
- Upgrade to a 1b Building Class

Post May 2011

- Up to and including a maximum of 6 people
- Requires universal access

Both Pre and Post May 2011 to be approved through a CDC process by a private certifier.

Car parking .5 spaces per room, approval by council discretion. 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.

Leilani Douglass

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## Comments on proposed changes to SEPP Seniors

**Submission to** <https://www.planningportal.nsw.gov.au/proposed-new-housing-diversity-sepp>

The following provides a Submission to the DPIE ‘Explanation of Intended Effect’ (EIE) for a new Housing Diversity SEPP” that focuses on how the provisions impact **Seniors Housing**.

While the EIE advises that these changes are being introduced “in order to accelerate projects that support employment and economic growth”, the implications of the new Housing Diversity SEPP would conversely dramatically reduce the planning legislative support for private sector seniors housing , as discussed in the following.

## **1. MODIFICATION TO SEPP SENIORS DEVELOPMENT STANDARDS**

### **1.1 Proposed Changes**

- *amend the SEPP provisions to clarify that development standards in a local environmental plan prevail to the extent of any inconsistency with the SEPP” pg 5, 19*
- *the development standards in the Seniors SEPP could be varied using Clause 4.6 of the SILEP, but only to a maximum of 20% pg19*
- *amend the definition of height to match the Standard Instrument LEP (pg18)*
- *amend the definition of AS 2890 to match the Standard Instrument LEP (pg18)*

SEPP Seniors currently incorporate a range of development standards, including at:

- **Part 2** Location and Access to Facilities
- **Part 4** Development standards to be complied with, and
- **Part 7** Development standards that cannot be used as grounds to refuse consent

The implications of the above changes on the design and provision of Seniors Housing in NSW is noted below.

### **1.2 Implications for Part 2 Clause 26 - Location and Access to Facilities**

This clause currently includes a number of development standards including:

- Maximum distance of 400m to a bus stop
- Maximum gradients to access facilities
- Bus frequency including - (iii) *that is available both to and from the proposed development at least once between 8am and 12pm per day and at least once between 12pm and 6pm each day from Monday to Friday (both days inclusive),*

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The implications of the proposed changes to the SEPP and the requested alternative solutions is provided below:

## **(a) Continued Application of Clause 26 to Residential Aged Care Facilities (RACFs)**

The analysis of this control by the Court has concluded that while access to a bus stop is an important requirement for the independent elderly, it is generally not utilised by residents within a RACF. The continued application of the 400m development standard, made more restrictive with the max 20% variation, is unreasonable and unnecessary for RACFs.

The residents within a RACF are typically frail and/or have a cognitive impairment (dementia) significantly limiting their ability to access services by themselves. Rather, services and facilities are generally provided within the RACF itself and residents are also taken to services and facilities with carer support. We have been advised by a number of our aged care clients that the elderly entering RACFs on average live there for 6 months because they are supported to age in place as long as possible in an independent or serviced dwelling, other than for residents with dementia. Therefore, RACFs are more closely aligned with a hospital than a residential villas or flats, providing 24 hour nursing staff, cooking, cleaning and assistance with personal care.

SEPP (Infrastructure) 2007 at Part 3 Division 10 permits hospitals within a variety of zones, including the R2 Low Density Residential zone with consent. Hospitals are not limited in the ISEPP by distances to bus stops. Prior to SEPP 5, nursing homes were often approved under a previous definition of 'hospital' eg Ku-ring-gai Planning Scheme Ordinance

**Recommendation: The planning controls should be modified to provide consistent treatment for RACFs and Hospitals and exclude RACFs from Clause 26. Alternatively, if DPIE prefers to include some Development Standards for Access to Facilities and Services for RACFs, the following amendment to Clause 26 is suggested:**

Insert new Clause 26(6) as follows:

(6) Access for Residential Care Facilities complies with this clause if the development complies with Clause 26(2) OR if the following is provided on-site:

- a) One medical/allied health consulting room per 50 beds, and
- b) One room suitable for personal services such as a hairdresser or beauty therapist, and
- c) A computer room with internet access for residents, and
- d) One multi-purpose room with an activities officer, and
- d) One kiosk and/or café for the sale of small consumer items, and
- e) A bus capable of carrying at least 10 passengers that will take residents on organised supported outings.

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Please note that the suggested wording at Clause 26(6) works for the larger scale hospital style RCFs where shared communal facilities are provided. This does not work for a household model RCF, where facilities are designed and serviced around a 9-bed household, such as the Hammondcare dementia housing model. Therefore, if DPIE is not prepared to exclude RCFs from Clause 26, it is important that an alternative compliance option such as the 400m to the bus stop remains available.

## (b) Maximum distance of 400m to a bus stop

The proposal to limit the distance of a site to a bus stop by 20% (to 480m) is inequitable given that the distance in the SEPP is measured from the front of a lot boundary not from the buildings or ILUs themselves. For example, there could be a large village where the ILUs are 1km from an infrequent bus stop that would technically comply, whereas a small site with an easy flat walk of 500m to a town centre would be prohibited. Altering this control to a land-use prohibition (by prescribing a max 20% variation) does not enable applicants to address the underlying purpose of the development standard to ensure a suitable level of access to facilities. Furthermore, it is very problematic for RCF as previously discussed. **Accordingly, the 20% limit on the 400m bus stop distance should not proceed.**

In addition, the current wording in the clause regarding bus frequency is unclear, as copied below:

*(iii) that is available both to and from the proposed development at least once between 8am and 12pm per day and at least once between 12pm and 6pm each day from Monday to Friday (both days inclusive),*

Willoughby Council is currently interpreting the above provision as requiring a bus service 7 days a week in the mornings and 5 days a week (Mon to Fri) in the afternoons. This is not the intent taking into account the original SEPP 5 controls that have been tweaked over time that initially required public transport frequency as follows:

*(iii) that is available both to and from the proposed development during daylight hours at least once per day from Monday to Friday (both days inclusive).*

### **Recommendation:**

The drafting of the new SEPP should remove this ambiguity to avoid expensive and wasteful litigation for applicants and Councils by inserting the following replacement wording;

*(iii) that is available both to and from the proposed development at least once between 8am and 12pm each day from Monday to Friday (both days inclusive), and at least once between 12pm and 6pm each day from Monday to Friday (both days inclusive),*

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The 20% limit (and effective prohibition) on the 400m distance control should not proceed as it inhibits provision of seniors in suitable flat areas. This is particularly important if DPIE decided not to exclude RACFs from the 400m to shops/public transport as recommended above. As an example, KOPWA has operated successfully as a not for profit RACF for over 50years at 12-16 Trafalgar Street Roseville. The distance to Roseville trains/bus stops is over 500m. Under the proposed changes approval of its expansion onto the adjoining site would not be possible on both Heritage Conservation Area grounds and being over 500m to public transport. Fortunately the RACF expansion was approved by Sydney North Planning Panel prior to the HCA prohibitions or these current proposed changes being gazetted, but it's a good case example of the SEPP changes working contrary to good planning/social outcomes for seniors who want to remain living in their local suburb. Had KOPWA delayed lodging their DA by a year the expansion (within a HCA) would have been prohibited and the facility would never be upgraded and would eventually become unviable due to its small bed numbers.

## (c) Maximum gradients

Application of the proposed 20% limit to the gradient controls within the SEPP would be challenging to apply. For example, does a potential SEPP Seniors site become prohibited because a 6.2m length of the footpath is at 10% rather than 6m (max 20% variation of 5m?).

**Recommendation: The 20% limit on the gradient controls should not proceed.**

## 1.3 Implications for Part 4 – Development Standards to be Complied With

### (a) Clause 40 – Development Standards minimum sizes and building height

#### **Site Size and Dimensions**

*(2) Site size: The size of the site must be at least 1,000 square metres*

*(3) Site frontage: The site frontage must be at least 20 metres wide measured at the building line*

**Comment:** While we there are no major concerns with the application of a 20% limit on the numerical controls for the size and shape of the site at (2) and (3) above, an LEP should not override this control in the event of any inconsistency.

#### **Building Height Controls**

*(4) Height in zones where **residential flat buildings** are not permitted If the development is proposed in a residential zone where residential flat buildings are not permitted—*

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- (a) the height of all buildings in the proposed development must be 8 metres or less, and*
- (b) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height, and*
- (c) a building located in the rear 25% area of the site must not exceed 1 storey in height.*

The 8m ceiling height control in SEPP Seniors reflects the BCA requirement and previous industry norm of 2.4m ceiling heights within a 3 storey residential apartment building. Clause 50(a) of SEPP Seniors makes it clear that the 8m ceiling control is not a 2 storey height control and furthermore Clause 40(4)(b) identifies that a 2 storey height control is required adjacent to the site boundaries to manage the interface. Therefore, the 8m ceiling control anticipates 3 storey buildings on part of the site that is setback from the boundaries.

Refer to Para 55 in ***De Stoop v Ku-ring-gai Council [2010] NSWLEC 1019*** that reports;  
*“The experts agree that the object of the standard is not stated however they agree the underlying objective or purpose of the standard is to limit development in areas not zoned for residential flat buildings to three storeys in order to ameliorate the potential for amenity impacts on adjoining residential properties and to be in character with residential zones where residential flat development is not permitted.”*

The introduction of 2.7m ceiling heights for residential apartments in SEPP No.65 Apartment Design Guide (ADG) established a new industry norm that has added additional height to residential flat developments. While it is questionable whether SEPP No.65 technically applies to Seniors Housing, it is widely applied as a best practice guide and accordingly Seniors developments are typically excavating the development sites to accommodate the taller 2.7m ceilings recommended in the ADG.

The proposed modification of the 8m ceiling control to an 8m roof control would result in sites being extensively excavated to achieve a third floor on part of the site resulting in a poor level of residential amenity for seniors. The application of the Council’s LEP height controls, which are typically 8.5m from existing ground to the roof in a low density residential zone, would also result in buildings being excavated into the ground compromising residential amenity and the setting of the development.

**Recommendation: The height controls at Clause 40(4)(a) in SEPP Seniors be updated to continue to permit a 3 storey element on part of the site, away from the property boundaries, with transitional building heights adjacent to the site boundaries.**

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## Replace Clause 40(4) with the following:

*(a) the height of all buildings in the proposed development must be 9.5 metres or less, and*

*Note: the purpose of this paragraph is to limit development in areas not zoned for residential flat buildings to three storeys with a ceiling height of 2.7m in order to ameliorate the potential for amenity impacts on adjoining residential properties and to be in character with residential zones where residential flat development is not otherwise permitted. Three storey building elements are required to be setback from the property boundaries as required by subclauses 40(4)(b) and 40(4)(c)*

*(b) any building or part of a building that is adjacent of a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height with a maximum external wall height of 7 metres, and*

*Note. The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape and at the interface with an adjacent residential zones where residential flat development is not otherwise permitted.*

*(c) any building or part of a building located within 9 metres of the rear property boundary must not exceed 1 storey in height. This does not apply to sites with a rear setback to a road.*

*Note. The purpose of this paragraph is to ameliorate the potential for amenity impacts on adjoining residential properties private open space areas.*

## **(c) Clause 41 – Standards for hostels and self-contained dwellings**

The current provisions that require compliance with Schedule 3 of the SEPP means these controls are not development standards. Including a large suite of mandatory numerical requirements is onerous.

**Recommendation:** If it was not the intent of DPIE to make these provisions mandatory, then a clause should be included advising that Schedule 3 comprises development standards that can be varied pursuant to Clause 4.6.

Secondly, the provisions at subclause (5) Schedule 3 for private car accommodation is unclear and is being applied inconsistently by consent authorities. Some Councils are requiring the current AS2890.6 requirement of a 2.4m wide space plus a 2.4m wide shared space for every seniors car space eg Cumberland Council which adds considerably to the cost of excavating an extra building level and results in excessive provision of wheelchair accessible spaces. Whereas, other Councils are applying the AS that applied at the time the SEPP was prepared that requires 3.2m wide spaces, with 5% increased to 3.8m wide eg Willoughby Council. The 2.4m wide shared space is helpful for shared carparks but problematic when private garages are provided.

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## **Recommendation: Amend subclause (5) as follows for self contained dwellings**

### **5 Private car accommodation**

*If car parking (not being car parking for employees) is provided—*

- (a) car parking spaces must comply with the requirements for parking for persons with a disability set out in AS 2890.6, OR*
- (b) where a carparking space is provided for the sole use of a resident, each space has a minimum dimension of 3.2m wide by 5.5m long, OR*
- (c) where an individual garage is provided for the sole use of a resident, each space has a minimum internal dimension of 3.8m wide by 6m long, and*
- (d) any garage must have a power-operated door, or there must be a power point and an area for motor or control rods to enable a power-operated door to be installed at a later date.*

Note: The purpose of (a) is to require the most flexible parking areas for shared residential parking. Alternatively, when parking spaces are allocated to a specific residential unit, then the space must be 3.2m wide where there are no adjacent walls, and increased to 3.8m wide with garage walls.

Lastly, the controls for hostels and self-contained housing controls need to be separated as some controls clearly intended for housing are nonsensical for hostels. The concessions then offered to social housing providers only extend to self contained dwellings and not hostels which is inconsistent.

## **Recommendation: The Schedule 3 controls for hostels needs to be reviewed.**

### **1.4 Implications for Part 6 Development of Vertical Villages**

This clause applies to land where RFBs are already permitted. Clause 45(2) allows a bonus FSR of 0.5:1 above the base floorspace prescribed in another planning instrument (eg an LEP) with a Site Compatibility Certificate (SCC).

Some Councils are construing this as meaning if a DA exceeds the maximum FSR in the LEP then the Vertical Village provisions are “automatically triggered” requiring a SCC and compliance with Clause 45 rather than allowing a variation to the FSR with a Clause 4.6 variation. This is being obstructive and should be clarified in the new SEPP to avoid expensive and wasteful litigation for applicants and Councils.

It is unclear how a 20% cap on the variation to the development standard would apply to this Part of the SEPP, and appears unnecessary given that an SCC to establish site suitability is required.

Even if one went to the effort of preparing a SCC and DA for a vertical village to obtain the 0.5:1 bonus, it does not help with the likely exceedance of the LEP height control and subsequent Clause

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4.6 and debates on character. Subclause (7) advises that a consent authority must not refuse consent to the FSR because the development does not comply with a building height control referred to in clause 40 (4) (a), 48 (a), 49 (a) or 50 (a). These clauses refer to a 8m ceiling height control that was applies to low density zones not to zones where RFBS/ Vertical Villages are permitted.

**Recommendation:** It would be more constructive if the bonus FSR of 0.5:1 was accompanied by a bonus height control equivalent to 2 additional storeys.

## 1.5 Implications for Part 7 Standards that Cannot be used as ground to refuse consent

### (a) Clause 48 and 49 – Deemed to Comply standards for RCFs and Hostels

The proposal to amend the SEPP provisions to prescribe that that development standards in a local environmental plan prevail to the extent of any inconsistency with the SEPP removes the long standing planning protections that have been in place for RCFs and Hostels and jeopardies the provision of new facilities into the future.

**Building Height** – See previous discussion regarding building heights. The 8m ceiling height control should be amended consistent with the discussion under Clause 40(4). If the LEP prevails, because building heights relate to “existing” ground, what will occur is excessive site excavation. Consequently, the outlook from some private bedrooms will be to embankments and retaining walls.

**Density and Scale** - Of particular concern is the removal of the deemed to comply provision that permits an FSR of 1:1. We have been previously advised by a number of our aged care clients that the minimum number of beds required in a RACF to support sustainable ongoing running costs is 105+ beds. This requires a minimum site area of 6000m<sup>2</sup>+ to be purchased. Because many LEPs commonly prescribe a maximum FSR of 0.5:1 for R2 zones, the impact of this amendment will require over 1.2 hectares of land to be available to construct a new RACF. It will be very difficult to secure such large parcels of land in Sydney area particularly with the recent gazettal of the rural area exclusion maps. The halving of the permissible FSR for RCFs in R2 zones would also act as a disincentive to renew older facilities. If adopted, we anticipate that RE2 Private Recreation zoned lands , such as private golf courses, will come under increasing pressure for the future development of RCFs as typically the RE2 zones have no LEP height/FSR controls. **The deemed to comply FSR controls should not be altered for RCFs and Hostels.**

**Landscaped Area** – The landscaped area control should be modified to a percentage of the site area, as this is a setting control, eg 30% of the site to be consistent with ILUs.

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## (b) Clause 50 – Deemed to Comply standards for ILUs

- Clause 50(a) Building Height – see previous discussion at 1.5(a). If the LEP prevails, this will encourage excessive site excavation.
- Clause 50(b) Density and Scale – Changing the FSR to the SILEP definition will make the ILU buildings larger. Conversely, it will reduce bedroom capacity in RACFs as the floor space below ground level used for services activities (eg kitchens and laundry) would be included. Currently SEPP seniors excludes this basement floor space.
- Clause 50(c) Landscaped Area – Discourages vertical villages by applying a flat rate of landscaping per unit at ground level irrespective of the building density or height. A site percentage would be more constructive.
- Clause 50(e) Sunlight Access - requires 3 hours of sunlight access to 70% of dwellings that is onerous for apartment building designs eg the SEPP 65 ADG requires 2 hours.
- Clause 50(f) Private Open Space – the area required is smaller than that recommended in SEPP 65 ADG. Note that SEPP 65 does not apply given the definition of residential accommodation is a group term, under which RFBs and Seniors Housing are separately defined. Accordingly, SEPP 65/ADG only applies to mixed use seniors developments eg shop-top seniors housing & registered club/seniors villages.
- Clause 50(h) prescribes a limited amount of required parking, well below market expectations in some localities. This is used by some Councils (eg Willoughby and Ku-ring-gai) to add the surplus parking spaces to the FSR calculations even if it is below ground within a basement due to the definition of GFA.

## 2. SEPP Seniors Schedule 1 – Environmentally Sensitive Land

*Proposed Changes include to*

- update the provisions of Schedule 1 – Environmentally sensitive land of the Seniors SEPP to align with current legislative and planning conditions pg 5 and pg19

**Implications of the Effect:** The EIE does not prescribe exactly what is proposed to be altered so it is not possible to determine what would be the effect of the amendment.

## 3. SEPP Seniors Site Compatibility Certificates

*Proposed Changes include to*

- Amend the SCC so that it is valid for 5 years, provided that a development application is lodged within 12 months of the date on which the SCC is issued (pg19)

**Implications of the Effect:** The inclusion of the provision that requires the DA to be lodged within 12 months of the SCC reduces the legislative support for private sector seniors housing, requiring the

# Levy Planning

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preparation of extensive DA documentation to be rushed. Furthermore, a number of our clients prefer to undertake Pre-DAs and consult extensively with their existing retirement community and neighbours prior to finalising a DA, which would be undermined by the 12 month deadline. A time-frame of 18 months would provide some breathing space to improve the quality of Development Applications submitted.

#### 4. Areas Recently Excluded from SEPP Seniors

The significant tightening of controls for Seniors Housing proposed is effectively a **double whammy** after the government gazetted 29th July 2020 the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) Amendment (Metropolitan Rural Areas Exemption) 2020*, without any community consultation. This legal document turns-off the beneficial provisions of the Seniors Housing SEPP for large areas of land mapped as 'metropolitan rural areas', that includes not only rural zoned land but also many towns and villages.

While the Metropolitan Rural Areas Exemption Map is not part of the EIE on exhibition, we thought it prudent to note the significant implications it will have on Seniors Housing supply. For example, we note that we were surprised to see that within the Hawkesbury LGA there is virtually no-where such housing can be supplied, even within larger town centres like Richmond and Windsor. While Hawkesbury LEP permits seniors housing in R1, R3 and certain business zones, analysis of R1/R3 zones in Richmond reveal those lots are relatively small (typically 500-650m<sup>2</sup>) which would be cost prohibitive for larger ILU developments or RACFs needing 1.2ha sites under the proposed SEPP amendments. Of particular note, there is an existing retirement village (Uniting) in Richmond. Stage 2 villas are currently under construction on R2 zoned lands. The future expansion site to the south is zoned rural.

Under the recently adopted changes, SEPP seniors no longer applies to those lands so that the aged care provider would need to apply for a rezoning which typically takes several years and adds considerable cost. Prior to this it would be a simple SCC application which has considerable merit as it abuts R2 and R1 zoned lands. Making sweeping changes across 13 LGAs because of concerns in Hornsby, Hills and Northern Beaches areas has had a significant and detrimental impact on future supply of seniors housing in suitable town centres such as Richmond. Further diminution of SEPP seniors as proposed under the current suite of SEPP changes will likely result in a shortfall of affordable housing for seniors / people with a disability in Richmond and similar areas. A further nuisance that results from sweeping prohibition maps is that many seniors housing developments will now have "Existing Use Rights" (EUR) and can no longer lodge a simple s4.55 to modify the development, or Complying Development for minor works, rather they must lodge a DA. Further, having EUR development standards for those sites are not applicable. The new maps gazetted 29-7-20 may force existing seniors housing developments to seek excessive building heights as they can no longer expand horizontally onto adjacent sites to achieve viable bed numbers. With no cl 4.6 required for EUR sites, there is no prescribed development standard for height/density.

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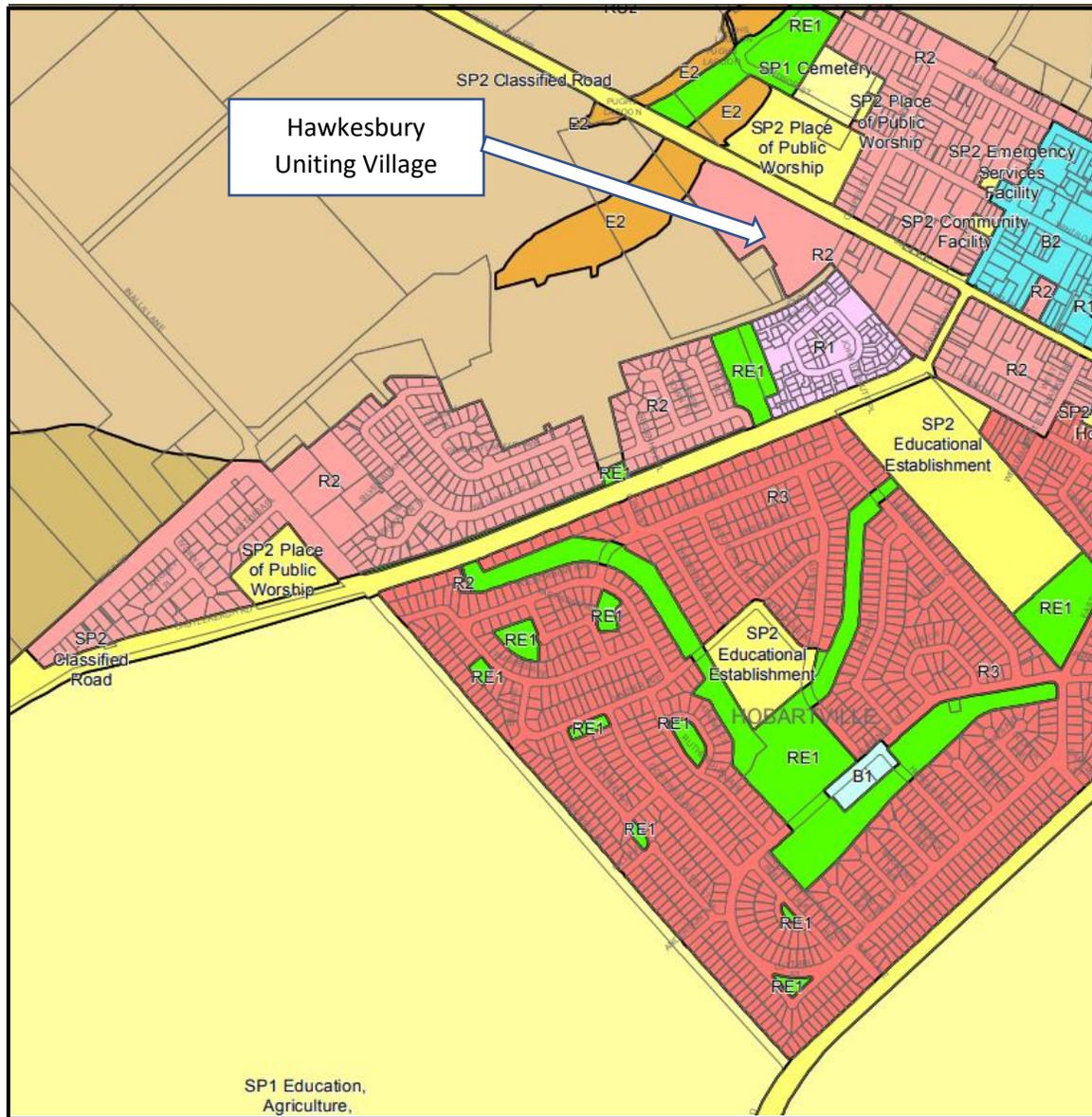


Figure 1 - Hawkesbury LEP map extract (Richmond/Hobartville area)

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## 5. Clause 26 Location and Access to Facilities

*Proposed Changes include to*

- “amend provisions so that point to point transport such as taxis, hire cars and ride share services, cannot be used for the purpose of meeting the accessibility requirement.” pg 5, 19

**Comment:** No concerns raised.

## 6. Definition of “people with a disability”

*Proposed Changes include to*

- amend the definition to match the Standard Instrument LEP (pg18)

**Comment:** No concerns raised.

## 7. Registered Clubs

*Proposed Changes include to*

- It is proposed to reinforce the requirement that of a SCC application is being made on the basis that the land is being used for the purpose of a registered club, the club must be a registered club at the time the SCC application is made.” Pg19

**Comment:** No concerns raised. Presumably the wording means that the Club could subsequently shut down. Some consideration should be given to facilitating new seniors housing developments having recurrent funding for the clubs (eg Chatswood Golf Club proposal) so that their long term viability is secured (not just in the short term from a land sale cash injection).

9 September 2020

The Secretary  
Department of Planning Industry and Environment  
Locked Bag 5022  
Parramatta NSW 2150

## **Exhibition of Draft Housing Diversity SEPP**

Dear Sir,

We write in response to the exhibition of the Explanation of Intended Effect (EIE) for the proposed Housing Diversity SEPP (SEPP).

This submission is made on behalf of Link Housing Limited. Link Housing (Link) is a charitable institution and Tier 1 nationally registered Community Housing Provider with approximately 4,000 dwellings under management. The proposed Housing Diversity SEPP is of particular interest to Link as we look to renew, update and expand on our housing stock to meet the needs of our existing clients and to provide housing opportunities to respond to the ever-growing demand.

In general Link Housing supports the initiatives to clarify the range of opportunities for the Community Housing sector to provide housing and to renew its housing stock. Additionally, with more and more of the State Government's social housing portfolio being transferred and managed by the CHP sector, and the Housing Diversity SEPP provides a significant opportunity to enable growth and renewal outcomes for this sector and government's social housing portfolio.

There are two issues which we wish to comment upon and suggest could be refined should the Housing Diversity SEPP proceed to be finalised. These relate to the strata subdivision of Seniors Housing developments in R2 Low Density Residential zones and the use of the LAHC Development without consent provisions on LAHC owned land.

### **Strata subdivision**

It is clear from the EIE relating to the social housing provisions for Seniors housing that a model to be implemented is for housing to be delivered as a mix of social, affordable and private housing. The inclusion of the private housing being a mechanism available to social housing providers to improve the viability of housing renewal proposals as well as creating diverse communities.

We would urge the Department of Planning Industry and Environment (DPIE) to include a clear provision making strata subdivision of developments undertaken by or on behalf of Land and Housing Corporation (LAHC) and Community Housing providers as a permissible form of



development. There is a clear necessity for this provision to be considered and implemented given existing provisions in some Local Environmental Plans. (LEPs).

The Hornsby LEP 2013 for example includes clause 4.1A. The clause states:

*4.1A Minimum subdivision lot size for strata plan schemes in certain zones*

*(1) The objective of this clause is to ensure that land to which this clause applies is not fragmented by subdivisions that would create additional dwelling entitlements.*

*(2) This clause applies to land in the following zones that is used, or is proposed to be used, for residential accommodation or tourist and visitor accommodation—*

- (a) Zone RU1 Primary Production,*
- (b) Zone RU2 Rural Landscape,*
- (c) Zone RU4 Primary Production Small Lots,*
- (d) Zone RU5 Village,*
- (e) Zone R2 Low Density Residential,*
- (f) Zone SP3 Tourist,*
- (g) Zone E2 Environmental Conservation,*
- (h) Zone E3 Environmental Management,*
- (i) Zone E4 Environmental Living.*

*(3) The size of any lot resulting from a subdivision of land to which this clause applies for a strata plan scheme (other than any lot comprising common property within the meaning of the Strata Schemes (Freehold Development) Act 1973 or Strata Schemes (Leasehold Development) Act 1986) is not to be less than the minimum size shown on the Lot Size Map in relation to that land.*

*(4) If a lot is a battle-axe lot or other lot with an access handle, the area of the access handle is not to be included in calculating the lot size.*

The effect of this clause is that if LAHC and Community Housing Providers propose for example a seniors housing development in the R2 Low Density Residential zone, the development could not be strata subdivided. Having this and similar LEP clauses applying will preclude LAHC and Community Housing providers from pursuing developments which incorporate a mix of social affordable and private housing because title to the private housing would not be able to be provided. Not being able to provide title to the private housing defeats the underlying principle of cross subsidising delivery of the affordable and social housing through the sale of private housing.

This blockage to the delivery by LAHC and Community Housing providers of developments with a mix of housing tenures could be readily remedied if the SEPP was explicit in permitting, with consent, the strata subdivision of seniors housing undertaken by LAHC and Community Housing providers.

### **Development without consent provisions**

Division 6 clause 40 of SEPP (Affordable Rental Housing) 2009 provides for circumstances where LAHC can pursue development without consent for the delivery of developments containing up to



20 dwellings. The Draft Housing Diversity SEPP proposes to increase the quantum of dwellings able to be provided by LAHC via this pathway to 60 dwellings.

Clause 40(3) of SEPP (Affordable Rental Housing) 2009 identifies that:

*(3) Development to which this clause applies may be carried out by or on behalf of the Land and Housing Corporation without development consent.*

Link as a Community Housing provider includes in its portfolio a significant portion of LAHC assets that it manages on 20-year leases. LAHC policies enable CHP led redevelopment and renewal of LAHC assets, however the current provisions prevent LAHC assisting CHPs achieve development consent because current provisions require that self-assessment and determination by LAHC only applies for development activity by or on behalf of LAHC.

For avoidance of doubt, the provisions of Division 6 should be refined or clarified to confirm the availability of this assessment pathway for the delivery of housing by Community Housing providers on LAHC land they are charged with managing.

The confirmation of the availability of this pathway availability can only assist in expanding the available options available for the delivery of social and affordable housing.

### **Conclusion**

Link Housing supports and commends the Government in exploring opportunities to improve housing delivery options for the Community Housing sector and the clarifications and updates otherwise outlined in the EIE.

We are firmly of the belief that the refinements we have suggested in this submission are of value to the Community Housing Sector, LAHC and those in the community we are striving to provide quality housing outcomes for.

We would welcome the opportunity to discuss the matters raised further with DPIE staff should this be seen to be of value.

Kind regards,

**Paul Hunt**

Chief Development Officer  
Link Housing Limited







## **Housing Diversity SEPP Explanation of Intended Effect – Lismore City Council Submission**

Lismore City Council (LCC) appreciates the opportunity to review and provide comments on the Explanation of Intended Effect for the new Housing Diversity State Environmental Planning Policy (SEPP).

LCC supports the renewal and consolidation of the housing related SEPPs. Housing affordability, location, accessibility and diversity are of significant interest to LCC.

### **Metropolitan and Regional differences**

There is a strong city centric focus within the provisions outlined in the EIE. The development that would be facilitated by the SEPP relies on good access to public transport and readily available reticulated water and sewerage systems.

In regional centres such as Lismore there are significant concerns regarding the impacts of the SEPP on car parking, water and wastewater servicing.

There is no justification for reduced car parking requirements for affordable housing tenants, particularly in rural/regional areas with limited or no public transport options.

### ***Recommendation:***

1. The SEPP should be modified to ensure there are appropriate distinctions addressing the different requirements of the metropolitan areas and regional NSW to ensure development does not adversely impact on traffic and parking and infrastructure servicing.

### **New definitions**

LCC generally supports the three new definitions: *build to rent housing*; *purpose built student housing*; and *co-living*. However, it is worth pointing out that more specific definitions increase the likelihood of exclusion of other meritorious development. This has been the experience of LCC with the specific nature of Standard Instrument definitions including, but not limited to, tourism related land uses.

#### ***Build to rent***

LCC Development Control plan requires the provision of car parking for residential flat buildings as follows: 1 per 1 bedroom unit; 1.5 per 2 bedroom unit; 2 per 3 bedroom unit; plus 1 per 5 units visitor parking. LCC considers these car parking rates should also be applied for BTR housing.

LCC considers that the minimum 50 dwellings in the build to rent model is too high for the regional context. 50 dwellings would be a substantial building, either a large footprint given the lower building heights regionally or a taller building, potentially out of character with essentially 2 storey maximum development in regional residential areas.

The mandatory application of build to rent in the B4 Mixed use, R4 High density residential, B3 Commercial Core and R3 Medium Density Residential are generally supported. However, the purpose of the commercial core is for an active street frontage and this should be incorporated into the definition if this type of housing is to be delivered within Zone B3.

Strata subdivision of this form of housing is not supported to ensure stability for the rental sector.

***Recommendations:***

1. The build to rent definition is not to be provided with car parking discounts in regional NSW.
2. Regional car parking should be provided at 1 per 1 bedroom unit; 1.5 per 2 bedroom unit; 2 per 3 bedroom unit; plus 1 per 5 units visitor parking or similar.
3. The build to rent definition provide a lower dwelling minimum for regional NSW.
4. The build to rent definition acknowledge and include the need for an active ground floor level in Zone B3 Commercial Core.

***Purpose built student housing***

Lismore is the location of a campus of Southern Cross University and student accommodation is currently provided within Zone SP2 Infrastructure (Educational Establishment) and Zone R1 General Residential. Zone R1 is an open zone in the Lismore LEP and as such innominate land uses such as student housing are permissible. Student housing is also permissible in Zone SP2 under the Education SEPP. Notwithstanding the current approval pathway, LCC is supportive of the new term purpose built student housing.

Not applying mandatory zones for the permissibility of purpose built student housing is supported as this allows flexibility for Councils to permit the use as appropriate.

LCC is of the view that minimum car parking requirements should apply to this form of development.

***Recommendations:***

1. The SEPP should define “student”.
2. Car parking should be required at a rate of 1 car parking space per unit/room.

***Co-living***

The introduction of co-living is supported, though the minimum size of 10 bedroom is probably too large for regional areas. This form of housing would be more appropriate in regional areas with a minimum of 4-5 bedrooms. This form of living needs to ensure there is lockable storage for each bedroom component (i.e. for outdoor equipment and the like).

Mandatory permitted use within Zones R3, R4 and B4 and any zone where residential flat buildings are permitted is supported by LCC.

Car parking requirements are likely to be problematic in regional areas where access to public transport is not equal to metropolitan area. In most regional areas public transport is limited to non-existent, and car usage is higher. LCC DCP boarding house car parking requirements includes 1 space per room plus 1 per 5 rooms visitor space

1. Car parking should be required at a rate of 1 car parking space per unit/room plus 1 per 5 rooms visitor space.

### **Boarding house changes /provisions**

The amendments to clarify that boarding houses are to remain as affordable housing are supported.

Removing the mandatory use of boarding houses in Zone R2 Low Density Residential and allowing Councils to choose the permissibility of the use in this zone is supported. Lismore LEP has applied Zone R2 to some flood prone established residential areas. The proposed approach will enable LCC to determine if boarding house permissibility is still appropriate in Zone R2.

LCC does not support the maximum of 12 bedrooms as it is out of character with the generally low density character of the residential zones.

The permissibility of boarding houses on government owned land, regardless of the LEP permissibility will allow flexibility for the provision of more affordable housing, however the integration with the surrounding local character is a key consideration to ensuring a good fit within the local context.

The reduction in the floor space density bonus is supported, however the density bonus has the ability to be out of character with regional areas and is more suited to the metropolitan context. There should be a distinction provided between metropolitan and regional use of density bonuses.

Car parking requirements are likely to be problematic in regional areas where access to public transport is not equal to metropolitan area. In most regional areas public transport is limited to non existent, and car usage is higher. LCC DCP boarding house car parking requirements includes 1 space per room plus 1 per 5 rooms visitor space.

#### **Recommendation:**

1. Car parking should be required at a rate of 1 car parking space per unit/room plus 1 per 5 rooms visitor space.
2. Further reduce the FSR bonus from 20% to 10% for regional areas.

### **Secondary dwellings changes/provisions in rural zones**

Lismore LEP permits dual occupancy (attached) and dual occupancy (detached) in Zone RU1. There is no numerical limit to the GFA of the building. Secondary dwellings are prohibited in Zone RU1 as they are not required due to the permissibility of dual occupancies. The proposed change will not affect Lismore.

#### **Recommendation:**

Nil.

### **Other proposed amendments to the ARHSEPP**

LCC raises no issues regarding the proposed amendments to the ARHSEPP.

#### **Recommendation:**

Nil.

### **Proposed amendments to the seniors housing provisions**

Updating the seniors housing provisions in line with the standard instrument LEP is supported. However, the intended definition of Environmentally Sensitive Area is not articulated.

The interpretation/definition of *Environmentally Sensitive Land* is found in a range of SEPPs, including the SEPP (Exempt and Complying Development) and the Standard Instrument LEP and called *Environmentally sensitive Area*. This definition should be consistent through all policy documents and it is recommended this be consistent with the SI LEP and the SEPP (Exempt and Complying Development).

Amending the validity of site compatibility certificates to 5 years (from 2 years) in line with validity of development applications is supported.

Amending the application of local development standards to allow an LEP to prevail to the extent of any consistency is supported.

The proposal to remove the requirement for lifts to be provided to seniors housing above a second floor seems to be counterproductive to providing appropriate and accessible housing for this demographic. Seniors and people in social housing, often with varying degrees of mobility issues, should be supported by clear and suitable access, including lifts.

**Recommendation:**

1. The definition of *Environmentally Sensitive Land* be amended to *Environmentally Sensitive Area* and be consistent with the definition within the SI LEP and the SEPP (Exempt and Complying Development).
2. Require lifts in senior housing above the second floor.

**Social housing changes/provisions**

LCC does not support increasing the number and range of the self-assessment allowed by the Land and Housing Corporation is not supported. Allowing one entity to plan, approve and deliver raises concern, diminishes consideration of local planning policy and principles and erodes the transparency and community engagement as part of development.

Allowing an increase in self-assessable developments from the current 20 to a proposed 60 is a significant increase. Similarly, allowing LAHC to self-assess a mix of private and social housing is also concerning as this generally occurs outside of the local planning policy, character and standards.

Expanding the range of affordable dwelling types that attract a density bonus to include manor houses, terraces and the like under the Low Rise Housing Diversity Code (LRHDC) is not appropriate for the regional context. These forms of development, now complying, are much denser than the local character of regional areas and have the potential to significantly change established regional town and village character. Most councils have accepted a degree of low rise medium density development as it does allow housing diversity, however, generally it is preferred that density and diversity is planned in an holistic manner rather than permitted adhoc where lot sizes just happen to be large enough. Allowing a density bonus on top of the low-rise medium density housing will exacerbate these impacts.

More significantly of concern is the ability of regional Councils to service these established areas with water and waste water. Many regional towns and villages are at capacity and future development needs to be carefully planned with the longer term planning for expansion of water and waste water servicing. The current LRMDH can result in a single dwelling on a larger parcel of land becoming 3-4 dwellings. In many localities there is not a lot of room for take up of this form of housing before there is substantial pressure on servicing. These developments are approved as complying development and then come to Council for sewer or waste water connections where

there is no capacity. This is not an appropriate planning framework and has the potential to be a far greater issue if density bonuses are permitted as well.

It is noted the *accessible area* definition used to apply the density bonus is not particularly relevant to the regional areas, as most do not have light rail or ferry wharfs.

***Recommendation:***

1. The proposed self-assessable development is not increased.
2. No expansion of density bonus outside of the metropolitan areas for other forms of housing in the LRHDC.

Department of Planning, Industry and Environment  
Locked Bag 5022  
**PARRAMATTA NSW 2150**

Submitted via Planning Portal

## Re: Proposed Housing Diversity SEPP

Thank you for the opportunity for Liverpool City Council to make a submission on the Explanation of Intended Effect (EIE) for the proposed new Housing Diversity State Environmental Planning Policy (SEPP).

Council supports the consolidation of *State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARHSEPP)*; *State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 (Seniors SEPP)*; and *State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes) (SEPP 70)* into a new Housing Diversity SEPP in order to help simplify the planning system and improve assessment outcomes. Council is also supportive of measures to improve housing diversity and housing affordability.

Within the EIE, there are a number of proposed changes we support and a number of changes which we consider need further consideration.

### Aims

The Housing Diversity SEPP is intended to replace SEPPs that have been in force for many years. This new SEPP should not be considered a short-term planning intervention, rather an environmental planning instrument (EPI) that will be in force over a long period of time like its predecessors. As such, the stated aims of the SEPP must reflect its long-term status as an EPI. While COVID-19 may have been a catalyst to consider the development of a Housing Diversity SEPP, it is not considered appropriate for short-term economic stimulus to be a stated aim of the SEPP, as this will likely become outdated and irrelevant. The promotion of economic development would be a more appropriate stated aim.

It is important that the aims of the SEPPs being replaced are reflected in the consolidated SEPP. Currently improving housing affordability is not included as an aim. The SEPP's aims should be amended to include improving housing affordability.

### New definitions

Council is supportive of the creation of new definitions to be included in the Principal Local Environmental Plan (Standard Instrument LEP) for build-to-rent housing, student housing and co-living developments, however we make the following comments:

#### Build-to-rent

Council is supportive of build-to-rent as defined in the EIE however is opposed to making build-to-rent a mandatory permissible use in the B3 – Commercial Core zone.

Council has a small remnant B3 zone following the rezoning of the majority of its City Centre to B4 to allow for mixed use development in the CBD. Protecting Liverpool's remaining commercial core is of significant strategic importance.

The aims of the B3 zone in the Standard Instrument LEP are as follows:

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- *To encourage appropriate employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*

Liverpool's LEP has two additional relevant aims:

- *To ensure that, for key land in the Liverpool city centre, opportunities for retail, business and office uses exist in the longer term.*
- *To strengthen the role of Liverpool city centre as the regional business, retail and cultural centre of south western Sydney.*

The inclusion of build-to-rent in the B3 zone is inconsistent with the objectives of the zone and may further limit commercial development sought in this area. Land values in B3 zones are typically lower than that of B4 zones. Including build-to-rent in the B3 zone would therefore make this zone an attractive proposition for residential development compared to areas such as R4 and B4 zones and undermine potential for commercial development. This is not only inconsistent with zone objectives but the objectives of the Greater Sydney Region Plan and Western City District Plan, and Liverpool City Centre's status as a Metropolitan Cluster.

A longer-term consideration of the impacts of allowing residential apartment buildings through build-to-rent in the B3 zone is required. The economic challenge resulting from COVID-19 and subsequent reduction in demand for commercial development is not a sufficient reason to include uses in the B3 zone that could undermine the economic potential of centres over the long term. Council already has significant amounts of land zoned for residential use in its City Centre and surrounding its train stations, and therefore allowing build-to-rent in the B3 zone would only have negative impacts for what is listed as an important strategic centre in Regional and District plans.

Council also has a goal to create a 24-hour economy in the City Centre. Having more noise-sensitive uses in a non-residential B3 core would be undermined by making build-to-rent permissible in this area due to the potential for reverse amenity impacts.

In response to suggestions that build-to-rent could be transitioned to a commercial use in future once demand for commercial development recovers, Council is unaware of any example of a development that has been transitioned from a residential to a commercial use, so is not supportive of this as a justification for allowing residential in the B3 zone, even with subdivision not allowable in perpetuity.

Council understands that build-to-rent would be a type of rental housing that would encourage longer term rents than typical 6-12-month agreements routinely in place. However, without revising tenancy laws, particularly around 'no grounds' evictions, the security that is touted as a benefit of build-to-rent housing would be threatened. Council

recommends that tenancy law for build-to-rent be reviewed in order improve security for tenants.

Council also questions why it is suggested some of SEPP 65 may not apply to build-to-rent developments. Build-to-rent is largely a change in tenure structure that should not necessitate any changes to minimum design standards as set out in SEPP 65.

### Student housing

Council is supportive of student housing as a new definition in the Standard Instrument LEP, and there is demand for student housing to accommodate new university populations in the Liverpool CBD.

Council believes that further design guidance is required to understand whether minimum sizes proposed are suitable for the needs of students. As some students spend their entire university life within student housing – with degrees routinely lasting 3-4 years or even longer – it is necessary for amenity to be maintained along with affordability. If rooms sizes are to be as small as 10m<sup>2</sup>, and potentially even smaller, it needs to be supported by adequate communal open space. Presently the communal open space proposed is quite small at just 1.25m<sup>2</sup> per student. Suitable amenity of this open space is also required, with solar access requirements necessary, as is currently required for boarding house development under the ARHSEPP. The minimum size of fully self-contained dwellings should also be specified to avoid dwellings with poor amenity.

### Co-living

Council is supportive of the new co-living definition, which will refer to new generation boarding house development currently provided for under the ARHSEPP, and fill a gap if standard boarding house development is to become 100% affordable dwellings as intended. Council, however, questions the minimum requirement for at least 10 units to make up a co-living development. Arbitrary limits may work to reduce feasibility for development, so this minimum number should be justified.

The communal open space metric of 20m<sup>2</sup> for up to 10 units, or potentially 20 residents, is considered extremely small, and could be as little as 1m<sup>2</sup> per resident. Living spaces should consider that dwellings can be inhabited by up to two residents and provide sufficient space to be useable and attractive to residents.

### **Parking**

Council is opposed to any additional controls that would reduce minimum car parking rates below that required by Council until such time as public transport accessibility and services are improved. Liverpool's residents are more car-dependent than many other LGAs due to its location in relation to major job centres and relatively poor public transport provision. Council believes it is best placed to set appropriate car parking rates. If included in a final SEPP, any minimum parking rates set, regardless of the type of dwelling, should take into account the public transport accessibility of the development site rather than having blanket minimums.

### **Changes to boarding house development**

Council is supportive of changes to boarding house development, including requiring all boarding house developments to be provided as affordable rental housing and managed

by a community housing prover (CHP). This form of housing should be provided as affordable housing in perpetuity.

Council also strongly supports removing the requirement for boarding houses to be mandated in the R2 – Low Density Residential zone. Council requests further detail on how the Department intends to facilitate the removal of boarding houses from council LEPs in the R2 zone. Council is aware of a number of other councils that will move to remove boarding houses as a permissible use in the R2 zone, and believes individual planning proposals from multiple councils would be a time- and resource-consuming way to implement the change.

Council agrees that the floor space bonus should be a blanket 20% to reduce excessive scale and bulk of developments in areas with low base FSRs.

Council also agrees with the changes to Part 3 of the ARHSEPP requiring a Council to consider whether there will be or is likely to be any reduction in affordable housing as a result of a proposed development. The change will reduce the burden on Council and make it easier to determine whether an existing building contains low-rental dwellings.

### **Changes to LAHC self-assessment powers**

Council believes that LAHC's self-assessment powers should remain at 20 units. As LAHC does not require community consultation under its self-assessment provisions, for a significant and impactful development up to 60 units, which may now have a significant private component, Council believes it should be the assessment authority, and that Council's standard community consultation provisions should apply. The community expects to be able to have meaningful input into planning decisions and LAHC's self-assessment processes do not enforce meaningful community consultation.

It is requested that the move to update LAHC's design guidelines and standards 'to better reflect contemporary practice' is better explained. At present it is difficult to understand what the outcome of these changes would be.

### **Seniors Housing**

Council is supportive of the changes to Seniors SEPP provisions to clarify that development standards in an LEP prevail to the extent of any inconsistency with the SEPP.

If you require any further information, please contact Cameron Jewell, Programme Lead Liverpool Collaboration Area, on 02 8711 7862.

Yours sincerely



**David Smith**  
Acting Director City Economy and Growth

**LGNSW Draft Submission to NSW Department  
of Planning, Industry and Environment on  
*Proposed New Housing Diversity SEPP*  
*Explanation of Intended Effect***

September 2020

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## 1.0 Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

LGNSW welcomes the opportunity to make a submission to the Department of Planning, Industry and Environment (DPIE) on the Explanation of Intended Effect (EIE) for the proposed Housing Diversity State Environmental Planning Policy (SEPP).

This is a draft submission awaiting review by the LGNSW Board. Any revisions made by the Board will be forwarded to the DPIE.

The submission is informed by LGNSW's Policy Platform, Annual Conference Resolutions and our engagement with members on specific planning and housing issues.

## 2.0 Background

DPIE is exhibiting an EIE for a proposed new Housing Diversity SEPP that aims to facilitate the delivery of diverse housing that meets the needs of the State's growing population and support the development of a build-to-rent sector.

The proposed Housing Diversity SEPP would consolidate three current SEPPs:

- State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP);
- State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 (Seniors SEPP); and
- State Environmental Planning Policy 70 – Affordable Housing (Revised Schemes) (SEPP70).

The proposed Housing Diversity SEPP will also update some planning provisions in the SEPPs in response to community concerns about boarding houses and seniors housing development, introduce three new housing types and make changes to facilitate social housing. These are summarised below.

### **New definitions**

The new SEPP proposes to introduce "built to-rent housing", "student housing" and "co-living" development types into the Standard Instrument – Principal Local Environmental Plan (Standard Instrument LEP).

### **Amend boarding house provisions to:**

- remove the requirement for boarding houses to be mandated in the R2 Low Density Residential zone
- amend the floor space ratio (FSR) bonus for boarding houses to a standard 20%
- include a requirement for affordability of boarding house developments.

### **Amend ARH SEPP provisions to:**

- ensure councils can continue to mitigate the loss of existing affordable housing by requiring monetary contributions

- introduce an exempt and/or complying development pathway to change an existing dwelling to a group home
- allow councils to set the maximum size of secondary dwelling developments in rural zones.

#### **Amend the Seniors SEPP to:**

- update definitions of 'height', 'people with a disability' and 'AS 2890' in line with the Standard Instrument LEP
- update Schedule 1 which identifies the "environmentally sensitive land" where the Seniors SEPP provisions do not apply to align with current legislative and planning conditions
- amend the "location and access to facilities" provisions
- extend the validity of a Site Compatibility Certificate (SCC) from 2 years to 5 years, on the condition that a development application is lodged within 12 months of the SCC issue
- clarify how the SEPP applies to land being used for the purposes of a registered club
- clarify that development standards in a Local Environmental Plan (LEP) prevail to the extent of any inconsistency with the SEPP.

#### **Changes to facilitate delivery of social housing**

Changes and new provisions to facilitate the delivery of social housing by NSW Land and Housing Corporation (LAHC), including in partnership with the private sector and community housing providers, are also proposed.

### **3.0 Summary of LGNSW Position**

LGNSW welcomes the proposal to consolidate three housing-related SEPPs into a Housing Diversity SEPP and amend a number of existing provisions.

The ARHSEPP, Seniors SEPP and SEPP 70 have been introduced intermittently over decades in response to housing need and planning issues, often with no intrinsic review or monitoring mechanism to measure their effectiveness and impact. In councils' experience these broad-based state planning instruments have often worked at cross purposes and not always delivered the outcomes they have sought to achieve. As the provisions are not able to be varied for local circumstances they have often led to poor planning outcomes.

The boarding house provisions in the ARHSEPP have been a significant concern for councils for some years. Councils have advised that the provisions have resulted in developments that are out of scale with low density residential neighbourhoods and the cumulative impact of an increasing number of boarding houses is placing pressure on local infrastructure. Further, as the accommodation and rents are not regulated, boarding houses are not delivering housing that is affordable.

The following collective resolutions of councils made at the 2019 LGNSW Annual Conference reflect these concerns:

### **38 LGNSW Board – Review of state policies on housing**

That Local Government NSW calls on the NSW Government to:

1. Review all housing-related State Environmental Planning Policies (SEPPs) so they allow for locally based planning to occur in line with the new emphasis on local strategic planning in the Environmental Planning and Assessment Act 1979.
2. Urgently progress its comprehensive review of all state policies, giving priority to the following housing related SEPP's (so that local housing solutions aren't undermined):
  - a) State Environment Planning Policy (Affordable Rental Housing 2009)
  - b) State Environment Planning Policy (Exempt and Complying Development Codes) 2008
  - c) Draft State Environmental Planning Policy (Short-term Rental Accommodation) 2019
  - d) State Environment Planning Policy (Sydney Regional Growth Centres) 2006
  - e) State Environmental Planning Policy (Housing for Seniors People with a Disability) 2004

This issue was also raised by Liverpool City, Penrith City, Hunters Hill, Tamworth Regional, Central Coast and Strathfield Councils

### **10 Penrith City Council – Boarding houses**

That Local Government NSW writes to the Minister for Planning and Environment requesting that the boarding houses division of the State Environmental Planning Policy (Affordable Rental Housing) 2009 (the SEPP) be amended. It is proposed that the amendments include:

- Requirement for a social impact study to be submitted with boarding house applications.
- Enabling councils to refuse development consent in certain circumstances, for example, when boarding houses are proposed in inappropriate locations without adequate access to public transport, services and jobs.
- Removal of the words “not more than” from Division 3, Clause 29 Section 2.e.iii “in the case of any development - not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site.”
- A minimum percentage of affordable rental housing in boarding houses.
- Objectives and actions for monitoring the effectiveness of boarding houses in contributing to the supply of affordable rental housing.

This issue was also raised by Cumberland, Willoughby City, and Wingecarribee Shire Councils.

LGNSW's advocacy on boarding house developments led to DPIE establishing the Council Boarding House Working Group in 2019. The Working Group, comprising DPIE, LGNSW and council representatives reviewed the boarding house provisions in the ARHSEPP and made 14 recommendations<sup>1</sup> to the Minister for Planning and Public Spaces to address their concerns.

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<sup>1</sup> [Report to the Minister from the Council Boarding House Working Group August 2019](#)

## **Overall support for proposed Housing Diversity SEPP**

LGNSW welcomes the Government's commitment to improving and streamlining the operation of housing related SEPPs. Consolidation of the ARHSEPP, Seniors Living and SEPP 70 SEPPs is supported by LGNSW because it will help clarify and streamline application of the SEPPs for councils and other stakeholders.

LGNSW also strongly supports most of the amendments proposed. These address many concerns councils have raised for some years. The proposed amendments to boarding house provisions, informed by the Boarding House Working Group's recommendations, demonstrate the importance of state and local government working together to develop effective and workable planning policies.

LGNSW's detailed comments and recommendations on all the proposed amendments are set out in the table at **Appendix 1**.

## **Proposals that are not supported or require further consideration**

While LGNSW broadly supports the consolidation of the SEPPs and the amendments outlined in the EIE, there are some exceptions to this support. These are summarised below.

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

The EIE proposes changes to the planning system to support new investment in build-to-rent housing. LGNSW is concerned that there has been no engagement or discussion with councils about this form of housing and its role in supporting housing needs.

The rationale for specific provisions for this form of accommodation is not clear and there does not appear to be any consideration given to the number and location of build-to-rent developments and the significant impact they will have beyond providing additional dwellings. Councils will be concerned that the proposed changes could lead to a rapid increase in housing stock without proper consideration and delivery of the necessary infrastructure to match the additional demand.

Councils are opposed to build-to-rent housing being permitted in B3 commercial zones. This is not consistent with the intent of the zone and will undermine the role of strategic centres and undermine broader Regional and District Plan priorities for economic development and job growth. LGNSW strongly opposes this proposal. Further, the proposal that they be assessed as State significant development (SSD) (where over specified capital investment value) gives councils no opportunity to consider these developments, thus removing local decision-making.

### ***Regional areas***

A concern raised by councils in regional areas is that the state-wide policies contained in SEPP provisions are often based on the housing markets and development pressures attributed to metropolitan areas. LGNSW requests that further consideration be given to how provisions relate to and support housing diversity in regional areas. There needs to be some flexibility to tailor the standards to suit the different conditions in regional locations, for example where accessibility to public transport and services can be vastly different from metropolitan settings.

### ***Streamlining SEPP 70***

LGNSW notes that there are no changes proposed to SEPP 70. While councils support the changes providing for all councils to be able to develop an affordable housing scheme, the process set out in DPIE's *Guideline for Developing an Affordable Housing Contribution Scheme* is lengthy and duplicative. LGNSW considers there is an opportunity to streamline the process for councils to develop schemes in support of affordable housing targets set out in District and Regional Plans.

### ***Review and monitoring program***

The EIE is silent on how the proposed Housing Diversity SEPP will be monitored to measure its effectiveness in delivering diverse and affordable housing. A monitoring program, developed from the outset with input from councils, is needed to ensure the proposed changes deliver the outcomes sought.

The Council Boarding House Working Group identified some possible considerations that could be used to measure housing delivered under these policies. The Working Group also noted that e-Planning initiatives, such as DA Online, may be able to be used in the future to measure the contribution of different numbers and types of affordable dwellings.<sup>2</sup>

Measurement and monitoring are critical to inform the 2-yearly review of the SEPP. It will also enable assessment of whether the SEPP (and other strategic plans and policies) strikes the right balance between providing a supporting framework and allowing for locally based plans as local councils complete their Local Housing Strategies and Local Environmental Plans.

### ***Further consultation and exhibition of a draft Housing Diversity SEPP***

Given these concerns and that further work is required (such as development of design guidelines for new housing types), LGNSW considers it is critical that councils can review and provide comment on a draft of the Housing Diversity SEPP before it is made.

## **4.0 Recommendations**

The following recommendations are based on the issues outlined in the above discussion and some of the key matters contained in Appendix 1. Please refer to Appendix 1 for more detailed comments and recommendations.

### **Recommendation 1**

LGNSW opposes the use of the B3 – Commercial Core zone for BTR housing and recommends that the SEPP be drafted to prohibit BTR housing in this zone.

### **Recommendation 2**

LGNSW recommends that the SEPP be drafted to allow councils to assess and decide all development applications for BTR housing regardless of the capital investment value of the development.

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<sup>2</sup> [Report to the Minister from the Council Boarding House Working Group, August 2019, p 17 & 24](#)

### **Recommendation 3**

LGNSW recommends that a lower number of self-contained dwellings be included in the definition for BTR housing for regional areas to also encourage smaller-scale BTR housing in these areas.

### **Recommendation 4**

LGNSW strongly supports the proposal to allow councils to determine the appropriate height and FSR controls through their LEPs for BTR housing, student housing and co-living housing developments, and recommends that these provisions be carried through into the SEPP to ensure that these forms of housing are consistent with the character of the local area.

### **Recommendation 5**

LGNSW recommends that consideration be given to how provisions in the new SEPP will relate to and support housing diversity in regional areas – flexibility should be built in to tailor the standards to suit the different conditions in regional locations.

### **Recommendation 6**

In relation to car parking provisions, LGNSW recommends that:

- Flexibility in car parking standards in the proposed SEPP is necessary to accommodate the unique needs of regional locations, which do not always have the same levels of public transport access as in metropolitan locations.
- The car parking rate for BRT housing, student housing and co-living housing developments be determined by councils rather than imposing potentially inappropriate blanket car parking rates for these forms of housing across the State.

### **Recommendation 7**

LGNSW recommends that design guidelines for BRT housing, student housing and co-living housing be prepared, to assist in creating high quality developments and liveable accommodation and that they have regard to the varying contexts in both metropolitan and regional locations.

### **Recommendation 8**

LGNSW strongly supports a requirement that boarding houses are rented at an affordable rate and recommends the inclusion of a provision that boarding house rooms permitted under the Housing Diversity SEPP remain affordable in perpetuity i.e. do not convert back to market rates.

### **Recommendation 9**

LGNSW recommends the inclusion of a provision in the new SEPP to clarify that boarding house development in the R2 Low Density Residential Zone is not mandated.

### **Recommendation 10**

In relation to group homes, LGNSW recommends that:

- group home conversions should be complying development at the very least, to ensure that they meet minimum requirements; and
- prior to finalising the Housing Diversity SEPP, DPIE consult with councils when developing complying provisions for conversion of existing dwellings to group homes.

### **Recommendation 11**

LGNSW recommends in principle support of expanded LAHC self-assessment, contingent on LAHC engagement with the relevant councils to support alignment between local strategic planning statements and local housing strategies with LAHC programs.

### **Recommendation 12**

LGNSW considers that the private components within LAHC developments should in general be required to meet the council's local provisions for example, car parking standards. There is no justification in the EIE for applying a lower rate of car parking for private dwellings in LAHC developments compared with other private residential developments.

### **Recommendation 13**

In updating the LAHC Design guidelines, LGNSW recommends that LAHC introduce construction methods and technologies that help reduce energy (heating and cooling) costs for tenants, recognising that some good examples exist in the far north of the state that show how significant savings could be achieved.

### **Recommendation 14**

LGNSW recommends that DPIE considers convening a group of councils, in a similar model to the Council Boarding House Working Group, to look at ways to streamline the process for councils to develop affordable housing schemes under SEPP 70.

### **Recommendation 15**

LGNSW recommends that DPIE establishes a monitoring program, with input from councils, which would measure the delivery of diverse and affordable housing under the new SEPP from its commencement date.

### **Recommendation 16**

LGNSW recommends that councils have the opportunity to review and provide comment on a draft of the Housing Diversity SEPP before it is made.

## 5.0 Conclusion

LGNSW commends DPIE for responding to council concerns in developing the Housing Diversity SEPP.

The proposed consolidation and amendments will address many of the issues that councils have raised about the impact of the ARHSEPP and Seniors Living SEPP in their communities. In contrast, the proposal to introduce new build-to-rent housing provisions, developed without input from councils is problematic, and local government strongly opposes some elements of these provisions. Given the potential impacts that councils have identified, further engagement with local government is critical before progressing with provision for this form of housing.

As councils have responsibility under the *Environmental Planning & Assessment Act 1979* for local strategic planning, it is important that the Housing Diversity SEPP (and other SEPPs) do not undermine Local Housing Strategies and Local Environmental Plans. Implementation of the Housing Diversity SEPP must therefore include a commitment to an effective monitoring program and review in conjunction with local councils.

Finally, the proposed Housing Diversity SEPP will include the key planning system provisions for delivering affordable housing in NSW. LGNSW suggests that incorporating affordable housing into the title of the SEPP would better reflect its aims and purpose.

LGNSW would welcome the opportunity to assist with further consideration of the proposed provisions and development of relevant guidelines for the Housing Diversity SEPP. To discuss this submission further, please contact Jane Partridge, Strategy Manager, Planning at [Jane.Partridge@lgnsw.org.au](mailto:Jane.Partridge@lgnsw.org.au)

## Appendix 1 - Comments & LGNSW position on proposed Housing Diversity SEPP provisions

### 1. Introducing new housing types

Proposed Provisions		LGNSW Comment		
<p><b>New Definitions</b> The Department is proposing to introduce three new definitions in the Standard Instrument LEP. The following table sets out key requirements for the new housing types, as well as the requirements for boarding houses.</p> <p><b>Table 1 Comparison of development standards for new housing types</b></p>		<p><b>Proposed New Housing Types</b> LGNSW welcomes the proposed initiative to introduce definitions and planning provisions for three new types of housing as a mechanism to increase housing diversity, including both housing type and tenure.</p>		
	Build to rent		Co-living	Student housing
<b>Tenant</b>	No restriction for market rent dwellings	No restriction	Students	Eligibility based on income
<b>Affordable</b>	Local provisions apply 3 years or more	No minimum requirement	No minimum requirement	Yes – 100%
<b>Tenancy</b>		Minimum 3 months	No minimum	Minimum 3 months
<b>Communal living area</b>	New design guidance will be developed	Required	Required	Required
<b>Room/Apartment size</b>	New design guidance will be developed	30 - 35 m <sup>2</sup>	10 m <sup>2</sup>	12 - 25 m <sup>2</sup>
<b>Minimum car parking provision</b>	0.5 spaces per dwelling	0.5 spaces per room	No minimum requirement	0.5 spaces per room, or

Proposed Provisions	LGNSW Comment
<p>0.2 spaces for social housing providers</p> <p>It is proposed that the definition for 'Build-to-rent housing' would be contained within the Standard Instrument – Principal Local Environmental Plan and would refer to a building or place that:</p> <ul style="list-style-type: none"> <li>contains at least 50 self-contained dwellings that are offered for long term private rent;</li> <li>is held within a single ownership;</li> <li>is operated by a single management entity; and</li> <li>includes on-site management.</li> </ul> <p><b>Proposed planning provisions</b></p> <p><i>Locational requirements</i></p> <p>It is proposed to make BTR housing a compulsory permitted use in the R4 - High Density Residential, B3 – Commercial Core, B4 - Mixed Use and B8 – Metropolitan Centre zones. It will also be permitted in R3 – Medium Density Residential where residential flat buildings are permitted. Councils could make BTR housing permissible in other land use zones through amendments to their LEPs.</p>	<p><b>Proposed Definition</b></p> <p>See comments regarding the proposed definition below in the section “BTR housing in regional areas”.</p>
<p><b>Proposed planning provisions</b></p> <p><i>Locational requirements</i></p> <p>It is proposed to make BTR housing a compulsory permitted use in the R4 - High Density Residential, B3 – Commercial Core, B4 - Mixed Use and B8 – Metropolitan Centre zones. It will also be permitted in R3 – Medium Density Residential where residential flat buildings are permitted. Councils could make BTR housing permissible in other land use zones through amendments to their LEPs.</p>	<p><b>Location</b></p> <p>The use of B3 – Commercial Core zoned land for BTR housing as proposed in the EIE is inconsistent with the objectives of this zone. Under the Standard Instrument – Principal Local Environmental Plan, the objectives of the B3 - Commercial Core zone are as follows:</p> <ul style="list-style-type: none"> <li>To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.</li> <li>To encourage appropriate employment opportunities in accessible locations.</li> <li>To maximise public transport patronage and encourage walking and cycling.</li> </ul> <p>Generally, councils do not allow any type of residential accommodation in the B3 commercial core; the aim is to reduce land use conflicts and limit the loss of employment-generating floor space in commercial cores. The proposal to include BTR housing as a permissible use in the B3 zone is likely to have adverse economic and land use impacts and will compromise the objectives sought by councils for their business and commercial centres. The protection of the commercial core is important for the long-term economic sustainability and amenity of these areas. Residential development within strategic commercial centres can have negative impacts on the commercial area and erode the commercial</p>

**Proposed Provisions**

**LGNSW Comment**

<p>character and the desirability of centres for businesses. This proposal is also inconsistent with the strategic outcomes contained in Regional and District Plans of creating strategic centres, and may undermine job targets and the growth of employment centres. The following extract from Eastern City District Plan relates to the planning priority of growing investments, business opportunities and jobs in strategic centres and highlights the importance of retaining strategic centres for commercial development:</p> <p><i>Employment growth is the principal underlying economic goal for metropolitan and strategic centres. Therefore the designation of a commercial core within a strategic centre, for economic and employment uses, may be necessary to manage the impact of residential developments in crowding out commercial activity.</i></p> <p><i>A balance must be struck in providing adequate mixed-use or residential zoned land around the commercial core zone to ensure new residential developments can benefit from access and services in centres.</i><sup>3</sup></p> <p>Many commercial centres are not well served by schools, open space and other services required by residents. Allowing residential development within commercial centres creates demand for new infrastructure to support the new residents and is likely to present significant challenges in delivering an appropriate and timely level of infrastructure.</p>	<ul style="list-style-type: none"> <li>• LGNSW opposes the use of the B3 – Commercial Core zone for BTR housing and recommends that the SEPP be drafted to prohibit BTR housing in this zone.</li> </ul> <p><b>State Significant Development</b></p> <p>In line with LGNSW’s policy platform, LGNSW does not support the proposal for BTR housing to be assessed as SSD and strongly advocates that councils should be empowered to make decisions on local development applications.</p>
<p><i>State significant development</i></p> <p>It is proposed that BTR housing would be assessed as State significant development (SSD) where the development has a capital investment value of \$100 million or more. It is proposed that developments within the City of Sydney local government area would be excluded from the SSD designation and would continue to be assessed by the City.</p>	

<sup>3</sup> Eastern City District Plan, Greater Sydney Commission, March 2018, p.77

<b>Proposed Provisions</b>	<b>LGNWSW Comment</b>
<p>It is proposed that BTR housing in regional areas would be assessed as SSD where the development has a capital investment value of \$50 million or more.</p>	<ul style="list-style-type: none"> <li>LGNWSW recommends that the SEPP be drafted to allow councils to assess and decide all development applications for BTR housing regardless of the capital investment value of the development.</li> </ul>
<p><i>Design Guidance</i></p> <p>Generally, consent authorities, when assessing development applications for BTR housing projects, should be guided by the design quality principles in State Environmental Planning Policy No 65 - (Design Quality of Residential Apartment Development) (SEPP 65). The Department will develop specific advice about those parts of SEPP 65 that are particular to the build-to-rent typology.</p>	<p><b>Design Guidance</b></p> <p>LGNWSW supports the proposal to clearly outline design guidance for BTR housing to assist in creating high quality developments and liveable accommodation. Regardless of tenure, as a form of apartment designed for long-term occupancy, BTR residents should have the same access to well-designed apartments with good amenity as those in other forms of residential apartment. This is particularly important given the potential for strata-subdivision of BTR some years down the track.</p> <p>The design guidelines for BTR housing should have regard to development in both metropolitan and regional locations.</p> <ul style="list-style-type: none"> <li>Design guidance for BTR housing should be subject to the same design considerations as under SEPP65 and the Apartment Design Guide (ADG), and they have regard to development in both metropolitan and regional locations.</li> </ul>
<p><i>Development standards</i></p> <p>It is proposed to allow councils to determine the relevant height and Floor Space Ratio (FSR) controls for BTR housing through their LEPs.</p> <p>It is proposed to apply a minimum 0.5 car parking spaces per dwelling for BTR housing. Where a lower maximum parking rate applies under a council's development control plan, this rate could be applied to BTR housing.</p> <p>BTR housing would be subject to minimum lease terms and would not be available for short-term rental accommodation. BTR housing is a different investment product to traditional residential flat buildings. Because it is held in single ownership, it will be much easier for the asset to be recycled at a later date. With this in mind, it is proposed that it would not be possible to strata subdivide a BTR housing development for the first 15 years and to prohibit subdivision in a B3 – Commercial Core zone, in perpetuity.</p> <p>The Government is seeking feedback on the appropriate mechanisms that could be incorporated into the SEPP to manage the transition from BTR housing to a strata-subdivided apartment development. For example, long-term residents could be</p>	<p><b>Height and Floor Space Ratio</b></p> <p>As proposed BTR housing developments are likely to impact the character of an area, LGNSW strongly supports the proposal to allow councils to determine the appropriate height and FSR controls through their LEPs.</p> <p>LGNWSW questions what regulatory measures will be used in the SEPP to ensure that BTR housing will not be available for short-term rental accommodation, and how these will be enforced.</p> <ul style="list-style-type: none"> <li>LGNWSW strongly supports the proposal for provisions to be included in the SEPP that allow councils to determine the appropriate height and FSR controls for BTR housing developments through their LEPs. LGNSW recommends the inclusion of these provisions in the new SEPP to ensure that this new form of housing is consistent with the character of the local area.</li> </ul>

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offered a right of first refusal to acquire a unit at a fair market price or a minimum percentage of dwellings for sale could be required to be retained as affordable housing.

## LGNSW Comment

- Further clarification is required on provisions to prevent short term rental accommodation in BTR developments and how this will be enforced.

### Car Parking

The imposition of a blanket car parking rate of 0.5 per dwelling in BTR housing across the State is considered inappropriate. Car parking standards should be flexible and determined according to the proximity of the site to services, employment and public transport.

In some locations, particularly regional areas, access to required services, employment and public transport is not within suitable walking distance, then higher car parking rates may be more appropriate. If there is a shortfall in on-site car parking, the development is likely to have wider impacts on the surrounding neighbourhood.

- LGNSW recommends that the car parking rate be determined by councils rather than imposing a potentially inappropriate blanket car parking rate of 0.5 spaces per dwelling for BTR housing developments across the State.

### Strata Title Subdivision

LGNSW is concerned about the proposal to allow strata subdivision of BTR housing after 15 years and no rationale or justification has been provided in the EIE for this proposal. If subdivision of the units for individual sale is to be allowed after 15 years, LGNSW considers that the initial development should comply with the relevant local development provisions for residential apartments (e.g. carparking rates) rather than BTR housing.

As BTR housing is not typically considered to be an affordable housing product, LGNSW seeks clarification on the proposed option of retaining a proportion of dwellings as affordable housing if subdivision by strata title occurs and dwellings are sold.

Proposed Provisions	LGNSW Comment
<p><i>BTR housing in regional areas</i></p> <p>The Government is seeking feedback on appropriate provisions for BTR housing in regional areas. It is expected that these developments would generally be of a smaller scale and could take the form of multi-dwelling housing or terraces rather than apartments.</p>	<ul style="list-style-type: none"> <li>• More information and evidence are required to justify the proposal to strata subdivide BTR after 15 years. In addition, if strata subdivision is to be permitted, BTR developments should comply with the relevant local development provisions for residential apartments and be subject to SEPP 65 design guidelines for apartments.</li> <li>• As discussed above, LGNSW opposes BTR in the B3 Commercial Core zones; no BTR - subdivided or otherwise - should be permitted in this zone.</li> </ul> <p><b>BTR housing in regional areas</b></p> <p>The threshold of 50 dwellings included in the proposed definition for BTR housing may be too high and inappropriate for regional areas. It is recommended that consideration be given to including a lower threshold to encourage smaller-scale BTR housing developments in regional areas. LGNSW suggests that DPIE convene a group of regional councils to discuss the opportunities for smaller scale BTR.</p> <ul style="list-style-type: none"> <li>• LGNSW recommends that a lower number of self-contained dwellings be included in the definition for BTR housing for regional areas to also encourage smaller-scale BTR housing in these areas.</li> </ul>
<p><b>Purpose-built student housing</b></p> <p><i>Proposed definition</i></p> <p>It is proposed that the definition for 'student housing' would be contained within the Standard Instrument LEP and would refer to a building that:</p> <ul style="list-style-type: none"> <li>• provides accommodation and communal facilities principally for students enrolled to study at an education establishment during teaching periods; and</li> <li>• may incorporate some fully self-contained dwellings.</li> </ul> <p>It is noted that under the State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (Education SEPP), development for the purpose of residential accommodation for students associated with a school or university may be carried out within the boundaries of an existing school or university respectively.</p> <p>To improve consistency across environmental planning instruments, it is proposed that both the new SEPP and the Education SEPP would rely on the proposed new Standard Instrument LEP definition of 'student housing' in the future.</p>	<p><b>Proposed Student Housing Definition</b></p> <p>Due to the proposed changes which will require boarding houses to be affordable housing, LGNSW welcomes this new definition for student housing to facilitate the development of this district type of accommodation in appropriate locations.</p> <p>The definition is unclear in regard to the following matters:</p> <ul style="list-style-type: none"> <li>• Would this definition apply to all educational establishments? e.g. TAFE, universities, schools.</li> <li>• What does "some" fully self-contained dwellings mean? What if a proposal includes mostly self-contained dwellings?</li> </ul> <ul style="list-style-type: none"> <li>• LGNSW recommends that the definition be amended to clarify whether the definition applies to all educational establishments and to</li> </ul>

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## LGNSW Comment

clarify the proportion of fully self-contained dwellings considered appropriate for student housing developments.

### *Proposed planning provisions*

It is not proposed to make student housing a compulsory permitted use in any of the land use zones

Height of buildings  
In accordance with the relevant LEP  
Maintaining LEP standard will ensure that new development is compatible with local character and consistent with community expectations.

Floor space ratio  
In accordance with the relevant LEP  
Maintaining LEP standard will ensure that new development is compatible with local character and consistent with community expectations.

Car parking  
No minimum spaces required  
Developers can choose to provide on-site car parking but there will be no minimum number of spaces required and a consent authority will not be able to refuse an application on the basis of car parking. It is expected that councils will permit student housing in areas that are in close proximity to educational establishments and the demand for on-site parking will be minimal.

Bicycle parking  
1 space minimum per 3 bedrooms  
The minimum bicycle parking rate will be a non-discretionary, 'must not refuse' provision.

Motorcycle parking  
1 space minimum per 5 bedrooms  
The minimum motorcycle parking rate will be a non-discretionary, 'must not refuse' provision.

Room size  
Minimum 10 m<sup>2</sup>  
The minimum room size is based on similar standards in other jurisdictions and reflects current industry practice, which is to provide a range of room options in a single development, including rooms that have an area of less than 10 m<sup>2</sup>.  
The proposed 10 m<sup>2</sup> standard will be a discretionary standard. This will allow developers that wish to, to demonstrate that a

### **Location**

LGNSW supports the proposal that student housing will not be a compulsory permitted use in any of the land use zones and to allow councils to determine appropriate locations for student housing.

- LGNSW recommends that councils be empowered to determine appropriate locations for student housing and supports the EIE's proposal to not include student housing as a compulsory permitted use in any of the land use zones.

### **Height and Floor Space Ratio**

LGNSW strongly supports the proposal to allow councils to determine the appropriate height and FSR controls through their LEPs to ensure that student housing developments are consistent with the character of the local area.

- LGNSW strongly supports the proposal to draft the SEPP to allow councils to determine the appropriate height and FSR controls for student housing developments through their LEPs. LGNSW recommends that provisions are included in the new SEPP to ensure that this new form of housing is consistent with the character of the local area.

### **Car Parking**

The proposal to not require any car parking spaces for student housing developments across the State is considered inappropriate and a concern for councils.

The car parking rate should be flexible and determined based on the proximity of the site to services and public transport. In some locations, and particularly regional areas, access to required services and public transport is not within suitable walking distance, then car parking spaces are likely to be required by students residing in student housing developments and by visitors. If there is a shortfall in on-site car parking,

Proposed Provisions		LGNSW Comment
<p>smaller area has adequate internal amenity and that shared facilities are available to compensate for the smaller room size.</p> <p>Communal area (indoor)      15 m<sup>2</sup> per 12 students</p> <p>Communal area (outdoor)      Consider access to open space</p> <p>High quality indoor communal space must be provided to meet the study, social, and religious needs of students. Depending on the size of the development, multiple rooms could be appropriate. In locations that are within 400 m of the relevant university, it may be possible to rely on the open space that is provided on campus. In other locations the new SEPP will recommend 2.5 m<sup>2</sup> of outdoor space per student.</p>	<p>the development is likely to have wider impacts on the surrounding neighbourhood.</p> <ul style="list-style-type: none"> <li>LGNSW recommends that the car parking rate for student housing developments be determined by councils rather than the proposal in the EIE to not require any car parking spaces for developments across the State.</li> </ul> <p><b>Room Size</b> LGNSW is concerned that the minimum room size of 10 m<sup>2</sup> is proposed to be discretionary and may be relaxed. In order to create accommodation that is liveable and healthy, particularly given the recent Covid-19 requirements for and experience with self-isolation, it is recommended that 10 m<sup>2</sup> be the absolute minimum size of rooms without scope for variation.</p> <ul style="list-style-type: none"> <li>LGNSW recommends that the absolute minimum size of rooms within student accommodation be 10 m<sup>2</sup> and that this size not be subject to any relaxations.</li> </ul>	
<p><i>Design Guidelines</i> Design guidelines for student housing could also be developed to accompany the new SEPP. The design guidelines would address issues such as built form, internal and external amenity, storage, solar access, natural ventilation, visual and acoustic privacy.</p>	<p><b>Design Guidelines</b> LGNSW supports the development of design guidelines for student housing to assist in creating high quality developments and liveable accommodation. The design guidelines should have regard to development in both metropolitan and regional locations.</p> <ul style="list-style-type: none"> <li>LGNSW recommends that design guidelines for student housing be prepared to assist in creating high quality developments and liveable accommodation and that they have regard to development in both metropolitan and regional locations.</li> </ul>	
<p><b>Co-living</b> <i>Proposed definition</i> It is proposed to introduce a new definition for co-living in the Standard Instrument LEP would refer to a building held in single ownership that:</p> <ul style="list-style-type: none"> <li>provides tenants with a principal place of residence for 3 months or more;</li> <li>includes on-site management;</li> </ul>	<p><b>Proposed Co-living Definition</b> Due to the proposed changes which will require boarding houses to be affordable housing, LGNSW welcomes this new definition for co-living to</p>	

Proposed Provisions	LGNSW Comment
<ul style="list-style-type: none"> <li>includes a communal living room and may include other shared facilities, such as a communal bathroom, kitchen or laundry; and</li> <li>has at least 10 private rooms, some or all of which may have private kitchen and/or bathroom facilities, with each private room accommodating not more than two adults.</li> </ul>	<p>facilitate the development of this type of accommodation in appropriate locations.</p> <p>LGNSW seeks clarification on the following aspects of the definition:</p> <ul style="list-style-type: none"> <li>Why does the development need to include at least 10 private rooms?</li> <li>What would the use be defined as if the proposal includes less than 10 private rooms?</li> </ul>
<p><i>Proposed planning provisions</i></p> <p>It is proposed to make co-living apartments a mandatory permitted use wherever residential flat buildings are currently permitted. This would generally include the R4 – High Density Residential, and B4 – Mixed Use zones, and would also include R3 – Medium Density Residential zones in some LGAs.</p> <p>Height of buildings with the relevant LEP In accordance with the relevant LEP Maintaining LEP standard will ensure that new development is compatible with local character and consistent with community expectations.</p> <p>Floor space ratio with the relevant LEP Maintaining LEP standard will ensure that new development is compatible with local character and consistent with community expectations.</p> <p>Car parking 0.5 spaces per room It is proposed to include car parking as a non-discretionary ‘must not refuse’ provision. This would allow councils to approve a co-living development with less parking when appropriate. In addition, should councils choose to prepare local plans with reduced car parking for co-living developments, it is intended these would prevail. It is noted that the demand for car parking varies significantly between different areas and it may be appropriate to have different car parking rates depending on the locational context, such as proximity to a train station. Stakeholder feedback is sought on appropriate car parking rates for this land use.</p>	<p><b>Height and Floor Space Ratio</b></p> <p>LGNSW strongly supports the proposal to allow councils to determine the appropriate height and FSR controls through their LEPs to ensure that co-living housing developments are consistent with the character of the local area.</p> <ul style="list-style-type: none"> <li>LGNSW strongly supports the proposal to draft the SEPP to allow councils to determine the appropriate height and FSR controls for co-living housing developments through their LEPs. LGNSW recommends the inclusion of these provisions in the new SEPP to ensure that this new form of housing is consistent with the character of the local area.</li> </ul> <p><b>Car Parking</b></p> <p>The imposition of a blanket car parking rate across the State is considered inappropriate. The car parking rate should be flexible and determined according to the proximity of the site to services, employment and public transport. In some locations, and particularly regional areas, access to required services, employment and public transport is not within suitable walking distance, then higher car parking rates of 1 parking space per room may be more appropriate. If there is a shortfall in on-site car parking, the development is likely to have wider impacts on the surrounding neighbourhood. It is suggested that the car parking rate be determined by councils rather than imposing a potentially inappropriate blanket rate.</p> <ul style="list-style-type: none"> <li>LGNSW recommends that the car parking rate be determined by councils rather than imposing a potentially inappropriate blanket car</li> </ul>

Proposed Provisions		LGNSW Comment
<p>Room size</p> <p>Strata subdivision</p> <p>Communal living space</p> <p>Private open space</p> <p>Communal open space</p>	<p>30-35 m<sup>2</sup></p> <p>Not permitted</p> <p>Minimum 20 m<sup>2</sup>, + 2 m<sup>2</sup> per room above 10 rooms</p> <p>4 m<sup>2</sup> per room</p> <p>25% of site area</p>	<p>It is proposed that co-living development would contain rooms would sit between boarding rooms and studio apartments in terms of size.</p> <p>Co-living developments would be held in single ownership like a new generation boarding house.</p> <p>This would provide for adequate internal communal spaces based on the number of rooms in a development.</p> <p>This is the same as the ADG requirement for studio apartments.</p> <p>It is proposed to provide for a reduction in communal open space where all dwellings have private open space that exceeds the minimum requirements.</p>
<p>Building envelope controls for residential flat buildings under the relevant DCP could apply</p> <p><i>Design Guidelines</i></p> <p>Design guidelines for co-living may be developed to accompany the new SEPP. The design guidelines could address issues such as built form, internal and external amenity, storage, solar access, natural ventilation, visual and acoustic privacy.</p>		<p><b>parking rate of 0.5 spaces per room for co-living housing developments across the State.</b></p> <p><b>Strata Title Subdivision</b></p> <p>LGNSW seeks clarification and the rationale for the proposal to not allow strata title subdivision for co-living housing developments whilst allowing BTR housing to be subdivided after 15 years.</p>
<p><b>Design Guidelines</b></p> <p>LGNSW supports the development of design guidelines for co-living housing to assist in creating high quality developments and liveable accommodation. The design guidelines for co-living housing should have regard to development in both metropolitan and regional locations.</p>		<p><b>Design Guidelines</b></p> <p>LGNSW supports the development of design guidelines for co-living housing to assist in creating high quality developments and liveable accommodation. The design guidelines for co-living housing should have regard to development in both metropolitan and regional locations.</p>
<p><b>Design Guidelines</b></p> <p>LGNSW recommends that design guidelines for co-living housing be prepared to assist in creating high quality developments and liveable accommodation and that they have regard to development in both metropolitan and regional locations.</p>		<p><b>Design Guidelines</b></p> <p>LGNSW recommends that design guidelines for co-living housing be prepared to assist in creating high quality developments and liveable accommodation and that they have regard to development in both metropolitan and regional locations.</p>

## 2. Updating existing provisions

Proposed provisions	LGNSW Comment
<p><b>Boarding House</b></p> <p>definition of 'boarding house' should be amended to include a requirement that boarding house rooms are affordable.</p> <p><b>Existing definition</b>  <b>boarding house</b> means a building that—            (a) is wholly or partly let in lodgings, and            (b) provides lodgers with a principal place of residence for 3 months or more, and            (c) may have 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 more lodgers,</p> <p>but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.  <b>Note. Boarding houses</b> are a type of <b>residential accommodation</b>—see the definition of that term in this Dictionary.</p>	<p>LGNSW supports a requirement that boarding house rooms are affordable. This addresses council concerns that planning incentives provided under the ARHSEPP for new generation boarding houses are not delivering housing that is affordable in accordance with the ARHSEPP aims which include "...<i>facilitate the effective delivery of new affordable rental housing.</i>...", (Clause 3(b)).</p> <ul style="list-style-type: none"> <li>LGNSW strongly supports a requirement that boarding house rooms are affordable.</li> </ul> <p>LGNSW notes that the proposed definition includes the term "affordable rental building" and a requirement that the boarding house is managed by a registered not-for-profit community housing provider.</p> <p>The EIE does not include a definition of "affordable rental building" or discuss how 'affordable' will be defined for the purposes of boarding houses. Further while management by CHPs was recommended by the Boarding House Working Group, the rationale for this is also not discussed in the EIE.</p> <ul style="list-style-type: none"> <li>LGNSW requests that DPIE provide further information on how the boarding house provisions will work when drafting the Housing Diversity SEPP and provide councils with an opportunity to review and comment on them.</li> </ul>

Proposed provisions	LGNSW Comment
<p>Feedback is sought on whether the it would be more appropriate to require rooms to be rented at affordable rates for a minimum of 10 years.</p>	<p>The rationale for limiting the time that rooms are rented at an affordable rate is not discussed in the EIE.</p> <p>Given the significant shortage of affordable housing in all areas, LGNSW considers that boarding house rooms should be affordable in perpetuity. Boarding houses should remain an affordable housing form and not revert to market rates without, at the very least, a separate assessment process which evaluates the impact of a potential loss of affordable housing in the locality.</p> <ul style="list-style-type: none"> <li>LGNSW recommends the inclusion of a provision that boarding house rooms permitted under the Housing Diversity SEPP should be rented at affordable rates in perpetuity i.e. do not convert back to market rates.</li> </ul>
<p>Boarding house development will not be mandated in the R2 Low Density Residential Zone</p>	<p>LGNSW supports this change. Many new generation boarding houses built in the R2 Low Density Residential Zone are out of scale with surrounding development.</p> <ul style="list-style-type: none"> <li>LGNSW recommends the inclusion of a provision in the new SEPP to clarify that boarding house development in the R2 Low Density Residential Zone is not mandated.</li> </ul>
<p>It is proposed that provisions will be included in the new SEPP to ensure LAHC will be able to develop boarding houses on government-owned land in the R2 zone, regardless of whether an LEP allows or prohibits boarding houses in that zone. When boarding houses are permitted in the R2 zone under an environmental planning instrument, the 12-room limit will continue to apply.</p>	<p>LGNSW understands that enabling LAHC to develop boarding houses contributes to the supply of social and affordable housing.</p> <p>It is not clear whether the 12-room limit will apply to LAHC developments on government-owned land in the R2 zone where boarding houses are otherwise prohibited under the LEP.</p> <ul style="list-style-type: none"> <li>LGNSW recommends that there is provision for adequate consultation with the relevant council when LAHC develops boarding houses on government-owned land.</li> </ul>
<p><i>Proposed 20% FSR bonus for boarding house development</i></p> <p>Currently, clause 29 of the ARHSEPP includes a floor space ratio (FSR) bonus on land within a zone in which residential flat buildings are permitted of:</p> <ul style="list-style-type: none"> <li>0.5:1 if the existing maximum floor space ratio is 2.5:1 or less, or</li> </ul>	<p>LGNSW supports the adoption of a flat FSR bonus to help remove inconsistencies with the current arrangement for FSR bonuses under the ARHSEPP. This is higher than the 10% bonus recommended by the</p>

Proposed provisions	LGNSW Comment
<ul style="list-style-type: none"> <li>20% of the existing maximum floor space ratio (FSR), if the existing maximum floor space ratio is greater than 2.5:1.</li> </ul> <p>It is proposed to introduce a flat 20% FSR bonus above existing maximum FSR, regardless of whether the existing maximum FSR is above or below 2.5:1.</p> <p>The proposed amendment will affect land with an existing maximum FSR of 2.5:1 or less, as it is proposed to reduce the FSR bonus from 0.5:1 to a flat 20% for such land. It should be noted that the bonus only applies in zones where residential flat buildings are permissible.</p>	<p>Council Working Group<sup>4</sup>. The impact of the 20% rate should be reviewed over time to determine whether it is working effectively and does not have unintended amenity impacts.</p> <ul style="list-style-type: none"> <li>LGNSW supports the adoption of a flat FSR bonus of 20% for boarding house development and considers that its impact be reviewed as part of a broader monitoring framework for implementation of the Housing Diversity SEPP.</li> </ul>
<p><i>Car parking</i></p> <p>The ARHSEPP currently provides reduced minimum car parking rates for boarding house development applications lodged by or on behalf of a social housing provider. It is proposed to maintain these provisions in the new SEPP.</p>	<p>LGNSW supports this approach.</p> <ul style="list-style-type: none"> <li>LGNSW supports maintenance of the current rates of car parking for boarding house development applications lodged by or on behalf of a social housing provider.</li> </ul>
<p><b>Proposed amendments to ARHSEPP provisions</b></p> <p><i>Group Homes</i></p> <p>It is proposed to update some provisions of the ARHSEPP when they are transferred to the new SEPP, including provisions relating to group homes and provisions relating to Part 3 – Retention of existing affordable housing.</p> <ul style="list-style-type: none"> <li>The ARHSEPP includes a complying development pathway for development of new group homes. However, there is currently no exempt or complying pathway for converting an existing dwelling to a group home.</li> <li>The Government is proposing to introduce a quicker and easier process to allow an existing dwelling to be used as a group home.</li> </ul>	<p>LGNSW understands the importance of group homes in helping to meet the housing needs of people with disability or who are socially disadvantaged.</p> <p>The EIE states that the Government proposes to introduce a quicker and easier process to allow an existing dwelling to be converted to a group home. Currently this requires development consent from local council.</p> <p>LGNSW understands that some councils consider the provisions for new group homes are generous and when built in R2 low density zones can result in development that is out of character. Development provisions for converting existing dwellings to group homes must ensure that group homes are safe, provide appropriate amenity and care for the occupants and are not out of scale or character with surrounding development.</p> <ul style="list-style-type: none"> <li>Group home conversions should be complying development at the very least, to ensure that they meet minimum requirements.</li> </ul>

<sup>4</sup> [Report to the Minister from the Council Boarding House Working Group, August 2019, p 21](#)

Proposed provisions	LGNSW Comment
<p><i>Amendment to Part 3 of the ARHSEPP</i></p> <ul style="list-style-type: none"> <li>Part 3 of the ARHSEPP requires a council to consider whether there will be or is likely to be any reduction in affordable housing as a result of a proposed development. A reduction in the availability of affordable housing could occur through the demolition or strata subdivision of an existing building that contains low-rental dwellings.</li> <li>Part 3 of the ARHSEPP also permits a council to levy monetary contributions as a condition of consent if they consider that approval of a proposed development would result in a loss of affordable housing on the land that is the subject of the application.</li> <li>Clause 49 of the ARHSEPP states that Part 3 of the ARHSEPP only applies to buildings that were low-rental residential buildings as at 28 January 2000</li> <li>Councils and industry groups have advised the Department that some 20 years later, it can be difficult to establish whether a building was a low-rental residential building as at the 28 January 2000 date because rental data from that period is not readily available.</li> </ul> <p>It is proposed to amend the provisions by removing the reference to the 28 January 2000 date.</p> <p><i>The proposed SEPP will instead allow a council to levy monetary contributions to offset the loss of dwellings that were low-rental at any time within the 5 years preceding the lodgement of the development application.</i></p> <p>The onus for providing evidence that a building did not contain a low-rental dwelling at the relevant time will also rest with the applicant (rather than the local Council)</p> <p><i>Secondary dwellings in rural zones</i></p> <p>The ARHSEPP currently permits secondary dwellings in the residential zones (R1, R2, R3, R4, R5) and does not allow secondary dwelling in any rural zones.</p> <p>Councils can, if they choose to, permit secondary dwellings in rural zones under their local environmental plans with maximum size of a secondary dwelling is set by Clause</p>	<ul style="list-style-type: none"> <li>DPIE should consult with councils when developing complying provisions for conversion of existing dwellings to group homes prior to finalising the Housing Diversity SEPP.</li> </ul> <p>LGNSW supports this change. There are significant resource implications for councils in establishing whether a building was a low-rental residential building as at 28 January 2000.</p> <p>LGNSW also welcomes the onus for providing evidence resting with the applicant.</p> <ul style="list-style-type: none"> <li>LGNSW supports the proposal to change the provisions that allow a council to levy monetary contributions to offset the loss of dwellings that were low-rental to within the 5 years preceding the lodgement of the development application and remove the reference to as at 28 January 2000.</li> </ul>
<p><i>Secondary dwellings in rural zones</i></p> <p>The ARHSEPP currently permits secondary dwellings in the residential zones (R1, R2, R3, R4, R5) and does not allow secondary dwelling in any rural zones.</p> <p>Councils can, if they choose to, permit secondary dwellings in rural zones under their local environmental plans with maximum size of a secondary dwelling is set by Clause</p>	<p>LGNSW supports the proposal to allow councils to set the maximum size for secondary dwellings in rural zones where they are permitted under the Local Environmental Plan.</p> <p>This will ensure that where permitted secondary dwellings are appropriate in the local context.</p>

Proposed provisions	LGNSW Comment
<p>5.4(9) under the Standard Instrument LEP of 60sqm or a % of the total floor area of the principal dwelling</p> <p><i>It is proposed to amend the ARHSEPP so that councils have the discretion to set a maximum size for secondary dwellings in rural zones.</i></p>	<p>LGNSW supports the proposal to allow for councils to have the discretion to set a maximum size for secondary dwellings in rural zones.</p>
<p><b>Proposed amendments to seniors housing provisions</b></p> <p><i>Update definitions in the Seniors SEPP</i></p> <p>The definitions in the Seniors SEPP have not been updated in line with the Standard Instrument LEP.</p> <p>It is proposed that the following definitions be updated:</p> <ul style="list-style-type: none"> <li>• the definition of 'height';</li> <li>• the definition of 'people with a disability'; and</li> <li>• the definition of 'AS 2890'.</li> </ul>	<p>LGNSW supports the updating of these provisions as they provide for consistency with council LEPs.</p>
<p><i>Update Schedule 1 – Environmentally Sensitive Land of the Seniors SEPP</i></p> <p>The Seniors SEPP does not apply to land identified in Schedule 1 – Environmentally Sensitive Land.</p> <p>Schedule 1 has not been comprehensively updated since the commencement of the Seniors SEPP in 2004.</p> <p>It is proposed that Schedule 1 will be updated, to be better aligned with current legislation and planning conditions.</p>	<p>LGNSW strongly supports the updating of Schedule 1 – Environmentally Sensitive Land to be better aligned with current legislation and planning conditions.</p>
<p><i>Location and access to facilities provisions</i></p> <p>It is proposed to amend the provisions for 'location and access to facilities' in the Seniors SEPP so that point-to-point transport, including taxis, hire cars and ride share services, cannot be used for the purpose of meeting the accessibility requirement.</p>	<p>LGNSW supports the amendments proposed. Seniors SEPP developments should be located in areas with good access to services and facilities.</p> <p>LGNSW supports the proposal to amend the provisions for location and access facilities in the Seniors SEPP so that point-to-point transport cannot be used for the purpose of the accessibility requirement.</p>
<p><i>Site Compatibility Certificates</i></p> <p><i>Validity of Site Compatibility Certificates</i></p>	<p>LGNSW understands this would not be opposed by councils.</p> <p>LGNSW generally supports the proposal to introduce provisions so that a Site Compatibility Certificate is valid for 5 years.</p>

Proposed provisions	LGNSW Comment
<p>A site compatibility certificate (SCC) is usually valid for 24 months. Once a SCC has been issued, development consent is sought through a development application lodged with the consent authority, which is usually the local council.</p> <p>Because of the 24-month timeframe for the validity of a SCC, and the time needed to prepare and assess seniors housing proposals, SCCs sometimes expire before a development application has been determined.</p> <p>It is proposed to introduce provisions in the new SEPP so that a SCC is valid for 5 years, provided that a development application is lodged within 12 months of the date on which the SCC is issued.</p>	<p>LGNSW supports amendments which clarify how the SEPP applies to land being used for the purposes of a registered club.</p> <ul style="list-style-type: none"> <li>LGNSW supports the proposal to improve certainty about the application of the Seniors SEPP to land used by registered clubs by requiring that the club must be a registered club at the time the SCC is made.</li> </ul>
<p><i>Registered clubs</i></p> <p>Currently, a SCC application can be made on land that is used as an existing registered club. Over the years, there have been a number of SSC applications made on land on which a registered club is no longer viable.</p> <p>To improve certainty for all stakeholders, it is proposed to reinforce the requirement that if a SCC application is being made on the basis that the land is being used for the purpose of a registered club, the club must be a registered club at the time the SCC application is made.</p>	<p>LGNSW supports amendments to ensure that development standards in Local Environmental Plans prevail to the extent of any inconsistency with the SEPP.</p> <ul style="list-style-type: none"> <li>LGNSW supports the proposal to amend the SEPP provisions to clarify that development standards in the LEP prevail to the extent of any inconsistency with the SEPP.</li> </ul>
<p><i>Application of local development standards</i></p> <p>Currently, the Seniors SEPP 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 to clarify that development standards in an LEP prevail to the extent of any inconsistency with the SEPP.</p> <p>It is proposed that the development standards in the Seniors SEPP could be varied using clause 4.6 of the Standard Instrument LEP, but only to a maximum of 20%.</p>	

### 3. Proposed changes to social housing provisions

Proposed Provisions	LGNSW comment
<p><b>Amending the ARHSEPP and Seniors SEPP to support the delivery of social housing</b></p> <p>The approach articulated in the NSW Government's <a href="#">Future Directions for Social Housing in NSW</a> (it is proposed that LAHC will partner with the private sector and community housing providers to deliver new housing projects.) This was not contemplated at the time the existing housing-related State planning policies were made and it is proposed that changes to the planning provisions used by LAHC will be made as part of the new SEPP to support the new approach.</p>	<p>Many LGAs face chronic housing shortages for low income community members. In some of these areas, councils have sought to engage directly with LAHC to develop solutions and renew existing housing product. The additional government investment in, and direct funding of social and affordable housing construction will help deliver much needed low income housing and is an opportunity for economic stimulus to support the local construction industry.</p>
<p><b>Proposed changes to the social housing provisions of the ARHSEPP</b></p> <p><i>Increase maximum number of dwellings that LAHC can self-assess</i></p> <p>LAHC currently uses the ARHSEPP provisions to deliver small scale redevelopments with up to 20 dwellings with a maximum height of 8.5 m (two storeys).</p> <p>To facilitate LAHC's new model, which will contain a mixture of private, affordable and social housing, it is proposed to increase the maximum number of dwellings that LAHC can self-assess to 60. The maximum height of 8.5 m (two storeys) will continue to apply.</p>	<p>In principle support, as local governments seek to address significant affordability challenges, particularly in regional locations. This support is contingent on LAHC engagement with the relevant councils.</p> <p>The proposal to limit LAHC self-assessment to 8.5m (two-storey) buildings is supported.</p> <ul style="list-style-type: none"> <li>LGNSW encourages LAHC engagement and productive working relationships with councils to align its programs with local housing strategies and local strategic plans, for the benefit of future social housing and the broader community.</li> <li>The proposal to limit LAHC self-assessment to 8.5m (two-storey) buildings should be carried over into the new SEPP.</li> </ul>
<p><i>Design guidelines for LAHC development</i></p> <p>When self-assessing proposals under the ARHSEPP, LAHC is currently required to consider the Seniors Living Policy: Urban Design Guidelines for Infill Development. In addition, LAHC also uses its own design guidelines and standards to assess applications. It is proposed to update these guidelines to better reflect contemporary practice.</p>	<p>Local government and all key stakeholders should be consulted by LAHC in the development of updated design guidelines.</p> <p>Quality, well-designed and located social and affordable housing offers the opportunity to enhance existing outcomes:</p> <ul style="list-style-type: none"> <li>The guidelines should introduce and apply construction methods and technologies that help reduce energy (heating and cooling) costs for tenants. (Some good examples exist in the far north of the state that show how significant savings could be achieved);</li> </ul>

Proposed Provisions	LGNSW comment
<p><i>Car parking requirements for LAHC development</i></p> <p>It is proposed to apply a minimum car parking rate of 0.5 spaces per dwelling to all dwellings, including social, affordable and private dwellings, in a development undertaken by or on behalf of LAHC, on government-owned land.</p> <p>If a lower car parking rate is proposed in a LAHC development, there would be an option to lodge a development application with the relevant local council for a merit-based assessment</p>	<ul style="list-style-type: none"> <li>Well-designed buildings that are sensitive to the local and neighbourhood character can help enhance community pride and acceptance.</li> </ul> <p>The process of LAHC engaging with the local council is critical.</p> <ul style="list-style-type: none"> <li>LAHC should consult local government and other stakeholders when updating or revising their general design guidelines for social housing.</li> <li>To enhance the self-assessment process and get the best outcome for new developments, the design guidelines could be supported by protocols for LAHC engagement with relevant councils when undertaking self-assessment in the LGA.</li> </ul>
<p><i>Expand the range of affordable dwelling types that attract a density bonus</i></p> <p>Division 1 of Part 2 of the ARHSEPP provides for a density bonus for infill affordable housing. The provisions are currently limited to dual occupancies, multi-dwelling housing and residential flat buildings.</p>	<p>Proximity to transport must be a consideration when designing car parking for LAHC developments. Flexibility in car parking standards is necessary to accommodate the unique needs of regional locations, which do not always have the same levels of public transport access as in metropolitan locations. These may need to be higher in regional and should be subject to discussion between LAHC and the local council.</p> <p>There appears to be no justification for 0.5 spaces per private dwelling. This may conflict with many councils' car parking controls which would generally require 1-2 spaces for the same size private dwelling. When applied in regional areas, these minimums may result in a shortfall in on-site parking, with spill-over impacts on the local neighbourhood. Where access to required services and transport is not within suitable walking distance, which is common in regional contexts, the design should consider incorporating a higher car parking standard.</p> <ul style="list-style-type: none"> <li>Car parking standards for all housing components in LAHC developments should factor in proximity to transport - this is particularly important in regional contexts.</li> <li>Car parking rates of 0.5 spaces per dwelling should only apply to social and affordable housing, and the relevant council car parking standards being applicable for the private component of LAHC developments.</li> </ul>
	<p>This proposal requires further consideration and consultation with local government.</p> <p>The introduction of bonuses for dwelling types introduced with the Low Rise Housing Diversity Code (manor houses and terraces) seems to conflict with the</p>

## Proposed Provisions

## LGNSW comment

It is proposed to increase the range of development that can be carried out under Division 1 to include other types of residential accommodation, such as manor houses and terraces, where these uses are permitted under another environmental planning instrument. These are dwelling types that were introduced with the Low-Rise Medium Density Housing Code in July 2018.

principle that these are 'complying' developments. The addition of bonuses would mean they no longer comply with the Codes SEPP. Allowing bonuses for these forms of complying development raises concerns and questions about scale and impact and local character.

It is unclear whether LAHC or a private certifier would be assessing these developments. LGNSW already has concerns about the use of private certifiers to approve these developments under the Codes SEPP. The addition of bonuses would add to an already complicated development pathway.

More information and detail are required on this proposal. LGNSW has concerns about:

- Impacts of additional bonuses on scale and local character;
- Inconsistency of allowing bonuses for developments assessed as 'complying' development;
- Role of private certifiers in assessing these developments on behalf of LAHC, particularly if a bonus system was introduced.

### *Clarify the types of development that LAHC can self-assess*

It is proposed to clarify that LAHC can self-assess proposals for any type of residential accommodation that is permitted with consent under another environmental planning instrument. This will include dwellings and dual occupancies permitted under an LEP, as well as manor houses and terraces that are facilitated under the Codes SEPP.

The self-assessment will be limited to development with a height of 8.5m or less.

It is also proposed to clarify that LAHC can self-assess boarding house developments where they are permissible with consent. As noted above, it is proposed to no longer mandate boarding house in the R2 zone. However, boarding houses developed by or on behalf of LAHC with a maximum of 12 rooms would still be permitted in the R2 zone, on Government owned land.

### *Update self-approval provisions for social housing*

The self-assessment provisions in the ARHSEPP are currently limited to residential development undertaken 'by or on behalf of the Land and Housing Corporation'.

Support LAHC self-assessment of dwellings, dual occupancies and boarding houses, subject to above-mentioned recommendations regarding LAHC consultation with local government when updating design guidelines and having in place a protocol for engaging with the relevant local council.

Support this being limited to development of 8.5m or less in height.

- LGNSW encourages LAHC engagement and productive working relationships with councils when self-assessing proposals for residential accommodation, to factor in any local considerations and help facilitate the most desirable outcomes and benefit for social housing and the broader community.
- The proposal to limit LAHC self-assessment to 8.5m (two-storey) buildings should be carried over into the new SEPP.

Support LAHC self-assessment, subject to above-mentioned recommendations regarding LAHC consultation with local government when updating design guidelines and having in place a protocol for engaging with the relevant local council.

## Proposed Provisions

The Government is proposing to include provisions in the new SEPP that will facilitate LAHC's development model, which includes a mixture of social, affordable and private housing. The amended provisions would allow LAHC to self-assess all residential development, including social, affordable and private housing components, proposed to be undertaken by or on behalf of LAHC, on any land owned by the State Government.

These developments would still be limited to the 8.5 m maximum height and the proposed 60 dwelling limit as discussed above.

## LGNSW comment

LGNSW expects that LAHC will do the self-assessment regardless of whether the residential development is undertaken by a third party on behalf of LAHC. This must be made clear in the SEPP.

Questions include:

- How will councils be notified in this process?
- How will infrastructure contributions be paid to councils for the increased demands on local infrastructure?

More information and detail required in the SEPP to:

- Confirm that LAHC is responsible for undertaking the self-assessment regardless of whether the residential development is undertaken by a third party 'on behalf of' LAHC.
- Clarify how councils will be notified;
- Ensure provisions in the SEPP include requirements to pay infrastructure contributions in accordance with the council's infrastructure contributions scheme.

The proposal to limit LAHC self-assessment to 8.5m (two-storey) buildings should be carried over into the new SEPP.

Support in principle, subject to LAHC engaging with the relevant council.

- LGNSW encourages LAHC engagement and productive working relationships with councils when self-assessing proposals for residential accommodation, to factor in any local considerations and help facilitate the most desirable outcomes and benefit for social housing and the broader community.

More information and explanation needed.

The EIE provides insufficient justification and evidence for this proposal. It is unclear how this provision would link to proposed social housing outcomes.

The EIE has no information on what provisions/controls would apply to subdivision of government-owned land. Questions include:

- Will subdivision have to meet council development standards in LEP?
- If not, what standards will apply?
- Who will be assessing these subdivisions?

### *Expand density bonus outside the Sydney metropolitan region*

There is a significant amount of land in centres outside Sydney that satisfies the definition of 'accessible area' within the SEPP but is not located within 400 metres of land zoned B2 – Local Centre, or B4 – Mixed Use. It is therefore proposed to apply the infill affordable housing bonus to all 'accessible areas' across the State

### *Subdivision of Government-owned land*

To support the delivery of the Government's social housing program, it is proposed to allow subdivision of Government-owned land without consent

Proposed Provisions	LGNSW comment
<p><b>Proposed changes to the social housing provisions of the Seniors SEPP</b></p> <p><i>Parking concessions for seniors housing</i></p> <p>The Seniors SEPP currently provides reduced minimum car parking rates for development applications lodged by or jointly with a social housing provider. It is proposed to clarify that the reduced parking rates also apply to the private dwelling component of a seniors housing development carried out by or on behalf of LAHC on government-owned land.</p>	<ul style="list-style-type: none"> <li>What land use zones would this provision apply to?</li> </ul> <p>Before any consideration of this proposal is incorporated into the SEPP:</p> <ul style="list-style-type: none"> <li>DPIE and/or LAHC should provide evidence/justification for this proposal; and clarify whether council development standards for subdivisions would apply.</li> <li>DPIE should defer to councils' submissions.</li> </ul> <p>Reduced parking was linked to lower car ownership of social housing residents, but there appears to be no justification for extending these reduced car parking rates for the private dwelling component of a senior housing development.</p> <p>As discussed previously, reduced car parking standards for private market housing could result in unintended consequences whereby surrounding neighbourhoods are impacted by increased pressure for on street parking. This should be discussed with the relevant council.</p> <ul style="list-style-type: none"> <li>Car parking rates of 0.5 spaces per dwelling should only apply to social and affordable housing, with local council controls applicable for the private market component.</li> </ul>
<p><i>Clarify application of lift access exemption</i></p> <p>The Seniors SEPP includes a requirement that new self-contained dwellings for seniors located on or above the second floor must have lift access. However, there is an exemption from the lift access requirement for development applications made by, or jointly with a social housing provider. The lift access exemption provides significant savings in terms of up-front construction and ongoing maintenance costs for LAHC.</p> <p>It is proposed to clarify that the lift access exemption applies to all seniors housing delivered by or on behalf of LAHC, including any dwellings that are not proposed to be used for the purpose of social housing.</p>	<p>The EIE provides insufficient justification for exemption from lift access requirements for seniors housing delivered by LAHC. Universal access is a standard building code requirement for mobility-impaired occupants and mobile-impaired visitors (AS14-28), therefore LGNSW does not support an exemption on the basis of savings in construction costs.</p> <ul style="list-style-type: none"> <li>Lift access should remain a requirement for new self-contained dwellings for all seniors located on or above the second floor.</li> </ul>
<p><b>Proposed changes to the social housing provisions of SRD SEPP</b></p> <p>It is proposed to amend the SRD SEPP so that projects will become SSD if:</p> <ul style="list-style-type: none"> <li>they are carried out by or on behalf of LAHC; and</li> <li>they have a capital investment value of more than \$100 million (increased from \$30 million).</li> </ul>	<p>More information and explanation needed.</p>

Proposed Provisions	LGNSW comment
<p>It is proposed to remove the current requirement under the SRD SEPP that LAHC sites need to be mapped on the State Significant Development Sites Map in order to be SSD.</p> <p>It is proposed that for Government-owned land within the City of Sydney, the Minister for Planning would be the consent authority for projects over \$100 million, with the power to delegate to the City of Sydney, if deemed appropriate.</p>	

Submitted on Wed, 09/09/2020 - 23:37

Submitted by: Anonymous

Submitted values are:

Submission Type: I am making a personal submission

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

Submission:

“What you earn shouldn’t stop you from living in any suburb: Stokes” was the headline in the SMH August 27, 2020 but the proposed Housing Diversity SEPP seems to be about exclusion and segregation not diversity and inclusion. My family has been providing genuinely affordable housing in the middle of the country’s third most expensive suburb for the last 63 years in a “built-to-rent” traditional boarding house. It is mainly occupied by low to moderate income “key and essential” workers employed within the local or adjacent municipalities. It accommodates women in the over 55 age group (the most vulnerable group to homelessness). Half the current residents have lived here or in the local area for at least 20 years. Some of the older residents grew up and have always lived locally and we are able to assist them to continue to do so including those on welfare. Most residents stay for years, some for decades. A model for diversity in affordable housing? Your proposed SEPP says not.

The site is zoned R2 and is privately operated (your EIE proposes boarding houses can only be operated by community housing providers and boarding houses will no longer be mandated in the zone). Our operation only remains viable whilst the Land Tax Exemption for boarding houses stays in place.

Unlike the new built-to-rent land tax exemption to be eligible we have to provide affordable housing at government set maximum tariff levels. New built-to-renters will have certainty on land tax relief for 20 years we only find out at the end of each year when a new ruling is issued. Under the proposed SEPP we won't be able to enter this sector again and if our operation becomes unviable we won't be able to leave without paying we expect a substantial but yet to be determined levy to the local Council. So will any other investor of any other rental property type who hasn't been charging at least the median rent for the area in the previous five years. In an area where there are many high value new rental homes and obsolete rental homes many investors of the latter type are likely to get stung whether developing the properties themselves or on selling for others to develop.

Co-living in the proposed SEPP is an odd option. AHURI research concluded the ARHSEPP failed in delivering its intended goal of affordable housing and that was with a maximum room size of 25 sq m. When the minimum room size under the proposed SEPP is 35 sq m per room and a minimum of 10 rooms will automatically exclude Class 1b construction under the National Construction Code thereby increasing building costs.

Class 1b dwellings are recognised as more likely to establish a genuine sense of community because of their smaller size yet still maintain an acceptable level of fire safety and amenity. If manor houses and duplexes of the “Missing Middle” can be built almost anywhere why can't small boarding and co-living houses? It is regrettable that the EIE's included Councils

Boarding House Working Group Report had no industry representation or involvement. For example it makes no mention of the lower North Shore boarding house that caused an uproar when first proposed and now most welcomed as it houses doctors and nurses from the local hospital. Or the regional boarding house in a popular tourist spot where the operation is welcomed by the local Council as it provides affordable accommodation for hospitality workers.

It has also helped reduce the tragic road toll involving tired workers driving long distances late at night to affordable accommodation in outlying towns. In late 2017 our local Council unanimously voted for an affordable housing policy stating that “those who work in the municipality should be able to afford to live in the municipality”.

Yet earlier that year Council’s interstate expert witness unfounded opinion about some of our residents was ridiculed by the Land and Environment Court. His technical opinion was dismissed in the next successful appeal. There were no objectors to nor any community concern expressed about our Development Application to upgrade the building to extend its useful life and meet current fire safety standards.

Your EIE also stresses the importance of “certainty” but based on past experience we are sceptical. Regrettably neither FACS (now C & J) nor DPIE were able to assist us in avoiding the abovementioned planning appeals.

Equally regrettable was C & J without prior notice withdrawing its Fire Safety Upgrade Grant scheme and declining to accept our application even though we had fully complied with its requirements. Its admirable to legislate fine policy objectives but to have private investors enforce them out of their own pocket isn’t the way to encourage private rental housing sector investment. If another objective of the proposed SEPP is to stimulate the economy after covid-19 then shutting out small property investors out of certain segments of the rental housing market is likely to hinder rather than enhance the end result.

Lucas Kallinos Traditional boarding house co-owner

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

Submitted on Fri, 07/08/2020 - 10:13

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Submission file:

Submission:

I believe there is an opportunity to allow for the strata subdivision of secondary dwellings and principal dwellings into two-lot strata schemes, in certain situations only. This would allow for first home buyers (singles and couples) to purchase a small suburban home.

Principal/secondary dwellings always share services, so strata subdivision would be appropriate.

The conditions for this to occur could be: - Where both dwellings face the street. - Only in the R2 Low Density zone, so that sterilisation of redevelopment potential through land ownership fragmentation is not an issue.