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<noreply@feedback.planningportal.nsw.gov.au>  
**Sent:** Thursday, 26 August 2021 4:18 PM  
**To:** DPE PS Housing Policy Mailbox  
**Subject:** Webform submission from: Proposed Housing SEPP  
**Attachments:** d09833221-submission---to-department-of-planning-portal---proposed-housing-diversity-sepp---uploaded-7-september-2020.pdf

**Follow Up Flag:** Follow up  
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Submitted on Thu, 26/08/2021 - 16:13

Submitted by: Anonymous

Submitted values are:

**Submission Type**

I am submitting on behalf of my organisation

## Name

**First name**

Matthew

**Last name**

Hill

**Organisation name**

Lake Macquarie City Council

**I would like my submission to remain confidential**

No

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[d09833221-submission---to-department-of-planning-portal---proposed-housing-diversity-sepp---uploaded-7-september-2020.pdf](#)

**Submission**

Thank you for the opportunity to comment on the proposed Housing State Environmental Planning Policy (SEPP). Lake Macquarie City Council (LMCC) staff previously reviewed to the Explanation of Intended Effect (EIE) and provided a submission dated 7 September 2020. I would like to refer you to this previous submission, which has been attached, and in particular draw your attention to the following.

- While the draft Housing SEPP provides provisions relating to co-living, the previous submission indicated support for expanding this to include co-operative housing models. Co-living currently refers to a building held in single ownership, however, this could also be expanded to include ownership by a co-operative to support a greater diversity of housing types and ownership arrangements.
- The draft Housing SEPP currently contains provisions relating to Floor Space Ratio (FSR) to support development, including offering development bonuses. As indicated in the previous submission, LMCC does not make use of FSR provisions in its Local Environmental Plan (LEP). Consideration should be given to other mechanisms to support the objectives of the SEPP, possibly including use of building height provisions, or if FSR provisions are relied on, these should recognise there may not currently be FSR provisions applying via a council's LEP.
- Regarding the permissibility of boarding houses in the R2 Low Density Residential zone, staff have previously supported maintaining this as a permissible use.

**I agree to the above statement**

Yes



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 Environment al 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.

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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 over-riding 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 black ink, appearing to read 'Wes Hain'.

Wes Hain

**Manager Integrated Planning**



31 August 2021

Jim Betts  
Secretary  
Department of Planning and Environment  
4 Parramatta Square  
PARRAMATTA NSW 2150

### **State Environmental Planning Policy (Housing) 2021**

Dear Mr Betts,

Thank you for the opportunity to provide comments on the Draft Housing SEPP (HSEPP). The Land and Housing Corporation (LAHC) is pleased that work is progressing to reform and simplify the complex statutory framework for the delivery of all forms of housing and notes that this round of work builds on the previous amendments to the State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP) that benefit LAHC.

LAHC's response to the proposed draft SEPP is provided in the context of the following policy and strategic considerations:

- its ability to deliver on its obligations under the *Housing Act 2001* to provide housing for the most vulnerable members of the community;
- assisting it in meeting its obligation in implementing the Government's *Future Directions for Social Housing in NSW* policy and other metropolitan and regional strategies; and
- its contribution to housing affordability and housing supply.

In its current form, the proposed changes in the draft SEPP do not fully enable LAHC to fulfil these obligations efficiently or to its greatest potential by limiting where new social housing can be delivered, increasing the cost of development and impeding the timely achievement of LAHC's housing targets. This is due to draft provisions that will:

- disable LAHC from undertaking seniors housing in the R2 zone;
- expand the environmentally sensitive land category of 'flood planning' in Schedule 4;
- delete the provision of clause 6 of ARH SEPP that declares development on LAHC land as 'affordable housing'; and
- result in increased requirements for existing, and the introduction of new, development standards.

It is acknowledged that this is a very complex statutory environment, and the reforms are intended to consolidate existing SEPPs as well as incorporate amendments to reflect new policies. However, as LAHC uses provisions across the whole legislative framework, the final drafting is important to ensure that there are no unintended alterations that appear minor but have significant impact on LAHC's ability to deliver needed social housing infrastructure.

LAHC would also encourage future consideration being given to consolidating and revising all provisions relating to social housing into a single place within the SEPP to provide clarity, ensuring that LAHC can most efficiently achieve its mandated objectives.

The below comments are not exhaustive, but are the issues of most concern.

## **Seniors Housing**

### **Seniors Housing in the R2 Low Density Residential Zone:**

A large proportion of LAHC's landholdings, especially in the metropolitan area, is located within R2 landuse zones. This is where the majority of past, current and future pipeline projects for LAHC are located. It is also estimated that around 60% of social housing tenants are aged over 60 years and live alone, with LAHC facing a huge challenge to right-size its portfolio to include more seniors housing for this growing tenant cohort.

A key planning mechanism that LAHC has used to deliver its housing targets has been its ability to construct 2 storey seniors housing in the R2 zones. This low impact style of development has been well integrated into existing local neighbourhood characters, enabling LAHC to construct a significantly greater number of fit for purpose dwellings and allowing existing tenants to age in place and maintain their social connections.

The Seniors SEPP has therefore been a major instrument for LAHC in growing and renewing its property portfolio to achieve the State Government's policy objectives under the *Future Directions for Social Housing in NSW*.

Over the last 5 years more than 50% of LAHC projects have been for seniors housing accounting for 985 new fit for purpose dwellings. Currently LAHC has seniors housing projects with the potential for 433 dwellings in the pipeline of which 407 are located in the R2 zone and would be at risk of abandonment at great cost already incurred.

LAHC receives very little community pushback over seniors housing projects and works closely with local councils and communities in their design and during their construction. Examples of recent projects were forwarded to the Minister for Planning and Public Places, and can be provided to Departmental staff as required.

The proposed removal of seniors housing from the R2 zone will have unintended consequences that would significantly reduce the volume and the location of new seniors housing whilst the demand for this type of housing keeps growing. In relation to the former, in most cases an uplift ratio of 4:1 has been achieved compared to a 2:1 uplift for dual occupancies as the alternative highest use in these areas. In relation to the latter, opportunities for more people to be located close to public transport and services would diminish.

The net effect of the proposed changes would be that LAHC would be unable to deliver its housing program completion targets for Government. An exemption similar to others already in place for LAHC's continued delivery of seniors housing in R2 zones could be a solution.

#### Independent Living Unit Development Standards:

The increased requirement for deep soil zones to be a minimum dimension of 6m instead of 3m would reduce potential yield as tested by LAHC's urban design team. Redevelopment of some sites may no longer be financially feasible. LAHC would be happy to provide examples to demonstrate this.

There appears to be an inexplicable inconsistency between the non-discretionary development standards for *'hostels and residential care facilities (RCF)'* and for *'independent living units' (ILU)*. A RCF can be carried out in an R2 zone with a height of up to 11.5m and an FSR of 1:1 while an ILU in an R3 zone or above is limited up to 10.5m and an FSR of 0.5:1.

It also appears that the 9m height limit for ILU's is designed to reflect local height planning controls for the R2 zone. Consideration could be given to synchronising the height limits for ILU's with LAHC's self-approval threshold by increasing the latter to 9m.

#### Flood Planning:

Drafting changes to the definition of environmentally sensitive areas in the proposed Schedule 4 to include 'flood planning areas' rather than the current 'floodway' or 'high hazard areas' would significantly reduce opportunities for seniors housing. LAHC has successfully demonstrated that it can safely develop such housing in areas with adequate mitigation measures.

### **Affordable Housing**

#### Clause 6(2) of ARH SEPP

Under Clause 6(2) of ARH SEPP *"residential development is taken to be for the purposes of affordable housing if the development is on land owned by the Land and Housing Corporation"*.

This is consistent with the definition of affordable housing under the Environmental Planning and Assessment Act 1979 which includes social housing as housing for very low-income households. This is supported by internal DPIE legal advice.

Clause 6(2) enables many LAHC projects to take advantage of bonus floor space ratios under the SEPP and facilitates many projects that would otherwise be unviable or deliver less social housing under existing planning controls. It also recognises the NSW Government's policy settings to use NSW Government owned land to facilitate housing renewal outcomes.

Removal of this clause again will have unintended consequences and would have serious impacts for LAHC's delivery of estate renewal and new social housing. LAHC suggests that the clause be retained in its current form.

#### Infill Affordable Housing

The introduction of new standards for minimum floor areas (dwelling sizes) for dual occupancies (side by side) and multi dwelling housing development that are 15-25m<sup>2</sup> larger than the existing requirements of ARHSEPP (Clause 14(2)(b)) significantly impact LAHC's ability to deliver on a site by site basis.

Likewise, the introduction of a minimum dimension of 6m for deep soil zones will substantially impact site planning and reduce LAHC's ability to provide social housing without significant proven benefits.

These measures are likely to increase per unit cost of development by between 21% and 30% and a loss of up to 3 units in a typical 15 unit development. LAHC already has costed dwelling size requirements, developed in consultation with the Government Architect, and there is no evidence that an increase in the amount of deep soil zone will achieve better design outcomes.

LAHC's Dwelling Requirements are embedded in the self-approval processes and what is being proposed would create a conflict. It is therefore suggested that for social and affordable housing the existing standards are retained.

#### Boarding House provisions:

LAHC considers that the categorisation of boarding houses in name only does not appear to serve any discernible purpose. To the contrary, LAHC considers that classifying some as '*co living*' and retaining the boarding house definition for affordable accommodation will unnecessarily stigmatise the latter.

Similarly, changes to landscaping, communal living and communal open space (COS) requirements are likely to impact on the delivery of affordable boarding house projects and potentially result in a loss of 2 rooms on a typical site.

Typically, LAHC carries out boarding house developments on single lots with an average size of 700m<sup>2</sup>. The proposed requirement for COS to be 20% of site area alone as opposed to the current 20m<sup>2</sup> would result in a 120m<sup>2</sup> increase. The increase would not appear to represent an appropriate balance between the optimum development of the site and the resident's amenity. LAHC would again be happy to provide examples to demonstrate this.

It is also considered that undertaking boarding houses in R3 zones is likely to be affected by the minimum lot size requirements which would be typically about 1000m<sup>2</sup> and therefore requiring lot consolidation.

This form of housing is becoming increasingly important in addressing the needs of especially single older women who are the largest growing cohort facing homelessness.

#### Group homes:

Part of LAHC's group home program involves purchasing or converting existing dwellings into group homes. In some locations the only available acquisitions and/or conversions may be on flood affected sites. Therefore, LAHC suggests that a provision be included that enables existing dwellings to be converted into a group homes subject to adequate mitigation measures.

### Other Issues

#### LAHC Part 5 Approval Thresholds:

It is proposed under the draft SEPP to continue the existing power for LAHC to approve up to 60 dwellings at heights of not more than 8.5m. In practice, LAHC's main renewal program is focused on a greater number of smaller projects and a limiting constraint has been relatively minor variations to the 8.5m height limit even where greater heights are possible under the relevant local planning controls. LAHC encourages discussion around the correct balance to be achieved, for example that the total number of dwellings be reduced to 40 dwellings, but the height limit be increased to 15 metres where this height is allowable under the relevant LEP.

#### Definition of Consent:

It is noted that the definition of '*Consent*' appears to have been omitted from the draft SEPP. LAHC requests that it should be retained as its omission would impact on its self-approval processes, particularly in relation to the removal of trees on redevelopment sites.

I trust that the above comments will assist the Department in progressing this important policy initiative. LAHC is able to provide examples of the impacts of the proposed amendments on current and recently completed projects as required. LAHC requests that it be given an opportunity to review a copy of the draft policy in its entirety prior to its gazettal.

We would welcome the Department's earliest consideration of these issues and request that you contact Lisa Heniedi, Director Portfolio Services on 0408 080 018 at your earliest convenience.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Mick Cassel', is positioned above the printed name.

**Mick Cassel**  
Chief Executive  
NSW Land and Housing Corporation





The Deputy Secretary,  
NSW Planning, Industry and Environment  
Locked Bag 5022,  
PARRAMATTA NSW 2124

Date: 26 August 2021  
Doc Ref: 49556/21

Dear Sir/Madam,

**Re: State Environmental Planning Policy (Housing) consultation draft submission**

Council thanks NSW Planning, Industry and Environment for the opportunity to comment on the proposed State Environmental Planning Policy (SEPP) Housing consultation draft and supporting documents.

Council continues to support a majority of the proposed amendments through the Housing SEPP, including most notably the amalgamation of the SEPPs for Affordable Rental Housing, Housing for Seniors and People with a Disability, Caravan Parks and Manufactured Homes Estates, together with controls for Short-Term Rental Accommodation, Group Homes and Build-to-Rent, to more accurately meet the housing needs and preferences of our changing community.

Council is particularly supportive of the removal of the very lengthy process of seeking *Site Compatibility Certificates* (SCC) for seniors housing developments.

Council supports the proposed decrease in FSR bonuses for Seniors Housing, including for vertical villages. The FSR bonus (up to 20%) for development involving a residential care facility in addition to the maximum permissible floor space ratio for the purposes of a vertical village is also supported. However, Council does not support the additional 15% floor space ratio bonus for development involving independent living units. These independent living units may be one, two or three bedroom units, and therefore should be held to the same standards as other development types (i.e. residential flat buildings). This type of development also impacts upon Council's housing targets and delivery of housing.

Council prefers the mandating of *car parking for seniors* housing developments 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.

Council does support some proposed amendments, 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 maximum of 25%;
- ensuring a minimum 3-month tenancy;
- ensuring affordability of boarding house apartments in perpetuity;
- permitting seniors housing in a full range of residential and business zones;
- applying a \$30 million threshold to apply for Seniors Housing developments as State Significant Development, which would align with other land uses;



## Lane Cove Council

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- amending the definition of height for seniors housing to be consistent with the Standard Instrument;
- removing the onerous need for seniors housing to “harmonise” with nearby heritage items or conservation areas; and
- creating a Co-Living Housing type to increase housing choice.

Council would welcome the opportunity to expand and detail any aspect of this submission. Should you wish to further discuss anything raised, please contact me or Council's strategic planning team on 9911 3580 / 9911 3627.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Mark Brisby", written over a faint, horizontal, wavy line.

Mark Brisby  
**Executive Manager, Environmental Services**



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our ref: EP&D:JWlb020921

2 September 2021

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

Dear Sir/Madam,

### **Proposed New Housing SEPP**

The Law Society is grateful for the opportunity to comment on the public consultation draft of the *State Environmental Planning Policy (Housing) 2021* (draft SEPP), together with the supporting documentation, including amendments to the *Standard Instrument (Local Environment Plans) Order 2006* and the draft Environmental Planning and Assessment Amendment (Housing) Regulation 2021 (draft Regulation).

The draft SEPP will consolidate provisions from the following existing State Environmental Planning Policies (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); *State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes)* (SEPP 70); *State Environmental Planning Policy No 21 – Caravan Parks* (SEPP 21); and *State Environmental Planning Policy No 36 – Manufactured Home Estates* (SEPP 36).

We support the aims of the draft SEPP, which proposes a complete strategy to address affordable housing in NSW, and are generally supportive of its provisions, subject to our comments in relation to specific provisions below.

### **General matters**

#### *Savings and transitional provisions*

The savings provision in Schedule 6 is clear and should avoid any debate as to the weight, if any, that should be given to the draft legislation along the lines of the discussion in *Maygood Australia Pty Ltd v Willoughby City Council* [2013] NSWLEC 142 and *Omid Mohebat-Arani v Ku-ring-gai Council* [2017] NSWLEC 143 at [20].

However, the draft SEPP will have the effect of prohibiting certain land uses (e.g., privately owned boarding houses and independent living units in the R2 zone (clause 76(1)(d)). We expect that there will be many such applications which will be captured by the savings provision. It is difficult to give weight to draft provisions where they have the effect of

prohibiting a certain land use. It might be useful to consider amending the savings provision to expressly provide that no weight is to be given to the provisions of the new Housing SEPP to the extent that it prohibits a certain land use.

### *Student accommodation*

The FAQs note that, unlike the EIE, the draft SEPP omits a separate definition of, and provisions for, student housing. The Department notes that on-campus accommodation will continue to be facilitated through the *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*. Off-campus, housing developers will use the co-living provisions. The Department states that this change recognises the similarities between the typologies for student housing and co-living and responds to concerns expressed by both educational establishments and private sector developers.<sup>1</sup>

The Law Society is concerned, however, that the slightly higher standard which the co-living category creates may make student housing unattractive to the providers who currently fill this void.

### *Definitions*

Relating the definitions to terms found in the Standard Instrument (SI) is the correct approach, in the Law Society's view.

However, "boarding house" as a planning term still has a definition which is slightly at odds with "boarding premises" under the *Boarding Houses Act 2012*.

### **Boarding Houses**

While it was always a requirement under the ARH SEPP that rents had to fall within certain limits determined by statistical data, the case law did not always appear to reflect the rent controls consistent with the ARH SEPP.

In cases like *Pomeroy v Hawkesbury City Council* [2018] NSWLEC 1146, affordability appeared to be a guideline only, for example at paragraph 39 Commissioner O'Neill stated: *...it is instead the form of the building of a boarding house and the limited size of rooms that constrains the relative cost of boarding house accommodation, which is provided at market rents.*

The Law Society supports the updated definition of affordable housing households and the requirement that boarding houses be managed by registered community housing providers (CHPs).

However, members of the Law Society who act for councils report that, although SEPP 70 and the draft SEPP arguably support the premise that there is a need for affordable housing in every Local Government Area of the State, not every proposal for a Division 1 Infill development can necessarily find a CHP to operate it.

While co-living housing may be a viable alternative in some cases, and has slightly higher amenity outcomes, there is no guarantee of affordability. Affordability is now linked, not only to the size of the dwellings and the compromised amenity, but to the mandating of CHPs. The Law Society is therefore concerned that there may not be sufficient funded and otherwise supported CHPs to fill the need for community boarding houses.

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<sup>1</sup> NSW Government, Department of Planning, Industry and Environment, *Housing SEPP consultation draft: Frequently asked questions*, 2.

## Seniors Housing

### *Definition of Gross Floor Area*

Gross floor area (GFA) is separately defined in clause 72 for the purpose of Part 4 Seniors Housing but the SI definition of GFA applies for the balance of the draft SEPP. We consider that the draft SEPP should adopt the SI definition and have specific exceptions for the purpose of seniors housing if that is considered necessary. To complicate matters further, the definition of GFA in Part 4 has been changed from the definition in the Seniors SEPP to something similar to, but different from, the SI definition of GFA (disregarding the exceptions in sub-paragraphs (e) and (f)). For example, GFA is defined in the draft SEPP to exclude “space for the loading and unloading of goods” but does not include the words in the SI definition which immediately follow, “(including access to it)”. Those words have been the subject of judicial consideration and excluding them will invite further litigation about what parts of the floor area should be excluded to calculate GFA for the purposes of seniors housing.

Clause 76(1)(d) states that the only form of seniors housing permitted in the R2 zone is a residential care facility. We note that this was not flagged in the EIE. The clause is headed as a development standard, but we suggest it merits reconsideration as to how it is framed.

## Group Homes

The need for greater regulation of group homes has not been addressed in the draft SEPP. The provisions relating to group homes are to be reviewed after the making of the Housing SEPP.<sup>2</sup> We consider that there is a need to introduce regulation to avoid this category of development being used as *de facto* housing for seniors or people with a disability, without the regulatory framework. In the SI, “group home” is defined to exclude development to which Seniors SEPP applies. That exclusion does not prevent seniors from occupying a group home.

Clauses 57-58 make provision for group homes as exempt development. Characterisation of development as a group home is not a simple exercise, and it may not be appropriate to make provision for exempt development where a complex characterisation exercise is required. The issue has given rise to litigation, see *Black Hill Residents Group Incorporated v Marist Youth Care Limited (t/as Marist180) (No 5)* [2021] NSWLEC 43.

## Non-discretionary development standards

The draft SEPP adopts non-discretionary development standards throughout (clauses 17, 23, 48, 64, 96, 97 and 100). Based on the stated aims of the Policy,<sup>3</sup> it does not seem to be the intention that a clause 4.6 variation would be required for each of these non-discretionary standards. We consider that the requirement for a clause 4.6 variation would create complexity and additional costs. Non-discretionary development standards have effect pursuant to s 4.15(2) and (3) of the *Environmental Planning and Assessment Act 1979* and can only be varied in accordance with s 4.15(3) of the Act.

This could be remedied by adding a provision which allows for variation of the non-discretionary standards as a subclause of each relevant provision or as a new clause in the draft SEPP. Making it clear that a clause 4.6 request is not required will avoid the issue

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<sup>2</sup> Ibid 1.

<sup>3</sup> Clause 3 of the draft SEPP states that one of the aims of the Policy is: “(b) to provide greater clarity and certainty for the housing sector.”

which has arisen in relation to clause 29(4) of the ARH SEPP (see *Parker Logan Property Pty Ltd v Inner West Council* [2018] NSWLEC 1339 at [30]-[47]).

Where a non-discretionary standard applies, it should be clear how it is intended to operate where a standard under the applicable Local Environmental Plan which applies is less onerous (e.g., height and floor space ratio).

#### *Other issues*

The character test has been included as a development standard (clauses 24(1)(a) and 65(1)(e)). We suggest that this is a subjective test, and that it should instead be inserted as a separate clause, such as, for example, clause 30A of the ARH SEPP.

Clause 24(1)(d) is also subjective and is not appropriate as a development standard.

Clause 48(2)(b) is an incomplete sentence. The current wording from clause 22(4)(b) should be retained.

#### **Cross-referencing errors**

There appear to be cross-referencing errors in the package of documents. Some examples appear below, if they are of assistance.

Clause 42(2)(b) of the draft SEPP refers to Chapter 3, Part 5 of the draft SEPP. This appears to be an incorrect reference as Chapter 3 only has four Parts. The draft Regulation also refers to Chapter 3, Part 5 of the draft SEPP: see Schedule 1, paragraphs [7] and [17].

Paragraph [17] of the draft Regulation refers to clause 85(2). It is not clear in which instrument clause 85(2) is located.

There appears to be a typographical error in paragraph [14] in Schedule 1 of the draft Regulation which proposes amending clause 2(1)(q) in the *Environmental Planning and Assessment Regulation 2000*, addressing reduction of availability of affordable housing. This paragraph should refer to clause 43(1) in the draft SEPP, rather than clause 45(1).

Clause 2(2) states, in error, "Chapter 3, Part 8 commences on 1 November 2021", as the SEPP does not include a Chapter 3, Part 8.

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,

Juliana Warner  
**President**

# FEEDBACK ON THE HOUSING SEPP CONSULTATION DRAFT

**27 August 2021**

*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 feedback

This feedback focusses on the following aspects:

- Non-discretionary development standards for hostels and residential aged care facilities.
- Building Height RCFs
- Location and access to facilities and services – RCF
- Solar Access
- Restrictions on occupation of seniors housing
- Deep Soil
- Location and access to facilities and services – ILU
- Development Standards - R2
- Definitions
- Land to which Part applies
- Land to which part does not apply
- Heritage
- Development Standards
- Use of Ground Floor in commercial zones
- ILUs - Roof
- ILUs - Deep Soil
- Vertical Villages

## Support for the aims of the new Housing SEPP

LASA's membership support, in principle, the aims of the draft Housing SEPP. We do however have grave concern that if the draft Housing SEPP would be implemented in the current form there will be serious and broad unintended consequences.



## Feedback with regard to individual aspects of concern

### Non-discretionary development standards for hostels and residential aged care facilities: Division 7 - Clause 96 (1)

- We feel this is a backward step that will inhibit RCFs being approved and constructed in NSW.
- Councils rarely see RCF applications and there regularly is an education of the Planning officers in terms of the RCF typology.
- The previous provision was clear and just laid out the facts. Everyone got it and it worked.
- In the Draft Housing SEPP we could have a building that is compliant with the height, but is still refused due to it being inappropriate for the area.
- Neighbours on the whole are not supportive of RCFs, we need clear boundaries that enable them not to be refused.
- The proposed non-discretionary standards SEPP seeks to provide guidance to Councils, rather than direct "do not refuse" standards. We do not see this as an improvement to the promulgation of Aged Care & Seniors Housing. The proposed changes weaken the authority of the SEPP, leaving too much interpretation open to various Councils & Council officers. If the Department is seeking the adequate provision of Seniors housing in coming decades, we strongly recommend the do not refuse principal is maintained in the new Housing SEPP.

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### Building Height RCFs: Division 7 - Clause 96 (2) (a) + (b) [Note this is replicated in Division 3 - Clause 74 - (2) (c) + (3)]

- The 9.5m is very tight and will see many 4.6's lodge to comply.
- The 9.5m will in the majority of cases not allow a pitched roof. We suggest provision is made of 10.5m where a pitched roof is used and changing the 11.5m to 12m where a pitched roof is used.
- The plant area needs to be 30% as 20% is too small. The area should be for the "total roof area".
- In addition to servicing equipment on the roof, consideration should also be made for a roof garden or landscaped spaces on the roof.

### Location and access to facilities and services – RCF: Division 4 - Clause 83

- Rather than just fixing the access requirements from the old SEPP we need to consider what residents are in RCFs and how they access facilities and services. The reality is residents do not go to the shops by themselves. They go on outings on the bus provided by the RCF operator.
- If an RCF has the following facilities and services there should not be a requirement to provide transport access: Facilities on site; café, hairdresser, beauty, postage, online banking, doctor, allied health professionals as required.
- If this isn't adopted then the Clause needs to be worded so any assessing officer knows what is required - for example - what does (a) Directly mean? We need to define (b) a transport service - this should not replicate the ILU def. It should be the provision of bus / minivan to transport residents to community services and recreational facilities as residents may reasonably require and where a medical practitioner cannot attend the RCF to this service also.
- As noted above facilities and services should not be the same as an ILU.

### **Solar Access: Division 6 - Clause 89 (a)**

- The wording in (a) (i) will end with assessing officers that do not understand RCFs indicating that all resident bedrooms need adequate daylight. As a minimum the wording of the current SEPP "to substantial areas" be used this could be to "substantial areas both internally and externally".
- The wording of (a) (ii) "in a way that does not adversely impact" is a higher test than the current SEPP. We would either suggest leaving the current wording or noting compliance to the local DCP or controls.
- At the end of the day we are comfortable to comply with the DCP. RCFs should not have a higher test placed upon them than a residential house.

### **Restrictions on occupation of seniors housing: Division 3 - Clause 77 (2)**

- From experience assessing officers have very wide interpretations on how to satisfy themselves in terms of this requirement. Some examples are; stating there needs to be high care staff and nurses in attendance. There needs to be kitchen and laundry staff on site.
- To overcome these confusions could the clause simply state that the consent authority should include the requirement that a positive covenant is placed on the title of the land to which the RCF is on that deals with the requirements in (1).
- Or as a minimum note that this method would be ok to satisfy this requirement.

### **Deep Soil: Division 7 - Clause 96 (f)**

- Regarding the words ",if practicable, at least 65% of the deep soil zone is located at the rear of the site".
- Having lived with the current SEPP and defining what the rear of the site is we do not recommend we start again. Sites are all too often irregular in shape and whilst we support this objective the setbacks and site controls will allow deep soil plating to the perimeter of the site.
- We strongly suggest the removal of this sentence.
- The imposition of directed locations for proportions of landscape and deep soil prevents the best site planning outcomes. Having removed the rear 25% rule for second storeys, the deep soil rule will reimpose an arbitrary and often highly detrimental outcome for sites. Site planning should be on merit based on orientation, solar access, reference to outlook etc. The proposed rule of 10% of the rear of the site as deep soil is in our view a regression in the development of the standards that Planning seems intent to update.

### **Location and access to facilities and services – ILU: Division 4 - Clause 83**

- Need to define 1 (a) directly.
- The transport service can be a public transport service

### **Development Standards - R2: Division 3 - Clause 76 (d)**

- ILUs need to be allowed in R2 zoning. They are appropriate for this area and offer choice to the community in terms a housing style.
- The continuum connection to a resident's local community, including access to their current private treating Doctor, makes a difference to the resident's life in both RCFs & ILUs.
- The omission of ILU's in R2 zones is not a good outcome. The effect of this change will lead to our elderly being forced to move away from their communities. The familiarity and amenity, well-being and liability for elderly residents of the NSW community will be immensely affected should this not be corrected. Smaller ILU developments in R2 zones allow for people to age within their communities.
- The removal of the permissibility of ILU's in R2 zones will potentially force elderly residents to move away from their area & community - into more dense areas, near urban main streets, shopping centres, higher traffic zones etc. Precisely the opposite of many elderly residents preferred locations as they advance in age. It will be highly detrimental to achieving diverse demography and housing in residential areas, will leave elderly residents in an unfamiliar and, given their level of comfort and capability at a later stage in life, could lead to cloistering & consequently, significantly lower levels of independence within the elderly in our communities.
- The overarching effect being that far greater resources and government support will be required for their care & wellbeing. It is not going to provide a positive social or economic outcome for the wider community.
- We strongly encourage that this omission is corrected, and that ILU's be permissible in R2 zones.

### **Definitions: Division 2 - Clause 72**

- We would recommend that the RCF is defined here. Even if this is covered in the Standard Instrument, this will be a key document that an assessing officer reviews to determine a RCF and should not be omitted.

### **Land to which Part applies: Division 1 - Clause 67**

- SP2 - Infrastructure - Education should be included. There are two projects our LASA working group know of where this applies. One being Vaucluse High School now a Mark Moran Seniors residence.

### **Land to which part does not apply: Division 1 - Clause 68 (1) (b)**

- The last paragraph of Schedule 4 may need re wording. One interpretation is that land with open space could be land which this part does not apply.
- We also want to ensure that if part of the land is flood affected this doesn't rule out the whole site. We have examples of large sites which have part flood affected, however have been developed as RCFs.

## **Heritage: Division 1 - Clause 69**

- This is a backward step that rules large areas of Sydney from having Seniors built on it. It has been in place for over two years.
- We are extremely concerned that this continuation of disallowing heritage will not allow us to construct RCFs & ILUs throughout the community where the prospective residents of the RCF & ILU live. The continuum connection to a resident's local community, including access to their current private treating Doctor, makes a difference to the resident's life in the RCF & ILU. To this end we need to place new RCFs & ILUs in all location's metro and rural right across NSW.
- This is a retrograde step and a disservice to the senior residents of great Sydney.
- Let's be frank - just carve out Ku-ring-gai and possibly one other LGA rather than have this apply to all of greater Sydney.

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## **Development Standards: Division 3 - Clause 75 (Note)**

- The bottom footnote refers to the "Commonwealth Aged Care Accreditation Standards" there are no longer such standards. The reference should be removed.

## **Use of Ground Floor in commercial zones: Division 3 - Clause 78 (3)**

- Consider the inclusion on the ground floor of an area of the seniors housing that the public are able to access during normal business hours to purchase goods and/ or services. This would exclude any residential use.

## **ILUs – Roof: Division 7 - Clause 97 (2) (a)**

- The 9m will in the majority of cases not allow a pitched roof. We suggest provision is made of 10m where a pitched roof is used and changing the 10.5m to 11m where a pitched roof is used.

## **ILUs - Deep Soil: Division 7 - Clause 97 (2) (f)**

- The words ",if practicable, at least 65% of the deep soil zone is located at the rear of the site" - should be removed for the reasons as per the RCF.
- Again, the imposition of directed locations for proportions of landscape and deep soil prevents the best site planning outcomes. Having removed the rear 25% rule for second storeys, the deep soil rule will reimpose an arbitrary and often highly detrimental outcome for sites. Site planning should be on merit based on orientation, solar access, reference to outlook etc. The proposed rule of 10% of the rear of the site as deep soil is in our view a regression in the development of the standards that Planning seems intent to update.

## Vertical Villages: Division 8 - Clause 99 (2) (a) + (4)

- The proposed bonus structure for Vertical villages is generally supportable but the rates of bonus are insufficient to satisfy the differing financial imperatives between independent living / aged care and developer led residential development.
- The financial feasibility of the majority of sites with the permissibility for a vertical village will simply not be able to compete with the wider development market unless the current bonus structure is maintained for sites with a permissible FSR of up to 2:1-2.5:1.
- We would urge the department to consider amending the proposed bonus structure to maintain the current bonus amounts for sites up to an FSR of 2:1.
- The maximum possible Floor Space needs to be changed to the maximum possible floor space allowable consistent with the controls.

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## General Comment

Any aspects of the current draft that will affect viability and yield, will drive up the price structure for the care of our elderly and become an economic drag on the working population & standards of living for all in NSW.

We are sure this is not the intent of DPIE but it will be the result.

To ensure that developments continue and that the senior residents of NSW have choice, the points made in this submission should be considered carefully.



27 August 2021

The Secretary  
Department of Planning, Industry and Environment  
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12 Darcey Street  
Parramatta NSW 2150

Attn: Mr Luke Walton  
By email: [housingpolicy@planning.nsw.gov.au](mailto:housingpolicy@planning.nsw.gov.au)

Dear Luke

**RE: Public Exhibition of State Environmental Planning Policy (Housing) 2021**

Lendlease-Retirement Living (LLRL) thanks the Department of Planning, Industry and Environment (DPIE) for the opportunity to make this submission on the exhibition draft of the State Environmental Planning Policy (Housing) 2021 (draft Housing SEPP). LLRL are the largest private provider of retirement living in NSW and Australia with 18 retirement villages in NSW alone and 17,000 residents in villages across Australia. As a major participant in the industry with over 60 years of development experience, LLRL has a keen interest in the continued delivery of quality new seniors housing to the people of NSW and the renewal of its existing villages to meet growing demographic demand and market expectations.

LLRL agrees with DPIE that the current *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (Seniors SEPP) requires a thorough review and congratulate DPIE for initiating review of this overly complex and inflexible piece of planning legislation.

Following a thorough review of "Part 4 Seniors Housing" of the draft Housing SEPP, LLRL believe many aspects of the draft legislation are positive and provide simplification, flexibility and improved certainty. However, there are also aspects that are extremely concerning with unworkable flaws and in the view of LLRL would restrict the supply of seniors housing in NSW at just the moment when supply needs to increase to meet the demographic wave of the baby boomer generation moving into older age.

Notwithstanding this, LLRL believe that the fundamentals of Part 4 of the draft Housing SEPP are sound, and with some of the modest adjustments discussed below could be a positive and transformative policy for the seniors housing industry in NSW. For simplicity and ease of reference for DPIE's consideration, the relevant divisions and clauses of Part 4 of the draft Housing SEPP are discussed below and recommendations for adjustments provided.

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The key amendments sought to “Part 4 Seniors Housing” are as follows:

Clause 67:	delete the “Hospital” restriction for SP2 zones and the continuance of the application of the policy to all lawful seniors housing existing consents that have not lapsed.
Clause 72:	single women and indigenous people remain defined as “seniors” at 55 years. Note that the age change does not impact existing seniors development and residents.
Clause 74:	ensure the 11.5m height development standard only applies to land in a residential zone where residential flat buildings are permitted.
Clause 76:	apply the SP1 provisions to SP2 zones and exclude Australian university land from the 50% surrounded by residential zoned land test. Delete reference to R2 zones. Alternate subclause provided as well.
Clause 83:	include services being provided on-site to satisfy provision.
Clause 92:	delete reference to safe pedestrian links from the site to public transport services or local facilities.
Clause 96 and 97:	provide note the ensure clause 4.6 variations are not needed when not complying with the non-discretionary standards. Also, additional subclause allowing standards of a local instrument to prevail if they are more generous than the non-discretionary standards.
Clause 98 and 99:	increase the incentive bonuses for ILU and RCF development and include a two storey height bonus for certain high density zones. Also delete the default 0.5:1 FSR provision.
Schedule 4:	delete flood planning and replace with floodway or high flooding hazard and delete open space.
Schedule 6:	provide in the savings provision for future detailed DAs related to a concept DA
Schedule 7:	allow for associated ILUs to form part of the 60% minimum RCF CIV of an SSD
Clause 3:	including a provision for the setting aside of local planning controls in the achievement of the policy

## 1.0 Division 1 Land to which this part applies

Since the introduction of the of the Standard Instrument Local Environmental Plan in 2006, there has been an opportunity to standardise and make clear where seniors housing can be developed. This is preferable to the often subjective and case law dominated tests which have evolved out of the Seniors SEPP. LLRL is therefore supportive of the prescribed zones approach that has been identified as it simplifies the application of the instrument and provides greater certainty.



## 1.1 Special Purpose Zones

LLRL is however extremely concerned with the limited consideration of the Special Purpose zones. In particular, the only circumstance that the SP2 Infrastructure zone can be used for seniors housing is when the zone is identified for 'Hospital' use. LLRL is particularly concerned that these changes will stifle the development of innovation campus associations with Australian universities which involve the development of seniors housing and related health and research associated with seniors living and health studies.

By contrast, for SP1 zones under clause 76, seniors housing can only be developed in the SP1 zone in circumstances where:

- A place of public worship, educational establishment, hospital or seniors housing is permitted on the land; and
- At least 50% of the site adjoins a residential zone.

It is noted that SP zones are generally well located within urban areas in relation to the infrastructure and services that seniors housing also benefits from, such as hospitals and health facilities. Importantly, there is no consistent distinction between an SP1 zoned educational establishment and an SP2 zoned educational establishment across the NSW planning system.

The two Special Purpose zones have been applied interchangeably since the first Standard Instrument LEPs commenced 14 years ago and provide for most tertiary institutes and university zones in NSW. For example, the following university main campuses are all zoned SP2 under various LEPs:

University	Zoning of Main Campus
University of Sydney	SP2 – Educational Establishment under Sydney LEP 2012
University of NSW	SP2 – Educational Establishment under Randwick LEP 2012
Western Sydney University	Parramatta Campus SP2 – Educational Establishment under Parramatta LEP 2011  Kingswood Campus SP2 – Educational Establishment under Penrith LEP 2010  Bankstown Campus SP2 – Infrastructure Educational Establishment under Bankstown LEP 2015
Macquarie University	SP2 – Educational Establishment under Ryde LEP 2014
University of Newcastle	SP2 – Educational Establishment under Newcastle LEP 2012
University of Wollongong	SP2 – Educational Establishment under Wollongong LEP 2009
Australian Catholic University	Strathfield Campus SP2 – Infrastructure Educational Establishment under Strathfield LEP 2012  North Sydney Campus SP2 – Educational Establishment under North Sydney LEP 2013



By limiting the use of these zones for seniors housing, the Department will restrict the development of innovation precincts on campuses at a critical time given the covid-19 pandemic when development of innovation precincts is vital to the long-term success of our universities.

Globally, universities are leading the way in developing successful innovation precincts. A thriving university innovation precinct will attract the brightest academics, researchers and students to the region creating greater employment, industry, research, education and recreational opportunities. Australian universities are highly competitive, internationally and also with each other, and to remain sustainable, universities must recognise the importance of both government and private investment to evolve and remain market competitive. According to IBISWorld, as of 2019, the Australian residential aged care sector generates total annual revenue of \$20.2 billion.

Notably the establishment of retirement villages on campus has been proven to be extremely successful in the United States, as it offers the residents the ability for ongoing learning, volunteer work, participation in university activities and research and intergenerational opportunities. It is a model which offers enormous possibilities for ageing residents in Australia and should be encouraged, rather than discouraged. Similar projects are also being considered in leading Australian universities such as La Trobe, Victoria.

Of specific concern, this proposed restriction on SP1 zoned land would render a major project of LLRL and the University of Wollongong (UOW) that is currently under assessment by Wollongong City Council, prohibited development. This is despite the land being clearly within an existing urban environment and campus in North Wollongong with substantial existing infrastructure and services.

UOW is detailing its concerns in a separate submission regarding the seniors housing prohibition that could impact its Innovation Campus and the joint UOW and LLRL Concept DA that is currently under assessment. LLRL is in complete alignment with UOW on this issue and request DPIE to consider the UOW submission carefully and the LLRL proposed amendments to clause 76 as detailed above and below.

## **1.2 Existing Use Rights**

The new prescribed zones framework has the potential to make existing lawfully approved seniors housing developments a prohibited use. This is particularly relevant to existing seniors housing developments in rural zones where the draft Housing SEPP does not apply to. Furthermore, lawful existing independent living unit (ILU) development under clause 76 would become prohibited in the R2 zone.

Just these two changes alone could result in hundreds and potentially thousands of lawfully approved and successfully operating seniors housing developments in NSW becoming prohibited development and therefore being reliant on the “existing use” rights provisions of the EP&A Act. This also does not include the lawfully approved seniors housing developments in the Special Purpose zones that could also now be rendered prohibited.

DPIE inadvertently making potentially thousands of seniors housing developments prohibited development and reliant on the “existing use” rights provisions not only is problematic from a land use planning perspective, but also provides little certainty for any future development or renewal on these sites and could substantially devalue the homes of residents and make the long-term renewal of these villages more lengthy, costly and uncertain.

#### **LLRL Recommendation – Clause 67**

The following is recommended for clause 67 with text deleted being ~~strike through~~ and new text added being **bold**.

##### *67 Land to which Part applies*

*This Part applies to land in the following zones—*

- (a) Zone RU5 Village,*
- (b) Zone R1 General Residential,*
- (c) Zone R2 Low Density Residential,*
- (d) Zone R3 Medium Density Residential,*
- (e) Zone R4 High Density Residential,*
- (f) Zone B1 Neighbourhood Centre,*
- (g) Zone B2 Local Centre,*
- (h) Zone B3 Commercial Core,*
- (i) Zone B4 Mixed Use,*
- (j) Zone B5 Business Development,*
- (k) Zone B6 Enterprise Corridor,*
- (l) Zone B7 Business Park,*
- (m) Zone B8 Metropolitan Centre,*
- (n) Zone SP1 Special Purposes,*
- (o) Zone SP2 Infrastructure—~~Hospital,~~*
- (p) Zone RE2 Private Recreation.*

***This Part also applies to land for which development consent was lawfully granted under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (or its predecessor instruments) and where that development consent has not lapsed.***

## **2.0 Division 2 Preliminary**

LLRL has specific concerns with the definition of “seniors” changing from 55 years to 60 years. Most notably regarding vulnerable groups such as 55-59 year old single women and indigenous people who the Seniors SEPP has assisted in providing affordable housing over decades. LLRL believe these groups should be exempted from the age change or be sufficiently targeted in the affordable housing parts of the draft Housing SEPP.

Further, LLRL is concerned that this change to a long standing and publicly recognised age that is considered “seniors” could create confusion and uncertainty with residents of seniors housing developments who are under 60 years. It is recommended that a savings provision or an explanatory note is provided to make clear this age increase does not relate to existing seniors housing developments and their residents (both current and future).

#### **LLRL Recommendation – Clause 72**

The following is recommended for clause 72 with text deleted being ~~strike through~~ and new text added being **bold**.

*seniors means the following people—*

- (a) people who are at least 60 years of age,*
- (b) single women or indigenous people who are at least 55 years of age,***
- ~~(bc)~~ people who are resident at a facility at which residential care, within the meaning of the Aged Care Act 1997 of the Commonwealth, is provided,*
- ~~(ed)~~ people who have been assessed as being eligible to occupy housing for aged persons provided by a social housing provider.*

***Note: This definition does not apply to land for which development consent was lawfully granted under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (or its predecessor instruments) and where that development consent has not lapsed.***

### **3.0 Division 3 Development Standards**

#### **3.1 Clause 74 Development standards-general**

LLRL has identified what appears to be a drafting error in subclause (3) that states:

- (3) The development may result in a building with a height of no more than 11.5m if servicing equipment on the roof of the building—*
  - (a) is fully integrated into the design of the roof or contained and suitably screened from view from public places, and*
  - (b) is limited to an area of no more than 20% of the surface area of the roof.*

The intent of this provision is to provide an additional 2.5m of building height for roof servicing equipment, above the 9m height standard of the immediately preceding subclause 2(c)(i). However, the 9m height standard applies only to residential zones where residential flat buildings are prohibited, whilst the 11.5m servicing equipment height standard has no such designation and therefore applies to all zones regardless of the underlying height allowed under local LEPs

For example, land in a R4 or B4 zone with a local LEP development standard height of 26m would require a clause 4.6 variation statement to vary the SEPP mandated 11.5m height standard of subclause (3) despite an LEP compliant height of 26m. Clearly, this outcome was not the intent of this provision.

#### LLRL Recommendation – Clause 74

The following is recommended for clause 74 with text deleted being ~~strike through~~ and new text added being **bold**.

- (3) ***For development on land in a residential zone where residential flat buildings are not permitted, the development may result in a building with a height of no more than 11.5m if servicing equipment on the roof of the building—***
- (a) *is fully integrated into the design of the roof or contained and suitably screened from view from public places, and*
  - (b) *is limited to an area of no more than 20% of the surface area of the roof.*

### 3.2 Clause 76 Development standards for Seniors Housing – Zones RE2, SP1, RU5 and R2

#### SP1 Special Purpose

The restriction placed on SP1 zoned land where at least 50% of the site must adjoin a residential zone would render a major project of LLRL and the University of Wollongong (UOW) for a Health and Wellbeing Precinct, that is currently under assessment by Wollongong City Council, prohibited development.

UOW has detailed its concerns in a separate submission regarding the seniors housing prohibition that could impact its Innovation Campus and this joint UOW and LLRP Concept DA. LLRL request DPIE to consider the proposed amendments to clause 76 to overcome this restriction on the current SEPP, as detailed below.

#### R2 Low Density Residential

The restriction on ILUs in R2 zones is the most concerning aspect of draft Housing SEPP for the seniors housing industry and its inclusion within the draft Housing SEPP without prior warning, consultation or explanation to its intent is extremely troubling.

The R2 zone (and its pre-Standard Instrument equivalent zoning) has been key to the delivery of seniors housing since the commencement of SEPP No. 5 in 1982. This is because land values are lower than in higher density zones such as R3 or R4 zones, and seniors housing providers do not need to compete for the acquisition of sites with market residential and apartment developers. This has resulted in hundreds, if not thousands of successful seniors housing developments in the R2 zone across metropolitan Sydney and also NSW, which has enormously increased supply.



From a LLRL perspective, six of our existing villages are located with an R2 zone, comprising 1,777 ILUs. These villages are well established within their local communities and are entirely compatible with the character, scale and density of their localities. Whilst three of these villages are permissible under local LEPs, it is perplexing for LLRL that three of these villages, currently permissible under the SEPP, would become prohibited development and their long-term futures be placed in jeopardy as a consequence of this provision. Furthermore, without the permissibility enshrined within a SEPP, local councils could simply make “seniors housing” prohibited in their R2 zones to align with the draft Housing SEPP. This would render six of LLRL villages (and 1,777 ILUs) as prohibited development and reliant upon the “existing use” rights provisions of the EP&A Act.

From a wider industry perspective, LLRL seniors housing data on the Greater Sydney and adjoining Regions, indicates that 343 of 787 ILU retirement villages (or 44%) and 402 out of 1215 RCFs (33%) are located in R2 zones. This is by far the most prevalent zoning seniors housing is located in. These figures also do not account for the hundreds of seniors housing developments on R2 zoned land that are not governed by the Retirement Villages Act 1999.

It is important to note that, ILU development in R2 zones is currently afforded no additional building height or floor space ratio over other forms of permissible development, with an 8m building height and a 0.5:1 FSR maximum as non-refusable standards under clause 50 of the Seniors SEPP. The seniors housing industry is therefore at a loss as to how ILU development results in an adverse impact upon low density residential neighbourhoods. Indeed, a RCF at a 1:1 FSR and a building typology and function more akin to a health services facility than residential dwellings, has arguably a greater impact upon streetscape and neighbourhood amenity than ILUs – yet RCFs remain permissible in the R2 zone. The intent of draft Housing SEPP is for the delivery of affordable and diverse housing types. This clause will have the opposite effect and we strongly recommend its deletion.

Notwithstanding this, should DPIE continue to hold concerns regarding ILU densities in R2 zones in some locations being potentially problematic due we understand to the strata subdividing of completed developments, rather than a blanket prohibition for ILUs on all land in the R2 zone, a suggestion is that ILU development would remain permissible in R2 zoned land for ILU developments subject to the Retirement Villages Act 1999. This ensures the long term management of the seniors housing development and services provided to residents, and excludes developments that are constructed and strata subdivided similar to market residential.

In addition, the removal of all rural zones (apart from RU5) coupled with ILUs no longer being permissible in the R2 zone is an enormous change for the industry and will limit housing choice and people downsizing to age-in-place within their communities. It will also force a significant number of seniors housing providers into direct competition with market residential developers in R3 and R4 zones to acquire a small amount of available sites, thereby increasing land values and therefore the cost of housing, with reduced potential for seniors housing to meet growing demand.

The vertical villages incentives provided in Division 8 are not considered broad enough in their application nor great enough in terms of the floor space incentive to offset the enormous loss of potential available R2 and rural zoned land that is proposed to be removed from the industry. This equates to approximately 80,000 hectares of R2 zoned land just in the Sydney Metropolitan Area being excluded from ILU development as a consequence of this provision and restricting NSW residents the choice to downsize within their communities. Our recommendation to adjust this provision is therefore provided below:

#### **LLRL Recommendation – Clause 76**

The following is recommended for clause 76 with text deleted being ~~strike through~~ and new text added being **bold**

*76 Development standards for seniors housing—*

*Zones RE2, SP1, **SP2** and RU5 ~~and R2~~*

*(1) Development consent must not be granted for development for the purposes of seniors housing unless the consent authority is satisfied as follows—*

*(a) for development on land in Zone RE2 Private Recreation—*

*(i) the development is carried out on land used for the purposes of an existing registered club, and*

*(ii) at least 50% of the site adjoins a residential zone,*

*(b) for development on land in Zone SP1 Special Purpose—*

*(i) development for the purposes of a place of public worship, an educational establishment, a hospital or seniors housing is permitted on the land, and*

*(ii) at least 50% of the site adjoins a residential zone **(except for land that is owned by an Australian university),***

*(c) for development on land in Zone SP2 Special Purpose—*

*(i) development for the purposes of a place of public worship, an educational establishment, a hospital or seniors housing is permitted on the land, and*

*(ii) at least 50% of the site adjoins a residential zone **(except for land that is owned by an Australian university),***

*~~(ed)~~ for development on land in Zone RU5 Village—*

*(i) the development is carried out on land within 50km of a 24-hour health services facility, and*

*(ii) the land is serviced by reticulated water and sewerage.*

*~~(d) for development on land in Zone R2 Low Density Residential—the development is carried out only for the purposes of a residential care facility.~~*

or alternate subclause (d):

***(d) for development on land in Zone R2 Low Density Residential—the development is carried out only for the purposes of a residential care facility. This clause does not apply to land on which a seniors housing development is approved to operate under the Retirement Villages Act 1999.***

#### 4.0 Division 4 Site-related requirements

##### 4.1 Clause 82 Location and access to facilities and services-independent living units

LLRL welcomes the updating to this onerous and problematic provision of the Seniors SEPP. By removing the word “public” this allows many of our existing villages and emerging villages to provide an alternative private bus service, which is typically the preferred transport method for many of our residents.

##### 4.2 Clause 83 Location and access to facilities and services-residential care facilities

Again, LLRL welcomes the updating to this provision of the Seniors SEPP and aligns with recent judgments from the NSW Land and Environment Court that acknowledge that given the frailty and high care needs of residents of RCFs, a private bus service is the safest and realistically the only transport option.

LLRL however believes that on-site services for RCF to meet this provision should be available, as they are with ILUs. Arguably, the residents of RCF being less mobile would have a higher need for on-site services than ILU residents, and therefore the provision of on-site services to satisfy this provision should also be afforded to RCFs.

#### **LLRL Recommendation – Clause 83**

The following is recommended for clause 76 with text deleted being ~~strike through~~ and new text added being **bold**

##### *83 Location and access to facilities and services—residential care facilities*

*(1) Development consent must not be granted for development for the purposes of a residential care facility unless the consent authority is satisfied that residents of the facility will have access to facilities and services—*

*(a) directly, or*

*(b) by a transport service other than a passenger service, **or***

*(c) **on-site.***

*(2) In this section— facilities and services has the same meaning as in section 82. passenger service has the same meaning as in the Point to Point Transport (Taxis and Hire Vehicles) Act 2016.*

*Note— A passenger service is defined as the transport, by a motor vehicle other than a bus, of passengers within, or partly within, this State for a fare.*

#### 5.0 Division 5 - Design requirements

LLRL notes support for the review of the 2004 Guideline which is well overdue in order to update these to modern standards and expectations, and LLRL looks forward to consultation to ensure that these provide for the intended design outcomes.

## 6.0 Division 6 Design principles

### 6.1 Clause 87 Neighbourhood amenity and streetscape

LLRL supports the acknowledgement of the operational, functional and economic requirements of residential care facilities and that they typically require a different building shape to other residential accommodation.

### 6.2 Clause 92 Accessibility

LLRL does not support subclause (a) of this design principle as it is inconsistent with clause 82 and clause 83 in that the word “public” is inserted. It could also result in consent authorities requiring applicants to demonstrate compliance with this principle, or imposing onerous conditions of consent to require public footpaths be constructed for hundreds of metres to provide safe links to public bus stops or local retail centres. LLRL believes that once clause 82 or clause 83 is satisfied, then this makes clause 92 redundant and no further test to access local facilities and services is required.

#### **LLRL Recommendation – Clause 92**

The following is recommended for clause 92 with text deleted being ~~strike through~~ and new text added being **bold**

*Development for the purposes of seniors housing should—*

~~(a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and~~

~~(b)~~ **provide attractive, yet safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors.**

## 7.0 Division 7 Non-discretionary development standards

LLRL supports the proposed non-discretionary standards as they have for many years provided a baseline level of certainty for seniors housing providers not only in the assessment of development applications but also in the acquisition of sites from a due diligence and feasibility perspective.



The change in the name of these provisions from the Seniors SEPP “standards that cannot be used to refuse consent” to the draft Housing SEPP “Non-discretionary standards” is understandable considering the reference to this term in section 4.15 of the EP&A Act, however we would like to bring DPIE’s attention to sub section 3(b) that states:

*Section 4.15 3(b)*

*(b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard **may be applied** (emphasis added) to the non-discretionary development standard.*

This provision states that it is at the discretion of the consent authority whether the flexibility applied to development standards is applied to non-discretionary standards. Given that the flexibility applied to development standards relates to their ability to be varied via clause 4.6 statements, this implies that a consent authority could require clause 4.6 statements to vary non-discretionary development standards.

This has never been the intent of the Seniors SEPP “standards that cannot be used to refuse development consent” provisions to act as hard development standards, nor how they have been applied in NSW since they were introduced. This is evident from the fact that the non-discretionary standards have been placed in Division 7 of Part 4 of the draft Housing SEPP, separate to the development standards in Division 3. Furthermore, the intent of the non-discretionary development standards is clearly stated in clauses 96(1) of the draft Housing SEPP as follows (with clause 97(1) being drafted in similar terms):

*“The object of this section is to identify development standards for particular matters relating to development for the purposes of hostels and residential care facilities that, **if complied with, prevent the consent authority from requiring more onerous standards for the matters.**”*

The above indicates that non-discretionary development standards are not meant to be applied in the same way as hard development standards. They merely provide certainty to applicants that a consent authority cannot require more onerous standards should they be complied with. If consent authorities apply clause 4.6 to non-discretionary standards, the distinction between non-discretionary and other development standards becomes blurred and is contrary to the intent of non-discretionary standards.

We therefore request DPIE to carefully consider the potential ramifications of this terminology change.

#### **LLRL Recommendation – Clause 96**

The following is recommended for clause 96 with text deleted being ~~strike through~~ and new text added being **bold**

*96 Non-discretionary development standards for hostels and residential care facilities—the Act, s 4.15*

*(1) The object of this section is to identify development standards for particular matters relating to development for the purposes of hostels and residential care facilities that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.*

***Note: The non-discretionary standards below are not to be considered development standards that require variation via clause 4.6 of the Standard Instrument for non-compliance.***

#### **7.1 Clause 96 Non-discretionary development standards for hostels and residential care facilities—the Act, s 4.15**

LLRL queries the inconsistency between the 9.5m non-discretionary height standard of clause 96(2)(a) and the 9m height development standard of clause 74(2)(c)(i). For example, a RCF in an R2 zone where residential flat buildings are prohibited could achieve a building height of 9.5m thereby complying with the non-discretionary standard, however it would breach the 9m height development standard of clause 74(2)(c)(i). This breach would therefore require a clause 4.6 statement to vary the 9m height development standard, despite the fact that a consent authority cannot require more onerous standards where a proposed development complies with a non-discretionary standard.

This is clearly not the intent of the interplay between the development standards of clause 74 and the non-discretionary standards of clause 96 and 97 and will need to be reviewed by DPIE to ensure consistency.

#### **7.2 Clause 97 Non-discretionary development standards for independent living units—the Act, s 4.15**

LLRL supports the non-discretionary standards relating to ILUs generally, however question some of their applicability in light of the prohibition of ILUs in R2 zones. The intent of these non-discretionary standards is to set a baseline of compliance, particularly in low density zones (ie R2), where a consent authority cannot refuse consent on that basis should a standard be complied with. In particular, the building height standard of 9m and the FSR standard of 0.5:1 for ILUs relate directly to R2 zoned land, where ILUs are proposed to no longer be permissible development.

This reinforces the prevailing seniors housing industry's perception that the prohibition of ILUs in R2 zones was a last moment addition to the draft Housing SEPP without proper consideration by DPIE. LLRL therefore again recommends that the prohibition of ILUs in R2 zone is deleted.

## **8.0 Division 8 Development for vertical villages**

### **8.1 Clause 98 Development to which Division applies**

LLRL supports the intention of this provision to incentivise seniors housing (in particular co-located developments) and to level the playing field in the acquisition of sites for seniors housing providers when competing against market rate residential developers which is typically the highest and best use.

LLRL also supports DPIE removing the need for a Site Compatibility Certificate (SCC) to access the bonus, and also removing the minimum affordable housing and the associated community housing provider requirement. These were significant impediments for the industry utilising the existing vertical village bonus of the Seniors SEPP.

LLRL however strongly believe in order for this incentive provision to achieve its intent it must be applied more broadly, and not just restricted to zones where residential flat buildings are permissible as this restricts the application of the bonus primarily to R4 zoned land and less frequently to R3, R1 and B4 zones. Accordingly, in the opinion of LLRL it must also apply where shop-top housing is permitted, which would open up many business zones to the application of the incentive.

Business zones in our commercial centres also provide the highest FSR development standards, which correlate better with a percentage bonus (as proposed) and provide a greater incentive for seniors housing providers as the base FSR increases.

For example, using the incentives provided in clause 98 for an ILU development, a typical 1.5:1 FSR in an R4 zone provides a total FSR (+ 15% bonus) of 1.725:1, or an increase in FSR of 0.225:1. Whilst, an ILU development in a B4 zone with a 5:1 FSR provides a total FSR (+15% bonus) of 5.75:1 or an increase in FSR of 0.75:1. Accordingly, allowing clause 98 to apply to business zones with higher FSRs will incentivise seniors housing in our urban and city centres.

We understand that this is the intent of this provision as publicly stated by the Minister for Planning and Public Spaces in the media regarding the draft Housing SEPP, in that vertical villages will incentive seniors housing in our city centres and on top of our shopping centres. The current drafting of the draft legislation regrettably does not promote this outcome as it does not apply to our urban centres or shopping districts.

### **8.2 Clause 99 Development for vertical villages permitted with consent**

LLRL again supports the intention of this provision, however as discussed it must apply also to zones where shop-top housing is permissible. This is not only to bring seniors into our urban centres from a social inclusion and integration perspective but to provide opportunities for the industry and partially offset the enormous amount of land that is proposed to be lost to the seniors housing industry with the draft Housing SEPP no longer applying to rural zones and ILUs being prohibited in the R2 zone.

The proposed changes significantly narrows the land available to the seniors housing industry to higher density zones that are typically outside where seniors housing providers have traditionally operated, given their inherent competitive disadvantage. Accordingly, its application must be broad and its incentives substantial enough to recalibrate the industry into higher density zones and not reduce the overall supply of new seniors housing at this crucial time in the demographic history of NSW.

Accordingly, LLRL suggest adjusting the incentives as follows:

- 20% bonus for ILUs
- 25% bonus for RCFs
- 25% bonus for RCFs + ILUs

From LLRL most recent experience, modern ILUs are on average between 15%-25% larger in GFA than standard market residential apartments, and this does not take into account the wider circulation spaces and substantive communal areas of modern ILU developments. Accordingly, a 20% bonus for ILUs is a conservative estimate of the additional GFA required for ILU developments to effectively compete with standard market residential developers in the acquisition of sites in higher density zones.

LLRL do not however support an even greater FSR above the RCF only bonus when a RCF and ILUs are combined. This could lead to unintended outcomes where a single ILU could be attached to a RCF in order to obtain the maximum available FSR bonus. The FSR bonus increase from 20% for ILUs to 25% for ILUs + RCF provide incentive in itself for colocation.

LLRL also welcomes the additional building height of 3.8m to accommodate the floor space bonus without the need to submit a clause 4.6 variation. However, in higher density zones with FSRs greater than approximately 1.5:1, it is unlikely that the available bonus floor space will be able to be accommodated within only a single additional storey, and further bonus building height will be necessary for the incentive to operate as envisioned.

Lastly, LLRL is extremely concerned regarding the default 0.5:1 FSR standard that would apply to land that does not have an FSR standard, this effectively applies an R2 zone FSR to all zones effectively downzoning medium and high density zones for senior housing. This is highly problematic given that almost all R3 and R4 zoned land prescribes densities well above 0.5:1, and many R4 zones prescribe densities well above 1:1.

For example, a seniors housing development on a 2,000m<sup>2</sup> site without an FSR development standard but with an R4 zoning, a building height development standard of 26 metres (or 8 storeys) and related DCP built form controls, would have a 0.5:1 FSR + bonus forced upon it. For an ILU development this would equate to an FSR of 0.575:1 which correlates to a 2 storey development in a 8 storey residential locality. This will result in seniors housing in these areas having a significantly lower density and yield than other forms of residential development, disincentivising seniors housing, which is entirely contrary to the purpose of this provision to incentivise seniors housing in our urban centres.



Removing this ill-conceived and deeply flawed default FSR is therefore strongly recommended and the incentive provision could still operate effectively in areas without an FSR as the building height bonus provides an incentive in itself.

#### **LLRL Recommendation – Clause 98 and 99**

The following is recommended for clause 98 and 99 with text deleted being ~~strike through~~ and new text added being **bold**

##### *98 Development to which Division applies*

*This Division applies to development for the purposes of a vertical village on land to which this Part applies if development for the purposes of a residential flat building **or shop-top housing** is permitted under another environmental planning instrument.*

##### *99 Development for vertical villages permitted with consent*

*(1) Development consent must not be granted for development to which this Division applies unless the site area of the development is at least 2,000m<sup>2</sup>.*

*(2) Development consent may be granted for development to which this Division applies if the development will result in a building with—*

*(a) the maximum permissible floor space ratio plus—*

*(i) for development involving independent living units—an additional ~~45~~**20**% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of independent living units, or*

*(ii) for development involving a residential care facility—an additional ~~20~~**25**% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of the residential care facility, or*

*(iii) for development involving independent living units and residential care facilities—an additional 25% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of independent living units or a residential care facility, or both, and*

***(b) the maximum permissible building height plus-***

***(i) 7.6m in any business zone (except for Zone B1 Neighbourhood Centre) and Zone R4 High Density Residential, or***

***(ii) 3.8m on any other land to which this Division applies.***

*(3) Development consent must not be granted under this Division for development on land to which an interim heritage order or listing on the State Heritage Register under the Heritage Act 1977 applies.*

*(4) In this section— maximum permissible floor space ratio means—*

*(a) the maximum floor space ratio permitted for the land under a relevant planning instrument; ~~or~~*

*~~(b) if a maximum floor space ratio is not specified under a relevant planning instrument— 0.5:1.~~*

## 9.0 Schedule 4 Environmentally sensitive land

LLRL supports the rationalisation of the environmentally sensitive land schedule as it minimises the ambiguity and broadness of this schedule. However, there remains concerns that land identified as 'flood planning' in another environmental planning instrument (such as an LEP) will be automatically excluded, whereas currently this exclusion only applies to land identified as 'floodway' or 'high flooding hazard'. This could potentially exclude large areas of land from the draft Housing SEPP where the actual flood hazard is minor. Furthermore, the "open space" exclusion appears superfluous given the prescribed zones of clause 67 and that the draft Housing SEPP applies to RE2 Private Recreation, which is effectively an open space zoning.

### LLRL Recommendation – Schedule 4

The following is recommended for Schedule 4 with text deleted being ~~strike through~~ and new text added being **bold**

*Land identified in another environmental planning instrument as follows or by a similar description—*

- (a) ~~flood planning~~ **floodway or high flooding hazard**,*
- (b) ~~open space~~,*
- (be) **natural wetland**.*

## 10.0 Schedule 6 Provisions consequent on commencement of State Environmental Planning Policy (Housing) 2021

The general savings provisions of the draft Housing SEPP do not appear to cover future detailed DAs related to concept DAs. This is problematic as a concept DA could have approved (or be under assessment) the building envelopes and seniors housing uses of a site, however should the draft Housing SEPP make seniors housing a prohibited use on the site, then future detailed DAs lodged in accordance with the Concept DA approval could be considered prohibited development.

This is relevant for the UOW H&WP as the current draft Housing SEPP prohibits seniors housing on the site. Whilst the concept DA we understand will be covered by the general savings provision, the future detailed DAs of the H&WP may not be covered and therefore could be prohibited development.

The following amendment to this provision is therefore proposed:

**LLRL Recommendation – Schedule 6**

The following is recommended for Schedule 6 with text deleted being ~~strike through~~ and new text added being **bold**

*2 General savings provision*

*The former provisions of a repealed instrument continue to apply to the following—*  
*(a) a development application made, but not yet determined, on or before the repeal day,*

***(b) a subsequent development application not yet made, that relates to a concept development application consent that has not lapsed,***

***(bc) a development consent granted on or before the repeal day***

**11.0 Schedule 7 Amendment of other environmental planning instruments**

LL-LR welcomes the recognition of large seniors housing projects as State Significant Development (SSD). We also welcome the ability to include the capital investment value of ILUs. However, in almost all integrated large villages the RCF component makes up less than 25% of the overall GFA of a village. This is because on co-located seniors housing villages, a much smaller proportion of ILU residents eventually move into RCFs and hence the number of beds in a RCF is up 5 times lower than the number of ILUs.

Therefore, by requiring the RCF facility be the majority contributor to the threshold for SSD will mean that the trigger to SSD is unlikely to be used regularly. Alternatively, it may mean that the planning process for the development of large sites may be split between part SSD and part Regional or Local development. This would be confusing for consent authorities, applicants and the community, particularly so when attempting to apply the various FSR bonuses of the vertical villages provision.

ILUs and RCFs being co-located on sites or within vertical villages provides continuum of care and the ability for residents to age in place within their own community and social networks and should be encouraged by planning policy. Accordingly, providing an SSD pathway for RCFs yet limiting the ILU component to a maximum of 40% of total CIV, runs counter to this concept, and will only either force large seniors developments out of SSD, or split the planning pathway. Neither of these options support the intention of an SSD pathway for seniors housing.

The 60% minimum CIV for RCFs also could potentially allow third party appeals where an objector could challenge the planning pathway of an SSD following its determination when the non-RCF component of the SSD is near to 40%.

It is also important that RCF specific Secretary's Environmental Assessment Requirements (SEARs) are developed in order to ensure that the development assessment process from inception to approval is not inadvertently lengthened as a consequence of overly onerous SEARs process that require lengthy lead times to address requirements prior to the lodgement of the SSD application with DPIE.



#### LLRL Recommendation – Schedule 7

The following is recommended for Schedule 7 with text deleted being ~~strike through~~ and new text added being **bold**

*7.1 State Environmental Planning Policy (State and Regional Development) 2011*

*Schedule 1 State significant development—general*

*Insert at the end of the Schedule with appropriate section numbering—*

*Residential care facilities*

*Development for the purposes of residential care facilities if—*

*(a) the development has a capital investment value of—*

*(i) for development on land in the Greater Sydney region—\$30 million, or*

*(ii) otherwise—\$20 million, and*

*(b) the residential care facility component **and any associated independent living unit component** of the proposed development has a value of at least 60% of the capital investment value of the proposed development.*

## 12.0 Incentives to Renew Ageing Villages

LLRL and many other retirement and residential care operators own and manage seniors housing stock that itself is aging and is not in keeping with modern and evolving design standards and resident expectations. Many of these retirement villages and RCFs were developed in the 1980s following the adoption of SEPP 5 which encouraged large village development on urban fringes. These large villages are common throughout Sydney and some large regional centres and have reached or are rapidly reaching the end of their economic life.

Often the obsolescence of the stock is incurable, with buildings not originally designed or constructed to enable upgrades (eg wide corridors, rooms for wheelchair accessibility, retrofitting lifts, detached and separated parking, small and low amenity private open spaces etc), to achieve minimum compliance with the Australian Standards and Building Code of Australia and must be replaced. This is of particular importance as life expectancy in Australia has increased by 10 years since the introduction of SEPP No. 5 and the average age of residents in retirement villages is now 81 years, accessibility for older, more frail and impaired residents is of great importance. The draft Housing SEPP needs to address how such stock can be effectively replaced.

Renewal of this stock is a complex and difficult process and often involves displacing residents and disruption to nearby residents within a village. As a result, significant renewal of older villages can be delayed or interim measures put in place to extend their economic life. Some villages we own are built at a density and height that are at the top or exceed current local planning controls and renewal of these villages can be held back as a result.



Replacement of existing senior housing at a 1:1 ratio is simply not economically viable given the combined costs of buying back the units as well as ensuring the relocated residents are not economically disadvantaged. Some of our existing villages may become prohibited under the planning controls in which they reside, making their renewal extremely difficult if not impossible, driving them to increasingly fall behind modern and development standards and market expectations seniors housing.

To ensure the ongoing replacement of NSW's obsolescing senior housing stock the draft Housing SEPP should provide planning incentives for older seniors housing stock to be renewed and revitalised. It should allow for density/height increases which make replacement above a 1:1 ratio possible (Lendlease has found 2:1 or 3:1 becomes commercially viable when considering the replacement of not only the housing stock but the need to renew and expand other village infrastructure elements such as the community facilities to ensure they also meet modern standards and resident expectations.

It should also guarantee that existing villages may utilise their current land for ongoing redevelopment for senior housing even in zones or locations prohibited under subsequent planning instrument changes. This is not about expansion of the use but rather about maintaining and reinvesting in current senior housing infrastructure across the state to ensure now and into the future NSW's senior housing stock can be kept in line with the most current and best practice standards.

Such renewal could provide for seniors housing to be brought up to date with current accessibility requirements and ESD requirements including BASIX. Furthermore, the social benefit to residents of having modern dwelling stock provided in existing villages where they call home is important. Such an incentive provision would allow for villages to be renewed in a staged manner and for existing residents to not have to move villages.

LLRL would welcome an appropriate FSR and building height incentive clause that provided for renewal of aging villages where the renewal was tied to defined and desirable accessibility, ESD and design standards. The draft Housing SEPP should also make it clear that renewal of villages is permitted irrespective of the zoning in which the village sits.

## 13.0 Other Matters

### 13.1 Aims of the Policy

The Seniors SEPP currently provides under clause 2 Aims of Policy:

- (2) *These aims will be achieved by—*
- (a) *setting aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified in this Policy, and*

This is not included in the draft Housing SEPP and is helpful for clarity to reinforce that the aims of the policy are achieved by the setting aside local provisions if they would prevent development under this policy.

#### **LLRL Recommendation – Clause 3**

The following is recommended for Clause 3 with text deleted being ~~strike-through~~ and new text added being **bold**

##### **3 Aims of Policy**

*The aims of this Policy are as follows—*

- (a) *to ensure an adequate supply of an appropriate range of housing types to meet the changing needs of people across the State, including the following—*
- (i) *seniors,*
  - (ii) *people with a disability,*
  - (iii) *households on very low, low or moderate incomes,*
  - (iv) *people experiencing homelessness or people experiencing other disadvantages who may require a model of accommodation that incorporates support services,*
- (b) *to provide greater clarity and certainty for the housing sector,*
- (c) *to encourage the development of diverse and affordable housing types by—*
- (i) *providing a consistent planning regime for the provision of new affordable housing,*
  - (ii) *providing incentives for certain types of development,*
  - (iii) *facilitating the delivery of new housing by the Land and Housing Corporation,*
- (d) *to support short-term rental accommodation as a home sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,*
- (e) *to mitigate the loss of existing affordable rental housing,*
- (f) *to encourage the development of housing that is designed and located in a manner that meets the needs of residents, especially seniors or people with a disability.*

- (b) These aims will be achieved by—**

**The setting aside local planning controls that would prevent the development of the housing types provided by this Policy that meets the development criteria and standards specified in this Policy.**

### 13.2 Relationship with other environmental planning instruments

LLRL support the provisions of the draft Housing SEPP prevailing of the provisions of the local environmental planning instruments where there is an inconsistency. However, should a local environmental planning instrument provide more generous provisions, those provisions should apply to the extent of an inconsistency. This has long been a tension between the Seniors SEPP and LEPs where LEPs provide more generous building height and floor space ratio standards.

#### **LLRL Recommendation – Clause 96 and 97 additional subclause**

The following is recommended for Clause 3 with text deleted being ~~strike-through~~ and new text added being **bold**

***(3) Notwithstanding clause 8 of this Policy, if another environmental planning instrument contains provisions that specify requirements, standards or controls in relation to a matter to which this clause applies, and those requirements, standards or controls are more generous than the standards, requirements or controls in this clause, those other provisions prevail.***

### 13.3 Subdivision

Clause 21 of the Seniors SEPP relating to subdivision is no longer included which has provided flexibility for seniors housing developments across varying local areas, zones and minimum subdivision sizes. This states:

#### *21 Subdivision*

*Land on which development ~~has been~~ may be carried out under this Chapter may be subdivided with the consent of the consent authority.*

It is recommended that this provision is retained with the above minor change to enable subdivision to occur alongside a seniors development application. This is particularly useful for example where parts of the development, such as a RCF are to be owned and operated separately.

### 14.0 Conclusion

LLRL welcomes the exhibition of the draft Housing SEPP and the opportunity to provide a submission. LLRL is supportive of the intent of the draft policy to simplify seniors housing planning legislation in NSW and to incentivise vertical villages in our urban centres and wish to commend DPIE on this reform.

LLRL remains however extremely concerned at some aspects of Part 4 of the draft Housing SEPP which will have the effect of working against the intent of the draft Housing SEPP. In our opinion the draft Housing SEPP as currently drafted will restrict the supply of modern seniors housing development at just the time when demand for seniors housing is increasing with the baby boomer generation entering older age.



Notwithstanding this, with the modest adjustments proposed to the relevant provisions contained within this submission, LLRL is confident that the draft Housing SEPP could be a transformative planning policy to deliver modern seniors housing in NSW for the next 20 years. This would allow not only housing choice as people age and social connection, but also the ability for people to age in place within their communities and established social networks.

LLRL seeks that the above submission and recommendations are thoroughly considered by DPIE in its finalisation of the draft Housing SEPP. We would be happy to discuss any of these matters further with you or make ourselves available to expand upon this submission, with our key contact being Karen Armstrong, National Planning Manager for LLRL, on 0409 990 172.

Yours sincerely

A handwritten signature in black ink, appearing to read "ajolic", is positioned below the "Yours sincerely" text.

**Anne Jolic**  
**Head of Development, Retirement Living**  
**Lendlease**



3 September 2021

The Secretary  
Department of Planning, Industry and Environment  
4 Parramatta Square  
12 Darcey Street  
Parramatta NSW 2150

Attn: Mr Luke Walton  
By email: [housingpolicy@planning.nsw.gov.au](mailto:housingpolicy@planning.nsw.gov.au)

Dear Luke

**Re: Public Exhibition of State Environmental Planning Policy (Housing) 2021 – Implications for University of Wollongong project for a \$250 Million Health and Wellbeing Precinct on Innovation Campus, north Wollongong**

Lendlease Retirement Living (LLRL) thanks the Department of Planning, Industry and Environment (DPIE) for the opportunity to make this submission on the exhibition draft of the State Environmental Planning Policy (Housing) 2021 (draft Housing SEPP).

LLRL agrees with DPIE that the current *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (Seniors SEPP) requires a thorough review of an overly complex piece of planning legislation. Notwithstanding this, we would like to highlight our significant concerns with the proposed changes to SP zones which have implications for all universities in across NSW, as well as raising the implications for our specific major project underway for a Health and Wellbeing Precinct at UOW's Innovation Campus, North Wollongong.

The University of Wollongong (UOW) in partnership with Lendlease Retirement Living are currently seeking to develop a Health and Wellbeing Precinct (H&WP) at the Innovation Campus. The precinct co-locates a health clinic and seniors living uses on a university campus in order to create a Living Lab environment focused on key challenges facing the community in relation to healthy ageing in place, patient-centred health care delivery, and providing best-practice immersive clinical education for current and future practitioners. This is an Australian first innovation project, modelled on overseas university successes and for which other Australian universities are seeking to follow.



The proposed SEPP changes will stifle the ability for UOW and other NSW universities to develop such precincts with health research and education aligned with seniors living uses, at a time where the development of innovation precincts are vital to the ongoing success of our universities. There is an emerging trend in the Australian network of universities to co-locate health and education facilities with seniors housing, child care, and commercial uses in health/education precincts, to advance research, health and education outcomes.

We would like to outline the H&WP project, its significance for health research, innovation and seniors housing in NSW, and to identify the simple changes to the draft SEPP which will avoid future uncertainties and complication of the planning pathways for delivering this project and other similar university projects in future.

For simplicity and ease of reference for DPIE's consideration, the relevant divisions and clauses of Part 4 of the draft Housing SEPP are discussed below and recommendations for adjustments provided. The key amendments we seek can be summarised as follows:

**Clause 76:**            **apply the SP1 provisions to SP2 zones and exclude Australian university land from the 50% surrounded by residential zoned land test.**

**Schedule 6:**        **provide in the savings provision for future detailed DAs related to a concept DA**

## **1.0 Project Overview**

### University of Wollongong – Health and Wellbeing Precinct

In January 2021, the University of Wollongong (UOW) (in conjunction with LLRL) lodged a Concept Development Application (Concept DA) with Wollongong City Council for a new 'Health and Wellbeing Precinct' (H&WP). The Concept DA is currently under assessment. UOW has been working on this project since 2016 and in partnership with LLRL since 2018.

This Concept DA was lodged on the basis that the H&WP meets the Seniors SEPP criteria for being land zoned primarily for urban purposes in view of the permitted uses, and existing development at the UOW Innovation Campus, the zone objectives, and that both 'educational establishments' and 'hospitals' are permitted with consent in accordance with Clause 4(1) of the Seniors SEPP. Under clause 4 of the Seniors SEPP, the SEPP applies to land within NSW that is zoned primarily for urban purposes.

The Concept DA seeks consent for phased 1 of the H&WP. This precinct aims to translate research into action—developing and delivering new models of health research combined with patient-centred care, while training the next generation of healthcare professionals and advancing health and wellbeing outcomes for the people of the Illawarra and beyond. The H&WP is a pivotal part of UOW's extensive strategy to address local, national, and global health challenges. The H&WP is expected to be designed and delivered over multiple stages, pursuant to one overarching vision of 'Living Well Longer'.

The hub of the precinct will be a primary community health clinic, which will be dedicated to being a centre of excellence in integrated health research, teaching, learning and healthcare to address key issues facing the Illawarra. It will complement existing health services in the Illawarra by offering non-surgical care focused on preventative health issues to maintain overall physical and mental wellbeing, particularly as we age.

UOW selected LLRL through a tender process, recognising LLRL as the largest private provider of retirement living in NSW and Australia, with 18 retirement villages in NSW alone and 17,000 residents in villages across Australia. As a major participant in the industry with over 60 years of development experience, LLRL has a keen interest in the continued delivery of quality new seniors housing to the people of NSW to meet growing demographic demand and market expectations.

A number of seniors housing buildings are proposed to be developed as part of the H&WP, including two ILU buildings and a Residential Care Facility (RCF). Community and visitor focused buildings will be developed around a significant piece of landscaped open space known as the 'Green Heart'.

Through the provision of seniors housing on the H&WP and on campus, there will be collaboration activities focused on research and education with the operators of the seniors housing. In this way, the Precinct will function as a 'Living Lab' focused on healthy ageing and boosting collaboration between community, researchers, educators, and care providers. A cohort of seniors living on campus offers an incredible opportunity to enable UOW researchers, clinicians and students to work with individuals in their homes and aged care settings to deepen understanding of how to best provide health care and services to support the wellbeing of older people. Immersion of researchers in the H&WP community would bring new thinking and ideas and an opportunity to excel in technological innovation for aging in place. It also brings empathy and understanding which leads to better patient outcomes.

Living Labs puts users at the centre of design and fosters co-creation, integrating cross-disciplinary research and innovation processes in real life communities and settings, thereby speeding up the pace of innovation to solve complex problems. Living on campus, seniors will be active participants in education outcomes for students and co-creators in research and product development. They will gain trust and knowledge by being involved in the research into the quality and delivery of care they receive.

The opportunity to co-design and commercialise products and services which truly meet the desires and needs of an aging population is unique and exciting. This creates significant opportunity for industry partnerships and the attraction of businesses to Wollongong.

The students, teachers and researchers at PCHB will benefit from being able to base themselves for extended periods on the campus, with the ease of conducting both education and research activities in the one location. The co-location of a living lab on campus addresses travel and accessibility issues which can be a barrier to students who are doing research projects or clinical education. Students from lower socioeconomic backgrounds and international students don't always have access to private transport, and lack of availability of public transport to ILA communities, often not located on good public transport links, is a significant constraint. The H&WP would avoid these challenges for UOW students and researchers.

The co-location will also better enable UOW to facilitate student simulation activities, which our research shows that learning in practice builds nurses competence and confidence. There are 750 Wollongong students in nursing alone. Doing these assessments with seniors in consultation rooms on site and within the ILA & Aged Care will reduce costs and improve the quality of education.

These research and education activities will be formalised through agreements between UOW and the operators and will include:

- University led research projects embedded within the facility itself, such as movement sensors, energy efficiency and data gathering;
- Student placements which integrates their learning within an authentic learning environment where practice is intertwined in a real-world setting;
- Student job opportunities to enhance interdisciplinary and inter-professional knowledge and practice;
- Graduate job opportunities to retain young people and local talent;
- Continuing professional development, including courses, staff exchanges and shared positions; and
- Provision of onsite shared facilities and teaching and learning spaces within seniors housing buildings.

The colocation of Seniors Housing within Universities has multiple educational and social benefits. These include achieving greater diversity across campus communities, promoting life-long learning opportunities where seniors can participate and volunteer in learning and research, greater social inclusion and less isolation of seniors able to live in purpose-built seniors facilities while remaining in an intergenerational community and, in turn, greater awareness and mutual understanding is gained across all age groups on campus. Greater activation of campuses is enabled through an ongoing, year round residential presence, so that campus facilities and services such as libraries, cafés and gyms can effectively operate year-round.



## **2.0 Division 1 Land to which this part applies**

### **2.1 Special Purpose Zones**

LLRL is extremely concerned with the limited consideration of both the Special Purpose zones. It is particularly concerning that these changes will stifle the development of innovation campus associations within Australian universities which involve the development of seniors housing and related health and research associated with seniors living and health studies.

In particular, for SP1 zones under clause 76, seniors housing can only be developed in the SP1 zone in circumstances where:

- A place of public worship, educational establishment, hospital or seniors housing is permitted on the land; and
- At least 50% of the site adjoins a residential zone.

For SP2 zones, the only circumstance that the SP2 Infrastructure zone can be used for seniors housing is when the zone is identified for 'Hospital' use

It is noted that SP zones are generally well located within urban areas in relation to the infrastructure and services that seniors housing also benefits from, such as hospitals and health facilities. Universities also often have significant infrastructure within their campuses, mixed use, have access to good public transport. The uses are also compatible with housing and self contained and often have diversity of urban land use zoning adjacent other than residential such as commercial, industrial and open space that immediately adjoin Campuses The SP zone for Universities should in itself be the test for a compatible land use and the additional restrictions removed.

Importantly, there is no consistent distinction between an SP1 zoned educational establishment and an SP2 zoned educational establishment across the NSW planning system.

The two Special Purpose zones have been applied interchangeably since the first Standard Instrument LEPs commenced 14 years ago and provide for most tertiary institutes and university zones in NSW. For example, the following university main campuses are all zoned SP2 under various LEPs:

University	Zoning of Main Campus
University of Sydney	SP2 – Educational Establishment under Sydney LEP 2012
University of NSW	SP2 – Educational Establishment under Randwick LEP 2012
Western Sydney University	<p>Parramatta Campus SP2 – Educational Establishment under Parramatta LEP 2011</p> <p>Kingswood Campus SP2 – Educational Establishment under Penrith LEP 2010</p> <p>Bankstown Campus SP2 – Infrastructure Educational Establishment under Bankstown LEP 2015</p>
Macquarie University	SP2 – Educational Establishment under Ryde LEP 2014
University of Newcastle	SP2 – Educational Establishment under Newcastle LEP 2012
University of Wollongong	SP2 – Educational Establishment under Wollongong LEP 2009
Australian Catholic University	<p>Strathfield Campus SP2 – Infrastructure Educational Establishment under Strathfield LEP 2012</p> <p>North Sydney Campus SP2 – Educational Establishment under North Sydney LEP 2013</p>

By limiting the use of these zones for seniors housing, the Department will restrict the development of innovation precincts on campuses at a critical time given the covid-19 pandemic when development of innovation precincts is vital to the long-term success of our universities.

The concept of this colocation is not new, however in Australia remains relatively conceptual. Notably the establishment of university based retirement villages on campus has been proven to be extremely successful in the United States and northern Europe, as it offers the residents the ability for ongoing learning, volunteer work, participation in university activities and research and intergenerational opportunities. It has both benefits for seniors and Universities. It is a model which offers enormous possibilities for ageing residents in Australia and should be encouraged, rather than discouraged. Similar projects are also being considered in leading Australian universities such as La Trobe, Victoria, University of Canberra, ACT, Griffith University, Gold Coast, and James Cook University, Townsville, QLD.

A thriving university innovation precinct will attract the brightest academics, researchers and students to the region creating greater employment, industry, research, education and recreational opportunities. Australian universities are highly competitive, internationally and also with each other, and to remain sustainable, universities must recognise the importance of both government and private investment to evolve and remain market competitive.

### **3.0 Division 3 Development Standards**

#### **3.1 Clause 76 Development standards for Seniors Housing – Zones RE2, SP1, RU5 and R2**

##### **SP1 Special Purpose**

The draft SEPP's Division 3 Clause 76 restriction placed on SP1 zoned land where at least 50% of the site must adjoin a residential zone would render a current major project of the University of Wollongong (UOW) in partnership with Lendlease Retirement Living (LLRL) on our Innovation Campus, that is currently under assessment by Wollongong City Council, as prohibited development. This is despite the land being clearly in a suitable location for this project, within an existing urban environment and campus in North Wollongong with substantial existing infrastructure and services.

This proposed policy change and impact on UOW is in stark contrast to other related NSW Government Policy positions, which recognise the need to encourage and develop Innovation Campuses associated with intergenerational campuses, health, research and seniors housing.

In late 2020, the Department exhibited a review of *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*. As part of this, the Department noted the following:

*Innovation spaces/hubs within existing tertiary institutions Innovation hubs are spaces that contribute to the growth and diversification of the economy and create jobs. Innovation hubs bring together multidisciplinary experts to find new ways to utilise talent, resources and technology and to support innovation and commercialisation through the cross-fertilisation of ideas between the academic sector and the private and/or public sector(s). The relationship between tertiary institutions and the workforce is becoming closer and tertiary institutions need to be able to respond to this need. There is a greater need to foster and attract innovation hub activities within existing tertiary institutions. It is proposed to expand the SEPP to permit development with consent for innovation hub activities on existing tertiary institutions. These innovation hub activities would typically include commercial uses associated with the tertiary institution. This proposed provision would not permit forms of residential accommodation as part of the innovation hub.*

Whilst this review noted that traditional residential accommodation would not be considered, it does not consider Seniors Housing and its role in innovation campuses such as the one at the UOW H&WP.

Furthermore the Action Plan "*Turning Ideas Into Jobs – Accelerating R&D in NSW Jan 2021*" of the NSW Innovation Policy presents the case for seizing a critical and timely opportunity for NSW to accelerate R&D and turn ideas into jobs through the implementation of five Priority Actions, with 4 specifically noting:

*"4 Target strategic support for NSW universities – collaborate on research that will drive the state's future strategic growth industries and research-led attraction of industry, and form partnerships to better leverage Commonwealth Government research funding."*

In the case of the H&WP at the UOW Innovation Campus, in July 2018 the NSW Minister for Education specifically varied the public positive covenant which directs suitable land uses on the campus. The covenant was varied to allow for seniors housing (both independent living and aged care) on the Innovation Campus. Again, this illustrates that the preliminary policy position put forward by DPIE in the draft Housing SEPP is inconsistent with the Government's own actions in seeking to promote senior housing and create intergenerational innovation campuses.

Further, the NSW Government's Housing Policy 2041 and 2021-22 Action Plan which sits alongside, seeks to increase housing supply and diversity. Structured around five priority areas for NSW Government, the action plan seeks to improve housing outcomes and housing choice, and also to consider this on government owned by "Maximising the impact of NSW Government-owned land, investment or assets and government-led development projects or funding to achieve the housing vision".

It is important to note that the provision of seniors housing is a key aspect in housing supply. It also encourages and enables:

- (1) people to free up existing housing which may have 1-2 people in larger homes
- (2) supports ageing in place, and
- (3) has direct outcomes to delaying entry into hospital and aged care facilities

The following amendment to this provision is therefore proposed:

#### **LL-RL Recommendation – Clause 76**

The following is recommended for clause 76 with text deleted being ~~strike through~~ and new text added being **bold**

*76 Development standards for seniors housing—*

*Zones RE2, SP1, **SP2** and RU5 and R2*

*(1) Development consent must not be granted for development for the purposes of seniors housing unless the consent authority is satisfied as follows—*

*(a) for development on land in Zone RE2 Private Recreation—*

*(i) the development is carried out on land used for the purposes of an existing registered club, and*

*(ii) at least 50% of the site adjoins a residential zone,*

*(b) for development on land in Zone SP1 Special Purpose—*

*(i) development for the purposes of a place of public worship, an educational establishment, a hospital or seniors housing is permitted on the land, and*

*(ii) at least 50% of the site adjoins a residential zone **(except for land that is owned by an Australian university),***

*(c) for development on land in Zone SP2 Special Purpose—*

*(i) development for the purposes of a place of public worship, an educational establishment, a hospital or seniors housing is permitted on the land, and*

*(ii) at least 50% of the site adjoins a residential zone **(except for land that is owned by an Australian university),***

...



#### 4.0 Schedule 6 Provisions consequent on commencement of SEPP (Housing) 2021

The general savings provisions of the draft Housing SEPP do not appear to cover future detailed DAs related to concept DAs. This is problematic as a concept DA could have approved (or be under assessment) for the building envelopes and seniors housing uses of a site, however should the draft Housing SEPP make seniors housing a prohibited use on the site, then future detailed DAs lodged in accordance with the Concept DA approval could be considered prohibited development. Concept DAs are recognised in the EP&A Act as a suitable approach to applications on large and staged sites, and there is no reason why the subsequent DAs, which must be consistent with any Concept DA consent, should not be suitably protected under the savings provisions.

This is particularly relevant for the UOW H&WP as the current draft Housing SEPP would prohibit seniors housing on the site. Whilst the Concept DA we understand will be covered by the general savings provision, the future detailed DAs of the H&WP may not be covered and therefore could be prohibited development.

The following amendment to this provision is therefore proposed to rectify this anomaly:

##### LL-RL Recommendation – Schedule 6

The following is recommended for Schedule 6 with text deleted being ~~strike through~~ and new text added being **bold**

##### *2 General savings provision*

*The former provisions of a repealed instrument continue to apply to the following—*

*(a) a development application made, but not yet determined, on or before the repeal day,*

***(b) a subsequent development application not yet made, that relates to a concept development application consent that has not lapsed,***

~~*(c) a development consent granted on or before the repeal day*~~

#### 5.0 Schedule 7 Amendment of other environmental planning instruments

LL-RL welcomes the recognition of large seniors housing projects as State Significant Development (SSD). We also welcome the ability to include the capital investment value of ILUs. However, in almost all integrated large villages the RCF component makes up less than 25% of the overall GFA of a village. This is because on large co-located seniors housing villages, a much smaller proportion of ILU residents eventually move into RCFs and hence the number of beds in a RCF is up 5 times lower than the number of ILUs. Following the Royal Commission into Aged Care findings, there is also likely to be a greater emphasis in prevention or delay of seniors into aged care, and retirement living provides a greater opportunity to provide alternate services to enable people to continue to live independently longer.

Therefore, by requiring the RCF facility be the majority contributor to the threshold for SSD will mean that the trigger to SSD is unlikely to be used regularly. Alternatively, it may mean that the planning process for the development of large sites may be split between part SSD and part Regional or Local development. This would be confusing for consent authorities, applicants and the community, particularly so when attempting to apply the various FSR bonuses of the vertical villages provision. This may also discourage current initiatives for more contemporary mixed use models and may polarise the independent and aged care options rather than encourage their current trend and best practice for colocation.

ILUs and RCFs being co-located on sites or within vertical villages provides continuum of care and the ability for residents to age in place within their own community and social networks and should be encouraged by planning policy. Accordingly, providing an SSD pathway for RCFs yet limiting the ILU component to a maximum of 40% of total CIV, runs counter to this concept, and will only either force large seniors developments out of SSD, or split the planning pathway. Neither of these options support the intention of an SSD pathway for seniors housing.

The 60% minimum CIV for RCFs also could potentially allow third party appeals where an objector could challenge the planning pathway of an SSD following its determination when the non-RCF component of the SSD is near to 40%.

It is also important that RCF specific Secretary's Environmental Assessment Requirements (SEARs) are developed in order to ensure that the development assessment process from inception to approval is not inadvertently lengthened as a consequence of overly onerous SEARs process that require lengthy lead times to address requirements prior to the lodgment of the SSD application with DPIE.

#### **LL-RL Recommendation – Schedule 7**

The following is recommended for Schedule 7 with text deleted being ~~strike through~~ and new text added being **bold**

##### *7.1 State Environmental Planning Policy (State and Regional Development) 2011*

##### *Schedule 1 State significant development—general*

*Insert at the end of the Schedule with appropriate section numbering—*

##### *Residential care facilities*

*Development for the purposes of residential care facilities if—*

*(a) the development has a capital investment value of—*

*(i) for development on land in the Greater Sydney region—\$30 million, or*

*(ii) otherwise—\$20 million, and*

*(b) the residential care facility component **and any associated independent living unit component** of the proposed development has a value of at least 60% of the capital investment value of the proposed development.*

## **6.0 Conclusion**

LLRL welcomes the exhibition of the draft Housing SEPP and the opportunity to provide a submission. LLRL is supportive of the intent of the draft policy to simplify seniors housing planning legislation in NSW and to incentivise seniors housing where suitably located in relation to urban facilities and services.

LLRL remains however extremely concerned on the implications of the restrictive approach taken to SP zones for the future potential of universities and innovation Precincts, and in particular and critically, for our current proposal for a Health and Wellbeing Precinct in partnership with UOW.

Notwithstanding this, with the modest adjustments proposed to the relevant provisions contained within this submission, we are confident that the draft Housing SEPP could be a transformative planning policy to deliver modern seniors housing in NSW for the next 20 years and to enable this significant project to more easily navigate the NSW planning system.

We would be happy to discuss these matters further with you or make ourselves available to expand upon this submission. Our key contacts are myself and Karen Armstrong, National Planning Manager, on 0409 990 172. We seek that the above submission and recommendations are thoroughly considered by DPIE in finalising the draft Housing SEPP.

Yours sincerely

A handwritten signature in black ink, appearing to be "AR", is positioned below the "Yours sincerely" text.

**Arabella Rohde**  
**Senior Development Manager/Project Lead, Retirement Living**  
**Lendlease**

Summary Table Key Changes draft HOUSING SEPP 2021 – Part 4 Seniors Housing Chapter only  
Prepared by Levy Planning 20<sup>th</sup> August 2021

Summary Response Table		
Clause	Requirement	Comment
67	SEPP applies to “prescribed zones”; RU5, R1, R2, R3, R4, B1, B2, B3, B4, B5, B6, B7, B8, SP1, SP2 – Hospitals & RE2-private recreation	<p>The change to prescribed zones is generally supported.</p> <p>RE2 &amp; SP1 must have 50% site adjoining residential zone. <i>Wirrabara Village Pty Ltd v The Hills Shire (2018) NSW LEC 1187</i> has determined 71m distance to residential zone is “adjoining”. The SEPP/supporting guideline needs to be clear as to what “adjoining” means and how its calculated eg for a site within a golf course, is it the whole golf course site? or is it just the developed portion of the golf course site? DPIE should clarify in the SEPP/Design Guidelines.</p> <p>Seniors housing will be prohibited in rural zones and only RACFs (not ILUs) are permitted in R2 zones. Therefore <u>existing</u> ILU villages in R2 &amp; Rural zones (or RACFs in rural zones) are reliant on the Existing Use Rights (EUR) provisions of the EP&amp;A Act 1979 &amp; Regulation. With the removal of permissibility for a range of sites, the previous controls that applied are removed which invites opportunistic EUR DAs in R2/rural and some RE2 zones that do not meet the 50% adjoining residential zones.</p>
68	<p>Land to which it does not apply - general Land described in Schedule 4 – Environmentally Sensitive Land</p> <ul style="list-style-type: none"> <li>• Land shown cross-hatched on the bush fire evacuation risk map.</li> <li>• Land identified as coastal wetlands and littoral rainforests area within the meaning of State Environmental Planning Policy (Coastal Management) 2018.</li> <li>• Land identified as coastal vulnerability area within the meaning of State Environmental Planning Policy (Coastal Management) 2018.</li> <li>• Land declared as an area of outstanding biodiversity value under the Biodiversity Conservation Act 2016, section 3.1.</li> <li>• Land identified on the Map within the meaning of the Biodiversity Conservation Regulation 2017, section 7.3.</li> <li>• Land identified in another environmental <b>planning instrument</b> as follows or by a similar description— (a) flood planning, (b) open space, (c) natural wetland</li> </ul>	<p>The list has been simplified to mapped areas which is supported in principal.</p> <p>However <u>all maps</u> need to be readily available on DPIE portal. Ideally, a property search on the DPIE portal will display all Schedule 4 maps that apply to a site.</p> <p>Its unclear if the entire site is excluded from the SEPP Housing or if its just the affected portions. LEC decisions have indicated only affected portions of the site are excluded eg RACF in Bushland Ave Gordon. DPIE should clarify in the SEPP/supporting guidelines so all councils and applicants are clear on this point. A few m2 map affectation should not sterilise an otherwise suitable SEPP seniors housing site.</p>



**Summary Table Key Changes draft HOUSING SEPP 2021 – Part 4 Seniors Housing Chapter only**  
**Prepared by Levy Planning 20<sup>th</sup> August 2021**

69	Greater Sydney - Heritage Conservation Areas Seniors housing not permissible in HCAs till 1 July 2022	After 1 July 2022 the LEPs to deal with this HCA prohibition on Council by Council basis.
70	Greater Sydney - Metropolitan Rural Areas (MRA)	Mapped areas for about 13 x Sydney LGAs prohibit seniors housing unless its permitted under the Council LEP. MRAs affect large areas of Hornsby and Hills Shire and Hawkesbury. The MRA maps (perhaps unintentionally???) <b>prohibit seniors housing in what are entirely suitable urban zoned areas such as Richmond and Windsor</b> . In those case examples, the Hawkesbury LEP permits seniors in R1, R3 and B1, B2 zones only. R1 zones are typically built out small lot integrated housing developments and not large expanses of vacant paddocks. R3 zones are typically small 500m2 single dwelling sites. Whether “over 60s” want to retire from their rural acreage/ large lot residential lifestyles to a Vertical Village in the CBD is questionable. Locating seniors accommodation in these suburban towns should be encouraged, not prohibited by an arbitrary MRA map. <b>Given the introduction of prescriptive zones, which prohibit seniors in the rural zoned areas, the MRA prohibitions will be redundant and the clause 70 should be deleted from the Housing SEPP.</b>
72	Gross Floor Area definition - updated	The GFA definition is an amalgamation of the standard instrument definition and SEPP seniors 2004 definition. Notably; <ul style="list-style-type: none"> <li>• More GFA can be achieved under Housing SEPP as wall thicknesses are excluded from GFA calcs</li> <li>• RACFs get bonus GFA because the services/facilities below ground level are excluded from calcs</li> </ul> <b>The amended definition is supported.</b>
72	<b>Seniors</b> means the following people— (a) people who are at least 60 years of age, (b) people who are resident at a facility at which residential care, within the meaning of the Aged Care Act 1997 of the Commonwealth, is provided, (c) people who have been assessed as being eligible to occupy housing for aged persons provided by a social housing provider.	Changed from 55yrs to 60ys  Probably not a major issue other than some restrictions on title will be 55yr and some will be 60yrs. More of an issue for vendor / purchaser and strata managers/Village operators to manage.
73	Bushfire Evacuation Risk Maps  (the cross hatched maps)	All fire risk matters 2(a) to 2(f) must be considered before Planning Secretary amends/replaces maps. No change.
74	<b>Development Standards - General</b> (1) This section applies to development for the purposes of seniors housing involving— (a) the erection of a building, or (b) alterations or additions to an existing building	<b>CI 74 (2)(a) and (b)</b> - no change  <b>CI 74 (2)(c)</b> Previously 8m measured to ceiling and is now 9m to top of roof and 2 storeys adjacent to boundary of the site.

<p><i>(2) Development consent must not be granted for the development unless—</i>  <i>(a) the site area of the development is at least 1,000m<sup>2</sup>,</i>  <i>(b) the frontage of the site area of the development is at least 20m measured at the building line</i></p> <p><i>(c) for development on land in a <b>residential zone</b> where <b>residential flat buildings are not permitted</b> the development will not result in a building—</i>  <i>(i) with a height of more than 9m, or</i>  <i>(ii) exceeding 2 storeys if the building is adjacent to the boundary of the site area</i></p> <p><b>(3) The development may result in a building with a height of no more than 11.5m if servicing equipment on the roof of the building—</b>  <i>(a) is fully integrated into the design of the roof or contained and suitably screened from view from public places, and</i>  <i>(b) is limited to an area of no more than <b>20%</b> of the surface area of the roof.</i></p> <p><b>(4) Subsection (1)(a) and (b) do not apply to development the subject of a development application made by the following— (a) the Land and Housing Corporation, (b) another social housing provider.</b></p>	<p><b>(3)</b> introduces a max building height <b>11.5m</b> for building with the roof plant</p> <div style="border: 1px solid black; padding: 5px;"> <p><b>There appears to be a typo/error. Its possible the cl 74(3) 11.5m height control is intended to relate to subclause (2)(c) development on residential sites that do not permit RFBs to allow them to have roof plant but its not consistent with CI 97 for ILUs. DPIE to confirm</b></p> </div> <p><b>Cl. 74 2(c)</b>The 9m/11.5m devt standard inconsistent with;-</p> <ul style="list-style-type: none"> <li>• <b>CI 96</b> deemed to comply criteria RACF = 9.5m/11.5m</li> <li>• <b>CI 97</b> deemed to comply criteria ILUs = 9m/10.5m</li> </ul> <p><b>RACF:</b> If a Residential Aged Care Facility in R2 zone is 9.5m ridge height then presumably no cl 4.6 variation is triggered due to CI 96 deemed to comply criteria. <b>DPIE need to confirm this and clarify in SEPP/design guideline.</b></p> <p><b>Height on Sloping Sites:</b> A further issue arises for sloping sites pursuant to clause 74(3) as written. For example a multi storey retirement village on a RE2 golf course that presents as 1-2 storey on the eastern boundary (adjoining low density housing) and then uses the steep slope to achieve 4-5 storeys on the downhill western side overlooking a golf course. A suitable development for the site (approved by SNPP on 21-7-21), but if lodged under the Housing SEPP, it would trigger a substantial cl.4.6 variation that imposes an 11.5m height standard. If the 20% limit on cl 4.6 is introduced to the LEP standard template, (as indicated by DPIE), then this recently approved golf course development would not be possible without a Planning Proposal. SEPP Seniors 2004 does not contain this generic height control for all sites.</p> <p><b>74(1)(a) and (b)</b> states the following:  <i>“This section applies to development for the purposes of seniors housing involving— (a) the erection of a building, or (b) alterations or additions to an existing building”.</i></p> <p>As written, the erection of a seniors building or alterations and additions would <b>NOT apply to LHC and social housing providers.</b></p>
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		<p>This appears to be a typo/error at 74(4) to be fixed.</p> <p>Presumably 74(4) should read instead “(4) Subsection (2)(a) and (b) do not apply to development the subject of a development application made by the following— (a) the Land and Housing Corporation, (b) another social housing provider”.</p>
76	<p><b>Development standards for seniors housing—Zones RE2, SP1, RU5 and R2</b> (a) for development on land in Zone RE2 Private Recreation— (i) the development is carried out on land used for the purposes of an existing registered club, and (ii) at least <b>50% of the site adjoins a residential zone</b>, (similar provisions for SP1 Special Uses zone) (limited permissibility for RU5 village zone)</p>	<p><b>The clause only refers to residential zones and <u>not business zones</u> eg bowling club in CBD would not qualify.</b></p> <p>The 50% site adjoining residential zone (ie R1 to R5 zone) can be challenging to calculate. Eg if it's a 1.4ha irregular shaped site on the edge of a golf course do you only consider the 1.4ha site or the whole golf course site? <b>The issue of “50% adjoining” needs to be clarified in the SEPP and supporting guideline to assist applicants/consent authorities.</b></p> <p>Further, the <u>current</u> SEPP Seniors 2004 states at <b>Clause 4 (4) Land that adjoins land zoned primarily for urban purposes</b> For the purposes of this Policy, land that adjoins land that is zoned primarily for urban purposes includes (but is not limited to) land that would directly adjoin land that is zoned primarily for urban purposes but for the presence of a public road to which there is direct vehicular and pedestrian access from the adjoining land.</p> <p>This enables for example a Registered Club on a site that is separated from urban zoned lands by road frontage(s) to be determined as “land that adjoins land zoned primarily for urban purposes”. <b>Wirrabarra Village Pty Ltd v The Hills Shire (2018) NSW LEC 1187</b> determined (rural) land at Pellitt Lane Dural within 71m of land zoned for urban purposes is in “sufficient proximity” to be classified as adjoining.</p> <p><b>Notwithstanding the LEC case law, the Housing SEPP should itself have a clarification that expressly states separation of RE2 and SP1 sites from the residential (or commercial??) zone by a public road to which there is direct vehicular and pedestrian access from the adjoining land is “adjoining”.</b></p>
76	<p>(d) for development on land in Zone R2 Low Density Residential—the development is carried out only for the purposes of a <b>residential care facility</b>.</p>	<p>Only RACFs (not ILUs) are permissible in the R2 zone unless the LEP permits “seniors housing”. EUR “opportunities” will arise for many existing ILU developments.</p>

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78	<p><b>Use of ground floor of seniors housing in commercial zones –</b>  <i>(2) Development consent must not be granted for development involving the building unless the part of the ground floor of the building that fronts a street will not be used for residential purposes.</i>  <i>(3) Subsection (2) does not apply to a part of a building that— (a) faces a service lane that does not require active street frontages, or (b) is used for any of the following purposes—</i>  <i>(i) a lobby for a residential, serviced apartment, hotel or tenanted component of the building,</i>  <i>(ii) access for fire services, (iii) vehicular access.</i>  <i>(4) Subsection (2) does not apply if another environmental planning instrument permits the use of the ground floor of the building for residential purposes.</i></p>	<p>This clarifies seniors housing (residential purposes) not permissible on ground floor where it faces the street. Hence ground floor street front could be used as café etc.</p> <p>Exceptions now provided for service lanes that don't have active street frontages.</p> <p><b>The Housing SEPP changes are supported.</b></p>
79	Subdivision	<p>New clause does not permit subdivision in B3 zone. <b>DPIE should clarify if this restriction only relate to Torrens Subdivision or does it also apply to strata</b></p>
82	<p><b>Location and access to Facilities and Services – ILU</b>  <i>(1) Development consent must not be granted for development for the purposes of an independent living unit unless the consent authority has considered whether residents will have adequate access to facilities and services—</i>  <i>(a) directly, or</i>  <i>(b) by a transport service that complies with subsection (2), or</i>  <i>(c) on-site.</i></p> <p><i>(2) The transport service must—</i>  <i>(a) take the residents to a place that has adequate access to facilities and services, and</i>  <i>(b) for development on land within the Greater Sydney region—</i>  <i>(i) not be a passenger service, and</i>  <i>(ii) be available both to and from the site at least once between 8am and 12pm each day and at least once between 12pm and 6pm each day, and</i></p> <p><i>(c) for development on land that is not within the Greater Sydney region—be available both to and from the site during daylight hours at least once each weekday</i></p>	<p><b>The meaning of the term “directly” is unclear.</b> Perhaps it means located on the adjoining site such as next door to a shopping plaza ?</p> <p><b>“Transport service”</b> is new terminology and no longer refers to (public) transport service. This may be a private mini-bus but not a taxi/uber/hire car. The frequency of the service is now <b>daily</b> in Greater Sydney (not just weekdays). This provides a convenient service for residents but may be unviable for smaller infill seniors ILUs due to cost burden on owners. Seniors developments that rely on a private “transport service” need to provide a mini-bus parking space on site.</p> <p>Footpath gradients in the draft Housing SEPP are unchanged. <b>Housing SEPP needs to be clearer to avoid mis-interpretation by some eg. Willoughby Council devt engineers who interpret that there must be a 3m length of 1<sub>in</sub>14 gradient after EVERY section that is steeper than 1<sub>in</sub>14. This results in more steep sections along the pathway to overcome the required 1<sub>in</sub>14 flatter sections.</b> Overall a poorer accessibility outcome to tick an arbitrary engineering box.</p> <p>Another issue with some Sydney North Shore councils. They are referencing AS1428 requirements for public footpaths which is not actually a requirement of the current SEPP Seniors</p>

		or the Draft Housing SEPP. Specifically they require 1in40 maximum cross-fall on footpaths to bus stops/shops. While the intent is to mitigate steep cross-falls that might unseat a person in a wheel chair, mandating 1in40 will result in significant upgrades to paths/potential impacts on street trees and resident driveways. The SEPP / SEPP guideline should offer some clarity on cross fall that balances reasonable level of accessibility/safety with over the top public works to rip up footpaths and re profile them because council installed them with a 1in30 crossfall or the like. There needs to be a common sense resolution an access consultant (eg Mark Relf) can recommend if you asked them.
83	<p><b>Location and access to facilities and services— residential care facilities (RACF)</b></p> <p><i>(1) Development consent must not be granted for development for the purposes of a residential care facility unless the consent authority is satisfied that residents of the facility will have access to facilities and services—</i></p> <p><i>(a) directly, or</i></p> <p><i>(b) by a transport service other than a passenger service.</i></p>	<p><b>The meaning of the term “directly” is unclear.</b> Perhaps it means located on the adjoining site such as next door to a shopping plaza ?? <b>DPIE need to clarify in the SEPP/Design Guideline.</b></p> <p><b>Transport service</b> may be a private mini-bus but not a taxi/uber/hire car.</p> <p><b>The clause does not refer to services/facilities on site option which is surprising given RACFs typically provide most required services and facilities on site for the convenience of frail residents who may not be suited to travel, even just to next door to a shopping plaza.</b></p> <p><b>DPIE need to clarify in the SEPP/Design Guideline.</b></p>
84	<p><b>Bushfire prone land</b></p> <p><i>(1) A consent authority must not consent to development under this Part on bush fire prone land unless the consent authority is satisfied that the development complies with the requirements of Planning for Bushfire Protection.</i></p> <p><i>(2) In determining a development application for development under this Part on land in the vicinity of bush fire prone land, a consent authority must consider the location of the development, the means of access to and egress from the location and other relevant matters, including the following—</i></p> <p><i>(a) the size of the existing population within the locality,</i></p> <p><i>(b) age groups within the population and the number of persons within the age groups,</i></p> <p><i>(c) the number of hospitals and other facilities providing care to the residents of the facilities within the locality,</i></p>	<p>Clause 84(1) has been simplified.</p> <p><b>CI 84 (2) should be overhauled and simplified. The clause 73 has same requirements that inform RFS bushfire cross hatched (exclusion) maps which already identifies unsuitable fire prone sites.</b></p> <p><b>The CI 84(2) requirements on applicant/council are onerous and unclear what “in the locality” means. The bushfire safety intent is sound, but the (a) to (i) list needs to be reworded/simplified.</b></p>

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	<p><i>and the number of beds within the hospitals and facilities,</i></p> <p><i>(d) the number of schools within the locality and the number of students at the schools,</i></p> <p><i>(e) existing development within the locality that has been carried out under this Policy or State Environmental Planning Policy No 5—Housing for Older People or People with a Disability,</i></p> <p><i>(f) the road network within the locality and the capacity of the road network to cater for traffic to and from existing development if there were a need to evacuate persons from the locality in the event of a bush fire</i></p>	<p><b>If the area is fundamentally unsuitable due to bushfire safety, then Council/DPIE should focus attentions on ascertaining cross hatched exclusion maps (eg as per North Turramurra) so that developers have up front certainty.</b></p>
87	<p><b>Neighbourhood amenity and Streetscape</b></p> <p><i>Development for the purposes of seniors housing should—</i></p> <p><i>(a) recognise that the operational, functional and economic requirements of residential care facilities typically require a different building shape from other residential accommodation, and....</i></p>	<p>The new clause 87(a) is helpful and highlights to Councils that RACFs are large built forms that have functional design requirements that mean it cannot look like a single dwelling.</p> <p>The clause goes on to clarify the development should complement HCAs and heritage items and maintain reasonable neighbourhood amenity via appropriate setbacks, siting, design , landscaping, tree retention etc.</p> <p><b>The new design guidance is supported.</b></p>
89	<p><b>Solar access and design for climate</b></p> <p><i>Development for the purposes of seniors housing should—</i></p> <p><i>(a) for development involving the erection of a new building—be designed—</i></p> <p><i>(i) to provide residents of the building with adequate daylight, and</i></p> <p><i>(ii) in a way that does not adversely impact the amount of daylight in neighbouring buildings, and</i></p> <p><i>(b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation, solar heating and lighting by locating the windows of living and dining areas in a northerly direction</i></p>	<p>Cl 89 refers to <b>daylight</b> and not “direct sunlight”</p> <p><u>Noted:</u> The current SEPP seniors 2004 equivalent clause 35 refers to “adequate sunlight to substantial areas of private open space” which has been omitted from the new SEPP clause 89.</p>
95	<p><b>Division 7 Non-discretionary development standards</b></p> <p><i>This Division does not apply to development on land to which an interim heritage order or listing on the State Heritage Register under the Heritage Act 1977 applies.</i></p>	<p>The deemed to comply criteria do <b>not apply</b> to sites that have Interim heritage order or listing on the State Heritage Register (SHR).</p> <p>(no change from SEPP Seniors 2004)</p>

<p>96</p>	<p><b>Non-discretionary development standards for hostels and residential care facilities—the Act, s 4.15</b></p> <p><i>(1) The object of this section is to identify development standards for particular matters relating to development for the purposes of hostels and residential care facilities that, <b><u>if complied with, prevent the consent authority from requiring more onerous standards for the matters.</u></b></i></p> <p><i>(2) The following are non-discretionary development standards in relation to development for the purposes of a hostel or a residential care facility—</i></p> <p><i>(a) no building exceeds a height of <b>9.5m</b>, excluding servicing equipment on the roof of a building,</i></p> <p><i>(b) servicing equipment on the roof of a building, which results in the building exceeding a height of 9.5m—</i></p> <p><i>(i) is fully integrated into the design of the roof or contained and suitably screened from view from public places, and</i></p> <p><i>(ii) is limited to an area of no more than 20% of the surface area of the roof, and (iii) does <b>not result in the building exceeding a height of 11.5m</b>,</i></p> <p><i>(c) the density and scale of the buildings when expressed as a floor space ratio is <b>1:1</b> or less,</i></p> <p><i>(d) <b>internal and external communal open spaces</b> with a total area of at least—</i></p> <p><i>(i) for a hostel—8m<sup>2</sup> for every bed, or</i></p> <p><i>(ii) for a residential care facility—<b>10m<sup>2</sup> for every bed</b>,</i></p> <p><i>(e) at least <b>15m<sup>2</sup> of landscaped area</b> for every bed</i></p> <p><i>(f) a deep soil zone on at least 15% of the site area, where each deep soil zone has minimum dimensions of 6m and, if practicable, at least 65% of the deep soil zone is located at the rear of the site,</i></p> <p><i>(g) for a hostel—at least 1 parking space for every 10 beds in the hostel,</i></p> <p><i>(h) for a residential care facility—at least <b>1 parking space for every 15 beds in the facility</b>,</i></p> <p><i>(i) at least 1 parking space for every 2 employees who are on duty at the same time,</i></p> <p><i>(j) at least 1 parking space for the purpose of ambulance parking</i></p>	<p><b>Cl. 96(2)</b> deemed to comply criteria for RACFs are;</p> <ul style="list-style-type: none"> <li>• Roof Ridge height = <b>9.5m</b> maximum</li> <li>• Roof plant height = <b>11.5m</b> maximum</li> </ul> <p><b>Clause 74</b> Development Standards - General however provides development standards of <b>9m/11.5m</b> for seniors housing.</p> <p>Presumably the RACF in R2 zone that is &gt;9m to 9.5m height, does not trigger clause 4.6 for height variation over 9m development standard. <b>DPIE needs to clarify in the SEPP/Design Guideline.</b></p> <p><b>FSR:</b> The 1:1 density is unchanged except that due to the change in the SEPP definition for GFA to exclude wall thicknesses, there is more net floor area achievable for RACFs and a smaller benefit to ILUs. <b>The new GFA definition is supported.</b></p> <p><b>Landscape/communal areas</b> – the SEPP seniors 2004 required 25m<sup>2</sup> per RACF bed. The draft Housing SEPP has segregated the spaces into landscape and communal (indoor/outdoor) areas. This recognises that frail aged residents would benefit from a balance of indoor communal areas as much as outdoor communal and landscape areas. <b>This change is supported.</b></p> <p>Parking for resident beds has been reduced from 1space per 10 RACF beds to 1 space per 15 RACF beds which means smaller basements/carpark areas. <b>This change is supported.</b></p> <p><b>However, by re-labelling these standards as “non-discretionary development standards”, this potentially invites the application of clause 4.6 of the Standard Instrument LEP to developments that do not comply.</b> It is noted that the Housing SEPP</p>
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		<p>has omitted to include the “Note” that appears in the SEPP Seniors 2004 as follows;</p> <p><b>Note</b>—The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant development consent.</p> <p>This is unfortunate as the “Note” gave a clear indication to councils that notwithstanding an FSR or height exceedance for example, the consent authority has discretion to approve the application <u>without</u> the need for a clause 4.6. Refer <i>Saha Builders Pty Ltd v Ku-ring-gai Council (2019) NSWLEC 1497</i>. The Housing SEPP needs to be clear on the issue of the non-discretionary development standards (ie deemed to comply criteria) and the subject of clause 4.6 to ensure consistent interpretation by consent authorities. If not properly drafted, the result may be Councils require multiple clause 4.6 on benign issues such as the dimension of a deep soil area, a shortage of parking on sites near transport/shops that reduced parking needs etc etc.</p>
97	<p><b>Non-discretionary development standards for independent living units—the Act, s 4.15</b></p> <p>(1) The object of this section is to identify development standards for particular matters relating to development for the purposes of <b>independent living units</b> that, if complied with, prevent the consent authority from requiring more onerous standards for those matters.</p> <p>(2) The following are non-discretionary development standards in relation to development for the purposes of an independent living unit—</p> <p>(a) <b>no building exceeds a height of 9m</b>, excluding servicing equipment on the roof of a building,</p> <p>(b) servicing equipment on the roof of a building, which results in the building exceeding a height of 9m—</p> <p>(i) is fully integrated into the design of the roof or contained and suitably screened from view from public places, and</p> <p>(ii) is limited to an area of no more than 20% of the surface area of the roof, and (iii) <b>does not result in the building exceeding a height of 10.5m</b>,</p> <p>(c) the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less,</p> <p>(d) for a development application made by a social housing provider—at least <b>35m<sup>2</sup> of landscaped area per dwelling</b>,</p>	<p><b>Cl.97</b> deemed to comply criteria for ILUs are;</p> <p>Roof Ridge height = <b>9m</b> maximum</p> <p>Roof plant height = <b>10.5m</b> maximum</p> <p><b>Clause 74</b> Development Standards General however provides development standards of <b>9m/11.5m</b> for seniors housing.</p> <p><b>The Cl. 74 development standard (11.5m) for building height with roof plant (presumably RFB permitted zones) exceeds the deemed to comply Cl 97 height. Needs to be checked/clarified by DPIE.</b></p> <p><b>Density:</b> No FSR change (except via change to definition that excludes wall thicknesses).</p>

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<p><i>(e) if paragraph (d) does not apply—at least 30% of the site area is landscaped,</i></p> <p><i>(f) a <b>deep soil zone on at least 15% of the site area</b>, where each deep soil zone has <b>minimum dimensions of 6m</b> and, if practicable, at least 65% of the deep soil zone is located at the rear of the site,</i></p> <p><i>(g) at least 70% of the dwellings receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter in living rooms and private open spaces,</i></p> <p><i>(h) for a dwelling in a single storey building or a dwelling located, wholly or in part, on the ground floor of a multi-storey building—</i></p> <p><i>(i) at least 15m<sup>2</sup> of private open space per dwelling, and</i></p> <p><i>(ii) at least 1 private open space with minimum dimensions of 3m accessible from a living area located on the ground floor,</i></p> <p><i>Note— The open space needs to be accessible only by a continuous accessible path of travel, within the meaning of AS 1428.1, if the dwelling itself is an accessible one— see Schedule 5, section 2.</i></p> <p><i>(i) for a dwelling in a multi-storey building not located on the ground floor—a balcony accessible from a living area with minimum dimensions of 2m and— (i) an area of at least 10m<sup>2</sup> , or (ii) for a 1 bedroom dwelling—an area of at least 6m<sup>2</sup> ,</i></p> <p><i>(j) for a development application made by, or made by a person jointly with, a <b>social housing provider</b>—at least 1 <b>parking space for every 5 dwellings</b>,</i></p> <p><i>(k) if paragraph (j) does not apply—at least <b>0.5 parking space</b> for each bedroom.</i></p>	<p><b>Landscape area:-</b> Cl 97(d) and (e) are unchanged. However, the logic of having 35m<sup>2</sup> per unit for social housing providers instead of the flat 30% rate for other developers is questioned. The end result is social housing provider developments have greater landscape area requirements than commercial developers are required to provide. The logic for the is unclear. <b>Recommend the 30% applies to all ILU developments.</b></p> <p><b>Deep Soil zone:-</b> The Housing SEPP introduces a wider <b>6m</b> dimension for deep soil areas (instead of 3m per the SEPP Seniors 2004).</p> <p><b>Solar Access:-</b> The 70% ILUs receiving 3hrs sunlight is same as SEPP Seniors 2004 which is inconsistent with SEPP 65 Apartment Design Guide (ADG) min. 2hrs sunlight, that most consent authorities are prepared to accept for ILUs 3 storeys and over.</p> <p><b>DPIE need to clarify re ADG application as technically it applies to RFBs and mixed-use developments but <u>NOT</u> “seniors housing”. <u>Note:</u> “Seniors Housing” is separately defined to “residential flat building” under the standard LEP template.</b></p> <p><b>Given there is ADG/SEPP 65 acceptance that multi-storey residential apartments can have 2hrs sunlight, the same 2hrs control should be applied to seniors ILUs that are 3 storeys or more.</b></p> <p><b>POS:</b> No change</p> <p><b>Parking:</b> No change</p> <p>(Except refer to Schedule 5 (5) min. provision of accessible spaces now 10% instead of 5%. This resolves the long disputed requirement for all non-employee spaces to be accessible. <b>Though for consistency with AS2890 it would be better if the 10% disabled spaces were 2.4m with 2.4m share space).</b></p>
<p><b>Does a non compliance with cl 97 non-discretionary development standards (deemed to comply criteria) trigger a cl.4.6 variation if not met? There is mixed advice on this, including recent PIA seminar advice that the answer is “YES, the applicant can lodge a cl 4.6”. Refer <i>Saha Builders v Ku-ring-gai (2019)</i> which found cl. 4.6 is NOT applicable for the equivalent clauses under current SEPP Seniors 2004. However the Draft Housing SEPP does not contain the same advisory note so perhaps LEC may find differently under the Housing SEPP provisions.</b></p> <p><b>DPIE need to have clear advice to avoid excessive cl 4.6 required for minor things like a 5m wide deep soil dimension, or less than 30% landscape area, or less parking on a site next to Westfields/train station where its entirely justified. Clause 4.6 submissions are onerous/costly and having 4-5 minor cl4.6 will detrimentally (and unnecessarily) add cost and uncertainty to Seniors DAs. <b>The SEPP/Design Guideline need to be clear that cl. 4.6 is not triggered.</b></b></p>	

98	<p><b>Vertical Villages (VV)</b> – applies on sites <b>where residential flat buildings (RFBs) are permitted</b></p>	<p>Residential Flat Buildings are separately defined to shop-top housing. <b>Therefore it is questioned whether Cl.98 applies to B1-B8 zoned sites. DPIE need to clarify in the SEPP/Design Guideline.</b></p>
99	<p>(1) Development consent must not be granted for development to which this Division applies unless the site area of the development is at least 2,000m<sup>2</sup></p> <p>(2) Development consent may be granted for development to which this Division applies if the development will result in a building with—</p> <p>(a) the maximum permissible floor space ratio plus—</p> <p>(i) for development involving <b>independent living units</b>— <b>an additional 15%</b> of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of independent living units, or</p> <p>(ii) for development involving a <b>residential care facility</b>— <b>an additional 20%</b> of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of the residential care facility, or</p> <p>(iii) for development involving <b>independent living units and residential care facilities</b>—<b>an additional 25%</b> of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of independent living units or a residential care facility, or both, and</p> <p>(b) a building height exceeding the <b>maximum permissible building height</b> by no more than <b>3.8m</b>.</p> <p>(3) Development consent must <b>not</b> be granted under this Division for development on land to which an <b>interim heritage order or listing on the State Heritage Register</b> under the Heritage Act 1977 applies.</p> <p>(4) In this section— <b>maximum permissible floor space ratio</b> means—</p> <p>(a) the maximum floor space ratio permitted for the land under a relevant planning instrument, or (b) if a maximum floor space ratio is not specified under a relevant planning instrument—<b>0.5:1</b>.</p>	<p><b>Definition:</b> Vertical Villages are still <u>not defined</u> in the Housing SEPP. The assumed intent is that they are multi-level buildings. Suggested wording to state VV are three or more levels of seniors housing either on its own or in conjunction with other permitted uses) .</p> <p><u>Key VV changes from SEPP Seniors 2004:</u></p> <ul style="list-style-type: none"> <li>• Minimum 2000m<sup>2</sup> site area</li> <li>• Housing SEPP has deleted the requirement for affordable housing &amp; on-site services component.</li> <li>• Housing SEPP has introduced bonus GFA over and above the maximum LEP/EPI control according to ILU/RACF mix per below; ILUs = 15%, RACF = 20%, ILUs + RACF = 25%</li> <li>• Building height bonuses of up to 3.8m</li> </ul> <p><b>Min Site Area:</b> The proposed 2000m<sup>2</sup> would inhibit boutique developments (eg 40 ILUs) in town centres eg Crows Nest where a 1000m<sup>2</sup> (or smaller) site can readily accommodate a mixed use seniors development with basement parking. We are unsure of the planning logic behind having min. 2000m<sup>2</sup> . VV sites in higher density areas where taller buildings can be readily accommodated on smaller sites. Not all VVs need to be large 100+ ILU villages, nor should they be. <b>1000m<sup>2</sup> site is sufficient for VV, especially in the case of business zones.</b></p> <p><b>Bonus GFA:-</b> Housing SEPP defines maximum permissible GFA being the relevant EPI/LEP. For example in Ku-ring-gai R4 zone its 1.3:1 <u>plus bonus 15/20/25% GFA</u>. In some councils, like Hornsby, not all sites have FSR controls. The default baseline FSR under the Housing SEPP is a modest FSR 0.5:1. <b>Hence a VV proposal would be unlikely in those LGA areas.</b></p> <p><b>Bonus Height:</b> - “Maximum permissible building height” is not defined and needs to be added to the SEPP for clarity (same as maximum FSR).</p>

		<p>Maximum LEP height in Ku-ring-gai = 17.5m + bonus 3.8m = <b>21.3m</b>. The Housing SEPP provides an 11.5m maximum height control (with roof plant) for RFB permitted sites. An LEP may permit considerably higher max heights. The SEPP needs to clarify which Instrument prevails for the purposes of the bonus 3.8m height.</p> <p>Otherwise Councils may adopt the <b>11.5m SEPP height baseline + the 3.8m bonus = 15.3m</b> on a site that already permits 17.5m+ under their LEP standards for example. <b>Hence there would be no certainty that the maximum height could be achieved.</b> If the bonus controls are not crystal clear, then developers will not be prepared to use them and risk failure on a legal interpretation in LEC. <b>DPIE need to clarify in the SEPP/Design Guideline and not leave this to individual consent authorities to determine if they want developers to implement the VV clause. The clause is much improved on SEPP Seniors 2004, and just needs to be clearer to be effective.</b></p>
100	<p><b>Non-discretionary development standards for vertical villages—the Act, s 4.15</b></p> <p><i>(1) The object of this section is to identify development standards for particular matters relating to development for the purposes of a vertical village that, <b>if complied with, prevent the consent authority from requiring more onerous standards for the matters</b></i></p> <p><i>(2) The following are non-discretionary development standards in relation to development for the purposes of vertical villages—</i></p> <p><i>(a) for a vertical village comprising hostels or <b>residential care facilities</b>—the standards specified in section 96(2)(a) and (b),</i></p> <p><i>(b) for a vertical village comprising <b>independent living units</b>—the standards specified in section 97(2)(a) and (b)</i></p>	<p>As per above, do the cl 96/97 heights simply get added to the 3.8m bonuses ? The bonus height provisions when applied to a taller LEP height control may not readily achievable. <b>Cl 100 needs to be clarified in the SEPP/Design Guideline.</b></p> <p><b>RACF</b> 96(2)(a) &amp; (b) -&gt; 9.5m roof / 11.5m plant</p> <p><b>ILU</b> 97(2)(a) &amp; (b) -&gt; 9m roof / 10.5m plant</p>
<b>Schedule 4</b>	<p><b>Environmentally sensitive land</b></p> <ul style="list-style-type: none"> <li>• Land shown cross-hatched on the bush fire evacuation risk map.</li> <li>• Land identified as coastal wetlands and littoral rainforests area within the meaning of State Environmental Planning Policy (Coastal Management) 2018.</li> <li>• Land identified as coastal vulnerability area within the meaning of State Environmental Planning Policy (Coastal Management) 2018.</li> <li>• Land declared as an area of outstanding biodiversity value under the Biodiversity Conservation Act 2016, section 3.1.</li> </ul>	<p>The removal of ambiguous terms and replacement with maps is supported. Eg it has removed the vague term “environmental conservation” which has triggered some Councils (KMC) to interpret Conservation to refer to heritage conservation.</p> <p><b>All Environmentally sensitive land maps need to be readily available on the DPIE planning portal via property search/mapping function and affectation summarised in the “Property Report”.</b></p> <p><b>Mapping affectation of sites should be stated on 10.7(5) planning certificates</b></p>

**Summary Table Key Changes draft HOUSING SEPP 2021 – Part 4 Seniors Housing Chapter only**  
**Prepared by Levy Planning 20<sup>th</sup> August 2021**

	<ul style="list-style-type: none"> <li>• Land identified on the Map within the meaning of the Biodiversity Conservation Regulation 2017, section 7.3.</li> <li>• Land identified in another environmental planning instrument as follows or by a similar description— (a) flood planning, (b) open space, (c) natural wetland</li> </ul>	<p>DPIE needs to clarify only the affected portions of the site are excluded and not the entire site which may be vastly larger than a small affected portion. Otherwise some Councils will attempt to claim the entire lot is prohibited when only the affected portion should be.</p> <p>What happens in the case of an R3 zoned site that the LEP permits seniors, BUT the SEPP prohibits under Schedule 4 ? Presumably the use is permissible but the SEPP controls do not apply. Therefore it would be a merit assessment ?</p>
<b>Schedule 5</b>	<p><b>Standards concerning accessibility and useability for hostels and <u>independent living units</u></b></p> <p><b>5 Private car accommodation</b>  If car parking, <u>not being car parking for employees</u>, is provided as follows—  (a) <b>at least the following amount of car parking spaces must be designed to enable the width of each space to be increased to 3.8m</b> and to comply with the requirements for parking for persons with a disability set out in AS/NZS 2890.6—  (i) <b>10%</b> of the total number of car parking spaces, or  (ii) if there are less than 10 car parking spaces—1 space</p> <p><b>21 Garbage</b>  A garbage storage area must be provided in an accessible location</p>	<p>Housing SEPP has increased the resident disabled space from 5% to <b>10%</b> . However the amended wording suggests the remainder resident parking is not required to be disabled spaces. <b>Praise be !</b></p> <p>This clause supplements Housing SEPP Cl 93 waste management design requirements but is specific to ILUS.</p> <p><b>Schedule 5 cl 21 needs to be clarified a built in garbage storage area is required inside the kitchen (eg under the bench) to avoid need for free standing bin trip hazards.</b> This is a small but important safety issue in some villages.</p>
<b>Schedule 6</b>	<p><b>2 General savings provision</b>  <i>The former provisions of a repealed instrument continue to apply to the following— (a) a development application made, but not yet <b>determined</b>, on or before the repeal day, (b) a development consent granted on or before the repeal day</i></p>	<p><b><i>SEPP Seniors 2004 states:-</i></b>  <b><i>52 Savings for development applications made before SEPP (Seniors Living) 2004 (Amendment No 1)</i></b>  <i>A development application made pursuant to Chapter 3 that was lodged with the consent authority (but not <b>finally determined</b>) before the commencement of State Environmental Planning Policy (Seniors Living) 2004 (Amendment No 1) is to be determined as if that Policy had not been made.</i></p> <p><b>The General Savings Provision in the Draft Housing SEPP should include the words “<u>finally determined</u>” so that the SEPP is clear applicants have opportunity to file an LEC appeal of a refusal by Council or Planning Panel.</b></p>

General Comments on Draft Housing SEPP
<p><b>RFB/Seniors Housing General Query - “Residential Flat Buildings” (RFB) FBs are separately defined to “Seniors Housing” and “Shop-top housing” under the umbrella term “Residential Accommodation”</b></p>
<p>SEPP 65 Apartment Design Guide applies to RFBs, shop top housing and mixed use developments. It does <u>not</u> apply to “seniors housing” so that if the 3+ storey seniors housing comprises ILU and/or RACF but no other use on the site, the SEPP 65/ADG does not apply. However, many councils consider that SEPP 65/ADG are applied to 3+ storey seniors ILU housing. The draft Housing SEPP noticeably does not reference SEPP 65/ADG while it does for other forms of housing which is consistent with the above. Though for mixed use multi storey seniors housing developments, SEPP 65/ADG does apply. The SEPP and Design Guideline need to clarify to councils/applicants if SEPP65/ADG applies to 3+ storey ILU developments so that all parties are on the same page.</p>
<p><b>Seniors in R2 zones and rural zones –</b> By prohibiting ILU seniors in R2 zones and all seniors in rural zones there will be substantial EUR situation for existing villages and developments. As an example the entire 40ha Anglicare Campus at Castle Hill will have EUR so that no development standards are applied to a redevelopment. While the existing village operators might be thrilled, Councils may be less enthusiastic and will probably look to amend their LEPs on masse to add additional permitted uses (APU) for the long list of EUR sites to mitigate potential for overdevelopment / Court cases solely based on merit. Perhaps its time to revisit the SP1 (aged care) zoning for seniors sites so that they do not have EUR and are subject to Housing SEPP development controls ?. There was no issue in the past with SP1 and it’s the obvious solution going forwards if R2/Rural zonings result in countless EUR sites.</p>
<p><b>Whether prohibiting seniors ILUs from all R2 zones is right solution ? –</b> there should be some consideration given to tightening up the design standards for ILUs in R2 and perhaps also the rural adjoining zones before outright prohibition pathway. Perhaps consider lower density with cl 4.6 caps and impose prescribed minimum landscape setbacks would instantly mitigate a raft of amenity issues for neighbours in R2 zones. In pursuing a robust controls route, in lieu of outright prohibition, it avoids the whole EUR situation and all the Court cases and Planning Proposals that will inevitably flow.</p>



Trim Ref: R20/0017 SUB-675

7 September 2021

Housing Policy Team

NSW Department of Planning, Industry and Environment

### **Proposed Housing SEPP – Consultation draft.**

Thank you for the opportunity to provide comment on the draft Housing SEPP. Local Government NSW (LGNSW) appreciates the Department's ongoing engagement with councils to develop the SEPP and the recent forum to outline key policy changes to councils. LGNSW is the peak body for local government in NSW, representing all NSW general purpose councils and related entities. This is a draft submission until it is endorsed by the LGNSW Board. We will advise at that time if there are any substantive changes to the submission.

### **LGNSW Position**

LGNSW is **supportive** of many provisions in the proposed Housing SEPP. LGNSW has advocated for the review of housing-related SEPPs, and their consolidation, for many years. We acknowledge that the Department has listened to and worked with local government to address the issues with the boarding house provisions and seniors housing. The proposed Housing SEPP addresses areas of significant concern for local government, such as the need for boarding houses to provide affordable housing in perpetuity and not be mandated in the R2 zone, and prescribing zones where seniors housing is permissible.

While welcoming many of the changes, councils are concerned that some new provisions will undermine their local planning strategies and result in development that is not responsive to the local context. Blanket provisions that apply statewide do not accommodate the unique differences between regional and metropolitan areas, coastal and inland and rural and remote settings. This points to a need for the proposed Housing SEPP to provide greater discretion for councils to determine both where certain forms of housing can be built and the development standards that apply.

Allowing for variations to minimum site dimensions, rates of car parking and heights in the Housing SEPP is needed to respond to different subdivision patterns, density of development and transport infrastructure across local government areas.

Councils have also identified the need for clarification of many provisions and definitions. LGNSW urges the Department to defer to councils' specific technical feedback to ensure these concerns are considered.

### **Recommendation 1**

The Housing SEPP should provide greater flexibility for councils to determine where different housing forms are permitted and for council development standards such as rates of car parking to apply.

Specific comments are outlined below.

### ***Boarding House Provisions***

LGNSW strongly supports the proposed amendments to boarding housing provisions. These amendments - which include a requirement for boarding house rooms to be rented at affordable rates and managed by a registered community housing provider in perpetuity, and provisions that they will no longer be mandated in the R2 Low Density Residential zone - are consistent with the recommendations of the [Boarding House Working Group](#).

They respond to the call from the local government sector that boarding houses should genuinely provide housing that is affordable for very low- and low-income households and address councils' increasing concerns about the amenity impacts of out-of-scale boarding houses in R2 zones.

Councils recognise the need for social and affordable housing but are concerned provisions allowing the Land and Housing Corporation (LAHC) to build boarding houses in the R2 zone will result in ongoing planning issues arising from boarding houses that are out-of-scale with surrounding development. The self-assessment pathway also limits councils' ability to provide meaningful input, particularly given the SEPP only provides councils with 21 days to comment.

#### **Recommendation 2**

The boarding house provisions for LAHC should be carefully monitored to ensure that councils and their communities do not see unacceptable outcomes such as out-of-scale development, as a result of these provisions.

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

The inclusion of provisions for co-living are generally supported. Councils recognise this form of housing contributes to diversity of dwellings and tenure but do not support the density bonus, 10% additional floor space. This is not linked to a social benefit such as affordable housing and allows development over and above the scale of development councils have determined as appropriate in consultation with their communities. The floor space ratio should be consistent with the council's local environmental plan (LEP) and policies to ensure the built form is compatible with development permitted within the zone.

#### **Recommendation 3**

The Housing SEPP should not include the 10% additional floor space for co-living developments and floor space ratios should be in line with the relevant LEP.

### ***Seniors Housing***

LGNSW is concerned that the list of prescribed zones for seniors housing development includes the full range of business zones. Councils carefully plan business zones to ensure that communities have access to the services and facilities they need and to support local businesses. They are also critical to providing jobs close to where people live, an objective underpinning district, regional and local plans. Business and industrial uses are an important part of local and regional economies and must be protected from residential encroachment or dislocation.

Councils are also not supportive of the height increases for seniors housing and floor space bonuses for vertical villages proposed in the SEPP. As with the provisions for co-living developments, councils note these additional height allowances will lead to building forms that are inconsistent with local streetscape and character, with amenity and privacy impacts on adjoining properties.

**Recommendation 4**

The Housing SEPP should allow councils to determine whether seniors housing is permissible in business zones and the local development standards under LEPs should apply for all forms of seniors housing.

**Finalising the Housing SEPP**

LGNSW understands the build-to-rent and short-term rental accommodation (STRA) provisions already developed will be consolidated in the final Housing SEPP in October 2021, and further work is being undertaken in relation to group homes, caravan parks and manufactured housing estates.

LGNSW remains very concerned about the planning framework for STRA. We have consistently advocated that councils should be able to determine the locations where properties can be used for short-term letting and the number of days it is available in their local government area. Not doing so risks putting further pressure on the availability and affordability of housing in many areas and undermining the outcomes which the Housing SEPP is seeking to achieve. The provision that un-hosted bookings of STRA for 21 or more consecutive days would not count towards applicable day thresholds is also seen as problematic and this provision should be removed.

**Recommendation 5**

Before the Housing SEPP is finalised, the planning provisions for STRA should be amended to provide greater flexibility for councils to determine where STRA is permitted and the number of days that properties can be let, and the 21-day exemption should be removed.

***Review and monitoring***

LGNSW's submission on the Housing Diversity SEPP Explanation of Intended Effect in October 2020 identified the need for a monitoring program, developed from the outset with input from councils, and regular 2-yearly reviews of the SEPP. This is critical to assessing whether the Housing SEPP is delivering intended outcomes and does not undermine Local Strategic Planning Statements, and locally based plans and strategies.

**Recommendation 6**

Fundamental to implementing the Housing SEPP, the Department of Planning, Industry and Environment (DPIE) should establish a monitoring program for commencement of the SEPP, including regular 2-yearly reviews to ensure the SEPP is delivering the outcomes sought.

Thank you again for the opportunity to comment on the draft Housing SEPP. LGNSW requests that DPIE prepare a submissions report on the consultation draft so that councils understand how the issues they have raised will be addressed.

Please contact Jane Partridge Strategy Manager, Planning at [jane.partridge@lgnsw.org.au](mailto:jane.partridge@lgnsw.org.au) on 02 9242 4093, for any queries about this submission.

Yours sincerely



Kelly Kwan

**Executive Manager Advocacy**

**From:** noreply@feedback.planningportal.nsw.gov.au on behalf of Planning Portal - Department of Planning and Environment  
<noreply@feedback.planningportal.nsw.gov.au>  
**Sent:** Thursday, 12 August 2021 7:36 PM  
**To:** DPE PS Housing Policy Mailbox  
**Subject:** Webform submission from: Proposed Housing SEPP

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Submitted on Thu, 12/08/2021 - 19:35

Submitted by: Anonymous

Submitted values are:

**Submission Type**

I am submitting on behalf of my organisation

## Name

**First name**

Fiona

**Last name**

Browne

**Organisation name**

Lily House

**I would like my submission to remain confidential**

No

## Info

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**Suburb**

Woombye

**Postcode**

4559

**Submission**

Dear Sir

As founder and director of Lily House, an accommodation and life skills training facility on the Sunshine Coast of Queensland, I have had almost 15 years of experience with women experiencing DV, without support or adequate income.

I am writing to voice my support for a smaller, affordable co-living model, one which has run successfully for our charity, positively impacted the lives of many women in crisis in our community, and which has proven to show positive social outcomes over many years.

I understand that larger co-living models are contemplated in the draft SEPP, but I want to speak about our experience with smaller, more affordable options, which enable us to maintain a sense of community within the house, and also enables us to be

situated in low density residential areas, close to all they are familiar with, and close to facilities they need.

Through our interaction with similar facilities in our community, we recognise that the positive effects from smaller co-living situations are actively sought by many in need. These people favour the smaller, affordable co-living model because it has tangible and very personal benefits for them, across a variety of demographics. These include...

- single women, adversely affected by life circumstances such as divorce, death or unexpected pregnancy (which is most of our clientele)
- women transitioning between domestic violence crisis accommodation to mainstream accommodation. These women have desperate needs and often nowhere to go! (Most of our clients experience this too)
- Women over 55, a demographic most affected by housing affordability
- Older people who want to age in a place they are familiar with, and surrounded by people who could help should they have need.
- frontline medical staff and other low income workers who want to remain in low density residential areas close to work
- young singles in their first jobs or young couples starting families (who may be looking to save for a home or to stay near family)

For this reason I would strongly advocate smaller co-living arrangements, 3-5 bedrooms with common areas, which we have found to facilitate a superior, and life changing experience to all of our clients. Such an arrangement allows their continued presence in a low density community space, promotes the building of positive ties within that community, and it also allows the use of already established residences, making it an affordable and extremely positive solution for those in need.

On a practical level, it would also be tremendously helpful if approval for this could be obtained via a certifier, as opposed to a lengthy, impersonal council approval.

I offer these thoughts as someone with much experience working with low income women in desperate need, and I trust that this will be helpful to you as you seek quality, affordable solutions to the accommodation crisis our nation now faces.

Yours Sincerely

Fiona Browne

**I agree to the above statement**

Yes

**From:** noreply@feedback.planningportal.nsw.gov.au on behalf of Planning Portal - Department of Planning and Environment  
<noreply@feedback.planningportal.nsw.gov.au>  
**Sent:** Wednesday, 4 August 2021 2:37 PM  
**To:** DPE PS Housing Policy Mailbox  
**Subject:** Webform submission from: Proposed Housing SEPP  
**Attachments:** 2021-august-submission-to-nsw-gov.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Submitted on Wed, 04/08/2021 - 14:35

Submitted by: Anonymous

Submitted values are:

**Submission Type**  
I am making a personal submission

## Name

**First name**  
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[2021-august-submission-to-nsw-gov.pdf](#)



**I agree to the above statement**

Yes

## Submission for proposed changes to the State Environment Planning Policy.

Personal submission by Lindsay Higgins 4<sup>th</sup> August 2021

Personal aims – to provide rental accommodation via residential property in the Sydney & metropolitan areas

Thank you for the opportunity to make a submission regarding the proposed changes to the State Environment Planning Policy.

The first paragraph regarding Housing SEPP says

*“NSW needs a **variety of housing options** to meet the needs of different people. To drive more housing supply and meet these needs, the NSW Government has developed a new Housing State Environmental Planning Policy (Housing SEPP). This new policy **aims to deliver more diverse and affordable housing types.**”*

The first two phases of the SEPP are aimed at existing and large scale housing. The current phase three is **aiming to address additional housing options but fails to do so.**

Phase three simply consolidates existing policy in one place and includes recent provisions which are **primarily for the large scale housing**. This leaves out a huge, **untapped source of housing** which **can be provided** by the ‘average mum and dad’ investor, which I relate to.

In the “Explanation of intended effect for a new housing diversity SEPP” July 2020

The aims of the new Housing Diversity SEPP include (page 5)

- Assisting state economic recovery
- Facilitate delivery of housing to meet the needs of the states growing population.

The key components of the SEPP are (page 5)

- Build to rent housing
- Purpose built student housing
- Co-living

The first two components are aimed at large scale housing and institutional investors.

Only the co-living component can be accessed by the largest and mostly untapped resource, that of large numbers of individual investors. **However...**

...under the proposed new definition of co-living, page 11 of the “Explanation of intended effect for a new housing diversity SEPP” July 2020, dwellings will need to have at least 10 private rooms, some or all of which will require kitchen and/or bathroom facilities.

For a property of this size, the cost of construction and land required puts the development **well out of reach of the average ‘mum & dad’ investor.**

When NSW has 200,000 dwellings short of demand#, according to the Community housing industry association of NSW, what is 100 social homes across Sydney & regional NSW via the LDA and seven home builders going to achieve?^ At a cost of \$25million, how much can NSW Government afford to build?^^

But with thousands of individual investors each able to provide one or two homes, you will facilitate enough housing to actually meet the demand.

**The solution -** **Include smaller and more affordable homes 3-5 bedroom homes.** These homes can be easily converted to self contained dwellings to provide accommodation for up to 6 tenants with much more affordable housing options will be available for the community. Additionally, many of these are in the lower density areas where tenants often want to live.

**The benefits** to the inclusion of such houses, which can be converted to include up to six residents are

- Affordable housing can be brought to market very quickly. Within 6-8 weeks if certifier approval is granted for properties meeting conditions of development. This is much quicker than the government can provide and gives an almost instant boost to the increasing demand on social housing.#
- The cost for micro apartments to the government is ZERO! Think of the budget. Spend it on other areas of real need that can not be provided by the citizens.
- Real rental choice can be provided by multiple options brought to market by individuals to provide various affordable rent options to suit individual preferences. More so than Build-to-rent housing which is likely to incorporate a very ‘cookie cutter’ approach.

- Being substantially similar to existing low density dwellings, it will not affect the look, feel or experience of other residents in R2 zones and can be incorporated with low socio-economic impact to blending in.
- With a much lower entry cost barrier compared to boarding houses & BTR, more people can provide this housing, greatly expanding the capacity to provide for the increasing demand of affordable housing.
- With a larger number of developments approved, greater development will help drive **much more** construction jobs and **economic recovery** than Build-to-rent on its own.
- The 'feel' of accommodation in essentially a house, is much more familiar to a wider variety of tenants and in R2 zones, will be where they want to be, particularly when family and friends are nearby.\*
- The atmosphere in smaller co-living dwellings provides less stress than larger group style, boarding house type of accommodation and is greatly sought after by women from domestic violence backgrounds and young people moving out of the family home.

Don't bog the process down by giving local councils the need to approve the process. Individual assessors can facilitate the huge demand by ensuring the developments meet compliance requirements.

Councils are struggling enough without unnecessarily adding to their burden.

Added delays through council won't help the NSW government by taking pressure off the budget. This will only increase the demand on social housing rather than providing a real option for affordable accommodation.

My family has already invested in Queensland and would like to enter the Sydney market to provide long term, affordable rental accommodation. The suggestions above will help people like us and the tenants we serve as well as easing the pressure on the NSW government to provide housing – which history shows they are not great at doing. Hence why they outsource the solutions.

We are simply asking to include us in your outsourcing by making provisions in the SEPP for smaller dwellings which can make a big difference to affordable housing.

^ <https://www.dpie.nsw.gov.au/land-and-housing-corporation/news/53-social-homes-to-be-delivered-in-six-months>

^^ <https://www.dpie.nsw.gov.au/land-and-housing-corporation/news/plans-advance-on-new-wollongong-social-housing>

\* <https://www.theguardian.com/cities/2019/sep/03/co-living-the-end-of-urban-loneliness-or-cynical-corporate-dormitories>

# <https://communityhousing.org.au/media-releases/nsw-needs-to-build-at-least-5000-more-social-housing-properties-a-year-for-the-next-decade/>



**Link  
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By email:

17 September 2021

Sandy Chappel  
Director, Housing Policy  
4 Parramatta Square,  
12 Darcy St, Parramatta, NSW 2150

Dear Sandy,

**Re: Submission to State Environmental Planning Policy (Housing) 2021  
with specific reference to No's 17, 19-23 Killaloe Avenue and 458 Pennant  
Hills Road, Pennant Hills, NSW 2120**

Link Wentworth is a registered community housing provider formed on 31 March 2021 from the merger between major Tier 1 housing providers, Link Housing and Wentworth Community Housing.

Link Wentworth provides social and affordable housing and delivers enhanced support services for those most vulnerable in the community. Our property portfolio includes social, affordable and disability housing for people on low to moderate incomes. We also provide support services to help people sustain their tenancies, strengthen their lives, and participate fully in their communities. We are one of the only housing providers in NSW to provide support services for those who are homeless or at risk of homelessness.

Link Wentworth has been working recently with Hornsby Council and the Department to unlock the potential of the site at Pennant Hills to provide additional affordable seniors housing resulting in an amendment to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 to allow an exemption to the prohibition on seniors housing in heritage conservation areas. This was successfully achieved in June 2021. It is disconcerting to now discover that there is another prohibition being introduced into the draft Housing SEPP via proposed clause 76(1)(d).

The grounds for submission to the draft Housing SEPP are as follows:

**1. Objection to prohibition of seniors housing other than residential care facilities on land zoned R2**

Clause 76(1)(d) provides that development consent must not be granted for development for the purposes of seniors housing unless the consent authority is satisfied that, for development on land in Zone R2 Low Density Residential, the development is carried out only for the purposes of a residential care facility.

Link Wentworth owns and manages a number of properties on land within Zone R2 Low Density Residential, including housing for seniors and persons with a disability. Furthermore, in response to expressed housing needs and



Government policy it intends to provide more specific purpose designed and constructed seniors housing in the form of independent living units on land zoned R2. Indeed, all Community Housing Providers should be enabled through Government policy and we request that a blanket exclusion be considered.

The prohibition of seniors housing on land zoned R2 in clause 76(1)(d) is strongly objected to for the following reasons:

1. The provisions of clause 76 are not a development standard as stated but a prohibition of all forms of seniors housing other than residential care facilities on land zoned R2;
2. This provision is contrary to the following aims of the draft Housing SEPP:
  - (a) to ensure an adequate supply of an appropriate range of housing types to meet the changing needs of people across the State, including the following—*
    - (i) seniors,*
    - (ii) people with a disability,*
    - (iii) households on very low, low or moderate incomes,*
    - (iv) people experiencing homelessness or people experiencing other disadvantages who may require a model of accommodation that incorporates support services,*
  - (f) to encourage the development of housing that is designed and located in a manner that meets the needs of residents, especially seniors or people with a disability.*
3. Setting aside local planning controls that prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified is one of the key mechanisms for achieving the aims of the existing State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. The draft Housing SEPP removes this mechanism and therefore inhibits rather than assists in achieving to aims of the Seniors SEPP being to increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and to make efficient use of existing infrastructure and services.
4. Contrary to the *Explanation of Intended Effect for a new Housing Diversity SEPP* (EIE) dated July 2020 in that:
  - There is no mention of this proposal to prohibit independent living units on land within the R2 zone in the EIE;
  - Clause 76(1)(d) is contrary to the intentions of the EIE to facilitate the development of social housing by the NSW Land and Housing Corporation (LAHC) and other social housing providers.
5. Inconsistent with provisions of the draft Housing SEPP: Clause 69 prohibits seniors housing on land in Greater Sydney region if an environmental planning instrument identifies the land as being within a heritage conservation area. Clause 69 provides some exemptions to



this rule which includes land owned by Link Wentworth at 17 Killaloe Street. Clause 69(3) allows seniors housing on this site only for this right to be removed by clause 79. This cannot be the intention of the draft instrument.

6. Prohibiting seniors housing in the R2 zone represents a significant change of policy direction which should not progress without more intensive consultation with industry, particularly community housing providers and Land and Housing Corporation.

The Department is requested to remove this provision prohibiting seniors housing on land zoned R2 Low Density Residential.

## **2. Changes to the provisions of clause 69(3)**

*State Environmental Planning Policy (Housing for Seniors or People with a Disability) Amendment (Heritage Conservation Areas Exemption) 2021* gazetted in June 2021 amended the provision of the Seniors SEPP to exempt Lot 4, DP 35528 at 17 Killaloe Avenue, Pennant Hills from the prohibition of seniors housing in heritage conservation areas. Clause 4A states (emphasis added):

### **4A Land to which Policy applies—heritage conservation areas in Greater Sydney Region**

(1) *This Policy does not apply to land in the Greater Sydney Region if an environmental planning instrument identifies the land as being within a heritage conservation area.*

(2) *This Policy continues to apply to development on land referred to in subclause (1) if—*

(a) *the relevant development application was lodged before the commencement of this clause, or*

(b) *the relevant development application was lodged after the commencement of this clause, but the development application relies on a site compatibility certificate and the application for that certificate was lodged before the commencement of this clause.*

(3) *A site compatibility certificate may be issued for land referred to in subclause (1) after the commencement of this clause if the application for that certificate was lodged before the commencement of this clause.*

(3A) *This clause does not apply to the following land—*

(a) *land in the North Sydney local government area,*

(b) *Lot 1, DP 9786, 46 Hannah Street, Beecroft,*

(c) *Lot Z, DP 100832, 48 Hannah Street, Beecroft,*

(d) *Lot 2, DP 517374, 50 Hannah Street, Beecroft,*

**(e) Lot 4, DP 35528, 17 Killaloe Avenue, Pennant Hills.**

(4) *This clause is repealed at the end of 1 July 2022.*

A similar clause is carried over into the draft Housing SEPP (clause 69).

No 17 Killaloe Avenue is one of two properties owned by Link Wentworth on Killaloe Avenue, the other being Lot 1 in DP Lot 1 in DP 1157249 at 19-23 Killaloe Avenue and 458 Pennant Hills Road, Pennant Hills. Lot 1 immediately adjoins Lot 4, DP 35528 at 17 Killaloe Avenue as can be seen in the following diagram:





Lot 1 contains 9 new single storey affordable housing dwellings whilst Lot 4 contains a detached dwelling house in a dilapidated condition. Link Wentworth propose to develop Lot 4 at 17 Killaloe Avenue for seniors housing in the form of independent living units. Access to, and parking for, seniors housing on Lot 4 will be located partly on Lot 1 in DP1157249 being parking and access recently completed as part of an affordable housing project.

So as to remove any doubt as to permissibility of works on Lot 1 associated with seniors housing on Lot 4, the Department is requested to amend clause 6g of the draft Housing SEPP as shown below (changes in bold):

*6g Land to which Part does not apply—heritage conservation areas in Greater Sydney*

*(1) This Part does not apply to land in the Greater Sydney region if an environmental planning instrument identifies the land as being within a heritage conservation area unless—*

*(a) a development application relating to the land was lodged before 28 February 2019, or*

*(b) a development application relating to the land was lodged on or after 28 February 2019, but the development application relies on a site compatibility certificate and the application for the certificate was lodged before that date.*



*(2) A site compatibility certificate may be issued for land in the exclusion zone after 28 February 2019 if the application for the certificate was lodged before that date.*

*(3) This section does not apply to the following land—*

*(a) land in the North Sydney local government area,*

*(b) Lot 1, DP 9786, 46 Hannah Street, Beecroft,*

*(c) Lot Z, DP 100832, 48 Hannah Street, Beecroft,*

*(d) Lot 2, DP 517374, 50 Hannah Street, Beecroft,*

*(e) Lot 4, DP 35528 and Lot 1, DP 1157249, 17 – 23 Killaloe Avenue and 458 Pennant Hills Road, Pennant Hills.*

*(4) This section is repealed at the end of 1 July 2022.*

This would facilitate the development of the site for additional affordable seniors housing.

Should you wish to discuss the above or require any further clarification, please do not hesitate to contact the undersigned.

Yours faithfully

**Link Wentworth Housing Ltd**

**Paul Hunt**

**Head of Development**

**Email [paul.hunt@linkwentworth.org.au](mailto:paul.hunt@linkwentworth.org.au)**

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

Submitted via Planning Portal

**Re: Proposed Housing SEPP**

Thank you for the opportunity for Liverpool City Council to make a submission on the draft State Environmental Planning Policy (Housing) 2021 (Housing SEPP).

As previously indicated, Council supports the consolidation of relevant SEPPs in order to simplify the planning system and promote efficient assessment processes. This includes:

- *State Environmental Planning Policy (Affordable Rental Housing) 2009;*
- *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004;*
- *State Environmental Planning Policy No 21—Caravan Parks;*
- *State Environmental Planning Policy No 36—Manufactured Home Estates; and*
- *State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes).*

Council is supportive of measures to improve housing diversity and housing affordability, as evidenced in its Local Strategic Planning Statement (LSPS) and Local Housing Strategy. Following the EIE, there are several proposed changes Council supports and a number of changes not supported. Council's detailed comments are provided at **Attachment 1**.

If you require any further information, please contact Cameron Jewell, Senior Strategic Planner, on 02 8711 7862.

Yours sincerely



**Luke Oste**  
Coordinator Strategic Planning

## **Attachment 1 – Detailed Comments**

### **Aims**

Council welcomes the inclusion of aims that better respond to affordable housing and removal of reference to Covid-19, as was recommended during Council's submission on the Explanation of Intended Effects (EIE).

### **Relationship with other environmental planning instruments**

Aside from the Liverpool Local Environmental Plan 2008 (LEP), development in certain parts of Liverpool is also covered by SEPP (Sydney Region Growth Centres) 2006, SEPP Western Sydney Aerotropolis 2020 and SEPP Major Development 2005 (Edmondson Park South). There should be clarity as to which SEPP overrides in instances of inconsistency, and whether amendments to other SEPPs will need to occur prior to gazettal of the Housing SEPP to ensure that there is no inconsistency in land use permissibility in similar zones across different areas of the LGA, including zones within the Aerotropolis SEPP.

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

As previously submitted, Council is supportive of changes to boarding house development, particularly requiring all boarding house developments to be provided as affordable rental housing and managed by a community housing provider (CHP). It commends the decision to have this housing provided as affordable housing in perpetuity and supports the removal of the requirement to have boarding houses mandated in the R2 – Low Density Residential zone.

Council welcomes the move to a percentage FSR bonus for boarding houses. This will work to reduce out-of-character development in lower density areas with low base FSRs.

### **Parking**

Liverpool's population is largely reliant on private vehicle transport, due to its location at the periphery of Sydney's public transport network and comparatively poor public transport service levels, compared with Greater Sydney. Until public transport service levels and accessibility is improved, Council cannot support levels of parking that are below those stated in Council's DCP controls.

Council recommends that parking rates be able to be set by councils, in order to respond to the unique challenges of each LGA, rather than applying a blanket control across Greater Sydney and the rest of the state. For Liverpool, reduced parking rates for boarding house, co-housing and seniors housing development will have impacts on on-street parking availability, which is already an issue for the community in many areas.

### **LAHC self-assessment powers**

Council in its submission on the EIE indicated that Council's standard community consultation provisions should apply to Land and Housing Corporation (LAHC) development when it is exercising its self-assessment powers, as LAHC's self-assessment processes do not enforce meaningful community consultation.

Council notes the inclusion of provisions allowing Council to nominate a person or persons who should be notified of this development. Council supports this inclusion and will enact it in line with its Community Participation Plan, however requests that the 21-day notice period be extended to a standard 28-day notice period to be in line with Council procedure and community expectation.

### **Residential flat buildings – social housing providers, public authorities and joint ventures**

Council expects that housing built by, on behalf of or in partnership with social housing providers and public authorities should lead by example. The affordable housing component of such development should have the period it is used as affordable housing extended from 10 years to at least 15 years, which is the proposed timeframe for infill affordable housing development provided by the private sector.

It is understood that under the proposed controls affordable housing provision of the above type of development would not apply to development on land owned by LAHC or to a development application made by a public authority. Council believe that this should only be the case if there are more stringent obligations for this type of development in regards to affordable housing and community outcomes.

### **Seniors Housing**

Council supported changes to the Seniors SEPP provisions to clarify that development standards in an LEP prevail to the extent of any inconsistency with the SEPP. Council notes that this has since been removed and reiterates its support for Council's LEP development standards to prevail in these instances.

Council supports prohibiting Seniors Housing in rural zones and the Metropolitan Rural Area, which will better ensure that Seniors Housing development is close to necessary services to support residents.

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**From:** noreply@feedback.planningportal.nsw.gov.au on behalf of Planning Portal - Department of Planning and Environment  
<noreply@feedback.planningportal.nsw.gov.au>  
**Sent:** Tuesday, 31 August 2021 1:52 PM  
**To:** DPE PS Housing Policy Mailbox  
**Subject:** Webform submission from: Proposed Housing SEPP  
**Attachments:** submission-on-housing-sepp.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Submitted on Tue, 31/08/2021 - 13:51

Submitted by: Anonymous

Submitted values are:

**Submission Type**

I am submitting on behalf of my organisation

## Name

**First name**

Cameron

**Last name**

Jewell

**Organisation name**

Liverpool City Council

**I would like my submission to remain confidential**

No

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**Suburb**

Liverpool

**Postcode**

2170

**Submission file**

[submission-on-housing-sepp.pdf](#)

**I agree to the above statement**

Yes



**From:** noreply@feedback.planningportal.nsw.gov.au on behalf of Planning Portal - Department of Planning and Environment  
<noreply@feedback.planningportal.nsw.gov.au>  
**Sent:** Sunday, 29 August 2021 2:18 PM  
**To:** DPE PS Housing Policy Mailbox  
**Subject:** Webform submission from: Proposed Housing SEPP  
  
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Submitted on Sun, 29/08/2021 - 14:18

Submitted by: Anonymous

Submitted values are:

**Submission Type**

I am making a personal submission

## Name

**First name**

Louise

**Last name**

Butler

**Organisation name**

Personal

**I would like my submission to remain confidential**

No

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**Suburb**

Darlinghurst

**Postcode**

2010

**Submission**

Dear Mr Stokes

I refer to the NSW Stage Government's proposed new Housing SEPP, which provides for the consolidation of five (5) existing housing related SEPPs, including the SEPP (Affordable Rental Housing) 2009, intended to be finalised in October 2021.

I support the proposed changes stipulating a definition for 'affordability' with which boarding houses must comply.

I am also in favour of the proposal to ensure boarding houses are managed by a Social Housing Provider.

The previous exhibition was encouraging, in relation to changes to boarding house requirements where the SEPP was to prohibit boarding houses in R2 zones and that boarding houses were to be managed by a Community Housing Provider.

It's extremely disappointing that the NSW Government has reverted to its previous position in relation to boarding houses in R2 zones and, in this proposed New Housing SEPP, will now permit a boarding house in an R2 zone, if it is located in an accessible area, that is, within 800m of a railway station or 400m of a bus stop.

This effectively means means that a boarding house can be located in most areas of Greater Sydney Metropolitan Sydney and, in particular, in the Georges River Local Government Area.

Boarding Houses are fundamentally incompatible with low density residential areas due to their bulk, scale and nature and should be only permitted in higher density residential zones and existing town centres.

Please give serious consideration to the profound and long-term detrimental impact of this proposed new Housing SEPP on the nature and amenity of existing and future communities.

Sincerely  
Louise Butler

**I agree to the above statement**

Yes

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**From:** noreply@feedback.planningportal.nsw.gov.au on behalf of Planning Portal - Department of Planning and Environment  
<noreply@feedback.planningportal.nsw.gov.au>  
**Sent:** Tuesday, 24 August 2021 3:23 PM  
**To:** DPE PS Housing Policy Mailbox  
**Subject:** Webform submission from: Proposed Housing SEPP

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Submitted on Tue, 24/08/2021 - 15:22

Submitted by: Anonymous

Submitted values are:

**Submission Type**

I am making a personal submission

## Name

**First name**

Luke

**Last name**

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**Organisation name**

NA

**I would like my submission to remain confidential**

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**Submission**

In relation to secondary dwellings:

1. What is "total floor area"? This term is not defined anywhere and seems to be used exclusively for secondary dwellings.
2. The complying development criteria for secondary dwellings PROHIBITS patios within 3 metres of a boundary, but then specifies standards for patios within 3 metres of a boundary! It makes no sense.
3. The complying development criteria for secondary dwellings in relation to private open space is very unclear. It specifies a width but not a length. It is unclear as to whether or not a 4x4m square is intended – this is not stated. "Direct access" from a living area is not defined. It's unclear whether "access" to the POS can be from the principal dwelling or only the secondary dwelling. This is unclear since a shared POS arrangement is allowed.

**I agree to the above statement**

Yes