

Our Ref: (2021/294679)

Phone Enquiries: 4934 9700

27 August 2021

NSW Department of Planning
Industry and Environment
NSW Planning Portal

Dear Sir/Madam

Re: Draft Housing State Environment Planning Policy: Submission

Thank you for the opportunity to comment on the proposed Draft Housing State Environmental Planning Policy (DHSEPP) or 'Housing SEPP'.

Maitland City Council has reviewed the exhibition material and provides the following comments for your consideration.

DHSEPP 2021

The proposed Housing SEPP will consolidate provisions from the following existing SEPPs:

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

However, the DHSEPP has not included the revised caravan park and manufactured home estate provisions. The existing provisions will be included in the finalised Housing SEPP.

It is acknowledged that Council has experienced significant issues with the application of SEPP 36 in the past, particularly regarding development outcomes in unsuitable, poorly serviced rural contexts.

It is anticipated a review of these provisions will be undertaken in two years, after the Housing SEPP is made, and Council staff look forward to providing further comment in due course. The use of rural zoned land for what is essentially medium density housing is of an ongoing concern and any further opportunities to address these significant issues are welcomed.

Chapter 1 Preliminary: Clause 3 Aims of Policy

- Council generally supports the aims of the policy. However, in regard to aim f, Council would encourage the inclusion of the following:

*"to encourage the development of housing that is designed and **suitably** located in a manner that meets the needs of residents, especially seniors or people with a disability".*

Chapter 2 (Affordable Housing): Part 2 (Development for affordable housing: Division 1 (Infill affordable housing))

- In regard to Clause 15(1)(b) of the DHSEPP, concern is raised that in-fill affordable housing is limited to non-heritage land.

It is unclear what 'non-heritage land' refers to. For example, does it intend to mean not within a conservation area, or not within the designated curtilage of a heritage item, or not on land that contains a heritage item? The definition is important given that a large portion of Maitland's key metropolitan centres are subject to heritage conservation areas, items and/or curtilages.

Council is generally supportive of appropriately located and designed infill development for the purposes of affordable housing where high quality outcomes can be achieved. Council also supports the appropriate adaptive – re-use of heritage buildings for such uses but would not support inappropriate intensification within sensitive heritage curtilages or contexts. The intent and application of the clause should be further refined.

- In regard to Clause 16 (Floor space ratio) of the DHSEPP, Maitland City Council (MCC) has not adopted floor space ratios (FSR) for all zones.

Guidance is sought from the Department of Planning, Industry and Environment (DPIE) on how this control will apply where there is not an applicable FSR.

- In regard to Clause 19 (Continued application of SEPP 65) of the DHSEPP, it is noted that Clause 4(4) of the State Environmental Planning Policy No 65 (Design Quality of Residential Apartment Development) will need to be amended to avoid conflict as this policy currently does not apply to boarding houses.

Division 2 (Boarding Houses)

- Clause 22 (Boarding Houses permitted with consent) of DHSEPP prohibits boarding houses in the R2 Low Density Residential Zone. As MCC currently has no R2 zoned land, this will not impact upon us.
- In regard to Clause 23(2) (Non-discretionary development standards) of the DHSEPP:
 - (a) and (b), guidance on how these controls will apply where there is not an applicable FSR.
 - (e) at least 3 hours of direct solar access provided between 9am and 3pm at mid-winter to at least 70% of the boarding rooms should be provided.
 - (j) Council supports the increase in car parking to 1 space for each boarding room.
 - (i) Council encourages setback controls for all zones (only R2, R3 and R4 identified).
 - (j) Strongly support minimum separation distances specified by the Apartment Design Guide for three storey developments. This will require amendments to SEPP 65 to avoid ambiguity.
- Having regard to Clause 24 (Standards for boarding houses) (1)(a), development consent must not be granted unless the consent authority is satisfied that the design of the development will be compatible with the character of the local area.

Clarification is sought as to whether the 'character of the local area' refers specifically to areas covered under a Local Character Statement, or if this clause can be applied more broadly.

- In regard to Clause 25 (Must be used for affordable housing in perpetuity) of the DHSEPP Council strongly supports this inclusion to ensure the provision of genuine affordable housing, which will be managed by a registered community housing provider.

Part 3 Co-living Housing

- In regard to Clause 64(2) of the DHSEPP:
 - (a), guidance on how these controls will apply where there is not an applicable FSR in areas such as Maitland.
 - (b), at least 3 hours of direct solar access should be provided between 9am and 3pm at mid-winter to at least 70% of the co-living rooms.

Part 4 Seniors Housing: Division 1 (Land to which part applies)

- Council supports the abolishment of Site Compatibility Certificates (SCC) for seniors housing.
- The phrase “zoned primarily for urban purposes” has been replaced with a list of prescribed zones to which seniors housing applies. With the exception of RU5 Village, which is not currently applicable to MCC, seniors housing will no longer be permitted in rural zones.

Council supports this major change as it will help to ensure the objectives of the RU1 and RU2 zone are achieved, and seniors housing is well located with good access to facilities and services.

- Clause 68 (Land to which Part does not apply – general) of the DHSEPP identifies that land described in Schedule 4 – Environmentally sensitive land does not apply.

The new definition of environmentally sensitive land includes 'flood planning'. Major concern is raised that if a site is mapped as flood planning under the Maitland Local Environmental Plan (MLEP) 2011, seniors housing is not permitted. This will have major ramifications for MCC given the amount of flood prone land in the LGA. The definition should clarify that this clause relates specifically to the parts of the lot affected by flood planning to not unfairly disadvantage land which is partially flood effected.

Division 7 (Non-discretionary development standards)

- Council raises concern that Clause 95 (Division does not apply to certain development applications relating to heritage-affected land) of DHSEPP does not apply to development on land to which an interim heritage order or listing on the State Heritage Register applies.
- New restrictions have also been introduced for land zoned RE2, SP1, RU5 and R2. Of note, seniors housing in the R2 zone can only be carried out for the purposes of a residential care facility.

Division 8 (Development for Vertical Villages)

- Changes proposed to bonus FSR for vertical villages including changes in bonus available, requirement for % of affordable places.

It is noted that there are potential Implications for MCC where no FSR controls apply, and this may result in reduced GFA available. Further guidance is sought from DPIE regarding this matter.

Schedule 7 (Amendments of Other Environmental Planning Instruments)

Council does not support the amendments to Schedule 1 (State significant development – general) to include residential care facilities with a capital investments value of \$20 million. Council should remain the consent authority to ensure local issues can be adequately considered throughout the assessment process.

If you wish to discuss these comments please contact Andrew Neil on (02) 4934 9821.

Yours sincerely

Andrew Neil
Manager Strategic Planning

This document is not signed as it has been delivered electronically.

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 1:40 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, 31/08/2021 - 13:40

Submitted by: Anonymous

Submitted values are:

Submission Type

I am submitting on behalf of my organisation

Name

First name

[REDACTED]

Last name

[REDACTED]

Organisation name

marchese partners

I would like my submission to remain confidential

Yes

Info

Email

[REDACTED]

Suburb

mosman

Postcode

2088

Submission

To whom it may concern,

In marchese partners / Life 3A we are committed to provide design solutions and forward thinking to our seniors.

The new Housing SEPP has come to put order in the planning process which we believe is positive, however there is some clauses in the policy that will impact on the ability to develop senior housing in NSW impacting on the social tissue and our senior's choices. We are happy to elaborate on this based on 20 years experience with Senior Living and Aged Care developments and dealing with developers and residents.

I agree to the above statement
Yes

To whom it may concern

Successful Victorian conversion of 3 bedroom house

We converted a 3 bedroom, single garage residence in Point Cook in Victoria into a 3 room “Rooming House” as it is called in Victoria. Since we finished the conversion in February 2017, the 3 rooms have been consistently rented out by a range of people. One room has had the same couple in there since the conversion. They thank us for giving them such a lovely place to live. We have been able to provide safe, clean, comfortable and affordable accommodation to many people in this one house since February 2017.

The positive things about the Victorian model are that we were able to certify the conversion, quickly, through private certification which saved time and money. We understood the safety regulations and requirements which we applied and exceeded them with a council inspector saying, it was the best rooming house he had ever seen. A real estate agent said we’d turned the property from a nightmare into a palace!

Each room or micro-apartment in this house has their own bathroom and food preparation area in their room. They have their own, medium-sized fridge and kitchen cupboards with their own cutlery, plates and cookware provided. Each room is furnished with a bed, couch, robe, table and chairs. The common areas include a fully functioning laundry with washing machine provided and the kitchen in the original house that is shared by the tenants. The property is managed by a local real estate agent. The tenants really appreciate this type of accommodation which is not commonly found. Each room has it’s own door with coded lock to enter their private room.

Ticking the boxes: Diversity, Affordability, Community, Singles

It is great that we were able to provide this accommodation in a suburban area. Our tenants are easily able to use the public transport close by to get to work, amenities or shops etc The jobs held by our tenants have ranged from chef, barrister, builder, nurse, factory worker, student to name a few. All have appreciated its cleanliness, security and affordability.

Converting underperforming properties economically

We were able to provide this affordable product as a “Mum and Dad investor” with the help of training and direction in how to seek approvals etc. Another reason is that we were able to convert an underperforming rental property into a profitable property. The conversion cost us \$70,000 and from that, we have been able to provide a great service to the community which we know has been appreciated by our tenants as we often get text messages and comments of how privileged they feel to be able to live in such a nice place.

A limitation of the Victorian model is that each room is not able to have their own kitchenette. If this was possible, each room could have their own fully self-contained unit. We know this is possible in Qld and would recommend this in a NSW model.

There are so many benefits to this model and so many people who could benefit from this. Just in the area where I live on the Northern Beaches in Sydney, I can see there would be so many people who could benefit from this type of housing. There are currently several "Boarding Houses" in the area. However, these are limited to developers who have deep pockets to build on a large scale. I hear that these type of developments will no longer be accepted in general residential zones. I can understand this scale of development not being desired in general residential areas, however, it is disappointing that an affordable housing model is pushed out of these residential zones where it is so desperately needed and desired.

Queensland Model in preference to the limiting granny flat

One of the limited options we have for affordable housing is with a granny flat. This is limiting as it is an additional building on the one block and the space and expense cannot always be available. However, there are many people even within close proximity to my home who could use and benefit from the Qld type of model.

Examples include, my elderly parents moving into an attached granny flat that my brother is hoping to build in his new home. This is in council and has been there for more than one year while my parents wait for the accommodation that is affordable and a manageable size for them as they downsize. There are many single, elderly people in the area living in large houses with large gardens to maintain. They could benefit from being able to live in a smaller part of their house whilst staying in their community, walking distance to their friends, church, shops, services and buses they have used for many years. It would mean they could share the garden maintenance and cost of running a house. Others could benefit from having an affordable place to live within a community.

Diversity of Tenants with affordability and less community dislocation

Several properties around us have recently sold for over \$3M. I don't know how our teenage children will be able to afford these houses. At least if they were able to rent a secure, comfortable and affordable place, they could save for a deposit whilst still staying in their community. It would also allow for a mix of people within the general residential zones where younger and older people can live in a house or part of a house with access to level accommodation and outside areas instead of the only option being in units where often times there are stairs and limited outdoor areas for gardening and recreation. It can be difficult for older people to find affordable accommodation where they don't have to walk up stairs and they have access to outside garden areas. I know this is the case for my own parents.

This accommodation is also beneficial for young adults as they study with part-time work. They can live in an area where they have grown up with friends and family but can be independent as it is

more affordable. The Qld model where each room is able to have their own bathroom and cooking facilities, where it is a small area of a larger dwelling where they can have some type of community and where they are in a residential area close to shops, services, transport and work is an ideal model.

Much needed planning flexibility for repurposing large houses

It also means “Mum and Dad investors” can help to provide this type of accommodation to so many people who need it. We currently live in a home with 2 teenage daughters who could benefit from this type of accommodation in the not too distant future. We could also benefit from not having to move from our friends and family in this area as we wouldn’t have to sell our home to move to a smaller, more practical accommodation as it could make our home more appropriately sized and more affordable for our changing needs as our children move out.

Community Empowerment

There are so many people in the area who could benefit from this type of accommodation from younger singles and couples right through to older singles and couples. It creates affordable housing for so many people of all ages and a sense of community. It can be provided by converting existing homes in residential areas by “Mum and Dad investors” without only being available to “deep pocketed developers”. It can be provided quickly and affordably by being approved by certifiers. There are so many positives for this model and so many ways it can benefit so many parts of the community. I really hope NSW adopts the great model that Qld has been able to offer.

Please contact me if you would like to discuss anything further.

Kind regards

Maria Dunn

0402 202 135

03/05/2018

RESPONSE TO DRAFT SEPP 2021 (HOUSING)

Mark Shapiro Architects has extensive involvement and knowledge of the co-living sector, having completed significant co-living developments in Bondi Beach and Glebe, and with numerous in planning stages and under construction.

We are supportive of the recognition of this distinct typology which fills an important gap in the housing market – in particular for singles, young professionals, divorcees, mobile professionals – it occupies the space between undesirable share housing and unaffordable strata housing close to central hub locations. As such we applaud the recognition of this important typology and wish to see its growth, which has a flow on effect for housing affordability.

We are supportive of many of the provisions, such as

- Limiting the inappropriate application in R2 zones
- 12-16sqm room sizes
- Inclusion of student housing

However, a notable number of the draft provisions will simply send the burgeoning co-living typology to the waste bin. Already it is an uphill battle to get a co-living feasibility to stack up against traditional off the plan residential development, due to

- Lending criteria
- A more expensive build cost
- Higher risk
- Inability to strata and sell off the plan

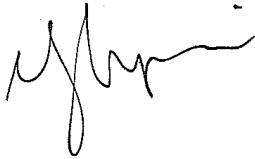
As such a generous FSR bonus and other provisions is CRITICAL to getting co-living to stack up.

- 10% FSR bonus (and temporary) is woefully inadequate, in particular when asking a developer to give up a significant portion of valuable NSA to unlettable common spaces. 20% is a minimum, and a return to the 0.5 FSR or 20% bonus is preferable
- Communal space requirements are far too onerous and again, when coupled with a minimal FSR bonus will simply deem co-living as theoretical at best
- 0.5 car spaces per room (which council's will no doubt co-opt into their DCPs) will mean that the vast majority of otherwise suitable sites for co-living will be unworkable geometrically, not to mention too expensive to build.
- Elevating ADG separation distances from the realm of merit based into the actual SEPP requirements will onerously require Clause 4.6 objections to the vast majority of applications, not to mention will be near impossible to comply with in most co-living sites.

If it is the DPIE's desire to merely pay lip service to 'housing diversity' for the sake of political expediency, but in reality destroy housing diversity and affordability, then the above provisions are on the right track.

However if the DPIE is sincere in its desire to encourage housing diversity then we implore you to reconsider the above provisions.

Regards,



Mark Shapiro
Reg. 9789

Dear Department of Planning

Thank you for allowing me to provide feedback as private individual to the Draft Housing State Environmental Planning Policy (SEPP) 2021.

Can you insert Development Control Plan into the definition of non-standard instrument?

Is the purpose of these changes to increase or reduce regulation?

Can the objectives include reference to provision of educational accommodation for staff and students?

In relations to a Local Environment Plan (LEP) that provides for 4.6 exceptions, can an applicant seek exception to the Housing SEPP?

Can you repeal the LOCAL GOVERNMENT (MANUFACTURED HOME ESTATES, CARAVAN PARKS, CAMPING GROUNDS AND MOVEABLE DWELLINGS) REGULATION 2005 subject to inserting caravan park, campsites, manufactured estates, and movable dwellings into the SEPP? When inserting items relating to caravan parks, campsites, manufactured estates, and movable dwellings, can you group common features to all development types in the SEPP? Can you group items relating to Site Compatibility Certificates, bushfire, flooding, and observatory spring into a single preliminary part that applies to all development types in the SEPP? Can 84 to 94 be grouped into a preliminary part to apply to all development types in the SEPP? As there are other definition sections outside the dictionary at the end of the SEPP, can all dictionary definitions be grouped into a single section? Can the combined dictionary include definition for people with disabilities even if the definition copies from Standard Instrument LEP Order ?

For all development types in the SEPP including section 23, 64, 99, are additional floorspace used for particular purposes, for private or affordable rent? If affordable rent, will the consent authority impose a requirement to place a covenant similar to that stated in the soon to be repealed Affordable Housing SEPP and Housing for Seniors or People with a Disability SEPP?

What is the difference between a group home, co-living house and a boarding house? Can you specify the lot size, setback, and landscaping requirements for co-living and boarding house? If you are unable to provide the above, can you repeal 4.1c the lot size for boarding house in Standard Instrument LEP Order, and refer lot size, setback, and landscaping

requirements for co-living house and boarding house as stated in Housing SEPP schedule for group home? Without specifying lot, setback, and landscaping requirements will mean deferring to standard/non-standard instruments that may prohibit or limit the development. It is questionable whether such planning instruments provide such information. However, it is possible that you may go in the opposite direction and amend 4.1c in Standard Instrument LEP Order to add co-living house to boarding house lot size requirements, in that case, can you still prescribe setback and landscaping requirements in the SEPP as that may not exist in standard/non-standard instruments.

Can section 35 subsection 2 be removed? Prohibiting the use of the division if residential flat permissible under another planning instrument means that one is positioning a residential flat in an area where attached or multi-dwellings are permitted which will likely mean that the planning secretary would suggest that the development is incompatible with surrounding character. By removing the above subsection would increase the number of character appropriate areas for residential flat buildings for Land and Housing Corporation and joint ventures with social housing provider.

For section 47, subsection 2c, if schedule 2 connecting to Exempt and Complying Developments SEPP, can you insert 2ciii the difference of the total permitted site coverage and the principle dwelling plus ancillary developments? For example, the lot is 900m², the total site coverage is 450m², the principle dwelling is 300m² and ancillary development is 30m², is it possible for the secondary dwelling to be 120m²? If so, can you amend section 5.4 subsection 9 of Standard Instrument LEP Order to reflect the above? It is questionable how many other planning instruments that provide enlargement of secondary dwelling beyond 60m² or 10% of principle dwelling, given that another schedule is removing sections in LEPs that provide for such enlargements of secondary dwellings over and above 60m² or 10% of principle dwelling.

Can you insert a new section 70 subsection 1a “section 35 subsection 1b, or” and renumber a and b to b and c? Would there be a difficult balance to on one hand prohibiting farmland to be converted to urban buildings while on the other hand allowing those already zoned residential or business to use their land under the Housing SEPP?

Can you amend section the error in 74 subsection 4 in order to refer to subsection 2a and b for the purpose of exemption for Land and Housing Corporation and Social Housing Providers in order to make sense? Can you also add to section 74 subsection 4, the exemption for section 76 subsection 1d, as 74 subsection 2c already provides a reasonable restriction on surface? However, if the requirements for seniors housing is to consider issues in 85 to 91, in questioning section 74 subsection 2c, would it still be appropriate to have a 3-storey building next to a 2-storey building? How far away from the fence line would be defined as adjacent to fall under the restriction of two storeys? What happens if neighbours have bilateral agreement to build to the fence line? If the section 76 subsection 1d restriction for

R2 is maintained, then the applicant would be forced to rezone from R2 to R3 which may reduce the benefit of the employment zoning changes.

can the term “people who have a disability” in section 77 subsection 1 as error be replaced with the Standard Instrument LEP Order term of “people with a disability”?

Given that the various business and industrial zones will be converted to Employment zones, how will the draft SEPP reflect such changes?

Can section 81 include a clause requiring that registered clubs commission an independent health impact assessment and social impact assessment, and consider the recommendations?

Can you provide an avenue under the Housing SEPP to adaptively reuse a dwelling or building with interim heritage order or state heritage register listing that may or may not attract density bonus subject to section 60 application to Heritage Office?

For schedule 5, subsection 5 and 6, can the doorway be further widened to 870mm or 920mm as stated in notes for 4.3.3 of AS4299-1995? What provisions are provided in the event that the Australian Standard or Disability Building Standard is amended to enlarge door and circulation space width and provision of step-free entrance as stated in the silver level liveable housing standard that is recommended in the Apartment Design Guide? Can the Housing SEPP amend SEPP 65 section 6A to insert 1i Universal Design so that applicants are required to be consistent with 4Q of the Apartment Design Guide?

For Schedule 6, can you also include the State Environmental Planning Policy (Affordable Rental Housing) 2009, Environmental Planning Policy No 21—Caravan Parks, and State Environmental Planning Policy No 36—Manufactured Home Estates?

For schedule 7.1, is it possible to replace “residential care facility” with “seniors housing”? Without the change, does this incentivise the location of young persons in residential care facilities oppose to hostels and independent living facilities?

For Schedule 8, can those changes for rural secondary dwellings be standardise in the Standard Instrument LEP Order?

Again, thank you for allowing me to provide feedback.

References

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13. Young people 'rot away' in aged care, three years after NDIS launched - ABC News, 17 July 2019, ABC News, last visited on Monday 2 August 2021, 9:23am, <https://www.abc.net.au/news/2019-07-17/young-people-in-nursing-homes-ndis-funding/11271818>

09 September 2021

The Hon. Robert Stokes, MP
Minister for Planning and Public Spaces
NSW Department of Planning, Industry and Environment

Dear Minister,

Request for specific savings provisions for the Stage 6 development of The Arbour Berry retirement village in response to the draft Housing State Environmental Planning Policy ('Housing SEPP' or 'Policy')

This submission is made by Mbark (retirement village developer and operator) in relation to the Stage 6 development of The Arbour Berry retirement village, located at 10 Victoria Street Berry (identified as lot 6 of DP1204186). The Stage 6 development ('Stage 6') has been earmarked since the establishment of the village in 2007 and proposes the construction of 11 additional freestanding homes for seniors housing on 7,665m² of vacant 'R2' – Low density residential zoned land ('R2 zoned land'). The Stage 6 extension is to be built within the lot boundary of the existing village which currently comprises 113 detached single storey homes, private resident community facilities, landscaped open space and associated roads.

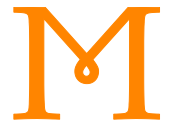
Mbark requests the Minister to provide specific savings provision for Stage 6 of The Arbour Berry

This request seeks a specific savings provision to be made by the Minister to ensure future development assessment of Stage 6 is assessed based on the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 ('SEPP 2004').

The request for a savings provision is made on grounds that Mbark has a developing village where the remaining stage is to be built on R2 zoned land, specifically designated as such, and supported by Council and the Department of Planning, Industry and Environment ('DPIE') for that purpose.

The Housing SEPP as written, would preclude this intended event from happening so a sensible inclusion in the Policy prior to release to ensure this unintended consequence doesn't eventuate would be appropriate. Shoalhaven Council ('Council') has also identified and requested this specific issue to be addressed.





A brief summary of the Stage 6 development at The Arbour Berry

Nov 2006 – March 2017 – Development of the existing The Arbour Berry retirement village commences. In this period the village is awarded best regional development by the Urban Development Institute of Australia (2011) and the best retirement living development in Australia by the Property Council of Australia (2014).

June 2019 – Mbark presents Stage 6 plans to the local community consultative body; The Berry Forum, no objections are raised. Stage 6 plans are provided to the community prior to the Housing SEPP.

December 2019 - A proponent-initiated planning proposal is prepared by Mbark and submitted to Council for the 'rezoning' of land from 'RU1' to 'R2' with the intention to deliver seniors housing.

March 2020 – The planning proposal is supported by Council (MIN20.161) and a request for Gateway Determination is submitted to The Department.

April 2020 – Gateway Determination occurs in April 2020 (PP-2021-359). The Department recommends the Planning Proposal proceeds as it *"supports the provision of seniors housing in Berry"* and *"is surrounded by urban development and presents as an infill opportunity"*. Council commences relevant studies and consultations. The intended outcome is *"to allow low density residential land use for the delivery of seniors housing."*

April 2021 - The Shoalhaven LEP 2014 ('SLEP 2014') is amended to 'rezone' the Stage 6 land from 'RU1' to 'R2'.

To date - Mbark has begun preparing the Development Application package for Stage 6.

General savings provisions are drafted in the Housing SEPP, however the proposed timing of Gazettal in October 2021 may prevent Mbark from being able to pursue the earmarked Stage 6 development of 11 additional freestanding homes for seniors housing. Therefore, this request to the Minister for specific savings provision for Stage 6, to be assessed under the SEPP 2004, is a reasonable and sensible provision in consideration of the intended outcomes of the recent 'rezoning', support for seniors housing by DPIE and Council, and the unanticipated timing of Gazettal of the Housing SEPP.

I look forward to hearing back soon,

Yours faithfully

James Robinson

Our Ref: BH-01/0000/2021

27 August 2021

Department of Planning, Industry and Environment
Online submission via www.planning.nsw.gov.au/housing-sepp

Dear Sir or Madam,

Re: Draft Housing State Environmental Planning Policy (Housing SEPP)

This letter is a submission to the Draft Housing State Environmental Planning Policy (Housing SEPP), which is currently on public exhibition until 29 August 2021.

This submission supports changes that seek to ensure that the home building sector is well-placed to assist with the current housing affordability and residential land supply challenges.

This submission does not support changes that will no longer allow seniors housing 'on land that adjoins land zoned primarily for urban purpose', which is currently enabled under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004) (4)(1).

The Draft Housing SEPP proposes to only allow seniors living on land zoned residential, business, special purposes, private recreation, and rural village under Draft Housing SEPP (67). This significant change in policy position, which is likely to reduce opportunities for seniors living.

The McCloy Group would please request that the Draft Housing SEPP be amended to continue to allow seniors housing 'on land that adjoins land zoned primarily for urban purposes'.

Please contact me on 0428 067 328 or via email at jeffrey.bretag@mccloygroup.com.au should you have any questions regarding this submission. We would welcome any opportunity to meet in person or via a video streaming medium to discuss this matter further.

Yours sincerely,

A handwritten signature in black ink that reads 'Jeffrey Bretag'.

JEFFREY BRETAG
Planning Director

27 August 21

NSW Department of Planning, Industry and Environment
12 Darcy Street,
Parramatta NSW 2150

To whom it may concern,

RE: Submission to the Draft State Environmental Planning Policy (Housing) 2021

1. Introduction

This submission has been prepared by Mecone NSW Pty Ltd (Mecone) on behalf of EG Funds Management in response to the *Draft State Environmental Planning Policy (Housing) 2021 (draft Housing SEPP)*. Specifically, this submission relates to co-living development (as defined under the draft Housing SEPP) and the implications the planning provisions proposed under the draft SEPP would inevitably have on this type of development and housing in NSW.

We support the Department of Planning, Environment and Infrastructure's (DPIE) direction to modernise and combine the current planning framework; and intent to facilitate delivery of a greater diversity of housing typologies, particularly in inner-city locations. However, some concerns are raised in relation to the proposed SEPP provisions and the impacts these will likely have on housing in NSW.

Given the overarching impact the proposed SEPP would have on future development in NSW, we must express our concern that the draft legislation will add significant costs to this type of housing, whilst also discouraging the delivery of a housing type which plays a vital role throughout NSW. The draft Housing SEPP undermines other equally worthwhile initiatives that would facilitate co-living development and the social and economic benefits it brings to a specific demographic. Currently, the proposed approach adds no genuinely measurable improvement to co-living development outcomes in NSW that would warrant such significant imposts on development costs and provide no genuine incentive to deliver more diverse and affordable housing.

We fear that the SEPP would diminish productivity and housing affordability while suppressing innovation. The fundamental issues as discussed in this submission and integration into the current planning process remain unclear and must be resolved prior to the finalisation of the Housing SEPP.

Ultimately, we are concerned with the overall direction being pursued in the draft SEPP. There is a high risk that the SEPP will:

- Add time and cost to development and thereby reduce housing supply and affordability;
- Further complicate the planning process;
- Result in a more prescriptive approach to design;
- Place more pressure on the housing market;
- Removal of FSR bonus will make co-living housing unviable;
- Reduce innovation and housing diversity.

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The SEPP would result in a more prescriptive approach to design of co-living development. This policy should be outcome focused rather than input focused. The numerical requirements outlined in the draft SEPP and onerous do not fit an outcome focused approach and have been discussed in greater detail below.

Accordingly, on behalf of EG Funds Management, we respectfully request that DPIE consider the following:

1. It is recommended that co-living development remain permitted in those land use zones currently prescribed in the ARH SEPP for boarding houses.
2. It is recommended that the Housing SEPP make provisions to ensure that boarding house and co-living development not be subject to FSR caps imposed under other planning instruments for traditional 'residential accommodation'.
3. That the existing FSR bonuses afforded for boarding houses under the ARH SEPP be retained for co-living development under the new Housing SEPP.
4. To ensure diverse and affordable housing continues to be delivered and the aims of the SEPP are achieved, it is recommended that clause 65(1)(d) be removed from the Housing SEPP.
5. Clarification is sought with respect to Clause 65(1)(c) as it relates to setback controls. Further, it is suggested that providing setback controls as development standards is contrary to the intent of development standards. It is therefore recommended that Clause 65(1)(c) be removed from the Housing SEPP and setbacks be governed by individual DCPs.
6. Compatibility - we contend that the intent and nature of Clause 65(1) should be a merit consideration and not be implemented as a development standard.

2. Background

It is understood that in recent years, there has been some reluctance from local councils to support boarding house developments due to the nature of the boarding houses being proposed and the demographic profile of people residing in this form of development. This is evidenced in the '**Planning for boarding house development Report**' to the Minister from the **Council Boarding House Working Group** who expressed concern that the development outcomes being facilitated under the current *State Environmental Planning Policy (Affordable Rental Housing) 2009* (ARH SEPP) did not align with the objectives of the ARH SEPP. In this regard, the Working Group believed that the intent of the ARH SEPP was not to facilitate a large number of student housing and non-traditional boarding house developments which did not meet the 'affordable housing' criteria of as defined under the EP&A Act.

Specifically, the Working Group identified the following key issues with the current AHR SEPP:

- lack of affordability of boarding house rooms
- use of the boarding house provisions to develop student housing
- excessive scale and bulk of some boarding house developments
- compatibility of boarding house development with low-density residential areas
- clustering of boarding house development in certain areas.

Accordingly, the Working Group considered the building uplift incentives for boarding house development (floor space ratio/car parking) should only be awarded to true affordable housing.

Adopting the views of the Working Group, DPIE released the **Explanation of Intended Effects (EIE)** in July 2020 for the proposed Housing SEPP with the objective to introduce a new land use definition (co-living) and planning controls for student housing and non-traditional (or new-generation) boarding house developments. As part of this, an affordability requirement for boarding houses was also proposed to be introduced. However, it is understood that DPIE

are seeking to ensure that there is ongoing supply of appropriate accommodation for students through the co-living provisions of the draft Housing SEPP.

While the proposal to create a new land use definition and planning controls for new-generation boarding houses (co-living) is supported, the planning controls proposed under the draft Housing SEPP are concerning given the history of boarding house development in NSW prior to the ARH SEPP and increasing demand for housing diversity. In this respect, the following is noted:

- Prior to the introduction of the ARH SEPP, the number of boarding houses in NSW was falling dramatically.
- Introducing an affordability requirement for boarding houses would again reduce the supply of new housing for students and other demographics currently not catered to by the traditional housing market. Leaving this up to local councils to ensure these types of housing developments are facilitated in their local areas does not align with the objects or intent of the draft Housing SEPP and would not yield the necessary housing outcomes for NSW.
- Prior to the introduction of the ARH SEPP, new boarding houses were not being constructed, partly because local planning controls limited the areas where boarding houses could be built and partly because some local planning controls restricted the installation of private facilities, such as ensuites and kitchenettes, in boarding house rooms. It is anticipated that this scenario would be repeated if left to local councils to control.
- Prior to the ARH SEPP, the boarding house building stock was aging and becoming increasingly expensive to maintain and update to current building standards. Further, there was pressure for the redevelopment of some older boarding houses in gentrifying areas to single family homes.
- It was in this context that the ARH SEPP was introduced to stimulate a range of new affordable rental housing types and supply in NSW, including boarding houses.
- The intention of the boarding house provisions introduced by the ARH SEPP in 2009 was to provide for both traditional boarding houses as well as 'new-generation' boarding houses with self-contained rooms in a compact, affordable form. It was expected that 'new-generation' boarding rooms would be more affordable than other similar residential development in the same area, due to their small size and shared facilities.

As discussed in the ensuing sections of this submissions, the proposed Housing SEPP offers little incentive or encouragement to pursue co-living development and it is anticipated that such a policy would result in a steep decline in all types of affordable housing and diverse housing throughout NSW, thus undermining the principle aims and intent of the proposed policy.

3. Demand for housing diversity and affordability

As identified above, through the introduction of the ARH SEPP in 2009, NSW experienced an increase in housing diversity and affordability by encouraging a range of boarding house developments, including new-generation boarding houses and student accommodation. These housing products responded effectively to the housing market which, particularly in metropolitan areas, has been under significant pressure from rising house prices.

Since its introduction, the ARH SEPP has allowed for a fluid response to shifts in the housing market and demand, providing appropriate opportunities to house various demographics that are not well serviced by the traditional housing market.

Under the proposed Housing SEPP, a development would only be regarded as a boarding house if it meets the 'affordability' rules and is managed by a non-for-profit community housing provider. It is evident that the proposed co-living housing would generally deny privately development 'new-generation' boarding houses from the benefit of the existing boarding house provisions.

While the draft Housing SEPP correctly identifies a new class of dwelling, the proposed planning controls for this type of housing does not respond to the consumer demand for co-living and completely misreads the market for this type of development.

Co-living is, and has been for some time, a viable and sought-after option for a range of people that are looking to live in areas that are located in close proximity to reliable public transport and/or place of work or study, that are seeking fully furnished accommodation with flexible rental periods. Co-living also offers options for people who are looking to live, and potentially work, in a setting which offers a sense of community and social interaction. In this respect co-living is ideally suited to mobile young workers however, also caters to the specific needs of various other groups including regionally based workers who are employed in the city during the week; key-workers including nurses and emergency workers; people from regional areas temporarily located to the city for short term work opportunities or for medical treatments; fly-in flyout (FIFO) workers from interstate; and those seeking short term accommodation.

As discussed above, there is an ongoing need to provide diverse and flexible housing opportunities to these groups. The provisions of the proposed Housing SEPP however do not reflect the requirements of all the possible users of co-living. The draft provisions in fact more accurately reflect a permanent and traditional residence, such as a residential flat building.

In a commercial sense, a key defining feature of a boarding house (or co-living under the draft SEPP) is that it cannot be subdivided and that it must be used as rental, not owner-occupied, accommodation. While there is no regulation on rents, given this housing is able to be developed at a lower cost than traditional residential accommodation, the underlying expectation is that boarding houses are generally more affordable to rent than studio apartments governed by SEPP 65 and the Apartment Design Guide (ADG).

As stated by the Productivity Commission, the key driver of housing prices (and therefore un-affordability) in Greater Sydney is the lack of supply. This, according to the Productivity Commission and Reserve Bank of Australia, is due to the over regulation by the NSW Planning system. This is further exacerbated by the complexity of the planning system, including policies such as the draft Housing SEPP.

The aims of the draft Housing SEPP 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—

(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,

(c) to **encourage the development of diverse and affordable housing** types by—

(ii) **providing incentives** for certain types of development,

For the reasons discussed in this submission, the provisions of the draft Housing SEPP undermine its own aims. The proposed SEPP would not ensure the adequate supply of an appropriate range of housing to meet the needs of people in NSW. Further, these provisions would not encourage or appropriately incentivise privately funded and constructed co-living developments. These matters are discussed further below.

4. Permissibility of co-living

The draft Housing SEPP is overly restrictive in terms of permissibility, only permitting co-living where residential flat building or shop top housing are permitted by a local council under their LEP. This, in addition to more onerous development standards (discussed below), creates little incentive to pursue alternative and more affordable housing options where traditional housing would be permitted. Grouped with minimal density bonuses and onerous planning controls, there is limited incentive for private developers to consider co-living, where a residential flat building or shop top housing could be pursued.

By restricting permissibility, feasibility and ultimately the supply of the different housing typologies included and encouraged by the SEPP are therefore threatened. Issues of affordability and equality of access to housing across NSW are too critical to be governed by individual councils. As aforementioned, it was local councils' failure to deliver adequate choice, supply, diversity and affordability that drove the need to create ARH SEPP in 2009. The proposed SEPP would significantly reduce housing opportunities in commercial zones where this form of housing is typically best placed and should be encouraged. The proposed approach to permissibility is contrary to Minister Stokes' messaging around affordable and diverse housing options being available to all, irrespective of the location and income. As provided by Minister Stokes from the Sydney Morning Herald:

"So much of planning has been about trying to restrict who can live in certain areas according to the style of housing they can afford." "In a city the size of Sydney, obviously you have much greater capacity to segregate, and housing, sadly, has been used subtly as an instrument [for] that sort of segregation according to income bracket and that's got to be broken down."

Further to the above, one of the issues with the draft SEPP for co-living in areas such as Redfern, is that whilst a co-living development becomes permissible as of right in the B4 zone (i.e. where residential flat buildings and shop top housing are permitted), there can often exist a maximum FSR standard for residential accommodation. Residential accommodation currently includes boarding houses, and it is anticipated that this would be the case for co-living. Such standards effectively prevent boarding house/co-living development in these situations making it unviable, which is clearly not the intent of the draft Housing SEPP. Accordingly, the provisions of the draft SEPP should ensure that co-living development is able to realise the applicable maximum FSR (for both commercial and residential development) and not be subject to any FSR cap on residential floorspace, as it may relate to boarding house and co-living development.

- Recommendation: In light of the above, it is recommended that co-living development remain permitted in those land use zones currently prescribed in the ARH SEPP for boarding houses.

5. Planning control incentives

The draft SEPP reduces the floor space ratio (FSR) bonus incentive from 0.5:1 or 20%, to 10%. A bonus which is also proposed to be abolished after August 2024. This provision does not offer a substantial enough incentive to pursue co-living where residential flat buildings or shop top housing would be permitted.

DPIE must recognise the importance of co-living development and the role this must continue to play in NSW. Given its purpose and wide range of groups it serves, this type of housing should continue to be encouraged through appropriate planning incentives to clearly differentiate it from traditional housing products.

By providing minimal built form bonuses for co-living, or none after August 2024, there is limited appeal to pursue this type of housing over traditional housing options permitted in the zone. Given a significant proportion of allowable floor space is needed to be dedicated to non-revenue generating communal areas for co-living developments, the lack of bonus provisions means that there is no incentive to pursue co-living over residential flat building or

shop top housing development. Removing this incentive would only serve to hinder the delivery of co-living developments and the ability to respond to the increasing demand for diverse and affordable housing.

- Recommendation: It is therefore proposed that the existing FSR bonuses afforded for boarding houses under the ARH SEPP be retained for co-living development under the new Housing SEPP to promote the delivery of much needed affordable housing, particularly in the Sydney Metro Area.

6. ADG building separation requirements

Clause 65(1)(d) imposes a standard for co-living housing developments exceeding 3 storeys to comply with the minimum building separation distances specified in the ADG. It is important to note that, unlike their application to residential flat building or shop top housing, these design provisions are proposed to be applied to co-living as a *standard* where, if not achieved, would require a clause 4.6 variation request to justify any departure.

As detailed in the DPIE's planning circular PS 17-001 (Using the Apartment Design Guide) in June 2017, *the ADG is a guide containing design guidance to improve the planning and design of residential apartment development in NSW*. Accordingly, there has been an appropriate level of flexibility afforded under the ADG for residential development in the past. However, applying controls from this design guide in such a strict nature is not consistent with the intent of the ADG, particularly in relation to the delivery of diverse and affordable housing types where *greater* flexibility should be adopted compared to traditional housing.

The promotion of the ADG (a *guide*) into statutory controls is questioned, particularly when the ADG itself is currently under review. Giving a higher priority and weight to ADG design controls compared to residential flat buildings or shop top housing development again undermines the aims of the draft Housing SEPP and is inappropriate in the context of the development type being considered.

- Recommendation: To ensure diverse and affordable housing continues to be delivered and the aims of the SEPP are achieved, it is recommended that clause 65(1)(d) be removed from the Housing SEPP.

7. Setback controls

Clause 65(1)(c) of the draft Housing SEPP requires front, side and rear setbacks for co-living developments to be not less than the minimum setback requirements under a relevant planning instrument for the following development/zones:

- R2 and R3 zones: multi dwelling housing
- R4 zone: residential flat buildings

Firstly, clarification is sought in relation to the application of these setback controls. In this respect, building setback controls are rarely written into planning instruments (EPIs) such as LEPs, and are more often provided in DCPs. This makes the application of this clause ambiguous and open to interpretation.

Secondly, it suggested that providing building setback controls as development standards is unreasonable and impractical, particularly in relation to the delivery of co-living development. Further, these standards do not allow for an opportunities and constraints analysis of a site and merit approach to design. In this regard the standards are too rigid in application and may impede good quality design outcomes. Again, giving a higher priority and weight to controls such as this, which are typically found in a DCP, undermines the aims of the draft Housing SEPP.

- Recommendation: It is therefore recommended that Clause 65(1)(c) be removed from the Housing SEPP and setbacks be governed by individual DCPs.

8. Compatibility

Clause 65(1)(e) imposes a standard requiring the design of the building to be *compatible with the character of the local area*. Given the intent and nature of this provision, and consideration of it as part of a development application, such a requirement should not form as a development standard.

As a matter of practice, development standards typically comprise of a numerical requirement so that if varied, the necessary tests required under a variation request can be appropriately applied and considered. The provision of a 'compatibility' standard is contrary to the definition of a 'development standard' under the EP&A Act. Development standards need to be quantified and fix, not a performance-based assessment subject to discretion.

The proposed standard under clause 65(1)(e) relates to the compatibility of the development with the character of the local area. The continued consideration and assessment against such matters is supported however, given its subjectivity, it is inappropriate for this matter of consideration to be written as a development standard.

- **Recommendation:** It is therefore recommended that this requirement be located elsewhere in the SEPP and form as a provision to be considered, as opposed to a standard, similar to the current ARH SEPP.

9. Conclusion

We welcome and support the DPIE's efforts in reviewing and modernising the existing ARH SEPP with the aim of appropriately facilitating a diversity of housing typologies. However, the proposed SEPP does warrant further consideration and discussion around the likely development outcomes it would produce and impact on housing diversity in NSW.

As detailed in this submission, the proposed Housing SEPP in its current form is not supported on a number of grounds. In summary, it is requested that the following outcomes be considered:

1. **Permissibility:** To ensure affordable and diverse housing is provided where it is needed and most suitable, it is recommended that co-living development remain permitted in those land use zones currently prescribed in the ARH SEPP for boarding houses. Further, it is recommended that the Housing SEPP make provisions to ensure that boarding house and co-living development not be subject to FSR caps imposed under other planning instruments for traditional 'residential accommodation'.
2. **FSR bonus provisions:** To ensure there are appropriate incentives to pursue co-living development and that it facilitates a viable development outcome, it is recommended that the existing FSR bonuses afforded for boarding houses under the ARH SEPP be retained for co-living development under the new Housing SEPP.
3. **Building separations and setback standards:** To ensure diverse and affordable housing continues to be delivered and the aims of the SEPP are achieved, it is recommended that clauses 65(1)(d) and 65(1)(c) be removed from the Housing SEPP.
4. **Compatibility:** Given the subjectivity of such matters, we recommend that clause 65(1) be a merit consideration and not be implemented as a development standard.

For the reasons outlined above, the draft Housing SEPP does not acknowledge the critical role new-generation boarding houses (co-living) play in catering to a wide ranging group of people in need of affordable housing options.

The provisions of the draft Housing SEPP neglect the fundamental principles in providing affordable and diverse housing options and the needs to clearly differentiate between traditional housing types. The proposed approach will place significant undue pressure on the housing market.

The direction proposed under the draft SEPP undermines the objectives and planning priorities identified in numerous local, regional and state-wide strategic planning policies in delivering affordable and diverse housing.

In light the above, we request the recommendations provided in this submission be considered by the DPIE. Further, we welcome the opportunity to meet with DPIE staff to discuss the contents of this submission and drafting of the Housing SEPP.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tom Cook', with a stylized flourish at the end.

Tom Cook
Director

Friday, 27 August 2021

NSW Department of Planning, Industry and Environment
12 Darcy Street,
Parramatta NSW 2150

To whom it may concern,

RE: Submission to the Draft State Environmental Planning Policy (Housing) 2021

Introduction

This submission has been prepared by Mecone NSW Pty Ltd on behalf of Signature Property Developments.

Signature are a local property developer specialising in residential development in Sydney's west and northwest. Signature aims to contribute to Sydney housing supply through the provision of well-designed and diverse housing products in strategic areas. Signature's development strategy ranges from small lot housing in greenfield subdivisions to boarding houses in urban infill areas.

This submission has been prepared in response to the *Draft State Environmental Planning Policy (Housing) 2021 (draft Housing SEPP)*. Specifically, this submission relates to boarding house and co-living development (as defined under the draft Housing SEPP) and the inevitable and damaging implications the planning controls proposed under the draft SEPP would have on these types of development in NSW.

Given the overarching impact the proposed SEPP would have on future development in NSW, we must express our concern that the Department of Planning, Industry & Environment (DPIE) has proposed to add significant costs to this type of housing, whilst also discouraging the delivery of a housing type which plays a vital role throughout NSW. The draft Housing SEPP undermine other equally worthwhile initiatives that would facilitate boarding houses and co-living development and the social and economic benefits it brings to a specific demographic.

At this stage, there is a high level of uncertainty in how the proposed SEPP would be implemented and a great deal of concern over its potential impact on housing diversity and affordability in NSW. We fear that the SEPP would diminish productivity and housing affordability while suppressing innovation. The fundamental issues as discussed in this submission and integration into the current planning process remain unclear and must be resolved.

Ultimately, we are concerned with the overall direction being pursued in the draft SEPP.

There is a high risk that the SEPP will:

- Add time and cost to development and thereby reduce housing supply and affordability;
- Further complicate the planning process;
- Result in a more prescriptive approach to design;
- Place more pressure on the housing market; and
- Reduce innovation.

Elimination of a key affordable housing type

The draft Housing SEPP proposes the following key changes to the development of boarding houses:

- Include affordability criteria in the definition of boarding house (i.e., must be managed by a registered not-for-profit community housing provider (CHP)) for a period of at least 15 years; and
- Introduce a new land use for co-living housing for new generation boarding houses developed by anyone other than a CHP;

These changes would effectively eliminate an important type of development permitted under existing controls; namely small-scale boarding houses not operated by registered community housing providers.

If the proposed changes are implemented, social housing providers would also be prevented from developing or operating small-scale boarding houses, as the definition for a social housing provider in the ARH SEPP is broader than registered community housing providers.

The ARH SEPP provides as follows:

social housing provider means any of the following—

- (a) the Department of Human Services,
- (b) the Land and Housing Corporation,
- (c) a registered community housing provider,
- (d) the Aboriginal Housing Office,
- (e) a registered Aboriginal housing organisation within the meaning of the [Aboriginal Housing Act 1998](#),
- (f) a local government authority that provides affordable housing,
- (g) a not-for-profit organisation that is a direct provider of rental housing to tenants.

The proposed changes to boarding houses means that several critical providers of social housing will not be able to manage a boarding house under the Housing SEPP. This will be potentially devastating for the most vulnerable members of the community as not-for-profit organisations that are not a registered community housing provider will no longer be able to propose or manage boarding houses.

There would be no opportunity for a private developer, such as Signature, to develop a site for the purposes of, for instance, a 10-bedroom boarding house with 12-25sqm rooms for a non-student population, unless the developer is prepared to hand over operation to a registered community housing provider for a period of 15 years (which would likely reduce the viability of the development).

Small-scale boarding houses by private developers are important contributors to housing choice and affordability.

The changes within the draft Housing SEPP would effectively eliminate this housing type and thereby eliminate a key mechanism for the delivery of affordable and diverse housing.

Background to Changes

It is understood that in recent years, there has been some reluctance from local councils to support boarding house developments due to the nature of the boarding houses being proposed and demographics these catered to. This is evidenced in the '**Planning for boarding house development Report**' to the Minister from the **Council Boarding House Working Group** who expressed concern that the development outcomes being facilitated under the current *State Environmental Planning Policy (Affordable Rental Housing) 2009* (ARH SEPP) did not align with the objectives of the ARH SEPP. In this respect, the Working Group believed that the intent of the ARH SEPP was not to facilitate a large number of student housing and non-traditional boarding house developments which did not meet the 'affordable housing' criteria of as defined under the EP&A Act.

Specifically, the Working Group identified the following key issues with the current AHR SEPP:

- lack of affordability of boarding house rooms
- use of the boarding house provisions to develop student housing
- excessive scale and bulk of some boarding house developments
- compatibility of boarding house development with low-density residential areas
- clustering of boarding house development in certain areas.

Accordingly, the Working Group considered the building uplift incentives for boarding house development (floor space ratio/car parking) should only be awarded to true affordable housing.

Adopting the views of the Working Group, DPIE released the **Explanation of Intended Effects (EIE)** in July 2020 for the proposed Housing SEPP with the objective to introduce a new land use definition (co-living) and planning controls for student housing and non-traditional (or new-generation) boarding house developments. As part of this, an affordability requirement for boarding houses was also proposed to be introduced.

While the proposal to create a new land use definition and planning controls for new-generation boarding houses (co-living) is supported, the planning controls proposed under the draft Housing SEPP are concerning given the history of boarding house development in NSW prior to the ARH SEPP and increasing demand for housing diversity. In this respect, the following is noted:

- Prior to the introduction of the ARH SEPP, the number of boarding houses in NSW was falling dramatically.
- Introducing an affordability requirement for boarding houses would again reduce the supply of new housing for students and other demographics currently not catered to by the traditional housing market. Leaving this up to local councils to ensure these types of housing developments are facilitated in their local areas does not align with the objects or intent of the draft Housing SEPP and would not yield the necessary housing outcomes for NSW.
- Prior to the introduction of the ARH SEPP, new boarding houses were not being constructed, partly because local planning controls limited the areas where boarding houses could be built and partly because some local planning controls restricted the installation of private facilities, such as ensuites and kitchenettes, in boarding house rooms. It is anticipated that this scenario would be repeated if left to local councils to control.
- Prior to the ARH SEPP, the boarding house building stock was aging and becoming increasingly expensive to maintain and update to current building standards. Further,

there was pressure for the redevelopment of some older boarding houses in gentrifying areas to single family homes.

- It was in this context that the ARH SEPP was introduced to stimulate a range of new affordable rental housing types and supply in NSW, including boarding houses.
- The intention of the boarding house provisions introduced by the ARH SEPP in 2009 was to provide for both traditional boarding houses as well as 'new-generation' boarding houses with self-contained rooms in a compact, affordable form. It was expected that 'new-generation' boarding rooms would be more affordable than other similar residential development in the same area, due to their small size and shared facilities.

As discussed in the ensuing sections of this submission, the proposed Housing SEPP offers little incentive or encouragement to pursue boarding houses or co-living development and it is anticipated that such a policy would result in a steep decline in all types of affordable housing and diverse housing throughout NSW.

Demand for housing diversity and affordability

As identified above, through the introduction of the ARH SEPP in 2009, NSW experienced an increase in housing diversity and affordability by encouraging a range of boarding house developments, including new-generation boarding houses and student accommodation. These housing products responded effectively to the housing market which, particularly in metropolitan areas, has been under significant pressure from rising house prices.

Since its introduction, the ARH SEPP has allowed for a fluid response to shifts in the housing market and demand, providing appropriate opportunities to house various demographics that are not well serviced by the traditional housing market.

Under the proposed Housing SEPP, a development would only be regarded as a boarding house if it meets the 'affordability' rules and is managed by a non-for-profit community housing provider. It is evident that the proposed co-living housing would generally deny privately developed 'new-generation' boarding houses from the benefit of the existing boarding house provisions. While the draft Housing SEPP correctly identifies a new class of dwelling, the proposed planning controls for this type of housing does not respond to the consumer demand for co-living and completely misreads the market for this type of development.

New generation boarding houses, now referred to as co-living, are, and have been for some time, a viable and sought-after option for a range of people that are looking to live in areas that are located in close proximity to reliable public transport and/or place of work or study, that are seeking furnished accommodation with flexible rental periods. Co-living also offers options for people who are looking to live, and potentially work, in a setting which offers a sense of community and social interaction. In this respect co-living is ideally suited to mobile young workers however, also caters to the specific needs of various other groups including regionally based workers who are employed in the city during the week; key-workers including nurses and emergency workers; people from regional areas temporarily located to the city for short term work opportunities or for medical treatments; fly-in flyout (FIFO) workers from interstate; and those seeking short term accommodation.

As discussed above, there is an ongoing need to provide diverse and flexible housing opportunities to these groups. The provisions of the proposed Housing SEPP however do not reflect the requirements of all the possible users of co-living. The draft provisions in fact more accurately reflect a permanent and traditional residence, such as a residential flat building. In a commercial sense, a key defining feature of a boarding house (or co-living under the draft SEPP) is that it cannot be subdivided and that it must be used as rental, not owner-occupied, accommodation. While there is no regulation on rents and market rents apply,

given this housing is able to be developed at a lower cost than traditional residential accommodation, the underlying expectation is that boarding houses are generally more affordable to rent than studio apartments governed by SEPP 65 and the Apartment Design Guide (ADG).

As stated by the Productivity Commission, the key driver of housing prices (and therefore un-affordability) in Greater Sydney is the lack of supply. This, according to the Productivity Commission and Reserve Bank of Australia, is due to the over regulation by the NSW Planning system. This is further exacerbated by the complexity of the planning system, including policies such as the draft Housing SEPP.

The aims of the draft Housing SEPP 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—
 - (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,
- (c) to **encourage the development of diverse and affordable housing** types by—
 - (ii) **providing incentives** for certain types of development,

For the reasons discussed in this submission, the provisions of the draft Housing SEPP undermine its own aims. In this respect, the proposed provisions would not ensure the adequate supply of an appropriate range of housing to meet the needs of people in NSW.

Further, these provisions would not encourage or appropriately incentivise privately developed co-living developments. These matters are discussed further below.

Boarding Houses Delivered by Community Housing Providers

The key change provided by the draft Housing SEPP for boarding Houses is that they must now be used for affordable housing for a period of 15 years and in perpetuity and managed by a community housing provider.

In addition, the draft Housing SEPP provides that boarding houses will only be allowed where they are permissible by another EPI. This implication is significant and will mean that boarding houses are no longer mandated in the R2 Low Density Residential zone. However, it will also mean that Council's can choose to exclude boarding houses as a permissible land use in any zone, if they do not wish to see boarding houses in the LGA.

The prohibition of boarding houses from the R2 zone will cut many small developers of boarding houses from the market as they cannot compete in higher density zones due to high land values. This is a perverse outcome and contrary to the intent of the policy and should be removed.

The type of boarding houses previously developed by Signature include low density, two storey boarding houses of a scale typical to a two storey home, which can be well located and compatible in an existing low density zone.

The draft Housing SEPP will completely eliminate this form of affordable housing through the removal of provisions which allow development of boarding houses within the R2 zone by private developers.

The previous provisions of the ARH SEPP limited these developments to accessible areas to ensure the R2 locations were appropriately located to facilities and services for the future

residents. The draft Housing SEPP will most certainly result in a significant reduction in the delivery of affordable housing, particularly in lower socio economic areas, where the development of low scale boarding housing within the R2 zone has previously met an important demand for an affordable type of housing.

Changes are also made to the standards which cannot be used to refuse consent, which further serve to limit opportunity for development of this type of housing:

- Where residential flat buildings are permissible and the land does not contain a heritage item, a 25% GFA bonus is applicable (previously 20% or 0.5:1 if the existing FSR was 2.5:1 or less).
- Landscape areas are to be in accordance with relevant planning instrument for either multi dwelling housing within R2 and R3 zones or residential flat buildings in the R4 zone.
- Minimum 30sqm of communal living space for boarding houses with six rooms and an additional 2sqm is required for each additional room.
- Communal open space equivalent to 20% of the site area required.
- Inclusion of rates for motorcycle and bicycle parking.

Allied to this, **new development standards** are introduced which development must comply with:

- The design must be "compatible" with the character of the local area. We see this as a key risk area for proponents – having seen this issue used to refuse consent for previous proposals despite Land & Environment Court precedence on compatibility.
- Minimum lot sizes:
 - R2 zone: 600sqm or minimum size for manor house under relevant planning instrument.
 - R3 zone: equivalent to multi dwelling housing under relevant planning instrument.
 - Any other land: equivalent to residential flat buildings under relevant planning instrument.
- Minimum setbacks
 - R2 and R3 land: equivalent to multi dwelling housing under relevant planning instrument.
 - R4 land equivalent to residential flat buildings under relevant planning instrument.
- In an interesting application of a policy that does not necessarily apply to this land use, if a boarding house exceeds three storeys, it must comply with the separation distances of the Apartment Design Guide.

In addition to the new development standards listed above, previous items, identified as standards which cannot be used to refuse consent under Clause 29 of the ARH SEPP have now been nominated as development standards, including:

- Room sizes (excluding bathroom/kitchen for the purposes of calculating GFA):
 - 12 sqm for single occupant room.
 - 16sqm in any other case.

It is important to note that many EPI's contain large minimum site area requirements for multi dwelling housing in R3 zones. By way of example, the **Blacktown LEP 2015 requires a minimum site area of 1,800 square metres for multi dwelling housing**, while the **Penrith LEP 2010 requires a minimum site area of 1,200 square metres**. Prescribing a site area development standard for boarding houses in R3 zones based on minimum multi dwelling housing site areas would effectively and dramatically reduce the desirability of constructing low scale and compatible boarding house developments in many LGA's.

The new provisions will not apply to boarding houses that have already been approved or built. However, they will apply where an application is lodged for major alterations or additions to a boarding house. We can see this becoming a major issue for even minor alterations and additions.

Permissibility of co-living

With small boarding houses in affordable locations in Western Sydney no longer available for development by small developers such as Signature, the only opportunity to explore a similar development type through the draft Housing SEPP will be as co-living. The draft Housing SEPP is overly restrictive in terms of permissibility, only permitting co-living where residential flat building or shop top housing are permitted by a local council under their LEP. This, in addition to more onerous development standards (discussed below), creates little incentive to pursue alternative and more affordable housing options where traditional housing would be permitted. Grouped with minimal density bonuses and onerous planning controls, there is limited incentive for private developers to consider co-living, where a residential flat building or shop top housing could be pursued.

By restricting permissibility, the feasibility and ultimately the supply of the different housing typologies included in the SEPP is threatened. Issues of affordability and equality of access to housing across NSW are too critical to be left to individual councils. As aforementioned, it was local Councils' failure to deliver adequate choice, supply, diversity and affordability that drove the need to create ARH SEPP in 2009. The proposed SEPP would significantly reduce housing opportunities in low density and commercial zones where this form of housing is typically best placed and should be encouraged. The proposed approach to permissibility is contrary to the Minister's messaging around affordable and diverse housing options being available to all, irrespective of the location and income.

Planning control incentives

The draft SEPP reduces the floor space ratio (FSR) bonus incentive from 0.5:1 or 20%, to 10%. A bonus which is also proposed to be abolished after August 2024. This provision does not offer a substantial enough incentive to pursue co-living where residential flat buildings or shop top housing would be permitted.

DPIE must recognise the importance of co-living development and the role this must continue to play in NSW. Given its purpose and wide range of groups it serves, this type of housing should continue to be encouraged through appropriate planning incentives to clearly differentiate it from traditional housing products.

By providing minimal built form bonuses for co-living, or none after August 2024, there is limited appeal to pursue this type of housing over traditional housing options permitted in the zone. Given a significant proportion of allowable floor space is needed to be dedicated to non-revenue generating communal areas for co-living developments, the lack of bonus provisions means that there is no incentive to pursue co-living over residential flat building or shop top housing development. Removing this incentive would only serve to hinder the delivery of co-living developments and ability to respond to the increasing demand for diverse and affordable housing.

It is therefore proposed that the existing FSR bonuses afforded for boarding houses under the ARH SEPP be retained for co-living development under the new Housing SEPP.

ADG building separation requirements

Clause 65(1)(d) includes a standard for co-living housing developments exceeding 3 storeys to comply with the minimum building separation distances specified in the ADG. It is important to note that, unlike the application of these for residential flat building or shop top housing, these design provisions are proposed to be applied to co-living as a development standard where, if not achieved, would require a clause 4.6 variation request to justify any departure.

As detailed in the DPIE's planning circular PS 17-001 (Using the Apartment Design Guide) in June 2017, *the ADG is a guide containing design guidance to improve the planning and design of residential apartment development in NSW*. Accordingly, there has been an appropriate level of flexibility afforded under the ADG for residential development in the past. However, applying controls from this design guide in such a strict nature is not consistent with the intent of the ADG, particularly in relation to the delivery of diverse and affordable housing types where *greater* flexibility should be adopted compared to traditional housing. The promotion of the ADG (a *guide*) into statutory controls is questioned, particularly when the ADG itself is currently under review. Giving a higher priority and weight to ADG design controls compared to residential flat buildings or shop top housing development again undermines the aims of the draft Housing SEPP and is inappropriate in the context of the development type being considered.

To ensure diverse and affordable housing continues to be delivered and the aims of the SEPP are achieved, it is recommended that clause 65(1)(d) be removed from the Housing SEPP.

Setback controls

Clause 65(1)(c) of the draft Housing SEPP requires front, side and rear setbacks for co-living developments to be not less than the minimum setback requirements under a relevant planning instrument for the following development/zones:

- R2 and R3 zones: multi dwelling housing
- R4 zone: residential flat buildings

Firstly, clarification is sought in relation to the application of these setback controls. In this respect, building setback controls are rarely included in planning instruments (EPIs) such as LEPs, and are more often provided in DCPs. This makes the application of this clause ambiguous and open to interpretation.

Secondly, it suggested that providing building setback controls as development standards is unreasonable and impractical, particularly in relation to the delivery of co-living developments. Again, giving a higher priority and weight to controls such as this, which are typically found in a DCP, undermines the aims of the draft Housing SEPP. It is therefore recommended that Clause 65(1)(c) be removed from the Housing SEPP and setbacks be governed by individual DCPs.

Compatibility

Clause 65(1)(e) imposes a standard requiring the design of the building to be *compatible with the character of the local area*. Given the intent and nature of this provision, and consideration of it as part of a development application, such a requirement should not form a development standard. As a matter of practice, development standards typically comprise of a numerical requirement so that if varied, the necessary tests required under a variation request can be appropriately applied and considered.

The proposed standard under clause 65(1)(e) relates to the compatibility of the development with the character of the local area. The consideration of such matters is supported however, given the subjectivity of such a provision, it is inappropriate for this to form a development standard. Accordingly, it is recommended that this requirement be located elsewhere in the SEPP and form as a provision to be considered, as opposed to a standard, similar to the current ARH SEPP.

Conclusion

As detailed in this submission, the proposed Housing SEPP in its current form is not supported on a number of grounds. In summary, the draft Housing SEPP does not acknowledge the critical role new-generation boarding houses play in catering to a wide-ranging group of people in need of affordable housing options. The provisions of the draft Housing SEPP neglect the fundamental principles in providing affordable housing options and the needs to clearly differentiate between traditional housing types. Such an approach will place significant undue pressure on the housing market.

Further, this direction inevitably undermines the objectives and planning priorities identified in numerous local, regional and state-wide strategic planning policies in delivering affordable and diverse housing.

In light the above, it is requested that the draft Housing SEPP undergo significant amendment in accordance with the matters raised in this submission and industry feedback and be re-exhibited for public comment.

Yours sincerely



Georgia Sedgmen
Director

19 August 2021

Mr Luke Walton
Executive Director - Planning Policy
Department of Planning, Industry and Environment
320 Pitt Street,
Sydney NSW 2000


Dear Mr Walton,

HOUSING SEPP – PROPOSAL TO INCLUDE PROVISIONS FOR ADAPTIVE RE-USE OF EXISTING BUILDINGS

We understand that the draft Housing SEPP has been received with criticism from the industry which is unfortunate. While the underlying proposals do not directly affect our business, we believe the SEPP provides an opportunity to address an ongoing issue that has been raised by Meriton over many years, as well as the immediate and permanent impacts of COVID, by facilitating the adaptive re-use of serviced apartments or other non-residential buildings for residential purposes in areas where this use is permitted with consent.

Further to our letter dated 8 July 2021 and many letters over previous years on this matter, the ability to convert between serviced apartment's and residential has never been more necessary then now with the impact of COVID. The immediate and ongoing impact to the tourism/serviced apartments sector will continue for years with our occupancy rates falling from 80-95% down to 20-30% and permeant changes to future business, leisure and international travel meaning a full recovery will be long-term if at all.

This is a similar situation for offices and other commercial buildings where demand for their current use is and will continue to change as people continue to work from home reducing demand for office and commercial space. It is also evident that we are facing a housing supply crisis with a substantial reduction in approvals and commencements which has been outlined by many sources including the NSW Productivity Commission.

Accordingly, this presents an opportunity for the Housing SEPP, which is focused on the delivery of diverse housing, to introduce provisions for adaptive re-use of existing buildings for the purposes of residential flat buildings that would allow the apartments to be sold individually like a normal strata apartment (or otherwise kept for residential leasing purposes).

Historically, even though a residential flat building may be permitted with consent, the conversion of older buildings for such purposes have been made overly difficult, if not impossible, by the rigid application of SEPP65/ADG. Otherwise, the building could be directly used or modified to facilitate residential use and as the building "exists" would have limited physical impact on its surrounding areas. As you would be aware, consent authorities are unable to get around the application of SEPP 65/ADG provisions as they are a matter for consideration under section 4.15 of the EPAA and there are no specific provisions to relax the guidelines in such scenarios. This is particularly relevant for serviced apartments that are essentially designed as residential apartments, but over time these buildings may not necessarily comply with the key design/amenity criteria which inhibits their change of use under the planning provisions, despite them

having a typical residential layout and function (i.e. balconies, kitchens, laundries, separate bedrooms and living areas etc).

The extent of the unreasonable application the ADG is nowhere more apparent than where buildings that were approved, constructed and occupied (but not sold) as residential flat buildings before being converted to serviced apartments (being a more efficient and “permissible” use at the time), are restricted from being converted back to residential due to the change in planning provisions. This is unreasonable given that, should the change to serviced apartments never occurred, the building would exist as a non-compliant residential flat building which would be common across Sydney as rules change and new adjoining developments occur, however we do not see Council’s out seeking rectification of these non-compliances. This is further exacerbated by some Council’s requiring the surrender or modification of the base residential consent as well as the application of restrictive covenants on the property titles to restrict the rights of the landowner to revert back to the previously approved residential use.

Accordingly, it is proposed that the HOUSING SEPP make provisions for the “Adaptive re-use of existing buildings” for the purposes of residential apartments (which could include serviced apartments, offices, commercial buildings etc) where the residential use is permitted with development consent under the respective LEP. This would ensure that there is no issue with permissibility or unexpected uses (which the government has otherwise afforded to BTR in the B3 Commercial Zone despite significant criticism from local Council’s).

The intent would be that in such instances, a DA could be lodged for the conversion of the existing building to residential apartments (which is permitted anyhow), but the Housing SEPP would:

- Limit the application of SEPP65/ADG, particularly with regard to the built form controls (i.e. building separation, setbacks, parking etc) that cannot be altered.
- Limit the application of Part 4 of the ADG to the Objectives only to ensure consideration of these elements and improved outcomes where possible, but are not strictly constrained by “Design Guidance”.
- Ensure that the Council/consent authority, where a building was previously approved as residential and is still generally in the same form, cannot refuse the application on the basis of non-compliance with SEPP 65 / ADG.
- Where there is an approval for conversion of a residential building, the consent authority does not have the ability to otherwise restrict the future use of that building for residential purposes by way of surrendering or modifying the original residential approval or imposing limitations on the title of the respective property.

The benefits are outlined below;

- Supply immediate housing in a more sustainable way via adaptive re-use as opposed to new construction (i.e. no demolition, construction, noise, dust, waste, landfill etc).
- Generate substantial Government revenue by the creation of stamp duty, GST, Land Tax etc through the sale of apartments
- Allow the landowner to create a more productive asset that has been compromised by the current COVID crisis and ongoing movement restrictions that will continue into the foreseeable future. It is simply unreasonable for the Government to expect them to sit idle and predominantly empty when there is a better use that also is good for the broader economy.

- Mitigate physical impacts to surrounding development as the building exists and demolition/construction is not necessary or would be limited to very minor changes where necessary.
- Provide an effective, but limited stream of new apartment developments to assist with the housing supply crisis being encountered in Sydney, in areas where residential flat buildings are permitted and otherwise expected (not as significant as the BTR rules which allow this form of residential development in zones where it is prohibited with the relaxed application of SEPP65/ADG).
- Align the use of the building with the underlying statutory land value considerations which is prepared on the basis of highest and best use which in such instances, is typically residential. If the Government is applying this rationale to the underlying calculation of land tax and council rates etc, then the land owner should be permitted to use the building for that purpose.

These provisions would not see a wholesale change to our serviced apartment portfolio, but allow a focus on underperforming assets that have been permanently affected by COVID and Government restrictions to be renewed for residential use. This will assist with the underlying urgent need for housing supply in an efficient and sustainable manner and in established, well-connected locations where this use is already permitted.

We cannot see any reason why such provisions should not be adopted, particularly the reinstatement of those buildings previously approved for residential apartments, when the planning and tax system has been adjusted to facilitate BTR with limited if any success in NSW. These changes would provide another opportunity to get our housing supply back on track in buildings that exist and for uses already permitted with consent.

Please contact the undersigned should you require any further information.

Yours sincerely

MERITON GROUP



Matthew Lennartz

Executive Manager – Planning and Government

Cc - Mr Peter Achterstraat, NSW Productivity Commissioner
The Hon Dominic Perrottet MP, NSW Treasurer
The Hon Kevin Anderson MP, Minister for Better Regulation and Innovation

HOUSING DIVERSITY SUBMISSION

One of the objectives of the proposed State Environmental Planning Policy Housing Diversity (Housing Diversity SEPP) plan is to provide more affordable and flexible housing options for people. One initiative is the new class of co-living developments.

Under the proposed plan (the plan), co-living buildings have a single owner. The buildings typically provide self-contained dwellings with private bathroom and kitchenette facilities and access to communal areas with access to good amenities. These developments are generally located in close proximity to public transport and other services. The plan envisages co-living developments to have at least six private rooms, have an appropriate workspace for a manager on site and provide tenants with at least three months residence. The plan provides for a minimum room size of 12 square metres for a single occupant and 16 square metres for two occupants - excluding private kitchen and bathroom areas. There must be a minimum of 20% of the site area to be communal open space and 30 square metres of communal living area.

The minimum requirements of communal open and indoor space would be difficult to meet on small residential blocks. Often, small residential blocks occur in areas where people want to live. The plan does not allow for smaller co-living developments more suited to popular low-density residential areas where traditional housing options are unaffordable. People wanting to live in smaller co-living developments value price point and location – in particular proximity to reliable public transport and amenities – over communal spaces.

Smaller co-living developments could accommodate three to five private rooms. Each room would be fully furnished and have its own kitchenette and bathroom catering for those who want their own private facilities. The rent includes reasonable use of utilities. This model provides a more bespoke housing option for particular segments of the population. Woman who are victims of domestic violence are often forced to leave their homes with few or no possessions. This model enables this segment of the population access to short term secure, fully furnished and affordable accommodation with fewer other occupants in their preferred area.

Smaller co-living developments are flexible and can be retrofitted from a standard house or built to specifications. The oversight of meeting these specifications could be placed in the hands of private certifiers. This would enable faster approval times and reduce local councils' workflows. Smaller co-living developments are less expensive to complete and, as such, attract the mum and dad investors. Each development can be unique to meet the needs of the end user.

It is submitted that a smaller co-living development would provide more bespoke housing solutions for segments of the population who want to live in low-density residential areas with five or less occupants. This model is more affordable for investors and is best suited to young professionals and people who require high quality secure short term fully furnished accommodation with a smaller group of occupants in quiet areas at an affordable price point. Brisbane City Council has successfully done this through their Rooming Accommodation model.

Yours Sincerely



Michael Bishop

0408 899 642

25 August 2021

Housing Policy Team
Department of Planning, Industry and Environment
Locked Bag 5022
Parramatta NSW 2124

Dear Housing Policy Team,

SUBMISSION TO DRAFT STATE ENVIRONMENTAL PLANNING POLICY (HOUSING) 2020

1. Introduction

This submission has been prepared in response to the public exhibition of the draft *State Environmental Planning Policy (Housing) 2020 (Housing SEPP)* currently on exhibition by the NSW Department of Planning, Industry and Environment (DPIE).

Mirvac has a general interest in partnering with registered clubs across Sydney to develop seniors living housing. Mirvac welcomes the opportunity to comment on the Draft Housing SEPP and supports the DPIE for its innovation in preparing a new SEPP that consolidates and updates housing-related policies. The proponent is highly supportive of mechanisms within the planning system which seek to streamline statutory processes, whilst having a positive effect on the delivery of senior housing supply that is compatible with its site and surroundings.

This submission has been divided into the following sections:

- Site Compatibility Certificates: Our position on retaining Site Compatibility Certificates as an important part of delivering the needs of housing diversity and choice for seniors in the Housing SEPP;
- Concerns with Draft Housing SEPP; and
- Conclusions and recommendations.

2. Seniors Housing

The aim of the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* is to encourage the provision of housing that will:

- (a) *increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and*
- (b) *make efficient use of existing infrastructure and services, and*
- (c) *be of good design.*

The aims of the draft Housing SEPP of relevance to seniors housing are:

- (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,*
- (b) *to provide greater clarity and certainty for the housing sector,*
- (c) *to encourage the development of diverse and affordable housing types by—*
 - (ii) *providing incentives for certain types of development,*
- (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.*

Housing 2041: NSW Housing Strategy recognises the State-wide significance of housing for older people as older people make up a growing share of the community with the number of people aged 65 and older to increase by 85% in the next 25 years.

The aims of the NSW Government to increase the supply of well-designed and appropriately located seniors housing and to create certainty for the industry are commended.

Given the underlying aging population trend and evidence that a good proportion of the aging population want to age in place and that housing supply is required to address a significant shortage in housing, Mirvac have significant concerns about some of the proposals in the Draft Housing SEPP regarding placing restrictions on Senior Housing in the form of Independent Living Units (ILUs) in RE2 Public Recreation Zones and prohibiting ILUs in R2 Low Density Zones.

The removal of the ability to develop suitable housing for seniors following an assessment of compatibility by a regional planning authority on land zoned RE2 Private Recreation zoned land and removing ILUs from the Zone R2 Low Density Residential are major retrograde steps that will only undermine the sound aims and objectives of the current Seniors Living SEPP and the draft housing SEPP.

3. Site Compatibility Certificates

The Seniors SEPP aims to facilitate development of housing for seniors and people with a disability in a way that balances the growing demand for suitable accommodation with the need to maintain the local character of neighbourhoods. Site Compatibility Certificates (SCC) were introduced as part of the amendments to the Seniors Living SEPP in 2007. The intended purpose of SCCs is to ensure seniors housing developments are broadly compatible with surrounding land uses before a development application (DA) can proceed to the development application lodgement, assessment, and determination stage with the relevant consent authority. Ultimately, a SCC would allow for a DA for seniors housing to be considered on land where it would otherwise be prohibited.

A SCC is required from the DPIE before lodging a DA where:

- Land adjoins urban land zones primarily for urban purposes.
- Land is within a zone identified as “special uses” under another environmental planning instrument.

- Land is being used for the purposes of an existing registered club, provided the land is zoned primarily for urban purposes or adjoins land zoned primarily for urban purposes; and
- The proposal is for a 'vertical village' under clause 45 of the SEPP.

For a SCC to be issued, the relevant planning panel must be of the opinion that the site is suitable for more intensive development and it is compatible with the surrounding environment having regard to (at a minimum) the criteria set out in clause 25(5)(b) of the Seniors Housing SEPP.

An important consideration in the proposal to remove the SCC process is the impact that this will have on the potential of golf clubs to continue providing benefits to the broader community. In many instances the reason many golf clubs look to accommodate seniors housing developments is to address their deteriorating financial position and they look to partner with a developer to secure a long-term future for members, public players and the local community. Increasing operating costs and a reduction in membership numbers place at risk the operation of many golf clubs in Sydney. The SCC has been used effectively by golf clubs to address their deteriorating financial position, to allow them to continue to operate and provide recreational opportunities for their local communities.

Overall, the declining participation in golf as a sport, more limited time available to younger newer members to devote to the golf, and competition from other sports and recreational pastimes, an aging golfing cohort and increased costs to maintain a golf course with fewer new golfers taking up the sport are all reasons why golf clubs have sought to work with developers to provide seniors housing.

The following seniors housing developments have successfully used SCC to ensure the compatibility of the development with the surrounding environment and land uses on land zoned RE2 Private Recreation, including golf clubs with registered clubs in established residential areas:

- **Penrith Golf Club Seniors Housing**

A SCC was approved on the 22nd of June 2018 for a seniors housing development on a portion of the Penrith Golf Club. The land is zoned RE2 Private Recreation under the Penrith Local Environmental Plan (LEP) 2010, and seniors housing is not a permitted use in the RE2 zone. The proposal was for eight four-storey apartment buildings including 160 units and 5 clusters of two-storey town houses including 15 town houses with basement car parking.

The suitability of the site was assessed against the criteria set out in clause 25(5) of the Seniors Housing SEPP where it was concluded that the site was suitable based off the nature of the site, the strategic intent of the locality, the availability of services and infrastructure to support the proposal and the surrounding residential land uses.

A development consent was then approved by the Western Sydney Planning Panel on the 25th of June 2018 and has since been constructed.

- **Chatswood Golf Course**

A SCC was approved by the Sydney North Planning Panel on 16 June 2021 for a seniors housing development consisting of 106 seniors housing selfcare dwellings and the redevelopment and integration of a new clubhouse. The development is intended to be 4-5 storeys in height with a two-level basement and at grade parking for 295 car spaces for use by the Club and the residents. The development will be the subject of a future development application.

- **Waverley Bowling Club Seniors Living**

A SCC was approved on the 25th of September 2017 for a seniors housing development on a portion of the Waverley Bowling Club. The land is zoned RE2 private recreational under the Waverley LEP 2012 and seniors living is not a permitted use in the RE2 zone. The proposal is for 90 seniors housing units across four (4) buildings ranging between three to six storeys, a swimming pool, gym and childcare centre.

Development consent was granted on the 15th August 2019 and has since been modified. Other successful senior housing developments that have utilised a SCC are the following:

- **Seniors Housing at 18 Randwick Close, Casula**

SCC issued on 3rd December 2020. A DA was lodged in Liverpool City Council in November 2020 and was approved by the Joint Regional Planning Panel in July 2021.

- **Seniors Housing at 14 Hamilton Road Albion Park**

SCC issued on 20th July 2020. A DA was lodged to Shellharbour City Council in December 2020 and is still under assessment.

- **Seniors Housing at Blacktown Workers Club**

SCC issued 11th August 2020. A Concept DA was lodged to Blacktown Council in December 2020 and is still under assessment.

These examples demonstrate that housing delivery for seniors housing can be successfully delivered in Zone RE2 Private Recreation in instances where the local context has a prevailing scale and density of the low-density residential zone. The SCC process has appropriately enabled developers to demonstrate how reasonably scaled seniors housing developments could be provided in Zone RE2 Private Recreation through appropriate site planning. The SCC process has enabled developers to work with clubs to deliver the housing density required to deliver seniors housing of a scale which is feasible and meets the increasing demand for seniors housing and that can support the provision of additional and enhanced club facilities to benefit the local community.

Many of the examples of seniors housing in Zone RE2 Private Recreation have achieved appropriate transitions in scale and/or building siting and setbacks due to the large land areas to be compatible with local context. Without the SCC processes these outcomes are unlikely to have been accepted through a DA process alone and the opportunities to provide suitable housing would not have been realised. The ramifications of Seniors Living Housing not being able to be delivered on Zone RE2 Private Recreation land will be significant, when considering the already limited opportunities for Senior Housing within the market where Seniors Housing developers will be required to compete for R3 Medium Density and R4 High Density sites as the only option for Seniors Living with regard to permissibility.

4. Concerns with Draft Housing SEPP

4.1 Removal of site compatibility certificates

As noted earlier in this submission a SCC application can be made on land that is used as an existing registered club, and there are many successful examples of seniors housing developments associated with golf clubs on RE2 Private Recreation zoned land.

The Explanation of Intended Effect (EIE) for the Housing SEPP identified a relatively minor change for SCC applications “to improve certainty for all stakeholders”. The change proposed in the EIE was to reinforce the requirement that if a SCC application is being made on the basis that the land is being used for the purpose of a registered club, the club must be a registered club at the time the SCC application is made.

The Draft Housing SEPP introduces significant changes to what has been contemplated in the EIE including prescribed zones where seniors housing is permissible, and the provisions for SCCs are proposed to be removed. Furthermore, a development standard is proposed to apply to Senior Housing developments on land zoned RE2 Private Recreation where the land is used by a registered club that at least 50% of the site must adjoin a residential zone.

A significant concern is that Local Councils may opt in or out of the prescribed zones. We understand that removing SCCs and introducing prescribed zones increases certainty for where seniors housing development can be located however, we are of the belief that SCCs must be retained, or a similar review mechanism by a regional authority is introduced, for the reasons outlined below:

- **Maximise opportunities for housing diversity** – Under the current Seniors Housing SEPP, SCCs makes provision for a diverse range of housing typologies that may not otherwise be permissible within a zone. Therefore, the removal of SCCs and the introduction of prescribed zones restricts seniors housing development to land where the prescribed zones apply. Additionally, Local Councils have the option to opt in or out of the prescribed zones, causing further restriction where seniors housing may be located. This is a significant risk to achieving the critically important aim of promoting aging in place, whereby seniors housing is available within the locations where people want to live within their existing communities.

One of the aims of the new Housing SEPP is to ensure an adequate supply of an appropriate range of housing types to meet the changing needs of people. Prescribing zones and removing the ability to provide seniors housing through the SCC pathway ultimately limits where seniors housing can be located and is a retrograde step.

- **Ensure site compatibility** – SCC were first introduced to ensure seniors housing development is compatible with the surrounding environment and land uses having regard to the criteria (clause 25(b) and clause 23(2(b))) as set out in the SEPP. Removing SCCs will limit the initial case by case assessment of compatibility by a Planning Panel.
- **Strategic Consideration** – The SCC serves a purpose in assessing if the proposed seniors housing is in line with the strategic intent for the area. This initial high level strategic assessment is important to the delivery of the intended future character for the area and setting the parameters for which the development will proceed. The consideration by DPIE of the SCC provides an opportunity for initial review which can be more strategic and broadly focused on the critical delivery of Seniors Housings within NSW as opposed to a local council.
- **Manage investment risk** – The SCC provided a valuable step in the planning system to evaluate the compatibility of the site before an investment is made into a DA. Without the initial step in obtaining a SCC and assessing the compatibility of the site, the risk of investment is significant. The SCC provides a certificate which can then be referred to during DA assessment that from a regional perspective the scale and type of development proposed is appropriate.

Removing the initial step of obtaining a SCC will increase the risk to developers to invest in seniors housing and therefore will create hesitancy in providing seniors housing in suitable locations, to address the housing needs of the ageing population.

- **Understanding of 'big picture'** – The SCC provides an opportunity for the housing needs for seniors to be assessed on a larger, regional or district scale and beyond the boundaries of a local council area which is subject to local community scrutiny. The role the Regional Planning Panels play in determining SCC applications is an appropriate function in the context of what is a significant regional objective to increase seniors housing. It is of concern that leaving the assessment solely to Local Councils may result in failure to consider the housing needs for seniors, which has broader regional or district scale implications and will likely have significant ramifications in terms of the number of seniors living development which can occur.

4.2 Prohibition of ILUs in Zone R2 Low Density Residential

In addition to the removal of SCCs there is also significant concern with the proposed prohibition of ILUs in the Zone R2 Low Density Zone: Given most of the residential zoned land in NSW is R2 Low Density Residential, with an underlying aging population trend and evidence that a good proportion of the aging population want to age in place and that additional housing supply is required to address a significant shortage, to restrict ILUs from these zones is of significant concern. The removal of the ability to develop suitable housing of a scale and density that is consistent with what is permitted in the Zone R2 Low Density is a major retrograde step and is considered a blunt instrument approach that will undermine the aims and objectives of the current Seniors Living SEPP and the draft housing SEPP. A more appropriate approach is to have in place requirements that help Planners assessing development applications for ILUs in R2 Low Density Residential zones to manage change. A review of the Urban Design Guidelines is an appropriate measured alternative, and if considered necessary changes introduced that provide Planners with the tools to determine the merits of ILU developments is a preferred approach compared to wholly prohibiting ILUs on the majority of residential zoned land in NSW.

5. Conclusion

We look forward to the implementation of the new Housing SEPP and welcome the opportunity to contribute and collaborate further to its implementation to ensure the successful delivery of seniors housing in appropriate and suitable locations.

We provide the following recommendations:

- **Recommendation 1** - Retain the provision to obtain a SCC prior to lodging a development application for the reasons discussed throughout this submission.
- **Recommendation 2** - Retain the ability to develop ILUs in Zone R2 Low Density Residential for the reasons discussed throughout this submission.
- **Recommendation 3** – Remove the proposed development standard requiring a 50% portion of the site that must adjoin residential land or require a lower portion of the land to adjoin residential land to reduce prescriptive controls that may restrict the delivery of seniors housing on otherwise compatible sites.
- **Recommendation 4** - DPIE to further investigate a variety of options and incentives to encourage housing diversity, in particular seniors housing, through the new Housing SEPP.

We thank you for the opportunity to contribute and collaborate on the Draft Housing SEPP and we welcome any opportunity to meet DPIE officers to discuss the concerns raised. We look forward to the DPIE's consideration of the matters raised and please do not hesitate to contact the undersigned with any questions of clarification.

Yours sincerely

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27 August 2021

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

Dear Sir/Madam;

Re: Submission – Draft Housing SEPP

Thank you for the opportunity to provide comment in response to exhibition of the following:

- Draft State Environmental Planning Policy (Housing) 2021 (the draft Housing SEPP),
- Draft Environmental Planning and Assessment Amendment (Housing) Regulation 2021, and
- Draft Standard Instrument (Local Environmental Plans) Amendment (Miscellaneous) Order 2021.

It is understood that the draft Housing SEPP will consolidate and replace five existing SEPPs which are applicable in the Mosman LGA, that is, SEPP (Affordable Rental Housing) 2009; SEPP (Housing for Seniors and People with a Disability) 2004; SEPP No 70 - Affordable Housing (Revised Schemes); SEPP No 21 - Caravan Parks; and SEPP No 36 - Manufactured Home Estates.

Having reviewed the public consultation drafts, the following comments are made -

Additional floor space ratio and other design provisions

The draft Housing SEPP will allow additional floor space, and in some instances building height, for infill-affordable housing, boarding houses, co-living housing and seniors housing above that which is permissible under a council's local environmental plan (LEP). Non-discretionary standards for minimum landscaped area, on-site parking and solar access are also proposed.

Concern is raised about the impact that such development may have within Mosman's established residential neighbourhoods and centres, in particular in terms of bulk/scale, resident amenity, traffic and demand on local services, as the draft SEPP standards differ significantly from Council's local controls within Mosman Local Environmental Plan 2012 (MLEP 2012) and Development Control Plans (DCPs).

For example, the draft SEPP would allow -

- Boarding house development with 25% more floor space than permissible in MLEP 2012;
- In-fill affordable housing with a bonus 0.5:1 FSR, up to 20% less landscaped area and 30% less on-site parking than compared with MLEP 2012 and Mosman's DCPs.
- Residential care facility development with an FSR of 1:1 and overall height to 11.5m in an R2 zone, significantly above the 0.5:1 and 8.5m height allowable in MLEP 2012.

The Department is asked to clarify the calculation of additional floor space under the draft SEPP. It is unclear whether this is to be a percentage of the base maximum floor space ratio set by a council's LEP, or a percentage of the base maximum plus any LEP FSR bonus. That is, would the draft SEPP allow a floor space bonus on top of another floor space bonus in an LEP? Many NSW council LEPs

including Mosman's contain FSR bonus provisions as an incentive to achieving identified planning outcomes, such as good design.

Boarding houses in the R2 zone

The draft Standard Instrument (Local Environmental Plans) Amendment (Miscellaneous) Order 2021 proposes to omit 'boarding houses' as a mandated permissible use for the R2 zone across NSW. This change is consistent with Mosman's Local Housing Strategy to retain the single dwelling character and low density residential environment of the R2 zone.

The Department is asked to clarify whether 'boarding houses' will be automatically removed from the R2 zone land use table in all NSW LEPs at the commencement of this legislation, or whether Council would need to apply for this to occur.

Thank you for the opportunity to comment on the proposed changes. Please contact the undersigned on 9978 4058 or at k.lynch@mosman.nsw.gov.au if you would like to discuss these issues further.

Yours sincerely

A handwritten signature in black ink, appearing to read 'K. Lynch', is displayed on a light blue rectangular background.

Kelly Lynch
SENIOR STRATEGIC PLANNER