



# CITY OF PARRAMATTA

NSW Department of Planning, Industry and  
Environment  
Via online submission at:  
<https://www.planningportal.nsw.gov.au/housing-sepp>

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**8 September 2021**

Dear Sir/Madam

**RE: City of Parramatta Council Submission – Proposed Housing SEPP**

Thank you for the opportunity to make a submission in relation to the proposed new Housing SEPP. The attached submission has been prepared by Council officers, given the limited timeframe available it has not been endorsed by Council but is consistent with previous Council resolutions on related matters.

The City of Parramatta Council (Council) welcomes the efforts of the NSW Government to consolidate the existing SEPPs related to affordable housing provision, and to update many provisions that have not been modified since their initial introduction. Council notes that many of the provisions it supported in our submission to the Explanation of Intended Effect (EIE) have been retained in the proposed Housing SEPP.

Council's submission focuses on the following areas of concern:

- Restated opposition to allowing build-to-rent in the B3 Commercial Core zone;
- The omission of a new land use for purpose-built student housing (PBSH) and the implications this has for supporting tertiary education in City of Parramatta; and
- Some concerns around seniors housing provisions and accessibility.

If you have any enquires regarding this submission, please contact Mark Egan, Acting Manager, Social Outcomes on 9806 5797 or [megan@cityofparramatta.nsw.gov.au](mailto:megan@cityofparramatta.nsw.gov.au).

Yours sincerely

**Jennifer Concato**  
Executive Director City Planning & Design

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## **CITY OF PARRAMATTA COUNCIL SUBMISSION – PROPOSED HOUSING SEPP**

### **EXECUTIVE SUMMARY**

The NSW Government publicly exhibited the Explanation of Intended Effect (EIE) for a Housing Diversity State Environmental Planning Policy (SEPP) between 29 July and 9 September 2020. Council prepared a detailed submission in response to this EIE which was endorsed by Council at its meeting on 26 August 2020. Following review of submissions and further industry consultation, the NSW Government has now released a draft Housing SEPP for public exhibition until 29 August 2021.

The matters covered in the proposed Housing SEPP are largely consistent with the EIE exhibited last year with some notable variations:

- The new SEPP now proposes to consolidate two SEPPs in addition to the three proposed in the original EIE, being:
  - State Environmental Planning Policy No 21—Caravan Parks; and
  - State Environmental Planning Policy No 36—Manufactured Home Estates.
- The proposed purpose-built student housing (PBSH) land use has been omitted.
- Some further detail has been provided regarding boarding houses that is consistent with Council's 2020 submission to the EIE.
- The SEPP's implementation has been made in phases, with some provisions (such as those for build-to-rent housing) being made in advance of the Housing SEPP consultation draft, and others (such as those for group homes) to be reviewed after the making of the Housing SEPP.

This submission makes the following key points:

- Council welcomes the amalgamation and streamlining of the five housing-related SEPPs.
- While build-to-rent is a welcome new land use definition to support this developing housing form, Council strongly opposes its mandated permissibility in the B3 Commercial Core zone, as it conflicts with Council's vision for the Parramatta CBD.
- Council urges further consideration of the need for a land use for purpose-built student housing, noting that co-living and boarding house are not interchangeable land uses and that specific consideration needs to be made for both on-campus and off-campus student housing to support the critical higher education sector.
- Council welcomes the identified changes to boarding houses, noting mandated affordability in perpetuity, and removing their mandatory permissibility in the R2 zone.

## **SUBMISSION**

Council staff welcome the amalgamation and streamlining of the five housing-related SEPPs, noting the addition of two more housing-related SEPPs, being:

- State Environmental Planning Policy No 21—Caravan Parks; and
- State Environmental Planning Policy No 36—Manufactured Home Estates.

It is noted that the above SEPPs are simply being transferred into the proposed Housing SEPP, and that their provisions are not relevant to the City of Parramatta context.

Council endorsed a substantial submission in relation to the previously exhibited Explanation of Intended Effect for a proposed Housing Diversity SEPP at its meeting on 26 August 2020. Subsequently, Council staff continued to provide feedback to the Department of Planning, Industry and Environment (DPIE) on boarding house and build-to-rent provisions. As a result of this, a number of matters raised in Council's submission have been addressed. The following commentary on the proposed Housing SEPP either emphasises previous issues of significant concern to Council, confirms support for changes that were previously supported in the Council submission, or raises concerns regarding unexpected changes in the proposed Housing SEPP.

## **Co-living**

Council staff welcome the new land use of co-living to support what is essentially new generation-style boarding house development, but without the affordability provisions now required for boarding houses. Council staff note that the provisions for co-living remain largely as stated in the publicly exhibited EIE, with two main exceptions:

- The inclusion of a 10% density bonus, which will operate for a set period until 1 August 2024; and
- Clarity on the car parking rate, being 0.5 spaces per room, or the maximum rate under the relevant LEP.

Council supported all proposed provisions for co-living in its submission to the exhibited EIE. Council staff support the time-limited density bonus as a measure to improve the economic viability of this housing form, and staff also support the clarified parking provisions.

## **Boarding houses (BH)**

Council staff welcome the changes to boarding house development included in the proposed Housing SEPP. In its submission to the EIE, Council strongly supported several of the changes proposed in the publicly exhibited EIE, including:

- Mandated affordability for all new boarding houses;
- Removal of mandated permissibility of boarding houses in the R2 Low Density zone; and
- Increased clarity around density bonuses for boarding houses.

Council staff note that in relation to the final point above, a flat rate density bonus of 25% increase in FSR will apply to boarding houses.

The EIE sought feedback on the term for which affordability should apply to boarding houses in future, with one proposed option being a fixed term of 10 years, as is currently the case with

affordable housing under the existing AHSEPP (2009), or applied in perpetuity. Council's submission recommended that boarding houses be mandated as affordable in perpetuity. It is encouraging to see that the proposed Housing SEPP shares Council's view and has included this requirement.

### **Build-To-Rent (BTR)**

Build-to-rent is not included in the draft Housing SEPP as these provisions have recently been introduced separately but are planned to be consolidated in the Housing SEPP following the exhibition period. The FAQ document accompanying the draft SEPP notes that the provisions "will be transferred to the Housing SEPP generally in their current form once the SEPP is finalised."

Council staff restate the following from the Council-endorsed submission to the EIE on build-to-rent provisions:

- Council strongly objects to the mandatory permissibility of built-to-rent (BTR) in the B3 – Commercial Core zone. This is because the inclusion of BTR within the commercial core of the Parramatta CBD, which is zoned B3, is inconsistent with the State Government and Council's vision for the CBD which is to provide a significant increase in jobs. The B3 zone, which is already limited in its application, should not be compromised by allowing residential uses (even if strata subdivision is prohibited). It's key objective is facilitating commercial uses and creating an employment hub. Permitting BTR in this zone will erode the objectives of the B3 zone. It is strongly requested that this use is not permitted in the B3 zone or that Parramatta be excluded from the operation of this clause.
- This position is consistent with Council's recent resolution to submit the Parramatta CBD Planning Proposal to the Department for finalisation which requests an exemption from the State Environmental Planning Policy Amendment (Build-to-rent Housing) 2021 in the B3 Commercial Core zone as this is inconsistent with the employment objectives of the commercial core in the Parramatta CBD and notes that there is adequate B4 Mixed Use zoned land in the Parramatta CBD to allow for build-to-rent housing.

Notwithstanding the above, Council supports the prohibition of strata subdivision of BTR developments in perpetuity where they are located in the B3 – Commercial Core zone.

### **Purpose-Built Student Housing (PBSH)**

Council staff were surprised to see that PBSH had been omitted from the proposed Housing SEPP altogether. Council supported this new land use in its submission in response to the EIE, stating that while "international students" have grown over recent years [in City of Parramatta], in both number and economic importance, the development of large-scale purpose-built student housing has not.

Council supported the majority of the proposed PBSH provisions in the exhibited EIE, with additional comments and suggestions to set minimum car parking rates, increase room sizes and increase the amount of required indoor and outdoor communal space.

The FAQ document accompanying the draft Housing SEPP noted the reason for omitting PBSH being feedback received from educational establishments and private sector developers, as well as the similarity of provisions to those proposed for co-living. The FAQ further indicated that on-



campus student housing will continue to be facilitated through the State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017.

City of Parramatta is committed to supporting higher education, and in April this year launched the **EducateAT Parramatta Alliance** uniting six universities and the Western Sydney Local Health District to advocate for, and attract talent to, the centre of global Sydney. These universities and this Alliance underline a sector that is worth \$1.6 billion and employs more than 11,500 people. Across several university campuses located in City of Parramatta, more than 25,000 students are enrolled. And finally, the University of Sydney is planning to deliver a full scale campus at Parramatta North that will open by 2030.

The significance of the education and training sector in Parramatta means that the accommodation of students to support this sector is a critical concern for Council. It is for this reason, Council staff support the inclusion of a land use for purpose-built student accommodation.

The key issues Council staff identify in omitting PBSH from the draft Housing SEPP are as follows:

1. The need for affordability in the provision of student accommodation; and
2. The unsuitability of either co-living or boarding house as a land use to adequately support student housing needs.

#### Affordability

International students often experience significant difficulties when coming to study in Australia, and finding suitable and affordable accommodation has been highlighted in research that Council undertook in relation to international students in our City last year. Discussion with members of the EducateAT Parramatta Alliance further confirmed affordability as a key issue for students, and a key outcome of purpose-built student accommodation.

Furthermore the EIE released by DPIE in May 2020 acknowledged that student housing was affordable housing. It is also noted that the University of Sydney staff provided real examples of student housing affordability, noting that their student accommodation was 25% below market rent with dormitory rooms at \$120 per week and studios at \$150 on their Camperdown-Darlington campus.

Another issue of significant concern to international students is finding opportunities to meet Australians and experience Australian culture when studying here. This issue was raised to Council staff in discussion with education providers that are members of the EducateAT Parramatta Alliance.

#### Inadequacy of other land uses

Council staff are unconvinced that either co-living or boarding houses will serve as a suitable land use to cater for on-campus PBSH.

Co-living provides some communal spaces and will enjoy a 10% FSR bonus for a set period. But the communal space required in co-living provisions is not on a par with the space and facilities provided or envisaged by universities for their on-campus student housing, and a 10% FSR bonus is unlikely to facilitate affordable rents for international students.

Similarly, boarding houses are not the same as student accommodation. The maximum size for boarding house rooms (25m<sup>2</sup>) is significantly larger than the size (10m<sup>2</sup>) proposed in the EIE for student housing. Secondly, the requirements for communal indoor and outdoor space in boarding houses do not adequately support the study and social needs of students. This is evidenced by the

significant amount of social and study space provided by universities in their on-campus PBSH developments.

#### On-campus student housing

Discussion with EducateAT Parramatta Alliance members emphasised that on-campus student accommodation provided by universities is far more than a stand-alone residential building, but rather a facility with embedded educational and social facilities that formed an extension of the university.

University Student Accommodation is typically a mixed-use facility and not stand-alone Residential or Boarding House development. All accommodation styles have shared communal spaces (kitchen/dining/amenities) and provide the students with internal and external educational and social spaces such as spaces for quiet learning, group or tutor work, peer to peer learning spaces, breakout spaces, meeting rooms, theatres, maker spaces, music rooms, gym, roof terraces and BBQ areas. Student accommodation buildings incorporate educational facilities to allow students to engage outside of the formal learning spaces provided by a University campus.

The FAQ document states that “on campus accommodation will continue to be facilitated through the State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017, which will be amended to expand student accommodation to accommodate people associated with the education facility (i.e. not just students).”

The current SEPP (Educational Establishments and Child Care Facilities) precludes universities from self-assessing such developments. Universities are used to being able to self-assess proposals under this SEPP, but in the case of purpose-build student accommodation, clause 44 of the SEPP specifically precludes self-assessment of this land use. DPIE will need to consider what threshold for self-assessment may be applied, if any, to on-campus student accommodation. It is the view of Council staff that Council should retain consent authority status for such proposals.

#### Off-campus student housing

The FAQ document further states that “off campus student housing developers will use the co-living housing provisions. This approach recognises the similarities between co-living and student housing typologies and responds to concerns expressed by both educational establishments and private sector developers.” This would appear to indicate that there are viability issues with off-campus student accommodation that may make it unattractive for private developers to pursue.

This approach may deliver an adequate built form, but Council staff question how co-living developments will be able to provide an affordable product suitable for university students, particularly as international students are usually restricted to working no more than 20 hours per week while studying.

## **SUMMARY**

Council supports the consolidation of several housing SEPPs into a single SEPP for ease of interpretation. Council strongly supports several of the proposed changes, including:

- The development of the new land uses of co-living and build-to-rent that further contribute to the diversity of housing options available to the residents of NSW; and
- The proposed changes to boarding house provisions, especially mandated affordability in perpetuity, and removal of mandatory permissibility in the R2 zone.

That being said, Council is concerned about several matters, including:

- The mandated permissibility of build-to-rent in the B3 Commercial Core zone, as it conflicts with Council's vision for the Parramatta CBD; and
- The omission of purpose-built student housing as a new land use that is critical to support the higher education sector across Greater Sydney and would provide suitably located and amenable housing for students participating in higher education.

# PATHWAYS

## RESIDENCES

Ms Sandy Chappel  
Director, Housing Policy Team  
Department of Planning Industry & Environment

Dear Ms Chappel,

### **SUBMISSION ON DRAFT STATE ENVIRONMENTAL PLANNING POLICY (HOUSING) 2021**

Pathways Residences has been operating in the aged care industry since 1993 and currently owns and operates five boutique aged care facilities located at Killara and Roseville in Sydney's Upper North Shore, Northbridge in Sydney's Lower North Shore, and Cronulla in the Sutherland Shire. Collectively, these facilities provide high and low care services to approximately 475 residents.

In addition, we have a DA approved residential care facility in Lane Cove and we are currently exploring new aged care opportunities in Cremorne on Sydney's Lower North Shore and Leura in the Blue Mountains.

### **SEPP often more restrictive than underlying instrument**

The Explanation of Intended Effect (EIE) had a clear focus on allowing the underlying Environmental Planning Instruments (EPIs) to prevail when an inconsistency with the draft Housing SEPP arose. In its current form, the draft Housing SEPP (in particular Clause 74) has implemented ridged planning controls and allows very limited opportunity for local planning controls to influence seniors development. This becomes an issue when other EPIs permit far more height and FSR than the development standards outlined. As a consequence, the desired objective of the SEPP to incentivise delivery of seniors housing is lost.

### **Application of the vertical villages clause when no underlying FSR**

Under Clause 99, a bonus FSR may be granted for a vertical village to the 'maximum permissible floor space ratio'. The definition under Clause 99(4) states that applicable FSR is either defined under an existing EPI or is assumed to be 0.5:1.

Where Councils have chosen not to apply FSR provisions (e.g. North Sydney, Hornsby and Lake Macquarie Councils) a ratio of 0.5:1 would be far more restrictive than what is ordinarily permissible on the site.

Accordingly, it would be preferable not to include an assumed 'maximum permissible floor space ratio' for vertical villages and instead increase the height limit to provide a commensurate bonus.

### **Vertical villages**

The introduction of a definition of *vertical village* would provide certainty over the intended use of Clause 99. If the Department does not intend to define vertical villages, the term should be dropped from the drafting and Division 8 should be redrafted to reflect the intent, that being "bonuses to encourage seniors development".

Use of the term 'vertical villages' when undefined provides a connotation that the proposed development will be high in nature. The additional 3.8m or 1 storey in height offered through Clause 99(2)(b) is not reflective of

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# PATHWAYS

## RESIDENCES

the intent to deliver 'vertical' development. Furthermore, the bonus height proposed does not reflect the context and character of the varying zones in which the clause applies.

It is not clear why a vertical village does not benefit from many of the non-discretionary standards available elsewhere in the instrument. Clause 100 turns off the non-discretionary standard within Clause 96 for a RCF vertical village. If a proposal for a RCF vertical village was to proceed, Clause 100(2)(b) would switch off all non-discretionary standards other than the controls relating to height.

This means an application would be assessed against controls within other EPIs or DCPs. SEPP65 does not apply to residential care facilities and many DCPs do not contain controls for RCF development. That may result in the vertical village RCF not having applicable controls, standards such as parking communal open space, landscaping, deep soil zone etc.

Clause 100 could be considered a great example where the SEPP is allowing local flavour to prevail. However, very few Councils have DCPs in place that would apply to RCF or ILU facilities to ensure future development is appropriate when the controls with Clause 96 and 97 of the draft Housing SEPP (e.g. landscaping, communal open space, deep soil planting, parking etc) are turned off under Clause 100.

Also, by switching off relevant components of Clause 96 and 97, there is no longer a mechanism that ensures a consent authority cannot require a more onerous standard. For example, a seniors provider could prepare an application for a ILU Vertical Village, deliver 0.5 parking spaces for each bedroom (consistent with cl 97(k)) and be refused based on parking rates as the non-discretionary standard no-longer applies. Clause 100 could therefore be seen as creating an additional restriction on seniors development.

It is recommended that further consideration be given to Clause 100 to ensure that it does not create unforeseen issues by removing controls or applying imperfect controls through a development control plans that have not been designed for ILU or RCF development.

### **Permissible max heights**

The current drafting of Clause 74 of the draft SEPP reduces incentives within the existing Seniors SEPP and as a consequence will reduce the viability and hence delivery of seniors housing.

In particular, the height control identified within Clause 74 is not-consistent with the application of height controls within other EPIs. Seniors development is permissible within many EPIs at heights much higher than the standards established within the draft Housing SEPP, thereby reducing feasibility. If the intent of the draft Housing SEPP is to encourage the supply of seniors housing, the height controls will stifle that intent.

There is an inconsistency between Clause 74 and Clause 96. Clause 74 is a development standard that only allows development for seniors housing to reach 9m in height, or 11.5m if servicing equipment is integrated within the roof design. Clause 96 identifies a non-discretionary height standard of 9.5m, or 11.5m if the servicing equipment is integrated within the roof design for RCFs. The 9.5m height non-discretionary standard does not appear necessary if a RCF is unable to exceed 9m in height (if servicing equipment not integrated).

In addition, subclause 74(3) appears to relate to subclause (2), however is drafted as a stand-alone provision which makes it illogical.

Therefore, the height standards with the draft SEPP should be made consistent between clauses 74, 96 and 97. Where there is no height limit in the underlying LEP, the proposal should not be constrained but rather be assessed on its merits in accordance with the character of the local area.

### **Clause 76 Development standards for seniors housing – Zones RE2 SP1 RU5 and R2**

The provision of Independent Living Units (ILUs) within the R2 zone provides a valuable housing typology that services a need within the market. The provision of ILUs within the R2 zone supports the principle of ageing in place and allows seniors to transition to a more appropriate housing type without moving away from their former (typically detached housing) place of residence. If a local supply of ILUs is not available for seniors to transition to, they will be forced to either leave the region and their network to find suitable accommodation, or they may choose to remain in the family home for longer, which seems contrary to objectives of improving housing diversity.

The Department should consider a revision to the application of Clause 76 to allow ILU development where it is compatible with the existing or desired local character of an area, or where ILUs are permissible on a site under another applicable EPI.

#### **State significant development pathway**

The requirement in Clause 7.1 for the RCF to be 60% of the CIV is not reflective of current models of care, where residents are supported to live independently for extended periods of time. As a consequence, the requirement for a 60-40 CIV split will likely reduce the proportion of developments that can benefit from this approval pathway. This split is also not reflective of the way the industry model is heading. Overseas models are demonstrating that a transition to a higher portion of ILU/assisted living forms of seniors development and likely to become the industry norm.

In addition, the relatively low threshold value of \$20m/\$30m will mean there is a disproportionately large cost impost for small scale RCF developments, shifting them from regional development to state significant, with the additional cost of seeking SEARs, preparing EIS, state design review panel etc. From Pathways experience, a more reasonable threshold would be within the \$40m - \$50m range to avoid small developments being subject to excessive state significant pathway costs.

I trust this information is of assistance to you in finalising the draft SEPP. If you would like any further detail on the content of this submission, please do not hesitate to contact me on 02 8437 1700

Yours sincerely



Graeme Skerritt

# PATHWAYS

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RESIDENCES



**From:** noreply@feedback.planningportal.nsw.gov.au on behalf of Planning Portal - Department of Planning and Environment  
<noreply@feedback.planningportal.nsw.gov.au>  
**Sent:** Wednesday, 4 August 2021 12:21 PM  
**To:** DPE PS Housing Policy Mailbox  
**Subject:** Webform submission from: Proposed Housing SEPP

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

Submitted on Wed, 04/08/2021 - 12:20

Submitted by: Anonymous

Submitted values are:

**Submission Type**

I am making a personal submission

## Name

**First name**

Paul

**Last name**

Snell

**Organisation name**

?

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

No

## Info

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**Submission**

You guys just need to pay attention to what Ian Ugarte is recommending, He is far more educated on what needs to happen and how to make it happen than anyone else in this country and he is motivated by helping people to get their lives back together by being able to find affordable and practical accommodation.

Please listen to the experts on Ian Ugarte's team.

**I agree to the above statement**

Yes

**Submission on proposed  
Housing State Environmental Planning Policy (Housing SEPP)**

This submission is to express my concern regarding the proposals in the above SEPP relating to boarding houses.

I am the manager, and one of a group of owners, of a number of boarding houses in a northern NSW seaside tourist town.

Our houses accommodate, on average, around 45 people aged from mid-twenties to over fifty. The average stay is six months but some of our occupants, particularly the older ones, are quite long term and our boarding house is their permanent home.

Our occupants are a mix of Australian citizens and international travellers on working visas. Most provide essential work in the nearby hospitality businesses in our local seaside town. Others are tradies, aged care workers, nurses. Skyrocketing real estate values and the growth of the Air BnB sector has meant there is an acute shortage of affordable accommodation for these type of workers in the town and forced many to seek accommodation in nearby hinterland towns, requiring them to travel by car into the town in which they work. A number of deaths of young people travelling back to their accommodation after late night restaurant shifts caused great angst in the community. We have been in discussion with the local council who are very supportive of our boarding house development and the planning agreement we have to provide a 25% discount to market rent for over 10% of our rooms.

Further pressure on rental accommodation comes from changing demographics. Over the last thirty or forty years the age at which people marry and form households has been steadily rising so many more single people are leaving home, pursuing careers, travelling and studying, and creating demand for exactly the type of affordable accommodation being offered by boarding houses which never existed before.

As with our boarding houses, many boarding houses are owned and operated by "Mum and Dad" investors for whom their boarding house business provides a manageable retirement business and income.

Managing the boarding house so that the occupants are well looked after, safe and happy is integral to the business model. This ensures that the occupants stay as long as possible which is important for the stability of the houses, as well as maximizing income as it reduces periods of vacancy. In our houses we work very hard to ensure the occupants are provided rooms with pleasant facilities, good clothes storage, good kitchen and bathroom amenity and plenty of outdoor areas providing both private spaces and areas for group socialising. This ensures our occupants have a good experience which we consider important for a number of reasons:-

1. As ethical investors and business owners that is how we do business.
2. Our advertising budget is minimal as much of our business comes from referrals of past occupants to friends and family members coming to our town and prior occupants who are seasonal workers who return year after year. Consequently, we enjoy a very high occupancy rate.
3. We are very aware of the power of social media to broadcast both positive and negative messages and a negative experience for our occupants can rapidly be disseminated to many potential occupants on social media.

The stated aim of the new Housing SEPP is "to facilitate the delivery of more diverse and affordable housing types".

However there are a number of provisions in the proposed SEPP which mitigate against that aim:-

1. The boarding houses "Must be used for affordable housing in perpetuity". Development consent must not be granted under this Division unless the consent authority is satisfied that from the date of the issue of the occupation certificate and continuing in perpetuity the boarding house will be used for affordable housing.

Comment: Our group, and other boarding house operators I know, have a long term commitment to their boarding house business model and are in it for "the long haul" – even continuing on into the next generation. However, every business must be able to change and adapt if circumstances require it for their survival. The COVID-19 pandemic shows how important it has been for many businesses to be able to "pivot" their business models and adapt to current circumstances to survive. Any legislation which prevents business owners being able to adjust and alter their business model should circumstances require it, is a strong disincentive to investment.

2. The boarding house will be managed by a registered community housing provider.

Comment: Most boarding houses are currently run by "Mum and Dad" owner/ investors for whom their boarding house business provides a retirement business and income. These operators will not want to be paying a third party – the registered community housing provider" to manage their boarding house business which they currently do themselves. The management fees they would have to pay will reduce the return from their business and they will suffer commensurate loss of control of their investment. If this provision is adopted the Mum and Dad boarding house investors, and hence this affordable accommodation model, will disappear.

While the "registered community housing provider" may provide adequate management, it is hard to imagine they will approach the task with the same passion, drive and commitment of the "Mum and Dad" owner/ operator for whom providing a well managed, well appointed boarding house offers the best guarantee of return on funds invested.


In summary the requirement of boarding houses to

- a) provide affordable housing in perpetuity, and
- b) be managed by a registered community housing provider,

will be the death knell of this type of housing.

At last count (2019) there were 1,062 registered boarding houses in NSW providing at minimum 4,248 rooms and at maximum 12,744 rooms. It is sad to think that provision of that accommodation will be lost in future if these provisions are enacted. The new Housing SEPP will have exactly the opposite effect of the aim of "delivery of more diverse and affordable housing types".

It will create a "structural diasater" which will result in at least one affordable housing type disappearing and thereby considerably reducing the supply of affordable housing stock.



Gail Hunt

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28/8/2021



Our reference: InfoStore

Contact: Natalie White

Telephone: 4732 7833

14 September 2021

Department of Planning, Industry & Environment  
{Sent by – Online submission}

**Draft Submission- Exhibition of proposed State Environmental Planning Policy – Housing 2021 (Housing SEPP)**

I refer to the proposed State Environmental Planning Policy – Housing 2021 (Housing SEPP) that was exhibited on the NSW Planning portal website between 31 July 2021 – 29 August 2021. Please find attached our submission which was endorsed by Council at its Ordinary meeting of {insert date after endorsement}

Penrith has a growing and ageing population, and in effect the housing needs and preferences continue to change. It is therefore important we recognise the need for dwellings that are affordable, well-designed and located in suitable locations that provide adequate levels of amenity and are close to infrastructure and services for our community. Council has strongly advocated for changes to be made to state policy around affordable housing to ensure better planning outcomes and targeted controls are implemented to mitigate impacts to neighbourhood amenity and local character.

As you would then appreciate, it is crucial that we engage our Council in state policy matters that may have significant impacts on the Penrith existing and growing community. However, due to the short exhibition timeframe provided for the draft SEPP, Council officers were unable to report the matter to a Council meeting for an endorsed submission. We wrote to DPIE to seek an extension on the exhibition timeframe in order to meet our Council meeting and reporting timeframes however as you may be aware, this request was declined.

We understand DPIE's intention to finalise the draft SEPP by October meant that this request couldn't be accommodated however we are disappointed with the timeframe provided for the exhibition given that there were changes in the current draft that were not previously exhibited in the Explanation of Intended Effect last year, particularly in relation to the changes in permissibility of co-living housing.

We acknowledge that the recently exhibited draft Housing SEPP has addressed many of the concerns raised in Council's previous submission including:

- Unsuitability of boarding houses in low density zones.
- Local character considerations for development.

- Affordability of boarding houses in perpetuity.
- Limited social impact assessment of boarding house developments.

However, there is still significant concern that the draft Housing SEPP does not go far enough in relation to co-living and boarding houses in preventing clustering or improving parking requirements. Also, co-living being permitted in some areas do not provide the required adequate infrastructure to support these land uses. These provisions are still not adequate for the Penrith Local Government Area in respect to Boarding Houses and Co-living Development.

A summary of our attached submission is provided below:

#### ***Boarding Houses***

- We request that DPIE considers including controls within the Housing SEPP to prevent the clustering of Boarding Houses.
- We also recommend specific controls to ensure the ongoing management of these developments by CHP's or reference to controls within our DCP including requirements to ensure safety and security provisions are being met.
- We do not support the parking rate for Boarding houses. Council has previously objected to this provision. We also request that the parking aligns with our DCP requirements where it is specified whether a stacked or covered space is required.
- We request that Boarding Houses constructed on land in R2 zones by LAHC are only permissible on land that is currently owned by LAHC.

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

- We do not support Co-living housing being permitted in zones where shop-top housing is permitted under our Penrith LEP, (with the exception of B4 zones), as we do not have the infrastructure to support the clustering of these developments in certain suburbs where these zones apply, particularly in the B1 and B2 zones. We request to defer from this clause or alternatively we suggest that a clause is included advising that controls set for multi dwelling housing in the relevant planning instrument apply to this development.
- We request additional controls to minimise the clustering of Co-Living housing.
- We do not support the parking rate for Co-living housing. Council has previously objected to this provision. We also request that the parking aligns with our DCP requirements where it is specified whether a stacked or covered space is required.

#### ***Seniors Housing***

- We appreciate that DPIE continues to limit the application of Seniors Housing provisions to ensure the original intent of protecting the values of the MRA.
- The SEPP acknowledges that Seniors Housing can be permitted under another environmental planning instrument to enable its



permissibility.

- Therefore, Council will continue to permit Seniors Housing in the RU5 Village zone under Penrith LEP, where supporting social infrastructure, community facilities, and transport is available.
- We do not support the proposed provisions for different parking rates between private developments and developments on LAHC land and request that parking rates are consistent for both LAHC and private dwellings.

#### **Rent to buy**

- We also understand that Boarding Houses are now to remain affordable in perpetuity. Although this will assist those preparing to rent, there are no controls proposed to increase affordable housing for purchasers that are entering into the property market for the first time or provisions for a pathway to ownership. The proposed Housing SEPP does not go far enough to consider or include mechanisms to increase affordable housing for purchasers.

#### **Early Engagement**

- It is noted that the proposed amendments to group home controls will not proceed at this time. Council would appreciate early engagement ahead of exhibition of any changes to the group homes provisions.

We appreciate the opportunity to provide feedback in relation to this matter. If you have any further questions on Council's draft submission, please contact Natalie Stanowski by email at [natalie.stanowski@penrith.city](mailto:natalie.stanowski@penrith.city) or by phone on 4732 7403.

Yours sincerely

Natasha Borgia  
**City Planning Manager**

Proposed change	Consistent with Council position	Comments
<b>Boarding Houses</b>		
<ul style="list-style-type: none"> <li>Boarding Houses now must be managed by a Community Housing Provider (CHP).</li> </ul>	Yes	<ul style="list-style-type: none"> <li>This change is supported.</li> <li>We also recommend specific controls to ensure the ongoing management of these developments by CHP's or reference to controls within our DCP including requirements to ensure safety and security provisions are being met.</li> </ul>
<ul style="list-style-type: none"> <li>Boarding Houses are now required to remain affordable in perpetuity.</li> </ul>	Yes	<ul style="list-style-type: none"> <li>This change is supported.</li> </ul>
<ul style="list-style-type: none"> <li>Boarding Houses will not be mandated in R2 Zones</li> </ul>	Yes	<ul style="list-style-type: none"> <li>This change is supported.</li> <li>However, we also advocate for strengthened locational requirements to avoid any potential clustering, particularly in R3 zones and in addition propose a dwelling limit is also applied to development in R3 zones where RFBs are not permitted.</li> </ul>
<ul style="list-style-type: none"> <li>Land and Housing Corporation (LAHC) permitted to construct boarding houses in R2 zones on government owned land.</li> <li>Boarding houses in R2 zone will not have more than 12 boarding rooms.</li> </ul>	Neutral	<ul style="list-style-type: none"> <li>We do not strongly object to this provision, as long as the developments are in line with the bulk and scale of surrounding dwellings and are on land that is currently owned by LAHC.</li> <li>We also advocate for strengthened locational requirements to avoid potential clustering of boarding houses occurring through the development by LAHC.</li> </ul>
<ul style="list-style-type: none"> <li>The design of the development must be compatible with the character of the local area</li> </ul>	Yes	<ul style="list-style-type: none"> <li>This is supported.</li> </ul>
<ul style="list-style-type: none"> <li>A bonus Floor Space Ratio (FSR) of 25% will be permitted for boarding houses in a zone where Residential Flat Buildings (RFB's) are permitted</li> </ul>	Yes	<ul style="list-style-type: none"> <li>This is supported.</li> <li>The initial EIE proposed a bonus 20% FSR.</li> <li>Under Penrith LEP 2010, RFB's are only permitted in R4 zones under our LEP, which is an appropriate location for higher densities due to availability of supporting infrastructure.</li> </ul>
<ul style="list-style-type: none"> <li>Parking: For development carried out by a LAHC provider:               <ul style="list-style-type: none"> <li>At least 0.2 spaces for each boarding room in an accessible area or</li> <li>At least 0.4 spaces for each boarding room</li> </ul> </li> </ul>	No	<ul style="list-style-type: none"> <li>We do not support the parking rate for boarding houses. Council has previously objected to this provision. We also request that the parking aligns with our DCP requirements where we note whether a stacked or covered space is required.</li> </ul>



Proposed change	Consistent with Council position	Comments
<ul style="list-style-type: none"> <li>For development not carried out by a LAHC provider: <ul style="list-style-type: none"> <li>at least 0.5 spaces for each boarding room</li> </ul> </li> </ul>		
<p><b>Setbacks:</b> the front, side and rear setbacks -</p> <ul style="list-style-type: none"> <li><b>R2 or R3 zones</b> -the minimum setback requirements for multi dwelling housing under a relevant planning instrument,</li> <li><b>R4 zones</b>—the minimum setback requirements for residential flat buildings under a relevant planning instrument</li> </ul>	Yes	<ul style="list-style-type: none"> <li>This change is supported as it requires consistency with Councils DCP.</li> </ul>
<b>Co-living Housing</b>		
<ul style="list-style-type: none"> <li>Privately owned boarding houses are now separately defined as 'Co-living' developments</li> </ul>	Yes	<ul style="list-style-type: none"> <li>This change is supported, as it provides clarification between 'affordable' boarding houses and those for private market rent.</li> </ul>
<ul style="list-style-type: none"> <li>Co-living is permissible where RFBs or Shop-top housing is permitted under an EPI, other than land zoned R2.</li> </ul>	No	<ul style="list-style-type: none"> <li>Penrith LEP 2010 permits shop top housing in R1, R3, R4, B1, B2, B4 and RU5 zones.</li> <li>We do not support co-living housing being permitted in the above zones where shop-top housing is permitted, with the exception of B4 zones, as we do not have the infrastructure to support the clustering of these developments in certain suburbs where these zones apply, particularly in the B1 and B2 zones.</li> <li>We request to defer from this clause or alternatively we suggest that a clause is included advising that controls set for multi dwelling housing in the relevant planning instrument apply to this development.</li> </ul>
<ul style="list-style-type: none"> <li>An FSR bonus of 10% will be permitted on non-heritage land and in a zone where RFBs are permitted.</li> </ul>	Yes	<ul style="list-style-type: none"> <li>This change is supported, as co- living development is permitted in appropriate higher density locations (R4 zones), with high accessibility to services and facilities including train stations and has limited impacts on amenity.</li> </ul>
<ul style="list-style-type: none"> <li>Parking requirements:</li> <li>For development carried out within the Greater Sydney</li> </ul>	No	<ul style="list-style-type: none"> <li>We do not support the parking rate for co-living development.</li> <li>Council has previously raised concerns with this in our initial submission to the EIE last year. We also request that the parking aligns with our DCP</li> </ul>

Proposed change	Consistent with Council position	Comments
region—the lesser of— <ul style="list-style-type: none"> <li>the maximum number of parking spaces permitted under a relevant planning instrument, or</li> <li>0.5 parking space for each private room</li> </ul>		requirements where we note whether a stacked or covered space is required.
<ul style="list-style-type: none"> <li>the design of the building will be compatible with the character of the local area</li> </ul>	Yes	<ul style="list-style-type: none"> <li>This is supported.</li> <li>We will be seeking to introduce specific character controls for certain R3 and R4 locations through our comprehensive DCP Review.</li> </ul>
<b>Student Housing</b>		
<ul style="list-style-type: none"> <li>Student Housing is no longer proposed as a separate land use. Instead, on campus student accommodation will continue to be facilitated through the Education SEPP and off-campus accommodation can be facilitated through the proposed 'Co-living' housing provisions.</li> </ul>	Yes	<ul style="list-style-type: none"> <li>This change is supported.</li> </ul>
<b>Group Homes</b>		
Proposed amendments to group home controls will not proceed at this time. These include: <ul style="list-style-type: none"> <li>Introducing CDC's being issued to private developers for group homes</li> <li>CDC's being issued for group homes in R2 zones</li> <li>Group homes being permissible in rural areas</li> </ul> Existing Group Home provisions will now be transferred in their current form to the proposed Housing SEPP.	Yes	<ul style="list-style-type: none"> <li>We raised concerns about these amendments in our initial submission and therefore support this decision for the current provisions to remain.</li> <li>We will undertake a further review of these controls once DPIE re-exhibit them and we can provide a submission.</li> <li>We will seek early engagement on the amendments.</li> </ul>
<b>Secondary Dwellings in Rural zones</b>		
<ul style="list-style-type: none"> <li>A new optional clause 5.5 of the Standard Instrument</li> </ul>	Yes	<ul style="list-style-type: none"> <li>This change is supported.</li> </ul>

Proposed change	Consistent with Council position	Comments
<p>(Local Environmental Plans) Order 2006 has been introduced for secondary dwellings on land in a rural zone. Schedule 8 of the of the public consultation draft will reinstate the desired controls for secondary dwellings in rural zones and is supported.</p>		
<b>Seniors Housing</b>		
<ul style="list-style-type: none"> <li>Land in the Metropolitan Rural Area (MRA) is excluded from the application of the SEPP (except residential and business zones).</li> </ul>	No	<ul style="list-style-type: none"> <li>We appreciate that DPIE continues to limit the application of Seniors Housing provisions to ensure the original intent of protecting the values of the MRA.</li> <li>The SEPP acknowledges that Seniors Housing can be permitted under another environmental planning instrument to enable its permissibility.</li> <li>Therefore, Council will continue to permit Seniors Housing in the RU5 Village zone under Penrith LEP, where supporting social infrastructure, community facilities, and transport is available.</li> <li>Seniors Housing in the RU5 can not rely on the Housing SEPP for its provisions and therefore Council will need to refine its controls to facilitate this development.</li> </ul>
<p>Different standards will apply between private developments and developments on LAHC land including:</p> <ul style="list-style-type: none"> <li>lowering of parking rates for private dwellings.</li> <li>Any lift exemptions that result in inadequate accessibility to all housing in the community.</li> </ul>	No	<ul style="list-style-type: none"> <li>We do not support this provision and request that parking rates are consistent for both LAHC and private dwellings.</li> </ul>

Dear Sir/Madam,

Thank you for the opportunity to provide feedback on the proposed Housing SEPP.

We have recently completed a seniors housing development in Rose Bay comprising 11 Independent Living Units (ILU's) and write to share our experiences and outline a significant issue with the draft SEPP.

Whilst the draft SEPP has provided clarity on a number of issues in relation to seniors housing controls, Clause 76(1)(d) limits seniors housing development in R2 zones to residential care facilities only. This will significantly impact the supply/delivery of much needed seniors housing in many Local Government Areas (LGAs).

The Woollahra and Waverley LGA's have identified a shortage of seniors in these catchments being an increasingly worrying issue given the ageing population. In response, Waverley Council's Housing Strategy prioritises the need to address the shortage of seniors housing.

It is understood prohibiting ILU's in R2 zones and the FSR bonus is to incentivise the development of vertical villages. The intention is to increase seniors' developments in centres with higher density land uses to increase people's options to 'age in place'.

The intent for people to age in place is the right strategy however, prohibiting ILU's in R2 zones will have the opposite effect. There appears to be a lack of consideration given to the:

- needs of the downsizers;
- commercial viability for developers, and
- existing planning controls that ensure ILU developments in R2 zones are appropriate.

#### Needs of the Downsizers

It appears consultation with seniors themselves, particularly downsizers, is desperately needed to further inform the draft SEPP.

All of the buyers in our development have downsized from the local area. Each buyer mentioned the decision to downsize was a very difficult one that had taken years to make. Moving from their large family home into an apartment is daunting and the common theme was that to avoid busy areas where vertical villages are located.

The majority of downsizers do not need an aged care facility and want to retain their independence. ILU's offer that independent lifestyle with the added benefits of accessibility.

#### Commercial Viability

The FSR bonus hasn't adequately considered the economic viability of development in the higher density zones. Firstly, the availability of suitable sites in LGA's similar to Woollahra and Waverley is extremely low. Secondly, the impact of seniors housing on sale price is not properly understood, namely:

- it is significantly more difficult to obtain funding for the construction of seniors housing development;
- potential purchasers are hesitant in purchasing a property with a positive covenant restricting the age of the occupants as there is uncertainty of the future sale of the property if they need to transition to a care facility or if their children were to inherit the property;
- the additional cost of building to ensure there are no steps throughout the site and the additional floor area needed to ensure each unit complies with the access requirements; and
- the significantly higher price of land in these higher density zones.

At the time of writing, there are only two new seniors housing developments in the Woollahra LGA. There were ILU's in Vaucluse and Rose Bay (images shown further below). The other seniors housing option is a large aged care facility in Vaucluse.

There is already a shortage of seniors housing in R2 zones due to the availability of suitable sites. Limiting seniors housing to higher density zones will only exacerbate the problem.

#### Development Assessment

The existing planning controls are sufficient to ensure any senior housing development in a R2 zone would be keeping in character of the surrounding area. Our development was subject to a detailed urban design review to ensure the built form would not result in unacceptable impacts upon the amenity of nearby properties and would compliment with the streetscape character.

As such, the development complies with Council's building height and building envelope controls.

Upon completion, we received positive feedback from the local community that were pleased with the final product and how it was able to fit into the streetscape. The images below are of the two recently completed ILU developments in the Woollahra LGA. The envelope of these projects are characteristic of the 2-3 storey built form character in the area.







The below image is an ILU development that is currently before the Land and Environment Court. Similarly, it was subject to a design review panel. Following consideration of the panel and Council's feedback, the design was amended to ensure it contributes positively to the streetscape character. The proposal complies with Council's building height, building setback and landscaped area controls.



These projects are prime examples of how ILU developments can address the shortage of seniors housing whilst keeping in character of the surrounding area.

We strongly urge the Department to review the draft SEPP and amend Clause 76(1)(d) to allow all forms of seniors housing development in R2 zones.

Regards,

Mr. Cheong

Changes proposed by the NSW Government to affordable housing SEPPs seem to have overlooked one significant community.

This community is the Co-living community.

---

I have been living in co-living shared housing since my divorce in 2001.

In those 20 years I have never found affordable housing and have had to live in shared housing instead.

There were no New Generation Boarding Houses (NGBH) twenty years ago and existing boarding houses were of a type of residence I would not care to live in.

Recently I have seen a number of NGBHs but they had no vacancy, insufficient parking and insufficient storage. And they weren't exactly affordable. Which is what I understand was the Government's intention in providing for them in the first place.

I prefer to live in a quiet residential area, not a high-rise area, not a commercial area, not a mixed-use business area and not in an industrial area.

There are many other people who like to live in residential areas as well. They include people affected by divorce, by loss of a job, by low income and so on.

I have come across many men affected this way, by divorce or loss of their job. I understand there are also many women who are similarly affected, particularly those over 50 who have little savings and limited superannuation.

Another group who prefer co-living situations are frontline medical staff and other lower-income workers who prefer to live in low-density residential areas close to their work.

A further group consists of single people starting a first job, or changing their work location. Similarly, young couples starting out, before they decide to have a family. Cost-effective co-living accommodation allows singles and couples to save, especially for their own home.

Yet another group are older homeowners or renters who want to live independently in an environment where they can enjoy the company of others in an affordable residence.

If the proposed consolidated NSW SEPP is supposed to deliver diverse and affordable housing, in its present form it does not appear to achieve that end.

In its present form, the proposed SEPP will force many people into non-residential situations such as apartments, build-to-rent facilities, and other types of accommodation outside traditional residential R2 areas.



People struggling with affordability need accommodation better than a rusty caravan and cheaper than the current average cost of a unit, apartment or traditional house.

I would suggest that the Government include a provision in the proposed SEPP allowing for developments smaller than typical 12-24+ room new generation boarding houses, high-rise apartments or even higher-rise build-to-rent complexes.

I would further suggest that the SEPP provide for smaller affordable co-living situations, for example, houses with 3-5 bedrooms, with a maximum of say 6 people in a co-living model.

This approach should be provided for in the R2 low density zone.

The SEPP should allow for a properly qualified certifier to inspect and approve such a style of co-living, in the form of a complying development.

There are a number of benefits to this approach.

1. It will not cost the Government anything
2. It will release taxpayer dollars for desperately needed social housing
3. It will not impact the surrounding neighbourhood
4. It will facilitate better social, community and environmental outcomes
5. It will provide increased income for mum and dad investors thereby lessening the financial burden on the State and Commonwealth Governments

Yours sincerely,

Peter Bradshaw JP  
JP No: 112122

Wahroonga NSW

---

**From:** noreply@feedback.planningportal.nsw.gov.au on behalf of Planning Portal -  
Department of Planning and Environment  
<noreply@feedback.planningportal.nsw.gov.au>  
**Sent:** Tuesday, 24 August 2021 4:19 PM  
**To:** DPE PS Housing Policy Mailbox  
**Subject:** Webform submission from: Proposed Housing SEPP

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

Submitted on Tue, 24/08/2021 - 16:05

Submitted by: Anonymous

Submitted values are:

**Submission Type**

I am making a personal submission

## Name

**First name**

PETER

**Last name**

BRADSHAW

**Organisation name**

GLENGARRY CONSULTING PTY LTD

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

No

## Info

**Email**

[pjbradshaw@bigpond.com](mailto:pjbradshaw@bigpond.com)

**Suburb**

WAHROONGA

**Postcode**

2076

**Submission**

Please see uploaded file.

Peter Bradshaw

**I agree to the above statement**

Yes

[REDACTED]

---

**From:** noreply@feedback.planningportal.nsw.gov.au on behalf of Planning Portal - Department of Planning and Environment  
<noreply@feedback.planningportal.nsw.gov.au>  
**Sent:** Sunday, 29 August 2021 6:18 PM  
**To:** DPE PS Housing Policy Mailbox  
**Subject:** Webform submission from: Proposed Housing SEPP  
**Attachments:** [REDACTED]

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

Submitted on Sun, 29/08/2021 - 18:17

Submitted by: Anonymous

Submitted values are:

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

## Name

**First name**

[REDACTED]

**Last name**

[REDACTED]

**Organisation name**

Personal Submission

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

Yes

## Info

**Email**

[REDACTED]

**Suburb**

[REDACTED]

**Postcode**

[REDACTED]

**Submission file**

[REDACTED]

**Submission**

[REDACTED]

[REDACTED]

Re: Submission on the draft State Environmental Planning Policy (Housing) 2021

I am writing to you to request the removal of clause 8.38 of the draft State Environmental Planning Policy (Housing) 2021.

Page 4 of the document titled "LAHC, Part 3 of ARHSEPP and Secondary Dwelling amendments – Frequently asked questions" on the Department of Planning, Industry and Environment website outlines a process where Council is required to lodge a Planning Proposal in order to introduce size limitations to Secondary Dwellings on rural land. After reading the above document, I felt reassured that Council would be required to lodge a Planning Proposal in order to introduce size restrictions to Secondary Dwellings on rural land. Based on the FAQ document. It appears the Department of Planning, Industry and Environment are now wanting to change the process from that outlined on their website.

I point out that draft clause 8.38 incorrectly states "8.38 Pittwater Local Environmental Plan 2019", instead of "8.38 Pittwater Local Environmental Plan 2014".

I request that due to the misinformation published on the Department of Planning, Industry and Environment website, combined with the typographical error in the draft State Environmental Planning Policy (Housing) 2021, that the proposed changes to the Pittwater LEP are omitted from the final State Environmental Planning Policy (Housing) 2021. This will ensure the planning proposal process as outlined on the Department of Planning, Industry and Environment website will be followed and that a proper public consultation process will be undertaken, should a change be proposed.

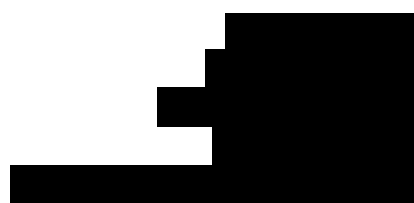
Yours faithfully,

With regards,

[REDACTED]

**I agree to the above statement**

Yes



**Re: Submission on the draft State Environmental Planning Policy (Housing) 2021**

I am writing to you to request the removal of clause 8.38 of the draft State Environmental Planning Policy (Housing) 2021.

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Yours faithfully,

With regards,



# TOTTO

## Housing SEPP

TOTTO Living – Feedback to the  
Public Consultation Draft

State Environmental Planning  
Policy (Housing) 2021

August 2021

## **Overview**

It is now apparent to us that the proposed changes to the planning framework for co-living must be considered in the broader regulatory framework or the sub sector will be unviable.

We have now considered the following in this submission:

- State Environmental Planning Policy (Housing) 2021
- Standard Instruments
- Proposed Shared Accommodation Act

## **Pi Capital Previous Engagement**

For context we provide previous Pi Capital submissions as part of this process in September 2020 and May 2021 (see submissions [here](#) and [here](#)).



## State Environmental Planning Policy (Housing) 2021

### **1. Applicable Zones (R2 ok, why not B Zones?)**

TOTTO Living are looking to deliver facilities from 50 rooms through 250 rooms and are therefore in support of the removal of the permissibility of Co-living from the R2 zones.

We think this will also achieve one of the main objectives of this process which is to remove this land use out of the suburbs and ensure its focused on higher density, higher connectivity, and higher amenity areas.

This ultimately will mean that Co-living is competing for land with BTS and BTR residential therefore its imperative that some of the other planning relaxations driving enhance GFA on the site are available to this usage.

In addition, we ask that col-living to be considered on B4 and B5 zones as the use integrates well with other uses such as retail and office (co-working) and considers its more fluid and commercial operations contemplated in B5 zones.

### **2. Setbacks (can you achieve the Bonus?)**

As per the above if Co-living must meet with the local requirements around setbacks, we are fearful that any FSR bonus will not be achievable. We therefore request that this is relaxed.

### **3. Density Bonus (compete against BTS?)**

As per the above commentary the Density bonus is required to compete with BTR and BTS land users see Figure 1 overleaf which has been refreshed from our previous submissions detailing the impact of the reduction of Bonus.

### **4. Parking (Overkill and Customers not using them)**

Our target customer rarely owns a car, this trend is expected to only increase as technology allows for ride sharing and car sharing. Furthermore, we are targeting well connected locations with rich amenity further reducing the need for parking.

Ultimately the requirement for parking will increase construction costs and provide upward pressure on rents.

We think that consideration must be given to public transport in the location and is overkill by a factor of 5.

### **5. Communal Open Space (Roof?)**

The communal open space requirement of 20% of site area will be difficult to achieve in higher density areas unless we are able to put this on the roof. We are seeking clarity as to if this will be possible.

## What the proposed Housing SEPP does to Coliving?

Below is an abbreviated hypothetical straight-line feasibility highlighting how it was difficult for coliving to compete with the traditional residential bid under the existing Boarding House regime already and how the proposed changes will make the sector unviable.

Please click [here](#) for the below working example in excel format.

Figure 1.

	Residential	Co-living (Boarding House)	Co-living (HDSEPP)
Site (sqm)	2,000	2,000	2,000
FSR	3.00	3.60	3.30
Potential Floor Space	6,000	7,200	6,600
Average Area (GFA) per Bed	50	30	30
No. of Beds	120	240	220
Rent pbpw	550	450	450
GST on income	nil	5.5%	
Outgoings Inc Services (post GST)	22.5%	35%	42%
<b>Income Fully let</b>	<b>2,659,800</b>	<b>3,449,628</b>	<b>2,985,840</b>
Cost per bed	225,000	130,000	143,000
Underground Car Park Per Bed	30,000		15,000
Professional Fees + Contingency	36,000	20,800	22,880
FF&E		11,000	11,000
Land per site / bed	175,000	87,500	95,455
Acquisition Costs (Stamp, legal, DD)	10,500	5,250	5,727
Financing Costs	29,790	15,629	17,741
Marketing and Agency	20,460		
Pre-opening Costs	nil	208	227
GST Margin Scheme	46,091	nil	nil
Construction Rate Psm	4,500	4,333	4,767
Total Costs	68,740,909	64,892,840	68,426,612
Total Cost /sqm	11,457	9,013	10,368
Land Bid Price	21,000,000	21,000,000	21,000,000
Yield on Cost	3.87%	5.32%	4.36%
Capitalised @ Net Yields of	3.25%	5.00%	5.00%
<b>Total Value</b>	<b>81,840,000</b>	<b>68,992,560</b>	<b>59,716,800</b>
Value psm GFA	13,640	9,582	9,048
Value psm NSA	16,047		
<b>Margin</b>	<b>19%</b>	<b>6%</b>	<b>-13%</b>

In an environment with volatile financing, leasing and market risk coupled with ever present construction and regulatory risk the margins generally for coliving remain tight. As can be seen above the constraints contemplated in the most recent iteration of the Housing SEPP makes coliving unviable going forward.

## Standard Instruments

Ensuring that the co-living remains commercial residential is integral to our ability to procure capital and deliver product in this asset class. To this end we have reviewed the definition of co-living to ensure it reflects the operational reality and considers Treasury's interpretation.

Our drafting of the definition is as follows:

Co-living housing means a building that—

- (a) is operated on a commercial basis or in business-like manner, and
- (b) has at least 6 private rooms, some or all of which may have private kitchen and bathroom facilities, and
- (c) is held out to the public as providing accommodation, and
- (d) provides occupants with a range of private room licence terms, including a genuine option to enter into a fixed term licence of a private room for at least 3 months, and
- (e) has shared facilities, such as a communal living room, bathroom, kitchen or laundry, maintained by a managing agent, who provides management services 24 hours a day, and
- (f) has central management (which may be located on-site or off-site) to accept reservations, allocate rooms, receive payments and perform or arrange additional services for residents, but does not include backpackers' accommodation, a boarding house, a group home, hotel or motel accommodation, seniors housing or a serviced apartment (notwithstanding the building may be similar to such premises).

Note— Co-living housing is a type of residential accommodation provided in commercially operated premises —see the definition of residential accommodation in this Dictionary.

Note- Paragraph (c) will be satisfied if an occupant who has been provided the option of a fixed term licence of at least 3 months opts for a licence of a shorter duration instead (or otherwise terminates a licence within the first 3 months).

## Short Term Accommodation Act

“Whether it’s a student or someone getting back on their feet, thousands of people stay and live-in shared accommodation each week, and it’s time the legislation caught up to reflect the reality of 2020.

“The changes will ensure stronger protections are in place for occupants in shared accommodation such as prescribing standard form agreements, minimum notice periods and requiring a property to be ‘fit for habitation’.”

The above quote has been taken from the NSW Governments statement on what they are looking when drafting the above legislation, it can be found [here](#).

We think this adequately describes the service that we provide and to considered that co living (short for communal living) is anything, but shared accommodation is quite perplexing.

Regardless, our advisers have pointed out that should co-living be pushed out of Boarding House Act and not be included in the Shared Accommodation Act then regardless of the definition of co-living we may default to the Residential Tenancies Act. This in turn will jeopardise the Tax status and ultimately the viability of the asset class.

We therefore request that Co-living rightfully be included within this act to ensure it retains its commercial residential status.

## Conclusion

Firstly, we have outlined proposed changes to Housing SEPP to ensure that Co-living can compete with tradition BTS and BTR residential product.

Secondly, we have provided suggestions around the definition of co-living in the standard instrument to ensure it can retain its commercial residential status and

Finally, we draw your attention to the fact that co-living needs to be included in the Shared Accommodation Act or it may fall under the Residential Tenancies Act and jeopardise is Commercial Residential Status.

We would welcome continued discussion with the DPIE and the Minister such that we can resolve this collectively and ensure that the citizens of NSW have co-living as a part of their housing choice into the future.

We remain at your disposal and thank you for allowing us to contribute to this process.

Kind regards,

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# Housing SEPP

**August 2021**

## Executive Summary

Picket & Co supports the SEPP's stated intention to provide more diverse and affordable housing and put a stop to developers using existing boarding house incentives to build developments that are not affordable.

We are however deeply concerned that the proposed manner of implementation of the SEPP would result in outcomes which run counter to these key objectives, and make low-cost co-living developments no longer feasible, resulting in a material loss of low-cost rental homes in NSW and millions of dollars of investment in the NSW economy.

**We strongly advocate that a new land definition for 'co-living' and changes to boarding houses should not be introduced until such time as there is co-ordination across the tenancy and taxation regimes at the State and Federal Government level.** Without this co-ordination, and as it currently stands, the new asset class of co-living is not economically viable and the fledgling industry will grind to a halt. This will result in the loss of thousands of low-cost rental homes in NSW, and continued investment in the NSW economy.

Backed by Mirvac Group, we believe Picket & Co are currently the only low-cost co-living provider working to implement an at-scale solution to low-cost rental accommodation by the private sector, with the potential to deliver a pipeline of **2,000 low-cost rentals for key workers by 2028**. We have welcomed the opportunity to work closely with DPIE to date and wish to express our continuing desire to continue to work with DPIE to design legislation for this bespoke and specialised asset class.

Key Issues and recommendations set out in this submission are summarised below:

Key Issues	Recommendations
<b># VIABILITY</b>	
1. The Housing SEPP <u>prevents the provision of low-cost co-living housing (priced at 10-15% below market) by private operators</u> . It leaves private operators with no alternative but to be 'at market'.	<ul style="list-style-type: none"> <li>• Introduce a definition for 'Low-Cost Co-living' being where: <i>"100% of co-living rooms are offered at 10% below the prevailing market rate for a comparable studio in a comparable location for at least 10 years as determined by an independent valuer"</i></li> <li>• Offer a density incentive to 'Low-Cost Co-living' providers (either an ongoing 20% FSR bonus, or exclusion of communal spaces from GFA)</li> <li>• Exclude 'low-cost co-living' from requirements under 'Part 3 retention of existing affordable rental'</li> <li>• Exclude 'low-cost co-living' providers from the obligation to make Affordable housing contributions under local government affordable housing planning schemes</li> </ul>
2. The proposed 10% density bonus is not economically viable for low-cost co-living, should not be time limited and should be applied wherever co-living is permissible	<ul style="list-style-type: none"> <li>• Introduce an ongoing density bonus of 20% (with <u>no</u> time limit) for low-cost co-living, supported with aligned building heights, and applicable in all zones where co-living is permissible (not just where shop top housing is permitted)</li> <li>OR</li> <li>• Remove internal communal space from GFA</li> </ul>
3. Open Communal Space requirements are excessive and not viable for operators	<ul style="list-style-type: none"> <li>• Reduce Communal Open Space (COS) requirement to 10% and include rooftop and balcony areas in the definition of COS.</li> <li>OR</li> </ul>

Key Issues	Recommendations
	<ul style="list-style-type: none"> <li>Introduce a Total Communal Space requirement eg 15% of space must be Total Communal Space</li> </ul>
<b># INTER-RELATIONSHIP WITH OTHER LEGISLATION</b>	
4. If co-living falls under the Residential Tenancies Act there will be unintended impacts around taxation treatment (GST and Income tax) which will devastate the investment proposition and stunt investment in the NSW economy	<ul style="list-style-type: none"> <li>Defer introduction of 'co-living' as a new land term for planning until such time as issues have been addressed in tenancy and taxation legislation at the State and Federal level. The changes to other legislation that are required include: <ul style="list-style-type: none"> <li>Ensuring that co-living continues to be captured by the (future) Shared Accommodation Act (or in the interim the Boarding House Act) and <b>not</b> the Residential Tenancies Act</li> </ul> </li> </ul>
5. If co-living falls under the Residential Tenancies Act, the typical characteristics of a co-living product cannot be offered.	<ul style="list-style-type: none"> <li>Include co-living (including self-contained accommodation) in the new Shared Accommodation Act</li> <li><b>AND</b></li> <li>Carve co-living out of the Residential Tenancies Act</li> </ul>
6. There is no land tax concession available for co-living	<ul style="list-style-type: none"> <li>Grant co-living a land tax concession – with the concession available not just for leases under the Residential Tenancies Act but also for agreements under the Boarding House Act or (future) Shared Accommodation Act</li> </ul>
<b># DELIVERY</b>	
7. Zoning permissibility is greatly reduced	<ul style="list-style-type: none"> <li>Ensure co-living can operate in all B zones including B1, B2 and B4</li> </ul>
8. The Housing SEPP defers to local planning instruments	<ul style="list-style-type: none"> <li>Rather than deferring to local planning instruments the SEPP should take clear positions in relation to matters such as: Affordability contributions, Landscaping, Minimum lot sizes, setbacks, and parking</li> </ul>
9. Land Use definition for 'co-living' includes a 3 month minimum stay	<ul style="list-style-type: none"> <li>Remove the 3 month minimum stay which does not reflect customer preferences</li> </ul>
10. There is a lack of clarity around Savings and Transition clauses	<ul style="list-style-type: none"> <li>Include Savings and Transition clauses that allow for a 5+ year transition to the new SEPP to allow the industry to adapt</li> <li>Any boarding houses approved prior to SEPP gazettal of co-living provisions not be required to be operated by a CHP</li> </ul>

## 1.0 Introduction & Overview

### 1.1 About Picket & Co

Picket & Co is a Mirvac-backed venture with a mission to help young Australians and key workers achieve home ownership sooner through a low-cost co-living product.

Picket & Co's low-cost housing solution reinvents the traditional boarding house by providing high quality and well-designed studio apartment rentals, **offered at rents 10-15% below a comparable studio**, with shared communal spaces, a strong focus on community and low-impact sustainable living.

Picket & Co caters to key workers and young Australians who are **not eligible for social or affordable housing**, but are **unable to afford the private rental market**. The creation of an 'in between' low-cost housing option (10-15% below market) is essential to ensure key workers can live close to where they work and maintain the functioning of our cities.

Picket & Co low-cost rentals are currently made possible due to the density incentives and minimum room sizes currently available to boarding houses under the Affordable Rental Housing SEPP 2009 (ARHSEPP). The goal is to create a new asset class which can deliver up to 2,000 low-cost rental homes by 2028.

## 2.0 Key Threshold Issues and Recommendations

### # VIABILITY

The following key threshold issues must be addressed in order for low-cost co-living – priced at 10-15% below market - **to remain an economically viable proposition** for the private sector and attract significant investment in the NSW economy.

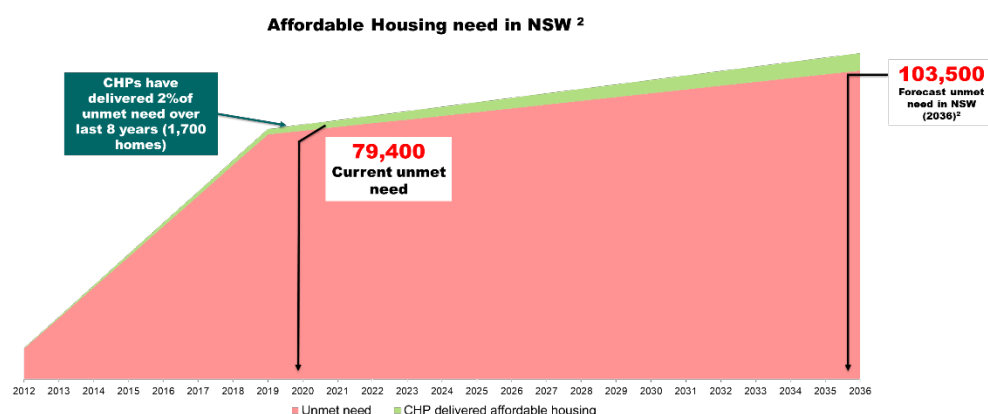
As it stands, the draft legislation will cripple a multi-billion dollar industry, and exclude the private sector from delivering a key part of the housing continuum. **Counter to the SEPP's stated objectives the legislation will, in fact, reduce the delivery of diverse and affordable housing.**

#### **Key Issue 2.1 The Housing SEPP prevents the provision of low-cost co-living housing (priced at 10-15% below market) by private operators, and leaves private operators no choice but to offer rents 'at market'**

- The Housing SEPP 'punishes' low-cost co-living operators and acts as a deterrent to the provision of low-cost co-living in 3 specific ways:
  1. By providing no additional density incentive for 'low-cost' rentals, meaning that low-cost co-living operators would not be competitive when buying land compared to at-market co-living operators and other competing uses
  2. Through the introduction of 'Part 3 retention of existing affordable rental housing' which, if applicable to co-living, will have the effect of lowering the valuation of a low-cost co-living property and limit exit options. **Penalising operators for exiting low-cost housing will have the perverse outcome of deterring any future operators from providing low-cost co-living in the first place.** Institutional investors have confirmed they would not proceed with significant investment in the sector if this clause applies to low-cost co-living. This measure further compounds issues with the delivery of low-cost rental product, on top of other incentives having been removed.
  3. By including no recognition of this form of low-cost housing or exemption for affordable housing contributions under LEPs and local affordable housing schemes for low-cost co-living
- Together the measures proposed in the draft SEPP would result in more costs to developers, which would need to be passed on to members in the form of higher rents in order to make sites financially feasible. This is the very opposite of the outcome desired by government, developers and customers which is to increase rental housing affordability
- It is vital that the private sector is allowed to play a role in the solution for low-cost housing. This is because Community Housing Providers (CHPs) alone cannot solve low-cost housing:
  - CHPs are 'capital constrained' which means they cannot attract the capital required to fund the housing that is required. For example, there is a shortfall of 80,000 affordable homes in NSW right now. Over the last 8 years CHPs have delivered 1,700 affordable homes which is just 2% of the need as shown



in the graph below. The private sector can help plug this shortfall. Picket & Co alone can deliver 2,000 low-cost rentals by 2028.



1 CHIA Delivering New Housing Supply 2017

2 City Futures "estimating needs and costs of social and affordable housing delivery March 2019. Includes Second Income Quartile (Q2) which is low income housing

- CHPs do not serve the entire housing continuum. For example, key workers are unlikely to qualify for affordable housing but many cannot afford to live near where they work.

## Recommendation

- Provide incentives for 'low-cost' co-living operators
  - Introduce a definition for 'low-cost co-living' as follows:  
*"Low-cost co-living is where 100% of co-living rooms offered at 10% below the prevailing market rate for a comparable studio in a comparable location for at least 10 years as determined by an independent valuer"*
  - Introduce incentives for 'low-cost co-living', for example
    - 20% FSR bonus OR
    - exclusion of Internal Common Spaces from GFA (there is precedent for this approach in the Seniors Living SEPP which allows services in basements to be excluded from GFA)

IF....	THEN	RECEIVE INCENTIVE	REGULATION	PENALTIES
<b>Low-Cost Co-Living</b>  Defined as: 100% of rooms provided at 10% below the prevailing market rate for a comparable studio in a comparable location for at least 10 years, as determined by an independent valuer.		<b>OPTION 1</b> 20% FSR bonus (to a maximum of 0.5 to 1)  <b>OPTION 2</b> Exclusion of Internal Common Space (ICS) from GFA where total ICS equates to a minimum of 20% of total GFA  <b>OPTION 3</b> Lower % FSR Uplift + At least 2 of the following: <ul style="list-style-type: none"> <li>• No minimum parking requirement</li> <li>• Bike parking not included in GFA</li> <li>• Exclude additional sqm for DDA units from GFA</li> <li>• Land Tax Concession</li> </ul>	<ul style="list-style-type: none"> <li>• Self-assessment annually to Dept of Fair Trading</li> <li>• Rents assessed by an independent valuer vs the prevailing market rate for a comparable studio in a comparable location for at least 10 years</li> <li>• Registered on title and condition of consent</li> <li>• Right of either party to appeal to NCAT</li> </ul>	<ul style="list-style-type: none"> <li>• Fines (Either a fixed amount or difference between market &amp; discounted rent)</li> <li>• Notice to cease operations</li> <li>• Repayment of land tax concessions</li> <li>• \$5k per reduced parking space</li> </ul>

- Exclude 'low-cost co-living' from requirements under 'Part 3 retention of existing affordable rental'
- Exclude 'low-cost co-living' from requirements for Affordable housing contributions under local government planning instruments

## Key Issue 2.2 The proposed 10% density bonus is not economically viable for low-cost co-living, is time limited, and is not applicable to all co-living zones

Financial modelling shows that low-cost co-living is financially viable if there is:

- an ongoing 20% FSR bonus, supported with aligned building heights  
**OR**
- internal communal space is not included in the calculation of GFA.

A 10% FSR bonus is not sufficient to make a co-living project financially feasible. Once this bonus is removed after 3 years the financial position further deteriorates, meaning that co-living projects will not proceed.

It is critical for DPIE to keep in mind that when developers assess a site, they look at the 'highest and best use' of that site. Without the 20% FSR bonus, **co-living will never be the highest and best use compared to alternative uses** like building residential build-to-sell apartments. So by reducing the FSR bonus from 20% to 10% and then to 0% in 3 years time, co-living projects will not be built and instead there will be more residential apartments built. This is counter to the objectives of the SEPP.

The below modelling shows how an FSR bonus of 10% or 0% is not financially viable.

*Indicative modelling:*

	No FSR Bonus	10% FSR Bonus	20% FSR Bonus	Communal spaces not included in GFA
Waterloo site	100% of Units at 12% Below Market	100% of Units at 12% Below Market	100% of Units at 12% Below Market	100% of Units at 12% Below Market
# Units	113	140	150	150
Market Rental for Studio	\$475	\$475	\$475	\$475
Average Discount	12%	12%	12%	12%
Discounted Rent	\$418	\$418	\$418	\$418
End Value	50,030,644	55,629,311	60,459,533	60,459,533
Land Acquisition Price	21,433,000	21,433,000	21,433,000	21,433,000
Construction	19,960,469	21,713,066	23,264,000	23,264,000
Other Development Costs	4,927,000	4,927,000	4,927,000	4,927,000
Contingency	798,419	868,523	930,560	930,560
Total Costs	47,118,888	48,941,589	50,554,560	50,554,560
IRR (Before Interest)	10.06%	13.57%	15.49%	15.49%
	BELOW HURDLE RATE <b>NOT VIABLE</b>	BELOW HURDLE RATE <b>NOT VIABLE</b>	MEETS HURDLE RATE <b>VIABLE</b>	MEETS HURDLE RATE <b>VIABLE</b>

**NOTE:**  
Project Hurdle Rate (IRR)  
= 15.25%

Further, the application of the 10% FSR bonus in the SEPP is only where 'residential flat buildings' are permitted. This means that in business zones where shop top housing is permitted, and therefore co-living will be permitted, but residential flat buildings are not permitted – the 10% FSR bonus would not be available. It is critical that any bonus be applied everywhere that co-living is permissible – including in business centres.

## Recommendation

- Offer specific incentives to **low-cost** co-living operators as per Recommendation 1  
**OR**
- Introduce an ongoing density bonus to 20% for all co-living operators, supported with aligned building heights and applicable to all zones where co-living is permitted  
**OR**
- Remove communal space from GFA for all co-living operators

## Key Issue 2.3 Open Communal Space requirements are excessive and not viable for operators

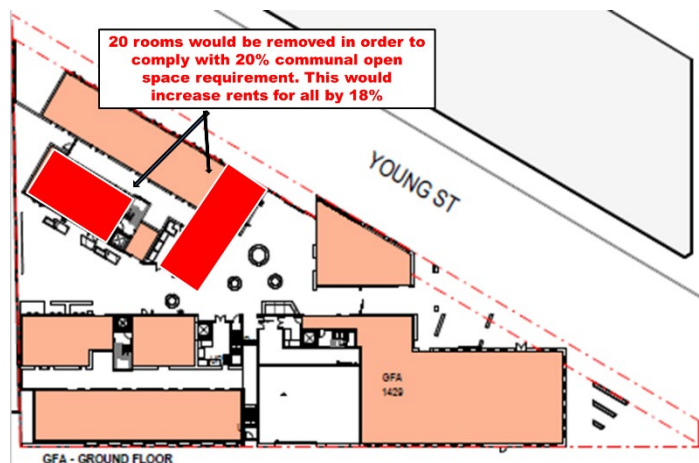
A requirement for 20% communal open space is excessive and may not be achievable on smaller inner-urban locations.

The below modelling demonstrates how communal space requirements of 15% and 20% are not viable

Waterloo site	Communal Open Space		
	Communal Open Space of 10%	Communal Open Space of 15%	Communal Open Space of 20%
# Units	150	138	130
Market Rental for Studio	\$475	\$475	\$475
Average Discount	12%	12%	12%
Discounted Rent	\$418	\$418	\$418
End Value	60,459,533	54,663,267	50,799,089
Land Acquisition Price	21,433,000	21,433,000	21,433,000
Construction	23,264,000	21,402,879	21,602,286
Other Development Costs	4,927,000	5,419,700	5,419,700
Contingency	930,560	941,727	950,501
Total Costs	50,554,560	49,197,306	49,405,486
IRR (Before Interest)	15.49%	8.67%	0.68%
	MEETS HURDLE RATE VIALE	BELOW HURDLE RATE NOT VIALE	BELOW HURDLE RATE NOT VIALE

**NOTE:**  
 Project Hurdle Rate (IRR) = 15.25%

For example, a requirement for 20% Open Communal Space would decrease the site yield by 13% and **increase rents by 18%** for residents.



### Recommendation

- Reduce Communal Open Space (COS) requirement to 10% and include rooftop and balcony areas in the definition of COS  
OR
- Introduce a Total Communal Space requirement e.g. 15% of space must be Total Communal Space

## # INTER-RELATIONSHIP WITH OTHER LEGISLATION

**We strongly advocate that a new land definition for ‘co-living’ and changes to boarding houses should not be introduced until such time as there is co-ordination across the tenancy and taxation regimes at the State and Federal Government level.**

An unintended consequence of the housing SEPP is its impact on adjacent legislation. Creation of a new land use in the **planning regime** leads to uncertainty in the **tenancy regime** and material economic impacts for the **taxation regime**, which will have a **material detrimental impact on investment** in NSW.

The result will be that co-living no longer ‘stacks up’ for developers and operators as the highest and best use for any site – leading to a loss of diverse, low-cost housing for a significant part of the housing market that has unmet housing needs.

**2.4 Key Issue - If co-living falls under the Residential Tenancies Act there will be unintended impacts around taxation treatment (GST and Income tax) which will devastate the investment proposition and stunt investment in the NSW economy.**

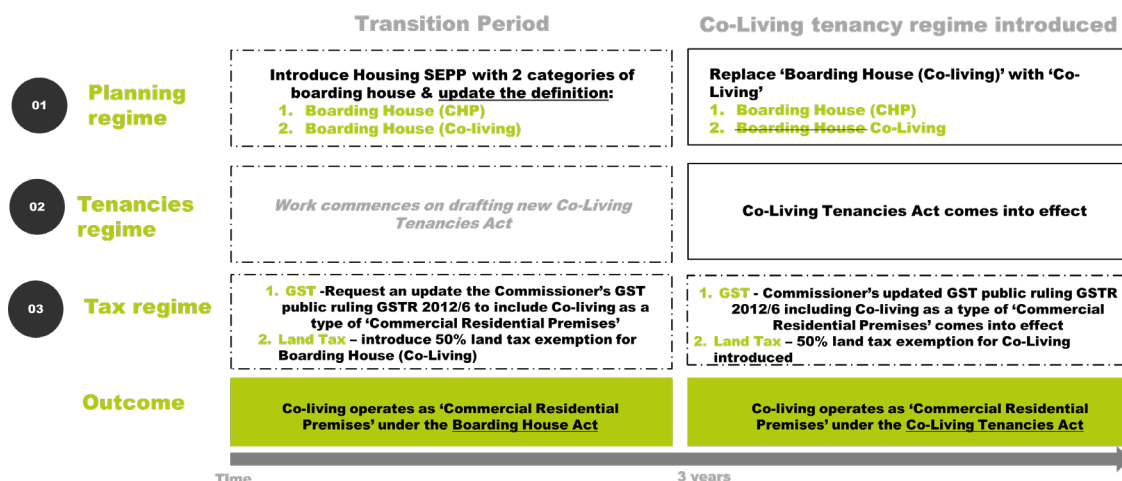
Tax treatments for particular asset classes are largely driven by the relevant tenancy regime that asset class falls under, as it is the tenancy regime that will specify key attributes and characteristics of the product. The creation of a new asset class of ‘co-living’ in the planning regime makes it unclear which tenancy regime co-living will fall into i.e. does co-living fall under the Boarding House Act or Residential Tenancies Act. If co-living falls under the Residential Tenancies Act there are significant unintended flow on effects through adjacent legislation, particularly in relation to GST (and status as ‘commercial residential’) and the ability for foreign investors to invest through a Managed Investment Trust.

### **Recommendation**

- Do not implement the new Housing SEPP until affected legislation is amended to support the use
- Ensure that co-living continues to be captured by the (future) Shared Accommodation Act (or in the interim the Boarding House Act) and **not** the Residential Tenancies Act. Specifically this requires the Shared Accommodation Act to capture self-contained co-living accommodation.

**OR**

- Create a Co-Living Tenancies Act which is separate to the Boarding House Act and Residential Tenancies Act and allows operators to offer a product that meets the definition of ‘commercial residential premises’ and offer typical characteristics of a co-living product. This is not possible under the Residential Tenancies Act
- If the State Government were to proceed with the introduction of the new ‘co-living’ land term before there was co-ordination with the tenancy and taxation regimes, a transition period would be required as outlined below



- During the transition period it is recommended that the definition of 'co-living' be amended, until such time as a Co-living Tenancies Act can come into effect

Co-living housing means a building or place that –

- Has at least 6 private rooms, some or all of which may have private kitchen and bathroom facilities, and
- Provides occupants, **boarders or lodgers** with a principal place of residence **for at least 3 months**, and
- Has shared facilities, such as a communal living room, bathroom, kitchen or laundry, maintained by a managing agent, who provides management services 24 hours a day

*May include boarding premises but does not include backpackers' accommodation, a boarding house, a group home, hotel or motel accommodation, seniors housing or a services apartment*

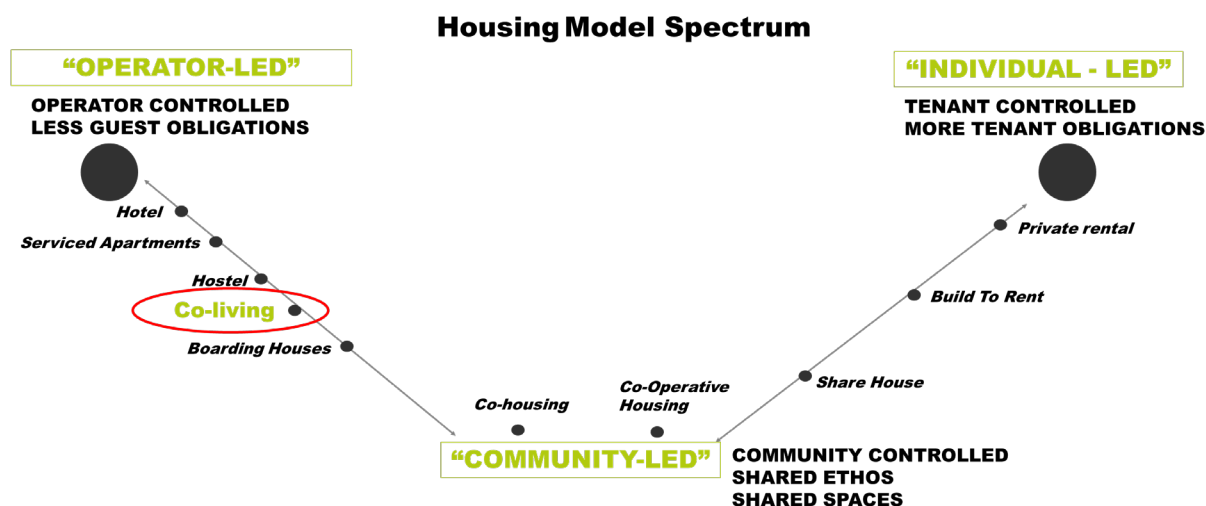
*Red* – recommended changes

## 2.5 Key Issue - If co-living falls under the Residential Tenancies Act (RTA), the typical characteristics of a co-living product cannot be offered.

Establishing an entirely new asset class for the purposes of planning requires not only consideration of planning standards, but also the flow on effects for that asset class regarding the **tenancy** regime. **Whilst we support the new land use terms, we strongly advocate that it not be implemented until all affected legislation is amended to support the use.**

Co-living is not currently defined for tenancy purposes and as such, it will default to the Residential Tenancy Act (RTA) which simply does not cater for the co-living product.

Co-living has characteristics that are fundamentally different to a typical residential tenancy. It is a separate and distinct offering in the housing spectrum, and takes lessons from collaborative housing models like co-housing and co-operative housing as well as operator-led models like hotels.



Co-living is an intentional community who share a common interest and ethos. The community also values the positive environmental impact of sharing resources and costs to reduce waste as well as the cost of living.

The product leverages density and scale with design and management standards tailored to deliver cost savings, which are passed on to members through low-cost rentals. Some examples of this include centralised services, simplified standard agreements and shared amenity including kitchens, living rooms, dining rooms and BBQ areas.

If co-living is captured under the RTA, fundamental changes will need to be made to the co-living product which will greatly dilute the product offering, reducing diversity of product type and flexibility for residents as well as increasing rents for members.

The impact of co-living being captured under the RTA would be:

1. **Inability of operator to enforce House Rules in order to ensure the health, safety and wellbeing of all members** – The RTA does not allow an operator to enforce House Rules in order to ensure the health, safety and wellbeing of members as well as enshrine the community ethos, shared intention and expected behaviours of members, without the intervention of the Tribunal.
2. **Inability to offer the typical attributes of a co-living product** – In order to comply with the requirements of the RTA, fundamental changes would need to be made to the co-living product which would prevent the product being offered as it is typically, reducing diversity of product type and flexibility for residents.
3. **Increased complexity translating into increased rents** - Added complexity in complying with the RTA would increase costs for operators which would be passed on to occupants in the form of higher rents. This is counter to the main aim of this housing type which is to pass on cost savings to members by leveraging centralised services to gain efficiencies and lower utility costs, simplified standard agreements which lower administration costs and shared amenity including kitchens, living rooms, dining rooms and BBQ areas which lower construction costs. These characteristics are fundamentally different to a typical residential tenancy, and more akin to a hotel-style offering.

The table below outlines the shortcomings of the RTA in supporting the delivery of co-living:

<b>Area</b>	<b>Requirement under the RTA</b>	<b>Issue created for co-living</b>
<b>Termination for serious damage or injury by tenant or other occupant</b>	A Landlord is required to apply to the Tribunal to terminate a lease if a tenant causes serious damage to the premises or causes injury to another person (Part 5, Division 2, 90 of RTA)	In an environment where people are sharing common spaces, landlords must be able to ensure the safety of all occupants and termination for serious damage or injury needs to be effected immediately, not by application to the Tribunal.  Under the Boarding House Act this is addressed by having House Rules that are enforceable.
<b>Standard form of agreement</b>	A standard lease document is required to be used. Some variations can be made (Part 2, Division 1, 15 (2) of RTA)	The standard form of agreement does not take into account a number of the features of co-living, for example, bundled charges for utilities and wi-fi. Additional terms will need to be added, making the agreement long and cumbersome, requiring additional resourcing which in turn increases costs.
<b>Types of payments</b>	Landlords may only receive from the tenant payments for a holding fee (once tenant application is approved), rent, a rental bond or an amount for registration of the agreement under the Real Property Act 1900 (RTA Part 3, Division 1, 23)	Fees for additional services are not allowed under the RTA and would need to be documented via a separate agreement. This makes the leasing process cumbersome and requires additional resourcing which increases costs.
<b>Tenant costs – utilities</b>	A tenant must pay all charges for the supply of electricity, gas (except bottled gas) or oil to the tenant if the premises are separately metered (RTA Part 3, Division 2, 38)	Typically, co-living operators do not separately meter rooms, similar to a hotel. Separate metering will change the building design and increase construction costs.
<b>Tenant costs - water</b>	A tenant must pay the water usage charges if the premises are separately metered (RTA Part 3, Division 2, 39)	Refer to comment above for utilities
<b>Quiet enjoyment</b>	A landlord must take all reasonable steps to ensure that neighbouring tenants do not interfere with the reasonable peace, comfort or privacy of the tenant. (RTA Part 3, Division 3, 50)	Co-living building design places communal spaces next to individual rooms and it is inevitable that noise from communal spaces will impact other occupants. It is intended that House Rules will be implemented requiring occupants to reduce noise levels between certain hours and limiting the use of other shared spaces however under the RTA, these House Rules cannot be enforced.
<b>Right to access premises</b>	Limited circumstances for the Landlord to enter the premises and in most instances, formal written notice is required. (RTA Part 3, Division 4, 55)	Picket & Co anticipates accessing rooms on a monthly basis to keep costs for maintenance and repairs down through a regular and ongoing maintenance program.
<b>Alterations to premises</b>	A landlord must not unreasonably withhold consent to a fixture, or to an alteration, addition or renovation that is of	Co-living rooms are offered fully furnished and just like staying in a hotel, occupants arrive with their personal belongings and nothing else. Alterations to the premises will

	a minor nature. (RTA Part 3, Division 6, 66)	not be allowed in order to reduce long term costs for repairs and maintenance.
<b>Sub-letting</b>	The landlord must not unreasonably withhold consent to a transfer of a tenancy or sub-letting of premises if the transfer results only in one or more tenants in addition to an original tenant or partial sub-letting of the premises (Part 4, 74)	Co-living's main value proposition is the curation of a strong community. Landlords need the ability to ensure that appropriate behaviours are exhibited within a community and require control over the selection of new occupants. Sub-letting removes the control of the landlord in this instance.

Furthermore, the following attribute of co-living are not supported by the Residential Tenancies Act

<b>'Cluster style' apartment</b>	The RTA does not contemplate 'cluster-style' co-living where a number of unrelated occupants have a private bedroom but share bathrooms and kitchens (similar to a 'share house')	The RTA does not contemplate 'cluster-style' apartments
<b>Additional occupant fee</b>	The RTA does not permit additional occupant fees	Co-living rooms commonly charge an additional occupant fee to lower costs for single occupants and cover electricity, internet and usage of common spaces for the additional occupant. This is not permitted under the Residential Tenancies Act
<b>Ability to choose a room</b>	RTAs relate to specific defined premises	Co-living members select a room type but not specific premises (similar to a hotel where a guest books a room type rather than a specific room)
<b>Tenure</b>	RTA applies only to tenancies > 3 months	Co-living typically has tenures ranging from short term (weeks) to long term (>3 months)

The RTA insufficiently caters for housing typologies which include sharing of common spaces. Further evidence of this sits within Part 7, Division 2, 138 Acceptable Behaviour Agreements (Social housing tenancy arrangements) where LAHC has been granted the power to request tenants enter into acceptable behaviour agreements which provide greater powers for LAHC to terminate agreements for inappropriate behaviour.

This is similar to the ability for Boarding House operators to have House Rules which ensure the appropriate conduct of residents and the health, safety and wellbeing of all occupants in the Boarding House.



## Recommendation

- Do not implement the new Housing SEPP until affected tenancy legislation is amended to support the use **AND**
- Include co-living in the new Shared Accommodation Act **AND**
- Exclude co-living from the Residential Tenancies Act

## 2.6 Key Issue - There is no land tax concession available for co-living

The current Build to Rent land tax concessions require tenancies to be subject to the Residential Tenancies Act. However as discussed above the typical characteristics of co-living cannot be offered under the Residential Tenancies Act, nor can the offering retain 'commercial residential status' if offered under the Residential Tenancies Act.

Co-living would also not qualify for land tax concessions for boarding houses, as the concessions only apply in limited circumstances based on defined rent thresholds. For example in 2020, in order to achieve the land tax concession a single room Boarding House was required to be offered at **\$267 per room** or below, whereas Picket & Co's room rate, even at 10-15% below a comparable studio in Waterloo, start at **\$379 per room per week**.

This leaves co-living in 'no man's land' in relation to land tax concessions, with no concession available.

## Recommendation

- Grant co-living a land tax concession – with the concession available not just for leases under the Residential Tenancies Act but also for agreements under the Boarding House Act and (future) Shared Accommodation Act

## # DELIVERY

## 2.7 Key Issue - Zoning permissibility is greatly reduced

Boarding houses are currently permitted in the following zones

- 'R1 General Residential' (R1);
- 'R2 Low Density Residential' (R2);
- 'R3 Medium Density Residential' (R3);
- 'R4 High Density Residential' (R4);
- 'B1 Neighbourhood Centre' (B1);
- 'B2 Local Centre' (B2); and
- 'B4 Mixed Use' (B4).

In contrast, co-living will only be permissible where residential flat buildings or shop top housing are permitted which will generally rule out most B1 and B2 zones. While we support the removal of co-living from R1 and R2 zones, the inability to develop co-living in B1 and B2 zones will greatly limit the ability to find viable sites and reduce site availability by at least

20%. Reducing permissibility will reduce the creation of liveable cities, preventing key workers from living close to where they live.

### **Recommendation**

- Make co-living permissible in all zones where Boarding Houses are permissible (including R3, R4, B1, B2 and B4) but not R1 and R2

## **2.8 Key Issue - The Housing SEPP defers to local planning instruments**

The purpose of a SEPP is to streamline the planning process and achieve key State Government objectives when those objectives are not being delivered by local planning instruments. The reason for a SEPP is to overcome 'localism' and provide certainty to the sector.

Unfortunately, there are numerous instances of the SEPP referring back to local planning instruments for guidance. This leads to a lack of clarity in the hierarchy of plans, confusion in the assessment process and most importantly, little incentive for this land use.

### **Recommendation**

- Rather than deferring to local planning instruments the SEPP should take clear positions in relation to matters such as:
  - Affordability contributions
  - Landscaping
  - Minimum lot sizes
  - Front, side and rear setbacks
  - Parking

## **2.9 Key Issue - Land Use definition for 'co-living' includes a 3 month minimum stay**

The requirement to provide a principal place of residence for a minimum of 3 months does not reflect customer preference and greatly reduces flexibility for members.

### **Recommendation**

- Remove the 3 month minimum stay

## 3.0 Other Issues and Recommendations

Item	Current ARH SEPP (Boarding House)	Proposed Housing SEPP	Picket & Co recommendation
Parking	0.5 spaces per room 0.2 spaces for social housing providers	The lesser of: - the maximum parking spaces required under local planning instrument; or - 0.5 parking spaces for each private room	Maximum controls (not minimum)  The target customer group has low instances of car ownership and as noted in the FAQ, co-living is typically built in highly connected areas close to public transport.
Minimum landscaping requirements	No requirement	For land in R2, R3 and R4, the minimum landscaping requirements under relevant planning instrument	Minimum landscaping requirements should be outlined in the SEPP and not deferred to local planning instruments
Maximum room size		There is a discrepancy in the drafting with no mention of the maximum room size in the SEPP, although 25sqm is referred to in the FAQ	Include 25sqm maximum room size for co-living in the SEPP
No co-living housing on ground floor street front	No requirement	For land zoned commercial, no part of the ground floor of the co-living housing that fronts a street will be used for residential purposes	Remove clause. In areas with existing high volume of ground floor commercial spaces or where significant vacant commercial stock already exists, adding further commercial stock compounds the issue and does not contribute to the vibrancy of the local area.
Local character test	Subjective criteria	Subjective criteria	The Local Character test should include more prescriptive criteria making it less subjective. This could be achieved by increasing the number of 'do not refuse' standards and requiring a 'local character checklist' to be completed, ensuring a consistent approach to the assessment of co-living applications across the state
Tenure	No requirement	3 months tenure	Examples of co-living offerings globally typically have both short and long term tenures to offer maximum flexibility for members
Cluster apartment typology	Co-living typically offers 'cluster' style apartments which are like mini co-living houses within a larger co-living facility. The cluster style apartment is actually a hybrid of a boarding room and standard apartment and as such consent authorities have	The Housing SEPP FAQs refer to minimum room sizes of 12sqm for an individual and 16sqm for a couple	Amend the Housing SEPP to cater for cluster apartment styles including: • minimum room size of 9sqm in the case of a co-living room to be used by a single (or couple) lodger  This is consistent with other jurisdictions in Australia and

	struggled to assess this form of accommodation.		<p>international standards for boarding rooms:</p> <ul style="list-style-type: none"> <li>•Melbourne, VIC Australia – 7.5sqm minimum requirement (1 occupant)</li> <li>•Brisbane, QLD Australia – 7.5sqm minimum requirement (1 occupant)</li> <li>•Darwin, Northern Territory Australia –7.5sqm minimum requirement (1 occupant)</li> <li>•United Kingdom –6.5sqm minimum room size (1 occupant)</li> <li>•New Zealand –6sqm minimum room size (1 occupant)</li> <li>•France –7sqm minimum room size (1 occupant)</li> <li>•The Netherlands –5sqm minimum room size (1 occupant)</li> </ul> <p>In order to ensure appropriate amenity is provided for occupants, we recommend offsetting the smaller room size by:</p> <ul style="list-style-type: none"> <li>•requiring a minimum communal space of 4sqm per person (spread throughout the building and accessible for all residents), plus an additional 2sqm for double lodgers</li> <li>•make cluster style accommodation subject to the rooms being rented to separate parties</li> </ul>
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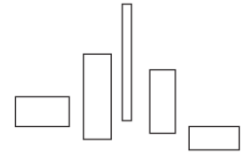
## Conclusion

Picket & Co welcomes the opportunity to provide feedback on the new Housing SEPP.

We urge the Department of Planning, Industry and Environment to consider our submission and implement our recommendations.

Should you require further information, please reach out to Christine Gilroy [christine.gilroy@picketandco.com.au](mailto:christine.gilroy@picketandco.com.au) or Stacey Agland [stacey.agland@picketandco.com.au](mailto:stacey.agland@picketandco.com.au) of Picket & Co.

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PIKES & VEREKERS  
LAWYERS

29 August 2021

The Relevant Officer  
Department of Planning, Industry & Environment  
GPO Box 39  
SYDNEY NSW 2001

Dear Sir/Madam

**SUBMISSION RE DRAFT HOUSING SEPP**  
**Our ref JRP:AWK:200114**

We write on behalf of Platino Properties Pty Ltd to provide a submission with respect to the draft State Environmental Planning Policy (Housing) 2021 (**the Draft SEPP**). Platino Properties have 40 years' experience in various forms of property development across Sydney, including seniors housing.

We refer specifically to cl 97 of the Draft SEPP which provides non-discretionary development standards for independent living units. We note that "the object of this section is to identify development standards for particular matters relating to development for the purposes of independent living units that, if complied with, prevent the consent authority from requiring more onerous standards for those matters". The clause is plainly intended to be beneficial and facultative. Unfortunately, the operation of the clause based on its current drafting will be contrary to its objective.

We see two problems arising:

1. A cl 4.6 request will be required to vary any of the non-discretionary standards set out in cl 97(2);
2. The non-discretionary standards will, in some circumstances, apply a more onerous requirement than what would otherwise apply under the applicable Local Environmental Plan (**LEP**).

Non-discretionary development standards are a form of development standard which must be applied in accordance with s 4.15(2) of the *Environmental Planning and Assessment Act 1979* (**the Act**). Pursuant to s 4.15(3) of the Act:

*(3) If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards—*

- (a) subsection (2) does not apply and the discretion of the consent authority under this section and section 4.16 is not limited as referred to in that subsection, and*
- (b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.*

To vary the non-discretionary development standards in cl 97(2) of the Draft SEPP, a provision which allows flexibility would need to be applied. There is no such provision within cl 97 itself or elsewhere in the Draft SEPP.

Pursuant to cl 4.6 of the *Standard Instrument LEP*:

- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating...*
- (4) Development consent must not be granted for development that contravenes a development standard unless...*

In the absence of a provision which allows flexibility in the Draft SEPP, a proponent for development consent would need to rely upon cl 4.6(2) of the applicable LEP for flexibility and would need to satisfy cl 4.6(3) and (4).

Considering the objective of cl 97 and its beneficial and facultative nature, it does not appear that the intention is to require a cl 4.6 request for variation of the standards listed in cl 97(2). In our submission that would be a very poor outcome which would add substantial cost and documentation to development applications.

Additional subclauses should be added to cl 97 to allow flexibility in the application of cl 97(2). We suggest similar wording to that used in cl 29(4) of the *State Environmental Planning Policy (Affordable Rental Housing) 2009* as follows:

- (3) A consent authority may consent to development to which this Division applies whether or not the development complies with the*

*standards set out in subclause (2) without the need to rely upon cl 4.6 of the applicable Local Environmental Plan.*

*(4) To avoid doubt, subclause (3) allows flexibility in the application of development standards and enables the granting of development consent if a development standard in subclause (2) is not complied with.*

We have added wording for abundant clarity that a clause 4.6 request is not required. The Land and Environment Court authorities on cl 29(4) of SEPP (ARH) have adopted differing views as to whether a cl 4.6 request is required (see *Parker Logan Property Pty Ltd v Inner West Council* [2018] NSWLEC 1339 at [30]-[47]).

Further, we have used the wording pursuant to s 4.15(3)(b) of the Act. Given non-discretionary development standards are a product of s4.15(2) of the Act, the provision which provides flexibility should clearly reflect or refer to s 4.15(3)(b).

In the alternative or in addition, we suggest that an independent clause be added to the Draft SEPP to allow for flexibility in the application of all non-discretionary development standards in the Draft SEPP.

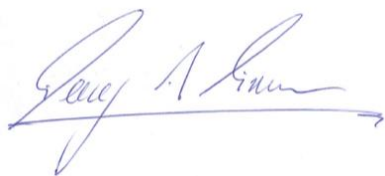
The second issue arises where the non-discretionary development standards are more onerous than the development standards under the applicable LEP. For example, cl 97(2)(a) imposes a height standard of 9m and 97(2)(c) imposes a FSR standard of 0.5:1. However, in many cases greater height and FSR will be available under the applicable LEP. Additional wording should be added to each of the non-discretionary development standards as follows (using (a) as an example):

(a) no building exceeds a height of 9m excluding servicing equipment on the roof of a building, **or the maximum height available for the development under the applicable Local Environmental Plan, whichever is greater;**

Similar wording should be added to subclauses (c) and (e).

If you have any queries please do not hesitate to contact the undersigned.

Yours faithfully



Gary Green  
Partner



Alistair Knox  
Associate  
Accredited Specialist Planning & Environment Law

27 August 2021

Housing Policy Team  
NSW Department of Planning, Industry and Environment

*Via online portal*

### **Submission to Proposed Housing State Environmental Planning Policy**

Thank you for the opportunity to provide comment on the draft Housing SEPP. Planning Institute of Australia (PIA) NSW members are particularly interested in these reforms, and we appreciate the opportunity to provide detailed comment on the draft instrument.

PIA NSW understand that much of the detail of the SEPP has been finalised and as such, we have used this submission to identify only those key issues we believe require modification before the instrument is made.

PIA NSW identifies the following key issues:

- Boarding houses should be a mandated use in the R2 Low Density Residential Zone to increase the likelihood of this critical housing type being delivered.
- The permissibility of co-living in the R2 Low Density Residential Zone should be confirmed.
- Business zones, aside from B4 Mixed Use Zone, should not be listed as prescribed zones for seniors housing, as such development would undermine the strategic intent of these zones cultivated by state and local government.
- Parking rates should be reduced and applied proportionally in accessible areas in Greater Sydney.
- A number of clauses should be amended to ensure the provision of diverse affordable housing is prioritised and that affordable housing provision is enabled in perpetuity.
- A review of drafting should occur to resolve inconsistencies and errors.

The following submission also outlines some additional issues for consideration by the Housing Policy team.



## Boarding Houses in R2 Low Density Residential Zone

Boarding houses are a critical affordable housing typology, supporting those people priced out of traditional private rental models. PIA NSW strongly supports the new affordability requirement for boarding houses required under the proposed Housing SEPP. It is concerning to see that boarding houses will not be a mandated use in the R2 Low Density Residential Zone. While PIA NSW understands some communities have expressed concern over boarding house development, the 12-room maximum and the requirement for a community housing provider to manage the development are seen as important steps to manage potential land use conflicts.

Appropriately designed and located boarding house development (in accordance with clause 22(b)) in the R2 Low Density Residential Zone ensure that this housing typology remains viable in the long term across NSW. Misconceptions around boarding house development resulting in community pressure may dissuade Councils from amending their LEPs of their own accord.

PIA would also encourage the consideration of a new name for this type of housing in the long-term, to the unwarranted stigma associated with the development type.

### Recommendation

Include boarding houses as a mandated use in R2 Low Density Residential Zone.

## Co-living in R2 Low Density Residential Zone

The drafting of the proposed instrument leaves some confusion regarding the permissibility of co-living housing in the R2 Low Density Residential Zone. Clause 63 states that co-living can be carried out “in a zone in which development for the purposes of co-living housing, residential flat buildings or shop top housing is permitted under another environmental planning instrument, other than Zone R2 Low Density Residential.” However, clause 65(1)(f) sets out that development for co-living in the R2 Low Density Residential Zone must not contain more than 12 rooms and must be in an accessible area.

PIA NSW supports co-living development in the R2 Low Density Residential Zone, capped at 12 rooms, in an accessible area and without any density bonus. For the reasons outlined above, co-living housing can be appropriately designed to have low impacts in low density residential settings.

### Recommendation

Confirm the permissibility of co-living housing in the R2 Low Density Residential Zone.

## Seniors Housing in Business Zones

PIA NSW are particularly concerned that the list of prescribed zones for seniors housing development include the full range of business zones. Business zones are carefully protected by local and state government, ensuring that there are locations available for everything from neighbourhood coffee shops to business park developments. They also ensure employment-generating land uses are retained close to where people live, which is of ongoing importance as

our urban fabric changes post-Covid. Seniors housing is a residential use which operates under different market conditions than most business and industrial uses, these are important lands which must be protected from residential encroachment or dislocation.

A number of these zones, particularly B3, B5, B6, B7 and B8 are also likely to be a poor experience for potential residents. There are a range of land use conflicts between seniors housing and permissible land uses in these zones such, as timber yards, warehouses, distribution centres and light industries.

It is acknowledged that permissibility of housing in business zones have already been impacted by changes regarding build to rent housing, which PIA NSW did not support. While it is acknowledged that these provisions are consistent with that change in policy direction, PIA NSW would encourage a deeper consideration of the cumulative impact of these policies on the viability of our commercial centres.

#### **Recommendation**

Do not include B1, B2, B3, B5, B6, B7 and B8 in the list of prescribed zones for seniors housing.

#### **Parking Rates**

PIA NSW understand the need to ensure that all housing typologies have appropriate parking levels, particularly in regional communities or inaccessible areas. However, there is a need to ensure that the Housing SEPP does not require overly onerous parking rates in accessible areas. PIA supports the default position of requiring Council rates to be met, however suggests that the SEPP also include lower rates for boarding houses and co-living developments in accessible areas. Car parking rates should also be lowered in instances where car share spaces and share bikes are provided. A revised approach to these provisions should seek to balance development feasibility, amenity, affordability and critical sustainability considerations.

#### **Recommendation**

Include lower-parking rates for boarding house and co-living developments where they are in an accessible area and as a result revise parking provision rates in line with accessibility.

#### **Affordable Housing**

PIA NSW recommends additional considerations in relation to affordable housing:

- Amend clause 43 to include consideration of whether a development is likely to replace housing for people on very low incomes with housing for people on low or moderate incomes. Such a provision would ensure that a diversity of affordable housing is provided and retained across the income spectrum.
- Amend clause 16 to ensure that additional floor space ratio awarded to in-fill affordable housing be required to be used for affordable housing in perpetuity.

- Amend all floor space bonuses awardable under co-living and vertical village provisions to require additional floor space to be used for affordable housing in perpetuity.

### **Recommendation**

Amend clause 16, clause 43 and co-living and vertical village bonuses to ensure a greater diversity of affordable housing is provided.

### **Seniors Housing Provisions**

There are a number of clauses relevant to seniors housing which require clarification in drafting:

- The relationship and hierarchy of clause 70, clause 71 and clause 76(1)(d) in relation to permissibility.
- The relationship and hierarchy of clause 96 and clause 99 in relation to non-discretionary development standards and vertical village bonuses.
- The inclusion of a definition for 'vertical village'.
- The inclusion of a definition for 'directly' in relation to clause 82 and clause 83.

Additionally, the impact of clause 76(1)(d) should be considered, having regard for existing seniors housing developments, aside from residential care facilities, which may require future expansion on surrounding sites zoned R2 Low Density Residential.

If provisions are made to allow expansion on surrounding R2 Low Density Residential zoned sites for existing seniors housing developments, adequate local character and built form controls should be ensured, through character assessment and development standards.

### **Other Issues**

PIA members and stakeholders have raised a number of other matters for consideration by the Housing Policy team in finalising this instrument:

- The need to define 'open space' in Schedule 4 given the different ways local governments may have classified and described this land.
- The need for a detailed Social Impact Assessment where senior housing is to be undertaken on land for the purposes of a registered club.
- The need for design guidelines to be produced for each housing typology as soon as possible to ensure appropriate design and thorough assessment of proposals.
- The potential for a sliding scale between indoor communal space and private space in boarding house developments, where lower rates of communal space may be provided where better appointed private rooms are included with facilities and amenities such as kitchenettes and bathrooms.

- The issues raised by Association of Consultants in Access Australia in relation to development standards, site-related requirements, siting standards, security, letterboxes, doorways, interiors, bedrooms, bathrooms, toilets, surface finishes, door hardware and additional standards for independent living units.
- Include a review provision for the SEPP at an appropriate point to determine:
  - How many boarding houses have been determined under the SEPP.
  - The extent to which changes regarding boarding houses impact the take up of difficult and isolated sites in mixed use centres that had previously been well suited for boarding houses and whether the availability of affordable boarding house accommodation is affected.
  - How many co-living developments have been determined under the SEPP.
  - Whether the development standards (height, FSR and minimum lot size etc.) for seniors housing have struck the right balance in ensuring adequate delivery of housing and maintenance of residential amenity.

Thank you again for the opportunity to provide comments on the draft Housing SEPP. We would be pleased to expand on our submission at any time and I can be contacted at [audrey.marsh@planning.org.au](mailto:audrey.marsh@planning.org.au) or 0431 019 989.

Yours sincerely



Audrey Marsh MPIA  
**Senior Policy and Campaigns Officer**

16 September 2021

22 SEP 2021

Minister for Planning and Public Spaces, Rob Stokes  
State Government NSW  
52 Martin Place  
SYDNEY NSW 2000

Cc: Minister for Ageing Tanya Davies, Minister for Water, Property and Housing Melinda Pavey

Cc: Michael Bishop, Senior Policy Adviser, The Hon. Rob Stokes MP, NSW Minister for Planning and Public Spaces

Dear Mr Stokes

**Recommendations for proposed Housing SEPP**

The Royal Commission on Aged Care and the recent NSW Intergenerational Report have highlighted the need for more diverse housing options for our ageing population, including retirement villages and over 60's communities with independent living units. The Royal Commission notes it is abundantly clear that our ageing population is reluctant to enter aged-care facilities.

As Aged Care Royal Commissioner Lynelle Briggs AO says: "Our inquiry has confirmed over and over again that people do not want to live or die in institutions. Older people should be supported to remain in their homes for as long as possible because this is where they want to be."

This situation has been exacerbated by COVID-19 and as Briggs says: "Thousands of residents in aged care homes that have not suffered outbreaks have endured months of isolation which has had, and continues to have, a terrible effect on their physical, mental and emotional wellbeing."

Currently, government planning can do more to accommodate the increasing demand for senior housing in the community. Based on data from Macroplan and ABS, 7,929 senior housing units should have been developed by 2021 in the greater Sydney region to meet the current penetration rate of 4.4%. The actual number of new units developed in this period (2016-21) is 3,689. This is a shortfall of more than 4,200 units, in this small statistical sample indicating that the current planning policies are simply not working. Furthermore, a penetration rate of 4.4% is considerably lower than New Zealand at 7.5% and the United States at 11%.

**OVERCOMING THE SHORTFALL OF SENIOR HOUSING UNITS**

The impediment to developing more over 60's communities with independent living units is the cost of suitable land in established urban areas with amenities that active seniors want and need. The situation is exacerbated by over 60's communities costing more to develop than similar residential developments.

The situation will improve if the Department of Planning works with local government to make land available at a reasonable cost in areas with high concentrations of seniors. This land needs to be located near facilities and priced to allow the cost of entry to senior housing to be lower than the surrounding housing.

Two policy measures that would facilitate senior housing development are additional floor space bonuses and allowing over 60's communities in non-residential areas.

#### Additional floor space bonuses

Senior housing cannot compete with residential uses on land zoned for residential or mixed use without substantial (25%) floor space and height bonuses. **Additional floor space bonuses would encourage the provision of affordable housing in over 60's communities.**

#### Senior housing in non-residential areas

Planning schemes need to allow, and provide the same bonuses as outlined above, for the construction of senior housing in areas where residential uses are not permitted, such as business zones and hospital areas. Such areas are often close to services and more affordable.

Development in these areas is less likely to have adverse impacts on residential areas, which are commonly the source of development objections. These areas are also more capable of accommodating bonus floor space. Other government departments could also be encouraged to make affordable land available for development.

Such developments need to take into consideration the requirements for successful senior housing.

#### REQUIREMENTS FOR SUCCESSFUL SENIOR HOUSING

Over 60's communities should be located within walking distance of services, shops and transport and in areas with ageing populations. The communities should be large enough to facilitate social interaction and allow for economical provision of services. According to *Knight Frank's Senior Living Annual Review 2020*), communities should have over 100 units.

A vibrant over 60's community has older people of all ages. Over 60's communities need facilities such as swimming pools, games rooms and gyms to encourage seniors to remain active and to attract younger seniors. However, community facilities and parks nearby may reduce the need for common space.

Too many seniors move into residential aged care because of a lack of senior housing in the community. To attract active seniors, independent living units should be in the area they already live in, be more attractive than their existing dwelling, not have an institutional feel and cost less. These developments must provide access to intergenerational interactions or mixed uses that allow residents to stay in touch with the community.

#### SENIOR HOUSING COSTS HIGHER THAN RESIDENTIAL DEVELOPMENT

Land available in non-residential locations would help off-set development costs and make independent living units more affordable. The construction costs of senior housing are higher than the cost of similar residential developments. Common area facilities within these complexes (10-15% of the area) add to the cost of each unit. As seniors spend a lot of their time at home, coupled with mobility changes due to ageing, they want larger dwellings than typical apartments designed according to the minimum sizes in the Australian Design Guidelines.

Yet senior housing also needs to be cheaper than the equivalent residential housing to make units affordable for seniors. As a rule of thumb, the cost of an independent living unit should be around 70% of the cost of other residential housing in the area to be affordable.

#### BENEFITS FOR THE GOVERNMENT AND COMMUNITY

There are number of benefits to providing more over 60's communities for all levels of government, the community and seniors. Over 60's communities reduce government and community costs benefiting the entire aged-care sector and reducing pressure on residential care.

For instance:

- Entry into residential aged care is delayed by up to five years, improving seniors' quality of life and reducing government costs. Residents pay for their own independent living unit, while the annual cost to the Federal Government of an aged-care bed is \$60,000. (*National overview of the retirement village sector*, Grant Thornton, 2014.)
- Seniors' health generally improves when they move into independent living units, and with on-site services available, there are fewer calls on hospital emergency services and fewer hospital admissions.

#### Homecare packages

The Government aims to deliver homecare packages to encourage seniors to stay in their own home. Homecare services can be provided more effectively and efficiently to an over 60's community at a third of the cost of delivering the identical service in the suburban home. Zinnia research indicates that costs are reduced by around \$34,000 per annum.

#### POLICY RECOMMENDATIONS

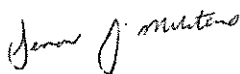
In summary, we recommend that the Department of Planning works with Local Government to facilitate construction of over 60's communities by making land available at reasonable cost in suitable locations in areas with high concentrations of seniors, both in metropolitan and regional areas.

To enable land to be located near facilities and priced to allow the cost of entry to be lower than surrounding housing, we recommend that planning schemes:

- provide floor space bonuses of 20–25%, and associated height bonuses so over 60's communities can be constructed in areas zoned for residential use and compete with residential use
- allow the construction of seniors housing in areas where residential uses are not permitted (business zones and areas where hospitals are permissible) with similar bonuses to that offered in residential zones. Such areas are often close to services, less disruptive to residential communities and more affordable.

I would be more than happy to discuss with anybody in the department to assist with any solutions and can be contacted on 0413 819 447.

Yours sincerely



Simon Militano

Development Director Consultant – Platino Properties

#### Appendices:

1. *Knight Frank's Senior Living Annual Review 2020* download [here](#)
2. *Zinnia Living Benefits of Homecare in the one location* download [here](#)

#### About the Author – Simon Militano

##### Relevant experience in seniors housing:

- 24 years' experience across multiple business disciplines and asset classes including 15+ years in Retirement Living and Aged Care.

- 20+ years at ASX listed Lendlease and as an Executive Team member (since 2014-2019) of the largest owner and operator of Retirement Living in Australia comprising more than 12,500 units, that are home to 16,500 residents across 71 existing retirement villages
- Development Director at Platino Properties over 55 residences and leads 'The Jardin' over 55's development at French Forest.
- Head of Development encompassing a team of 74 staff across Australia and 14 new developments in various forms of acquisition, planning, conversion and delivery. Responsible for the sale of over 2,000 new retirement living units.
- Led the University of Wollongong (UOW) - Project Delivery Agreement (PDA) which is a \$500 million masterplan project and Australia's first university-based retirement community which will feature Retirement Living, Aged Care, Child Care, Primary Health & disability housing.

**[UoW Project Announcement Video Professor Alison Jones, & Simon Militano](#)**

- Chair of the UNSW Designing supportive housing community's series with a number of projects, under his leadership having been award UDIA and Property Council Retirement villages of the year awards
- Member of Retirement Living Property Council 2017-2019 and Chair of the Planning Sub-Committee



27 August 2021

Mr Luke Walton  
Executive Director  
Department of Planning Infrastructure and Environment  
Locked Bag 5022  
PARRAMATTA NSW 2124

Online Submission

Dear Mr Walton

**RE: DRAFT HOUSING SEPP**

I write in relation to the Department's invitation to provide comments on the draft Housing SEPP that is currently on public exhibition. While we support the Department's objectives to provide for quality housing for seniors and people with a disability, as well as a diverse range of affordable housing options within NSW, we hold serious concerns with a number of elements of the draft SEPP as currently drafted, and its practical application and impact on the viability of development for the purposes of housing for seniors and affordable housing. These concerns are outlined below.

**The function of Independent Living Units within the seniors housing market**

- The market for housing for seniors is changing. Many seniors do not want to move into the traditional "retirement village" style of housing, choosing rather to remain in their own homes. This can lead to situations where older people are no longer able to maintain their home and they are unsure of the how and where to find appropriate care packages, meaning that many go without care until it gets to the point that they have no choice but to enter nursing home accommodation, often against their wishes.
- There needs to be a clear understanding of the function that Independent Living Units (ILUs) can perform within the housing market. Our experience is that there is a tendency for Councils and other consent authorities to view them as "units for empty nesters" when in fact they are capable of providing independent living options that allow seniors to age in place with access to services and in-home care packages on an 'as required' basis.
- ILUs, in association with home care packages, have the ability to reduce reliance on the provision of higher-care aged housing, such as nursing homes, which is a form of housing that is becoming far less attractive to seniors aged care. Home care packages are most effectively and efficiently provided on a larger scale, as economies of scale allow for costs to residents to be kept lower than if care providers are visiting older people in individual dwellings.

- This in turn reduces the cost of providing for aged care to government.

#### **Specific design requirements for ILUs make them more expensive to build**

- Independent housing for seniors is required to be larger (compared to standard residential apartments) both within individual apartments and as overall development area, to provide for access, common recreational areas for residents and visitors and tenancies for the provision of allied health services and the like.
- This results in higher construction costs and means that a development for ILUs cannot compete, in terms of being the highest and best use, on a site that is zoned to allow for residential flat buildings (RFBs).
- Subsidies / bonuses of some kind are therefore required to incentivise the provision of ILUs for seniors in accordance with the objectives of the draft SEPP.

#### **Need to provide incentives on a wider range of sites**

- It is clear that providing housing for seniors in metropolitan areas that are accessible and located in proximity to a wide range of amenities, services and facilities is the right approach, and this is supported, in part, by the draft SEPP provisions. However, for the reasons identified above, bonuses must be provided to incentivise the provision of ILUs in these locations. The current draft provisions only provide bonuses for the development of vertical villages, which are only to be allowed on sites larger than 2000m<sup>2</sup> where RFBs are permitted. These bonuses must apply to a wider range of sites if a diverse range of housing is to be provided.
- Clause 99 of the draft SEPP provides greater bonuses for the provision of residential care facilities than for ILUs. As outlined above, ILUs for seniors offer the opportunity to remain in these apartments longer and to “age in place”, which in turn offers opportunities for less reliance on higher care housing and higher costs to residents and government.

#### **Non-discretionary development standards**

- We are concerned about cl 97 of the Draft SEPP which sets out non-discretionary development standards for independent living units. We have been advised that a cl 4.6 variation request would be required to vary any of those development standards. This would be contrary to the objective of the clause and will add substantial cost and documentation to the development application process.
- We request that an additional provision be added to cl 97 which allows for flexibility without the need to rely upon cl 4.6 of the LEP.
- As drafted, Clause 97 restricts the height of an ILU or vertical village development within any zone to a maximum of 9m (11.5m including rooftop services) regardless of the applicable height of building development standard in the relevant LEP. Similarly, Clause 97 would act to restrict the FSR of an ILU development, regardless of the zone or context, to 0.5:1. It is unclear how cl 97 is intended to operate when it sets a lower or more onerous development standard than the applicable LEP (e.g. for height and FSR).
- In practice therefore, a hypothetical development proposal for a seniors ILU building in a B3 zone with a height limit of 25m prescribed in an LEP would have a maximum height of 9m prescribed by the SEPP, and a Clause 4.6 variation would be required to support a building height that is consistent with the LEP development standard. This would make the process of preparing and assessing development applications for seniors housing more complicated

and onerous, creating yet another deterrent to developing appropriate sites for high quality housing for seniors.

- Cl. 97(g) turns a guideline contained within the Apartment Design Guide into a non-discretionary development standard for which any variation would require a variation request under Clause 4.6 of the Standard Instrument. As with the point above, this would create an unnecessary process complication that should be avoided. The requirements for seniors ILUs should be consistent with the ADG requirements for RFBs, as per the current situation.
- We request that the non-discretionary standards be amended to clarify that where a less onerous or preferable development standard is available under the applicable LEP then that will continue to apply.

**Specialised Panel or Panel members to determine applications for seniors housing**

- Given the specialised nature and the specific design, functional requirements (such as common areas, provision of facilities and services etc) and cost / funding implications associated with development for seniors housing, applications for this form of development should be considered and determined by Panels convened specifically for this type of development.
- Such Panels should be comprised of experts in the field of various components of the seniors housing sector, including but not limited to architects specialising in the design of seniors housing and people who have appropriate levels of experience in providing services within the aged care industry.
- Convening expert panels would ensure that proper consideration could be given based on a thorough understanding of the specific requirements of this form of housing development. It could also ensure that a consistency in the consideration and determination of application for seniors housing could be achieved, providing greater levels of certainty for applicants as to the requirements and expectations.

We trust that our comments will be of value in the Department's process of finalising the SEPP. Should you wish to discuss any of the issues raised in our submission please contact me on 0422 813 025.

Yours sincerely



Paula Mottek

Urban Planning Manager

**Platino Properties**

29 August 2021

Ms Sandy Chappel  
Director, Housing Policy  
Department of Planning, Industry and Environment  
Online submission via [www.planningportal.nsw.gov.au/housing-sepp](http://www.planningportal.nsw.gov.au/housing-sepp)

**RE: Submission on the draft State Environmental Planning Policy (Housing)**

Dear Ms Chappel,

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

Port Stephens Council adopted a Local Housing Strategy in 2020 ([Live Port Stephens](#)) to:

- ensure suitable land supply
- improve housing affordability
- increase the diversity of housing choice
- facilitate liveable communities

Significant commitments to invest in Port Stephens to grow the regional and local economy and to provide the infrastructure to support growth will attract new residents and drive demand for new housing in our area over the next 20 years. Port Stephens is also already experiencing significant changes in housing demand as a result of demographic and regional migration trends.

The draft Housing SEPP includes many reforms that will align with the priorities identified in our Local Housing Strategy and will assist in responding to regional housing demand.

Some of the reforms in the draft Housing SEPP are however 'metro-centric' and will have little impact on housing supply and diversity in regional areas, or may have a detrimental impact in regions like Port Stephens. This submission identifies opportunities to amend the draft SEPP to avoid unintended consequences on housing supply in regional areas like Port Stephens.

*Site compatibility certificates for seniors living developments*

Under the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (the existing SEPP), a site compatibility certificate permits seniors housing on land that is compatible with the use, despite the underlying zoning. This

enables councils with limited resources to assess applications for seniors housing in appropriate locations without undergoing a rezoning process which can take on average 3 -5 years to complete. The draft Housing SEPP proposes to repeal this mechanism.

Regional councils like Port Stephens do not have the resources to undertake local strategic planning across the entire local government area to identify individual suitable sites for seniors housing and zone them appropriately. The criteria based approach in the existing SEPP is an efficient, risk based approach to meeting demand for this type of development in regional areas.

The existing SEPP also aligns with the Port Stephens Local Housing Strategy which adopts a similar risk based, criteria approach to identify the locations suitable for different types of new housing. In our region, this approach supports housing affordability by enabling a competitive housing market and provides a clear signal to landowners and developers about the difficulty of progressing a rezoning on land that does not meet the criteria.

The impact of the change in the Housing SEPP is likely to be less noticeable in metropolitan areas where councils have smaller geographical areas to plan for and significant resources to prepare comprehensive local strategic plans and accompanying comprehensive rezonings.

In addition, the majority of land in Port Stephens is not able to take advantage of the Standard Instrument local environmental plan clause enabling development near zone boundaries because it is in the coastal zone. In other areas and regions, this clause is available to permit seniors housing development on land adjoining residential zones despite the underlying zoning, and provides a more affordable and timely process than a rezoning. This is not currently available for the majority of land in Port Stephens.

If the change in the draft Housing SEPP is implemented, the supply of future seniors housing development in Port Stephens is likely to be limited to:

- Standard housing developments in existing residential zones, i.e. multi dwelling housing, attached dwellings, single dwellings, or community title developments which may be marketed towards seniors; and
- Caravan parks repurposed with moveable dwellings installed on long term sites (i.e. residential land lease communities which may be marketed towards seniors) where the land is zoned RE2 Private Recreation, or the caravan park is operating under existing use rights. Often these sites are located in areas where a residential zone permitting medium density development may be difficult to justify, such as outside of town centres or in and around environmentally sensitive locations.

Port Stephens has an ageing population (In 2018, 37% of the population was aged 55 and over), and there is a concern that a change to further limit the sources of housing supply for seniors would have a detrimental impact and would be contrary to the

objectives of the Port Stephens Local Housing Strategy to facilitate housing diversity in appropriate locations. The Housing SEPP could be amended to address this issue by retaining site compatibility certificates for regional areas, such as Port Stephens.

### *Changes to boarding houses*

Under the existing State Environmental Planning Policy (Affordable Rental Housing) 2009, boarding houses are facilitated as a form of affordable housing and receive concessions from planning rules that are not available for conventional residential flat buildings. As a result, there is a greater ability to develop boarding houses on sites where apartment style developments would not ordinarily be feasible.

Boarding houses may generally be developed to deliver increased yield and a more affordable housing product. Given that the product is able to be developed at a lower cost than residential flat buildings, with more compact dwellings, the expectation is that boarding houses are generally more affordable to rent than *Apartment Design Guide* compliant studio apartments.

Under the draft Housing SEPP, a development would only be regarded as a boarding house if:

- it meets 'affordability' rules (which include rent controls); and
- is managed by a not-for-profit community housing provider.

In Port Stephens, the opportunity for properties to be developed as boarding houses and to take advantage of the planning concessions available for boarding houses, including floor space ration bonuses, will be limited by the proposed changes.

In preparing our Local Housing Strategy in 2020, data collected showed that community housing providers had limited investments in Port Stephens compared to other council areas in the region.

The extent of land available for the new 'co-living housing' product will be less than what is currently available for development as boarding houses under the existing State Environmental Planning Policy (Affordable Rental Housing) 2009. Co-living housing will only be permissible where residential flat buildings or shop top housing are permitted, which in Port Stephens is a limited number of zones.

### *Consolidation of State Environmental Planning Policy No 21—Caravan Parks*

The draft Housing SEPP will consolidate State Environmental Planning Policy No 21—Caravan Parks without amendments to the existing provisions.

Reform of these provisions is a key priority in Port Stephens given the number of existing caravan parks and the ability to install moveable dwellings for long term residence under existing consents or modifications. In Port Stephens, many of these developments are marketed as high end, 'resort style living' housing products for seniors. State Environmental Planning Policy No 21—Caravan Parks does not reflect these market changes and still considers long term caravan sites (and potential sites for moveable dwellings) as a source of 'low-cost housing'.


It is noted that a review of State Environmental Planning Policy No 36—Manufactured Home Estates will be undertaken in the future, however this policy does not apply in Port Stephens to permit manufactured home estates. It is the provisions of State Environmental Planning Policy No 21—Caravan Parks that require amendment and updating to assist better planning for this new form of multi-dwelling housing in Port Stephens.

*Housing diversity and affordability in regional NSW*

The Housing SEPP could also include initiatives to address housing supply issues unique to regional areas as identified by the newly appointed Regional Housing Affordability Taskforce. Regional areas and regional councils experience particular challenges in meeting housing demands that are not experienced in metropolitan centres. The draft Housing SEPP could be amended to include reforms that are informed by the Regional Housing Affordability Taskforce and should be amended to ensure any changes in the exhibition draft will not have a detrimental impact on housing supply in the regions (as detailed above).

Thank you for the opportunity to provide comments on these issues. If you wish to discuss the matters raised above or have any questions, please contact Liz Lamb, Strategic Planning Co-ordinator by email at [Elizabeth.lamb@portstephens.nsw.gov.au](mailto:Elizabeth.lamb@portstephens.nsw.gov.au) or by phone on 4988 0293.

Yours faithfully,



**Steven Peart**

**Group Manager Development Services  
Port Stephens Council**







Planning | Development | Management

29 August 2021

General Manager  
Department of Planning, Industry and Environment  
C/- NSW Planning Portal

Dear Sir/Madam,

## **Public Submission – Proposed Housing State Environmental Planning Policy**

This letter is a public submission on the Housing SEPP consultation draft published by the Department of Planning, Industry and Environment on the NSW Planning Portal. We are a small-town planning consultancy based in Northbridge with clients who have an active interest and investments in the senior's housing industry in New South Wales. Upon review of the proposed Housing SEPP and in conjunction with our experience in obtaining approvals for multiple senior's housing projects across regional New South Wales, we suggest that the Department consider our submission and recommendations made therein.

### **Matters for Consideration**

We wish to express our concern with the retention of the Metropolitan Rural Areas Exclusion Zone under cl 70 (3) of the proposed Housing SEPP. The exclusion zone covers large swathes of rural areas on the fringes of metropolitan Sydney. These areas contain vast amounts of undeveloped land that is capable of meeting the minimum required lot size of seniors housing (1,000sqm) under the proposed housing SEPP. The continued implementation of this exclusion zone under the SEPP severely restricts the delivery of seniors housing in Sydney – particularly for those seniors wishing to retire in a quiet, rural setting.

In addition, the imposition of stricter development standards for seniors housing will also further restrict the supply of seniors housing and provide a deterrent for developers to invest in the seniors housing market. The additional development standards have already been largely incorporated in many local environmental plans and development control plans across the state. The imposition of these development standards will only serve to lengthen the assessment period for seniors housing applications, as assessing officers will be forced to address similar development standards across three separate policies/documents.

The incorporation of additional development standards into the Housing SEPP will likely generate an influx of variation requests for projects that cannot adhere to the strict provisions. Formal variation requests require careful consideration by consent authorities and often lengthen the assessment process. It is considered that these standards should be left for Councils to incorporate into their strategic planning policies. This will allow more flexibility in the planning process and enable consent authorities to undertake merit assessments on each individual proposal.



## Recommendations

Based on the above issues, we wish to make several recommendations to enhance the seniors housing provisions under the proposed Housing SEPP. Our primary recommendation is to include an expedited development assessment process to facilitate the delivery of seniors housing in NSW. It is critical that such a process be introduced to the SEPP to address the existing shortfall in seniors housing in NSW.

In addition, it is recommended that seniors housing in rural settings be encouraged across the state. The provision of seniors housing in rural zones would greatly enhance the capacity of land able to be developed for seniors housing. The detrimental effects of siting seniors housing on rural land can be easily addressed through provisions requiring that health care facilities be located nearby. Seniors housing in rural settings that are adequately supported by nearby infrastructure will add to the diversity of seniors housing stock in NSW.

## Conclusion

It is requested that the Department consider the feedback and recommendations made in this letter when reviewing the proposed Housing SEPP following the SEPP's public exhibition. We would be happy to further engage with the Department and/or expand further on any of the points raised above.

Yours Sincerely,

PRECISE PLANNING

A handwritten signature in dark ink, appearing to be 'DB', written over a light grey rectangular background.

Douglas Bennett  
Senior Planner

3 September 2021

Department of Planning, Industry & Environment  
Draft Housing SEPP  
Locked Bag 5022  
PARRAMATTA NSW 2124

### Draft Housing SEPP

The Property Council welcomes the opportunity to provide feedback to the Department of Planning, Industry and Environment (the **Department**) on the Draft Housing State Environmental Planning Policy (**Draft Housing SEPP**) and supporting documents.

As Australia's peak representative of the property and construction industry, the Property Council's members include Australia's leading investors, owners, managers, and developers of property across all asset classes, many of whom are NSW-based and make their largest investments here.

We note that the proposed Housing SEPP will:

- Consolidate five existing housing-related SEPPs
- Include the recently made provisions for short term rental accommodation and build-to-rent housing
- Include the recently updated social housing provisions
- Include provisions for co-living housing, a form of housing that provides small private rooms (which may or may not include private kitchen and bathroom facilities), offset by access to managed communal spaces
- Incorporate amendments to boarding house and seniors housing provisions
- Amend some local environmental plans, in relation to secondary dwellings in rural zones, and the permissibility of boarding houses in R2 zones.

The documents on exhibition comprise:

- The draft Housing SEPP consultation draft
- Draft Environmental Planning and Assessment Regulation amendment
- Draft Standard Instrument Order
- Frequently Asked Questions and Plain English Supporting Document.

The Property Council provides in-principle support for the Draft Housing SEPP and its objectives.

The Property Council supports many of the measures outlined in this SEPP however there a number of key issues of concern, including:

- The exclusion of Co-Living, affordable housing and seniors development in the R2 zone, which has the potential to wipe out over 80,000 hectares of zoned land in the Sydney Metropolitan Area from this form of development, and places even greater pressure on the medium to high density residential areas.
- Provisions related to the delivery of seniors housing will not provide a sufficient pipeline to of high-quality, fit for purpose seniors accommodation to support NSW's ageing population.
- The removal of Student Housing and related provisions from the Draft SEPP.

Our commentary and recommendations in relation to these important reforms is attached for your review and consideration.

Should you wish to discuss these issues further, please contact Annie Manson, NSW Policy Manager via email [amanson@propertycouncil.com.au](mailto:amanson@propertycouncil.com.au) or phone on 0422 131 741.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Luke Achterstraat', is written over a light blue horizontal line.

**Luke Achterstraat**  
**NSW Executive Director**  
**Property Council of Australia**



# SUBMISSION

State Environmental Planning Policy  
(Housing) 2021- Consultation Draft

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# RECOMMENDATIONS

## CO-LIVING

1. The Draft Housing SEPP should be revised to mandate 'Co-Living' as permissible with consent in the R2 Low Density Housing land use zone.
2. To secure a sustainable supply of affordable accommodation options, and assist in alleviating the long-term housing affordability crisis, the 10 percent floor space ratio bonus should be increased to 25 percent in line with the Boarding House bonus.
3. The FSR bonus should be permanent – not withdrawn on 1 August 2024 .
4. Clause 63 should be revised to clarify the intended permissibility of Co-Living in the R2 Low Density Residential Zone.
5. Amend Clause 65(1)(c) to clarify the intention to reference Planning Instruments, Development Control Plans or both.
6. The Property Council recommends State and Federal government work together collaboratively and urgently to provide a taxation framework that encourages ongoing investment in Co-Living development.
7. Communal facilities should be exempted from the calculation of FSR for Co-Living, to balance the removal of the FSR bonus and encourage a high proportion of communal facilities. Height controls still apply and other standards to limit built form.
8. We support the increase in the number of standards listed where Consent Authorities cannot refuse consent if those discretionary standards are met.
9. The car and motorcycle parking rates for Co-Living development identified in the Draft housing SEPP are very high and should be lowered, taking into account that Co-Living would be located in highly accessible areas well supported by public transport options and bike and car sharing infrastructure.
10. A reduced rate of communal open space (below 25 percent) should apply in locations that are within 800m distance of areas of regional open space or substantial areas of local open space.
11. Any provisions which reference a DCP or Guideline in the SEPP should be removed, to avoid the need to lodge a clause 4.6 variation to vary the development standard.
12. If the ADG must be referenced as a design consideration, the provision could be relocated into a future design guide for Co-Living.
13. Should it be considered necessary to impose a deadline on the application of the 10 percent floor space bonus for Co-Living development, appropriate savings and transition provisions should be included in the SEPP to clarify that Co-Living proposed in Concept Development Applications is still eligible for the FSR bonus, even if the detailed DA is submitted after the deadline.

## INFILL HOUSING

14. Keep the current requirement for 'infill' affordable housing to be retained as 'Affordable Rental Housing' for a period of 10 years. The proposal to extend this to 15 years is not supported.
15. The Draft SEPP should be amended to enable broader application of the in-fill affordable housing concessions and FSR bonus.
16. This needs to include:

17. For sites outside Greater Sydney, excluding weekends from the frequency test for bus services under the definition of 'accessible area'.
18. Applying the infill affordable housing concession to all sites in regional areas that are in proximity to transport services or town centres, regardless of zone.
19. A height bonus should be applied to in-fill affordable housing development in medium and high-density locations. This will assist with achieving the full FSR bonus and will help offset increases to development standards proposed as part of the draft Housing SEPP, such as increased deep soil requirements.
20. The requirement that bonus FSR must be used for the purpose of affordable housing should be removed.
21. Current minimum dwelling sizes should be retained as the increases proposed will render this development type financially unfeasible in many areas. Current deep soil requirement should be retained.

## **BOARDING HOUSES**

22. 'Boarding Houses' must be mandated in R2 to ensure that this development type continues to remain a viable development option in a wide variety of locations throughout the state.
23. To manage community concerns regarding boarding house development in low density zones, a guideline to facilitate boarding house design should be developed, in consultation with the development industry, councils and the community.
24. 'Boarding Houses' must be mandated in R2 to ensure that this development type continues to remain a viable development option in a wide variety of locations throughout the state.
25. To manage community concerns regarding boarding house development in low density zones, a guideline to facilitate boarding house design should be developed, in consultation with the development industry, councils and the community.
26. Remove the requirement that boarding house design must be compatible with the 'local character' of the area as a mandatory development standard.
27. Existing Boarding Houses should be able to undertake alterations and additions without having to meet the new Boarding House requirements detailed in the Draft Housing SEPP.

## **STUDENT HOUSING**

28. 'Conduct analysis of the potential impact on the supply of Student Housing should the definition not be included in the final Housing SEPP, in consultation with the university sector and student housing providers.
29. Engage with student housing providers to determine the specific needs and requirements for Student Housing.
30. To compensate for the reduction in floor space ratio bonus, a reduced room size of 10 square metres is necessary to ensure that 'student housing' is still feasible and allows for 'cluster style' living arrangements. (The room size of 12 square metres will greatly limit the ability of student housing providers to develop these projects feasibly.)



## HOUSING FOR SENIORS

31. That the NSW Government retain the age definition for seniors housing people aged 55 and above.
32. There are savings provisions included in Schedule 6 of the draft SEPP which outlines that, any DAs that have been “made” will be “saved” however there should be inclusion of an additional item in Clause 2 of Schedule 6. This should be inserted as item “c” to include a concept development application granted on or before the repealed day, including any subsequent development applications that are consistent with that concept DA.
33. That the NSW Government clearly outline the saving and transition arrangements for current and concept development applications. We also request that the final SEPP include savings and transitional provisions to allow existing villages in the RE2, SP1, RU5 and R2 zones to continue to be subject to the provisions of the previous SEPP so that there is a clear planning pathway for those villages to seek planning approval to enable them to be upgraded, that is, redeveloped or expanded over time.
34. The Property Council recommends the NSW Government reconsider its position in relation to seniors housing development within the R2 zone to permit both RACF and ILU development as a means of ensuring supply and a diversification of offering in the market by large- and small-scale operators.
35. If R2 Zones are to be restricted an additional provision that allows the development of ILUs in the R2 zone if they are compatible with the existing character of the area is recommended. This could build on local character analysis already undertaken by DPIE and local Councils.
36. Recognition of existing use rights for seniors’ development on R2 zoned land to support future redevelopment of outdated facilities is required. This should be extended to expressly include any future amalgamation of adjoining sites for seniors’ development, noting that many providers have been buying up adjacent land to future proof expansion of outdated facilities that invariably require more floor area per dwelling due to quality demands and current standards. Sunset provision to allow existing owners of R2 zoned land up to 5 years to utilise the Draft Housing SEPP prior to the R2 prohibition coming into effect should also be included in the final SEPP.
37. The Property Council recommends that a simple, viable and more effective approach would be to apply 25 percent across the board be given to any of these types of developments. A FSR bonus based on a percentage basis is a gross downgrading in the current SEPP bonus provision. This approach does not account for the difference in size and cost of providing an ILU product, in terms of accessibility, clubrooms and amenities and other on-site support services, the size of car parking and multiple lifts for enhanced accessibility.
38. The Property Council is urging the New South Wales Government to amend the existing draft Housing SEPP to utilise definitive language solutions throughout the SEPP. The Government must also consider incorporating the use of transport access provisions for joint developments of aged care facilities and Independent Living Units. This amendment would address the existing access to private and on demand transport options readily available to residents of Independent Living Units. The transport provisions will ensure joint developments will also have a further sense of design integration and planning diligence.
39. It is unnecessary to exclude Residential Care Facilities from heritage conservation areas. There are adequate protections in place for items and areas that are heritage

listed under national, state, and local legislation. Additionally, Council has adequate controls within their DCPs to ensure character of a heritage area is maintained.

40. To facilitate the supply of significant seniors housing projects, the Property Council recommends that the SSD pathway should be available for any seniors housing development that includes a Residential Aged Care Facility (RACF), where the RACF has a capital investment value meeting relevant capital investment value threshold, irrespective of the contribution of the Independent Living Units (ILUs) to the overall value of the development.
41. The SSD pathway should be available as an opt-in process for social housing, land and housing providers. The SSD pathway should also be made available for any seniors housing development that includes RACF, where the RACF has a capital investment value meeting relevant capital investment value threshold, irrespective of the contribution of the ILU's to the overall value of the development.

## CO-LIVING

The Draft Housing SEPP introduces a new form of residential accommodation, 'Co-Living', which has been defined as follows:

*A building or place that:*

- a) *has at least six private rooms, some or all of which may have private kitchens and bathroom facilities,*
- b) *provides occupants with a principal place of residence for at least three months*
- c) *has shared facilities, such as a communal living room, bathroom, kitchen or laundry, maintained by a managing agent, who provides management services 24 hours a day.*

Previously this type of development was identified as a form of 'Boarding House'. The Draft Housing SEPP has separated this new land use from the 'Boarding House' definition to avoid the negative perceptions that sometimes attach to boarding house development.

### **Co-Living should be mandated in the R2 Low Density Residential land use zone**

Under the provisions of the Draft Housing SEPP the extent of land available for development of Co-living housing is very limited, particularly when compared with the areas where existing 'boarding house' development type are permitted.

Currently, boarding houses are permitted in any of the following zones:

- R1 General Residential
- R2 Low Density Residential
- R3 Medium Density Residential
- R4 High Density Residential
- B1 Neighbourhood Centre
- B2 Local Centre and
- B4 Mixed Use

Under the Draft SEPP, Co-Living will only be permissible where Residential Flat Buildings or Shop Top Housing are permitted. This will generally rule out R1, R2 and B1 zones and some B2 zones, leaving R3, R4 and B4. Sites with these zonings are generally costly and highly sought after by developers. Co-Living is also unlikely to be developed on these sites given there are other development types permissible in these zones which provide a higher rate of return on investment, such as private market apartments.

We note that Councils still have the option of amending their LEPs to add 'Co-Living' as permissible in other zones. However, given the history of Council hostility to Boarding Houses it is unlikely any will make these changes.

To maximise the successful uptake of the new Co-Living dwelling type, the Draft SEPP should mandate Co-Living as permissible with consent in R2 Low Density Residential land use zones.

The exclusion of Co-Living development in the R2 zone has the potential to wipe out over 80,000 hectares of zoned land in the Sydney Metropolitan Area from this form of development, and places even greater pressure on the medium to high density residential areas.

The R2 Low Density Residential Zone generally does not permit more lucrative development types such as Residential Flat Buildings, making Co-Living a more viable and profitable choice for developers. This will increase uptake and supply and affordable accommodation – achieving the intention of the draft Housing SEPP.

**Recommendation:**

The Draft Housing SEPP should be revised to mandate 'Co-Living' as permissible with consent in the R2 Low Density Housing land use zone.

**Proposed Floor Space Ratio Bonus for Co-Living**

An incentive in the form of a proposed 10 percent floor space ratio bonus is proposed for Co-Living development on sites where Residential Flat Buildings are permitted, up until 1 August 2024. The provision of an FSR bonus is supported by the Property Council, however this proposed bonus is much less than that offered to boarding houses, which receive a 25 percent bonus.

The Property Council believes the 25% floor space ratio bonus provided to boarding houses should be extended to Co-Living.

We are also concerned regarding the removal of the bonus on 1 August 2024. There is no justification provided for the removal of the FSR bonus on this date. The bonus should be made permanent to ensure continued consistent investment in this housing type beyond 2024.

**Recommendation:**

To secure a sustainable supply of affordable accommodation options, and assist in alleviating the long-term housing affordability crisis, the 10 percent floor space ratio bonus should be increased to 25 percent in line with the Boarding House bonus.

The FSR bonus should be permanent – not withdrawn on 1 August 2024.

The proposed floor space bonus to permitted residential FSR should apply to areas where both Residential Flat Buildings are permitted and where Shop Top Housing is permitted. This will permit Co-Living in many accessible areas. The FSR bonus will help to ensure that Co-Living can compete on the market with other types of development which may deliver higher returns, for example private residential apartment development.

**Clarification on the permissibility of Co-Living in the R2 Low Density Residential zone**

The Draft Housing SEPP could be revised to clarify the permissibility of Co-Living in the R2 Low Density Residential Zone. Specifically, the Division includes development standards for areas where Co-Living is proposed in the R2 Low Density Residential zone, however clause 63 implies Co-Living is not permitted in the R2 Low Density Residential zone. Clause 63 could

be revised to clarify the permissibility of Co-Living in the R2 Low Density Zone, possibly to include the same permissibility provisions as clause 22(2) for Boarding Houses.

**Recommendation:**

Clause 63 should be revised to clarify the intended permissibility of Co-Living in the R2 Low Density Residential Zone.

**Planning instruments versus Development Control Plans**

Clause 65(1)(c) references setback provisions in a relevant 'Planning Instrument'. Setback provisions are typically contained in Development Control Plans. It is unclear if the intent is to reference Planning Instruments or Development Control Plans.

**Recommendation:**

Amend Clause 65(1)(c) to clarify the intention to reference Planning Instruments, Development Control Plans or both.

**Taxation arrangements for Co-Living development**

The move to differentiating between 'Boarding House' and 'Co-Living' has major ramifications on adjacent legislation (particularly around taxation) and could have devastating consequences for the investment proposition for this form of development.

A 'Boarding House' is a defined legal term that is recognised in taxation legislation and Foreign Investment Review Board requirements.

As such, both foreign and domestic investors can receive favourable GST treatment, and foreign investors are permitted to invest in Boarding Houses through Managed Investment Trusts and pay a lower rate of withholding tax. This makes Boarding Houses the 'highest and best use' for sites in NSW and this sustains and supports the growth of this sector.

Co-Living is not a recognised term in taxation legislation and FIRB requirements and as such it does not qualify for treatment as 'commercial residential.'

This means there would not be favourable GST treatment for local investors and a blanket prohibition by foreign investors in Co-Living.

Unless this is addressed, once Co-Living is separated from 'Boarding House' provisions, it would no longer be the 'highest and best use' and would bring investment in this asset class to a standstill.

**Recommendation:**

The Property Council recommends State and Federal government work together collaboratively and urgently to provide a taxation framework that encourages ongoing investment in Co-Living development.

**Planning Controls**

We note that the planning controls proposed for Co-Living are different to those applying to boarding houses.

#### **A) Car Parking Rates**

Car parking rates for highly accessible locations close to regular public transport services and locations with good access to amenities and services should be kept low. Excessive carparking requirements often trigger the need for costly basement carparking, which ultimately increases the rents paid by tenants and reduces affordability.

#### **B) Communal Open Space**

The requirements for communal open space also have a significant cost implication on the feasibility of boarding house development.

Requiring 25% of the site area to be provided as communal outdoor space can be challenging for some developers, particularly in locations with high site acquisition costs.

A reduced rate should be applied to locations that are within 800m distance of areas of regional open space or substantial areas of local open space.

#### **Recommendations:**

Communal facilities should be exempted from the calculation of FSR for Co-Living, to balance the removal of the FSR bonus and encourage a high proportion of communal facilities. Height controls still apply and other standards to limit built form.

We support the increase in the number of standards listed where Consent Authorities cannot refuse consent if those discretionary standards are met.

The car and motorcycle parking rates for Co-Living development identified in the Draft housing SEPP are very high and should be lowered, taking into account that Co-Living would be located in highly accessible areas well supported by public transport options and bike and car sharing infrastructure.

A reduced rate of communal open space (below 25 percent) should apply in locations that are within 800m distance of areas of regional open space or substantial areas of local open space.

#### **Clause 4.6 variations to development standards**

Development standards for Co-Living, in particular height and floor space ratio maximums, are included in the Draft Housing SEPP. If these were to be varied, such variations would require a clause 4.6 variation which is generally not required for local standards (outlined in Development Control Plans) or guidelines (such as the Apartment Design Guide).

Any provisions which reference a DCP or Guideline in the SEPP should be removed, to avoid the need to lodge a clause 4.6 variation to vary the development standard.

This is made more complex by the concurrent review being undertaken by the Department and the Government Architect of NSW of the *Design and Place SEPP* to clarify the Apartment

Design Guide (**ADG**) as a 'Guide' and something that should not be rigidly applied, rather site conditions and context should be taken into consideration.

If the ADG must be referenced as a design consideration, the provision could be relocated into a future design guide for Co-Living.

**Recommendations:**

Any provisions which reference a DCP or Guideline in the SEPP should be removed, to avoid the need to lodge a clause 4.6 variation to vary the development standard.

If the ADG must be referenced as a design consideration, the provision could be relocated into a future design guide for Co-Living.

### **Transitional Arrangements for Co-Living**

There is some confusion regarding the treatment of Co-Living within Concept Development Applications. It is essential that Co-Living proposed within Concept Development Applications is eligible for the 10 percent floor space ratio bonus, even if the detailed Development Application is submitted after the 1 August 2024. Savings and transition provisions should be included in the Draft Housing SEPP to reflect this.

**Recommendation:**

Should it be considered necessary to impose a deadline on the application of the 10 percent floor space bonus for Co-Living development, appropriate savings and transition provisions should be included in the SEPP to clarify that Co-Living proposed in Concept Development Applications is still eligible for the FSR bonus, even if the detailed DA is submitted after the deadline.

## **INFILL HOUSING**

### **Retention of affordable rental housing for an additional 5 years**

We note that under the Draft Housing SEPP, 'infill' affordable housing will be required to be retained as Affordable Rental Housing for an additional five years, for a total of 15 years. The current requirement is for housing developed under the 'infill' affordable housing provisions to be retained as affordable rental housing for ten years.

The Property Council does not support this change and believes that the current ten-year retention period is fit for purpose and should not be extended.

The ten-year retention period allows investors to realise their return on investment in this development within a reasonable time period and allows for infill affordable housing to be turned over frequently, remaining high quality and fit for purpose.

Any extension of the ten-year retention period will impact return on investment, deter further investment in this development type and result in a decreased supply of affordable housing through this policy mechanism.



**Recommendation:**

Keep the current requirement for 'infill' affordable housing to be retained as 'Affordable Rental Housing' for a period of 10 years. The proposal to extend this to 15 years is not supported.

**Accessibility thresholds should be adjusted**

The proposed accessibility thresholds for development to qualify for the infill affordable housing concessions and FSR bonus limits opportunities for new, diverse and affordable housing as many potential sites in regional areas will not meet these criteria.

Public transport coverage and frequency in regional areas is lower than in Greater Sydney. Many sites will struggle to meet the weekend service level requirement.

Additionally, in regional areas there is little land available that is within 400m of a B1, B2 or B4 zone. The proposed criteria exclude well located land in other zones that have good levels of access to transport and services.

**Recommendations:**

The Draft SEPP should be amended to enable broader application of the in-fill affordable housing concessions and FSR bonus.

This needs to include:

*For sites outside Greater Sydney, excluding weekends from the frequency test for bus services under the definition of 'accessible area'.*

*Applying the infill affordable housing concession to all sites in regional areas that are in proximity to transport services or town centres, regardless of zone.*

**Additional Building Height is needed to fully utilise the density bonus for in-fill Affordable Housing**

The Property Council supports the retention of the existing FSR bonus available for in-fill affordable housing available under the Affordable Rental Housing SEPP. The density bonus supports the feasibility of new affordable housing in locations with good access to transport and services.

However, it can be difficult for social and affordable housing developments to achieve the full FSR bonus due to the impact of other planning controls, for example, height restrictions, even when the variation from planning controls is marginal and the overall planning outcomes are consistent with the objectives of the local area.

We note that a new provision has been inserted, requiring the bonus floor space ratio to be used **only** for the purpose of affordable housing. This clause should be removed. As long as a development meets the requirement of providing at least 20 percent of floorspace for affordable housing, the use of the bonus floor space is irrelevant.



**Recommendations:**

A height bonus should be applied to in-fill affordable housing development in medium and high-density locations. This will assist with achieving the full FSR bonus and will help offset increases to development standards proposed as part of the draft Housing SEPP, such as increased deep soil requirements.

The requirement that bonus FSR must be used for the purpose of affordable housing should be removed.

**Changes to development standards****A) Minimum Dwelling Sizes**

The Draft Housing SEPP proposes increased minimum dwelling sizes for dwelling types not covered by the Apartment Design Guide and Low-Rise Housing Diversity Design guide (e.g. attached dwellings and residential flat buildings under three storeys). These sizes are as follows:

- One bed – from 50 metres to 65 square metres
- Two bed – from 70 metres to 90 square metres
- Three bed – from 90 metre to 115 square metres (plus 12 square metres for each additional bed above this)

**These proposed increases will have significant impacts on building cost and feasibility in delivering affordable housing and are not supported by the Property Council.**

**B) Deep Soil Zones**

The Deep Soil requirement remains at the current 15 percent of the site however the minimum dimension for Deep Soil Zones has increased from three metres to six metres. This will impact the amount of affordable housing that can be delivered on a site, particularly on smaller sites in urban areas. The proposed approach is inconsistent with the Apartment Design Guide, which applies a lesser requirement to smaller sites. Retaining the current 3 metre minimum dimension enables a greater degree of design flexibility, while still supporting the growth of larger trees, particularly adjacent to street setbacks and rear setbacks that can offer soil connectivity.

**Recommendations:**

Current minimum dwelling sizes should be retained as the increases proposed will render this development type financially unfeasible in many areas. Current deep soil requirement should be retained.

## BOARDING HOUSES

**Removal of Boarding Houses as a mandated use in R2 Low Density Residential land use zone**

The Property Council does not support the removal of 'Boarding Houses' as a mandated use in the R2 Low Density Residential Zone. We note that Councils may add 'Boarding Houses' as a permitted use in the R2 Zone if they wish to, however, there is unlikely to be any uptake on

this option and there is concern that some councils will prohibit this development type to manage community concerns about boarding houses.

The removal of 'Boarding Houses' as mandated effectively prevents boarding house development in approximately 80,000 hectares of R2 zoned land across Sydney and limits this development to higher-density zones which are highly sought after and costly. It is unlikely that a boarding house would present the best return on investment on land zoned for medium and higher density residential uses and places even greater pressure on land zoned for these purposes.

This change will reduce opportunities for supply of affordable housing options in established communities, especially in regional areas where the supply of higher density land is often limited.

When combined with the requirement for boarding houses to be 100percent affordable in perpetuity, the proposals undermine the financial feasibility of this form of housing, particularly given the higher cost of land in higher density locations.

**Recommendations:**

'Boarding Houses' must be mandated in R2 to ensure that this development type continues to remain a viable development option in a wide variety of locations throughout the state.

To manage community concerns regarding boarding house development in low density zones, a guideline to facilitate boarding house design should be developed, in consultation with the development industry, councils and the community.

**'Local Character' requirement**

We note that the draft Housing SEPP introduces new standards for boarding houses which must be complied with.

This includes a requirement that boarding house design must be 'compatible' with the 'local character' of the area. Councils hostile to boarding house development have used 'local character' to refuse consent for boarding houses in the past, despite Land and Environment precedence on compatibility. We are concerned that hostile consent authorities will interpret 'Local character' in a manner to prevent boarding house development. We believe the local character requirement should not be used as a mandatory development standard which must be adhered to.

**Recommendation:**

Remove the requirement that boarding house design must be compatible with the 'local character' of the area as a mandatory development standard.

**Alterations and additions to existing Boarding Houses**

The proposed changes development standards for boarding houses do not apply to existing boarding houses, however, alterations and additions to existing boarding will have to comply with the new requirements. This could be difficult and costly to accommodate for existing boarding houses which were not designed with these requirements in mind. This may also

deter boarding house owners from pursuing upgrades to avoid the onerous cost of renovating the entire boarding house to meet the new standards and requirements.

**Recommendations:**

Existing Boarding Houses should be able to undertake alterations and additions without having to meet the new Boarding House requirements detailed in the Draft Housing SEPP.

## STUDENT HOUSING

### Definition of Student Housing should be included

The Explanation of Intended Effect for the Housing SEPP proposed that a definition for 'student housing' would be contained within the Standard Instrument LEP and would refer to a building that:

- Provides accommodation and communal facilities principally for students enrolled to study at education establishment during teaching periods; and
- May incorporate some fully self-contained dwellings.

The Property Council was disappointed to see the proposed definition has not been included in the Draft Housing SEPP.

Conversations held with Department representatives indicate that the definition for 'Student Housing' was dropped as it was very similar to 'Co-Living' and the Department believed that the co-living provisions provided in the Draft Housing SEPP could encompass Student Housing.

The Property Council believes that there are significant differences between 'Student Housing' and 'Co-Living' and a separate definition is necessary to ensure this critical accommodation type can continue to be provided to support Australia's university sector, particularly with the return of international university students once COVID travel restrictions are eased.

Key differences identified by our members are outlined below:

- Student housing is generally located very close to universities, allowing students easy access to campus, whereas co-living can be located in a wide variety of locations throughout the state
- Students are generally less likely to own cars and more likely to utilise public transport and/or use bicycles or Ubers
- Students are more likely to take advantage of and shared common areas and facilities, many are away from home and will be looking for opportunities to socialise and spend time with other residents
- Co living is generally developed in complexes of 30-80 rooms where as student housing is generally developed in complexes of 300+ rooms
- Co-living residents are more likely to have a partner requiring additional room space.

**Recommendations:**

Retain the definition of 'Student Housing' included in the EIE in the final Housing SEPP.

Conduct analysis of the potential impact on the supply of Student Housing should the definition not be included in the final Housing SEPP, in consultation with the university sector and student housing providers.

Engage with student housing providers to determine the specific needs and requirements for Student Housing.

### **A reduction in Minimum Room Size is needed**

With the introduction of a specific definition for 'Student Housing', these developments would no longer be eligible for the 'Floor Space Ratio' bonus provided to 'Boarding Houses.' It is understood that to offset the loss of this floor space ratio bonus, a reduced minimum room size of 10 square metres was proposed.

We note that the Draft Housing SEPP no longer includes the reduced minimum room size of 10 square metres proposed in the EIE and room sizes are to be retained at the current level of 12 square metres mandated for traditional boarding houses.

While this may be appropriate for other housing types, such as Co-Living, Student Housing design requires smaller room sizes.

Design focuses on 'cluster style' accommodation which comprises 2-6 bedrooms with semi-private common living area for that 'cluster'. Student housing providers have indicated that cluster living is better for student welfare than alternative designs.

We note other jurisdictions, including the UK, do not impose legislated minimum room sizes for student housing and typically student housing providers will provide room sizes of 10sqm plus a private bathroom. These facts were also acknowledged in the EIE and were the basis for the proposed 10sqm minimum room size.

Smaller bedroom sizes are needed to accommodate additional living space specifically for each individual 'cluster'. The design of 'cluster style' accommodation could be further addressed in a future design guide, however room sizes should be adjusted to facilitate this design.

### **Recommendation:**

To compensate for the reduction in floor space ratio bonus, a reduced room size of 10 square metres is necessary to ensure that 'student housing' is still feasible and allows for 'cluster style' living arrangements. (The room size of 12 square metres will greatly limit the ability of student housing providers to develop these projects feasibly.)

### **Provision of car and bicycle parking**

Locations where student housing is developed are generally highly serviced by public transport, and often within walking distance to university. Students often do not own cars, due to the cost and have made a conscious choice to live in an area close to public transport to ensure they are able to reach jobs, education, shopping and services.

Car spaces reduce the affordability and feasibility of student accommodation. Research by student housing providers indicate that there is generally low uptake of car parking spaces where car spaces have been mandated.

A large amount of student housing is taken up by international students, whose parents prefer the security and certainty of professionally managed accommodation. International students tend to have low car ownership rates.

Bicycle parking should be set at 1 per 4 students. The current proposal for 1 bicycle parking place per student is excessive. Student housing providers in the UK provide one bicycle parking space 4-5 students.

**Recommendation:**

The parking requirements for student housing are onerous and should be adjusted to 0.2 car parking spaces per student and one bicycle parking space for 4-5 students. Clear evidence-based research should be undertaken in consultation with student housing providers to determine if parking is needed and how much.

## HOUSING FOR SENIORS

### Provision of Seniors Housing needs to be a Government Priority

Retirement villages are more than just a housing option for older people. The World Health Organisation has identified the value of housing that allows older people to age comfortably and safely within their own community but notes that dedicated and affordable seniors' housing is in short supply.

In an effort to direct more focus on this issue, the WHO has developed a global strategy and action plan to support healthy ageing, housing is a key aspect of this plan.

It is critical the NSW Government plans for the increase in the ageing population. The 2021 NSW Intergenerational Report, shows that by 2061 one quarter of the population will be over the aged over 65, an increase from the current 17 percent now. This equates to an additional 1.564 million people.

The rapidly ageing NSW population demonstrates the challenge that confronts government and the broader community in ensuring purpose-built, age-friendly housing across the State. Ultimately, this will require a mix of housing types and the retirement village sector provides an avenue to deliver a portion of this housing at no cost to the NSW Government.

Modelling of the above figures at an estimated penetration rate of 6 percent an average occupancy of 1.3 persons per Independent Living Unit (ILU). This equates to demand for an additional 72,000 ILU's over the next 40 years. This pipeline is not going to be met.

The 2020 Property Council of Australia/PwC Retirement Census participants indicated there is approximately 2,261 units planned to be completed between FY21 and FY25.<sup>1</sup>

<sup>1</sup> [PwC/Property Council Retirement Living Census](#)

As the retirement village industry does not receive any government funding to build this much needed purpose-built housing, it is critical that any planning changes do not inhibit the investment required to meet future demand.

In addition, within the next 20-40 years the entire stock of ILU's in NSW will require redeveloping, which would require reliance on existing use rights, leading to delays and risk of further supply reduction.

One of the key focus areas in the NSW Government's Ageing Well in NSW Seniors Strategy: 2021-2031 is living in age-friendly communities.<sup>2</sup>

The final report of the Royal Commission into Aged Care and Quality, due to its consumer focus related to ageing in place and delaying to moving to residential aged care until the end-stage of life, outlines the important role retirement communities will be required to fill, as policy shifts to supporting older people to receive care and support in homes of their choice. It is expected that this will likely lead to a higher penetration rate of older people as they move into appropriate accommodation to allow them to age in place.

There are benefits to Government in supporting purpose built aged friendly communities. Research commissioned by the Property Council uses official government data to demonstrate that retirement villages are directly responsible for saving Australian governments at least \$2.16 billion each year through delayed entry of residents to aged care and through residents requiring fewer hospital and GP visits and shorter hospital stays. This research specifically identifies Australian Institute of Health and Welfare data, which has been backed by independent analysis, showing retirement village residents enter aged care on average five years later than those going from a family home.

These significant health outcomes are achieved because retirement villages are designed and operated to mitigate the two main factors that lead to the hospitalisation of older Australians: falls and depression.

It is clear that purpose built aged-friendly communities are going to have an important role to play in supporting the aged population both now and in the future.

### **Provisions in the Diversity SEPP does not Support the aim of Increasing Seniors Housing**

The objective of the draft housing SEPP is to encourage housing that is designed and located in a manner that meets the needs of residents, especially seniors or people with a disability. Whilst the Property Council supports the review and "refresh" of the current Seniors SEPP provisions, as exhibited, the draft SEPP will not achieve the intended aims.

In its current form, the draft SEPP loses the existing balance that has been achieved between development control and development incentives, with the latter critical to ensure high quality seniors' stock is continued to be provided for a product that is considerably more expensive to deliver than traditional forms of residential housing.

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<sup>2</sup> [NSW Seniors Strategy: 2021-2031](#)

Whilst there are some minor improvements in the development controls set out in the draft SEPP, it holistically results in reduced opportunities for stock delivery, through tighter restrictions on location, blanket exclusions for land that could readily achieve a suitable outcome that responds to constraints such as flooding, inclusion of a minimum site area requirement for vertical villages, increased development control (generally) and considerably reduced incentives for the provision of vertical villages on land that is clearly intended to permit high density development outcomes.

The Property Council's key concerns are outlined below:

### **Age increase from 55 to 60 years of age**

The Property Council opposes the proposed increased age requirement for seniors housing from 55 to 60 years. The relative affordability of retirement villages is primarily a consequence of tenure arrangements (more weighted toward lease and licence arrangements) and the deferred management fee model.

From a demographic perspective, an average of 62 per cent of all retirement village residents are female, of which it is estimated 68% are single. Affordability is a primary determining factor for this cohort.

Collectively, this data points to the essential role that retirement communities play in providing safe and secure age-friendly communities for vulnerable Australians, and in particular single, older women. It follows, that without retirement villages many older women would be forced to live in less safe and supportive environments, which would have a direct and significant health and social impact on those individuals.

At time where the biggest increase of women over the age of 55 are at risk of homelessness, this age change which now removes the pathway for this cohort to access affordable, long-term secure housing in land lease communities or retirement villages does not seem logical. Also, the decrease in age does not consider the lower life expectancy of indigenous Australians.

The justification provided in the Explanation of Intended Effect for the proposed age increase raises a fundamental concern about the appropriateness of amending a long-standing State housing planning policy to align with a Commonwealth government financial regulation.

There is no requirement that persons residing in Senior's housing must be self-funded retirees or on an Aged Pension and given the pressures to continue working well beyond 'traditional' retirement age it is increasingly likely that residents will still be working. Tying it to superannuation access is therefore irrelevant.

The change to the preservation age under superannuation legislation is unlikely to affect the age at which people consider downsizing (but rather when they decide to retire) and therefore we question the rationale for the change.

The Seniors SEPP is currently aimed at housing for people who are at a stage in their life where they are considering downsizing. The SEPP not only facilitates benefits for older persons through the availability of appropriate housing but also has flow on benefits to the broader community in terms of supply and affordability and supporting aging in place. Increasing the



minimum age threshold will only serve to reduce the scope of the SEPP and the delivery of these benefits.

The AHURI report *Effective downsizing options for older Australians* (February 2020)<sup>3</sup> research covered the 55+ age group. The research shows that downsizing, or 'rightsizing' as it is often termed, is an integral part of the current and future housing preferences of older Australians. The research found that 26 percent of over 55s had downsized, and a further 29 percent had considered downsizing. Older Australians perceive downsizing as more than just a reduction in dwelling size. Rather, it refers to internal and external spaces becoming more manageable, and a reduction in belongings. It also includes a financial benefit to the household.

There is no benefit to the community to have older people living in family homes, in fact the Government needs to incentivise people to "right size" to improve housing availability and affordability.

If the change in age is implemented, moving forward, this will mean that only older villages which were built prior implementation of this Housing SEPP will only be able available for people under 60 to move into, whilst new villages would only be occupied by over 60's.

Even though the average age a person moves into a retirement village is 75 years of age, people under the age of 60 are residents of seniors housing, and manufactured home parks has a younger cohort moving in. The closing of an option of affordable housing is a concern. A survey of members highlighted this. A not-for-profit retirement operator highlighted that 400 of their residents are currently between the ages of 55 and 60. Please note this is the age of people currently living in their communities not the age they were when they moved it.

Retirement communities have the full range of accommodation including affordable and social housing for over 55's. This change, which does not financially impact the Government will mean people in this age group in the future will now be ineligible for this type of housing both in affordable rental or buying housing due to the unique contract options of the sector. There would be people now above the age of 60 living in retirement communities who moved in at in that age range.

The 2020 PwC Retirement Living Census shows that a nationally a two-bedroom dwelling in a retirement community is 67% of the median house sale price in the same postcode. In Sydney metropolitan area this statistic is a two-bedroom dwelling is 47% of the median house sale in the same postcode. It is unclear what the planning basis is for recommending this policy change.

**Recommendation:**

That the NSW Government retain the age definition for seniors housing people aged 55 and above.

**Savings and Transitions Provisions Require Clarification**

The draft SEPP's proposed savings and transitional provisions provide for a standard approach to DAs only, and the FAQ notes only that the 'Government will make a final

<sup>3</sup> Effective downsizing options for older Australians (February 2020)<sup>3</sup>



decision regarding any savings and transitional provisions' in making the SEPP. We request the Government's commitment to including suitable savings provisions in the SEPP should also clearly apply to Concept DAs and their future staged DAs to be lodged and assessed following such Concept DA consents.

These are a valid DA pathway under the EP&A Act and a strategic approach to staging of large sites over time, which should not be stymied by the SEPP. There should be an additional item in Clause 2 Schedule 6, as item 'c' which adds savings for any subsequent DAs not yet lodged, that relate to a Concept DA that has not lapsed.

#### **Recommendations:**

There are savings provisions included in Schedule 6 of the draft SEPP which outlines that, any DAs that have been "made" will be "saved" however there should be inclusion of an additional item in Clause 2 of Schedule 6. This should be inserted as item "c" to include a concept development application granted on or before the repealed day, including any subsequent development applications that are consistent with that concept DA.

The NSW Government clearly outline the saving and transition arrangements for current and concept development applications. We also request that the final SEPP include savings and transitional provisions to allow existing villages in the RE2, SP1, RU5 and R2 zones to continue to be subject to the provisions of the previous SEPP so that there is a clear planning pathway for those villages to seek planning approval to enable them to be upgraded, that is, redeveloped or expanded over time.

#### **Prescribed Zones are Supported but are Limits Inhibit Supply**

Whilst the Property Council is generally supportive of the move to 'prescribed zones' for providing clarity as to the land to which the SEPP applies, of fundamental concern are the development standards proposed in clause 76 which limit seniors housing development in the RE2, SP1, RU5 and R2 zones.

##### **A) Restrictions of Seniors Housing in R2 Low Density Residential Zone will limit supply**

Restricting all ILU development in the R2 zone fundamentally undermines the potential for the SEPP to achieve its aim of ensuring an adequate supply of an appropriate range of housing types to meet the changing needs of people across the State. This is because it forces aged care providers (including not-for-profit operators) to compete with commercial residential developers for high-density sites.

The result is that for many operators it becomes unfeasible to develop high density sites for the purposes of seniors housing. This is then compounded for smaller scale operators who will then need to access upfront the significant capital that is required to build a vertical village development in a high-density zone, without the ability to progressively stage the construction of a development to reflect demand.

The limitations and proposed restriction of all ILU development in the R2 is the most critical in terms of its implications for the supply of seniors housing. This cannot be overstated to the Government. In addition, this change will remove seniors housing as a low-density

housing option from approximately 80,000 hectares of R2 zoned land in Greater Sydney alone, as well as many regional towns, affecting affordability of future seniors housing supply. Developers and operators of retirement villages require access to land in areas where the future residents wish to live, which is heavily dependent on R2 zoned land.

The difficulty for operators competing with residential developers is compounded that these developments require communal facilities, like roof top outdoor areas, media centres and community rooms to be included the size of the dwelling as well are approximately 15% larger than residential apartments. This has very real implications for the ability of operators to deliver affordable and quality seniors housing, the need for which will continue to grow with Australia's aging population.

Fundamentally, the practical application of Part 4 of the draft SEPP will be highly limited if ILU's are restricted in the R2 zone. Whilst the Department has referred to the ability of individual local councils to 'opt in' to permit all forms of seniors housing in R2 zones in their Local Environmental Plans, the Department must also acknowledge the very real likelihood that, taking their lead from the State Government, many councils will move to similarly preclude ILU development in R2 zones. Local Government has not operated in good faith in delivering their overall housing targets as set by the Greater Sydney Commission, and as such should not be given the opt in option for further important housing development such as this.

Whilst the Government has made clear its policy position to encourage seniors housing in higher density areas and away from low-density zones, this will not encourage the supply of a diverse offering of seniors housing in NSW nor will it assist in achieving the outcomes sought by the findings of the Royal Commission into Aged Care Quality and Safety. The findings of the Royal Commission relevantly included that residential aged care should transition towards smaller, lower-density congregate living arrangements, including the 'small household model'.

Whilst the draft SEPP proposes that Residential Aged Care Facilities (**RACFs**) will be permitted in the R2 zone, the practical reality is that the development of a RACF is generally only financially feasible if it is developed in conjunction with co-located ILUs. Co-location of a RACF with ILUs also has the added significant benefits of facilitating seniors to age in place and maintain connection with their local communities – which leads to significantly improved outcomes in terms of wellbeing and healthy ageing.

There are also very real implications for existing seniors housing developments located in R2 zones. Our members include both commercial and not-for-profit aged care providers of a variety of scales, many of whom have between 30–50 percent of their existing seniors housing developments (including ILUs) located in R2 zones.

If the SEPP restricts all ILU development in R2 zones, existing villages will be solely reliant on the existing use rights or saved consent provisions under the *Environmental Planning and Assessment Act 1979* (NSW), unless permissible under the applicable Local Environmental Plan. This makes the planning approvals process highly complex, expensive, and uncertain for those operators of existing villages who may wish to upgrade aged housing stock on R2 zoned land - a disincentive for operators to invest the time and resources in this process. Not

only does this place a high degree of uncertainty on the process of future upgrades to villages however, it is also raising significant concerns among the many thousands of village residents across NSW of the impact that this change will have on the value of their homes.

There are other development standards that could be proposed in the SEPP which would ensure that RACF and ILU development in these zones was appropriate in scale and consistent with the local character, without the need for a blanket restriction which will wholly undermine the supply of affordable housing.

Rather than prohibit all types of senior's development, other than RACFs, in the R2 zone, the control should focus on delivering seniors housing that is compatible with the area. The controls within the SEPP should then focus on ensuring the seniors development is consistent with the area, not what the type of housing it is.

**Recommendation:**

The Property Council recommends the NSW Government reconsider its position in relation to seniors housing development within the R2 zone to permit both RACF and ILU development as a means of ensuring supply and a diversification of offering in the market by large- and small-scale operators.

**B) Further Restrictions in RE2 and SP1 Zones Limit Supply**

In relation to the proposed restrictions in the RE2 and SP1, the need for at least 50 percent of the site adjoining a residential zone is arbitrary and unduly limited. Given the Government's intention to encourage development in high-density areas serviced by public transport, we consider that provisions should be broadened to apply to RE2 and SP1 zones which adjoin business zones and not simply residential zones.

Rather than prohibit all types of senior's development, other than RACFs in the R2 zone, the control should focus on delivering seniors housing that is compatible with the area. The controls within the SEPP should then focus on ensuring the seniors development is consistent with the area, not what the type of housing it is.

**Recommendations:**

If R2 Zones are to be restricted an additional provision that allows the development of ILUs in the R2 zone if they are compatible with the existing character of the area is recommended. This could build on local character analysis already undertaken by DPIE and local Councils.

Recognition of existing use rights for seniors' development on R2 zoned land to support future redevelopment of outdated facilities is required. This should be extended to expressly include any future amalgamation of adjoining sites for seniors' development, noting that many providers have been buying up adjacent land to future proof expansion of outdated facilities that invariably require more floor area per dwelling due to quality demands and current standards. Sunset provision to allow existing owners of R2 zoned land up to 5 years to utilise the Draft Housing SEPP prior to the R2 prohibition coming into effect should also be included in the final SEPP.

**C) Limits to SP2 Zones**

We are also concerned with the limited consideration of the Special Purpose zones. In particular, the only circumstance that the SP2 Infrastructure zone can be used for seniors housing is when the zone is identified for 'Hospital' use. These changes will stifle the development of surplus land on many school sites that have potential for intergenerational communities to be created.

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

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

It is noted that SP zones are generally well located within urban areas in relation to the infrastructure and services that seniors housing also benefits from, such as hospitals and health facilities. Importantly, there is no consistent distinction between an SP1 zoned educational establishment and an SP2 zoned educational establishment across the NSW planning system. The two Special Purpose zones have been applied interchangeably for the past 15 years with the SP2 zone being a prevalent zoning for educational establishments in NSW.

By limiting the use of these zones for seniors housing, the Department will restrict the development of innovation precincts on campuses at a critical time given the COVID-19 pandemic when development of innovation precincts is vital to the long-term success of our universities. The establishment of retirement villages on campus has proven to be extremely successful in the United States, as it offers the residents the ability for ongoing learning, volunteer work, participation in university activities and research and intergenerational opportunities. It is a model which offers enormous possibilities for ageing residents in Australia and should be encouraged, rather than discouraged.

#### **D) B3 Commercial Core Zones restrictions limit mixed-use development**

The other issue of concern is that subdivision is not permitted in B3 zones. This is an issue because it would prevent the stratum subdivision of a mixed-use development. It is standard practice to split the title and ownership of commercial and residential components of a mixed-use development, and seniors housing should not be treated any differently. The planning policy reason for this proposed restriction is not clear.

#### **E) Rural Zones restrictions limits much needed supply in Regional Areas**

The removal of rural zones will affect the ability to develop new villages to the outskirts of regional towns where locals prefer to live, and which are often still within 5-10 minutes of services. While the current Seniors SEPP provisions are unduly complex, there is the possibility for seniors housing developments to be located in rural zones if certain criteria are satisfied and a Site Compatibility Certificate is obtained. This allows for a merit-based assessment rather than a blanket prohibition of seniors housing in rural zones without any consideration of individual site circumstances.

One of the major difficulties in delivering seniors housing in regional and rural areas is the challenge of developing 'greenfield' sites due to the planning constraints and availability of suitably zoned land. Therefore, the removal of rural zones from the seniors' provisions of the

draft Housing SEPP further limits the availability of rural zoned land for seniors housing providers and will limit housing choice and people downsizing to age within their communities.

The Property Council can identify no reason why other rural zones such as RU2 Rural Landscape cannot be included in the list of prescribed zones, subject to suitable locational criteria such as those proposed for other zones in clause 76. We also note that draft clause 82 which requires independent living units (ILUs) to have access to transport services and services and facilities would apply to development in the RU2 Rural Landscape Zone, thereby ensuring that residents in the RU2 Zone have access to the required facilities.

### **New and updated non-discretionary standards**

The use of non-discretionary standards is generally supported, as they have for many years provided certainty and advantages for retirement living providers, not only in the assessment of development applications but also in the acquisition of sites from a due diligence and feasibility perspective.

The change in the name of these provisions from the Seniors SEPP “standards that cannot be used to refuse consent” to the draft Housing SEPP “Non-discretionary standards” is understandable considering the reference to this term in section 4.15 of the EP&A Act.

However, the drafting of section 4.15(3)(b) is problematic.

The section is outlined below.

*4.15(3)(b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard **may be applied** to the non-discretionary development standard.*

This provision effectively gives a consent authority discretion whether to apply clause 4.6 of a relevant LEP to non-discretionary standards in the Housing SEPP. It has never been the intent of the Seniors SEPP, “standards that cannot be used to refuse development consent”, that these provisions to act as hard development standards. Also this is not how they have been applied in NSW since they were introduced.

The Property Council queries whether this is not the intent of the new non-discretionary standards, as they have been placed in Division 7 of Part 4 of the draft Housing SEPP, separate to the development standards in Division 3. Furthermore, the intent of the non-discretionary development standards is clearly stated in clause 96(1) of the draft Housing SEPP as follows (with clause 97(1) being drafted in similar terms):

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

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

distinction between non-discretionary and other development standards becomes blurred and is contrary to the intent of non-discretionary standards.

In addition to the above, we have concerns with the following proposed non-discretionary standards:

- There is an inconsistency between the 9.5m non-discretionary height standard of clause 96(2)(a) and the 9m height development standard of clause 74(2)(c)(i). For example, a RCF in an R2 zone where residential flat buildings are prohibited could achieve a building height of 9.5m thereby complying with the non-discretionary standard, however it would breach the 9m height development standard of clause 74(2)(c)(i). This breach would therefore require a clause 4.6 statement to vary the 9m height development standard, even though a consent authority cannot require more onerous standards where a proposed development complies with a non-discretionary standard. This is clearly not the intent of the interplay between the development standards of clause 74 and the non-discretionary standards of clause 96 and 97 and will need to be reviewed by DPIE to ensure consistency.
- Furthermore, the new standard for internal and external communal open space of 10m<sup>2</sup> per bed, for a 100 bed RCF equates to 1,000m<sup>2</sup> of communal open space which is considered onerous, particularly outside of low-density residential zones. Following consultation with our members, we believe that 7m<sup>2</sup> per bed would be an appropriate rate.
- In relation to the non-discretionary standards for ILUs, we question some of their applicability considering the proposed prohibition of ILUs in R2 zones. The intent of these non-discretionary standards is to set a baseline of compliance, particularly in low density zones, where a consent authority cannot refuse consent on that basis should a standard be complied with. In particular, the building height standard of 9m and the FSR standard of 0.5:1 for ILUs relate directly to R2 zoned land, where ILUs are proposed to no longer be permissible development. This reinforces the industry's perception that the impacts of prohibition of ILUs in R2 zones was not given proper consideration.

### **Incentives provided to encourage the development of 'Vertical Villages' in medium and high-density areas increase the supply of seniors housing**

The proposed removal of the requirement for a site compatibility certificate for the bonus floor space is welcomed, however, a survey of members has shown that over 80 percent of operators who responded said the bonus incentives provisions will unlikely encourage or even enable them to feasibly develop this type of seniors housing.

To ensure that seniors housing is incentivised in these types of developments the following issues identified need to be considered and addressed in the final instrument.

- The applicability of Division 8 relates to land where residential flat buildings are permissible under another EPI. It would be reasonable to expand this to permit vertical villages on land where shop top housing is a permissible use, to ensure that seniors housing is encouraged and incentivized to be provided within a range of



town centres, mixed use, and business zones where Residential Flat Buildings are typically prohibited.

- The industry requiring a minimum site area to permit a vertical village development will not promote or facilitate infill development in existing urban areas. This acts as a disincentive for smaller, boutique options in seniors housing within medium – high density zones, as well as existing aged care facilities which may not comply with the minimum site area standard. Provisions for bonus height are inadequate and illogical. The current vertical village provisions of Clause 45 of the Seniors SEPP currently allow for a bonus FSR of 0.5:1, to be applied above the maximum permissible FSR under a LEP or DCP that applies to the land. This has generally not been sufficient to attract significant interest within the development industry to meet the increasing demand for seniors' accommodation and care.
- The inclusion of a provision for bonus height (by up to 3.8 metres) is supported, however the current ratios outlined below are confusing, illogical and considerably reduce bonus FSR.

The draft vertical village provisions propose to reduce the bonus FSR provision from 0.5:1 to:

- 15 percent (or 0.15:1) for ILUs
- 20 percent (or 0.2:1) for RCFs
- 25 percent (or 0.25:1) for ILUs and RCF mix.

The Property Council recommends that a simple, viable and more effective approach would be **to apply 25 percent across the board** be given to any of these types of developments. A FSR bonus based on a percentage basis is a gross downgrading in the current SEPP bonus provision. This approach does not account for the difference in size and cost of providing an ILU product, in terms of accessibility, clubrooms and amenities and other on-site support services, the size of car parking and multiple lifts for enhanced accessibility.

The "base" FSR needs flexibility in relation to what is allowed under the LEP. The "base" FSR of 0.5:1 where there is no maximum FSR specified under a LEP is insufficient to enable a feasible development outcome for a senior's vertical village, noting (as above) that the build cost associated with the product is more extensive due to design standards and market demand, than the cost associated with a regular RFB.

This is particularly evident where there might be a mix of ILUs and a RACF and respective non-discretionary standards of 0.5:1 for the ILUs and 1:1 for the RACF; yet if there were to be no maximum FSR permitted under the relevant EPI (i.e. LEP), the bonus would be applied to 0.5:1 (per 99(4)(b), as opposed to picking up the higher non-discretionary standard that would typically apply to a RACF of 1:1).

Furthermore, there are many scenarios where there is no maximum permissible FSR that applies to the site under the relevant LEP, yet there is a height standard applied. In this regard, a "blanket" FSR of 0.5:1 + nominal bonus is unlikely to correlate with the maximum permissible building height (based on the LEP height + the 3.8 metre bonus/incentive), resulting in the need for a Clause 4.6 variation to the FSR in a

circumstance whether the height standards (coupled with other development controls and standards) anticipate a greater density on the site beyond the generic 0.5:1. We consider an appropriate mitigating approach would be to scale the FSR bonus on the basis of what is permissible on the site in terms of height.

A proper floor space incentive is required. The floor space incentive for vertical villages is further undermined/reduced by the removal of Clause 45(4), which currently allows the gross floor area for on-site support services (as defined) to be excluded from the calculation of GFA, up to a maximum of 50 percent of the total GFA. We would recommend re-insertion of this provision in the final instrument. Clarity is required on non-discretionary standards. The non-discretionary standards for vertical villages refer to the general non-discretionary standards under Clauses 96 and 97. It is not clear as to why the non-discretionary standards do not reflect the additional height permitted under Clause 99(2)(b) for a vertical village.

A vertical village remains undefined in the draft instrument. It would be considered good practice for a new instrument to include such a definition for a development outcome that has its own set of development controls. The 3.8m height bonus permits an additional floor only. In a development containing ILU's and residential aged care the up to 25% floor space will only be achievable in a zone permitting up to 4 floors. In higher zones the additional floor will allow less FSR bonus to be delivered. It is suggested that the height be increased 3.8m for every 4 floors. For example, if the underlying zone permits 8 stories, then to achieve the 25 percent bonus, there should also be a 7.6m height bonus.

- Seniors Housing needs to be allowed above shop top housing. Division 8 (98) this means this section does not apply to shop top housing zones. There is no logical reason for seniors housing to be prohibited from being built in these zones.

As outlined above, seniors communities are built to different standards and requirements to regular residential developments. Feedback from the industry indicates that the standard 2-bedroom residential apartment is 75-80m<sup>2</sup> whilst a senior's housing dwelling is 95m<sup>2</sup>, therefore 15 percent larger and the ingoing contribution is set for a lower price than residential properties.

This differences between these two types of developments are reflected in recently released research by Dr Lois Toward, UTS titled "*A Comparison of Built Form Outcomes between Retirement Villages and Residential Developments*".<sup>4</sup> The differences include the size of apartments, the relationship between the net apartment area and the gross floor area (referred to as the efficiency ratio), features of car parking, floor height, community facilities and, in addition, the anticipated population in each property.

<b>Recommendation:</b>
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<sup>4</sup> <https://www.uts.edu.au/sites/default/files/2021-08/uts-dab-lois-toward-report-retirement-villages-residential-developments.pdf>



The Property Council recommends that a simple, viable and more effective approach would be **to apply 25 percent across the board** be given to any of these types of developments. A FSR bonus based on a percentage basis is a gross downgrading in the current SEPP bonus provision. This approach does not account for the difference in size and cost of providing an ILU product, in terms of accessibility, clubrooms and amenities and other on-site support services, the size of car parking and multiple lifts for enhanced accessibility.

### Development standards revised and updated

Rationalization of development standards proposed in the draft Housing SEPP is generally supported. However, there appears to be a drafting error in clause 74(3) that states:

*(3) The development may result in a building with a height of no more than 11.5m if servicing equipment on the roof of the building.*

*(a) is fully integrated into the design of the roof or contained and suitably screened from view from public places, and*

*(b) is limited to an area of no more than 20 percent of the surface area of the roof.*

It is understood the underlying intent of this provision is to provide an additional 2.5m of building height for roof servicing equipment, above the 9m height standard. However, the 9m height standard applies only to residential zones where residential flat buildings are prohibited, whilst the 11.5m servicing equipment height appears to apply to all zones.

For example, land in an R4 zone with a 20m height development standard or 6 stories under an LEP, will require a clause 4.6 variation statement to vary the 11.5m height standard of subclause (3), despite the proposal achieving an LEP compliant height of 20m. The Property Council questions whether this outcome was the intent of this provision.

### Clarification to Transport Access Requirements and Definitions for Seniors Housing and Independent Living Units

The Property Council is urging the New South Wales Government to re consider the definitions and conditions surrounding transport access requirements for Independent Living Units and Residential Care Facilities. The current draft of the Housing SEPP utilises several vague references when outlining requirements for transport access and services. *Division 6, section 92* referring to the accessibility development for the purposes of seniors housing outlines that developments 'should',

- 1. have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities.*
- 2. provide attractive, yet safe, environments for pedestrians and motorists with 'convenient' access and parking for residents and visitors.*

The current definitions stated in *section 92* fail to adequately outline what defines these terms. If these terms are left open for interpretation, then developers, certifying authorities and council will be able to utilise discretion over what they consider the terms to require.

The Property Council recognises the discrepancies in the draft SEPP related to onsite provisions for transport requirements for Independent Living Units, as well as the varying requirements being identified for Residential Aged Care facilities. The draft SEPP also fails to outline whether developments must adhere to make provisions for access to public transport in ILU and Aged Care developments.

Existing development standards state that public transport access must be provided for however, this has been identified as an anomaly in the draft SEPP. Clearly referred to under *division 4, section 82* relating to 'Site-related requirements' for transport and other services. The SEPP does not adequately or appropriately designate whether developments of ILU's must provide for public transport access requirements. Division 82 outlines that transport access requirements must,

- a. *take the residents to a place that has adequate access to facilities and services, and*
- b. *for development on land within the Greater Sydney region,*
  - i. *not be a passenger service, and*
  - ii. *be available both to and from the site at least once between 8am and 12pm each day and at least once between 12pm and 6pm each day.*
- c. *for development on land that is not within the Greater Sydney region, be available both to and from the site during daylight hours at least once each weekday.*

Developers of Independent Living Units are allowed to provide onsite provisions for transport however, are unable to be provided under the same provisions when developing either a residential aged care building or a joint aged care and ILU development. The draft Housing SEPP clearly demonstrates a discrepancy. The Department of Planning and Environment, through industry consultation roundtables have outlined that the draft SEPP is aiming to reduce the access and location requirements for residential aged care developments, however, are keeping many of the existing provisions which are required for Independent Living Unit developments. The draft SEPP should further clarify this point, as it has created uncertainty for the industry, especially for developers who intend to develop joint projects, which incorporate the two.

By default, the more stringent transport access requirements for Independent Living Units will apply, if a combined product is developed in conjunction with joint facilities, in order to meet Independent Living Unit access requirements.

It is recommended the draft SEPP to create a universal requirement for joint developments containing Independent Living Unit's and Aged Care Facilities, which can be readily applied to joint development projects

#### **Recommendation:**

The Property Council is urging the New South Wales Government to amend the existing draft Housing SEPP to utilise definitive language solutions throughout the SEPP. The Government must also consider incorporating the use of transport access provisions for joint developments of aged care facilities and Independent Living Units. This amendment would address the existing access to private and on demand transport options readily available to

residents of Independent Living Units. The transport provisions will ensure joint developments will also have a further sense of design integration and planning diligence.

**Changes to ‘design principles’ have been incorporated to acknowledge the unique nature of Residential Care Facility design**

There is essentially no change from the existing SEPP regarding Design Requirements and Design Principles to the new SEPP except for 87(a) which states:

Neighborhood amenity and streetscape Development for the purposes of seniors housing should:

*(a) recognise that the operational, functional, and economic requirements of residential care facilities typically require a different building shape from other residential accommodation.*

It is not clear whether this clause is attempting make allowances for RACFs by recognising and accepting their potentially different building form to other residential building types or whether it will be used to prevent their development as they have been labelled different and therefore may add to an argument that they are unable to fit in and therefore should not be developed in certain locations.

RACFs do not have a set building format, nor necessarily do any other types of residential accommodation. This clause seems unnecessary. We note that ‘land to which this Part does not apply’ includes heritage conservation areas in Greater Sydney Region. This clause is fundamentally unchanged from the current SEPP except with the addition of specific dates around transitional savings. The date of July 2022 for repeal of the section remains. Many operators have built in heritage conservation areas in Greater Sydney and ensured appropriate design features. One not-for-profit operator in the Greater Sydney region currently has seven percent of their ILU’s in Heritage Conservation Areas. This moratorium which allow Councils to disallow development in these areas currently needs to be lifted.

This moratorium seems to be based upon a preconceived notion that seniors housing cannot fit in with local character. Yet there are many examples of seniors' accommodation within heritage areas and even within heritage buildings. Items of heritage value are often incorporated into newer developments ensuring their ongoing maintenance and use. One of the aims of providing seniors housing in a diversity of locations is to allow seniors to remain within their community as they age and maintain access to the places and people that are known to them, adding to overall wellbeing. To preclude seniors housing from these areas means residents within those areas will not have this housing choice available to them.

**Recommendation:**

It is unnecessary to exclude Residential Care Facilities from heritage conservation areas. There are adequate protections in place for items and areas that are heritage listed under national, state, and local legislation. Additionally, Council has adequate controls within their DCPs to ensure character of a heritage area is maintained.

**State Significant Development Pathway has limited application**

The Property Council strongly supports the creation of a new State Significant Development (SSD) pathway for residential care facilities.

However, the current drafting of the proposed new clause to be inserted within the *State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP)*, subclause (b), will mean that it is very limited in its practical application and will therefore not be effective in providing an alternative planning pathway to increase supply.

This is because larger developments with RACFs of over \$30 million in Greater Sydney (and over \$20 million outside of Greater Sydney) are generally co-located with ILUs, and in most cases the ILUs will contribute to most of the capital investment value. In other words, the RACF rarely constitutes 60 percent of the capital investment value of the overall development. For these types of large developments, which are surely prime candidates to be assessed by an SSD pathway, the effect of the current drafting is development that includes a RACF of over the monetary threshold would be rendered ineligible to access the SSD pathway because the co-located ILUs comprise more than 60 percent of the capital investment value of the overall development.

The Final Report into the Royal Commission into Aged Care Quality and Safety recommended a move to smaller residential aged care facilities with the focus on supporting people to age in place. This SSD should support the proposed models for aged care facilities as highlighted in the report.

#### **Recommendation:**

To facilitate the supply of significant seniors housing projects, the Property Council recommends that the SSD pathway should be available for **any seniors housing development that includes a Residential Aged Care Facility (RACF)**, where the RACF has a capital investment value meeting relevant capital investment value threshold, irrespective of the contribution of the Independent Living Units (ILUs) to the overall value of the development.

The SSD pathway should be available as an opt-in process for social housing, land and housing providers. The SSD pathway should also be made available for any seniors housing development that includes RACF, where the RACF has a capital investment value meeting relevant capital investment value threshold, irrespective of the contribution of the ILU's to the overall value of the development.

#### **Environmentally Sensitive Land**

The review and reduction of this Schedule removes a lot of current uncertainty with the SEPP.

However, inclusion of the land under Environmental Planning Instruments identified for 'flood planning' and 'open space' are confusing and should be removed. Flood assessment can be undertaken at the DA stage and suitable areas excluded from any development, potentially without excluding an entire site as currently occurs. Seniors housing developments have previously occurred in flood prone land the issue of flooding should simply need to be considered in the same way as the new flooding provisions in all LEPs. The

reference to 'open space' is vague and open to interpretation and given prescribed zones, now appears redundant.



# The Property Owners Association of NSW

To: NSW Department of Planning, Industry and Environment  
NSW Planning Portal - Online Submission  
<https://www.planningportal.nsw.gov.au/housing-sepp>

## Proposed Housing SEPP: Draft Provisions.

29<sup>th</sup> August 2021.

Submission on behalf of the:

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## DISCUSSION PAPER:

Thank you for the opportunity to provide our feedback on the NSW Department of Planning, Industry and Environment Proposed Housing SEPP: Draft Provisions 29<sup>th</sup> August 2021<sup>1</sup>.

## BACKGROUND:

The Property Owners Association of NSW Inc (POA NSW) is the peak body that has represented property owners in NSW since 1951. POA NSW relies on the feedback and support of our membership base, which is predominantly “mums and dads” investors who collectively account for some 96% <sup>2</sup> of all property owners in NSW.

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<sup>1</sup> <https://www.planningportal.nsw.gov.au/housing-sepp>  
[https://www.planningportal.nsw.gov.au/sites/default/files/documents/2021/Draft%20State%20Environmental%20Planning%20Policy%20%28Housing%29%202021\\_0.pdf](https://www.planningportal.nsw.gov.au/sites/default/files/documents/2021/Draft%20State%20Environmental%20Planning%20Policy%20%28Housing%29%202021_0.pdf)  
<https://www.planningportal.nsw.gov.au/sites/default/files/documents/2021/Draft%20Environmental%20Planning%20and%20Assessment%20Amendment%20%28Housing%29%20Regulation%202021.pdf>  
<https://www.planningportal.nsw.gov.au/sites/default/files/documents/2021/Standard%20Instrument%20%28Local%20Environmental%20Plans%29%20Amendment%20%28Miscellaneous%29%20Order%202021.pdf>  
<https://www.planningportal.nsw.gov.au/sites/default/files/documents/2021/Housing%20SEPP%20consultation%20draft%20frequently%20asked%20questions.pdf>  
<https://www.planningportal.nsw.gov.au/sites/default/files/documents/2021/Housing%20SEPP%20Plain%20English%20document.pdf>

<sup>2</sup> “According the ATO there are just over 2 million property investors in Australia: Where 71% owned just one investment property; 19% owned two properties; 6% owned three properties; 2% owned four properties; 1% owned five properties; 1% owned six or more investment properties”. home-owners in Australia)  
<https://www.yourinvestmentpropertymag.com.au/news/how-many-property-s-do-investors-own-258529.aspx>



## OUTLINE

Our submission on the proposed Housing SEPP builds upon our September 2020 Proposed New Housing Diversity SEPP: Explanation Intended Effect submission.

They should be read in conjunction, as our EIE submission outlines the critical role incentives play in the provision of existing and new diverse and affordable housing. A copy is attached in Appendix A.

This submission will focus on some key concerns brought to light in the proposed Housing SEPP:

1. As proposed, boarding houses are no longer facilitated by the planning system.
2. The increased need to support and facilitate existing diverse and affordable supply which will alleviate the impending new supply loss on this niche segment of the housing market.
3. Measures needed to address and curtail the expected increase in ‘illegal’ non-compliant housing supply that will be drawn to accommodate excess demand for affordable housing.
4. Mandating a 2-year rolling statutory review of the proposed Housing SEPP so that unintended consequences can be addressed in a timely manner.

A number of recommended changes to soften the impact of these proposed Housing SEPP provisions are provided later in this submission.



## PLANNING REGULATIONS & HOUSING SUPPLY.

Planning regulations play a critical role in the delivery of diverse and affordable housing supply. This has been identified by many national and international institutions, including the OECD and Reserve Bank of Australia:

*A recent report from the Organisation for Economic Co-operation and Development (OECD) found that Australia's planning approvals and zoning restrictions play a key role in limiting housing supply. The findings of the OECD report also reflect the results of studies done by Australian researchers and think tanks.*

*A widely cited 2018 Reserve Bank of Australia (RBA) study found that restrictive zoning laws have contributed to the rise in apartment prices across the nation, particularly in Sydney.*

*"The effect of zoning has increased dramatically over the past two decades, likely due to existing restrictions binding more tightly as demand has risen," the study concluded.*

*Reserve Bank of Australia (RBA) Governor Philip Lowe has cited strict planning regulations as a challenge to increasing the supply of housing. He said policy must make sure that "planning processes are sufficiently flexible to allow the supply side of the market to respond to the extra demand."<sup>3</sup>*

## PROPOSED HOUSING SEPP: OBJECTIVES V OUTCOMES

### 1. PROPOSED HOUSING SEPP: OBJECTIVES

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<sup>3</sup> <https://thepropertytribune.com.au/media/federal-inquiry-into-housing-supply/>

NSW Planning states its proposed Housing SEPP's objective is to support a greater diversity of housing supply.

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

*The proposed changes will also ensure that the home building sector is well-placed to assist the economic recovery of NSW following the COVID-19 pandemic.<sup>4</sup>*

## **2. PROPOSED HOUSING SEPP: OUTCOMES**

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Despite this, the proposed Housing SEPP contains measures which will have the opposite effect. They will restrict and deter both new and existing diverse and affordable housing types rather than facilitating it.

Examples of these measures include:

- 1. Introduction of Boarding House ‘affordability’ provisions and mandating community housing provider management, which shuts the door on the viability of new supply of this alternate form of housing.**

This is acknowledged by NSW Planning in the September 2020 Housing Diversity SEPP EIE:

*‘The proposed introduction of an affordability requirement for boarding house development as set out above in this EIE would mean that this type of housing is no longer facilitated by the planning system’.<sup>5</sup>*

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<sup>4</sup> <https://www.planning.nsw.gov.au/Policy-and-Legislation/Housing/Diverse-and-affordable-housing/Housing-SEPP#inPageNav-2>

<sup>5</sup> [https://shared-drupal-s3fs.s3-ap-southeast-2.amazonaws.com/master-test/fapub\\_pdf/000/00/Housing+Diversity+SEPP+EIE+\(1\).pdf](https://shared-drupal-s3fs.s3-ap-southeast-2.amazonaws.com/master-test/fapub_pdf/000/00/Housing+Diversity+SEPP+EIE+(1).pdf)

This will lead to a collapse in new supply of affordable housing which is gravely concerning.

Further:

**2. (a) the reduction in scope of zones where developments are permissible, plus a**

**(b) loss of incentives such as; floor space concessions, height ratios, setback concessions, and tighter minimum lot size requirements etc**

will curtail the range of land available for co living / boarding house developments and reduce the commercial viability of these diverse housing options. If ‘the numbers don’t stack up’, developers will not be encouraged to undertake non-mainstream development options, so diverse and affordable housing projects will not proceed. As elucidated by Aaron Gadiel

*For some sites, the opportunity to develop any form of more compact, multi-unit, rental accommodation will be wiped away altogether. For other sites, the opportunity may still notionally exist, but with a reduced number of dwellings.*

*Reducing the dwelling yield may diminish the attraction of this development type, relative to other competing land uses. This may damage the supply of cost-effective housing generally (possibly well beyond the ‘headline’ reductions in realisable gross floor area set out in the exhibition documents).<sup>6</sup>*

The only supply going forward will be public and social housing and the remaining existing boarding house market. Public and social housing is predicated on significant taxpayers funding support, while new boarding house style development is *“no longer facilitated by the planning system.”* This leaves the NSW diverse and affordable housing market in a very precarious position.

As time goes by this supply shortfall will continue to grow because in a growth economy demand does not abate. As Alain Bertaud describes *“People don’t go*

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<sup>6</sup> <https://www.lexology.com/library/detail.aspx?g=17f96d44-74e4-4ac4-8158-6c0f1eca7df1>

*away. They will just go ...(into)... either crowding existing housing or building illegally”<sup>7</sup>. This in turn fuels illegal housing suppliers who will soak up excess housing needs.*

We believe this is not a pareto-optimal outcome and will impose unnecessary societal and economic hardships, particularly on those who cannot ‘fit’ into the regulatory constraints of mainstream housing such as residential tenancy leases or home ownership.

## **EXISTING DIVERSE AND AFFORDABLE HOUSING SUPPLIERS.**

In our September 2020 submission on the Proposed New Housing Diversity SEPP: EIE, we presented some data on the vital role existing boarding houses play in supplying diverse range of alternative housing options in many established areas of Sydney and NSW. The following provides a summary of some of those key data points on boarding houses:

*There were 1109 registered General Boarding Houses in NSW on 10 January 2020<sup>8</sup>. 17 of these were Assisted Boarding Houses that cater for “persons with additional needs”.*

*The majority of registered boarding houses contain 5-12 residents, with the average size estimated at 10<sup>9</sup>.*

*The City of Sydney, Inner West, Randwick, Newcastle and then Waverley contain the majority of NSW boarding houses.*

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<sup>7</sup> Alain Bertaud (Senior Research Scholar New York University author of Order without Design, How Markets Shape Cities) <https://www.youtube.com/watch?v=Mlac1nhgCs4>. Approximately 1.30 minute mark.

<sup>8</sup><https://www.parliament.nsw.gov.au/tp/files/77910/Report%20on%20the%20Statutory%20Review%20of%20the%20Boarding%20Houses%20Act%202012.pdf> pg 13

<sup>9</sup> Pg 9 & 10 Martin C. Boarding Houses in NSW: growth, change and implications for equitable density. Chris Martin. UNSW City Futures Research Centre. July 2019 for Shelter NSW

*In 2017, 616<sup>10</sup> boarding houses (about 60%) complied and met Revenue NSW criteria for low-cost accommodation supply.*

*Affordable registered boarding houses operate with very little government assistance. In fact, in 2013 it is estimated the land tax concession amounted to just \$2.67<sup>11</sup> per dwelling per day (note tariffs in boarding houses generally include all bills and furnishings). This is quite considerably less than Social or Public housing suppliers.*

*In a recent 5-year study of Boarding Houses, residents of registered general boarding houses were found to experience above average levels of satisfaction and well-being based on seven indicators (5.42-7.58 out of 10) and above average scores ranging from 5.83 to 7.74 out of 10 for overall satisfaction with their boarding house accommodation<sup>12</sup>.*

*Of significant note, Associate Professor Drake's 5-year study also found that:*

*Over the four data collection periods, there was an overall significant difference between residents reported satisfaction with their standard of living ( $p < 0.001$ ). Of note, was a significant decline in satisfaction between 2015 and 2016. This decline was explored with residents through the semi-structured interviews in the 2017 data collection period. Residents attributed this decline in satisfaction to limited affordable housing options and increased occupancy fees - this was felt mostly in Sydney, and by those participants in receipt of Newstart allowance.<sup>13</sup>*

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<sup>10</sup> Parliament of NSW. Parliamentary Questions #8378 BOARDING HOUSE LAND TAX EXEMPTIONS, Greenwich, Alex to the Minister for Finance, Services and Property. Question asked on 17 May 2018 (session 56-1) and printed in Questions & Answers Paper No. 183 Answer received on 21 June 2018 and printed in Questions & Answers Paper No. 192 <https://www.parliament.nsw.gov.au/la/papers/pages/qanda-tracking-details.aspx?pk=239231>

<sup>11</sup> Being 720 boarding houses with an average of 10 dwellings per building and the value of the exemption being \$7m in the 2013 calendar year. Based on Table: Appendix 9.10: Office of State Revenue data BOARDING HOUSES ACT 2012 EVALUATION REPORT 1, 2014. Final Report. Dr. Gabrielle Drake, Dr. Hazel Blunden, Kathy Newton, and Esterina Lentini. 29 September, 2014. University of Western Sydney, and as estimated in: Martin C. Boarding Houses in NSW: growth, change and implications for equitable density. Chris Martin. UNSW City Futures Research Centre. July 2019 for Shelter NSW.

<sup>12</sup> EVALUATION OF THE BOARDING HOUSES ACT 2012 –FINAL REPORT. DRAKE. 2018 <https://www.newtowncentre.org/uploads/5/1/5/0/51502997/evaluation-of-the-boarding-houses-act-2012-report-4-and-final-report-2018.pdf>

<sup>13</sup> Pg 28 EVALUATION OF THE BOARDING HOUSES ACT 2012 –FINAL REPORT. Refer to interval reports for additional analysis of this significant decrease. <https://www.newtowncentre.org/uploads/5/1/5/0/51502997/evaluation-of-the-boarding-houses-act-2012-report-4-and-final-report-2018.pdf>

*Further NSW Revenue data shows that in a similar period leading into and through 2015-2016, there was an overall 12.6%<sup>14</sup> decline in affordable Boarding House supply which broadly aligns<sup>15</sup> with the impact of the introduction of the NSW Boarding House Act.*

As can be seen; 1) ‘tighter’ regulation, 2) reduced supply/affordability, and 3) diminished resident well-being have a strong direct causation correlation.

## NEW SUPPLY LOSS MITIGATION

Given the proposed new Housing SEPP will not facilitate new diverse and affordable housing supply<sup>16</sup>, the role played by existing boarding house suppliers will become more important going forward in mitigating the new supply loss.

Central to this ongoing existing supply is both their ongoing viability and their ongoing capacity to adapt to meet everchanging demand.

We note the proposed Housing SEPP FAQ paper provides that:

*The new provisions will not be retrospective, so they will not impact on boarding houses that have already been approved or built. **However, the new provisions will apply where an application is lodged for major alterations or additions to a boarding house.**<sup>17</sup>*

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<sup>14</sup> Pg26, Statutory Review of the Boarding Houses Act 2012, POANSW. August 2019 Submission. [https://poansw.com.au/wp-content/uploads/2019/11/GoogleDrive\\_POA-NSW-Boarding-House\\_Act\\_5\\_year\\_review-Bill-2019-SubmissionEM200919.pdf](https://poansw.com.au/wp-content/uploads/2019/11/GoogleDrive_POA-NSW-Boarding-House_Act_5_year_review-Bill-2019-SubmissionEM200919.pdf)

<sup>15</sup> Pg28, Statutory Review of the Boarding Houses Act 2012, POANSW. August 2019 Submission. [https://poansw.com.au/wp-content/uploads/2019/11/GoogleDrive\\_POA-NSW-Boarding-House\\_Act\\_5\\_year\\_review-Bill-2019-SubmissionEM200919.pdf](https://poansw.com.au/wp-content/uploads/2019/11/GoogleDrive_POA-NSW-Boarding-House_Act_5_year_review-Bill-2019-SubmissionEM200919.pdf)

<sup>16</sup> NSW Planning Dept. “The proposed introduction of an affordability requirement for boarding house development as set out above in this EIE would mean that this type of housing is no longer facilitated by the planning system”. [https://shared-drupal-s3fs.s3-ap-southeast-2.amazonaws.com/master-test/fapub\\_pdf/000/00/Housing+Diversity+SEPP+EIE+\(1\).pdf](https://shared-drupal-s3fs.s3-ap-southeast-2.amazonaws.com/master-test/fapub_pdf/000/00/Housing+Diversity+SEPP+EIE+(1).pdf)

<sup>17</sup> <https://www.planningportal.nsw.gov.au/sites/default/files/documents/2021/Housing%20SEPP%20consultation%20draft%20frequently%20asked%20questions.pdf>

We are concerned with the punitive impact an application for major alterations and additions will have on the existing affordable boarding house's viability. It effectively prohibits an existing suppliers' ongoing capacity to continue operating, as it curtails their capacity to grow and cater the everchanging 'flavour' of demand. Suppliers that cannot meet demand are not sustainable and will inevitably peter out.

This is a horrendous impost; it imposes excessive hardship on existing long-standing low-cost housing suppliers and further it will deprive the market of a healthy source of existing diversity of niche supply.

## RECOMMENDATIONS

1. Existing registered Boarding Houses should be permitted and facilitated within the provisions of the Housing SEPP to undertake major alterations and additions without triggering the punitive mandated elements that would terminate their capacity to continue operating within existing (ie pre proposed housing SEPP) parameters. In particular:
  - (a) The imposition of a mandatory community housing provider in the event of a major DA application should be removed for existing boarding house operations.
  - (b) The development concessions for boarding houses in the proposed new Housing SEPP should be accessible to existing boarding houses (located in appropriate zones) that qualify (say for 3 years) for the NSW Revenue Boarding House land tax<sup>19</sup> Exemptions and Concessions requirements.
  - (c) Bolster incentives and supports to existing affordable housing suppliers to sustain their viability and thereby ongoing supply.

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<sup>19</sup> Section 10Q Land Tax Management Act 1956  
<https://www.revenue.nsw.gov.au/help-centre/resources-library/rulings/land/lt106>



2. Regulatory and effective policing measures are introduced to **genuinely** address and stamp out illegal housing suppliers who accommodate people at significant health, safety and societal cost.
3. As outlined in our previous September 2020 EIE submission, planning concessions should be granted to facilitate diverse and affordable housing development, and incentives provided to encourage the market to supply at affordable rates. This will spur on a viable supply that will deliver diverse and affordable housing with very little drain on taxpayer funds.
4. We expect that many of the provisions in the proposed Housing SEPP will have adverse unintended consequences, and we recommend that statutory reviews of the Housing SEPP be scheduled every 2 years, so that these impacts can be reversed in a timely fashion.

## CONCLUSION

The withdrawal of development concessions and incentives proposed in the new Housing SEPP will lead to a reduction in;

- a. construction of new boarding houses / co-living supply, while
- b. existing boarding house supply will be adversely affected because a major addition or alteration will have punitive impacts on this niche supply, curtailing their ongoing viability and capacity to respond to evolving changes in demand.

In combination, NSW faces an impending supply shock in diverse and affordable housing supply which will have significant societal and economic impacts, especially for essential workers who need flexible housing options near essential amenities. Measures recommended in this submission will soften these



impacts, while regular reviews of the SEPP should be locked in so that these regulatory consequences can be reversed in a timely fashion.

Yours Faithfully,

On behalf of The Property Owners Association of NSW.

*Peter Dormia*

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## APPENDIX A:



# The Property Owners Association of NSW

To: NSW Department of Planning, Industry and Environment  
NSW Planning Portal - Online Submission  
<https://www.planningportal.nsw.gov.au/proposed-new-housing-diversity-sepp>

## Proposed New Housing Diversity SEPP: Explanation of Intended Effect.

September 2020

Submission on behalf of the:

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## DISCUSSION PAPER:

Thank you for the opportunity to provide our feedback on the NSW Department of Planning, Industry and Environment Proposed New Housing Diversity SEPP: Explanation of Intended Effect, September 2020<sup>48</sup>

## BACKGROUND:

The Property Owners Association of NSW Inc (POA NSW) is the peak body that has represented property owners in NSW since 1951. POA NSW relies on the feedback and support of our membership base, which is predominantly “mums and dads” investors who collectively account for some 96%<sup>49</sup> of all property owners in NSW.

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<sup>48</sup> <https://www.planningportal.nsw.gov.au/proposed-new-housing-diversity-sepp>. [https://shared-drupal-s3fs.s3-ap-southeast-2.amazonaws.com/master-test/fapub\\_pdf/000/00/Housing+Diversity+SEPP+EIE+\(1\).pdf](https://shared-drupal-s3fs.s3-ap-southeast-2.amazonaws.com/master-test/fapub_pdf/000/00/Housing+Diversity+SEPP+EIE+(1).pdf). [https://shared-drupal-s3fs.s3-ap-southeast-2.amazonaws.com/master-test/fapub\\_pdf/000/00/Frequently+asked+questions+HDSEPP.pdf](https://shared-drupal-s3fs.s3-ap-southeast-2.amazonaws.com/master-test/fapub_pdf/000/00/Frequently+asked+questions+HDSEPP.pdf). [https://shared-drupal-s3fs.s3-ap-southeast-2.amazonaws.com/master-test/fapub\\_pdf/000/00/Report+to+the+Minister+from+the+Council+Boarding+House+Working+Group.pdf](https://shared-drupal-s3fs.s3-ap-southeast-2.amazonaws.com/master-test/fapub_pdf/000/00/Report+to+the+Minister+from+the+Council+Boarding+House+Working+Group.pdf). [https://shared-drupal-s3fs.s3-ap-southeast-2.amazonaws.com/master-test/fapub\\_pdf/000/Seniors+Housing+Investigation+Report+-+Greater+Sydney+Commission%2C+2019.PDF](https://shared-drupal-s3fs.s3-ap-southeast-2.amazonaws.com/master-test/fapub_pdf/000/Seniors+Housing+Investigation+Report+-+Greater+Sydney+Commission%2C+2019.PDF)

<sup>49</sup> “According the ATO there are just over 2 million property investors in Australia: Where 71% owned just one investment property; 19% owned two properties; 6% owned three properties; 2% owned four properties; 1% owned five properties; 1% owned six or more investment properties”. (Note this data does not include the even larger pool of home-owners in Australia) <https://www.yourinvestmentpropertymag.com.au/news/how-many-property-s-do-investors-own-258529.aspx>

## **EXPLANATION OF INTENDED EFFECT.**

We appreciate this Explanation of Intended Effect (EIE) has been developed very quickly during a health and economic crisis, instead of a more comprehensive draft proposal that would contain greater details.

That given, we have attempted to predict implied meaning. We caution that this may have an unintended effect on the way our submission is in turn interpreted.

Further we believe it will be difficult to provide a proper assessment of any proposed SEPP until it's in draft form. Often the 'devil is in the detail', and this detail is required before a robust submission can be made.

## **SUMMARY:**

We strongly endorse a regulatory system that encourages and supports micro suppliers to meet the ongoing changes in demand for housing in NSW.

We are concerned that the Proposed New Housing Diversity SEPP, while conceptually is a step in the right direction, is likely to fail to encourage market supply to deliver 'riskier' diverse housing options.

This submission will focus on some of the main concerns raised by our 'mums and dads' property investors:

## **STATED PROPOSED DIVERSITY SEPP OBJECTIVES.**

We endorse the proposal to support a greater diversity of housing supply. A lack of diverse housing options has an adverse effect on consumers who don't fall into the rigid housing supply options available.

The proposed Diversity SEPP 'headline' suggests it intends to ameliorate this regulatory constraint. Given this, we endorse many of the objectives stated in the EIE. In particular..

Create Jobs .... assist the State's economic recovery following COVID-19... EIE pg9

Adds Diversity ... facilitates the delivery of housing that meets the needs of the State's growing population... EIE pg9

Adds Viscosity ... in a format capable of being expanded and amended as future needs may require...EIE pg9

Provide Certainty ... SEPP that will provide greater clarity and **certainty** for the residential development sector... (bold added).EIE pg9

Encourage affordable supply... Housing affordability is another major issue across NSW, but particularly in the Sydney metropolitan area... EIE Pg3

Provide Incentives to improve viability of supply ... the Government is proposing to incentivise the delivery of build-to-rent (BTR) housing through the NSW planning system. EIE pg 7.

If these policy objectives can be delivered broadly to a wide range of housing suppliers, we predict that the market will move to deliver more jobs, more diverse housing options, and better affordability.

But we remain concerned that these stated objectives are not consistent with the proposed policy initiatives, and the likely outcome from Diversity SEPP as presented will be inferior economic and supply outcomes.

Areas of concern include:

## 1. PART 3: NON - PARETO OPTIMAL IMPACT.

We are extremely concerned about the proposed amendments to Part 3 of the ARHSEPP....

*The proposed SEPP will ... allow a council to levy monetary contributions to offset the loss of dwellings that were low-rental at any time within the 5 years preceding the lodgement of the development application. EIE Pg 17.*

Our interpretation of this is that going forward any rental property, at any stage, in the 5 years prior to a development application whose rental slips below the comparable median rent will be liable to a monetary levy as a condition of consent.

Obviously, we have already received a number of alarmed calls from suppliers who are concerned about being caught out by this proposal and they are currently reviewing their rental agreements so as to ensure that their rents do not lie below the median rents.

But what is even more disturbing about the feedback is the incredibly complex knock-on effect this policy will have. Basically, the market will have to add 'risk premium' to cover the cost of regulatory change, which is ultimately born by the consumer.

Let's examine the effect imposing a penalty on low rental suppliers will have on various segments of the market, in particular low rental supply:

### **Bottom Quartile Rentals**

For those housing suppliers that sit well below the median rate, they will have to discount the anticipated 'low rental retention levy' and pass that cost onto the consumer in the form of higher rents, or as research data<sup>50</sup> shows, lower levels of maintenance so poorer quality housing will prevail in that quartile. Further investment in this sector will be discouraged, reducing overall supply. The combination of these forces will lead to relatively higher rents.

### **Middle Quartile Rentals**

But what about those suppliers who are very close to their median comparable rental? This is very complex, and it will revolve around an instable equilibrium vortex that will keep pushing median rents higher.

Firstly, we expect suppliers will adjust their rates so as to ensure they do not fall below the median. But the median is a variable position, so median rents will naturally move in line with overall rentals over time (eg: if rents broadly go up, the median will rise, and vice versa). Suppliers will be forced to anticipate these future movements in median rents by the market. (Note they will be mindful that their competitors will be driven by the same incentive.)

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<sup>50</sup> <https://www.brookings.edu/research/what-does-economic-evidence-tell-us-about-the-effects-of-rent-control/>  
POA NSW : Proposed Housing SEPP: Draft Provisions - 29<sup>th</sup> August 2021

This puts property owners in a very difficult position, which is made more complex because of the regulatory impact of the RTA which restricts rental increases. So, property owners will not have the flexibility to adjust rents as the median moves, they'll all have to anticipate future changes and add an additional risk premium to the median.

It's not just higher rents that will prevail, but higher supply costs and an overall reduction in supply will as well. This is because we envisage the market will move away from 'riskier' longer term tenure to shorter tenures. This will lead to greater turnover costs and reduced supply (supply is lost between turnovers).

### **Top Quartile Rentals**

Relatively, we would expect a shift in housing investment to properties that would fall safely in the top quartile of rents.

### **Discounted Rents:**

Another excellent point raised by one long term property investor is the impact such a low rental retention levy will have on suppliers that generously provide 'discounted rents', whether it be for long term secure tenures or to help out a tenant in difficulty. For example, in the current covid crisis, many tenants have been given significant rental discounts. Those suppliers will be harshly penalized for such Samaritan acts if they slip below the median and seek a development application within the next 5 years.

Alternatively, say a property is due redevelopment or reoccupation. Currently it would be offered at a negotiated discounted rate, to compensate the fact that it will be subject to major works. These properties would all have to be withdrawn from the supply pool to avoid being caught out at below median rents.

### **Uncertainty effect**

While another more vexing issue for all property owners will be whether council's decision to approve a development application will be jeopardized by the 'loss of a low rental property'. This is an unknown, and we will require further analysis, but the bottom line is that this additional regulatory uncertainty will lead to sub optimal resource use and pricing, which stifles supply and pushes up rents.



## ONUS OF PROOF

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We have identified some significant logistical issues with “ .. *the onus for providing evidence that a building not contain a low-rental dwelling at the relevant time rests with the applicant..*” pg 17.

We envisage, for this to operate effectively, every property owner will be required to maintain 5 year rolling records of rentals. Note this will include homeowners as well, as they'll have to be able to prove they lived in that site for the whole 5 years and did not rent or sublet below the median comparable rent at any stage.

Firstly, this is a significant ‘red tape’ impost on millions of NSW residential property owners. It will lead to millions of hours of lost productivity every year, to verify, record, and store at a standard that can be relied upon as ‘evidence’.

Secondly, what will happen in the 5 years preceding the start of an ‘onus of proof’ imposition? It would be unreasonable to retrospectively require 5 years of proof when record keeping requirements have not been flagged. Will a moratorium apply for the first 5 years until record keeping can catch up? Or will the inability of the property owner to adequately provide 5 years evidence automatically trigger low rental status?

Further what will prevail if a person wants to buy an existing home. They may like to upgrade it within 5 years of purchase. How will they prove if it's not been a low rental property in the years prior to purchase? What if vendor can't or won't provide evidence? Should the vendor be legally required to provide verified rental evidence? Would this be required in the sale contract? If not, how will that uncertainty affect its market price?

## OVERVIEW

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We have been inundated with further mind-boggling examples of unintended impacts such a policy will have on rental supply, just too many to list here.

Overall the impact of imposing penalties on low rental supply will be to increase rents (cost and risk premiums) and increase operating costs (shorter tenure cycles and associated turnover costs). Further it will discourage investment in properties that would sit near the median rent and well below the median rent. Also, it will discourage maintenance of properties that sit well below the median rent. Investment in these sectors will also diminish, leading to further supply loss and thereby increases in rents, which sets off the vicious cycle for those rentals near the new higher median rent.



The bottom line is that this policy will lead to non pareto optimal outcomes for all, with higher rents, higher operating costs and less supply of low and median rentals.

## RECOMMENDATIONS:

### PROPOSED LOW RENTAL RETENTION LEVY.

1. As outlined above, the Part 3 proposed low rental retention levy will act as a punitive penalty on low rental supply, and it should be abolished. Further we suggest the NSW Planning Minister, (and/or the Premier for greater reassurance) should publicly revoke this proposal to ease suppliers concerns and remove this uncertainty risk that already hangs over the market. This should be done as soon as possible.
2. In the event this policy proposal is not abolished, we suggest a broad and sound economic analysis of these proposed Part 3 changes is commissioned. This in-depth study should be undertaken by a highly regarded academic team from a reputable institution. It should; review previous comparable national/international studies, identify & quantify the direct and indirect economic impacts of these changes on the various stakeholders, (especially renters seeking affordable accommodation) over the short, medium and long terms. This study should be; peer reviewed, made publicly available and included in any further public consultation on this matter.

## 2. DIVERSITY AND AFFORDABILITY:

*‘The proposed introduction of an affordability requirement for boarding house development as set out above in this EIE would mean that this type of housing is no longer facilitated by the planning system’.* page 11 of the EIE

The proposed substantial pull back of; development concessions, incentives and a loss of certainty (with loss of ‘can not refuse’ provisions by council) and imposition of mandatory community housing provider management will trigger a collapse in new

diverse housing construction in NSW. The greatest impact will be in the proposed Co-Living and Boarding House developments segment<sup>51</sup>.

## **PUBLIC V SOCIAL V MARKET HOUSING.**

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Each of the suppliers and managers of housing (Public Housing, Social Housing and Market Suppliers) have an important role to play in providing alternative and diverse housing options. The competitive tensions that interplay between these different suppliers drives each of them to excel at their relative strengths and to moderate their respective weaknesses<sup>52</sup>.

Market suppliers have a very important role to play in this mix. They can deliver diverse and affordable housing efficiently, with relatively small amounts of upfront or ongoing taxpayer assistance.

Further some 96%<sup>53</sup> of property investors are small housing suppliers. These micro-suppliers are often highly invested and motivated small businesses who will deliver if presented with viable options. The regulatory framework should encourage and facilitate these micro suppliers to realise niche supply opportunities.

This is not the case with Social housing suppliers, their cost structures often exceed market suppliers who can deliver more at less cost. We predict these social housing models will be an ongoing heavy burden on the public purse and are only justifiable in a targeted way to address specific crisis and/or care housing needs. We believe these pressures will bear out in the longer term, especially when the ‘silent killer’ depreciation and amortisation takes hold of buildings, and the cash flow impact of major refurbishments is required.

Further, a preliminary review of NCAT 2018-2019 Consumer and Commercial Division workload and performance results<sup>54</sup>, indicates a large number of NCAT Social Housing applications relative to its size. This NCAT (and other sources of) data

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<sup>51</sup> We would require further analysis and data to establish the impact on the Student accommodation market, its outcome will be in the hands of the various councils that control developments near educational institutions.

<sup>52</sup> We will outline other counterproductive forces, such as the corrosive impact of illegal suppliers later.

<sup>53</sup> “According the ATO there are just over 2 million property investors in Australia: Where 71% owned just one investment property; 19% owned two properties; 6% owned three properties; 2% owned four properties; 1% owned five properties; 1% owned six or more investment properties”. (Note this data does not include the even larger pool of homeowners in Australia) <https://www.yourinvestmentpropertymag.com.au/news/how-many-property-s-do-investors-own-258529.aspx>

<sup>54</sup> Table 4 Pg 35. <https://www.parliament.nsw.gov.au/tp/files/76848/NCAT%20Annual%20Report.pdf>  
POA NSW : Proposed Housing SEPP: Draft Provisions - 29<sup>th</sup> August 2021

should be analysed and a report produced to rate the performance of the Community Housing Provider sector.

A model weighted towards market supply to address more general affordability and diversity needs is a pareto optimal use of tax-payer funds.

## **AFFORDABILITY MANDATE**

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We believe that the proposed mandating of Community Housing Provider management in new Boarding Houses is a step in the wrong direction. This will discourage new investment and limit the diversity and viscosity of a wider range housing suppliers.

For example, there are over 2 million Australian workers in casual employment<sup>55</sup> or workers whose place of work changes regularly, so they need a flexible ‘easy in easy out’ form of housing that is affordable and generally available in diverse geographic locations, especially near amenities and transport nodes so that they can access labour markets.

*I’m a nurse, so I’m a shift worker. They get us on contracts, 3 months here, 6 months there. Flick a coin, I could be at Westmead or POW next month. I can’t get stuck with the hassles of a lease. I don’t want to. Plus, I can’t deal with flatmates dramas, I’m in Theatre most days. It just doesn’t work for me. It’s got to be affordable, clean & quiet and all set up and ready to go.*

This is a very large and important sector of housing demand, and these essential workers play a critical role in the economy. Micro market suppliers are suitably placed to cater for this segment of the market, if the planning system is able to deliver certainty and viability.

## **PAGE 14: THE GOVERNMENT IS SEEKING FEEDBACK..**

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The EIE on page 14 poses the following alternative to mandatory Community Housing Providers.

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<sup>55</sup> More than two million Australians are employed casually. Women account for just over half of all casuals and 40% of casuals are aged 15-24 years, compared with 14% of other employees.

[https://www.australianunions.org.au/casual\\_workers\\_factsheet](https://www.australianunions.org.au/casual_workers_factsheet)

*”The Government is seeking feedback on whether it would be more appropriate to require rooms in new boarding houses to be rented at affordable rates for a minimum of 10 years, after which they could revert to market rates”. Pg14*

This model is superior to mandatory community housing management and will deliver better affordable housing supply, but it assumes that the 10 year affordability proviso can still enable viability of market supply. This becomes a complex prediction of discounting loss of yield for ten years and then trying to guesstimate property values in 10 years time. This uncertainty will invariably have to be priced, and adds a premium for the inevitable uncertainty.

A better model is using incentives to encourage markets to provide ongoing diverse and affordable housing supply. It would include incentives paid to all suppliers who meet housing targets, such as affordability and/or tenure conditions (whether it be long term tenure for families, or flexible access to transient workers). A ‘carrot’, rather than a ‘stick’ that could be tweaked as demand needs evolve so as to facilitate supplies response.

## **RECOMMENDATIONS:**

### **INCENTIVES AND DEVELOPMENT CONCESSIONS.**

A long term stable system of incentives and planning concessions are required to provide greater certainty and improve the viability of market supply in housing segments that are wanting. Some examples of policies include:

1. Development concessions:
  - i. Such as those currently available in the AHRSEPP. These could be reviewed and refined so as to mitigate unacceptable outcomes as has been done in the past.
  - ii. Reinstatement of reasonable ‘must not refuse’ provisions to provide certainty and clarity for micro suppliers who don’t have the resources to undertake complex council development assessments.
  - iii. 0.2 Parking concession to be reinstated for sites in higher density zones and next to high quality transport nodes. Car ownership is extremely low in affordable housing, and new modes such as car-

sharing and ridesharing will further reduce individual car ownership overtime.

- iv. Bulky developments in low density zones could be mitigated with similar measures as the 12 room maximum, instead of removing the R2 zone mandate.

2. Incentives tied to affordable rentals.

- i. Introduce targeted rolling land tax concession incentive agreements with market suppliers. Studies could be undertaken to establish the levels that will be required to achieve viability of supply, then the market will move to address these weak spots. Fixed rental targets that reflect comparable median rentals could be set and then averaged or indexed during agreement periods and suppliers must meet targets before incentives are provided. The NSW Department of Communities and Justice have produced various examples of such targets, eg Table of Rents for the Boarding House Financial Assistance Program- New supply<sup>56</sup>, which counterbalances local viability constraints with affordability targets.
  - ii. Council rate reductions could be offered in LGA where there are specific needs; or segments with specific challenges such as insurance or essential services maintenance costs in Boarding Houses could be targeted for additional support.
3. These incentive and concession programs could be tweaked as market needs shift, but they need to remain fundamentally stable over the long term as housing investment is long term and ‘lumpy’, it tends to lag the market and needs time to gain momentum.
4. The current ‘one size fits all’ tenancy laws forces suppliers to offer standard products, deterring supply of diverse tenure options to consumers, which causes market failure. Laws and regulations need to trade-off suppliers risks, tenure and pricing so as to encourage diverse options, whether it be for long term secure tenure or alternatively flexible easy access housing.
5. Suppliers should be encouraged and enabled to offer flexible terms that suit resident’s needs, and any rigidities imposed should have degrees of flexibility to permit a greater range of diverse supply. For example:

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<sup>56</sup> <https://www.facs.nsw.gov.au/download?file=374943>. See Appendix A for a copy of TABLE OF RENTS FOR THE BOARDING HOUSE FINANCIAL ASSISTANCE PROGRAM - 2019

- i. The minimum 3 months tenure, should be amended to enable viscosity, for example say 75% occupancies must meet a 3 month minimum, so as to allow for the plethora of diverse affordable demand situations efficiently. Some examples:
    1. There should be scope for an open ended 18 week stay that is subject to employment contract renewal in the 9<sup>th</sup> week, without punitive impact on the supplier, otherwise they won't offer it and unless a low paid essential worker can easily find viable housing, they won't accept the employment contract. This then has ramifications on the employers capacity to deliver their supply.
    2. There are a large and growing number of essential low paid workers that live regionally but work a few days a week in metro areas. Say one party needs accommodation mid-week, while another on the weekend. Rolling team-ups should be enabled, given all parties are agreeable. Thereby regional workers will have affordable, flexible but also stable source of housing supply.
  - ii. These are just two of many examples of demand needs that are not smoothly catered for because of unnecessary rigidities in planning and occupancy laws that prevent compliant affordable<sup>57</sup> supply from easily catering for niche demand needs. So this everchanging demand must turn to illegal suppliers. This then corrodes compliant supply. Regulations must enable and encourage compliant suppliers to efficiently cater for these demand needs. In the long run this will prevent ongoing frictions in housing markets, as market supply will constantly move to meet everchanging demand.
6. Imposition of mandatory community housing provider management will substantially reduce the diversity, efficiency, and viscosity of affordable supply vis-a-vis market managed suppliers that can respond to everchanging micro demand needs. Further, as acknowledged in the EIE<sup>58</sup>, such 'stick' approaches will inevitably lead to a withdrawal of existing and new market supply. This will have a corrosive impact on affordably options for consumers and especially essential low paid workers that are the cornerstone of the NSW's metropolitan economy.
  7. Social and Public housing resources should be targeted towards complex housing demand needs that market suppliers even with low levels of

<sup>57</sup> There are multiple existing sources of 'unaffordable' supply, such as hotels and motels, but they are too costly for a essential workers on low pay rates.

<sup>58</sup> *'The proposed introduction of an affordability requirement for boarding house development as set out above in this EIE would mean that this type of housing is no longer facilitated by the planning system'*. page 11 of the EIE

incentives cannot viably supply, (eg crisis accommodation, or members of society with ‘special needs that require special care services’) so that public funds are effectively utilised.

### 3.BUILD TO RENT

We support the proposed introduction of land tax incentives to encourage long term tenure. It is a step in the right direction to encourage market supply.

But we remain concerned about the societal impacts of large high density housing and large single property ownership models.

Large high density projects will put significant pressure on local infrastructure and amenities and have the potential to turn into ghettos. While single ownership will encourage oligopoly suppliers who could abuse market power. Further it encourages a less egalitarian land ownership structure in NSW which is a step in the wrong direction. These are not ideal societal outcomes.<sup>59</sup>

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<sup>59</sup> The great strength of housing supply in NSW is the large percentage of housing supply owned by micro suppliers. Some 96%<sup>59</sup> of suppliers own less than 3 properties, and only 1% own more than six properties. These micro-suppliers are often ‘mums and dads’ investors, who are highly motivated and committed.

This ownership structure is an important feature of the housing market. It is a market where there are a large number of sellers. In very basic simple theoretical economic terms this housing market is most akin to a perfect competition market.

*Perfect Competition: There are a large number of buyers and sellers in a perfectly competitive market. The sellers are small firms, instead of large corporations capable of controlling prices through supply adjustments ..... Perfect competition is a benchmark, or "ideal type," to which real-life market structures can be compared..... Perfect competition is theoretically the opposite of a monopoly, in which only a single firm supplies a good or service and that firm can charge whatever price it wants since consumers have no alternatives and it is difficult for would-be competitors to enter the marketplace.<sup>59</sup>*

Given mobility constraints that prevail in established areas, especially in Sydney, large scale operators (ie more akin to an oligopoly or monopoly) could easily corner supply ownership in the various geographic segments. Armed with significant market power, they can use greater leverage to realise short term supply opportunities, but in the long run this will deliver an inferior pareto optimal supply structure. This will inevitably produce inferior societal outcomes, especially for the middle and lower classes in NSW, if property ownership becomes highly concentrated.

Instead the regulatory framework should encourage and facilitate micro suppliers to realise these normal short term supply opportunities, despite their lack of market power, so as to encourage a continuation of property ownership by widest possible range of people.



## RECOMMENDATIONS:

### BUILD TO RENT

1. Broaden Build to Rent development concessions and tax incentives so they are available to all suppliers who provide housing that meet essential targets such as long term tenure, affordability, and/or provides flexible easy access:
  - a. This will encourage smaller ‘mums and dads’ developments in a wider range of areas to address ongoing changes in demand.
  - b. Less high density developments will have a milder impact on infrastructure, amenities and communities.
  - c. Areas with high levels of amenities do not require additional ‘in-house’ amenities. Further in-house amenities lead to barriers and segregation within broader communities. This is anti-social, and not conducive of a cohesive integrated society.
  - d. More construction jobs can be generated from a greater number of projects.
  - e. Greater diversity and competition will prevail with a larger number of smaller suppliers instead of a few large and powerful suppliers.
2. Regarding the feedback request on page 9: *“the appropriate mechanisms that could be incorporated into the SEPP to manage the transition from BTR housing to a strata-subdivided apartment development”*.
  - a. We understood BTR in other jurisdictions was predominantly a long term and ongoing rental model. A 15 year limit seems to curtail this stated objective.
  - b. Also subdividing the building will compromise that sites capacity to remain in a *‘format capable of being expanded and adapted as future needs arise’*(EIE)
  - c. Further governments should be cautious they don’t inadvertently incentivise developers to hold sites so as to avoid GST and then sell individually after building warranties expire. This may have a perverse impact on building standards and BTR motivation.
  - d. On balance, ongoing rental should be encouraged with ongoing incentives, beyond 15 years, but at 15 years the option should be made available for strata division if appropriate targets are met, to incentivise BTR development.
3. A 0.5 parking concession should only be granted if BTR are located very close to significant transport nodes that enable easy access to amenities and labour



markets. Otherwise social problems will prevail in those sites disconnected from amenities and the labour market.

## **RECOMMENDATIONS:**

### **CO-LIVING.**

1. The proposed definition of Co-living should be broadened so that smaller than 10 bedroom Co-living developments can be constructed. We suggest the minimum number should be closer to 6 dwellings. We understand that most states in Australia that permit similar structures, set minimums in the range of 5 to 7 dwellings. As noted in our BTR recommendations, this will encourage smaller scale developments in a wider range of areas and be accessible to micro suppliers.
2. Legislation that covers non exclusive use agreements should be adapted to cater for the unique nature of share accommodation's non-exclusive use that will prevail in Co-Living premises. For example, residents need to respect other residents, use communal facilities in a responsible manner, and keep them clean and tidy.
3. Incentives, such as BTR land tax concessions should be made available to Co-living sites that meet housing supply targets like affordable housing and or easy access flexible tenure, to support supply of housing for essential workers often on contracts who need to live near work (eg shift workers at hospitals) or transport nodes.

## **4.EXISTING BOARDING HOUSES IN NSW:**

Existing Boarding Houses have been playing a vital role in supplying easy in alternative accommodation with flexible tenure in established areas at affordable rates since English settlement in NSW. Most suppliers are small family businesses that have provided stable homes for residents for decades.

The following provides some key data on boarding houses:

*In total, Census data and Boarding House registration results provide that there are around 16196 residents<sup>60</sup> living in NSW boarding houses. This amounts to about 0.214% of NSW's population of 7.544 million people.*

*There were 1109 registered General Boarding Houses in NSW on 10 January 2020<sup>61</sup>. 17 of these were Assisted Boarding Houses that cater for "persons with additional needs".*

*The majority of registered boarding houses contain 5-12 residents, with the average size estimated at 10<sup>62</sup>.*

*The City of Sydney, Inner West, Randwick, Newcastle and then Waverley contain the majority of NSW boarding houses.*

*In 2017, 616<sup>63</sup> boarding houses (about 60%) complied with Revenue NSW criteria for low cost accommodation supply.*

*Affordable registered boarding houses operate with very little government assistance. In fact, in 2013 it is estimated the land tax concession amounted to just \$2.67<sup>64</sup> per dwelling per day (note tariffs in boarding houses generally include all bills and furnishings). This is quite considerably less than Social or Public housing suppliers.*

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<sup>60</sup> Pg 9 & 10 Martin C. Boarding Houses in NSW: growth, change and implications for equitable density. Chris Martin. UNSW City Futures Research Centre. July 2019 for Shelter NSW

<sup>61</sup> <https://www.parliament.nsw.gov.au/tp/files/77910/Report%20on%20the%20Statutory%20Review%20of%20the%20Boarding%20Houses%20Act%202012.pdf> pg 13

<sup>62</sup> Pg 9 & 10 Martin C. Boarding Houses in NSW: growth, change and implications for equitable density. Chris Martin. UNSW City Futures Research Centre. July 2019 for Shelter NSW

<sup>63</sup> Parliament of NSW. Parliamentary Questions #8378 BOARDING HOUSE LAND TAX EXEMPTIONS, Greenwich, Alex to the Minister for Finance, Services and Property. Question asked on 17 May 2018 (session 56-1) and printed in Questions & Answers Paper No. 183. Answer received on 21 June 2018 and printed in Questions & Answers Paper No. 192 <https://www.parliament.nsw.gov.au/la/papers/pages/qanda-tracking-details.aspx?pk=239231>

<sup>64</sup> Being 720 boarding houses with an average of 10 dwellings per building and the value of the exemption being \$7m in the 2013 calendar year. Based on Table: Appendix 9.10: Office of State Revenue data BOARDING HOUSES ACT 2012 EVALUATION REPORT 1, 2014. Final Report. Dr. Gabrielle Drake, Dr. Hazel Blunden, Kathy Newton, and Esterina Lentini. 29 September, 2014. University of Western Sydney, and as estimated in: Martin C. Boarding Houses in NSW: growth, change and implications for equitable density. Chris Martin. UNSW City Futures Research Centre. July 2019 for Shelter NSW.

*In a recent 5 year study of Boarding Houses, residents of registered general boarding houses were found to experience above average levels of satisfaction with their well being based on seven indicators (5.42-7.58 out of 10) and above average scores ranging from 5.83 to 7.74 out of 10 for overall satisfaction with their boarding house accommodation<sup>65</sup>.*

*There are a considerable number of unregistered boarding houses. Some are small boarding houses (ie under 5 occupants) that are not required to register, but are still required to meet council conditions.*

*There are a very large number of Boarding Houses that operate illegally. They are not registered by NSW Fair Trading, and they are likely to be operating without appropriate council and fire/safety approvals. Their number is unknown and difficult to establish as they seek to remain undetected, but some estimates have put it at 25%<sup>66</sup> or even 100% of the number of registered boarding houses. Residents in such illegal houses face significant health and safety risks and illegal suppliers undermine compliant supply and tarnish the industries reputation.*

In terms of ‘fit for purpose’, Boarding houses, (especially those existing 616 micro suppliers that meet the Revenue NSW low cost supply criteria), play a crucial role in providing a diverse range of easy access furnished accommodation in a wide range of locations at low cost affordable rates with very little tax payer assistance. Further, residents in these houses experience above to high levels of satisfaction. These long established compliant suppliers are clearly ‘fit for purpose’. (The same can not be said for the large number of illegal operators that fly under the radar and need to be brought into line.)

A number of compliant suppliers have expressed concerns about the proposed change in the SI definition of boarding houses, ie the mandatory requirement of Community Housing Provider management. They are concerned such a move will impact existing long established suppliers.

Any adverse changes to the SEPP should not apply retrospectively, as it would have adverse impacts on their viability and thereby the preferred housing mode for the bulk of the 16000 residents of existing boarding houses in NSW.

Further, existing suppliers are concerned about the impact the proposed SEPP will have on any future DA applications to existing Boarding Houses. As the Diversity

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<sup>65</sup>EVALUATION OF THE BOARDING HOUSES ACT 2012 –FINAL REPORT. DRAKE. 2018

<https://www.newtowncentre.org/uploads/5/1/5/0/51502997/evaluation-of-the-boarding-houses-act-2012-report-4-and-final-report-2018.pdf>

<sup>66</sup> NSW Registrar of Community Housing, Regulation of Boarding Houses in NSW, Final discussion paper, From the viewpoint of the NSW Registrar of Community Housing, October 2019, pg 3

SEPP is currently proposed, any future DA would have harsh effects, such as the imposition of a mandatory community housing provider and the loss of development concessions. These adverse effects plus the loss of certainty would be prohibitive and deter any future works, which in turn will lead to a slow decline in standards and overall supply of this long established market source of affordable housing.

## RECOMMENDATIONS:

### EXISTING HOUSING SUPPLIERS

1. Clear confirmation to be provided that any adverse impacts of a proposed new SEPP does not apply retrospectively to existing housing suppliers.
2. Existing housing suppliers be 'grandfathered' from proposed SEPP changes, so that future alterations and additions to existing affordable established operations are not adversely affected by proposed changes.

## 5.OTHER:

### ILLEGAL HOUSING SUPPLIERS.

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A lack of diverse housing options is one of the results of a planning system that presumes that demand for housing is not fluid and sits at an arbitrary norm. As Alain Bertaud <sup>67</sup>explains.

*“Urban planner thinks in terms of norms and needs... if you ask a urban planner what is the optimum size of housing they'll tell you a number, something like 50 or 60m2. If you ask the same question to an economist, the*

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<sup>67</sup> Alain Bertaud (Senior Research Scholar New York University author of Order without Design, How Markets Shape Cities)

*economist will say it all depends. .... Planners don't think about viscosity. They consider what is important is what people need, and they decide on what people need based on norms.... and anything below that is socially unacceptable and they won't allow anybody to build that. The effect of course is that in areas where people are relatively poor, and construction (&) land is expensive, they eliminate a large number of people from having legal housing. They don't of course exclude people from the city. People don't go away. They will just go ...(into)... either crowding existing housing or building illegally”<sup>68</sup>. (Alain Bertaud)*

No one disputes the need for genuine reasonable minimum standards, but the effect of inflexible regulation that doesn't motivate healthy market outcomes is ultimately to fuel an inferior market outcome, ie to fuel illegal housing.

And it's not just the occupant that is at risk within illegal housing...

*From a broader community perspective, the widespread and uncontrolled provision of illegal dwellings and the associated 'hidden' increase in population, generates a number of problems for provision of social services and facilities. At the local level, a proliferation of illegal dwellings undermine analysis and planning for public open space and community facilities to meet the needs of the increased population. At State level, a significant, under-enumerated informal sector undermines analysis and planning for new/additional capacity in schools, hospitals, public transport and social support services<sup>69</sup>.*

Further the illegal supply undermines legal supply, which is burdened by regulatory forces and is stuck at a competitive disadvantage to illegal supply. Over time, illegal supply flourishes at the expense of legitimate supply. So, the net effect of greater consumer protection and regulation is actually the opposite, a deterioration in the housing standards and options for consumers. This is a vicious cycle that must be reversed, so as to encourage acceptable housing outcomes.

### **Sound Regulatory Enforcement.**

Installing a sound regulatory framework to mitigate the demand, and thereby supply, of illegal housing is one important part of the illegal housing problem, the other important

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<sup>68</sup> Alain Bertaud (Senior Research Scholar New York University author of Order without Design, How Markets Shape Cities) <https://www.youtube.com/watch?v=Mlac1nhgCs4>. 2.00 minutes

<sup>69</sup> Pg 39 Gurran, N, Pill, M, Maasen, S, Alizadeh, T and Shrestha, P (2019) *Informal accommodation and vulnerable households: scale, drivers and policy responses in metropolitan Sydney*, University of Sydney Policy Lab.

mitigating force lies with compliance and policing of illegal supply, a role predominantly undertaken by councils.

POANSW accepts councils have a difficult role, but we believe many local councils have failed to adequately address hidden illegal housing suppliers. Regulating compliance is a core duty of local government, and our feedback is that many councils don't appear to have the appetite or the structure to execute their compliance duties in a sound and effective manner.

*“Consistent with each of the interval reports, participants from local councils, as well as agency staff from community organisations, continued to raise concerns about the ability of local governments to monitor and enforce the Act within existing resources.”<sup>70</sup>(2012)*

A better more effective system of managing illegal and non-compliance in the housing market is required. Resources need to be directed at significant and flagrant breaches of regulations rather than low risk petty misdemeanours.

As one residential property investor noted:

*“Councils are clearly in the dark, and they're just looking under the light posts”*

### **Consumer Protection laws (RTA etc)**

While it is acknowledged that a large and very important segment of demand for rental accommodation is the mainstream market ( ie Residential Tenancies), but there is also a large demand for accommodation that does not fit into this rigid regulatory framework that deters suppliers from providing a diverse range of supply options.

One example of this is the impact the Residential Tenancy Act has on many consumers access to a rental lease...

*Interviewees reported that single people receiving unemployment benefits, disability support payments, or the old age pension, were particularly affected by housing affordability pressures, and unable to find affordable accommodation in the formal sector of the market. Despite being able to pay up to \$200 in rent (with the Commonwealth Rental Assistance (CRA) subsidy), these low income earners are unable to access self-contained accommodation in*

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<sup>70</sup> Pg 31 Evaluation of the Boarding Houses Act 2012 Final Report Associate Professor Gabrielle Drake Associate Professor Gabrielle Drake February 2018 ACU



*the private rental sector but rather need to seek share accommodation, lodging, or a boarding house room. “We find that access to some properties through certain real estate agents is becoming increasingly hard...they’ll straight up admit that they won’t take anyone who’s on Centrelink .. They want people that are working.” (Housing advocate) <sup>71</sup>*

Supply barriers created by residential tenancy conditions are not just limited to the lower income and vulnerable groups. These supply barriers also make it very difficult for the 2 million Australian workers in casual employment<sup>72</sup> or workers whose place of work changes regularly.

The reality is that mainstream supply, (ie residential tenancies) housing options are being denied to a large number of people at the edges seeking affordable flexible accommodation.

A functioning housing market is one that can cater for all types of demand. Both a healthy mainstream and alternative market is needed. Both these markets are different and have different characteristics, and each will have living arrangements that present trade-offs between location, cost, tenure security, privacy, and household formations.

*This trade-off is done differently by different households. It’s a very very important thing<sup>73</sup>. (Alain Bertaud)*

Flexible housing supply options need to be encouraged to meet all demand needs, and this innovative motivation will be deterred by ongoing tightening of regulatory frameworks that disable and discourage rental supply options.

*We don’t have a magic wand... the occupant ends up wearing it. Water always finds its level. (Residential housing supplier)*

The following conclusion drawn by Martin(2015)<sup>74</sup> is also used in the conclusion of *Informal accommodation and vulnerable households: scale, drivers and policy responses in metropolitan Sydney*<sup>75</sup> Gurran et al,(2019). It captures the direction in which regulators should move so as to address the illegal market and encourage

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<sup>71</sup> Pg 19I Gurran, N, Pill, M, Maasen, S, Alizadeh, T and Shrestha, P (2019) *Informal accommodation and vulnerable households: scale, drivers and policy responses in metropolitan Sydney*, University of Sydney Policy Lab.

<sup>72</sup> More than two million Australians are employed casually. Women account for just over half of all casuals and 40% of casuals are aged 15-24 years, compared with 14% of other employees.

[https://www.australianunions.org.au/casual\\_workers\\_factsheet](https://www.australianunions.org.au/casual_workers_factsheet)

<sup>73</sup> Alain Bertaud (Senior Research Scholar New York University author of Order without Design, How Markets Shape Cities) <https://www.youtube.com/watch?v=Mlac1nhgCs4>. 4.30 minutes

<sup>74</sup> C Martin. (2015) The informal lodging sector in NSW. A regulatory blindspot. Concluding remark. City Blog. 14/9/15

<sup>75</sup> <https://apo.org.au/node/232186>

compliant alternatives to fill the demand voids caused by regulatory failures in mainstream housing supply.

*..... We need to reform the regulation of marginal rental accommodation, to more definitely draw a line between arrangements that are exploitative, unsafe and unacceptable, and those that are tolerable for their specific purpose of relatively short-term, accessible accommodation. Such a reform would probably mean relaxing the requirements regarding development consent and related prescriptions that currently notionally apply – but in so doing could put the informal lodging sector more clearly on the radar of regulators.<sup>76,77</sup>*

## **BTR “PROFESSIONAL ON SITE MANAGEMENT”**

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How will this new standard of professional on-site management differ from existing professional property management? Will a new standard of qualification be required for BTR managers, or will they have the same qualifications as existing property managers? How will these ‘superior’ standards be regulated, and what provisions will be installed to ensure BTR fulfil the proviso on page 8 of EIE “*focused on providing a good experience for tenants through the provision of on-site services and facilities*”

Will residential tenancy agreements also regulate BTR occupancies? If so, will the qualifications that property managers carry fall under the same provisions as those currently under The Property Stock and Business Agents Act 2002? If not, how will property managers differentiate the differences between general property managers and those in the BTR sector who need to manage the same type of residential tenancies"

## **BUILDING CODE CLASSIFICATIONS**

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<sup>7676</sup> C Martin. (2015) The informal lodging sector in NSW. A regulatory blindspot. Concluding remark. City Blog. 14/9/15. <http://blogs.unsw.edu.au/cityfutures/blog/2015/09/the-informal-lodging-sector-in-nsw-a-regulatory-blind-spot/>

<sup>77</sup> Pg 52 Gurran, N, Pill, M, Maasen, S, Alizadeh, T and Shrestha, P (2019) *Informal accommodation and vulnerable households: scale, drivers and policy responses in metropolitan Sydney*, University of Sydney Policy Lab



How will the new buildings, Co-Living, Student and BTR be classified under the building code of Australia. Will Co-Living and Student accommodation fall under class 1b or Class3 buildings?

## **ROLLING 24 MONTH REVIEW.**

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We concur that it is very prudent to fully ... *review the provisions of the new SEPP within 24 months of its introduction to ensure they are functioning as intended* pg10.

We expect that many of the provisions as proposed will have adverse unintended consequences, particularly in relation to the supply of affordable housing, and suggest that reviews be scheduled every 2 years, so that these impacts can be reversed as soon as possible.

## **CONCLUSION.**

Small property investors make up 96% of housing suppliers in NSW. This critical source of micro housing suppliers should be encouraged to move towards satisfying the everchanging housing demand needs in NSW.

The planning system needs to move towards providing greater certainty for suppliers who seek to invest non-mainstream housing options. Further development concessions and long-term incentives are needed to improve viability of supply in segments that are wanting, while efficiently allocating taxpayer funds.

Land tax incentives, such as BTR concessions, tied to housing supply outcomes is a step in the right direction, and they should be broadened to smaller developments and expanded to support other targets such as affordability and easy access housing.

Imposing punitive measures on affordable suppliers, such as; Part 3 retention levies, mandatory community housing supplier management, and the ‘pullback’ of development concessions will have a corrosive impact on existing supply levels and deter future investment in these sectors.

Consumers, particularly those who don't fit into the mainstream, will be the most harshly affected by these proposed changes.

Yours Faithfully,

On behalf of The Property Owners Association of NSW.

*Peter Dormia*

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## APPENDIX A

### TABLE OF RENTS FOR THE BOARDING HOUSE FINANCIAL ASSISTANCE PROGRAM - 2019

#### Maximum Tariffs for Rooms for the Boarding House Financial Assistance Program - New Supply for 2019

Based on March Quarter Rent and Sales Report on median rents and Office of State Revenue tariff limits for boarding houses

In certain LGAs tariffs higher than the Office of State Revenue are permitted due to higher median rentals (highlighted in table)

#### Weekly Tariffs for 2019 (\$)

LGA (Local Government Areas)	Rent threshold single accommodation no board and lodging	Rent threshold double accommodation no board and lodging	Rent threshold single accommodation with board and lodging	Rent threshold double accommodation with board and lodging
OFFICE OF STATE REVENUE THRESHOLDS	261	432	389	643
Albury	261	432	389	643
Armidale Regional	261	432	389	643
Ballina	261	432	389	643
Balranald	261	432	389	643
Bathurst Regional	261	432	389	643
Bayside	375	432	389	643
Bega Valley	261	432	389	643
Bellingen	261	432	389	643
Berrigan	261	432	389	643
Blacktown	261	432	389	643
Bland	261	432	389	643
Blayney	261	432	389	643
Blue Mountains	261	432	389	643
Bogan	261	432	389	643
Bourke	261	432	389	643
Brewarrina	261	432	389	643
Broken Hill	261	432	389	643
Burwood	370	432	389	643
Byron	274	432	389	643
Cabonne	261	432	389	643
Camden	261	432	389	643
Campbelltown	261	432	389	643
Canada Bay	353	432	389	643
Canterbury-Bankstown	270	432	389	643
Carathool	261	432	389	643
Central Coast	261	432	389	643
Central Darling	261	432	389	643
Cessnock	261	432	389	643
Clarence Valley	261	432	389	643
Cobar	261	432	389	643
Coffs Harbour	261	432	389	643
Coolamon	261	432	389	643
Gundagai	261	432	389	643
Cowra	261	432	389	643
Cumberland	263	432	389	643
Western Plains Regional	261	432	389	643
Dungog	261	432	389	643
Edward River	261	432	389	643
Eurobodalla	261	432	389	643

Fairfield	261	432	389	643
Federation	261	432	389	643
Forbes	261	432	389	643
Georges River	300	432	389	643
Gilgandra	261	432	389	643
Glen Innes Severn	261	432	389	643
Goulburn Mulwaree	261	432	389	643
Greater Hume Shire	261	432	389	643
Griffith	261	432	389	643
Gunnedah	261	432	389	643
Gwydir	261	432	389	643
Hawkesbury	261	432	389	643
Hay	261	432	389	643
Hilltops	261	432	389	643
Hornsby	285	432	389	643
Hunters Hill	308	432	389	643
Inner West	325	432	389	643
Inverell	261	432	389	643
Junee	261	432	389	643
Kempsey	261	432	389	643
Kiama	261	432	389	643
Ku-Ring-Gai	334	432	389	643
Kyogle	261	432	389	643
Lachlan	261	432	389	643
Lake Macquarie	261	432	389	643
Lane Cove	370	432	389	643
Leeton	261	432	389	643
Lismore	261	432	389	643
Lithgow	261	432	389	643
Liverpool	261	432	389	643
Liverpool Plains	261	432	389	643
Lockhart	261	432	389	643
Maitland	261	432	389	643
Mid-Coast	261	432	389	643
Mid-Western Regional	261	432	389	643
Moree Plains	261	432	389	643
Mosman	345	432	389	643
Murray River	261	432	389	643
Murrumbidgee	261	432	389	643
Muswellbrook	261	432	389	643
Nambucca	261	432	389	643
Narrabri	261	432	389	643
Narrandera	261	432	389	643
Narromine	261	432	389	643
Newcastle	261	432	389	643
North Sydney	410	432	410	643
Northern Beaches	350	432	389	643
Oberon	261	432	389	643
Orange	261	432	389	643
Parkes	261	432	389	643
Parramatta	308	432	389	643
Penrith	261	432	389	643
Port Macquarie-Hastings	261	432	389	643
Port Stephens	261	432	389	643

Queanbeyan-Palerang Regional	261	432	389	643
Randwick	355	432	389	643
Richmond Valley	261	432	389	643
Ryde	308	432	389	643
Shellharbour	261	432	389	643
Shoalhaven	261	432	389	643
Singleton	261	432	389	643
Snowy Monaro Regional	261	432	389	643
Snowy Valleys	261	432	389	643
Strathfield	293	432	389	643
Sutherland Shire	270	432	389	643
Sydney	410	432	410	643
Tamworth Regional	261	432	389	643
Temora	261	432	389	643
Tenterfield	261	432	389	643
The Hills Shire	281	432	389	643
Tweed	261	432	389	643
Upper Hunter Shire	261	432	389	643
Upper Lachlan Shire	261	432	389	643
Uralla	261	432	389	643
Wagga Wagga	261	432	389	643
Walacha	261	432	389	643
Walgett	261	432	389	643
Warren	261	432	389	643
Warrumbungle Shire	261	432	389	643
Waverley	430	432	430	643
Weddin	261	432	389	643
Wentworth	261	432	389	643
Willoughby	400	432	400	643
Wingecarribee	261	432	389	643
Wollondilly	261	432	389	643
Wollongong	261	432	389	643
Woollahra	360	432	389	643
Yass Valley	261	432	389	643

Source of OSR thresholds: <https://www.revenue.nsw.gov.au/help-centre/resources-library/lt104>

## Additional References:

*Aaron Gadiel, Partner*

[millsoakley.com.au/thinking/build-to-rent-and-seniors-housing-development-to-lose-the-benefit-of-planningincentives-and-protections/](https://millsoakley.com.au/thinking/build-to-rent-and-seniors-housing-development-to-lose-the-benefit-of-planningincentives-and-protections/)

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Holding Redlich lawyers:

“ At the moment, it is not clear what will happen to existing boarding houses, and whether these changes will apply retrospectively as there are no savings and transitional provisions that explain how the change in definition will impact existing boarding house development”

<https://www.holdingredlich.com/overview-a-new-sepp-for-housing-diversity-in-nsw>