



9 September 2021

Housing Policy Team
Department of Planning Industry and Environment
By email: <https://www.planning.nsw.gov.au/housing-sepp>

Re: Submission to the proposed Housing SEPP

Thank you for the opportunity to make a submission to the draft Housing SEPP and for an extension to 9 September 2020, for SSROC to gather feedback from our member councils to provide our submission.

The Southern Sydney Regional Organisation of Councils Inc (SSROC) is an association of eleven local councils in the area south of Sydney Harbour, covering central, inner west, eastern and southern Sydney. SSROC provides a forum for the exchange of ideas between our member councils, and an interface between governments, other councils and key bodies on issues of common interest. Together, our member councils cover a population of about 1.7 million, one third of the population of Sydney. SSROC seeks to advocate for the needs of our member councils and bring our regional perspective to the issues raised.

SSROC population and housing data¹, in the period from 2011 to 2016, reveals a very diverse socio-economic area marked by rapidly rising numbers of dwellings and underlying growth in the number of households in the area. The estimated resident population increased by over 150,000 during this five-year census period.

As our area underwent rapid densification, it has increasingly been characterised by mounting numbers of households renting privately, many of whom continue to experience high rental stress. Analysis of weekly rental payments of households in the SSROC region show a larger proportion of households paying high rental payments (\$450 per week or more), and a smaller proportion of households with low rental payments (less than \$250 per week) when compared to Greater Sydney.

The supply of affordable and diverse housing is of great importance to our member councils.

Many of the live issues and forces that the proposed SEPP is intended to address are currently impacting the councils and their communities in SSROC.

Background

The Housing Diversity SEPP (HSEPP) aims to consolidate the following five existing SEPPs:

- *State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARHSEPP)*
- *State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 (Seniors SEPP)*

¹ Source: Australian Bureau of Statistics, Census of population and Housing 2011 and 2016, compiled by id <https://profile.id.com.au/ssroc/>

- *State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes) (SEPP 70).*
- *State Environmental Planning Policy No 21—Caravan Parks; and*
- *State Environmental Planning Policy No 36—Manufactured Home Estates.*

SSROC welcomes the consolidation of these SEPPs as it provides more consistency and clarity around how they work together. SSROC supports the aim of delivering more diverse and affordable housing types. However our review of the proposed SEPP has identified potential issues in the draft instrument that may prevent it from being used as intended.

There is an opportunity to modernise language and ensure planning definitions are consistent and easy to understand.

Over a three-year period SSROC commissioned the City Futures Research Centre, UNSW to research the effectiveness of the Affordable Rental Housing (ARH) State Environmental Planning Policy (SEPP) in delivering affordable housing in the Eastern City and South Districts:

- State Environmental Planning Policy (Affordable Rental Housing) 2009 (AHSEPP) in Southern and Central Sydney, June 2018, <https://cityfutures.be.unsw.edu.au/research/projects/affordable-housing-sepp-and-southern-sydney/>
- Occupant Survey of recent Boarding House Developments in Central and Southern Sydney, June 2019, <https://cityfutures.be.unsw.edu.au/research/projects/boarding-houses-central-and-southern-sydney/>
- *Secondary Dwellings in Central and Southern Sydney*, May 2020, <https://ssroc.nsw.gov.au/occupancy-survey-of-residents-living-in-secondary-dwellings/>

This research uncovered a number of issues and gaps between planning intention and outcomes: most notably the low levels of affordable rental housing that is actually being provided under the planning instrument. The research found that boarding houses and secondary dwellings are providing forms of lower cost housing but are not providing affordable housing outcomes for low and very low income households in inner city and middle ring areas. Notably the research shows that diverse supply does not necessarily lead to more affordable housing.

SSROC has previously advocated extensively for amendments to the ARHSEPP, pointing out key flaws in this instrument that prevented it from being used in the way it was intended.

Housing unaffordability remains an outstanding and increasing problem, disrupting the policy goal of providing appropriate housing for everyone. Accordingly, SSROC makes a number of recommendations to improve the new SEPP, specific to the provision of affordable housing.

Overview of the submission

This submission reviews each chapter of the draft SEPP and outlines SSROC's position and recommendations. As the provisions for caravan parks and manufactured home estates will be transferred to the Housing SEPP in their current form, this submission will focus on the other three SEPPs, including ARHSEPP, Seniors SEPP, and SEPP 70. SSROC is supportive of many provisions in the proposed Housing SEPP.

Recently, changes were made to the ARHSEPP to facilitate the delivery of social and affordable housing by the NSW Land and Housing Corporation and introduce build-to-rent housing into the NSW planning system. The Housing SEPP consultation draft does not include these newly made

provisions relating to LAHC social and affordable housing provisions, secondary dwellings in rural areas, and short-term rental accommodation, as these provisions will be reviewed 24 months after the Housing SEPP is made.

As these provisions will be included in the Housing SEPP in due course, SSROC asks for the opportunity to provide feedback before these provisions are finalised. It is noted that the framework for short-term rental accommodation (STRA) will commence in the Housing SEPP on 1 November 2021, and that the Build-to-Rent (BTR) provisions exhibited in the EIE have already come into effect in the ARHSEPP.

This submission is organised to broadly follow the chapters of the draft Housing SEPP and read as follows:

1. Chapter 1 Preliminary
2. Chapter 2 Affordable housing
3. Chapter 3 Diverse housing
4. Chapter 4 Seniors housing
5. Related issues

General Comments

SSROC welcomes the proposal to consolidate the SEPPs.

However, while we recognise the potential benefits of the proposed reforms, it is SSROC's view that the draft Housing SEPP still requires some important amendments. This submission seeks to recommend changes to ensure the new Housing SEPP appropriately supports and incentivises the delivery of affordable and diverse housing.

Key Recommendations

1.0 Preliminary

- The draft SEPP include the words 'affordable' and 'diverse' in the title to explicitly reflect the focus and intention of the draft SEPP.

2.0 Affordable Housing

- Adopt and adapt the definition for affordable housing in the EP&A Act to avoid confusion and to ensure consistency.
- Update the affordable housing principles to be consistent with the proposed definitions.
- Include the aim from SEPP 70, "makes a requirement with respect to the imposition of conditions relating to the provision of affordable housing" in the aims of the Housing SEPP.
- Retain the proposed affordable housing requirement for boarding houses in the finalised Housing SEPP, and that any related bonus provisions be reviewed regularly.
- The additional floor space bonus for in-fill affordable housing be used for affordable housing in perpetuity, consistent with the requirement for boarding houses.

3.0 Diverse Housing

- Improve the planning rules for boarding houses and co-living housing to achieve good design and sustainability outcomes.
- Improve the planning rules for secondary dwellings to achieve good design and amenity outcomes.
- Apply the Livable Housing Design Guidelines to enable people to age-in-place across diverse types of housing.

4.0 Seniors Housing

- The proposal to mandate seniors housing in the B3 Commercial Core is not supported as this may contradict the zone objectives and reduce the ability for councils to provide for jobs in those locations.
- The application of LEP permissibility and development standards should prevail over the SEPP prescribed zones for seniors housing.
- The seniors housing bonus is subject to a merit assessment or additional amenity and character criteria, and not be applicable to sites that have been the subject of a successful planning proposal to increase height or FSR within the preceding five years.

5.0 Related issues

- Ensure the proposed definitions are consistent with existing definitions in the NSW planning system.
- DPIE count secondary dwellings, boarding houses, build-to-rent housing and co-living housing as forms of housing that contribute to housing supply.
- DPIE establish a monitoring and review program for the commencement of the SEPP to ensure the outcomes sought are being achieved.

Detailed Comments

1.0 Preliminary

Name of Policy

As suggested in SSROC's submission to the exhibition of the Housing Diversity SEPP Explanation of Intended Effect, SSROC recommends that the draft SEPP include the words 'affordable' and 'diverse' in the title to explicitly reflect the intention of the draft SEPP. The current name - *State Environmental Planning Policy (Housing) 2021* is confusing as the draft SEPP did not consolidate all of the housing-related SEPPs, for example *SEPP 65 - Design Quality of Residential Apartment Development* or the housing components of the *Code SEPP* are not part of the consolidation.

Recommended Action:

The draft SEPP include the words 'affordable' and 'diverse' in the title to explicitly reflect the intention of the draft SEPP.

2.0 Affordable Housing

Overview

An aim of the Draft SEPP is to provide a consistent planning regime for the provision of new affordable housing. SSROC supports a more consistent approach that applies to all affordable housing across environmental planning instruments.

Chapter 2 Affordable Housing of the draft SEPP consolidates the two affordable housing SEPPs (ARHSEPP and SEPP 70). The main aims of the ARHSEPP are to provide incentives for in-fill affordable housing and boarding houses, while also to retain existing affordable rental housing. SEPP 70 on the other hand, recognises the need for affordable rental housing across the State and provides a pathway for Councils to levy for affordable housing contributions.

Social and affordable housing is vital infrastructure that is integral for economic prosperity and community wellbeing. At a time of ongoing economic uncertainty, it is especially important that the right planning framework is in place to facilitate the delivery of diverse and affordable housing and encourage greater options in the rental housing market.

Definition of Affordable Housing

The draft Housing SEPP largely adapts the definition for affordable housing from the ARHSEPP and SEPP 70. The income brackets used for very low-income household, low-income household and moderate-income household are consistent with SEPP 70. The only difference is that the new definition added a condition that these households pay no more than 30% of that gross income in rent.

SSROC supports the addition of the condition to “pay no more than 30% of that gross income in rent”, as households are in housing affordability stress if they are in the bottom 40% for household incomes and paying more than 30% of their income in housing costs.”² This addition clearly identifies how much rent should be charged for affordable housing. In the drafting, however, it is unclear as to whether this is a definition for affordable housing, or it describes the eligibility of different types of households.

It is recommended that the definition be amended to clarify up front that it is a definition for affordable housing, not households.

Recommended Action:

The definition for affordable housing in the EP&A Act be amended to avoid confusion and ensure consistency, by clarifying that it is a definition for affordable housing, not households. . The suggested amendment is provided below in bold and underlined for clarity.

Affordable housing means housing for a very low income household, low income household or moderate income household that pays no more than 30% of that gross income in rent.³ In this Policy, a household is taken to be a very low income household, low income household or moderate income household if the household—

(a) has a gross income within the following ranges of percentages of the median household income for the time being for the Greater Sydney (Greater Capital City Statistical Area) or the Rest of NSW (Greater Capital City Statistical Area) **and pays no more than 30% of that gross income in rent**—

(i) very low income household—less than 50%,

² AHURI 2019, *Understanding the 30:40 indicator of housing affordability stress*, accessed from <https://www.ahuri.edu.au/research/ahuri-briefs/3040-indicator>

³ Adapted from the EP & A Act

- (ii) low income household—50–less than 80%,
 - (iii) moderate income household—80–120%, or
- (b) is eligible to occupy rental accommodation under the National Rental Affordability Scheme and pays no more rent than that which would be charged if the household were to occupy rental accommodation under the Scheme.

Update the Affordable Housing Principles

The Draft SEPP proposes to transfer the existing affordable housing principles from SEPP 70. Principle 2 reads “*affordable housing is to be created and managed so that a socially diverse residential population representative of all income groups is developed and maintained in a locality*”.

The issue is that this principle is inconsistent with the proposed affordable housing definition, which is specific to very low, low and moderate income groups. The proposed definition does not cater for all income groups, such as high-income groups.

To address this issue, the Draft SEPP (Schedule 1) should amend Principle 2 to read “*affordable housing is to be created and managed so that a socially diverse residential population representative of **very low, low and moderate** income groups is developed and maintained in a locality*”.

Recommended Action:

Amend Principle 2 (Schedule 1) to create and manage affordable housing for very low, low and moderate income groups....

Reinstate the aim from SEPP 70 – “makes a requirement with respect to the imposition of conditions relating to the provision of affordable housing”

SSROC supports the aims of the draft Housing SEPP in principle, however, notes that one important SEPP 70 aim has not been translated or reflected clearly in the aims. As the main purpose of SEPP 70 is to enable all Councils in NSW to impose conditions related to the provision of affordable housing, it is important that this aim is included in the aims of the draft Housing SEPP.

Recommended Action:

The following aim from SEPP 70 be added to the Housing SEPP aims:

- *To make a requirement with respect to the imposition of conditions relating to the provision of affordable housing.*

Boarding houses

Experience with the current ARHSEPP is that boarding houses have been largely built as micro-apartments and rented out at price points not accessible by low-income groups. Micro-apartments that received the boarding house bonuses under Division 3 Boarding Houses of the ARHSEPP are generally advertised as fully furnished studio apartments across Greater Sydney. The rents range

from \$300 to \$650 per week.⁴ The ARHSEPP has in practice been utilised to deliver housing products that are out of reach for low income and very low-income households.

Based on the definition of housing affordability (rent not exceeding 30% of the household income), for a very low-income household, rents higher than \$262 are unaffordable, for a low-income household, rents higher than \$420 are unaffordable. For a moderate-income household, rents higher than \$630 are unaffordable.⁵ It is essential that the Housing SEPP requires boarding houses to be affordable in perpetuity to deliver upon the aims of the draft SEPP, so that people with a household income lower than \$2,000 per week are able to live close to work, education and amenities.

SSROC commends the Department for the change to ensure boarding houses are delivered as genuine forms of affordable rental housing by requiring them to be used for affordable housing in perpetuity and be managed by a community housing provider. This is a welcome change given the large number of new generation boarding houses built under the ARHSEPP to date that allowed developers to unlock FSR incentives without a requirement for affordable housing.

SSROC supports the proposal to no longer mandate boarding houses in the R2 Low Density Residential zone. The preferred approach is for the Department to amend the LEPs for councils wishing to opt-out, rather than Council having to prepare a planning proposal to remove boarding houses from the Land Use Table.

SSROC is supportive of the increase of floor space bonus from 20% to 25% to incentivise the delivery of this affordable housing model, provided the additional floor space is used only for the purpose of the boarding house. The bonus is only to apply **to land upon** which residential flat buildings are currently permissible, and upon which there are no heritage items.

This increase in bonus should be reviewed after 24 months as part of the Housing SEPP review with regards to development feasibility, and impacts upon local character, and whether a further increase is warranted to encourage delivery of true affordable housing. It is noted that development feasibility does not remain constant and could be influenced by many factors other than planning controls including construction costs, land prices, and general demands of the market.

It is therefore recommended that such a bonus be reviewed every two years to respond to changing market conditions. The rent for affordable housing is usually between 20% to 25% below the market rate⁶. An increase of 5% floor space bonus together with a 20% decrease in rental income may reduce the overall supply of boarding houses should land prices and construction costs in Sydney continue to increase. This however does not suggest that boarding houses should not be affordable, it just identifies that the amount of floor space bonus may need to be reviewed with changing market conditions.

Recommended Action:

Retain the proposed affordable housing requirement for boarding houses in the finalised Housing SEPP.

Boarding house incentive provisions be reviewed regularly to ensure they are effective and not producing out-of-scale development.

⁴ Sourced from current boarding house listings in the Waverley LGA.

⁵ The median weekly household income for Greater Sydney is \$1,750 based on ABS Census data 2016.

⁶ NSW Government, Communities and Justice 2018, *Renting affordable housing*

Boarding Houses in R2 Low Density

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

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

If DPIE intends to progress the change, SSROC proposes the following:

- Collaboration with councils prior to this change so that input can be provided on this separate planning pathway.
- Detailed design standards specifically for boarding house development in R2 zones.
- Character statements prepared in accordance with DCP requirements for boarding house development in R2 zones.
- Opportunity for neighbours and the local community to provide their feedback and comments on the proposal and its design. It is not sufficient to provide adjoining neighbours with a notification of works letter prior to construction.

Recommended Action:

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

In-fill affordable housing: Retaining affordable rental housing in perpetuity to provide permanent housing solutions for people on very low to moderate incomes, including key workers

An aim of the draft SEPP is to mitigate the loss of existing affordable rental housing. While the draft SEPP looks to achieve this aim by requiring certain boarding houses to be used for affordable housing in perpetuity (clause 25), it does not achieve this aim for other housing types. In particular:

- The use of infill affordable housing as affordable housing is proposed to be limited to 15 years (clause 20) and 10 years (clause 39). This does not provide permanent housing solutions for people on very low to moderate incomes, including key workers.
- The requirement for boarding houses to be used for affordable housing in perpetuity does not apply to development on land owned by the Land and Housing Corporation or to a development application made by a public authority (clause 25).

To address this issue, the SEPP should:

- Ensure that the affordable housing stock is retained in perpetuity if infill affordable housing and boarding houses are to achieve the bonus FSR.
- Retain clause 17(1)(b) of the *SEPP (Affordable Rental Housing) 2009*, which enables Council to impose a restriction against the title of the property on which development is to be carried out, and ensure that infill affordable housing is used as affordable housing.

The floor space bonuses for in-fill affordable housing remains unchanged in the draft SEPP. SSROC supports the clarification that the additional floor space ratio must be used for the

purposes of affordable housing. This additional clause clarifies any dispute around whether the additional floor space could be applied across the whole site and for uses other than affordable housing.

The draft SEPP proposes to increase the number of years that the additional floor space needs to be used for affordable housing has increased from 10 years to 15 years.

While this modest increase is supported, SSROC strongly recommends that the additional floor space be used for affordable housing in perpetuity. Clearly the shortage of affordable housing is not a short or medium-term housing problem. The 2021-22 NSW Intergenerational Report shows the need for affordable housing will continue to grow. Providing infill affordable housing in perpetuity will ensure a steadier supply of affordable housing and provide more certainty for the community housing providers that manage these units. It will also create consistency with the ongoing affordability requirement for boarding houses. Both in-fill affordable housing and boarding houses are important typologies in the provision of affordable housing, therefore the requirement for the retention of affordable housing should be the same.

SSROC notes that the NSW Government's 2021-22 Intergenerational Report has predicted that if those who retire without owning a home require social housing at a similar rate to today's retirees, this would increase demand for social housing by 68,000 households by 2060-61 – more than double the current social housing waiting list.

The current system also does not inform the community of where to find dwellings that are approved and constructed as affordable housing. The NSW Government should establish a search engine for dwellings certified as affordable rental housing, and to provide this information at the point of rent or sale.

Recommended Action:

The additional floor space bonus given for in-fill affordable housing be used for affordable housing in perpetuity, consistent with the requirement for boarding houses.

Require boarding houses on land owned by the Land and Housing Corporation or to a development application made by a public authority to be used as affordable housing in perpetuity.

Retain clause 17(1)(b) of the *SEPP (Affordable Rental Housing) 2009* to ensure infill affordable housing is used as affordable housing.

Establish a search engine for dwellings certified as affordable rental housing.

Conditions of Consent

SSROC does not support the removal of the 88E restriction to be registered on title for in-fill affordable housing development where the affordable housing is not provided in perpetuity. The registration on title should be retained for transparency for future owners, and to ensure enforcement of the requirement.

SSROC is concerned about the removal of existing ARHSEPP provisions that require conditions of consent to be imposed and a restriction to be registered on title mandating retention of the affordable housing and its management by a registered CHP for the prescribed period. Unlike for boarding houses, co-living housing and seniors housing, these requirements are not proposed to be replaced by prescribed conditions of development consent under Division 8A of the Environmental Planning and Assessment Regulation 2000 (EPA Regulation).

Without transparent monitoring and registration requirements, developers and subsequent owners have limited motivation to comply with the affordability requirements for the full 15 years. Recent research by CHIA NSW has highlighted the extent of non-compliance. It found that as many as 30% of projects completed by private developers did not comply with the ARHSEPP requirements.

The NSW Registrar of Community Housing is well placed to maintain a database of approved and completed affordable housing dwellings and to confirm that registered CHPs are managing those dwellings. While this is proposed for boarding house development, the draft Housing SEPP has not extended this requirement to in-fill affordable housing. This would lessen the administrative burden on Councils and consolidate and simplify arrangements.

This mechanism would enable the Registrar to confirm that properties are meeting the affordability requirements for the proposed 15-year affordable housing period and enable the Registrar to provide advice on the total number of affordable housing dwellings made available through the in-fill affordable housing provisions. This would create a transparent and accountable system for all parties, at minimal cost to the Office of the Registrar, planning authorities, and developers.

The Registrar could enable and also monitor reinvestment decisions when assets are renewed when they reach the need of their useful life.

Recommended Action:

The EPA Regulation be amended to include prescribed conditions of consent for in-fill affordable housing by private developers, that require:

- the dwellings proposed for the purpose of affordable housing will be used for the purpose of affordable housing for the prescribed period;
- all accommodation that is used for affordable housing be managed by a registered CHP. This should include requiring evidence of draft management agreements with a CHP;
- a restriction on title to be registered for the designated affordable housing properties: and,
- requiring notice of the development to be given to the Registrar of Community Housing, as per the requirement for boarding houses.

Issuing of site compatibility certificates for residential flat buildings where it would contradict a council's master plan program for centres

The Draft SEPP enables the issuing of site compatibility certificates for residential flat buildings within the vicinity of railway stations. This would apply to zones that prohibit residential flat buildings (clause 37).

SSROC does not support this proposal where it is inconsistent with a councils' LSPS and *Housing Strategy*. Master plan programs will determine suitable locations for residential flat buildings within the vicinity of railway stations.

This restriction should also apply where master plans are underway. The issue of site compatibility certificates would pre-empt the final recommendations of the master plans.

Recommended Action:

The SEPP does not enable the issuing site compatibility certificates for residential flat buildings where this would contradict many councils' master planning for centres.

Flexibility for different housing forms

SSROC does not support the minimum 450m² lot size for infill affordable housing as it is inadequate to achieve good design outcomes and is, as a consequence, inconsistent with many councils' lot size controls.

An aim of the draft SEPP is to provide a consistent planning regime for the provision of new affordable and diverse housing. Whilst the draft SEPP achieves this aim by requiring boarding houses (clause 24) and co-living housing (clause 65) to comply with council lot size requirements, it does not do so for infill affordable housing (clause 17(2)(a)).

SSROC does not support this proposal as it is inconsistent with many councils' lot size requirements and is inadequate to accommodate the proposed dwellings, setbacks to adjoining residential land, private open space and landscaped areas, driveways and vehicle manoeuvring areas.

This issue is illustrated in the following table with a comparison with Canterbury Bankstown Council's LEP.

CBC LEP (minimum lot sizes requirements)	Draft SEPP (minimum lot size requirements)
<ul style="list-style-type: none"> Dwelling houses = 450m² Dual occupancies (attached) = 500m² Dual occupancies (detached) = 700m² Attached dwellings = 750m² Multi dwelling housing = 1,000m² Multi dwelling housing (terraces) = 1,000m² Residential flat buildings = 1,500m² 	Clause 17: Infill affordable housing <ul style="list-style-type: none"> Dwelling houses = 450m² Dual occupancies (attached) = 450m² Dual occupancies (detached) = 450m² Attached dwellings = 450m² Multi dwelling housing = 450m² Multi dwelling housing (terraces) = 450m² Residential flat buildings = 450m²

Recommended Action:

Amend the lot size requirement for infill affordable housing (clause 17) to ensure in-fill affordable housing complies with good design outcomes and with council lot size requirements.

Other Design Changes

The design changes to in-fill affordable housing development proposed under the draft SEPP are supported in part. Controls that refer to or mirror the NSW Apartment Design Guideline including deep soil zone dimensions and minimum bedroom sizes are supported. However, reference to the Low Rise Housing Diversity Code minimum floor areas will allow for greater FSR than what is envisaged under council LEPs. A clarifying statement should be included that allows consideration of LEP standards, as outlined in further detail below.

In relation to the proposed development standards outlined in Chapter 2, Division 1 SSROC provides the following points:

- Clause 17(1)(i) Non-discretionary standards (dual occupancy, manor house or multi dwelling housing) – this clause should include “or if a maximum is specified for this form of development in any LEP”.

- Clause 20 Must be used for affordable housing for at least 15 years – the requirement for an 88E restriction to be registered on title should be reinstated.

3.0 Diverse Housing

Co-living

The draft Housing SEPP introduces new planning provisions for ‘co-living housing’. The provisions are similar to those that will apply to boarding houses, except that there is no affordability requirement. Co-living will be permitted in locations where councils are planning for higher density residential development including R3 Medium Density and R4 High Density land.

SSROC acknowledges that the micro-apartment style of development will be enabled under the Co-living component of the Housing SEPP. SSROC is supportive of the additional 10% floor space bonus for co-living housing located on land where residential flat buildings are permitted and on which there are no heritage items until 1 August 2024, on the condition there is a proportion of affordable housing in the co-living accommodation provided. This floor space bonus is less than what is currently in place for boarding houses under the ARHSEPP and is also less than the boarding house bonus proposed in the draft Housing SEPP. This additional bonus however would ensure that co-living development remains a viable product for developers and provides time for the market to adjust to the new provisions. This form of housing also provides an important diversity of housing options and provides an attractive market option for renters.

Application of the Apartment Design Guide to Co-living

The NSW Government Architect’s *Better Placed Policy* provides the framework for good design. Good design is not just how a place looks, but how it works and feels for people. Good design applies to all dwellings and should contribute to the well-being of individuals and the community. Good design is essential for smaller living spaces.

The concern is that the Draft SEPP may be inconsistent with the *Better Placed Policy* as it is unclear whether the design requirements for boarding houses and co-living housing will ensure there is:

- a high standard of building design quality
- adequate solar access to the private rooms and neighbouring properties.
- requirements for the ongoing management and maintenance of co-living housing.

The Draft SEPP should look to apply the Apartment Design Guide to boarding houses and co-living housing, similar to the approach taken for build-to-rent housing under the *SEPP (Affordable Rental Housing) 2009* (clause 41E).

Design guidance

It is noted that new design guidance is intended to be provided for seniors housing, boarding houses and co-living housing in late 2021 in line with the making of the draft SEPP. While SSROC acknowledges the need for design guidelines to be available at the commencement of the Housing SEPP, this leaves little opportunity for councils to contribute to, or review the guidelines, prior to their finalisation. Ideally, design guidelines should have been exhibited concurrently with the draft SEPP to provide a greater understanding of the changes.

Notwithstanding, SSROC requests the opportunity for councils to review and provide comments on the design guidance prior to finalisation.

Application of development control standards and BASIX

The Department of Planning, Industry and Environment's *Explanation of Intended Effect for a Design and Place SEPP* highlights that the sustainability performance of residential buildings is one of the main drivers of energy and water efficiency for housing in NSW⁷.

To this extent, the Draft SEPP should apply BASIX to boarding houses and co-living housing to be consistent with the NSW Government's commitment to improve BASIX as a pathway to cost-effective, low-emission outcomes for residential buildings.

The Land and Environment Court has also considered this question and confirmed the view that if boarding/private rooms are capable of being used as a separate domicile, therefore meeting the definition of a 'dwelling', a BASIX certificate for the development will be required to accompany the development application (*SHMH Properties Australia Pty Ltd v City of Sydney Council* [2018]).

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

Recommended Actions:

The Housing SEPP should:

- apply the Apartment Design Guide and BASIX to boarding houses and co-living housing.
- Provide greater flexibility for councils where different housing forms are permitted and for council development standards such as rates of car parking to apply.

Improve the planning rules for secondary dwellings to achieve good design and amenity outcomes

The introduction of secondary dwellings as a complying development category under the Affordable Rental Housing SEPP was designed to facilitate infill suburban development through small scale dwellings up to 60m² in area. Traditionally, secondary dwellings were simple outbuildings that accommodated an aging parent or acted as an extra room for a teenage child.

The new form of secondary dwellings has however taken on a completely new role and are now a legitimate form of housing for whole families. Although they cannot be subdivided and must form part of a primary dwelling, their impacts on the local community do not differ from an ordinary dwelling.

Canterbury Bankstown Council reports that in many instances, these dwellings are now appearing as major secondary houses with covered ancillary development, containing up to three/four bedrooms squeezed to fit within the building footprint. This scenario creates inadequate living conditions for renters, together with inadequate private open spaces and access. Inadequate parking creates added problems and concerns for the community.

⁷ page 36

Recommended Actions:

- Limit the number of bedrooms in secondary dwellings to two bedrooms.
- Do not permit outbuildings and covered ancillary development (e.g., decks, patios, pergolas, terraces, verandahs, alfresco areas and the like) to be attached to secondary dwellings, which have the potential to be readily converted to additional rooms, that exceed the 60m² maximum allowable floor area.
- Require off-street parking for secondary dwellings.
- Require minimum private open space for secondary dwellings.
- Provide dedicated private access to secondary dwellings that does not impinge on the privacy or the minimum requirement of either the principal or secondary dwelling's private open space.

Apply the Livable Housing Design Guidelines to enable people to age in place

An aim of the draft SEPP is to ensure an adequate supply of an appropriate range of housing types to meet the changing needs of people across the State, including seniors and people with disabilities. A shortcoming of the draft SEPP is that it does not reference the *Livable Housing Design Guidelines*.

At present, there is a mixed approach to this issue in NSW. Most councils apply the Adaptable Housing Australian Standard. However, industry, social housing providers and some councils are moving from the Adaptable Housing Australian Standard to the *Livable Housing Design Guidelines*.

The Guidelines aim to provide suitable accommodation for a broad range of the community including seniors, people with temporary injuries, families with young children, and people with disabilities and their families; plus enable people to age in place. The Guidelines contain three types of building design standards: Platinum, Gold and Silver. Livable Housing Australia's goal is for all new homes to achieve a minimum standard (Silver) however this target is not legislated and therefore remains discretionary.

In 2019, Canterbury Bankstown Council (CBC) consulted the community, industry, social housing providers, aged care providers and state agencies to discuss options on how Council may proceed to address future demand for livable housing. In summary, most respondents supported the application of the *Livable Housing Design Guidelines*. In 2020, CBC decided to move from the Adaptable Housing Australian Standard to the *Livable Housing Design Guidelines*.

In applying the planning rules such as the requirement for step-free pathways in front yards, flexibility would be given to difficult sites. It is not proposed to apply the planning rules to steeply sloping sites or to modifications to existing dwellings.

There is the opportunity for the Draft SEPP to modernise the policy approach to housing options that would enable people to age in place, particularly in relation to the status of the *Livable Housing Design Guidelines*.

Recommended Action:

Consider referencing and promoting the application of the *Livable Housing Design Guidelines (to at least silver standard)* to secondary dwellings, boarding houses, build-to-rent housing and co-living housing.

Group housing

SSROC supports the conversion of an existing dwelling to a group home to support people in need. The existing group home provisions will be transferred in their current form to the proposed Housing SEPP, with a comprehensive review of these provisions to take place later in 2021. SSROC asks for the opportunity to provide feedback for the review of these provisions.

4.0 Seniors Housing

Not supporting the proposal to mandate seniors housing in the B3 Commercial Core

SSROC does not support the proposal to mandate seniors housing in the B3 Commercial Core for the following reasons:

- Mandating seniors housing in the B3 Commercial Core would reduce the ability for councils to provide for jobs in those locations.
- The State and local policies recommend establishing the B3 Commercial Core to protect areas for the long-term supply of commercial floor space.
- In many instances this proposal will be in conflict with councils' strategic intent found in their Local Strategic Planning Statements that have been assured by the Greater Sydney Commission. Seniors housing in the B3 Commercial Core will often contradict the zone objectives and the intent of the new planning framework which aims to ensure strategic planning occurs in a coordinated and orderly manner.
- Safeguarding employment floorspace in commercial centres is necessary due to the recent bias towards housing development in these centres. Failure to protect land for commercial uses could result in these centres being dominated by residential development that locks out the potential for significant commercial floor space.
- While residential development in, or nearby town centres, is important to maintain vibrancy, activity and passive surveillance, Strategic Centres must as a priority cater for the State Government's substantial employment targets.
- A key concern is the proposal to mandate seniors housing in the B3 Commercial Core will erode the ability of employment zones to deliver jobs targets.

According to the Department of Planning, Industry and Environment's Note 11-002, the B3 Commercial Core should be applied in major metropolitan or regional centres only where the focus is on the provision of employment and services. This is demonstrated in the zone objectives, which include:

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

This proposal to mandate seniors housing in the B3 Commercial Core is inconsistent with the zone objectives as the purpose of seniors housing is to provide residential accommodation. Seniors housing should be optional land use depending on the scale, role and location of the commercial core.

Recommended Action:

The SEPP does not mandate seniors housing in the B3 Commercial Core as it can contradict the zone objectives and reduce the ability for councils and the NSW Government to provide for jobs in these locations.

Permissibility

The draft Housing SEPP proposes prescribed zones where seniors housing will be permissible and removes the site compatibility certificate pathway. It is noted that any development that has already received a site compatibility certificate is still able to utilise this.

The removal of the site compatibility pathway is supported, as greater certainty is provided for the community about the likely locations for seniors housing developments. However, the inclusion of prescribed zones in the draft SEPP is not supported, as this would override council's strategic planning work with regards to the most appropriate locations for seniors housing.

As noted of particular concern is the inclusion of seniors housing in the B3 Commercial Core as a prescribed zone. The recent inclusion of the Build to Rent use in the B3 Commercial Core zone has also recently undermined many councils' important strategic planning work. To provide for residential uses in the B3 Commercial Core zone is not only inconsistent with the zone objectives, but it is inconsistent with the objectives of the *District Plans* and many *Local Strategic Planning Statements*, which seek to provide for economic development in commercial cores.

The application of LEP permissibility and development standards should prevail over the SEPP prescribed zones for seniors housing.

Recommended Action:

Permissibility should remain with councils to determine which zones in the relevant local environmental plan are appropriate for seniors housing, particularly as it relates to business zones in which the primary purpose is to provide commercial development.

Vertical Villages Bonus

There is no definition for vertical villages. Rather, vertical village is a container term utilised to deliver a floor space bonus to incentivise seniors development in a high density manner to encourage ageing in place. A vertical village might comprise of independent living units, residential care facilities or a combination of both.

The draft Housing SEPP now proposes changes to FSR and height bonuses available under the vertical villages for sites over 2,000m² where residential flat buildings are permissible. While bonus provisions may be appropriate to incentivise certain types of development, these should also include a merit assessment to determine whether the full bonus is appropriate for the specific site.

With the proposed FSR incentives within business zones of up to 25%, the broader economic implications need to be considered to ensure a council retains the ability to deliver employment floor space in strategic centres. The minimum 2,000m² site area requirement for vertical villages could result in the concentration of vertical villages in the more important economic strategic centres.

With coupling of the potential FSR bonus of up to 25%, with a height bonus of up to 3.8m, it is recommended that vertical village development comply with the building separation requirements outlined in the NSW Apartment Design Guideline.

For example, in Waverley Council, existing planning proposals have sought to amend the WLEP by increasing the development capacity of the site for the purposes of seniors housing only. These proposals have been consulted upon with the community, and the maximum increase is prescribed based on what is appropriate for the subject site and surrounding character. Accordingly, any additional bonus above a recent increase would be seen as undermining the planning proposal process and the community's trust and transparency in the planning process.

Recommended Action:

The Vertical Villages provision include additional amenity and character criteria and that the bonus height and FSR be subject to a merit assessment.

The proposed draft SEPP bonus provisions should not be available on sites that have been the subject of a planning proposal process that resulted in an increase in height or FSR in the preceding 5 years.

Prohibition on Independent Living Units in the R2 zone

Many councils' Local Housing Strategies identify the delivery of seniors housing as an important part of enhancing housing choice and diversity in lower density residential areas. The draft Housing SEPP currently prohibits development for the purpose of Independent Living Units (ILUs) in the R2 Low Density zone and there is no mechanism to allow Council's to permit the use in R2 zones if they choose. This prohibition may hinder the delivery of appropriately sized ILUs in local government areas particularly if the State Significance Development pathway is modified as suggested.

The Explanation of Intended Effect for the new Housing Diversity SEPP clarified that development standards in an LEP prevail when there is inconsistency with the SEPP in relation to ILUs in the R2 zone. However, this clarification has been removed in the draft Housing SEPP and should be reinstated.

State Significant Development Pathway

Many SSROC councils do not support the proposed State Significant Development (SSD) pathway for residential care facilities with a capital investment value over \$30 million or more. The threshold of \$30 million is relatively low when considering the infrastructure associated with residential care facilities. While SSROC notes that the demand for seniors housing will continue to grow, removing local councils as the consent authority for seniors housing is inappropriate.

Councils' local planning frameworks are well equipped to assess such residential developments. SSROC contends that seniors housing does not have the 'state significance' to be assessed under an SSD approval pathway, regardless of the CIV.

Further, the draft only requires residential care facilities to comprise 60% of the total development, opening the door for a mix of seniors housing types utilising the SSD pathway. As noted above, the SSD approvals pathway should not apply, even in part, to ILU developments. Allowing seniors housing developments to be assessed under an SSD approval pathway could result in developments that exceed local planning controls, are incompatible with the local character of the area and inconsistent with community expectations. If DPIE intends to pursue this approval pathway, SSROC suggests the CIV be raised to \$100 million to align with the recently introduced build-to-rent SSD pathway.

Proposed Seniors development standards

In addition to the above, SSROC provides the following comments in relation to the development standards outlined in Chapter 2, Part 4:

- Clause 78 Use of ground floor of seniors housing in commercial zones – the clause should be amended to require active frontages on the ground floor to ensure delivery of mixed-use premises with retail and business premise at the ground floor.
- Clause 96(e) and (f) Non-discretionary development standards for hostels and residential care facilities – clarification is sought as to how landscaping and deep soil requirements will be applied in business zones that are typically built boundary to boundary with limited opportunity for landscaping or deep soil zones.
- Clause 97(d), (e) and (f) Non-discretionary development standards for independent living units – clarification is sought as to how landscaping and deep soil requirements will be applied in business zones that are typically built boundary to boundary with limited opportunity for landscaping or deep soil zones.
- Schedule 4 Environmentally Sensitive Land (flood planning) – clarification is sought as to the definition of ‘flood planning’ referred to in Schedule 4.

5.0 Related issues

Ensuring the proposed definitions are consistent with existing definitions in the NSW planning system

The Draft SEPP proposes to introduce new definitions that depart from existing definitions, resulting in inconsistencies in the NSW planning system.

Recommended Actions:

- Amend the definition of ‘environmentally sensitive area’ to include land identified by an environmental planning instrument as being of high Aboriginal cultural significance or high biodiversity significance.
- Clarify the extent of the definition of ‘non-heritage land’
- Ensure the definitions of ‘landscaped area’ and ‘deep soil zone’ are consistent with the Standard Instrument LEP and the Apartment Design Guide.
- Introduce a definition for vertical village to ensure the bonus FSR is correctly applied (clause 99).

Improved Monitoring: include secondary dwellings, boarding houses, build-to-rent housing and co-living housing as forms of housing that contribute to housing supply

DPIE currently relies on Sydney Water connections data to monitor net dwelling completions in Sydney. Council notes that this completions data excludes aged care/seniors living developments and boarding house/student accommodation dwellings.

Randwick Council has seen approximately 2,000 boarding house rooms recently approved in the LGA. As such, SSROC proposes that DPIE investigates improved monitoring to ensure that data collection is more accurately aligned with the supply of additional housing types. This will also allow councils, the community and DPIE to better understand how the forthcoming Housing SEPP is being implemented and achieving its stated outcomes.

Research commissioned by Southern Sydney Regional Organisation of Councils and prepared by the University of NSW City Futures Research Centre, found in the period between July 2007 and

June 2017, that 8,212 secondary dwellings were constructed across the SSROC region comprising eleven council areas. Canterbury Bankstown accounted for 52%, resulting in over 4,000 secondary dwellings being constructed within Canterbury Bankstown LGA over the decade.

As the NSW Government includes one or two bedroom villas, townhouses and units as dwellings that contributes towards housing supply, it is also logical and consistent to recognise the contribution made by secondary dwellings to the overall housing supply. Secondary dwellings can accommodate whole families which results in the same level of demand on local services, facilities, open space and on-street parking when compared to detached dwellings.

The study prepared by the UNSW City Futures Research Centre notes:

“... the volume of approvals raises number of broader planning related issues. This kind of incremental growth in dwelling is not generally factored in planning for growth across the Sydney region. In the case of Canterbury-Bankstown where secondary dwellings account for 31% of dwelling growth between 2006 and 2017, this figure represents a substantial contribution to dwelling stock levels. While this may be viewed as beneficial to delivering dwelling growth, if it has not been factored in growth estimates and not form part of local infrastructure and service planning, then this represents a significant black spot in the planning process. Additional pressures on public transport, schools, local amenities and facilities, water infrastructure and road networks are likely to result without any plan in place to address additional demand”⁸.

A similar data collection concern applies to boarding houses, build-to-rent housing and co-living housing under the Draft SEPP. According to the SSROC research, there are gaps in the Department’s understanding of the types of dwellings being built, their use and occupant profile, and the additional infrastructure and amenity demands they create on their host neighbourhoods.

Recommended Actions:

- Improve the NSW Government’s data collection by formally including secondary dwellings, boarding houses, build to rent and co-living housing as forms that contribute to housing supply and local councils dwelling targets.
- DPIE establish a monitoring and review program for the commencement of the SEPP to ensure the housing outcomes sought are being achieved.

Conclusion

SSROC member councils cover a large portion of Greater Sydney and have a direct interest in supporting and advocating for changes to improve and diversify the delivery of housing that meets the needs of our current and future communities by maintaining supply and increasing housing choice. Affordable housing is perhaps the most critical option or choice for lower income earners struggling in the private housing market. This issue needs to be kept in tight focus by the new SEPP.

While welcoming many of the changes, councils are concerned that some new provisions will undermine their local planning strategies and result in development that is not responsive to the local context. Blanket provisions that apply state-wide do not accommodate the unique differences between areas. This points to a need for the proposed Housing SEPP to provide greater discretion

⁸ Research report commissioned by Southern Sydney Regional Organisation of Councils (SSROC), June 2018, page 18.



for councils to determine both where certain forms of housing can be built and the development standards that apply.

In order to make this submission within the timeframe for receiving comments, it has not been possible for it to be reviewed by councils or to be endorsed by the SSROC. I will contact you further if any issues arise as it is reviewed.

If you have any queries, please do not hesitate to contact me or Mark Nutting, SSROC's Strategic Planning Manager on 8396 3800 or ssroc@ssroc.nsw.gov.au.

Again, thank you for the opportunity to comment on the proposed Housing SEPP. We are keen to participate in any further consultation stages for the introduction of the new SEPP, in particular consultations about changes that will particularly impact on local councils.

Yours faithfully

A handwritten signature in black ink that reads 'H Sloan'.

Helen Sloan
Acting General Manager
Southern Sydney Regional Organisation of Councils