

UDIA NSW Housing Diversity SEPP EIE Submission

The Urban Development Institute of Australia (UDIA) NSW is the peak body representing the interests of the urban development industry in New South Wales. We represent over 500 member companies that are directly involved in the industry including developers, strata and community managers, planners and lawyers.

UDIA makes this submission to the Department of Planning, Industry and Environment's (DPIE) Explanation of Intended Effect (EIE) for a new Housing Diversity SEPP (July 2020) and many of our members will make direct submissions in relation to the EIE.

The UDIA supports the NSW State Government's proposal to prepare a new Housing SEPP to consolidate and update housing-related policies. The UDIA is highly supportive of any new mechanisms which seek to streamline statutory processes that contribute to housing supply and amendments which more closely reflect the typologies the property industry is delivering.

The proposed amendments are a good first step, however UDIA contends that more can and needs to be done to facilitate housing to meet the needs of the people of NSW. This submission sets out the additional considerations that would further support supply and delivery of a truly diverse range of housing that caters to the needs of all household types. We also contend that the modernisation of housing related planning controls will also better reflect the housing continuum and the changing housing needs of the population. It is important that the provisions to enable affordable and market rental housing do not set up barriers to their acceptance by the community and approval by relevant authorities.

The imposition of limits or controls on tenure and or preventing the future subdivision of BTR products may make the asset difficult to value.

Our detailed comments are set out below and are structured as follows:

- Summary of recommendations;
- General commentary about housing policy;
- Overarching discussion on the need to reconsider all housing terms and definitions;
- An overview of some of the unintended consequences of the EIE with specific consideration of the proposed land use terms and land use characterisation;
- Specific feedback on each of the proposed typologies discussed in the EIE and the proposed amendments.

UDIA has also prepared an additional letter that details our concerns with the Seniors Housing SEPP amendments, noting the critical importance of Seniors Housing as part of responding.

UDIA understands that the draft SEPP is not intended to be placed on public exhibition. We believe it is essential that any draft be placed on public exhibition for consultation and feedback given the breadth of concerns outlined in our submission and the potential impacts of the draft SEPP on the housing development industry. Public consultation of the draft SEPP would provide greater transparency, facilitate review and feedback on the actual provisions (which are yet to be sighted) and is consistent with the State Government's policy to increase consultation and public engagement.

UDIA would welcome the opportunity to discuss a range of amendments with the NSW Government, drawing on our members' frontline experience, before the release of the draft Housing Diversity SEPP for public consultation and certainly before its finalisation.

Summary of Recommendations:

- 1. The NSW Housing Strategy should be resolved ahead of the Housing Diversity SEPP to avoid an inverted process and misalignment.**
- 2. Providing for housing diversity is a matter of State and regional planning significance and should be driven and supported by the NSW Government in the form of a new SEPP that facilitates and incentivises a much wider range of housing typologies.**
- 3. Create a clear definition of "affordable housing".**
- 4. Housing developed under affordable housing provisions is to be maintained as affordable housing rather than being capped at 10 years.**
- 5. Clearly outline what evidence would be sufficient for applicants to prove "low rental" dwellings.**
- 6. The new Housing Diversity SEPP should include development standards set by the State Government, not councils, for new typologies such as BTR and co-living. Development standards should be typology specific and not seek to simply expand the application of SEPP 65 and the ADG.**
- 7. Development standards should be typology specific and not seek to simply expand the application of SEPP 65 and the ADG.**
- 8. Undertake a complete overhaul of terms, definitions and development controls to move away from the negative perceptions that are now embedded in the planning process and hinder delivery of a truly diverse housing market.**
- 9. Revise existing and proposed definitions to distinguish between 'co-living' and 'apartments' as separate housing product types.**
- 10. Introduce new definitions for:**
 - a. 'market' and 'affordable' as separate rental and operating models**
 - b. communal living area**
 - c. Room/apartment size.**
- 11. Remove the minimum 50 unit requirement proposed for the BTR definition.**
- 12. Extend the land tax discount announced by the New South Wales Treasurer in late July 2020 to all BTR, with no minimum unit requirement.**

- 13. Develop and implement a suite of incentives to stimulate the construction of a truly diverse range of housing typologies that addresses the feedback provided throughout UDIA's submission for each of the specific typologies.**
- 14. Existing land use zones for the main university campuses should be identified as a prescribed zone in the SEPP, and the SEPP should permit student housing in a prescribed zone. Alternatively, student housing should be identified as permissible with consent in the same prescribed zones as universities under the Educational Establishments SEPP.**
- 15. Onsite management of BTR schemes should be project and site specific as appropriate to each scheme.**
- 16. Provide clear guidance on design expectations in the absence of design guidelines. Any design guidelines should promote flexibility and a range of innovative design solutions within each scheme.**

Visionary and Aspirational Policy

1.1 The Introduction to the EIE states:

'The proposed Housing Diversity SEPP is an example of government-led action to address housing diversity and affordability, in line with the proposed NSW Housing Strategy'.

It would be instructive to have the NSW Housing Strategy resolved ahead of the Housing Diversity SEPP to avoid an inverted process. In the absence of this occurring, UDIA seeks clarification on how the Housing Diversity SEPP will achieve the objectives described in the NSW Housing Strategy, more specifically Theme 2 – Diverse Housing for Diverse Needs, particularly as the Housing Diversity SEPP appears to be contrary to the objectives and demographic data presented in the NSW Housing Strategy.

1.2 The Introduction to the EIE also states:

... the housing needs and preferences of the community have changed over time and will continue to change. It is important to ensure that planning policies facilitate housing types in response to these changes.

The UDIA wholly agrees with this statement. However, while the Housing Diversity SEPP will play an important part in consolidating and rationalising the various State Policies currently regulating various classes of housing, its principal effect will be to remove existing incentives presently afforded to traditional boarding houses. This does not achieve the stated objective of facilitating diversity and affordability in line with the Housing Strategy.

1.3 Although three existing housing related SEPPs will be consolidated into the new SEPP, and new definitions will be introduced via the new SEPP into the Standard Instrument LEP, it appears from the EIE that the new SEPP itself will not include any provisions or incentives to provide for the new forms of housing such as BTR, student housing and co-living development. The UDIA reiterates the need for flexibility and incentives to promote new types of development and achieve the objective of diversity.

- 1.4 The proposed imposition of additional, and in many cases unnecessary, regulation is likely to preclude emerging housing types designed to respond to future changes in housing needs and preferences. Neither the removal of incentives, nor the imposition of additional standards, will have the intended effect of facilitating the provision of more diversity in affordable housing types. This is very disappointing and importantly, a missed opportunity.
- 1.5 As the Department acknowledges in the EIE, the aging population, the growing demand for smaller and more accessible homes, housing affordability and housing insecurity due to the COVID-19 health and economic crisis, are challenges that the State must address.
- 1.6 As such, providing for housing diversity is a matter of State and regional planning significance and should be driven and supported by the NSW Government in the form of a new SEPP that facilitates and incentivises a much wider range of housing typologies including next generation boarding houses, medium density, and a range of housing tenures.
- 1.7 It is noted that the ARH SEPP includes the following as part of its aims:
- to facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning, permissibility, floor space ratio bonuses and non-discretionary development standards;
 - to facilitate the development of housing for the homeless and other disadvantaged people who may require support services, including group homes and supportive accommodation.
- 1.8 Similarly, one of the aims of the Seniors Housing SEPP is to encourage the provision of housing that will increase the supply and diversity of residences that meet the needs of seniors of people with a disability.
- 1.9 History has demonstrated the need for the NSW Government to take the lead:
- 1991: SEPP 32 - Urban Consolidation (Redevelopment of Urban Land),
 - 1998: SEPP 5 - Housing for Older People and People with a Disability,
 - 1997: SEPP 53 - Metropolitan Residential Development
 - 2004: Seniors Living SEPP
 - 2009: AHR SEPP
- 1.10 In the course of reforming the housing-related SEPPs, UDIA recommends a clear definition of “affordable housing” and recommends that housing developed under affordable housing provisions be maintained as affordable housing rather than being capped at 10 years. Community Housing Providers (CHPs) need longer leasing terms to meet lending requirements in order for the sector to be able to grow affordable housing stock in pace with projected demand.
- 1.11 The SEPP should also clearly outline what evidence would be sufficient for applicants to prove “low rental” dwellings. It is problematic to set a minimum tenancy periods as this gives less flexibility to tenants.

- 1.12 The introduction of Build-to-Rent (BTR) and Co-living as new land use terms is wholly supported. UDIA would, however, question the intention to defer the identification of planning controls to local councils. BTR is being led by a small number of developers who have an in-depth understanding of the design, asset management, and planning framework that is required to support this typology and asset class. As a new concept for Australia, it is generally not well understood across the industry and particularly by consent authorities. UDIA would strongly encourage the Government to identify key development controls in the SEPP to ensure BTR is successful from the outset. By definition, BTR developments will be large if they are to accommodate a minimum of 50 self-contained dwellings. Viable built form controls need to be set at the outset to ensure they support delivery of this new typology and deliver good design outcomes. Without Government leading the way, UDIA believes local councils will seek to assess BTR as quasi-residential flat building controls and will require compliance with SEPP 65 and ADG controls, which may not be fit-for-purpose.
- 1.13 Similarly, some guidance regarding the height and density controls and other minimum acceptable requirements should be provided for co-living. The EIE suggests that building envelope controls for residential flat buildings will need to comply with relevant DCPs and we believe this is risky and is likely to lead to onerous compliance with SEPP 65 and the ADG for a typology that clearly has bespoke spatial layout and design specifications. Clarity regarding when and who will prepare the design guidelines suggested in the EIE is also required.
- 1.14 Development standards should be typology specific and not seek to simply expand the application of SEPP 65 and the ADG.
- 1.15 Development controls such as height and density for BTR and co-living could be identified in the SEPP for an initial 24-month period as a trial to enable the Government to retain control over any refinements / amendments that may be required as part of the SEPP's first review. Following the 24-month trial period, the controls could be transferred into local environmental plans once they had been tried, tested and proven to deliver the desired outcomes.
- 1.16 The new Housing Diversity SEPP should take a similar lead and include development standards set by the State Government, not councils. Leaving the height and FSR controls to current LEP controls or to councils to determine in the future negates the important objectives referred to above.
- 1.17 The State Government could over time exempt a council from the application of the whole or parts of the Housing Diversity SEPP where the council has demonstrated that its LEP has provided appropriate and adequate development controls for these new housing types. It is noted that SEPP 53 was amended from time to time to exclude its application to local councils where the Minister for Planning agreed with the council's residential strategy and its plans to implement that strategy.

Recommendations:

1. The NSW Housing Strategy should be resolved ahead of the Housing Diversity SEPP to avoid an inverted process and miss-alignment.
2. Providing for housing diversity is a matter of State and regional planning significance and should be driven and supported by the NSW Government in the form of a new SEPP that facilitates and incentivises a much wider range of housing typologies.
3. Create of a clear definition of “affordable housing”.
4. Housing developed under affordable housing provisions is to be maintained as affordable housing rather than being capped at 10 years.
5. Clearly outline what evidence would be sufficient for applicants to prove “low rental” dwellings.
6. The new Housing Diversity SEPP should include development standards set by the State Government, not councils, for new typologies such as BTR and co-living. Development standards should be typology specific and not seek to simply expand the application of SEPP 65 and the ADG.
7. Development standards should be typology specific and not seek to simply expand the application of SEPP 65 and the ADG.

Housing Terms, Definitions and Land Use Characterisation

- 1.18 The COVID pandemic has highlighted more than ever before the importance of ensuring that everyone has a safe and comfortable place to shelter, irrespective of their household composition, size, income or tenure preferences. One of the key underlying issues with the housing planning framework in NSW is the distinction between the ‘haves and have nots’. While this may not have been deliberate, over time certain housing typologies have gained an undesirable reputation, some which can be attributed to the terms and definitions used across various environmental planning instruments. Boarding houses and affordable rental housing schemes, for example, are burdened with a particularly poor stigma, which manifests in longer assessment timeframes, hostile objectors and, in many cases, DA refusal. Similarly, social housing attracts negative connotations and is often perceived by the community as development that seeks to build the largest number of dwellings with cheap materials, and little-to-no concern for the quality of life of its residents.
- 1.19 What we today define as boarding houses, affordable rental housing and social housing are principal elements of a democratic city such as Sydney. These housing structures need to be recognised as valid housing options that provide shelter and connect residents to their community, place of employment and the rest of the city and its services.
- 1.20 UDIA contends that a complete overhaul of terms, definitions and development controls is required to move away from the negative perceptions that are now embedded in the planning process and hinder delivery of a truly diverse housing market. For instance, the terms “boarding house” and “lodger” are proposed to be retained. The terms are antiquated (used since the ARHSEPP commenced in 2009) and have negative

connotations. Furthermore, consideration should be given to abandoning the term 'affordable housing' as a land use.

- 1.21 The UDIA suggests that it may be more appropriate to distinguish between 'co-living' and 'apartments' as separate housing product types, and 'market' and 'affordable' as separate rental and operating models (the latter being run by a CHP). Appropriately drafted definitions could be prepared in those categories, and ideally implemented across relevant NSW legislation including the *Environmental Planning and Assessment Act, 1979* and the *Boarding Houses Act, 2012*.
- 1.22 To reduce confusion, all terms should be clearly defined, including:
- Affordable
 - Communal living area
 - Room/apartment size (it's assumed this is referring to internal area measured to the internal faces of external and party walls, but it is not clearly stated).
- 1.23 Whether a proposed form of development is permissible or not in a particular zone is fundamental. Answering that question is more problematic, as planning law turns on the characterisation of the purpose of development of land¹. This task can be one of the most difficult and challenging aspects of planning law.
- 1.24 In the experience of our members, definitions that include numerical requirements can be fraught and often lead to a debate on whether the numerical requirement is a development standard or results in the development being prohibited. The number of cases in the Land and Environment Court on the application of clauses 29 and 30 of the ARHSEPP and the Seniors Housing SEPP are testament to this.
- 1.25 In relation to the EIE specifically, we question the need for the 50-apartment minimum for BTR proposed to be included in the definition for BTR. While we understand that the BTR model is most successful when delivered with a minimum critical mass, we would caution against an arbitrary threshold being defined that has unintended consequences. For example, if a BTR type of development proposes less than 50 self-contained units, would it be defined as co-living or would it be characterised and assessed as a residential flat building? Land use characterisation will be problematic as residential flat buildings are a compulsory permissible use in some zones where it is not proposed to make BTR and co-living compulsory permissible uses. Conversely, BTR is proposed to be a compulsory permitted use in the commercial zones such as B3, B4 and B8. However, residential flat buildings are not currently a compulsory permitted use in those zones.
- 1.26 Clarity is also sought regarding instances where during the course of the assessment of a BTR development, the applicant and the council agree that a better planning outcome would be a 49 unit development and not a 50 unit development? Will the development be characterised as a residential flat building? What if residential flat buildings are prohibited in that zone? It is noted that residential flat buildings are ordinarily prohibited in the B3 zone in most councils' LEPs (e.g. prohibited in the B3 zone under Parramatta LEP 2011, Sydney LEP 2012 and North Sydney LEP 2013).
- 1.27 Conversely, we can foreshadow instances where councils will require DAs for RFBs of 50-units or more to include information and details as to future strata subdivision and future sale to distinguish the proposed use from a BTR. This could occur prior to lodgement, creating unnecessary red tape and preventing otherwise valid DAs from being submitted for assessment.

¹ *Botany Bay City Council v Pet Carriers International Pty Limited* [2013] NSWLEC 147 at [24].

- 1.28 These are not hypothetical questions. Our members frequently have to address these kinds of questions from councils when undertaking development under the ARHSEPP and the Seniors Housing SEPP. For the reasons outlined above, the minimum 50-unit requirement proposed for the BTR definition should be removed. Similarly, the land tax discount announced by the New South Wales Treasurer in late July 2020 should extend to all BTR, with no minimum unit requirement.

Recommendations:

8. Undertake a complete overhaul of terms, definitions and development controls to move away from the negative perceptions that are now embedded in the planning process and hinder delivery of a truly diverse housing market.
9. Revise existing and proposed definitions to distinguish between 'co-living' and 'apartments' as separate housing product types.
10. Introduce new definitions for:
 - a) 'market' and 'affordable' as separate rental and operating models
 - b) communal living area
 - c) Room/apartment size.
11. Remove the minimum 50 unit requirement proposed for the BTR definition.
12. Extend the land tax discount announced by the New South Wales Treasurer in late July 2020 to all BTR, with no minimum unit requirement.

Build-to-Rent

- 1.29 A large proportion of new housing is already developed for the purpose of being rented. However, current taxation settings advantage individual 'mum and dad' investors relative to institutional investors. This in turn creates significant uncertainty of tenure for renters because if the dwelling owner chooses to sell, the new owner need only provide 30 days' notice for the tenant to vacate the property. While the ability to have long term leases may also be an issue for some tenants, the larger concern is potential eviction with only 30 days' notice. This is not addressed in the proposed changes.

- 1.30 The recently announced 50% discount to Land Tax for BTR projects will remove this principal impediment and is a first step to clear the way for institutional investment in rental accommodation, as is common in many comparable international economies. Rather than facilitating or incentivising such development, the draft provisions add a layer of additional regulation, including:

- 15-Year Prohibition on Subdivision – The purpose of this provision is unclear. The tax relief to be available to BTR is paid annually. If the land use changes, the tax relief will cease. With an emerging asset class, it is important to provide for unsuccessful models to be repurposed. The 15-year strata prohibition serves no apparent planning purpose;
- 3-Year Minimum Tenancy – While this is generally acceptable, it fails to address the greater issue of lease termination arrangements. What happens at the end of the 3-year lease? Can it then be terminated with 90 days' notice?

- Minimum 0.5 Car Parking Spaces – This should be a ‘cannot be refused’ standard. The provision of car parking is often a major component of the cost of housing and removal of car parking is a key opportunity to improve affordability, particularly in highly accessible locations. The UDIA Roy Sheargold Scholarship Research Report, *Build to Rent in Sydney NSW: Financial Feasibility*, shows that a 10% reduction in carparking can improve the internal rate of return by 1-2%;
- Minimum 50 Dwellings – It is understood that emerging business models currently favour schemes of 50 to 100 apartments. However, there is no planning reason to enshrine this model. Why should a future model that works at 20 dwellings be precluded? Furthermore, what about incremental expansion, where existing schemes are expanded by adding (say) 20 additional dwellings to an existing facility on an adjacent site, with both to be operated as a single facility?
- Additional On-site Facilities – If the objective is to increase affordability, why mandate the provision of supplementary facilities that the market may not seek. This could end up like past examples where residential flat buildings were required to provide and maintain private gyms and pools of little real amenity, only to become redundant recurrent costs when superior commercial or public facilities open nearby (see Zetland for example);
- On-site Management – While access to building management is important for tenants who have limited authority and resources to repair and maintain their dwelling and communal facilities, it is not clear what benefit is provided by that management being required to be located on site.

1.31 The only apparent incentive proposed is the intended permissibility in the B3 Commercial Core zone. While this appears to be a significant incentive, the incentive value is limited as relatively little land has actually been zoned B3, and most of what has is substantially developed or identified for other development purposes. Furthermore, from a planning perspective it is difficult to see how BTR differs from other residential accommodation in terms of the reasons for residential accommodation being prohibited in B3 zones.

1.32 The EIE’s proposed definition of BTR includes reference to ‘*long term private rent*’. While it would be common for BTR tenancies to be long-term, this shouldn’t necessarily be prescribed as it restricts tenants’ flexibility. If the rationale is to protect tenants from arbitrary and frequent rent increases, it is noted that the *Residential Tenancies Act, 2010* provides that there cannot be more than one rent increase in any 12-month period. This could be amended to extend the period for BTR within the Residential Tenancies Act. The SEPP should also clarify whether the terms of rent are to be regulated, and if so, how. Our preference is that Residential Tenancies Act is used to regulate tenancy obligations, land-use planning should not regulate particular terms of tenancy agreements.

1.33 The definition references ‘*includes on-site management*’. While this would be common for institutional BTR, it would need to be clarified if on-site managers could be shared between developments (e.g. one manager for 3 adjacent buildings under 3 separate DAs). The need for management to be located on site will unnecessarily add operational costs to BTR schemes, especially impacting smaller schemes. These management costs would logically flow through to the tenant in the form of higher rents or make proposals less feasible in the long term. UDIA recommends that management is provided as appropriate to each scheme.

- 1.34 In Table 1 of the EIE, it is unclear what is meant by 'local provisions apply' for BTR Housing with respect to "Affordable", we recommend further discussions to help the industry understand what is meant and provide feedback.
- 1.35 Any design guidelines developed for BTR should promote flexibility and a range of innovative design solutions within each scheme.

Purpose-Built Student Housing

- 1.36 In principle, the UDIA supports the proposed amendments to purpose-built student housing. Recognition of purpose-built student housing as a distinct category of development is clearly warranted and its categorisation as a type of Boarding House was misleading.
- 1.37 UDIA would, however, question the realistic take-up of this typology in the short to medium term given the challenges the university sector is facing in a post-COVID economy. The slashing of university jobs, constrained funding, and impacts of limited international students suggests there will be little to no demand to prioritise funding of student accommodation ahead of other initiatives.
- 1.38 The UDIA notes the EIE indicates Purpose-Built Student Housing is not proposed to be made a compulsory use in any of the land use zones under the Standard LEP Instrument. UDIA contends that this will compromise the delivery of Student Housing as councils will need to first amend their LEPs (at their own leisure) to introduce the new land use term before it could be utilised. This means that student housing would need to continue to be assessed as a Boarding House in the interim, which may be challenging with the proposed amendments to the boarding house controls also mooted in the EIE.
- 1.39 Noting there are only 11 universities across NSW, a more pragmatic interim solution might be for the existing land use zones for the main campuses to be identified as a prescribed zone in the SEPP, and for the SEPP to permit Student Housing in a prescribed zone. Alternatively, Student Housing should be identified as permissible with consent in the same prescribed zones as universities under the Educational Establishments SEPP. If it is considered that SP1 Special Activities and SP2 Infrastructure zones generally are not appropriate, Student Housing could be limited in these zones where the identified purpose is "educational establishments".
- 1.40 The timing of the suggested design guidelines needs to be clarified. The UDIA is aware of examples where local councils apply SEPP 65 and ADG requirements on Student Accommodation DAs which is unreasonable. Clear guidance on design expectations in the absence of design guidelines is required.
- 1.41 UDIA also questions the removal of the (generally) 20% FSR bonus available to Student Housing as a type of Boarding House. This proposed amendment will actively de-incentivise this important class of housing.
- 1.42 The rationale for Student Housing benefitting from no minimum parking provision (as opposed to any other proposed typology) is unclear.

Co-Living

- 1.43 To effectively achieve the aims of housing diversity it is unclear why Co-Living, which is currently permissible (as new generation boarding houses) in seven zones, is proposed to be reduced to two zones (R4 and B4) but potentially three (maybe R3). This will not facilitate this form of development.

- 1.44 The EIE acknowledges that Co-Living developments are essentially privately developed and operated Boarding Houses. The principal effect of the EIE is to remove the (generally) 20% FSR incentive that currently applies to such development proposed as a Boarding House. This will actively de-incentivise this category of housing.
- 1.45 The EIE acknowledges that many private Boarding Houses are being delivered as 'new generation' Boarding Houses with small self-contained dwellings, including private bathroom and kitchenette facilities. This is a good thing, however, the fact that some parts of the market are choosing to fill the gap between Boarding Houses and ADG compliant studio apartments does not provide a rational basis to require all privately developed Boarding Houses to do so. There is currently no constraint to larger self-contained dwellings being provided, so presumably this model will continue to be delivered. Specifically, there is no need to mandate a minimum 30-35sqm room size. If the objective is to optimise housing diversity and affordability the private market should be able to provide conventional boarding house models, 'New generation' Boarding House models and combinations or variations on these models.
- 1.46 It is not clear why the inclusion of self-contained 'new generation' boarding house rooms should necessarily require a 4sqm balcony. A co-living model relies on shared facilities, and a large shared balcony may be preferable than many small balconies, which may compromise the urban design outcome.
- 1.47 The 0.5 Car Parking Spaces standard should be a 'cannot be refused' standard. A mandated minimum provision of car parking could significantly reduce the affordability of Co-Living and will often be excessive, particularly in highly accessible locations.

Boarding Houses

- 1.48 The EIE notes that council and community concerns about existing Boarding House provisions include
- the lack of affordability of Boarding House rooms;
 - the use of the Boarding House provisions to develop student housing;
 - the excessive scale and bulk of some Boarding House developments;
 - the compatibility of boarding house development with low-density residential areas;
 - the clustering of Boarding House development in certain areas.
- 1.49 The principal effect of the EIE is to exclude the private market from the management of Boarding Houses, by redefining boarding houses to only include those managed by a registered not for profit CHP. Private Boarding Houses will be limited to 'new generation' co-living facilities with minimum room sizes of 30-35sqm, with no FSR bonus to incentivise them. It is not clear how this will address any of the above concerns. The exclusion of the private sector from the Boarding House market is likely to have significant negative implications for the supply of affordable accommodation.

- 1.50 Community concerns about Boarding Houses may more effectively be addressed by regulating the maximum size of such developments in specified sensitive zones (e.g. R2 Low Density Residential).
- 1.51 UDIA would be interested in better understanding how financially viable the proposed flat 20% FSR bonus on land with an FSR of 2.5:1 or less. A large number of our members are community housing providers and could be available to assist the NSW Government verify the implications of introducing the proposed control to real case studies.
- 1.52 It is noted in the EIE that Boarding Houses will be excluded from residential R2 zones. UDIA does not support this.

Seniors Housing

- 1.53 Many development proposals pursued under the Seniors Housing SEPP significantly exceed the underlying height and FSR standards of the applicable LEP. This has been the principle incentive that has led to the significant supply of Seniors Housing, for which there is a continually growing demand as our population ages. Replacement of this incentive with an allowance for Clause 4.6 variations (capped at 20%) will significantly reduce the ongoing supply of this important category of housing.
- 1.54 The policy implications of introducing an anomalous 20% cap should be carefully considered, given the degree of Clause 4.6 variation is not mandated in any other environmental planning instrument to our knowledge. The introduction of a 20% variation could also inadvertently pre-empt the assessment process and would be contradictory to the objectives of Clause 4.6 variations to provide an appropriate degree of flexibility and to achieve better outcomes for and from development by allowing that flexibility in particular circumstances.
- 1.55 While the proposed reconciliation of the SEPP Seniors definition of height with that of the Standard Instrument appears to be logical housekeeping, the Standard Instrument definition is measured to the highest point of the building, while the current SEPP Seniors definition is measured to the ceiling of the top most floor. This change therefore effectively reduces the height standard by the difference between the top most ceiling and the top most point of the roof. In many cases this can be the equivalent of one storey. The general height standard for senior's development at Clause 40(3) of the SEPP is eight metres. For a pitched roof development, the proposed change could therefore reduce the effective height standard from eight to five metres, potentially halving the development potential of some schemes, particularly those of sloping sites, and rendering the development unfeasible.
- 1.56 Should point-to-point transport such as taxis, ride share services and the like be explicitly excluded from the location and access to facilities given they are increasingly used as a form of transport? Perhaps there needs to be some recognition that these are valid transport options but cannot be the only means of transport to satisfy the location and access to facilities test.
- 1.57 It is unclear what the explicit intention is for registered clubs. Is the purpose of the proposed amendment to clarify that a SCC can only be made in respect of land that is operational as a registered club at the time of the DA lodgement? We request further consultation with the industry on these terms.

Social Housing Provisions

- 1.58 UDIA seeks to better understand how the range of affordable dwelling types will be expanded when many councils have sought an exemption from the Low-Rise Medium Density Housing Code.
- 1.59 If there is to be a genuine incentive for more social and affordable housing supply then CHPs need access to similar approval pathways to LAHC, as not all CHP housing projects are developed on LAHC land or in conjunction with LAHC.

Recommendations:

13. Develop and implement a suite of incentives to stimulate the construction of a truly diverse range of housing typologies that addresses the feedback provided throughout UDIA's submission for each of the specific typologies.
14. Existing land use zones for the main university campuses should be identified as a prescribed zone in the SEPP, and the SEPP should permit student housing in a prescribed zone. Alternatively, student housing should be identified as permissible with consent in the same prescribed zones as universities under the Educational Establishments SEPP.
15. Onsite management of BTR schemes should be project and site specific as appropriate to each scheme.
16. Provide clear guidance on design expectations in the absence of design guidelines. Any design guidelines should promote flexibility and a range of innovative design solutions within each scheme.

Conclusion

Housing is a fundamental component of the NSW economy. We are supportive of measures to improve access to housing needs for all members of the community across the entire housing continuum.

We are keen to discuss how we can collaborate. Please contact Sam Stone, Manager, State Policy and Government Relations on 0401 213 899 or ssstone@udiansw.com.au to arrange a meeting.

Luke Walton
Executive Director, Planning Policy
Department of Planning, Industry and Environment
12 Darcy St
Parramatta NSW 2150

Dear Mr Walton,

RE: Housing Diversity SEPP – Explanation of Intended Effect – Seniors Housing Issues

The Urban Development Institute of Australia (UDIA) NSW is the peak body representing the interests of the urban development industry in New South Wales. We represent over 500 member companies that are directly involved in the industry including developers, housing providers, architects, planners and lawyers.

UDIA believes that Seniors Housing is critical to the future of the State. Therefore, we have taken the unusual step of providing an additional submission focussed on Senior's Housing issues.

UDIA is pleased to make this submission on the Housing Diversity SEPP - Explanation of Intended Effect (EIE). UDIA remains strongly supportive of the Department of Planning, Industry and Environment's (DPIE) intent of facilitating more diverse and affordable housing forms, particularly in the current economic climate, and the opportunity to review State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors SEPP). However, UDIA remains gravely concerned that the EIE as currently drafted will generate significant obstacles to obtain approval for these forms of residential accommodation and that the intended outcome will not be achieved.

This submission focusses on the proposed amendments to the Seniors SEPP and discusses the following key concerns:

- The clear intention to restrict this valid housing option, with no valid identified alternative, to a housing choice which is providing for a growing community need, with ageing being the most significant demographic change impacting NSW now and in the future.
- The potential for Local Environmental Plans (LEP) to override the provisions of a State Environmental Planning Policy (SEPP) and the localisation of controls for seniors development.
- The limit on clause 4.6 variations to a maximum of 20%.
- The missed opportunities to update the controls and design guidelines within the current Seniors SEPP which are 30 years old and do not reflect modern design standards.
- The lack of recognition of social and affordable housing providers other than the Land and Housing Corporation.

Urban Development
Institute of Australia
NEW SOUTH WALES

PO Box Q402,
QVB Post Office NSW 1230
Level 5, 56 Clarence Street
Sydney NSW 2000
e udia@udiansw.com.au
t 02 9262 1214
w www.udiansw.com.au
abn 43 001 172 363

Our key recommendations are:

1. The SEPP continue to override LEP controls and continue to provide consistency and certainty in respect of controls applying to seniors developments.
2. The incentives be retained and expanded to apply where shop top housing is permitted.
3. Incentives be provided for the renewal of ageing retirement villages.
4. Exemptions from the Seniors SEPP should only be granted where it has been demonstrated that the local provisions will deliver seniors housing to meet the demand within the relevant Local Government Area. Otherwise, the SEPP should override the LEP.
5. A new overarching seniors specific design guide should still apply, with an updated version of the 2004 Seniors Living Policy Urban Design Guidelines for infill development, if an exclusion is applied to ensure consistency is maintained and that local onerous controls are not implemented.
6. Given the significant impact of these proposed changes and uncertainty of their implications on the development, construction and operation of seniors housing, that it is critical that any new SEPP be exhibited for further comment.

Use of Seniors SEPP

The Seniors SEPP was written almost 30 years ago and both the demographic of people housed and built environment that it fits into has changed significantly. In terms of Seniors Living, people are often entering it later, beyond 55 and wanting to be stay within their community or move to higher services areas with urban and rural settings. In terms of Residential Aged Care Facilities (RACFs) the average age has increased from 75 to 85 years of age and the average stay has decreased from 3 years to around 13 months. Aged Care has moved closer to Palliative Care in many cases, but not all.

Our investigations of development approvals over the last 10 years suggest that near to 100% of Seniors Living projects are delivered via the Seniors SEPP. It is fundamental to the delivery of Seniors Housing and most Councils do not have suitable controls in place or understand some of the key considerations. For example the Inner West Council has tried to prescribe that for Aged Care buildings 70% of resident rooms achieve solar access similar to the ADG, this is not viable in RACF models but further it does not match care models where the mental health and well-being of residents needs to see them encouraged to spend time in communal living spaces, but with choice. Their bedrooms are not their primary living space. Local Councils are often not sufficiently informed to determine the needs of people living in Seniors Housing.

Further to the above it has long been the practice for controls and issues covered by SEPPs to be taken out of LEPs so as to not duplicate controls and as such, many LEPs do not cater for seniors housing and do not make it a permissible use within their residential zones as this was not seen as necessary given the permissibility granted by the SEPP. This approach has also allowed for consistency in the seniors housing directions and controls and while the controls are now due to be updated, the state-wide approach, as opposed to taking on an ad hoc approach that is applied on a council by council basis, has been acknowledged nationally as industry leading. The directions in the EIE would appear to set NSW back 30 years and would, if enacted as appear to be proposed, to reduce rather than encourage housing choice and diversity across NSW. Particularly, if Councils have not updated their LEP.

Localisation of Seniors Housing Controls

Of most concern relating to the proposed changes is the potential for LEPs to prevail over the Seniors SEPP. This proposed amendment is significant in that it reverses a long-standing legislative planning practice in NSW where, should there be any inconsistency between a SEPP and a LEP, the SEPP will prevail to the extent of any inconsistency, given it is the higher order and state wide instrument.

This proposed change will now mean that all development standards of an applicable LEP will prevail over the development standards of the Seniors SEPP where there is an inconsistency. So not only will the building height and FSR development standards of the LEP prevail, but this could lead to councils seeking to impose seniors housing specific development standards (such as access to services, increased parking rates etc) to further control or restrict seniors development in their LGA.

The consequence of this is likely to make the provision of seniors housing more challenging than it is already. Seniors housing (both ILUs and RACFs) is typically larger than standard residential development due to mobility spatial requirements, and often require provision of onsite services required for elements of communal living and in the case of RACFs a sub-acute environment. As such seniors developments typically generate lower yields when compared to standard residential apartments and are thus less financially competitive in the market. The Seniors SEPP currently compensates for this by offering the floorspace incentives for vertical villages and Residential Aged Care Facilities to make a level playing field, and prior to the MRA exclusion zone being implemented last month into the Seniors SEPP, it allowed seniors housing on non-urban zoned land that wasn't available to residential developers.

The Seniors SEPP was introduced in recognition of our ageing population there is a specific need to plan for this type of accommodation in our communities so that people can age in place and remain connected with their own community. At the time it was observed that the local planning provisions did not encourage or cater for the demand for seniors housing and many seniors were being forced to relocate out of their communities to find suitable and affordable accommodation. To overcome this issue the Seniors SEPP was introduced which allowed for seniors housing to be delivered where it would have otherwise been prohibited and to incentivise seniors housing by making it more competitive in the residential market. The ongoing relevance and necessity of the Seniors SEPP is evidenced by the fact that almost all of the development applications proposing seniors housing rely on the provisions of the Seniors SEPP for both permissibility and/or viability reasons. To change this now when we are on the precipice of the baby boomer demographic explosion in terms of need for these forms of housing could have massive impacts adequate provision of available aged services and accommodation offerings.

However, if DPIE's intent is to move the controls back to the local level then it is suggested that the Seniors SEPP should be structured such that it applies to all of NSW but each Council has the option to apply for an exemption from the SEPP. Exemptions should only be granted if it can be demonstrated that the relevant council has suitable provisions within their LEP that will accommodate for the expected demand for seniors housing within their Local Government Area. Specific criteria could be developed to ensure applications for exclusion from the SEPP are considered on a consistent basis and that there is genuine provision for this form of accommodation within the local controls that are not onerous. The UDIA would be willing to work with DPIE to assist with developing these criteria.

The UDIA would also be willing to work with DPIE to prepare updated design guidelines that could be implemented by each Council so as to ensure there is still some consistency in respect of the design and servicing of seniors developments. This would give greater certainty to the seniors housing providers and would ensure that controls implemented by Councils are not onerous or unreasonable.

Local councils should be required to demonstrate as part of the five year review of the LEP and LSPS that the targeted housing for seniors has actually been delivered. If the controls have not yielded the required level of seniors accommodation then the exclusion would be repealed and the Seniors SEPP would once again apply until such time as amendments are made to the local controls to increase the amount of seniors housing delivered within the LGA.

Implications of Specific Changes

Definition of height, parking and people with a disability

The EIE indicates definitions will be updated and this is potentially appropriate, but no detail is provided and it is concerning that this could occur without a correct understanding of the implications of delivery as indicated in some of the other amendments proposed. There needs to be clear consultation with the industry to allow considered feedback on proposed changes. If the desired outcome is improved delivery then this needs to be done in a transparent manner.

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

Floor space

It appears that the proposal suggests that floor space will be determined by the LEP, as most low density residential zones have an FSR of 0.5:1 or lower this will mean a reduction in the permissible FSR of seniors development and in particular RACFs which will see a reduction in floorspace down from 1:1 to 0.5:1. The impacts of this are enormous on services already struggling with the removal of significant federal funding 3 years ago and now dealing with COVID. If the intention is to improve delivery, this will do the opposite. Most providers operate with models of 96 residents or 144 residents, but essentially on average a RACF building in a Residential zoned R2 or R3 for 96 residents will require a site area of 5,000-5,500sqm and 7,000-8,000sqm for 144 residents. The changes as proposed could double the required site area, this will significantly impact the cost of future RACF projects and also cripple the feasibility of sites already purchased by providers. The suggested CI4.6 path to a potential maximum 20% increase is both uncertain and will fall significantly short of the required outcome to facilitate the delivery of Seniors Living projects

Limit of Clause 4.6 variations

Development standards within the Seniors SEPP have always been able to be varied via clause 4.6 or SEPP No. 1. This has been an important function of the Seniors SEPP and has allowed for site specific responses to be provided where appropriate and of merit. DPIE has provided no rationale for proposing an arbitrary maximum possible 20% variation, which

appears to be moving away from recent case law on Clause 4.6 variations that have reinforced the premise of merit.

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

Missed opportunities

Outdated development standards and design guidelines

Being essentially a near 40 year old instrument (commencing with SEPP No. 5 in 1982), the Seniors SEPP is now outdated and does not reflect the modern forms of seniors accommodation that the market demands. The provisions in the SEPP tend to cater for a retirement village low density style of accommodation, rather than middle ring and inner city medium and high density housing. For example, the open space requirements for social housing providers – being a minimum of 35 square metres of landscaped area per dwelling. In inner city areas compliance with this control is not feasible or reasonable. Revised provisions should be implemented which cater for a range of dwelling types – i.e. low, medium and high density areas.

Incentives for renewal of ageing villages

The ageing of retirement villages is a significant problem for the industry. Much of the accommodation provided in this format is outdated, is not accessible and is in need of significant renovation work which is not feasible due to the fact that most sites are built to their full development potential. This not only impacts operators but also existing residents that see the value of units decline due to lack of saleability.

Facilitating the orderly redevelopment and increasing density would allow exiting residents to maximise the units value while delivering increased seniors housing in an established area with established networks.

A new provision could be implemented for the renewal of ageing villages that works in a similar way to the vertical villages provision. Such a clause could apply to villages and care facilities that were mostly (i.e. minimum 50%) constructed prior to, say, 1992 and meet the site requirements of clause 40 of SEPP Seniors. Should a site meet these criteria, then it would be eligible for a 0.5:1 FSR bonus and a similar building height bonus, provided a Site Compatibility Certificate (SCC) is issued. Specific provisions could be introduced into the SEPP, such as design excellence and amenity provisions, to ensure that the additional density is appropriate in the context of the site. Having the level of scrutiny applied by way of a SCC would help ensure the utilisation of the above incentives results in an appropriate built form outcome.

Application of Vertical Villages Provision to Shoptop Housing

The vertical villages provision (Clause 45) that provides a 0.5:1 FSR bonus should be expanded to include land that permits shop-top housing. This would mean that the 0.5:1 FSR bonus could apply to mixed use zones and therefore within local centres when a SCC is issued. An additional height bonus could also be included with this provision to accommodate the FSR bonus.

The above incentive to develop seniors in accessible locations such as mixed use centres could offset the substantial loss of land at the rural fringe of Sydney were Seniors Housing is no longer permissible on account of the recent amendment to the Seniors SEPP that has applied an exclusion zone to the MRA.

Recognition that many seniors housing providers are social housing providers

The amendments to the Seniors SEPP make note that approximately 20% of the housing that LAHC provides is for seniors and people with a disability. There is no recognition that a large proportion of seniors housing is provided by other social housing providers and other not for profit entities. The DPIE should be consulting directly with these entities to understand the challenges they face in delivering affordable housing for seniors to ensure the changes proposed will enable the key delivery of seniors housing by a range of social housing providers.

Nor is there any discussion on any amendments in respect of housing for people with a disability. The National Disability Strategy, that was adopted by all levels of government in 2011, had the objective of creating inclusive and accessible communities. The strategy is based on the belief that all Australian's should have fair and equal access to the full range of mainstream programs and services available; including housing. Further to this, the NSW Disability Inclusion Act 2014, which was launched in 2015, highlighted four priority areas including creating liveable communities. The updated planning framework needs to address and support those issues highlighted in other disability policies to allow the sector to respond to the housing requirements of those living with a disability.

We propose that the ARHSEPP recognise housing for people with a disability as an affordable rental housing solution and the expansion of the range of housing types that attract a density bonus under the social housing umbrella be expanded to include Specialist Disability Accommodation. This proposal is supported by the findings and recommendations that were reported in May 2016 during an inquiry into accommodation for people with disabilities. The Federal Government Joint Standing Committee on the NDIS recommended that accommodation for people with disability be integral in the development of affordable and social housing proposals.

Conclusion

In summary it is encouraging that DPIE is reviewing the Seniors SEPP, however we believe that it is crucial that the Seniors SEPP is retained with further incentive provisions and that it has precedence over LEP controls. Without this:

- Councils will be likely to impose more onerous controls which will affect the viability of seniors developments;
- Seniors Housing providers will not have any certainty as to the likely approvals they will be able to obtain; and
- Seniors Housing providers will be less likely to be able to compete in the market and provision of new seniors housing will likely reduce and therefore not meet the increasing demand for this type of accommodation.

We are currently at a pivotal point in terms of providing adequate supply of housing options for the ageing baby boomer generation, in having an appropriate planning framework to deliver sufficient accommodation which is especially designed to be able to cater to the needs of an ageing population. Seniors accommodation has specific design requirements, particularly in relation communal and onsite services and as such it cannot be compared to a standard residential development.

If it is to be delivered, consistent development standards need to be applied and incentives given to ensure that the market will cater for the demand.

The past has shown that intervention is required and to remove this as is currently proposed would be a significant step backwards for the seniors housing sector, that has relied on the intervention of SEPP Seniors for nearly 40 years to deliver seniors housing to NSW. Rather than returning the controls to the local level, we should be reviewing the SEPP to see how we can make the document more streamlined and relevant to the modern day style of housing. This would make the assessment of such applications easier.

Specific Comments on the Seniors SEPP

| Clause | Comment |
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| 3 | The suggested change to the Height definition is addressed in the body of the letter, and was also discussed at a briefing meeting between the DPIE and UDIA at 11:30am on the 28 th August, the height needs to be understood in the context noted above. |
| Clause 4 | Clarity should be given as to what zones are considered to be 'primarily zoned for urban purposes'. |
| Clause 5(3) | Must remain - If this Policy is inconsistent with any other environmental planning instrument, made before or after this Policy, this Policy prevails to the extent of the inconsistency. |
| Clause 10 | Include Multi-generational housing as a typology, following lead of European Models, particularly if we are looking for diversity. New forms of housing such as assisted living should also be included. |
| Clause 19 | The opportunity for mixed use ground floors to provide better community connection can sometimes be a big obstacle when seeking approval. A café or hairdresser that serves both the community and residents facilitates better community connection. The clause should allow for ancillary uses such as these even if they are prohibited in the zone. |
| Clause 26 | SEPP should recognise L&E Court decisions to accept mini bus service for RACFs, further the reality of the frailty of most residents in residential aged care needs to be acknowledge, they are not physically able to use public transport. This clause should not be used to prevent Seniors Living, where residents in retirement villages often prefer a village provided bus as it is more convenient and closer than local public transport, with drop-offs to their door, which assists to enable people to age in place |
| Clause 40 (4)(c) | The requirement for single storey in the rear 25% of a lot is no longer consistent with the development of most adjoining residential development. The setbacks are often 3-5m to 2 storey dwellings. This clause is 30 years old and needs to be removed or significantly reduced, ie a rear setback consistent with adjoining neighbours, or 25% more than the prevailing local rear setback ie a 4m setback would mean 5m on the seniors site. Further, the proposed 20% CI4.6 limit will potentially prevent many suitable developments given the limitations of this clause. |

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| Clause 45 | <p>0.5:1 (or additional) bonus should apply where RFBs and shop top are permissible. RFBs not mandated as being permissible within B1, B2 or B4 zones, however these would be a highly suitable location for a vertical village.</p> <p>A new incentive clause could also be added in respect of renewal of ageing retirement villages. A height incentive needs to also be considered in this clause to enable it to work.</p> |
| Clause 45 (6) | Needs to be reviewed, in actual fact this clause means that there are very few organisations capable of using the Vertical Villages bonus, you essentially have to be a community housing provider and it prevents standard Aged Care providers from utilising this bonus and therefore limits the provision of Aged Care in some circumstances. |
| Clause 48(c) | Given the reduced mobility of residents in Aged Care, the landscaping needs to be understood in terms of access to terraces up the upper levels also. If 25sqm is retained, then it should be that up to 30% of this requirement can be provided as upper level terraces. |
| Clause 49(c) | Hostel landscape areas, similar to clause 48(c) this should be modified as noted. |
| Clause 49(d) | Reduce resident parking requirements if a share car is provided. |
| Clause 50(b) | Floor space should be increased to 0.75:1 to account for the larger sized apartments and shared facilities. |
| Clause 50(d) | Landscape should be decreased to 7% consistent with ADG |
| Clause 50(e) | Solar access, if Council's are going to insist on compliance with the ADG, for ILUs, then solar access should only be 2 hours in Urban Areas. |
| Clause 50(h)(ii) | Parking requirements which also require the use of accessible spaces for all units mean that most Urban Seniors developments build basements way larger than adjoining residential developments and this significantly impacts viability. Parking reductions for share cars should be provided. Eg Reduction of up to 10 spaces for every share car provided. |
| Schedule 1 | Support clarifying what environmentally sensitive land means. These changes have significant implications for the ability to use the SEPP and should be publicly exhibited. |
| Schedule 3 | It should be clear that an Access Report accompanying a Development Application is sufficient to meet this requirement and Council's should not need to request detailed documentation to address this item at the Development Application stage. |