

### What is included in the Housing SEPP consultation draft?

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

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

New land use terms are also being introduced into the Standard Instrument Local Environmental Plan for co-living housing and independent living units.

The Housing SEPP consultation draft does not include the recently introduced provisions for short-term rental accommodation and build-to-rent housing, or the recently amended social housing provisions; all of which will be transferred to the Housing SEPP generally in their current form once the SEPP is finalised.

The existing SEPP provisions for caravan parks, camping grounds and manufactured home estates, as well as the group homes provisions will be transferred to the proposed Housing SEPP generally in their current form. A comprehensive review of these provisions will be carried out in late 2021.

### What has changed since the exhibition of the EIE?

The content of the proposed Housing SEPP has changed in a number of ways since the exhibition of the EIE. In particular:

- The Housing SEPP will consolidate five SEPPs instead of the originally-proposed three;
- The policy has been made in phases, with some provisions (such as those for build-to-rent housing) being made in advance of the Housing SEPP consultation draft, and others (such as those for group homes) to be reviewed after the making of the Housing SEPP;
- A number of proposed provisions set out in the EIE have changed, and some additional provisions relating to the housing types covered by the EIE have been introduced or amended; and
- A separate definition of, and provisions for, student housing is no longer being included.

### **How does the proposed Housing SEPP differentiate between affordable housing and diverse housing?**

The proposed Housing SEPP separates the different housing types into affordable housing and diverse housing. This provides greater clarity for all stakeholders on the housing types that are required to be used for the purpose of affordable housing under the proposed SEPP.

### **Why is there no definition for student housing?**

Following consideration of stakeholder feedback, it is no longer proposed to introduce a separate definition or development standards for student housing.

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

Off campus student housing developers will use the co-living housing provisions. This approach recognises the similarities between co-living and student housing typologies and responds to concerns expressed by both educational establishments and private sector developers.

## **Boarding houses**

### **How will you ensure ongoing affordability of boarding houses?**

Boarding houses will be required to provide affordable housing in perpetuity. The Housing SEPP proposes an updated definition of affordable housing households and a requirement that boarding houses be managed by registered community housing providers (CHPs). Registered CHPs will be required to apply the NSW Affordable Housing Ministerial Guidelines. These guidelines provide guidance for the setting of rates of rent which ensure eligible households are not under housing stress.

Registered CHPs are overseen by the Registrar of Community Housing, who from time to time may require them to demonstrate that the rents they are charging for boarding houses are affordable.

### **How will these changes affect boarding house DAs that have been approved?**

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

### **Why is LAHC allowed to self-assess boarding house proposals?**

The NSW Land and Housing Corporation (LAHC) is responsible for the NSW Government's social housing portfolio. LAHC supports the priorities of the Government's social housing policy Future Directions for Social Housing in NSW. Future Directions is underpinned by three strategic priorities:

- more social housing;

- more opportunities, support and incentives to avoid and/or leave social housing; and
- a better social housing experience.

Allowing LAHC to self-assess boarding house developments in accessible locations will facilitate ongoing supply of social housing to meet the needs of vulnerable residents by eliminating the time delays and costs associated with external approval of these proposals.

## Co-living housing

### What is co-living housing?

Co-living housing is a new type of housing that has emerged in multiple countries around the world. In New South Wales, this housing type has been delivered under the boarding house provisions of the ARHSEPP. The new co-living housing provisions will enable developers to continue delivering this form of housing, which provides a ready-to-occupy form of accommodation.

Co-living housing will provide a primary place of residence for all occupants and will not allow for short-term tourist and visitor accommodation.

A central feature of co-living housing will be the community that is encouraged by the co-living manager. The manager will be responsible for implementing the development's plan of management, and although they may not be on site at all times, they will be contactable by phone 24/7.

Co-living will be able to have as few as six private rooms but will be more likely to involve buildings containing 30 – 40 private rooms. Depending on their size, private rooms may accommodate 1 or 2 people. Because the emphasis of these developments is on shared communal spaces, private rooms will be small (upwards of 12sqm for an individual and 16sqm for a couple) but may include kitchen and bathroom facilities. Shared indoor and outdoor spaces will encourage residents to come together to relax and socialise.

Co-living will typically be built in highly connected areas, where residents have convenient access to work, study, and recreation opportunities.

### Does a density bonus apply to co-living housing?

A time limited density bonus of 10% will apply to co-living housing until 1 August 2024.

The density bonus will help to ensure ongoing supply of co-living housing, which will be particularly important as part of the State's COVID recovery, due to the decreased income and increased housing stress many are experiencing as a result of the pandemic.

### **Co-living housing may not be able to access the same tax benefits as new generation boarding houses. Without these benefits, investors will be reluctant to invest in this housing type. Did you consider this?**

The department is aware that some types of housing that are currently being delivered under the boarding house provisions of the ARH SEPP benefit from tax concessions, and that these may be affected by the introduction of the new co-living housing land use term. The Government is exploring appropriate solutions for the tax treatment of this new housing type.

It is recommended that developers wanting to deliver co-living housing seek professional advice regarding the tax implications for their individual circumstances.

## Boarding houses and co-living housing

### **What is the difference between boarding houses and co-living housing?**

Boarding houses and co-living housing will be similar in terms of their built form and operation. However, boarding houses will benefit from a larger (25%) FSR bonus and will be required to be used as affordable housing in perpetuity.

### **Why have you introduced new standards for boarding houses and co-living housing (such as the requirements for communal living areas and communal open space)?**

The smaller size of private rooms in boarding houses and co-living housing does not provide adequate residential amenity unless it is offset by communal spaces.

Under ARHSEPP, the standards for communal space in boarding houses were limited in scope and did not require scaling in response to development size. Feedback from stakeholders indicated that this resulted in some operators delivering communal areas that were inadequate for the development. It is understood that this can result in sub-standard living conditions and disproportionately increases demand on public spaces.

It is understood that the new standards for communal spaces may impact development feasibility in some cases. However, an appropriate balance is needed to ensure that all residents are provided appropriate amenity.

### **Why is there a maximum room size for boarding houses and co-living housing? Larger rooms will provide better amenity for residents.**

The maximum room size standards for boarding houses and co-living are intended to clearly differentiate these products from apartments in a residential flat building.

Allowing larger room sizes for co-living and boarding houses would make it unclear when minimum requirements under the Apartment Design Guide apply to these forms of development.

The smaller room size for boarding houses and co-living is offset by the shared spaces and facilities to be provided in these developments.

### **Why is there a minimum stay for boarding houses and co-living housing?**

Both boarding houses and co-living are required to provide residents with a principal place of residence for a minimum of 3 months. This will:

- Ensure that these housing types are not used as short-term residential accommodation or serviced apartments;
- Reduce impacts on the local community by limiting turnover of tenants; and
- Support the development of a sense of community among residents sharing spaces within these developments.

### Secondary dwellings

#### **What are the changes to the maximum size restrictions of a secondary dwelling in a rural zone and where can I find the relevant restrictions for my LGA?**

For secondary dwellings on land in a rural zone, a new optional clause 5.5 of the Standard Instrument (Local Environmental Plans) Order 2006 has been introduced. The new optional clause responds to requests from councils for greater discretion to be able to set the maximum size for secondary dwellings in a rural zone. The changes will now provide councils the discretion to set a maximum size for secondary dwellings in a rural zone and the maximum distance a secondary dwelling should be from the principal dwelling.

You can find the secondary dwelling provisions for an LGA within its relevant LEP.

#### **How will the changes to the maximum sizes of secondary dwellings affect the development application process?**

The development application process for a secondary dwelling is largely unchanged. Applicants will need to be aware of any amendments their local council makes to its Local Environmental Plan to set a maximum size for secondary dwellings and distances between primary and secondary dwellings in rural zones.

#### **Can development consent be granted to vary the development standards under clause 5.5?**

No. Clause 4.6(8) of the Standard Instrument (Local Environmental Plans) Order 2006 (SILEP) applies to clause 5.5 of the SILEP.

### Seniors housing

#### **Why are prescribed zones being used for seniors housing?**

Prescribed zones are being adopted to address the uncertainty over the definition of 'land zoned primarily for urban purposes' and 'land adjoining land zoned primarily for urban purposes'. This removes the need for technical assessment of sites by the applicant and council and department officers. Prescribed zones make seniors housing permissible in the zone with development consent.

#### **How were the prescribed zones chosen?**

The prescribed zones are Residential zones (R1-R4) and Business zones (B1-B8), RE2 Private Recreation, RU5 Village, SP1 and SP2 (Hospital). Prescribed zones were chosen following a review of the zones where the Seniors SEPP currently applies. The proposed prescribed zones are a combination of zones where Seniors Housing is permissible in the relevant Local Environmental Plan (LEP) or the Seniors SEPP currently applies.

Some prescribed zones are also restricted by certain land uses or adjoining land uses. For example, land zoned RE2 Private Recreation, SP1 Special Purposes and SP2 Infrastructure must currently be used for certain land uses. Also, at least 50% of land adjoining sites zoned RE2 and SP1 must be residential prescribed zones.

The SEPP only applies to Residential Care Facilities in the R2 Low Density Residential Zone.

The SEPP only applies to land zoned RU5 Rural Village where the land is serviced by reticulated water and sewerage, within 50 kilometres of a 24-hour health services facility and not mapped by the Metropolitan Rural Area exclusion.

Councils can list seniors housing land use types as a permitted land use under their LEPs should they wish the SEPP provisions to apply to another zone not specified.

### **What happened to the Site Compatibility Certificate process?**

Site compatibility certificates (SCCs) were predominantly used for 'land that adjoins land zoned primarily for urban purposes', land zoned special use, registered club site and vertical village applications. The introduction of prescribed zones and the removal of the definition of 'land zoned primarily for urban purposes' removes the need for SCCs. The certainty and transparency created by the prescribed zones approach allows applicants to proceed directly to the development application process, rather than seeking an initial assessment of a site compatibility for seniors housing.

### **Why is seniors housing being permitted in the Business zones?**

Under the Seniors SEPP currently, seniors housing is permissible in all business zones (B1-B8), as the SEPP applies on land where a hospital is permissible with consent. Under the Infrastructure SEPP, health services facilities, including hospitals, are permitted with consent in business zones B1-B8.

The inclusion of all business zones in the prescribed zones reflects what is currently allowed under the Seniors SEPP and makes it clearer for councils and seniors' developers where seniors housing is permissible with consent.

### **Is seniors housing permissible in rural zones and industrial zones?**

Rural and industrial zones have not been included in the list of prescribed zones in the Housing SEPP. If a council wants to permit seniors housing in its rural and/or industrial zones, it can do so by amending its LEP through the planning proposal process.

### **What is an 'independent living unit'?**

Independent living units were previously referred to as 'self-contained dwellings' in the Seniors SEPP. This change is to align with current industry terminology.

### **Does the Metropolitan Rural Area exclusion still apply?**

Yes, however, seniors housing standards can now be applied to residential (R1-R4) and business (B1-B7) zoned land within the Metropolitan Rural Area (MRA). Residential and business zoned land has been exempted as this is where development has already occurred and where services are available. The seniors housing provisions will not apply to other land in the MRA.

Restricting the application of the seniors housing provisions to residential and business zoned land will ensure that the original intent of the MRA exclusion zone is retained. By maintaining the current restrictions for seniors housing in rural, environmental and transitional zoned land, the rural character of these areas continues to be protected.

### **Does the heritage conservation area moratorium still apply?**

The moratorium on seniors housing in Heritage Conservation Areas (HCAs) has been extended until 1 July 2022. This extension will allow additional time for Greater Sydney

Region councils to see how the new provisions are applied in their LGAs. Councils will need to provide justification for any extension to the HCA moratorium beyond 1 July 2022.

### **Why did the building height definition change?**

The building height definition has been updated to be consistent with Standard Instrument LEP definition. Also, the development standards have been amended to provide a height of 9 metres for independent living units and 9.5 metres residential care facilities to account for the differences in definitions. The additional building height is provided to support the unique requirements of seniors housing. An allowance for rooftop plant and machinery has also been provided, recognising the service requirements for seniors housing.

### **Why have the site analysis requirements for seniors housing been removed?**

Schedule 1 of the Environmental Planning and Assessment Regulation 2000 lists the information and documentation to be included with all development applications. This includes site analysis requirements. It is not necessary to repeat this requirement in the Housing SEPP.

### **What changes have been made to location and access requirements?**

The requirements have been updated to recognise the differing needs between residents of independent living units (ILUs) and residential care facilities (RCFs).

ILUs must now either be located close to services or provide those services onsite, whereas RCFs are required to provide onsite services. Point-to-point transport (such as a taxi or ride-share vehicle) can no longer be used to satisfy the access requirements of the SEPP. RCFs will be required to provide adequate transport services, such as a courtesy bus.

### **Why have the landscaped area requirements changed?**

The amount of landscaped area requirements has been reduced from 25sqm per bed to 15sqm per bed. However, a requirement for communal open space (internal and external) with a minimum of 10sqm per bed has been introduced into the SEPP. This change should provide better amenity for residents.

### **Why have the car parking requirements changed?**

The car parking requirements have changed to reduce the requirement from 1 parking space per 10 beds to 1 parking space to 15 beds for Residential Care Facilities. This is in recognition of the limited need of parking spaces by residents.

Private car accommodation requirements for Independent Living Units have been updated to increase the percentage of accessible car spaces from 5% to 10%. These requirements have also been updated to clarify that not all parking spaces are required to be delivered as 'accessible' spaces.

### **What changes have been made to the 'vertical village' bonus?**

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

### **Vertical villages do not provide affordable housing but are still getting an FSR bonus. Why?**

The Commonwealth Government bed licencing system provides funding to aged care providers for the accommodation of persons with limited financial capacity based on an assessment of income and wealth. Additionally, the Commonwealth Government provides residential aged care supplements to help with accommodation costs, and costs of meeting specific care needs. You can find more information here:

<https://www.health.gov.au/initiatives-and-programs/residential-aged-care/funding-for-residential-aged-care/supplements-for-residential-aged-care>.

### **What changes have been made to the environmentally sensitive land schedule?**

The environmentally sensitive land schedule in the Seniors SEPP has not been comprehensively reviewed or updated since 2004. The schedule has been amended to align with current legislation such as the Standard Instrument Dictionary, the State Environmental Planning Policy (Coastal Management) 2018 and the *Biodiversity Conservation Act 2016*. The Water Catchment term has been removed as the proposed Catchments SEPP will apply to development in water catchments. The Catchments SEPP will contain water quality controls to which all development in the catchment must comply.

### **Does seniors housing still need to comply with accessibility standards?**

The Seniors SEPP lists all standards concerning accessibility and useability for hostels and independent living units. These standards have been retained and updated where the Australian Standard has been amended.

### **Why is there a State Significant Development (SSD) pathway for seniors housing?**

The population of NSW is ageing as well as growing. This means that demand for seniors housing in well-located areas will continue to grow. An ageing population will also significantly increase demand for residential aged care beds. To meet predicted demand, an SSD pathway has been introduced for residential care facilities (RCFs), with proposed capital investment value (CIV) thresholds being:

- \$30 million for Greater Sydney Region; or
- \$20 million for all other areas.

The CIV threshold requires that the residential care facilities component of the development contributes to a minimum of 60% of the overall development contributes.

### **What about the other proposed changes to the Seniors SEPP exhibited in the Housing Diversity EIE?**

The Explanation of Intended Effect (EIE) proposed a 20% cap on clause 4.6 variations. This amendment has been transferred to broader clause 4.6 review being undertaken by the department.

The EIE also proposed to enable the development controls in a relevant LEP to prevail over controls in the proposed SEPP. The standards in the EIE have been reviewed, and it is considered that the standards in the SEPP provide an appropriate balance between LEP provisions and SEPP provisions and provide certainty for the seniors' development industry, councils and the community regarding what development controls are in place.



### Why has the seniors age changed?

The minimum age threshold for seniors is currently 55 years in the Seniors SEPP. This aligns with the 'preservation age' of the *Superannuation Industry (Supervision) Regulations 1994*. These regulations have recently been changed to increase the age that people can gain access to reserved superannuation funds from 55 years to 60 years in 2025. The Housing SEPP has been amended to align with the new age threshold.

## General

### I've already lodged a DA for one of the housing types covered by the Housing SEPP. How will that be affected?

The Government will make a final decision regarding any savings and transitional provisions prior to the making of the Housing SEPP.

### Will design guidance be provided to accompany the proposed SEPP?

New design guidance will be developed for seniors housing, BTR housing, boarding houses and co-living housing in the second half of 2021.

The new design guidance is likely to cover matters such as:

- solar access, ventilation, storage and visual and acoustic privacy,
- criteria for shared amenities such as laundries and shared vehicles, and
- building maintenance, given the higher level of traffic and the higher value of assets that would be commonly accessible in this type of development.

The provisions of the draft Housing SEPP relating to seniors housing still refer to the existing guideline which will remain in place until new guidance is prepared and adopted.

### What will happen next?

Feedback from the consultation draft will be considered in making the Housing SEPP. You can provide feedback via the NSW Planning Portal by 11:59pm on 29 August 2021.

Provisions relating to group homes, caravan parks, manufactured housing estates and camping grounds will be reviewed in the second half of 2021.

A review of the SEPP will be undertaken 24 months after it is made to ensure the new and amended provisions are functioning as intended.

### Where can I find out more?

For more information:

- visit the [Housing SEPP webpage](#)
- email the Housing Policy team on [housingpolicy@planning.nsw.gov.au](mailto:housingpolicy@planning.nsw.gov.au)
- call the Housing Policy team on (02) 8289 6701.

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