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HOUSING DIVERSITY SEPP

Submissions Report

Exhibition outcomes

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1. Executive summary

In 2020, the Department of Planning Industry and Environment (DPIE) exhibited an Explanation of Intended Effect (EIE) for a proposed Housing Diversity State Environmental Planning Policy.

The EIE was on public exhibition for six weeks from 29 July 2020 to 9 September 2020. More than 270 submissions were received from a wide range of stakeholders including individual community members, peak industry groups, councils and other government bodies, developers, community housing providers, and seniors housing providers.

Separate submissions reports have been prepared for build-to-rent housing and the updated social housing provisions, as these changes have been progressed ahead of the other amendments set out in the EIE. This report provides a comprehensive summary of all issues raised in submissions to the EIE, with a particular focus on the changes that have not already been progressed through recent SEPP amendments.

There was strong support across stakeholder groups for consolidating the three housing-related SEPPs, and for reviewing outdated SEPP provisions. However, council and industry submissions were generally not aligned on other issues – particularly in relation to specific planning provisions for the diverse housing types.

Three submissions also commented on the regulatory framework for caravan parks, camping grounds and manufactured home estates. Two of these submissions, from Byron Shire and Port Stephens Councils, noted that the NSW Government discussion paper ‘Improving the regulation of manufactured homes, caravan parks, manufactured home estates and camping grounds’ has not progressed since its publication in 2015. They observed that caravan parks and manufactured home estates could contribute to housing diversity and affordability.

2. Overview

2.1 Exhibited material

The EIE outlined proposed changes to the planning system as follows:

- Consolidation of three existing, housing-related 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); and
 - *State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes)* (SEPP 70).
- Introduction of new definitions into the Standard Instrument – Principal Local Environmental Plan (Standard Instrument LEP) for build-to-rent housing, student housing and co-living.
- Amendments to the boarding house provisions of the ARHSEPP to:
 - remove the requirement for boarding houses to be mandated within the R2 – Low Density Residential zone;

- amend the floor space ratio (FSR) bonus for boarding house development to a standard 20%; and
 - include a requirement for affordability of boarding house developments.
- Amendments to the provisions of the ARHSEPP to:
 - ensure that councils can mitigate the loss of existing affordable housing by levying monetary contributions;
 - provide a quicker and easier process to allow an existing dwelling to be used as a group home; and
 - allow councils to set the maximum size for a secondary dwelling in a rural zone.
- Amendments to the Seniors SEPP to:
 - update or amend a number of definitions to bring them into line with the Standard Instrument LEP;
 - clarify how the SEPP applies to land being used for the purposes of a registered club;
 - update the provisions of Schedule 1 – Environmentally sensitive land to align with current legislative and planning conditions;
 - amend the ‘location and access to facilities’ provisions so that point-to-point transport cannot be used for the purpose of meeting the accessibility requirements of the SEPP;
 - extend the validity of a site compatibility certificate (SCC) from 24 months to five years, provided that a development application is lodged within 12 months of the date on which the SCC is issued; and
 - clarify that development standards in a LEP prevail to the extent of any inconsistency with the SEPP.
- Amendments to the Seniors SEPP, the ARHSEPP and the *State Environmental Planning Policy (State and Regional Development) 2011* (SRD SEPP) to support the delivery of social housing by the NSW Land and Housing Corporation (LAHC) on government-owned land.

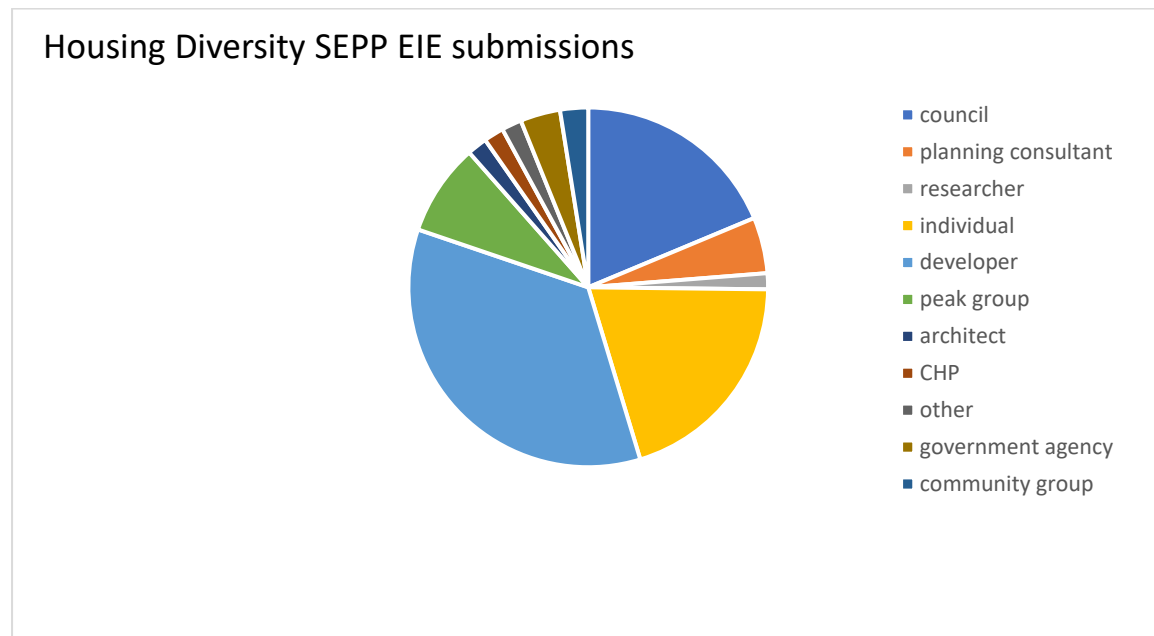
2.2 Consultation summary

The EIE was exhibited on the Department’s planning portal for six weeks, from 29 July to 9 September 2020. During the exhibition period, the Housing Policy team held workshops with 36 councils from across NSW; held a webinar for council staff and consultants, with 149 attendees; and organised briefing sessions with peak groups including Local Government NSW (LGNSW), the Urban Development Institute of Australia (UDIA), the Housing Institute of Australia (HIA), Australian Institute of Architects (AIA) and the Committee for Sydney.

Following the exhibition period, the Department held working groups with councils and industry representatives to further refine some of the proposals set out in the EIE, such as provisions for boarding houses and student housing. Two separate reports have been prepared to detail the outcomes and recommendations of the industry working group and the council boarding house working group.

2.3 Submissions overview

During the exhibition period, 277 submissions were received via email and through the planning portal. The following chart provides a breakdown of the types of stakeholders who made submissions.



Of the 97 developer submissions received, 19 were from seniors housing developers, 25 were boarding house developers, 15 were from co-living developers, and 9 were from BTR housing developers. Of the 52 council submissions received, 32 were from metropolitan councils and 20 were from regional councils.

Councils and developers generally supported the proposed new land use terms. However, they disagreed on the planning provisions that should apply; particularly the location, car parking and minimum room size requirements.

Councils expressed strong concerns about the proposed locational requirements for BTR housing, and about changes to LAHC provisions.

Seniors housing developers expressed strong concerns about allowing council LEP standards to prevail over the SEPP, and the proposal to cap clause 4.6 variations at 20%.

Proposed changes to boarding house provisions and the proposed planning provisions for co-living development were also controversial with small-scale developers.

3. Overarching themes raised in submissions

There were five overarching issues that cut across a range of proposed changes. They are:

- concerns about affordability,
- the need for a different set of provisions for development in regional areas to those used in Sydney,
- design guidance for each housing type facilitated by the SEPP,
- car parking requirements,
- the need for savings and transitional provisions in the proposed SEPP.

Stakeholders indicated that an opportunity to comment on a draft of the SEPP would be welcomed.

3.1 Affordability

There was concern from some stakeholders that the proposed SEPP would not adequately address housing affordability. Some stakeholders noted that there seemed to be an underlying assumption that housing diversity equates to affordability, which is not necessarily the case.

3.2 Separate provisions for regional areas

Regional councils and developers were concerned about the suitability of provisions in existing SEPPs, as well as the proposed provisions, for regional areas.

3.3 Design guidance

The EIE indicated that design guidance would be prepared or updated for boarding houses, BTR, student housing, co-living, LAHC development and seniors housing development.

There was strong interest in this issue, with several stakeholders indicating they would like to comment on, or be involved in the development of, design guidance for one or more forms of development.

3.4 Car parking

The EIE set out proposed car parking rates for BTR housing, co-living, boarding houses and mixed-tenure LAHC developments. The EIE also stated that student housing would not be subject to any minimum on-site car parking requirement.

Some stakeholders made comments about the proposed car parking rates, while some comments about car parking were more general.

Regional and suburban councils were generally concerned about the proposed car parking rates being too low. Developers and some metropolitan councils would like to see lower, or no, minimum car parking rates for some or all of the development types addressed in the proposed SEPP.

4. Changes proposed in the EIE

4.1 Build-to-rent housing

The EIE proposed to introduce a new definition and planning provisions for build-to-rent (BTR) housing. The proposed planning provisions included land use zones where this use would be mandated, and a car parking rate of 0.5 spaces per dwelling. A separate report has been prepared which comprehensively addresses the issues raised in submissions regarding BTR housing. A summary of the BTR housing issues is provided here.

Twenty-eight councils expressed strong opposition to BTR housing being mandated in the B3 Commercial Core zone. These councils were of the view that allowing residential accommodation in this zone would be inconsistent with the zone objectives and would likely have an inflationary effect on land values. This would make commercial land uses unfeasible in these areas. LGNSW also opposed the use of the B3 zone for BTR housing.

PIA objected to permitting BTR housing in the B3 zone, indicating that it is a form of housing that is not supported or consistent with the intent of that zone. It also noted that the extent of areas with this zone are very limited in spatial strategies across NSW.

Councils strongly believe that State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development, and the Apartment Design Guide (ADG), should apply to BTR housing. This would ensure the same design and amenity outcomes as for other residential flat developments.

Nineteen councils expressed opposition to allowing strata subdivision for BTR after fifteen years, while some industry stakeholders suggested the prohibition on strata subdivision should be reduced to ten or seven years. A submission from Ms Jenny Leong MP and Mr Jamie Parker MP recommended that BTR housing be required to provide affordable housing in perpetuity. They do not support the fifteen-year time limit; in their view, this approach will entrench the displacement of long-term communities and see established neighbourhoods being dismantled down the track.

There was also significant interest in the proposed 50 dwelling minimum for BTR housing, with nineteen councils and several other stakeholders objecting to this standard. Three established BTR developers recommended that the minimum number of dwellings be set at 100 dwellings, while small to medium sized developers contended that the 50 dwelling requirement is too high and that a minimum of 10 dwellings would be more appropriate and would ensure smaller developers could access the tax incentives for this housing type.

Nineteen councils objected to the proposed car parking standard of 0.5 spaces per dwelling as too low for suburban and regional areas. Some developers suggested that a maximum rate of 0.5 spaces should be introduced.

Several councils opposed the assessment of BTR developments as state significant development (SSD). LGNSW recommended that councils be allowed to assess and determine all development applications for BTR housing regardless of the capital investment value. The Property Council of Australia supported an SSD pathway but not the SSD exemption for the City of Sydney, stating that NSW needs a planning system that is consistent across all local government areas (LGAs). Meriton also opposed the proposed exemption for the City of Sydney, and recommended the expansion of SSD classifications to:

- Any development in excess of \$100M if it can be guaranteed that construction will commence within a certain timeframe upon approval;
- Multi-stage projects that rely on concept plans or similar, and that incorporate a minimum proportion of BTR (i.e. \$100M in capital investment value).

Several councils raised issues regarding affordability and security of rental tenure. Some submissions expressed strong support for the inclusion of a three-year minimum lease term, others highlighted the availability of 'no-grounds evictions' in the Residential Tenancies Act 2010 and suggested that it would be difficult to enforce a minimum lease term through the planning system. Developers generally opposed the introduction of a three-year minimum lease term.

4.2 Student housing

The EIE proposed to introduce a new definition and planning provisions for student housing. This was a key recommendation of the 2019 Council Boarding House Working Group and was discussed in more detail with the 2020 Council Boarding House Working Group.

A total of 92 submissions commented on the proposed definition and planning provisions for student housing.

Five submissions were received from student housing developers, including the University of Sydney which develops accommodation for students on its campuses. A submission was also received from the NSW Vice-Chancellors' Committee (VCC), which represents fourteen universities across NSW and the ACT. Thirty-six councils commented on the proposal to introduce student housing into the planning system. Most stakeholders expressed general support for the introduction of a new definition for student housing and the proposal to apply councils' development standards for height and FSR to this accommodation type.

4.2.1 Definition

UDIA supported the introduction of a new definition for student housing but questioned 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. Lake Macquarie Council and Campbelltown City Council questioned the need for a separate definition for student housing; City of Ryde Council suggested that the introduction of a new definition has no merit if the same planning issues that arise from a boarding house result from development approved as student housing. Other councils supported the introduction of a separate definition, including City of Sydney and Randwick City which process the bulk of purpose-built student housing development applications under the current boarding house provisions.

Byron Shire Council indicated that more clarity is required on how to define 'student' and expressed concern about this type of development being used as backpacker accommodation.

The Property Council of Australia recommended clarifying the definition for student housing regarding what is meant by teaching periods and if the housing can be used outside of formal university terms or semester periods.

Ms Jenny Leong MP and Mr Jamie Parker MP submitted that the student housing definition must ensure that this typology is affordable housing and remains affordable housing.

4.2.2 Planning provisions

Woollahra, Shoalhaven, Canada Bay, Penrith, City of Sydney, Byron Shire, Lake Macquarie and Camden councils all expressed concerns about how consent authorities would ensure that student housing developments are used to house students. Lake Macquarie Council suggested setting standards in consultation with educational institutions, rather than leaving it for councils to monitor and enforce tenancy requirements. City of Sydney Council recommended that a mechanism be introduced to monitor and ensure that student housing is only used by students.

City of Sydney Council also recommended investigating how this type of accommodation might be temporarily used for emergency accommodation during times when demand for student housing is significantly reduced, such as during COVID-19. Ms Jenny Leong MP and Mr Jamie Parker MP made a similar recommendation.

Developer Platino Properties noted that allowing councils to determine where this use would be permissible does not provide certainty for industry. Student housing developer Iglu recommended that student housing be made a mandatory permitted use in B3, B4 and B8 zones. Another developer recommended that student housing should be permissible in the B2 zone.

Most councils agreed that they should be allowed to determine where to permit student housing in their LGAs. The exceptions were Albury and Lake Macquarie, who suggested that the decision should not be left to councils that are unfamiliar with this development type. Strathfield City Council raised concerns about permitting student housing in special purpose zones, as these zones are used for universities as well as railway-lines and road corridors. Randwick City Council suggested that student housing should only be permissible in locations close to town centres and railway stations and should be within five kilometres of a tertiary education establishment.

UDIA recommended that existing land use zones for the main university campuses be identified as prescribed zones in the SEPP, and that the SEPP permit student housing in these prescribed zones. Alternatively, it suggested that student housing be identified as permissible with consent in the same prescribed zones as universities under the State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017.

The Property Council of Australia also recommended identifying areas close to tertiary institutions where student housing could be provided under the Housing SEPP using mandated zones or SCCs. Planning Institute of Australia (PIA) also recommended supporting appropriate student housing outcomes via SCCs.

Student housing developer Scape stated that removal of FSR incentives (as currently apply for boarding house developments) and the introduction of new prescriptive controls covering tenants, accommodation room sizes, and operator requirements limit developers' ability to acquire land in key employment areas. Scape would also like to see an additional land use definition included in the planning system for 'education and key-worker housing'.

Urban Taskforce generally supported the proposed provisions but indicated that meeting demand and market price points would be challenged if height and FSR controls are determined on a council by council basis and no FSR bonus is available.

AIA supported the proposal to align FSR with the relevant LEP. It strongly recommended access to open space to support the mental health of occupants and the development of design guidelines to address current issues of amenity, scale, context and form. AIA also recommended the inclusion of self-contained dwellings in this model but noted that the minimum 10 sqm size would be too small for this dwelling type.

Four councils (Georges River, Woollahra, Canterbury Bankstown and City of Newcastle) suggested that the ADG should apply to student housing developments. Four other councils (Camden, Willoughby, Randwick City Council and City of Sydney) supported the introduction of specific design guidance for student housing to ensure adequate amenity for residents. Woollahra Municipal Council mentioned amenity, accessibility, solar access and natural ventilation as key issues that should be addressed in any design guidance for student housing. Randwick City Council and Blacktown City Council suggested there should be a requirement to provide a character statement with a development application for student housing, to demonstrate appropriate built form.

The NSW VCC opposed the introduction of separate design guidance for student housing, stating that there are general standards within which student housing providers operate, similar to the hotel industry. The NSW VCC suggested that this negates the need for any additional planning requirements.

PIA recommended the provision of specific design guidance.

UDIA questioned the rationale for a nil minimum car parking rate for student housing, given its similarity to other housing types. Camden Council, Hornsby Shire Council, Blacktown City Council, Wollongong City Council, Bega Valley Shire Council, and Port Macquarie-Hastings Council all expressed concern about the proposed nil car parking standard. Woollahra Municipal Council suggested that existing local car parking provisions should apply, with potential for reductions where there is access to frequent public transport. Lismore City Council suggested a minimum requirement of one car parking space per room. City of Canada Bay Council suggested a maximum car parking rate of 0.1-0.3 spaces per studio/1-bedroom for student housing in metropolitan locations.

Randwick City Council suggested that the minimum room size should be increased to 12-16 sqm. Blacktown City Council suggested a minimum of 15 sqm per room. Inner West Council, Willoughby Council, AIA, and City of Ryde Council also expressed concerns about the proposed minimum room size being too small to provide adequate amenity for residents.

The WSU Urban Research program noted that the proposed room sizes are small and discretionary. In their view, a substantially smaller minimum room size than for co-living development standards is likely to attract developers seeking approval for student housing but using the dwelling for a wider range of occupants that would technically align the building's use with co-living.

Ms Jenny Leong MP and Mr Jamie Parker MP also expressed concern about the minimum room size. They were concerned that developers would look to build using this model due to the small FSR, rather than build urgently needed affordable housing. They also noted that serious consideration needs to be given to the workability and functionality of shared common spaces given the realities of COVID-19 and what could be a new normal.

Randwick City Council suggested that communal areas should have a minimum sunlight access requirement and be co-located with outdoor space. Each communal area should have a minimum area of 20 sqm or 15 sqm per 12 students (whichever is greater), with a minimum dimension of three metres.

The Property Council of Australia recommended adopting a merit-based approach to communal and open space requirements, rather than fixed requirements.

Randwick City, Blacktown City, and Georges River councils suggested that there should be a minimum affordability requirement for student housing. The Aboriginal Housing Office (AHO) recommended that the proposed SEPP explicitly refer to and enable development of culturally appropriate student housing.

The Property Council of Australia recommended leading a process with regional councils to identify any shortages in student accommodation and appropriate locations for development of this housing type.

4.3 Co-living

The EIE proposed to introduce a new definition and planning provisions for co-living.

A total of 42 submissions commented on the proposed definition and planning provisions for co-living including eighteen councils (Fairfield City, Port Stephens, Ballina Shire, City of Newcastle, Wollongong City, Liverpool City, Blacktown City, Lismore City, Hawkesbury City, Waverley, Blue Mountains City, Inner West, Sutherland Shire, Albury City, Lane Cove, Lake Macquarie, Bayside and Randwick City).

Councils and developers generally indicated support for the introduction of a new definition for co-living. However, feedback on the proposed definition and planning provisions was mixed.

4.3.1 Definition

The proposed definition for co-living would refer to a building held in single ownership that:

- provides tenants with a principal place of residence for 3 months or more;
- includes on-site management;
- includes a communal living room and may include other shared facilities, such as a communal bathroom, kitchen or laundry; and
- has at least 10 private rooms, some or all of which may have private kitchen and/or bathroom facilities, with each private room accommodating not more than two adults.

Ballina Shire Council was concerned about defining co-living as a type of building, which may preclude detached typologies that are better suited to regional areas.

Tenancy length

Sixteen submissions were received in relation to the proposed minimum tenancy of 3 months. Those submissions all expressed concern about this proposal.

Stakeholders put forward a range of alternative proposals, including:

- no mandated minimum tenancy length,
- minimum tenancy lengths ranging from 1 week to 12 months,
- provision of a range of tenancy length options,
- flexibility around tenancy length.

Bathurst Regional Council and Snowy Monaro Regional Council raised concerns about the potential for unauthorised use of co-living for short term rental accommodation in high tourism areas, and the compliance burden this will place on councils. However, Snowy Monaro Regional Council noted that if the compliance issues are overcome and new planning provisions are appropriately implemented, co-living could be used to address housing supply issues for seasonal workers.

Freedom Development suggested that 20% of rooms in any co-living site should permit tenancies of less than 3 months to help support more vulnerable and transient people. Urbico was generally supportive of the proposed minimum 3-month tenancy period, but like Freedom Development suggested that flexibility was needed to allow a small proportion of rooms (it also suggested 20%) be available to rent for slightly shorter periods of 1 to 3 months. Urbico emphasised that there was no desire to compete with short-term accommodation providers for short-stay tenancies of less than one month, and was supportive of a prohibition on leases shorter than one month.

Yass Valley Council sought to allow stays of less than three months in co-living development to meet demand for rental accommodation from workers on major construction sites.

PI Capital Partners noted that while the majority of co-living customers would look to longer term tenure averaging 6 – 18 months, 10 – 30% (depending on location) would be looking to stay for less than 3 months.

Mirvac expressed the view that a flexible, market-driven approach is required in relation to tenancy length in co-living developments. It recommended that no minimum tenancy length be included in the definition.

Number of rooms

Thirty-four submissions were received in relation to the proposed minimum threshold for the number of rooms in a co-living development. Stakeholders variously recommended higher, lower and no minimum thresholds.

AIA does not support a minimum of 10 private rooms. In its view, the number of units allowable should align with current boarding house provisions.

PIA is concerned that the 10-room minimum may undermine the intent of co-living development, by limiting design creativity in a housing type that is intended to be flexible and alternative. It recommended removing minimum room numbers.

Urbico recommended the definition be amended to require a minimum of 40 private rooms. It stated larger developments (i.e. 40 rooms or more) will not be accessible to the smaller, self-financed owner/builder/developers that have been building lower-quality boarding house developments in recent years.

Randwick City Council questioned the minimum 10-room requirement, stating that smaller developments could address unmet need for affordable rental accommodation. Tweed Shire Council and Lismore City Council indicated that four to five bedrooms would be a more appropriate threshold for regional areas. Liverpool City Council questioned the minimum room number requirement and raised concern that arbitrary limits may adversely impact development feasibility. Wollongong City Council suggested that there should be a cap on the maximum number of bedrooms in a co-living development, being 20 bedrooms.

Some developers (Urban Villager, Weave Living, and Aperion Group) indicated support for co-living in the R2 zone, with lower room number restrictions.

LGNSW welcomed the proposed definition, but sought clarification about the 10 private room threshold, and questioned how similar accommodation with fewer than 10 private rooms would be categorised.

Smaller individual developers expressed concern about the minimum number of rooms. They contend that a minimum 10 room requirement will result in illegal share housing. In their view, share housing up to 6 people should be permitted as complying development in the R2 zone.

Affordability

Ms Jenny Leong MP and Mr Jamie Parker MP recommended mandating affordability within new housing types, including co-living, to facilitate large scale development of affordable and social housing.

PIA recommended the application of a minimum percentage affordable rental housing in co-living.

Other

AIA recommended further consultation with regard to the definition and model of the co-living typology with key stakeholders such as the AIA, Co-housing Australia and Community Housing Groups to assist in establishing a product which provides long term rental or ownership options with resident-led (or Community Housing Providers in the case of

affordable housing) management on site. It also recommended that Community Land Trust models be considered to encourage options which provide those currently locked out of the housing market an option to become future buyers.

Mirvac sought clarification on how co-living would be defined when mixed with other forms of housing, such as BTR housing.

UDIA expressed concern about the stigma associated with certain housing types (such as boarding houses) and which can result in longer assessment timeframes, hostile objectors and, in many cases, DA refusal. It suggested that one way to address this would be to undertake a complete overhaul of terms, definitions and development controls. In particular, UDIA recommended revising the proposed definitions 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).

4.3.2 Building height and FSR

The EIE proposed that the relevant council LEP height and FSR standards would apply to co-living. Generally, councils supported this proposal while developers had concerns about it.

Bayside Council, Albury City Council, Shoalhaven Council, City of Parramatta Council, Penrith City Council, Inner West Council, Blue Mountains City Council, Woollahra Municipal Council and Community Alliance for Byron Shire expressed support for this proposal.

LGNSW expressed strong support for this proposal, noting that this will ensure that co-living developments are consistent with the character of the local area.

Twenty-four submissions from developers indicated that co-living developments would not be viable without a density bonus, and a smaller minimum room size than that proposed in the EIE.

Urbico objected to the lack of any proposed FSR bonus for co-living, contending that the bonus allows for the provision of communal areas without sacrificing revenue generating areas. Urbico contended that a 20-30% FSR bonus should be offered for co-living; and when compared to student housing, the higher room sizes and higher car parking requirements will make it essentially impossible for a co-living development to achieve commercial viability.

Urban Taskforce was of the view that a flat percentage FSR bonus would be a better tool for supporting co-living developments than the variable percentage FSR bonus currently available under the boarding house provisions, which have to date been used to deliver co-living developments. It also recommended that merit-based concessions be considered in the application of any building envelope controls for residential flat buildings to co-living developments, in order to accommodate the FSR bonus.

The Property Council of Australia recommended extending the updated boarding house FSR bonus to co-living housing developments.

The Housing Industry Association questioned whether the proposed co-living controls would provide enough of an incentive to encourage the delivery of this type of accommodation and questioned whether this housing type would be commercially viable for builders and operators.

Sasco Development Co-Living suggested applying some flexibility to the LEP height standard.

4.3.3 Car parking

The EIE proposed a non-discretionary car parking standard of 0.5 spaces per room.

Fifteen councils (City of Ryde, Penrith City, The Hills Shire, Tweed Shire, Lismore City, Yass Valley, Shellharbour, Wollongong City, Shoalhaven, Queanbeyan-Palerang Regional, Randwick City, Woollahra, Hornsby Shire, Blacktown City and Port Stephens) indicated that the proposed rate of 0.5 spaces per room was likely to be inadequate.

Six regional councils (Lismore City, Yass Valley, Shellharbour, Wollongong City, Shoalhaven and Queanbeyan-Palerang) stated that the proposed rates are not suitable for regional areas and suggested consideration of a separate car parking rate, for example, one car space per room and one car space per five rooms for visitors.

Queanbeyan-Palerang Regional Council noted that their current requirement for residential flats and medium density housing is two car spaces per dwelling, which is consistent with demonstrated car parking demand from these forms of housing in the Queanbeyan-Palerang LGA.

Fairfield City Council noted that 0.5 car spaces may be acceptable in some circumstances, but car parking requirements differ depending on the location of the development, particularly in western Sydney. Fairfield City Council, Canterbury Bankstown City Council and Randwick City Council suggested that car parking rates should be based on proximity and access to frequent public transport.

Willoughby Council raised concerns that 0.5 car spaces per room would result in a much higher provision of onsite car parking than currently required and suggested that car share and electric vehicle charging stations should be considered.

LGNSW recommended flexibility in car parking requirements to accommodate the unique needs of regional locations, which do not always have the same levels of public transport access as metropolitan locations. It suggested car parking rates for co-living developments be determined by councils rather than imposing potentially inappropriate rates across the State.

EG Funds Management supported council discretion at the DA stage to determine an appropriate car parking rate, based on the accessibility of the subject site. It suggested a non-discretionary 'must not refuse' provision of zero car parking spaces for sites within a prescribed radius (e.g. 3 km) of major strategic sites, 0.2 car parking spaces in accessible areas (as defined by the SEPP) and 0.5 car parking spaces for all other locations. It also suggested that a single car-share space should be equivalent to approximately ten private car spaces.

The Property Council of Australia suggested surveys be undertaken of car ownership within co-living developments to determine actual rates of motor vehicle ownership. It recommended a car parking rate of 0.2 spaces per room as well as provisions to encourage car sharing.

Urban Taskforce was of the view that the prescription for a minimum car parking standard of 0.5 spaces per room is unnecessary. It suggested instead a sliding scale, ranging from zero spaces per room, based on accessibility to centres/transport, and including car share spaces.

Mirvac expressed the view that the proposed rate is unreasonable and not consistent with broader government policy. It recommended a maximum rate of 0.5 car parking spaces per room, which could also be reduced where a site is located in close proximity to public transport (i.e. 800 metres from a train station).

PIA was concerned that the car parking requirements might undermine the intent of co-living development, by limiting design creativity in a housing type that is intended to be flexible and alternative. PIA recommended removing minimum car parking requirements.

UDIA recommended that 0.5 car parking spaces should be a 'must not refuse' standard, as a mandated minimum car parking requirement could significantly reduce the affordability of co-living developments.

4.3.4 Room size

The EIE proposed a room size of 30 to 35 sqm for co-living. Thirty-three submissions raised concerns about the proposed room size.

The Hills Shire Council recommended a non-discretionary room size of 35 sqm, with councils having discretion to set higher minimum room sizes in response to local circumstances.

Government Architect NSW suggested that room size be considered against universal design principles and contingent on occupancy, i.e. a minimum area per person, or separate requirements for single and double rooms.

Community Housing Provider (CHP) Common Equity NSW recommended setting the minimum room size at 35 sqm (for individuals, with a higher minimum for double rooms and multi-room dwellings) to increase liveability. Common Equity also recommended the application of universal design principles to encourage and facilitate longer term tenancies.

Developers generally indicated that a minimum room size of 30 to 35 sqm is too large and will make this type of development unfeasible. A range of alternate room sizes were recommended. Mirvac stated that a range of 10 – 25 sqm would enable a range of typologies and price points. Scape proposed a minimum of 12 sqm. Microspace recommended 15 sqm. Open Door suggested a room size of 16 – 30 sqm (including kitchen and bathroom). Urban Villager and Sasco also recommend 16 – 30 sqm. Urbico contended that a properly-designed studio apartment of 18 – 35 sqm (including kitchen and bathroom) is the "key" to unlocking the co-living formula. The Danias Group recommended a minimum room size of 20 sqm. The Community Housing Industry Association NSW suggested a minimum of 25 – 35 sqm.

The Property Council of Australia suggested that a minimum room size of 18 to 28 sqm would be more appropriate and better recognise the greater use of communal areas in this type of development.

The AIA suggested that room sizes should align with current boarding house requirements, to allow the market to determine the mix and configuration.

Urban Taskforce recommended a minimum of 15 - 20 sqm, and/or a control supporting a mix of room sizes within a development.

4.3.5 Private open space (POS)

The EIE proposed a standard of 4 sqm of POS per room, which is the same as the ADG requirement for studio apartments.

Twenty-one submissions were received in relation to the proposed POS requirements.

Industry stakeholders were generally opposed, stating that 4 sqm per room is too onerous.

Hmlet opposed the POS requirements, stating that they represent a potential safety risk (accidental harm and self-harm incidents), as well as being a source of noise complaints. It suggested that open space be concentrated in communal areas only.

JSA Studio Architects and Aperion Group suggested removing the POS requirement. Co-living developer Urbico stated that this provision alone could destroy viability, and there should be no requirement for POS in co-living developments. Urbico suggested an open space requirement of 15% of the site area, with 7.5% to be communal open space and the other 7.5% to be provided as POS.

The Property Council of Australia suggested that POS could be assessed on merit if communal open space (COS) has been provided. It suggested the SEPP clarify what type of POS would be acceptable (e.g. balconies, wintergardens, rooftop terraces), and provide guidance for applicants in the form of examples.

Urban Taskforce was of the view that the proposed standard would destroy the feasibility of co-living on most sites. It suggested that any mandated, minimum open space requirement should be focussed on communal areas, and/or that a merit-based approach should be taken to the application of open space requirements.

The City of Parramatta Council supported the proposed rate of 4 sqm per room, while Bega Valley Council stated that 4 sqm of POS per room is not adequate.

4.3.6 Communal open space

The EIE proposed a standard for COS of 25% of the site area. It also proposed to provide for a reduction in COS where all dwellings have POS that exceeds the minimum requirements.

Nine councils (City of Sydney, City of Parramatta, Shoalhaven, Bega Valley, Willoughby, Sutherland Shire, City of Ryde, Blacktown and Liverpool) and thirteen industry groups made submissions on the proposed COS requirements.

City of Parramatta Council supported the proposed COS standard.

The City of Ryde Council opposed a reduction in COS where all dwellings have POS that exceeds the minimum requirements.

Bega Valley Shire Council suggested retaining the 25% COS control and including and minimum solar access requirements, because 4 sqm POS per room is inadequate.

Urbico opposed the COS requirement of 25% of the site area, concerned that this could be particularly difficult on small lots, sites within business zones, or in dense urban areas. It suggested a total open space provision of 15% of the site area, with 7.5% required to be provided as COS, and the option to provide the other 7.5% as discretionary POS.

ALT Living suggested that if the 25% COS can be achieved by a rooftop then it could potentially work. However, if this is required to be garden area at ground level, then this requirement may become prohibitive to the viability of a co-living project.

Willoughby Council recommended COS be provided without exception at ground level.

Open Door suggested that the 25% COS standard be considered on a merit-base, taking into account factors such as building wide amenities like landscaped roof top terraces,

internal common space exceeding minimum requirements, POS provision to a significant proportion of apartments, and proximity to public open space, facilities and/or contributions to public open space.

Danias Group suggested that 25% of site area for COS is excessive when combined with the communal living space requirements. They recommended that the communal living space and COS requirements be amalgamated into a single standard for combined communal space with a minimum area equal to 25% of the site.

The Sydney Business Chamber expressed its concern that there may be some overlap in the needs for a minimum amount of communal living space and COS, and indicated that this should be clarified before the SEPP is made.

Mirvac recommended that prescriptive standards not be provided for communal living, open space and amenities, but that a principle and performance-based approach be adopted instead.

4.3.7 Communal living space

The EIE proposed a minimum communal living space requirement of 20 sqm, with an additional 2 sqm per room above 10 rooms.

City of Parramatta Council and Hmlet supported the proposed communal living area provisions.

EG Funding requested that a communal living space requirement of less than 2 sqm per person be considered.

Urbico opposed the proposed communal living space requirements. Their view was that 2 sqm per room is excessive, particularly for larger schemes where there are efficiencies of scale with regard to the provision of communal areas. They suggested that the requirement should be linked to the GFA, rather than the number of rooms and proposed a minimum standard that equates to 5% of the GFA. Alternatively, they suggested a rate of 1.2 sqm per room.

Open Door recommended a slightly higher minimum standard for communal living space of 25 sqm + 2 sqm per room above 10 rooms.

4.3.8 Design guidance

The EIE noted that design guidelines for co-living may be developed to accompany the new SEPP. It indicated that design guidelines could address issues such as built form, internal and external amenity, storage, solar access, natural ventilation, visual and acoustic privacy.

There was strong interest from a range of stakeholders in the design guidance to be developed for co-living, with twenty-four submissions received. Some councils (Georges River, Bayside, City of Canterbury Bankstown, City of Sydney and Shoalhaven) recommended that the ADG (or specific sections) be applied to co-living to facilitate high quality amenity and built form outcomes.

Woollahra Municipal Council and The Hills Shire Council requested council input into the development of any design guidelines.

Penrith City and Inner West councils suggested that councils should be able to set their own design criteria depending on the character of the locality. Hornsby Shire Council stated that there are likely to be amenity impacts associated with small room sizes.

UDIA recommended that development standards for new typologies including co-living be set by the State Government, not councils. It recommended that such development standards be typology specific, not simply an expansion of the application of SEPP 65 and the ADG. It recommended that any design guidelines promote flexibility and a range of innovative design solutions within each scheme.

LGNSW recommended that design guidelines for co-living be prepared to assist in creating high quality developments and liveable accommodation in both metropolitan and regional locations.

Mirvac agreed that design guidance specific to co-living housing should be developed. It encouraged the development of design guidance that is flexible and adaptive, with each unique situation and site able to be considered on its own merits in respect of the guidance. Mirvac suggested that any design guidance needs to support a market-led and flexible approach which prioritises choice.

The Property Council of Australia recommended that standardised design guidelines for co-living that should prevail over any local requirements. It also recommended the provision of guidance for applicants in the form of examples of acceptable methods of meeting the proposed planning requirements.

The Housing Industry Association supported the development of design guidelines for co-living to accompany the SEPP. It supported the suggestion in the EIE that design guidelines cover matters including (built form, internal and external amenity, storage, etc.)

4.3.9 Other

Some smaller developers contended that share housing of up to 6 people should be permitted, including in the R2 zone. In their view, such housing should be complying development.

The AIA indicated that the co-living typology should facilitate projects such as those of small and medium scale currently being developed under the new generation boarding house provisions.

The Property Council of Australia recommended consultation with local councils regarding business zones (B2 and B3) where small co-living housing developments would be compatible with local character.

4.4 Boarding houses

Three key changes to boarding house provisions were set out in the EIE:

1. remove the requirement for boarding houses to be mandated in the R2 zone;
2. amend the FSR bonus for boarding house development to a standard 20%; and
3. amend the definition of 'boarding house' to include an affordability requirement.

These changes respond to recommendations of the 2019 Council Boarding House Working Group and are also designed to address some of the concerns that councils and communities have raised regarding the use of the boarding house provisions since the ARHSEPP was introduced in 2009.

4.4.1 Definition

The EIE proposed the following new definition for 'boarding house':

an affordable rental building that –

- a) provides lodgers with a principal place of residence for 3 months or more, and*
- b) is managed by a registered not-for-profit community housing provider (CHP), and*
- c) has some shared facilities, such as a communal living room, bathroom, kitchen or laundry, and*
- d) has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or two adult lodgers,*

but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.

Forty-eight submissions commented on the proposed definition.

Thirteen councils (Randwick, Bayside, Lake Macquarie, Sutherland Shire, City of Ryde, Inner West, Port Macquarie-Hastings, Waverley, Lismore, Georges River, Snowy Monaro Regional, Port Stephens and Woollahra) supported the proposed definition.

Student housing developer Scape recommended that the current definition be retained. Scape submitted that the proposed provisions will disincentivise the private development and operation of boarding houses. Scape claimed that the boarding house product has traditionally been delivered to market with comparatively low profit margins, and that requiring new boarding houses to be affordable and managed by a not-for-profit community housing provider will render this housing type unfeasible.

Urban Taskforce also recommended retention of the current 'workable' definition under the ARHSEPP; in its view, the proposed definition will render this housing type unfeasible. It is also concerned that the proposed definition will reinforce negative stereotypes of boarding houses.

City of Newcastle Council noted that the definition would allow a proposal to circumvent controls for communal living rooms by splitting the boarding rooms into multiple smaller boarding houses.

Affordable

Ms Jenny Leong MP and Mr Jamie Parker MP supported the introduction of a more targeted definition of boarding houses and the introduction of an affordability requirement for this housing type.

PIA, JSA Studio Architects, Urban Research Program WSU, Evolve Housing, National Disability Services, Better Planning Network, Northern Sydney Regional Organisation of Councils (NSROC), Shelter NSW, AIA, Law Society of NSW, Government Architect NSW, Community Alliance for Byron Shire and Tenants' Union of NSW, as well as three submissions from individuals, supported the proposal to make boarding houses affordable.

AIA supported limiting the definition of boarding house under the ARHSEPP as affordable on the condition that new alternate pathways are created under the co-living typology to preserve the emerging innovation and diversity in this sector.

NSROC and LGNSW requested further information on how 'affordable' would be defined, and how this requirement would be enforced or managed.

Wollongong City Council recommended that the definition for affordable boarding house refer to 'very low, low- and moderate-income earners.'

Co-living developer Picket & Co does not believe there is a need to introduce a prescriptive affordability requirement. In its view, affordability is delivered through smaller room size, density and the shared/communal nature of the offering. However, if an affordability requirement were to be introduced, it recommends a requirement that 20% of total units have rents set 20% below market rates for a minimum of ten years. This would be consistent with global examples of inclusionary planning.

The Tenants' Union of NSW suggested targeting boarding house accommodation to very low and low-income households, possibly by providing a minimum ratio number of very low and low-income residents accommodated.

Shelter NSW suggested that the definition of affordable housing under the ARHSEPP should also be amended to account for local rental markets.

Building

Ballina Shire Council noted that defining 'boarding house' as a type of 'building' may not suit the character of regional areas where a detached typology could be more suitable.

Lodgers

City of Newcastle Council recommended that the term 'lodgers' be updated to 'residents' and that the definition refer to total occupancy, not just adults.

PIA expressed concern that the proposed definition may exclude children who are staying in that environment with their parents. It recommended that the definition be changed to 'one or two *adults*', to address this concern and to be consistent with the co-living definition.

Management by Community Housing Provider

The EIE proposed a requirement that boarding houses be managed by a registered not-for-profit CHP.

During the consultation period, fifty-nine submissions were received on this issue.

Submissions were provided by industry professionals, developers, 10 councils (Bayside, City of Sydney, Willoughby, Penrith City, Inner West, Blacktown City, Liverpool City, Wollongong City, City of Newcastle and Campbelltown City), the Law Society, AIA, Shelter NSW, NSW Young Lawyers and St George Community Housing. The proposal was opposed by forty-two of these stakeholders, mostly small developers who are currently delivering new-generation boarding house-type developments.

The Property Owners Association (POA) opposed mandatory CHP management, suggesting that this would substantially reduce the diversity, efficiency, and viscosity of supply of affordable housing.

UDIA submitted that limiting private boarding houses to 'new generation' co-living facilities with minimum room sizes of 30 to 35 sqm, with no FSR bonus to incentivise them, is unlikely to address concerns about housing diversity and affordability. In its view, the exclusion of the private sector from the boarding house market is likely to have significant negative implications for the supply of affordable accommodation.

Danias Group questioned whether the proposal would mean that private operators would be forced to relinquish their operating rights to a not-for-profit organisation if they wanted to upgrade or expand an existing facility, or even repair it as a result of fire or flood damage.

City of Canada Bay Council pointed out that there are many examples of well-run, privately-operated boarding houses in inner Sydney and that the proposed requirement for CHP management could result in depletion of this housing stock.

The NSW Registrar of Community Housing supported the proposal but noted that there is no distinction in the *Community Housing Providers (Adoption of National Law) Act 2012* between for-profit and not-for-profit operators. The Registrar recommended that the management of boarding houses not be restricted to not-for-profit organisations as this would restrict the number of bodies prepared to enter the affordable housing sector.

The Law Society of NSW supported the proposal but suggested that all boarding houses approved prior to the introduction of the new SEPP be permitted to maintain their current management structure.

St George Community Housing supported the proposal.

Wollongong City Council supported the proposal and suggested that boarding house management should be further restricted to the higher tier or CHP, which provides wrap around services to assist their clients.

Blacktown City Council supported CHP management of boarding houses and recommended that additional incentives be provided for CHPs to deliver boarding houses, as CHPs are already exempt from paying land tax.

Shared facilities

Blacktown City Council recommended the definition specify that a boarding house 'must have some shared facilities, including a communal living room, bathroom, kitchen and laundry.'

Other

The Committee for Sydney recommended that in order to eliminate stigma associated with the term 'boarding house', it should be replaced with a new term, such as 'affordable co-living'. St George Community Housing and UKO suggested an alternate name of 'micro-apartments'. Urban Taskforce also recommended re-naming this type of development and suggested 'micro housing', 'mini house' or 'tiny housing' as alternatives.

4.4.2 Duration of affordable rates

The EIE sought feedback on whether it would be more appropriate to require rooms in new boarding houses to be rented at affordable rates for a minimum of 10 years (after which they could revert to market rates), or in perpetuity.

Fifteen councils (The Hills Shire, Randwick City, City of Sydney, Willoughby, City of Parramatta, City of Ryde, Sutherland Shire, Penrith City, Hornsby Shire, Inner West, Waverley, Georges River, Hornsby Shire, Camden, and Campbelltown City) opposed a ten year minimum and supported affordable rates in perpetuity for boarding houses. Waverley Council suggested that limiting affordability to a period of 10 years is a tokenistic solution to an ongoing affordable housing problem. City of Ryde added that this approach merely delays the housing affordability issue.

Campbelltown City Council recommended that boarding houses be maintained for affordable housing in perpetuity, but stated that if a ten year limit is to be introduced, there should be a

register or database for boarding house developments to provide certainty for all stakeholders on the date of commencement and expiry of the required affordable rental rate.

City of Newcastle Council recommended that the proposal to require affordable rents for a minimum of 10 years before reversion to market rates be further investigated with CHPs who have well-established approaches to the recycling or divestment of their portfolios while considering retaining social connection for longer term residents. In their view, while market rates for older stock may provide a more affordable option for certain renters, boarding houses should remain rent-controlled by CHPs and available for households on very low to moderate incomes.

LGNSW strongly supported a requirement that boarding rooms be rented at affordable rates and recommended that affordability be maintained in perpetuity.

Ms Jenny Leong MP and Mr Jamie Parker MP, as well as PIA, UDIA, City West Housing, Shelter NSW also recommend that affordable housing be provided in perpetuity.

AIA opposed the return of boarding houses to market rates after 10 years; in its view, this would be detrimental in terms of the security of tenure the tenants desire, would undermine the aim of delivering desperately-needed affordable housing, and would lead to poorer quality construction outcomes.

Evolve Housing recommended that the minimum period for boarding rooms to be rented at affordable rental rates should be 20 years.

4.4.3 Boarding houses no longer mandated in R2 zone

The EIE proposed that boarding houses no longer be a mandatory permissible use in the R2 zone.

Forty four submissions supported this proposed change, including 27 councils (The Hills Shire, Randwick City, Tweed Shire, Bayside, Lake Macquarie, Shoalhaven, Willoughby, Sutherland Shire, Shellharbour, City of Parramatta, City of Ryde, Penrith City, Hornsby Shire, Cumberland City, Port Macquarie-Hastings, Waverley, Byron Shire, Lismore City, Blacktown City, Georges River, Liverpool City, Ku-ring-gai, City of Newcastle, City of Canterbury Bankstown, Fairfield City, Bathurst and Woollahra), LGNSW, Southern Sydney Regional Organisation of Councils, NSROC, the Better Planning Network and Evolve Housing.

The Property Council of Australia noted the impact of the 12-room limit for boarding houses in the R2 zone introduced in 2019 and suggested that complete prohibition of boarding houses in the R2 zone is appropriate but does reduce housing diversity.

Urbico supported the removal of the land use from the R2 and R1 zones, stating that the current controls have supported smaller scale new generation boarding houses seeking to benefit from the FSR bonus. It contended that this has in many cases led to buildings with excessive bulk and scale that are incompatible with the low-density residential character of the surrounding area, and which often have poor design outcomes.

JSA Studio Architects supported removing boarding houses from the R2 zone, noting that areas in this zone do not have suitable social or transport infrastructure to accommodate any size of boarding house. The Property Council of Australia also supported this change, but also noted that it will reduce housing diversity.

Forty-two other stakeholders including UDIA, AIA and PIA opposed this change.

City of Sydney Council supported the continued permissibility of boarding house development in the R2 zone under Sydney Local Environmental Plan 2012.

PIA acknowledged the concerns of some councils regarding boarding house developments. It suggested that these concerns would be more appropriately dealt with through clear design guidance, local character statements reflected in development controls, and other factors, such as removal of the floor space bonus in this zone and the opportunity for councils to lodge an LEP amendment to remove boarding houses as permissible in the R2 zone in their LGA.

The Law Society of NSW was of the view that there are situations where a boarding house is suitable in an R2 zone and that the height and bulk of these developments could be limited using LEP controls.

AIA noted that current boarding houses have an 'accessible location' test which already limits which parts of the R2 zone are suitable for this type of development. It argued that a 12 room boarding house has the equivalent footprint and scale of a large project home and that, managed by Community Housing Providers who have stringent operational guidelines, these developments pose no threat to surrounding communities. It also noted that this typology is capable of providing much needed keyworker housing in locations close to employment opportunities which is desirable, but often unavailable in Sydney, leading to better community outcomes.

Government Architect NSW was concerned that removing boarding houses from the R2 zone would act against a core aim of the ARHSEPP to increase the supply of affordable housing, given that a large proportion of urban land across NSW is zoned R2.

Some boarding house developers suggested that boarding houses should not be removed from R2 zones unless co-living is allowed in these areas. Anglicare was concerned that not mandating boarding houses in R2 zones would reduce the availability of affordable housing in metropolitan LGAs, especially where R2 zones are conveniently located adjacent and/or in close proximity to business zoned land which would afford a high degree of accessibility for boarding house residents to services.

Urban Taskforce recommended that boarding houses continue to be permissible in the R2 zone, when the site is within 400 m of a train or metro station.

Camden Council and City of Sydney Council recommended that boarding houses be excluded from land that is within a heritage conservation area.

4.4.4 Only LAHC boarding houses permitted in R2 zone

The EIE proposed that provisions be included in the new SEPP to allow LAHC to develop boarding houses on government-owned land in the R2 zone, regardless of whether the relevant LEP allows or prohibits boarding houses in that zone.

Fourteen submissions were received in response to this proposal. Most councils were opposed to or had concerns about this proposal. Most industry stakeholders were neutral on the proposal but some recommended extending the application to allow other developers to deliver boarding houses in the R2 zone.

Randwick City Council, Cumberland City Council, Willoughby Council, City of Ryde Council and Hornsby Shire Council do not support allowing LAHC to develop boarding houses in the R2 zone. Hornsby Shire Council stated that the proposed provisions would lead to the same

planning issues and conflicts that currently arise with the development of boarding houses in low density areas.

Lismore City Council expressed concern about how LAHC boarding houses in the R2 zone would integrate with surrounding local character.

Waverley Council expressed opposition to any development that could contravene the objectives of the R2 zone. However, it indicated that given the significant need for new social and affordable housing stock it might support this proposal if there were enough safeguards to ensure that new development was in keeping with the context of the surrounding area. Bayside Council recommended that boarding house development on LAHC-owned land be limited to twelve rooms and not be eligible for an FSR bonus, in order to protect local character and amenity.

Wesley Mission was of the view that if LAHC is permitted to develop boarding houses in R2 zoned land, this permission should apply to all community and social housing providers.

4.4.5 20% FSR bonus

The EIE proposed the simplification of the FSR bonus for boarding house development to 20% above the existing maximum FSR. Forty-five submissions responded to this proposed change.

Twenty-five stakeholders supported this proposal, including fifteen councils (Randwick City, Tweed Shire, Bayside, Lake Macquarie, Willoughby, Sutherland Shire, City of Parramatta, Penrith City, Inner West, Waverley, Byron Shire, Georges River, Liverpool City, Fairfield City, Bathurst), JSA Studio Architects, LGNSW, SGS Economics, Better Planning Network, the Law Society of NSW, Shelter NSW, AIA and the Property Council of Australia.

City of Sydney Council supported the proposal in principle, but only if:

- it would provide genuine affordable housing outcomes;
- the affordable housing would be provided in perpetuity;
- boarding houses would not be located within heritage conservation areas or areas with fine grain subdivision; and
- boarding houses would incorporate specific amenity standards of the ADG.

Shellharbour Council and Community Alliance for Byron Shire recommended that the FSR bonus be limited to a maximum of 10% instead of 20%.

Urban Taskforce recommended that the FSR bonus remain, but at a flat percentage rate (it suggested 50%) irrespective of the local control.

Thirteen submissions opposed the proposed change to the FSR bonus. City of Canterbury Bankstown Council was concerned that the FSR bonus would result in development that does not comply with the SEPP 65 principles, does not provide good amenity to dwellings, and is out of character with established areas. In its view, this increase would contribute to excessive bulk and scale of boarding house development, when compared to surrounding low residential development.

Wollongong City Council was also of the view that the proposed provisions would contribute to excessive bulk and scale of boarding house development, when compared to surrounding low density residential development. Wollongong City recommended that the FSR bonus for

boarding houses be removed, and that the development be required to comply with the relevant LEP provisions.

The Community Housing Industry Association NSW submitted that the combination of new affordability requirements (resulting in reduced operational revenue), and the reduced FSR bonus, would significantly reduce the development feasibility of delivering this type of housing for low and very low-income individuals.

4.4.6 Car parking

The EIE proposed that the existing minimum car parking rates for boarding house development applications lodged by or on behalf of a social housing provider be maintained. Twenty-six submissions were received in relation to this proposal.

A number of councils raised concerns about the inadequacy of existing car parking rates for boarding houses. City of Canterbury Bankstown Council recommended an increase in the minimum car parking rates as follows:

1. at least 1 car parking space per room on land within residential zones;
2. at least 0.5 car parking spaces per room on land within a zone other than a residential zone; and
3. at least 1 car parking space provided for each person employed in connection with the development and who is a resident on site.

City of Ryde Council noted that the existing car parking provisions have proven to be insufficient to meet the demand of tenants. It noted that while there is the opportunity to improve sustainable transport links, in the interim, not providing sufficient onsite car parking risks generating (or exacerbating existing) car parking and traffic issues on local streets. In its view, the car parking rates for boarding houses require further review to manage local traffic issues. Car and bicycle share schemes to help promote more sustainable travel could also be considered.

Similarly, Bathurst Council was very concerned about the inadequacy of the proposed minimum car parking rates, stating that they do not appropriately reflect the impacts of this type of development on the availability of on-street car parking, nor levels of car ownership in regional and rural locations.

Industry representatives such as UKO and Cushman & Wakefield stated that the rate of 0.5 car parking spaces per boarding room for development not carried out by or on behalf of a social housing provider does and will negatively impact feasibility. Cushman & Wakefield stated that boarding house tenants do not require car parking at this level.

Urban Villager recommended 0.2 car parking spaces for boarding rooms in accessible areas. William Building Corporation stated that car parking rates should be reduced to rates similar or equivalent to those for student housing. Urban Taskforce suggested a sliding scale of 0 to 0.5 spaces per room, depending on accessibility of the site to public transport, and that this include car share spaces.

Local Government NSW, Evolve Housing, the Property Council of Australia and Shelter NSW supported a rate of 0.2 spaces per room for social housing providers. The Law Society of NSW stated that councils should be able to apply maximum car parking rates.

AIA strongly recommended the abolition of minimum car parking requirements to future-proof projects across all typologies. In its view, maximum requirements would allow the

market to determine when, how and why car parking is required. AIA recommended that the SEPP encourage bicycle parking, ride share drop off points and limited parking allocated flexibly on an 'as needs' basis.

NSROC also recommended that car parking rates be reviewed in light of alternative transport options and accessibility.

4.4.7 Design and amenity

Thirty submissions raised concerns about the lack of design provisions in the EIE.

City of Sydney recommended that minimum amenity standards be developed for boarding houses, such as those that provide for natural light and ventilation, and the application of specific amenity standards under the ADG. It recommended that such standards be developed in consultation with local government.

Sutherland Shire Council recommended the provision of clear design guidance for boarding houses. It noted that SEPP 65 and the ADG have delivered significant improvements to the design of residential flat buildings and recommended that these be applied to boarding houses where the proposal meets the thresholds triggering the application of those instruments. It also recommended the inclusion of a requirement for communal areas to be provided on each floor of any proposed development with three storeys or more.

Shoalhaven Council also supported the introduction of guidelines similar to the ADG. Shoalhaven noted that resident comfort and sustainability should be key focus areas for the guidelines, as any development under centralised management provides opportunities for increased building sustainability outcomes and ongoing cost-savings for both managers and residents.

Shelter NSW recommended that all design matters should be deferred to the proposed Design and Place SEPP.

The AHO raised concerns about the inappropriateness of the solitary design of boarding houses for the needs of Aboriginal tenants. The AHO recommended that the design of this type of housing consider 'collective approaches to shared wealth and living patterns that involve familial responsibility within a larger kinship group. It is important to note that refusal to share resources, including accommodation can be a source of shame for Aboriginal people. This can result in direct conflict between the rules of co-living properties [such as boarding houses] that prohibit guests and the social responsibility within Aboriginal culture to host visiting relations.' AHO also noted that the solitary design of boarding houses can result in feelings of social isolation for Aboriginal tenants who face prejudice from other tenants.

4.4.8 Other

Northern Beaches Strategic Community Group submitted that the measurement of delivery of boarding houses under an LEP should include the impact criteria of each boarding house on the surrounding dwellings, streets and suburbs. It indicated that this information is needed to ensure a holistic understanding of the impacts of a boarding house on the character and liveability of an area.

Smaller developers raised concerns about universal access requirements for privately-managed boarding houses built prior to 2011. They suggested that modifications necessary to achieve universal design would be cost-prohibitive.

4.5 Group homes

The EIE proposed a quicker and easier process to allow an existing dwelling to be used as a group home.

Feedback on this proposal was received from fifteen councils, eight group home providers, and four government agencies.

Areas of concern raised by councils included clustering of group homes, conservation of heritage items, lack of detail about accessibility requirements and lack of clarity about the proposed process for converting a dwelling to a group home.

Lake Macquarie City Council supported the proposed changes. Blacktown and Woollahra councils were concerned about accessibility for residents, especially on large lot residential sites. Penrith City Council recommended that group homes should only be constructed and operated by LAHC or a CHP. Hornsby Shire, Hunters Hill, Camden, City of Sydney, Woollahra, Ku-ring-gai, and City of Ryde councils expressed concern over the conservation of heritage items under the proposed pathway. Suggestions included the exclusion of proposals which include the conversion of heritage items from the proposed simplified pathway. Campbelltown City Council expressed concerns over the clustering of group homes and the cumulative impact this could have on neighbourhoods. The Hills Shire Council requested more information about the proposed process for converting a dwelling to a group home.

LGNSW recommended that group home conversions be subject to the complying development process (i.e. not be identified as exempt development) to ensure that they meet minimum requirements. It also recommended that the Department consult with councils when developing complying provisions for conversion of existing dwellings to group homes.

PIA expressed concern that streamlined pathways to conversion of dwelling houses would not result in adequate consideration of the unique accessibility requirements and design issues associated with group homes.

According to Civic Disability Services, a disability services and support organisation, existing planning provisions (including approval pathways and definitions such as “group homes”, “dwelling houses”, “people with a disability” and “people who are socially disadvantaged”):

- Can be discriminatory, placing cost, time and complexity burdens on people with disabilities and service providers to which people without disabilities are not subject.
- Can require consent authorities to make subjective assessments of applicants, which they have no specific expertise to do.

Civic suggested that clarification is required in either the Standard Instrument LEP or the Housing SEPP that while a person with a disability can opt to live in a group home, they may equally choose to live in a dwelling without the need to obtain development consent for a permanent group home.

The AHO noted that for Aboriginal people living with disability, there is a need to ensure that co-living models, including group homes, are connected to culturally appropriate support services that can effectively engage with Aboriginal people and families so that National Disability Insurance Scheme benefits are maximised.

NSW Department of Primary Industries (DPI) recommended locating group homes in areas which have access to services and public transport. DPI has received complaints from farmers who live near group homes about occupants wandering onto agricultural properties, interfering with livestock and infrastructure.

4.6 LAHC amendments

The EIE proposed several amendments to LAHC provisions contained within the ARHSEPP, Seniors SEPP and SRD SEPP. A separate report has been prepared which comprehensively addresses the issues raised in submissions regarding changes to provisions used by LAHC. A summary of the submissions regarding the LAHC amendments is provided here.

Seventy-one submissions were received regarding the LAHC amendments, including twenty-three councils, twelve peak groups and four government agencies. Ms Jenny Leong MP and Mr Jamie Parker MP also made a submission.

There was strong opposition from councils to increasing the self-assessment threshold for LAHC to 60 dwellings, due to potential amenity, local character and infrastructure impacts. Councils also objected to any bonuses or concessions being applied to the private component of a LAHC development. The submission received from Ms Jenny Leong MP and Mr Jamie Parker MP recommended that any changes to LAHC's self-assessment powers should not come at the expense of rigorous and genuine community engagement.

Most councils also opposed the proposal to introduce a flat car parking rate of 0.5 spaces per dwelling for LAHC developments due to concerns regarding the impact on street parking and relative inaccessibility of some locations.

The feedback received in response to the proposal to allow LAHC to self-assess any type of residential accommodation was mixed, with some councils and peak bodies in support of the proposed amendments and almost half of all council submissions objecting due to potential clashes with local controls and character. The councils who expressed opposition are Tweed Shire, Bayside, The Hills Shire, Randwick City, Lake Macquarie, Hunters Hill, City of Canada Bay, Sutherland Shire, City of Parramatta, Wollongong City, City of Ryde, Penrith City, Hornsby Shire, Cumberland City, Port Macquarie-Hastings and Willoughby.

Peak bodies and community housing providers all expressed support for expanding LAHC self-approval powers in this way.

Four submissions were received regarding the expansion of density bonuses outside the Sydney metropolitan region. Of these, the AHO and the Community Housing Industry Association were supportive; Tweed Shire and Wollongong City councils opposed the proposed change.

The proposal to allow subdivision of Government-owned land without consent was opposed by The Hills Shire and Randwick City councils. The AHO supported this proposal, while the NSW Rural Fire Service stressed that subdivisions of bushfire prone land would need to comply with the requirements of section 100B of the Rural Fires Act.

Councils and industry representatives indicated that they would like to be involved in the development of new design guidance for LAHC development.

The submissions received regarding the proposed changes to the SRD SEPP were mixed. Penrith City Council supported the proposed changes, while City of Parramatta Council opposed them.

4.7 Seniors housing amendments

The EIE set out the following proposed changes to seniors housing provisions:

- update definitions in the Seniors SEPP;
- clarify how the SEPP applies to land being used for the purposes of a registered club;
- update the provisions of Schedule 1 – Environmentally sensitive land to align with current legislative and planning conditions;
- amend the ‘location and access to facilities’ provisions so that point-to-point transport cannot be used to meet the accessibility requirements;
- set the validity of an SCC at five years (up from 24 months), provided that a development application is lodged within 12 months of the date on which the SCC is issued;
- establish that development standards in LEPs prevail to the extent of any inconsistency with the SEPP; and
- cap variations to Seniors SEPP development standards at 20%.

103 submissions commented on the proposed changes to seniors housing provisions. This included thirty-six councils, twenty-three developers, and fourteen peak groups.

Council submissions expressed general support for the changes set out in the EIE. Aged care developers indicated strong concerns about some of the changes, particularly allowing LEP standards to prevail over the SEPP and capping clause 4.6 variations to 20%.

Some stakeholders recommended that in addition to updating Schedule 1 and certain definitions as outlined in the EIE, the entire Seniors SEPP should be reviewed. Other stakeholders recommended additional, specific changes to address concerns with the current operation and application of the SEPP.

For example, Ku-ring-gai Municipal Council requested that seniors housing be permanently excluded from heritage conservation areas (HCAs). Kiama Municipal Council also suggested that amendments be made to extend the HCA and metropolitan rural area (MRA) exclusions to include land outside the Greater Sydney Region.

Lane Cove Council and Ballina Shire Council expressed concern regarding the clustering of seniors housing developments in certain areas.

Two submissions recommended that the definition of a ‘senior’ be reviewed, with Willoughby Council recommending a change from people ‘over 55 years’ to ‘over 65 years’ of age.

AIA recommended that in the face of the significant change currently occurring in the aged care sector, the SEPP could include provision for ‘assisted living units’ in place of the outdated ‘hostel’ definition. The AIA noted that there is increasing demand for this type of accommodation, but it is not currently addressed in the planning system.

Seniors housing provider Hammond Care suggested that the new SEPP should incentivise the renewal of existing seniors housing stock to allow providers to upgrade their assets and deliver contemporary standards of care to their residents.

Baptist Care recommended that clause 45 (Vertical villages) of the Seniors SEPP, which provides an FSR bonus of 0.5:1, be expanded to include land that permits shop-top housing, provide a density incentive provision that allows for redevelopment beyond what would otherwise be permitted under the Seniors SEPP, and exclude social housing providers from the requirement to pay developer contributions.

4.7.1 Update definitions in the Seniors SEPP

The EIE proposed that the following definitions in the Seniors SEPP be updated or amended in line with the Standard Instrument LEP to provide a consistent approach with other environmental planning instruments:

- the definition of 'height';
- the definition of 'people with a disability'; and
- the definition of 'AS 2890'.

Eleven councils (Bathurst, Hawkesbury, Lane Cove, Lake Macquarie, Lismore, Northern Beaches, City of Ryde, Shoalhaven, City of Sydney, Willoughby and Woollahra) expressed support for updating definitions. Most industry and other stakeholders also support the proposal to update the definitions. However, some seniors housing developers, as well as UDIA and Leading Age Services Australia raised specific concerns about updating the definition of 'height' as this would effectively reduce the height potential of seniors housing developments. The AIA recommended that the definition of height be updated as proposed, and that the height standard in the SEPP be increased to 9 metres to offset the impact of amending the definition.

Lane Cove Council also recommended that amendments be made to align the definition/calculation for GFA/FSR for seniors housing developments with the Standard Instrument.

4.7.2 Registered club SCC provisions

Currently, an SCC application can be made for a seniors housing proposal on land that is used as an existing registered club. Over the years, there have been several SCC applications made for land on which a registered club is no longer viable. To improve certainty for all stakeholders, the EIE proposed to reinforce the requirement that if an SCC application is being made on the basis that the land is being used for the purpose of a registered club, the club must be a registered club at the time the SCC application is lodged.

The Better Planning Network raised general concern in their submission about the loss of green space associated with seniors developments on club sites.

City of Canada Bay Council and Randwick City Council recommended that clubs on land zoned RE2 – Private Recreation should be prevented from obtaining an SCC, as this land provides highly valued open space in metro areas where there is enormous pressure to meet the demands associated with population growth. Canada Bay also recommended that where a seniors housing development is facilitated through the SCC process on registered club land, that the club should be required to continue operating to ensure these sites are

not subsequently acquired and developed by private entities. Randwick also noted that providing for seniors housing through an LEP amendment is preferable to using the SCC process.

Fairfield City Council noted that the majority of registered club sites in its LGA are zoned RE2 and are surrounded by R2 zoned land. There are generally no height or FSR standards for the RE2 zoned land, which has implications for the compatibility of seniors housing developments with the surrounding residential areas. Fairfield recommended that site specific development control plans be required where seniors housing development is proposed on registered club sites. Fairfield also recommends that the new SEPP include objectives and provisions to require that the height and built form of seniors housing on club sites be compatible with surrounding development, particularly at the interface with the residential zoned land.

ClubsNSW supported the proposed change in principle and invited further consultation to ensure that any amendments achieve the policy objective, while retaining the range of commercial arrangements under which clubs develop facilities on their land.

The Property Council of Australia recommended not proceeding with this proposal. In its view, it would not boost housing diversity or opportunities to deliver seniors housing. They also suggested that it is not a valid planning consideration, as the intention is not to provide seniors with access to a registered club, it is to provide opportunities for development of suitable land or to allow registered clubs to diversify their income streams. The proposed change could preclude the redevelopment of sites that are suitable for seniors housing and this may become more widespread as the economic impacts of COVID-19 affect hospitality venues.

4.7.3 Schedule 1 – Environmentally sensitive land

The EIE proposed that Schedule 1 – Environmentally sensitive land be updated to improve its alignment with current legislative and planning conditions. Schedule 1 excludes certain land from the application of the SEPP but has not been comprehensively updated since 2004 and now contains several obsolete or unclear terms.

Eleven councils (Bathurst, Blacktown City, Fairfield City, Hawkesbury, Hornsby Shire, Northern Beaches, Randwick City, City of Ryde, Shoalhaven, Sutherland, and Tweed Shire) expressed support for this change, with five other councils expressing concern, or seeking more detail about the specific terms that would be included in an updated Schedule 1.

Sutherland Shire Council supported the proposal to update to Schedule 1 and recommended the inclusion of terrestrial biodiversity, groundwater vulnerability, riparian land and watercourses, and environmental and scenic qualities of natural landforms, as well as all land zoned E1, E2, E3 and E4.

Fairfield City Council recommended that a re-drafted Schedule 1 include high and medium flood risk precincts as well as all land that is mapped as bushfire prone land.

Ku-ring-gai Municipal Council suggested that any amendments to Schedule 1 should not remove the existing exclusions identified on the 2002 Bushfire Evacuation Risk Map.

Bathurst Regional Council requested that rural lands and land within the noise footprint of Mount Panorama motor racing circuit be included as environmentally sensitive land.

The Law Society of NSW expressed concern about the potential for an updated Schedule 1 to exclude more land from the application of the Seniors SEPP. It noted that many councils have started to prepare LEP overlays which identify potential environmental sensitivity which has not been verified. The expansion of Schedule 1 could capture land where the environmental sensitivity has not been verified, resulting in seniors housing being inappropriately excluded from such land.

City of Newcastle Council was concerned that re-drafting these provisions could lessen existing protection of environmentally sensitive land by reducing the scope of the exclusions.

The NSW Department of Primary Industries made a specific recommendation that land identified as 'important agricultural land' should be excluded from the application of the SEPP.

The Property Council of Australia recommended undertaking further consultation regarding the review of environmentally sensitive land to be included in Schedule 1.

4.7.4 Location and access to facilities

The EIE proposed to amend the 'location and access to facilities' provisions in the Seniors SEPP so that point-to-point transport could not be used to meet the accessibility requirement.

This proposed change was supported by nineteen councils but was opposed by industry stakeholders such as the AIA, the Property Council of Australia and Urban Taskforce.

Waverley Council supported the proposed change and noted that point-to-point transport delivered by seniors housing developers or operators is not cost effective when compared with the use of public transport on a senior's concession card. Waverley Council also noted that the proposed change would help to ensure that seniors housing is built closer to public transport nodes, services and facilities.

Port Macquarie-Hastings Council agreed that it is important for seniors housing to be located in close proximity to transport services and facilities. However, it was concerned about the impact of the proposed amendments in the regional context, where the public transport network is limited. Port Macquarie-Hastings requested that the new SEPP not preclude point-to-point transport options in regional areas.

Common Equity NSW opposed amending the 'location and access to facilities' provisions, noting that point-to-point transport could be a safer option than public transport for older people in the COVID-19 environment.

Pathways Residences recommended that location and access to services provisions could differentiate between different types of seniors housing, recognising the distinct difference between people living in residential care facilities and those living independently in self-contained dwellings.

Planning consultant Levy Planning noted that the Infrastructure SEPP permits hospitals within a variety of zones, including R2, without requirements for proximity to public transport or services. Levy Planning suggested that a residential care facility resembles a hospital and as such the same standard should apply to this form of seniors housing.

AIA noted that this requirement does not differentiate between the differing needs of retirement living and aged care residents. It recommended the removal of the requirement

that facilities and services be no more than 400m from the site of the development, provided the development can demonstrate there are services and facilities provided on site and/or regular transport is available for residents to have access to facilities and services.

4.7.5 Five year validity of site compatibility certificates

The EIE proposed to introduce provisions in the new SEPP to set the validity of an SCC at five years (up from the current 24 months), provided that a development application is lodged within twelve months of the date on which the SCC is issued.

Some councils were concerned that five years is a long time for an SCC to remain valid and noted that this can affect strategic planning. Some developers indicated that twelve months may not be sufficient time to prepare and lodge a development application.

The Property Council of Australia supported the increased timeframe for SCC validity. However, it suggested that the twelve-month period for DA lodgement be extended to twenty-four months, or that provision be made for an applicant to demonstrate that significant effort has been made to prepare an application within the prescribed time period.

Levy Planning also indicated that a twelve-month timeframe for DA lodgement would rush the preparation of extensive DA documentation. Levy Planning notes that a twelve-month deadline would reduce opportunities for pre-DA consultation with councils, neighbours and other stakeholders prior to lodgement. A timeframe of 18 months would provide some breathing space to improve the quality of development applications submitted.

4.7.6 Application of local development standards

Currently, the Seniors SEPP allows development for the purpose of seniors housing to be carried out 'despite the provisions of any other environmental planning instrument'. The EIE proposed to amend the SEPP provisions to clarify that development standards in an LEP prevail to the extent of any inconsistency with the SEPP.

Nineteen councils (Bayside, Blacktown City, Byron Bay, Camden, Hawkesbury, Hunters Hill, Ku-ring-gai, Lane Cove, Lake Macquarie, Lismore, Liverpool, Penrith City, Randwick City, Sutherland Shire, City of Sydney, Tweed Shire, Waverley, and Woollahra) support this proposed change, while thirteen seniors housing developers are opposed to it.

Blacktown City Council supported the change and suggested that the amendments should also ensure that standards applying under the Growth Areas SEPP override the Seniors SEPP standards.

The Property Council of Australia opposed allowing LEP development standards to prevail over the SEPP, suggesting that this undermines the traditional planning hierarchy where State planning instruments take precedence over local planning controls. It expressed concern over what these changes may mean for interpretation of planning law in Land and Environment Court appeals. It also argued that this approach is unlikely to improve housing diversity or the supply of seniors housing as local controls increase the cost of delivering seniors housing and are not tailored to meet the unique needs of this market.

Levy Planning asserted that LEP standards should not override clause 40 development standards. Levy Planning also suggested that allowing LEP standards to prevail will jeopardise the provision of new residential aged care facilities and hostels due to reduced

FSR, as most LEP standards provide an FSR of 0.5:1 while the SEPP allows an FSR of 1:1 for these types of seniors housing.

AIA noted that it is important to ensure the benefits of certain existing provisions (the 1:1 FSR for residential aged care buildings in residential zonings; the 8m height control and definition being to the underside of the ceiling) are not lost with the proposed deference to the Standard Instrument LEP definitions.

4.7.7 Cap variations to Seniors SEPP development standards at 20%

The EIE proposed that the development standards in the Seniors SEPP could continue to be varied using clause 4.6 of the Standard Instrument LEP, but only to a maximum of 20%.

Councils, developers and other stakeholders were generally opposed to or concerned about this proposal. The only exceptions were City of Ryde and Lake Macquarie councils.

The City of Sydney supported the use of clause 4.6 in a LEP to vary a development standard under the SEPP but expressed concern about capping the maximum variation at 20%. City of Sydney Council, Camden Council, Estia Health, Centurion and Advantaged Care all highlighted the need to assess floor space and height variation requests on merit.

Hornsby Shire and Ku-ring-gai Councils expressed concern that specifying a maximum 20% variation may lead to proposals designed to the maximum variation, rather than attempting to design within development standards. The Hills Shire Council was concerned that developers will expect variations of 20% to be supported regardless of merit if the proposed change is made.

Anglicare noted that clause 4.6 aims to achieve better outcomes for and from development by providing flexibility in particular circumstances. For example, it allows developers to work around development standards which are unreasonable in certain contexts. Anglicare suggested that the proposed cap on variations might encourage councils to lower development standards to account for the 20%.

A number of stakeholders (Levy Planning, Anglicare, Baptist Care, NSW Young Lawyers) also pointed to the difficulty of applying a 20% variation limit to development standards such as the requirements of clause 26 which includes complex numerical and non-numerical requirements. Levy Planning also noted that a 20% variation limit will have uneven impacts on facilities of different sizes.

The Property Council of Australia recommended providing further clarification regarding the proposed 20% cap on clause 4.6 variations.

4.7.8 Other comments

The AIA recommended further refinement of provisions relating to vertical villages, including:

- redefining this term to include delivery of housing for seniors and people with a disability with and without an affordability component; and
- broadening the application of vertical villages to include other zonings where employment generation and the co-location of other compatible uses are objectives.

PIA recommended retaining or enhancing the local character provisions in the existing SEPP.

The Property Council of Australia recommended ensuring that councils benefiting from the current heritage conservation area moratorium implement their strategic planning work before the current moratorium expires on 1 July 2021.

4.8 SEPP 70

SEPP 70 identifies LGAs that have a need for affordable housing. In February 2019, SEPP 70 was amended to include all NSW councils. This amendment removed the need to list an LGA in SEPP 70, thereby expediting implementation of affordable housing contribution schemes across the State. Affordable housing contribution schemes are council-led documents that set out how, where and at what rates affordable housing contributions may be collected by councils.

A key element of the proposed SEPP is the consolidation of the ARHSEPP, the Seniors SEPP and SEPP 70. This is part of the NSW Government's program to streamline the planning system by reducing the number of state policies.

Wollongong City Council submitted that SEPP 70 should be repealed, and the Standard Instrument LEP amended to include a standard affordable housing contributions clause. Wollongong also noted that:

- the guidelines for developing affordable housing contribution schemes need to be reviewed;
- the definition of affordable housing in the Environmental Planning and Assessment Act 1979 relates to income levels, whereas the ARHSEPP and the Development Contribution Directions refer to land uses, which creates confusion; and
- there is no requirement for applications under the ARHSEPP to deliver affordable housing as defined by the Act. In particular, secondary dwellings and boarding houses are not required to be affordable, and Wollongong City Council suggested that this should be addressed.

Shelter NSW supported the retention of the SEPP 70 provisions and urged more ambitious targets. Shelter NSW also recommended that the proposed SEPP include a schedule and maps of all Affordable Housing Contribution Schemes that apply across NSW.

The Community Housing Industry Association NSW recommended introducing a mandatory requirement for all councils to develop affordable housing contribution schemes, to avoid distortions in the housing market and to improve capacity to meet housing need. It also recommended an expansion of affordable housing contribution schemes into broad based systems after three to five years to provide certainty to the market about the locations where affordable housing will be required and to enable the market to adjust. It also requested the extension of the application of the NSW Affordable Housing Ministerial Guidelines to all affordable housing delivered under the new SEPP.

4.9 Part 3 – Retention of existing affordable housing

The EIE proposed that the ARHSEPP be amended to allow a council to levy monetary contributions to offset the loss of dwellings that were low rental at any time within the five years preceding the lodgement of a development application (DA). The EIE also proposed that applicants should be responsible for demonstrating that a building which is proposed to be demolished, altered or strata subdivided did not contain low-rental dwellings at the relevant time.

Twelve councils (Tweed Shire, Randwick City, Georges River, Liverpool City, Wollongong City, Lane Cove, Willoughby, City of Parramatta, City of Ryde, Inner West, City of Newcastle and Woollahra) expressed support for the Part 3 amendments proposed in the EIE. The AIA, Better Planning Network, and LGNSW also expressed support for the proposed amendments.

Industry representatives have asked that the Department prepare guidelines to ensure a more consistent approach to levying Part 3 contributions. UDIA recommended clearly outlining the evidence that would be sufficient for applicants to prove a building contains “low rental” dwellings.

Only five submissions were received expressing opposition to these proposals. The reasons for opposition were that the proposed amendments could discourage the supply of rental housing at below-median rents, and that the new provisions should not be applied to any building that became low-rental after 28 January 2000.

The POA was critical of the proposed approach for three key reasons:

- the levying of contributions under Part 3 does not exclude the application of other development contributions, including (SEPP 70) affordable housing contributions;
- a key driver for redevelopment is that existing housing stock is aged and at the end of its useful life. This type of housing stock would generally rent at lower rates; and
- implementing the proposed changes could introduce a perverse incentive for developers to ensure that dwellings are not rented out at or below the median, and this could reduce the availability of affordable rental housing.

Urban Taskforce had similar concerns.

City of Sydney Council recommended that the Department publish a calculator and model conditions of consent to assist councils in applying conditions under Part 3. The Community Housing Industry Association NSW suggested introducing monitoring and registration requirements for affordable housing dwellings. It also suggested establishing an industry working group to, among other things, review the impacts on development feasibility of extending the affordable housing period and allowing flexibility around how owners meet the affordability requirement.

The Property Council of Australia indicated that further information was needed to support such a significant expansion of application of the clause. It also opposed the proposal to require applicants to demonstrate that buildings do not contain low-rental dwellings as, in its view, this would place a considerable administrative burden and expense on very a large number of development applications.

4.10 Secondary dwellings in rural zones

The ARHSEPP currently makes secondary dwellings permissible in residential zones (R1, R2, R3, R4 and R5). Councils can also permit secondary dwellings in rural zones under their LEPs, and several councils with rural zoned land have chosen to do so. The ARHSEPP sets a maximum size of 60 sqm, or such larger area as is permitted under an LEP, for secondary dwelling development. At the time the EIE was exhibited, clause 5.4(9) of the Standard Instrument, which read as follows:

(9) Secondary dwellings

If development for the purposes of a secondary dwelling is permitted under this Plan, the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is the greater —

(a) 60 square metres,

(b) [insert number] % of the total floor area of the principal dwelling.

The Department had received feedback from councils indicating that the clause did not allow sufficient flexibility in some council areas where there is rural and urban zoned land. The EIE proposed to allow councils the discretion to set a separate maximum size for secondary dwellings in rural zones, through an amendment to the ARHSEPP.

Twelve out of twenty-six submissions received regarding these changes expressed support for the proposed amendments.

The Hills and Hornsby Shire Councils expressed support for the proposed changes, as did several other councils. The Hills Shire Council specified that it would prefer this change was made by an amendment to the Standard Instrument LEP.

Some councils such as Northern Beaches noted that they do not permit secondary dwellings in their rural zones, and other councils mentioned that they are satisfied with the existing standards for secondary dwellings.

Tweed Shire Council expressed concern about possible pressure to increase the maximum size of secondary dwellings in rural zones if adjoining councils adopt a larger secondary dwelling size as a result of the proposed amendments.

Lake Macquarie City Council suggested that secondary dwellings should only be permitted in rural zones if attached to a principal dwelling.

DPI opposed allowing larger secondary dwellings in rural zones due to concerns that this would increase the utility of secondary dwellings for rental by people unrelated to farming operations. DPI notes that urbanisation in rural areas increases potential for land use conflict and threatens the agricultural industry in NSW.

Sydney Water expressed concern about the servicing implications for larger secondary dwellings and requested that any secondary dwelling larger than 60 sqm be subject to the section 73 process and not approved as complying development.

NSW Rural Fire Service suggested that proposals to erect secondary dwellings on sites that are bush fire prone need to allow for future building to Bushfire Attack Level-29 or less so that future owners are not encumbered with the additional costs of building and maintaining to BAL-40 and/or BAL-Flame Zone.

5. Metropolitan rural area amendment

An amendment was made to the Seniors SEPP in July 2020, such that it no longer applies to land in the Metropolitan Rural Area (MRA) of Greater Sydney. The MRA amendment responded to the 2019 Greater Sydney Commission investigation report into the cumulative impacts of seniors housing development in the rural areas of The Hills and Hornsby LGAs.

While this amendment has already been made and was not included in the EIE, several submissions commented on this issue. Feedback on the MRA amendment was received from six councils and 11 developers, industry groups and individuals.

The Hills and Hornsby Shire councils expressed strong support for the amendment. Blue Mountains City Council, Penrith City Council, and Wollondilly Council expressed concern that the amendment was made without consultation but were generally supportive.

Ballina Shire and Kiama Municipal councils requested that a similar exclusion be introduced for land in regional areas, to assist regional councils in strategically managing growth pressures.

Levy Planning and Urban Taskforce expressed their concern regarding the lack of prior public consultation about the MRA amendment and noted that it includes urban zoned land in many towns. The Property Council of Australia recommended a review of the MRA exclusion to make it temporary.

PIA supported exclusion of the application of the Seniors SEPP from the MRA.

Seniors housing developers who mentioned the MRA in their submissions are strongly opposed to the amendment. These include Stockland, Baptist Care, Opal Specialist Aged Care, and Wesley Mission. Some developers (Carrington Centennial Care and Highgate Management) identified specific sites that they would like to have excluded from the MRA.

Opal Specialist Aged Care suggested that the MRA amendment was inconsistent with District Plans. Opal and Baptist Care were concerned about the impact of the amendment on urban zoned land within the MRA and noted that excluding the Seniors SEPP from such land goes beyond the recommendations of the Greater Sydney Commission investigation report. Stockland suggested that the mapping of the MRA exclusion zone be reviewed to ensure that existing retirement communities and suburbs, zoned for urban purposes within the MRA, are not excluded from the SEPP.

Cranbrook Care contended that existing facilities within the MRA should not be required to rely upon existing use rights where seniors housing is not permitted under the relevant LEP. They stated that the SEPP should introduce amendments which support existing facilities to be rebuilt and/or upgraded, to ensure they are fit for purpose.

Aged care provider Uniting wants to be sure that the SEPP provisions do not pose a barrier to providing or maintaining seniors housing in rural and regional areas. Uniting suggested that this should include maintaining clear approval pathways for existing facilities, particularly those located within MRAs, to be rebuilt/repurposed and expanded.

One submission was received from an individual on this issue, expressing support for the prevention of seniors living development in the MRA and suggesting that the exclusion be expanded to include additional land.