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HOUSING SEPP

Submissions report

Consultation draft exhibition outcomes

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1. Executive summary

During August 2021 the Department of Planning Industry and Environment (DPIE) exhibited a consultation draft for a proposed Housing State Environmental Planning Policy (the **Housing SEPP**). The draft SEPP was accompanied by a draft Environmental Planning and Assessment Regulation amendment and a draft Standard Instrument Order (the **consultation package**).

241 submissions were received from a wide range of stakeholders including individual community members, peak industry groups, Members of Parliament, councils and other government bodies, developers, community housing providers, and seniors housing providers.

This report provides a comprehensive summary of all issues raised in submissions in response to the consultation draft.

There was strong support across stakeholder groups for the consolidation of existing housing-related SEPPs into a single Housing SEPP. Councils and the community were generally supportive of the proposal that boarding houses be used for affordable housing in perpetuity and the proposed permissibility of this housing type. Industry was generally concerned about the impact of the proposed development standards on feasibility. There was concern from the university sector and some councils about the decision not to include a separate definition of student housing.

Peak bodies and seniors housing providers expressed general support for the proposed changes to seniors housing as they will provide greater flexibility and certainty. Councils indicated strong concerns about some of the changes, particularly permitting seniors housing in business zones.

Submissions were also received in relation to:

- in-fill affordable housing, particularly the proposed increase in the minimum affordability term from 10 years to 15 years,
- secondary dwellings, including the proposed amendment of some local environmental plans (LEPs) to introduce optional clause 5.5 (controls for secondary dwellings in rural zones),
- affordable housing contributions under SEPP 70,
- residential flat buildings developed by social housing, public authorities and joint ventures, and
- the retention of existing affordable housing under Part 3 of the ARHSEPP.

Several overarching concerns were identified, including car parking standards, the definition of affordable housing, access to bonuses and planning concessions, the perceived elevation of local planning instruments to quasi-statutory instruments under the Housing SEPP, provisions for regional areas and design guidance.

Although the relevant provisions weren't included in the consultation package, a number of submissions were also received in relation to build-to-rent housing, groups homes, caravan parks and manufactured home estates, short term rental accommodation (STRA) and the adaptive re-use of existing development.

In response to the feedback received, a number of provisions relating to boarding houses, co-living housing, BTR housing and seniors housing have been amended. These

amendments have been made to further clarify or streamline the operation of the Housing SEPP, or to better support the delivery of diverse and affordable housing. These amendments include:

- the change of some controls for co-living housing and boarding houses from requirements to considerations;
- the extension of FSR bonuses for co-living housing, boarding houses and seniors housing to land which contains a heritage item;
- the amendment of the definition of seniors housing to include Aboriginal and Torres Strait Islander people aged 55 years and over;
- permitting LAHC and providers operating under the Retirement Villages Act 1999 to develop ILUs in the R2 zone;
- extending the application of the vertical village provisions;
- removing the Metropolitan Rural Area exclusion zone for seniors housing;
- introducing a new pathway for conversion of certain serviced apartments to residential flat buildings; and
- capturing proposals where the Secretary's Environmental Impact Assessment Requirements (SEARs) have already been issued and are still valid, in the savings provision.

2. Background

2.1. Explanation of intended effect

An Explanation of Intended Effect (EIE) for a proposed Housing SEPP was exhibited from 29 July to 9 September 2020. The EIE indicated that the proposed SEPP would amend or update planning provisions to better reflect the changing housing needs and expectations of the community, provide greater certainty for all stakeholders, and support the State's economic recovery from COVID-19.

The EIE proposed to:

- consolidate three housing related SEPPs (Affordable Rental Housing 2009, the Seniors SEPP and SEPP 70),
- introduce three new land use definitions (build-to-rent housing, co-living housing and student housing),
- amend provisions used by Land and Housing Corporation (LAHC), and
- amend existing provisions for secondary dwellings, group homes, retention of existing affordable housing, and seniors housing.

More than 270 submissions were received in response to the exhibition of the EIE.

Since that time, separate SEPP amendments have been progressed to introduce build-to-rent housing (BTR housing) into the planning system, update the provisions used by LAHC, and regulate STRA.

2.2. Targeted consultation

In April and May 2021, DPIE conducted targeted stakeholder consultation regarding proposed boarding house, co-living housing and student housing provisions with select councils, peak groups, industry and registered Community Housing Providers (CHPs). The

purpose of these consultations was to explain how the proposed SEPP provisions had been refined since the EIE was exhibited, and to seek further feedback from key stakeholders.

In relation to boarding houses, the proposed approach was generally supported. There was concern among councils and CHPs that LAHC would be able to self-assess and develop boarding houses in land in the R2 – Low Density Residential zone regardless of permissibility. CHPs raised concerns about the proposed standards for communal open space and communal living area being too onerous.

In relation to co-living housing, councils expressed strong opposition to permitting this housing type wherever multi-dwelling house is permitted, and to any floor space ratio (FSR) bonus for co-living housing. Developers contended that co-living housing would not be feasible without an FSR bonus, particularly in light of proposed standards for communal spaces and tax and tenancy issues.

In relation to student housing, councils and peak groups raised concerns about whether or how compliance with the proposed definition would be managed.

Car parking was a point of contention for all three housing types.

In May 2021, DPIE also conducted targeted stakeholder consultation with developers, peak bodies and councils in relation to the proposed seniors housing provisions.

Developers were supportive of the intent to address the historically low uptake of the vertical villages provisions with additional FSR bonus. BaptistCare and Anglicare noted that additional height in addition to the bonus would be required to ensure the FSR bonus could be achieved without a clause 4.6 variation.

Opal Aged Care suggested the focus should be on increased height and bulk, moving away from FSR bonus, similar to Victorian provisions.

Industry and peak groups were supportive of removing the affordability requirement.

Councils were concerned about the impact of the vertical villages incentives on local character in particular that the additional height would create adverse impacts to views, outlook and overshadowing.

3. The consultation draft

The consultation package was exhibited to elicit feedback on whether the proposed SEPP would function as intended.

Some proposed provisions were not included in the consultation draft, as the exhibition sought to focus attention on the most significant new, amended or updated provisions. In particular, the consultation draft did not include:

- New provisions for BTR housing and STRA, and recently updated provisions used by the Land and Housing Corporation.
- Provisions of SEPP 21 and SEPP 36 which are proposed to be transferred to the Housing SEPP generally in their current form.

Brief overviews of the provisions contained in the consultation package are set out under the relevant headings in the Feedback section, below.

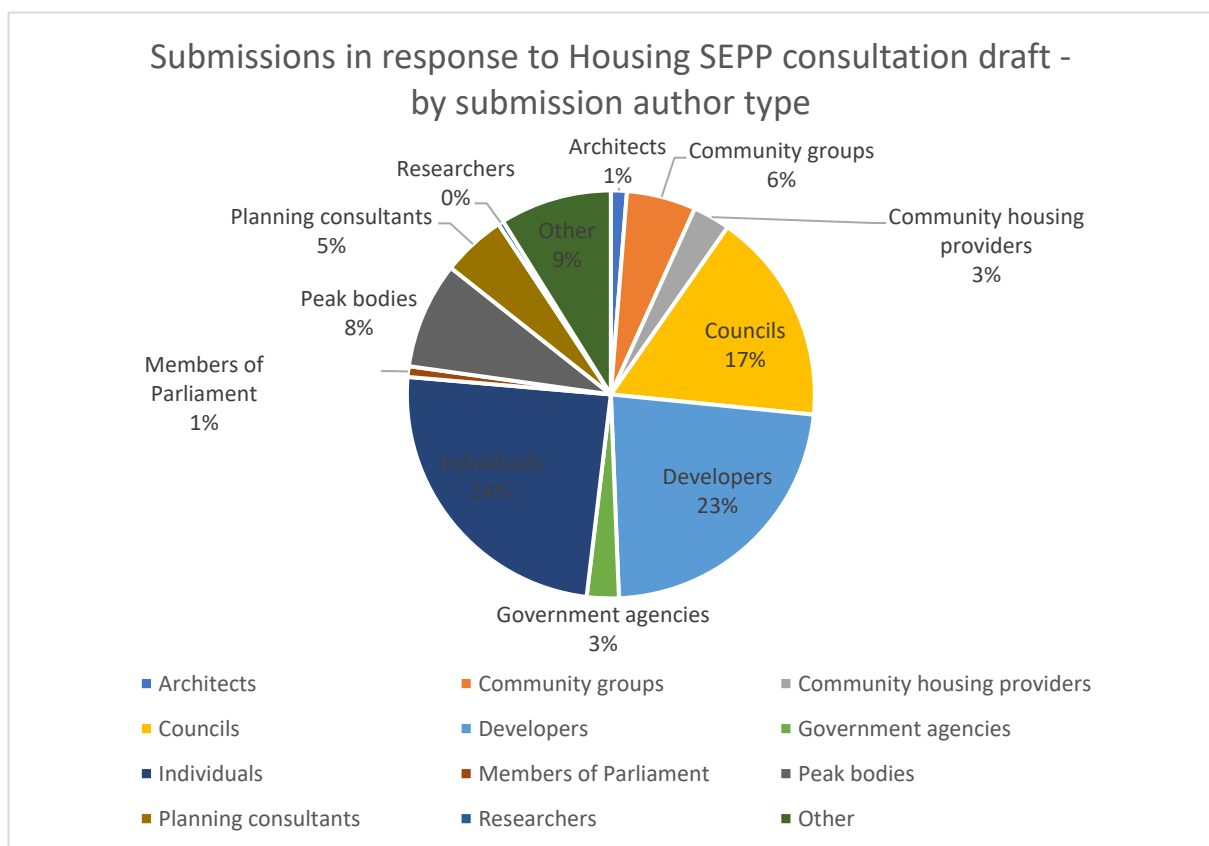
4. Feedback on the consultation package

The consultation package was exhibited from 30 July to 29 August 2021. Some late submissions were accepted after the formal close of the feedback period.

During the feedback period, the Housing Policy team:

- Held a webinar for council staff, with over 300 attendees;
- Provided briefings for LAHC, Landcom, councils and CHPs, peak groups and their members including Planning Institute Australia (PIA), Property Council of Australia (PCA), Urban Development Institute of Australia (UDIA) and Committee for Sydney.

241 submissions were received in response to the consultation draft. The following chart provides a breakdown of the types of stakeholders who made submissions.



Of the 54 developer submissions received, 22 were from seniors housing developers, nine were from co-living housing developers, seven were from student housing developers, and two were from boarding house developers. Of the 40 council submissions received, 28 were from metropolitan councils and 12 were from regional councils.

Councils generally supported the proposed changes to the boarding house provisions and the proposed co-living housing provisions. Developers were concerned about the impacts of the proposed standards on development feasibility for both housing types.

There was broad concern from industry and some councils about the proposed approach to student housing.

Peak bodies and seniors housing providers expressed general support for the changes to seniors housing as these amendments will provide greater flexibility, and certainty. Councils indicated strong concerns about some of the changes, particularly permitting seniors housing in all business zones.

Submissions were also received in relation to:

- in-fill affordable housing, particularly the proposed increase in the minimum affordability term from 10 years to 15 years,
- secondary dwellings, including the proposed amendment of LEPs to introduce optional clause 5.5 (controls for secondary dwellings in rural zones),
- the way affordable housing contributions are calculated and who they may be collected by,
- residential flat buildings developed by social housing, public authorities and joint ventures, and
- the retention of existing affordable housing.

Although the relevant provisions weren't included in the consultation package, a number of submissions were also received in relation to BTR housing, groups homes, caravan parks and manufactured home estates, and STRA.

4.1. Overarching themes

There were seven overarching issues that cut across a range of proposed changes:

- car parking requirements,
- the definition of affordable housing,
- the operation of non-discretionary development standards,
- access to bonuses and planning concessions,
- future review of the Housing SEPP,
- separate provisions for regional areas, and
- design guidance for each housing type facilitated by the SEPP.

4.1.1. Car parking

The consultation draft proposed car parking standards for boarding houses, co-living housing and seniors housing. A large number of submissions commented on the proposed car parking standards, as well as the car parking standards for BTR housing, which were not included in the consultation draft.

Details of the car parking standards for each housing type, and feedback received, are set out in the relevant sections. However, clear trends emerged across all housing types.

Developers (Unilodge, Evolve Housing, Freedom Development Group, UKO, Picket & Co, Urban Revolutions), councils in well-connected areas (Willoughby, Randwick City) and some peak bodies (Urban Taskforce, Housing Institute of Australia (HIA)) overwhelmingly supported no, or the lowest possible, standards for car parking for each housing type. This was typically because of the impacts of car parking construction on development feasibility, experience suggesting lower rates of car ownership and use in these areas, resulting in car parking often being under utilised, and a desire to discourage private car ownership and use

in favour of public and active transport. PIA recommended that car parking rates be reduced and applied proportionally in accessible areas in Greater Sydney.

Councils in less-well connected areas of Greater Sydney and in regional areas (Ryde, Wollongong, The Hills, Northern Beaches, Maitland, Sutherland, Camden), Shelter NSW and community members were clear that the proposed car parking standards would be too low in these areas. They were also concerned that inadequate parking would impact the streetscape, local character, amenity, and safety and further discourage a pedestrian-friendly and permeable environment. They recommended that car parking standards be left to local councils, or that the SEPP provide for significantly higher minimum standards, such as 1 car space per dwelling (for boarding houses and co-living housing) or bedroom.

PIA noted the importance of ensuring that all housing typologies provide appropriate levels of car parking, both in regional communities and inaccessible areas, and in accessible areas. They recommended a default position of requiring that council rates be met, but that the Housing SEPP include lower rates for boarding house and co-living housing development in accessible areas.

4.1.2. Affordable housing (very low, low and moderate income households)

The Environmental Planning and Assessment Act 1979 (EP&A Act) defines affordable housing as housing for very, low and moderate income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument.

The draft included a new definition of affordable housing households that incorporated elements of the existing ARHSEPP and SEPP 70 definitions of the same term.

17 submissions commented on the proposed definition, with nine supporting the proposal, including Local Government NSW (LGNSW) and the Law Society of NSW.

Of those who did not support the proposed definition:

- Community Housing Industry Association NSW (CHIA NSW), Southern Youth and Family Services were concerned that the geographic basis proposed to be used to set household income benchmarks would unfairly impact tenants and CHPs in some areas, including the Illawarra, Central Coast, Hunter and Blue Mountains regions.
- City of Newcastle Council, Wollongong City Council and Shelter NSW echoed this concern, recommending the use of more geographically nuanced definitions to better reflect differences across NSW.
- Southern Sydney Regional Organisation of Councils (SSROC) recommended adopting and adapting the definition from the EP&A Act to avoid confusion and ensure consistency.
- City of Sydney opposed the inclusion of any reference to the National Rental Affordability Scheme (NRAS) in the definition, on the basis that NRAS is tied to market value rent and not a proportion of gross household income.
- Southern Cross Community Housing recommended that affordable housing rents be linked to 75 – 80% of market rent instead of to household income.
- Evolve Housing recommended that the definition include greater flexibility around rent thresholds for moderate income households to achieve sustainability for both residents and investors.

4.1.3. Operation of non-discretionary clauses

The consultation draft included a number of non-discretionary development standards, pursuant to section 4.15 of the EP&A Act. Six submissions included comments on the general operation of these non-discretionary clauses.

The Law Society of NSW, Urban Taskforce and Pikes and Verekers Lawyers were concerned about the interaction between non-discretionary standards and LEPs, where a non-discretionary standard is more onerous than the LEP standard. The Law Society recommended that it should be clear how a non-discretionary standard is intended to operate where a standard under the relevant LEP is less onerous. Pikes and Verekers Lawyers recommended that in such cases, the standard most favourable to the developer should apply.

The Law Society of NSW and Pikes and Verekers Lawyers were also concerned about the relationship between the non-discretionary standards and clause 4.6 of the Standard Instrument LEP. The Law Society recommended that the SEPP be amended to make it clear that a 4.6 variation request is not required to vary a non-discretionary standard. Pikes and Verekers Lawyers recommended incorporating a subclause similar to cl 29(4) of the ARHSEPP into each non-discretionary standard. They also recommended that any such subclause make clear that its power is derived from section 4.15 of the EP&A Act.

4.1.4. Access to bonuses and benefits

Ms Jenny Leong MP and Mr Jamie Parker MP (The Greens) expressed the view that FSR bonuses and other benefits should result in dwellings being affordable in perpetuity. SSROC expressed a similar view.

Note. Two submissions were received from the Greens: one, signed by Ms Jenny Leong MP and Mr Jamie Parker MP (The Greens) and referred to as above throughout this report, and one signed by the Greens NSW Planning and Environmental Law Organiser (referred to in this report as **Greens NSW**).

Councils were generally not supportive of FSR bonuses due to concerns about excessive bulk and scale of boarding house development, when compared to surrounding low density residential development.

Urban Taskforce and HIA were of the view that permitting LAHC regulatory advantages over other developers raises concerns about competitive neutrality and may disincentivise private sector development.

Landcom requested that it be afforded access to the same bonuses and other benefits as CHPs and other NSW Government entities.

City of Sydney and Goulburn Mulwaree councils recommended that heritage conservation areas be excluded from the application of any FSR bonus.

4.1.5. Review of the Housing SEPP

There was support across stakeholder groups for ensuring the Housing SEPP is reviewed regularly to ensure it is operating effectively and as intended.

The Property Owners Association of NSW (POA NSW) was concerned that many of the provisions of the proposed Housing SEPP would have adverse unintended consequences and recommended a 2-year rolling statutory review. Shelter NSW noted that review and evaluation of the Housing SEPP should be supported by accurate and detailed data collection to monitor any potential oversupply or undersupply.

Urban Taskforce recommended undertaking a regulatory impact assessment of the impact of the Housing SEPP on affordable housing. SSROC recommended that a monitoring and review program be established to ensure the outcomes sought are being achieved. Save Murrumbidgee Resident Group recommended that there be a parliamentary review of the Housing SEPP at three and six years after introduction, with particular attention to boarding houses.

PIA recommended the inclusion of a review provision in the Housing SEPP to determine:

- How many boarding house DAs have been determined under the SEPP,
- The extent to which the changes to the boarding house provisions impact the take up of difficult and isolated sites in mixed use centres that had previously been well suited for boarding houses, and whether the availability of affordable boarding house accommodation is affected.
- Whether the development standards for seniors housing have struck the right balance in ensuring adequate delivery of housing and maintenance of residential amenity.

PIA also recommended including a review provision for the SEPP to consider how many co-living housing developments have been determined under the Housing SEPP. The University of Sydney also noted that it will be important to monitor development trends in the co-living housing sector and recommended that rental costs and tenant outcomes be reviewed in the short and medium term.

The University of Sydney also urged review of the current and projected take up of the FSR bonus for in-fill affordable housing, and sensitivity testing to ensure that private providers will continue to take up that incentive with the extension of the affordability period requirement from 10 years to 15 years.

4.1.6. Elevation of local planning instruments and guides

Some provisions of the Housing SEPP, such as those specifying building separation and setbacks for boarding houses and co-living housing, were drafted with reference to the Apartment Design Guide (ADG) and/or development control plan (DCP) controls.

UDIA NSW, Unilodge Australia, the Catholic Archdiocese of Australia and Vasey Communities were concerned about what they perceived as the elevation of the ADG and/or DCP controls to quasi statutory instruments. In their views, this approach would give too great an influence to controls that should only be used as guidelines. They also noted that making these guidelines statutory controls would make their requirements more onerous than for other forms of development.

4.1.7. 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.

CHIA NSW, UDIA, Urban Taskforce, Leading Age Services Australia (LASA), Council of the Ageing NSW (COTA NSW), PCA and HIA objected to the prescribed zones for seniors housing stating that such an approach will reduce opportunities in regional areas for the supply of a broad range of seniors housing in established communities.

Councils such as Lake Macquarie, Blue Mountains and Port Stephens observed that the Housing SEPP does not give due consideration to the differences between regional and metropolitan NSW.

4.1.8. Design guidance

Several submissions commented on design guidance, stemming from the EIE originally indicating that design guidance would be prepared or updated for boarding houses, BTR housing, student housing, co-living, LAHC development and seniors housing development.

The Australian Institute of Architects (AIA), PCA, UDIA, PIA, CHIA NSW, Scape and several councils recommended that the SEPP be supported by design guidance for each housing type as soon as possible to ensure appropriate design and thorough assessment of proposals.

UDIA noted the importance of clarifying the relationship between the Housing SEPP and any design guidance that might be provided. They also noted that more stringent design requirements will significantly impact development feasibility, particularly in relation to affordable housing developments, where there is no capacity to pass on price increases to purchasers. They recommended that the ADG not apply to affordable housing and that any new standards be tested to determine impacts on feasibility.

CHIA NSW recommended that, instead of numerical requirements being set out in the Housing SEPP, any design guidance should set out design requirements.

The Australian Network for Universal Housing Design, Ageing on the Edge, SSROC and Canterbury Bankstown Council recommended that the Housing SEPP apply the Livable Housing Design Guidelines across all housing types under the Housing SEPP.

A number of seniors housing providers and peak bodies also noted that the *Seniors Living Policy: Urban Design Guidelines for Infill Development* is outdated and requires review.

The City of Sydney thought it was important that future design guidance is clear about co-living housing provisions such as room size calculation, minimum standards for apartment layout and efficiency and minimum dimensions.

Sutherland Shire Council supported the inclusion of design guidance encouraging the provision of communal areas on each floor of any proposed boarding house and co-living housing to improve resident amenity.

SSROC requested the opportunity for councils to review and provide comments on design guidance prior to any finalisation. The Department of Communities and Justice (DCJ) requested that they be consulted in the development of any design guidance.

4.2. Boarding houses

The proposed boarding house provisions included:

- A requirement for rooms to be rented at affordable rates and managed by a registered community housing provider in perpetuity.
- An FSR bonus of 25% on land where residential flat buildings are permitted and on which there are no heritage items.
- New minimum standards for communal living area and communal open space.
- Updated bicycle and car parking requirements.

- New lot size, setbacks, landscaped area and building separation requirements.
- Boarding houses no longer mandated in the R2 zone.
- The introduction of a new pathway to allow LAHC to self-assess boarding house proposals in the R2 zone, or wherever the use is otherwise permitted with consent.

81 submissions (37% of total submissions) commented on the proposed boarding house provisions.

4.2.1. Definition

The consultation package included an updated definition of 'boarding house'.

Twenty-two submissions commented on the proposed definition.

Most submissions (including LGNSW, Woollahra Municipal Council, Cumberland City Council, Sutherland Shire Council, Inner West Council Housing and Affordability Committee and Shelter NSW) supported the proposed definition.

Ms Jenny Leong MP and Mr Jamie Parker MP (The Greens) and Randwick City Council recommended that the definition clarify the role of social housing providers and LAHC in the delivery and management of boarding houses.

City of Newcastle Council recommended amending the definition to include a reference to a building 'or place', to bring the definition into line with the proposed co-living housing definition and prevent circumvention of the 12 room cap in the R2 zone and other controls such as those for communal living rooms by delivering dwellings across multiple buildings on a single site.

Blue Mountains City Council recommended that the definition be amended to explicitly exclude short term rental accommodation. Randwick City Council recommended that consideration be given to removing the minimum three month stay to encourage flexibility for tenants.

The Law Society of NSW was concerned that the proposed definition would be slightly at odds with the definition of 'boarding premises' under the Boarding Houses Act 2012.

4.2.2. Duration of affordability

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.

The consultation draft indicated that boarding houses would remain affordable in perpetuity.

35 submissions commented on this proposal, with 22 (including seven peak bodies (PIA, COTA NSW, Shelter NSW, LGNSW, SSROC, AIA), 14 councils (City of Sydney, Canterbury Bankstown, Parramatta, Waverley, Ryde, Sutherland, Woollahra, Cumberland, Northern Beaches, Goulburn Mulwaree, Hornsby, Randwick, Liverpool, Maitland, Lane Cove) and the Inner West Council Housing and Affordability Committee) supporting the proposal.

Landcom, UDIA, CHIA NSW, Southern Cross Community Housing and Urban Revolutions were concerned about the impacts this restriction would have on the commercial realities of delivering affordable housing, including obtaining finance, asset recycling and re-stocking. UDIA recommended a uniform 10-year requirement for affordability across the SEPP, to align with investment decisions and enable operators to deliver a pipeline of projects. CHIA

NSW recommended 15 – 20 years, accompanied by measures to support the ongoing availability of affordable housing beyond this time.

Wollongong City Council recognised that CHPs and LAHC need to renew their stock and suggested that a nominated timeframe of 20 – 30 years may be preferable to affordability in perpetuity. DCJ recommended that where owners build and retain dwellings, provisions should permit the flexibility to renew or recycle an asset as long as an equivalent number of affordable dwellings are created elsewhere.

Pearce Hunt Partnership noted that every business must be able to change and adapt in response to changing circumstances, and were of the view that requiring affordability in perpetuity would be a strong disincentive to investment.

Three councils (Ryde, The Hills, Canterbury Bankstown) expressed concern that the section in the draft SEPP requiring that boarding houses be used as affordable housing in perpetuity does not apply to LAHC.

DCJ recommended that the requirement for boarding houses to be affordable in perpetuity be noted on title to ensure that regardless of who owns the boarding house, it will be retained as affordable housing.

4.2.3. FSR bonus

The consultation draft proposed a 25% FSR bonus for boarding houses on non-heritage land in a zone in which residential flat buildings are permitted, and provided the additional floor space was used for the purposes of the boarding house.

36 submissions commented on this proposal. SSROC, Shelter NSW, COTA NSW and seven councils (Lane Cove, Liverpool, Ryde, Waverley, Parramatta, Penrith, Randwick) were among those who supported the proposal.

Ms Jenny Leong MP and Mr Jamie Parker MP (The Greens) supported the proposed FSR bonus, provided it continued to be available only in zones where residential flat buildings are permitted and the boarding houses are required to be affordable in perpetuity and under the management of registered CHPs (unless undertaken by LAHC).

Seven councils (Ku-ring-gai, City of Sydney, Mosman, Northern Beaches, Inner West, Shellharbour and Canada Bay) opposed the increase in FSR bonus because of the likelihood it would result in excessive bulk and scale, and the negative impacts this would have on local character and areas of heritage significance. They recommended removing or significantly reducing it (e.g. to a maximum of 10%).

Evolve Housing was of the view that the proposed bonus would not be sufficient. CHIA NSW was concerned that the proposed FSR bonus would not provide as much additional FSR as is currently available under the ARHSEPP for sites with a lower existing FSR. They also recommended that any bonus be extended to land on which medium density housing is permitted. A community member recommended an FSR bonus of 0.5:1.

St George Community Housing (SGCH), DCJ and Catholic Archdiocese of Sydney recommended that any FSR bonus be tied to additional building height.

Woollahra Municipal, Randwick City and Inner West councils recommended that land in heritage conservation areas be excluded from application of the FSR bonus. Woollahra was of the view that the FSR bonus should only apply to sites larger than 1000 m².

SSROC recommended that the FSR bonus be regularly reviewed. Waverley Council recommended that this happen every 2 years.

4.2.4. Management by a registered CHP

The consultation draft proposed that all new boarding houses (except where self-assessed by LAHC) be required to be managed by a registered CHP.

31 submissions commented on this proposal. Of these, councils (Randwick, Penrith, Maitland, Willoughby, Blacktown, Inner West, Liverpool, Northern Beaches), CHPs and peak bodies (SSROC, COTA NSW, CHIA NSW, Evolve Housing, Shelter NSW) and a number of community members tended to support the proposal, while developers tended to oppose it.

Willoughby City Council recommended that this proposal be accompanied by the following additional requirements:

- a covenant to meet the affordable housing criteria,
- that boarding houses be registered and evidence of this registration be provided to council before issue of any occupation certificate,
- that any change in operator to be notified to council, and
- that a timeframe be provided for how regularly a boarding house must show proof of registration to council.

Penrith City Council also recommended specific controls to ensure the ongoing management of these developments by CHPs, or that reference be made to local DCP controls requiring that safety and security provisions are met.

The Law Society of NSW was concerned that there may not be sufficient funded and otherwise supported CHPs to sustain this proposed change.

DCJ was concerned that requiring boarding houses to be managed by CHPs and not making the same requirement for co-living housing, which is essentially the same product, would create a discriminatory two-class structure which will jeopardise approvals for boarding house development.

A community member expressed the view that if CHPs were to be responsible for boarding houses they would not be built.

University of Sydney recommended allowing for mixed-tenure boarding houses to be built and managed in partnership with private providers.

4.2.5. LAHC self-assessment pathway

The consultation draft proposed a self-assessment pathway for LAHC boarding house developments, subject to a maximum building height of 8.5 m, and a 12 room cap for development in the R2 zone.

28 submissions commented on this proposal. All submissions – predominantly from councils – opposed the proposal, or expressed reservations.

Eight councils (Ryde, Northern Beaches, City of Sydney, Randwick, Canada Bay, Inner West, Blacktown, Woollahra) opposed this proposal, on the basis that there is no justification for exempting LAHC from standard planning processes and requirements. They advised that allowing LAHC self-assessment of boarding houses:

- would undermine councils' planning powers,
- would result in inappropriate siting of developments,
- would make it difficult to plan for appropriate levels of services and infrastructure to meet the needs of the community,
- may exacerbate community opposition to boarding houses, and
- would defeat the purpose of the proposed Housing SEPP.

Hornsby Shire and Ku-ring-gai Municipal councils were concerned that this proposal would enable LAHC to continue to develop boarding houses in the R2 zone. SSROC and the Greens NSW were concerned that this would create ongoing planning issues, including the delivery of boarding houses that are out of scale with surrounding development. Penrith City Council requested that LACH boarding houses in R2 zones only be permissible on land currently owned by LAHC.

Lake Macquarie City Council was concerned about the size of developments LAHC would be able to self-assess in regional areas. They were also concerned that this pathway would enable LAHC to self-assess the subdivision of land.

WaterNSW was of the view that LAHC should not be able to self-assess on Sydney Drinking Water Catchment land. If this is to be permitted, they recommended that notification to WaterNSW for developments over four rooms be required.

SSROC was concerned about the limited (21-day) opportunity for councils to comment on these LAHC developments. Liverpool City Council recommended that the 21 day notice period for this self-assessment pathway be extended to 28-days.

Campbelltown City Council requested that any self-assessments made by LAHC using this pathway require appropriate resolution of any objections raised by councils. Where concerns are unable to be resolved, it was recommended that such proposals be referred to an independent planning panel for determination, to mitigate any risk of conflicts of interest and corruption.

Evolve Housing and SGCH requested that a similar approval pathway be made available to CHPs. Landcom requested that a similar pathway be extended to all government owned or led development of affordable, social and market combinations to increase affordable and diverse housing outcomes.

SSROC recommended that LAHC boarding houses be required to be used for affordable housing in perpetuity.

4.2.6. Communal open space

The consultation draft proposed a new communal open space standard of at least 20% of the site area, and with minimum dimensions of 3m.

14 submissions commented on this proposal. Of these, only COTA NSW unreservedly supported the proposal. The remaining submissions expressed concerns about or recommended variations to the proposal.

LAHC indicated that the proposed standard would impact delivery of affordable boarding house projects, resulting in a loss of two rooms on a typical 700 m² site. CHIA NSW was of the view that the proposed standard was excessive. They recommended that the existing

standards under the ARHSEPP be retained for boarding houses being delivered by not-for-profit CHPs. UDIA was concerned that the proposed standard would prioritise design and amenity over feasibility and affordability. DCJ was concerned that the proposed standard would significantly reduce yields and affect the feasibility of developments.

AIA recommended allowing a reduction of communal open space based on the amount of private open space provided.

City of Ryde Council recommended clarifying that the front setback may not contribute to the communal open space provisions where amenity impacts to neighbours would be unacceptable.

AIA and the Inner West Council Housing and Affordability Committee recommended the inclusion of a minimum solar access control.

Randwick City Council recommended that the minimum requirement for communal open space provision be 20 m², increasing to at least 20% of the site area.

Some members of the community recommended that communal open space be provided on each residential floor.

Another member of the community was concerned that the communal open space provision would not allow for planting of trees, contrary to the Minister's stated desire to promote a green city.

4.2.7. Landscaping standards

The consultation draft proposed minimum landscaping requirements for boarding houses, consistent with the landscaping standards in an LEP or DCP.

11 submissions commented on this proposal. Of these, the four council submissions (City of Sydney, Northern Beaches, Inner West, Ryde) were generally supportive of the proposal.

Industry views were divided on the proposal.

The Catholic Archdiocese of Sydney and BaptistCare recommended that the SEPP include a non-discretionary standard relating to landscaped area to ensure consistency across the State and provide certainty for industry.

Urban Revolutions was of the view that landscaping requirements should be site specific.

Rockeman Town Planning was concerned that applying these standards in the R2 zone would prevent development on smaller lots.

CHIA NSW noted that it was unclear what landscaping standard should apply where one was not specified in an LEP or DCP. They recommended that the Housing SEPP be amended to provide that the ADG or Low Rise Housing Diversity Design Guide apply in these cases.

LAHC and DCJ were of the view that the proposed standard, in conjunction with other proposed standards, would negatively impact the delivery of affordable housing projects.

4.2.8. Permissibility

The consultation draft did not include prescribed zones for boarding house development but the associated SILEP order includes boarding house as a mandatory permitted use in most

residential and business zones. The exception is R2 zoned land where councils can choose to permit boarding houses but it is no longer proposed to be mandated in this zone.

Any development in the R2 zone must be on land in an accessible area (Greater Sydney region) or all or part of the development is within 400m walking distance of land in Zone B2 Local Centre or Zone B4 Mixed Use, or an equivalent land use zone (otherwise).

Thirty-three submissions commented on this proposal.

Local Government NSW, SSROC and 10 councils (Fairfield, Cumberland, Parramatta, Canterbury Bankstown, Willoughby, Waverley, Randwick, Mosman, Northern Beaches, Lane Cove) supported the proposed permissibility. Another three councils (Ku-ring-gai, Newcastle, Hornsby), and community submissions encouraged further restriction of boarding houses in the R2 zone, regardless of who is the owner or applicant, and whether the site meets the criteria for accessibility.

The Hills Shire Council strongly recommended that boarding houses be excluded from the R2 and B4 zones, irrespective of accessibility or applicant. In their view, the same issues relating to bulk, scale and nature of use will occur whether the development is undertaken privately or by LAHC. They also recommended excluding boarding houses from the B2 zone and suggested that permissibility of boarding houses be controlled by the relevant LEP.

Camden Council and a number of members of the community recommended excluding boarding house development from heritage conservation areas.

Peak bodies (PIA, AIA, Urban Taskforce, CHIA NSW, COTA NSW, UDIA, Shelter NSW) and CHPs (Catholic Archdiocese of Sydney, Anglicare, BaptistCare), industry (Mecone NSW) and others (University of Sydney) were concerned that the proposed restrictions on boarding house development in the R2 zone would negatively impact supply of this housing type. AIA and Alsaker were concerned that this would create a shortage of affordable and accessible housing for key workers and downsizers. UDIA was concerned that this would exclude co-operative housing as it cannot compete in higher density zones due to high land values. CHIA NSW recommended that all social housing providers, including not-for-profit CHPs, be permitted to deliver boarding houses of up to 12 rooms in this zone, supported by an appropriate design framework. DCJ recommended that there be no restriction on the delivery of boarding houses on heritage land or within particular residential zones.

PCA and Landcom opposed no longer mandating boarding houses as a permitted use in the R2 zone.

Urban Taskforce recommended that boarding houses be permitted in all residential and business zones. PIA recommended mandating boarding houses in R2 to increase the likelihood of this critical housing type being delivered.

UDIA recommended that further consideration be given to the definition of accessible area, as sites within currently-defined accessible areas are likely to be suitable for higher-value land uses than boarding houses. Cumberland City Council recommended that the definition of accessible area be revised to clarify whether the required bus movements per hour need to be from the same bus stop or can be calculated across multiple bus stops within the catchment area.

4.2.9. Car parking

The consultation draft proposed non-discretionary car parking standards for boarding houses as follows:

- Developed by or on behalf of a social housing provider – of 0.2 spaces per boarding room in accessible areas, otherwise 0.4 car parking spaces per boarding room
- Otherwise:
 - In the Greater Sydney region – at least 0.5 spaces per boarding room
 - Not in the Greater Sydney region – at least one space per boarding room.

19 submissions commented on this proposal. Of these, most did not support the proposed standards.

Suburban councils (Ryde, Blacktown, Liverpool, The Hills, Canterbury Bankstown, Sutherland) were concerned that the proposed standards were not suitable for their local government areas (LGAs) and would result in insufficient on site car parking being provided. Blue Mountains City Council felt that a number of proposed standards, including the car parking standards, were city-centric and that car parking standards should be set by councils in outer metropolitan areas.

Penrith City Council opposed the proposed standards. They requested that car parking align with their DCP requirements, which specify whether a stacked or covered space is required.

Shelter NSW was concerned that the proposed car parking rates would be inappropriate in areas with poor access to regular and reliable public transport, particularly in regional communities.

The Hills Shire Council, Wollongong City Council and Maitland City Council supported the proposed rate of one space per room in regional areas. Canterbury Bankstown Council recommended a rate of one space per room on land in residential zones, otherwise 0.5 spaces per room. Wollongong City Council recommended that visitor car parking also be required. The Hills Shire Council recommended that alternatively, housing types under the Housing SEPP be required to comply with the relevant local car parking controls.

Evolve Housing felt that the proposed standards were too high and recommended a rate of 0.2 spaces per room.

The Registrar of Community Housing recommended standardising rates for all boarding houses, instead of prescribing a different rate for boarding houses delivered by social housing providers. DCJ supported the removal of the definition of social housing provider, which would have the same effect.

Landcom requested that the car parking concessions being granted to LAHC and registered CHPs be extended to Landcom developments.

4.2.10. Size of boarding rooms

The consultation draft proposed minimum boarding room sizes of 12 m² for a single room or 16 m² otherwise. A maximum room size of 25 m² was also proposed. All standards excluded any area used for the purposes of private kitchen or bathroom facilities, and were consistent with existing boarding room standards under the ARHSEPP.

Seven submissions commented on the proposed minimum room size.

City of Sydney Council supported the proposed minimum room size and recommended that a minimum dimension of 3m also be required for boarding rooms.

Ms Jenny Leong MP and Mr Jamie Parker MP (The Greens) and the Greens NSW were of the view that this standard was too low. Gus Fares Architects supported this view and recommended that the minimum room size be 30 – 40 sqm.

Smith & Tzannes recommended omitting any reference to a minimum area and instead inserting minimum clear room dimensions.

Three submissions commented on the proposed maximum room size, all opposing the proposed standard. Common Equity NSW felt that removing the maximum room size would allow a greater diversity of tenants to be housed, and inclusive design principles to be applied with greater effectiveness. Urban Revolutions was of the view that accessible rooms should be exempt from the standard.

CHIA NSW recommended that, instead of numerical requirements in the SEPP, design guidance be provided to demonstrate how standards could be applied flexibly to support feasibility and respond to the specific needs of tenants.

4.2.11. Communal living area

The consultation draft proposed new communal living area standards of:

- A total of 30sqm of communal living area for any boarding house containing six boarding rooms, with each communal living area having a minimum dimension of 3m, and
- For any boarding house containing more than six boarding rooms, an additional 2sqm of communal living area for each additional boarding room.

Ten submissions commented on the proposed standards. Of these, three supported the proposed standards (COTA NSW, City of Ryde Council, Common Equity NSW).

UDIA opposed the proposed standards, which they saw as prioritising design and amenity over feasibility and affordability.

CHIA NSW recommended that the existing standards under the ARHSEPP be retained for boarding houses being delivered by not-for-profit CHPs.

NSW Greens MPs Jenny Leong and Jamie Parker recommended requiring a minimum of two communal areas per six boarding rooms.

PIA recommended introducing a sliding scale involving communal living areas, communal open space and boarding rooms, with lower rates of communal space required where better appointed boarding rooms are provided.

Inner West Council Housing and Affordability Committee recommended that communal living area be calculated based on the number of residents rather than the number of boarding rooms.

DCJ was concerned that the requirements for communal living area would significantly reduce yields and affect the feasibility of developments.

Shelter NSW recommended that communal living areas be connected to communal open space.

4.2.12. Building separation standards

The draft SEPP proposed a new requirement that boarding houses exceeding three storeys must comply with the minimum building separation distances specified in the ADG.

Five submissions commented on this proposal. Two submissions supported the proposal, including City of Newcastle Council who noted that not imposing building separation requirements for buildings three storeys or less results in bulk and scale impacts and poor internal amenity.

Two submissions did not support this proposal. The Catholic Archdiocese of Sydney and BaptistCare were both concerned that calling on the ADG in this way would unduly elevate it from a guideline to a statutory control which must be complied with, making it more onerous than for a residential flat building.

4.2.13. Private open space

The consultation draft did not propose any minimum private open space requirement.

Four submissions commented on this aspect of the draft SEPP. The AIA strongly recommended ensuring that boarding rooms deliver adequate private open space to residents. Northern Beaches Council recommended that 4 m² of private open space be required for each boarding room. PIA recommended that any private open space provided be used as a basis for reducing provision of communal space.

4.2.14. Minimum lot sizes

The consultation draft proposed to apply the relevant LEP standard for minimum lot size to boarding houses.

Four submissions commented on this proposal, all expressing concerns.

AIA held the view that a 600 m² lot size for development in the R2 zone would be too small and would prevent development on infill sites.

LAHC stated that the proposed standards would typically require a lot of 1000 m² in an R3 zone and this would make lot consolidation necessary in order to deliver a boarding house.

DCJ was concerned that these requirements may reduce yield for this development type.

4.2.15. Maximum of 12 rooms in development in the R2 zone

The consultation draft proposed a maximum of 12 boarding rooms for any boarding house development in an R2 zone, consistent with the existing ARHSEPP standard.

Three submissions commented on this proposal. Wollongong City Council and a community member supported it; BaptistCare opposed it as a restriction on supply in local government areas that elect to encourage boarding house development in their R2 zones.

Penrith City Council recommended the introduction of a dwelling limit for development in R3 zones where RFBs are not permitted.

4.2.16. Other

PIA, Landcom, DCJ and CHIA NSW recommended that a new name be considered for boarding houses to reduce the stigma associated with this housing type. The University of Sydney echoed this recommendation, suggesting that there be a single name for boarding houses and co-living housing given the similarity between the standards for both housing

types. The City of Newcastle Council shared the underlying concern but suggested that a public awareness campaign may be a more appropriate response. DCJ noted that the term “boarding houses” runs contrary to the terminology that will be used in the proposed Shared Accommodation Act.

UDIA and the Catholic Archdiocese of Sydney did not support the proposal to include a local character clause. The Law Society of NSW suggested that the consideration of local character is subjective and therefore not a development standard, and recommended that it be moved to a separate clause. PCA recommended that compatibility with the local area standard be removed. AIA recommended that any design guidance include a definition of ‘compatibility’ with the character of the local area. UDIA recommended a commitment to plan for the future housing needs and changing requirements of future communities, to ensure sites are not precluded by existing character considerations.

The Law Society of NSW noted that the adequacy of bathroom, kitchen and laundry facilities is subjective and therefore not a development standard. Smith & Tzannes were concerned that what would constitute ‘adequate’ would be unclear. Inner West Council recommended that additional guidance be provided regarding what might be considered ‘adequate’ and noted that the National Construction Code (NCC) does not require kitchens and laundries in Class 3 buildings.

Ms Jenny Leong MP and Mr Jamie Parker MP (The Greens) recommended that the SEPP require basic amenities, such as a window, kitchen and ensuite, as standard. AIA strongly recommended requiring that boarding rooms be self-contained.

Campbelltown City Council and Penrith City Council were concerned about managing the impacts of clustering, particularly in the R2 (Campbelltown) and R3 (Penrith) zones. They recommended using controls such as strengthened locational requirements or mandatory separation distances.

Greens NSW were concerned about the omission of the requirement for on-site managers.

PCA recommended that existing boarding houses be able to undertake alterations and additions without having to meet the new boarding house requirements of the Housing SEPP.

The Registrar of Community Housing recommended that, prior to the issue of an occupation certificate, the applicant and the council or certifier must inform the Registrar of Community Housing of the boarding house development, and provide evidence of an agreement with a registered CHP.

Cumberland City Council recommended that any area required to provide the mandatory manager’s workspace be in addition to the minimum area required to be provided as communal living area.

CHIA NSW recommended that the existing bicycle parking standard under the ARHSEPP be retained for boarding houses being delivered by not-for-profit CHPs.

Penrith City Council supported the proposed setback standards, as they would ensure consistency with council’s DCP. Urban Revolutions opposed the proposed setback standards, holding the view that they would be unworkable for most sites. They recommended 3m side setbacks instead, and that sites neighbouring zero setback

standards should be exempt. DCJ was concerned that the proposed setbacks may reduce yield.

Inner West Council recommended that 'land zoned primarily for commercial purposes' be defined for clarity.

Smith & Tzannes were concerned that the proposed subdivision restriction clause would not prevent subdivision of a boarding house. They recommended adding an additional subclause to 2.6 of the standard instrument to prevent subdivision of boarding houses.

Maitland City Council recommended requiring three hours of solar access to 70% of rooms.

Fairfield City Council recommended that boarding houses be required to comply with the relevant provisions of SEPP 65 and the ADG.

4.3. Co-living housing

The consultation package proposed a new definition of, and planning provisions for, co-living housing.

The co-living housing provisions are similar to those for boarding houses. However, there is no affordability requirement and this use will be permitted where residential flat building or shop top housing is permitted under the LEP. A 10% FSR bonus is proposed until 1 August 2024.

A total of 106 submissions commented on the proposed definition and planning provisions for co-living housing including 29 councils.

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

4.3.1. Definition

The key elements of the proposed definition for co-living housing are as follows:

- has at least 6 private rooms, some or all having private kitchen and bathroom facilities
- provides occupants with a principal place of residence for at least 3 months
- has shared facilities such as a communal living room, bathroom, kitchen or laundry
- includes management services 24 hours a day

Tenancy length

Two submissions commented on the proposed minimum 3 month tenancy. Randwick City Council supported the proposal, believing it would ensure the SEPP had the desired effect of increasing rental housing stock and is not used as STRA.

Picket & Co opposed the proposal, arguing it did not reflect the preferences of co-living tenants.

Number of rooms

24 submissions commented on the proposed minimum number of rooms.

Randwick City Council and Shoalhaven City Council supported the proposed minimum, while 21 other submissions recommended introducing a smaller co-living housing model, comprising a maximum of five rooms / six people, permissible in the R2 zone with a complying development pathway.

Reasons for these recommendations included:

- Smaller co-living housing can be better managed and is suited to the R2 zone
- Co-living housing suits a range of demographics, including single women affected by life circumstances such as divorce, death, or low income/savings (especially women over 55); women transitioning from domestic violence crisis accommodation to mainstream accommodation; key workers; older homeowners who wish to age in place; young couples
- Co-living housing is positively associated with health outcomes as a result of the increased social support it provides to residents
- Co-living housing reduces residents' sense of economic insecurity
- Residents value the smaller, more intimate community offered by smaller-scale co-living housing

The Institute for Sustainable Futures, University of Technology Sydney, suggested that a three /five bedroom typology would be a relevant option for many people seeking affordable housing, particularly those who want to remain in the R2 residential areas they currently reside in.

4.3.2. Student housing

The Housing SEPP did not propose the introduction of a separate SILEP definition or development standards for student housing. Instead, it was intended that on campus student accommodation would continue to be facilitated through the *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017* (Education SEPP), and off campus accommodation would be delivered under the proposed co-living housing provisions.

Twenty-four stakeholders commented on the proposed approach.

Four councils (Blacktown, Penrith, Ryde, Camden) and Mark Shapiro Architects supported this approach. The remaining stakeholders had concerns.

The NSW Vice Chancellor's Committee was concerned that there remains no planning definition and associated standards for university student housing within any NSW planning instrument. In their view:

- delivery of university student accommodation is inconsistent with either of the proposed options for delivery of student accommodation (the proposed co-living housing provisions and the Education SEPP).
- university student accommodation offers below-market rents when compared with Good and Services Tax (GST) inclusive market value of the supply. They were concerned that the omission of a definition of student housing from the Housing SEPP will result in losing the potential of university student accommodation to contribute to the provision of affordable housing and to relieve pressure on surrounding rental markets, particularly in metropolitan areas.
- Campus student accommodation discourages the need for on-site car parking

- This is a missed opportunity to streamline and fast-track the NSW planning approval process by allowing universities to self-determine small scale additions and alterations to student accommodation facilities.

Scape, PCA Unilodge Australia, EducAT Parramatta Alliance, three councils (Tweed, Parramatta, Shoalhaven), Cedar Pacific, the Asia Pacific Student Accommodation Association, Willowtree Planning, Wee Hur Capital and 7 Dayman Developments strongly recommended that student housing be defined separately from co-living housing. Scape noted that co-living housing and purpose-built student accommodation have distinct operational and functional differences, in particular in relation to room sizes, car parking rates, lease tenure and management. Linkcity expressed similar concerns. EducAT Parramatta Alliance and Parramatta Council held the view that neither the co-living housing nor the boarding house provisions would adequately support student housing needs.

The Asia Pacific Student Accommodation Association submitted that the proposed co-living housing provisions do not resolve issues with current arrangements, or provide a clear and sensible path forward for the purpose-built student accommodation sector. In their view, separation between on- and off-campus student housing is undesirable and inconsistent.

Unilodge Australia, Scape, Linkcity, the Law Society of NSW and Willowtree Planning were concerned that the proposed co-living housing standards would make purpose-built student housing unfeasible.

The NSW Vice Chancellor's Committee, City of Parramatta Council and EducAT Parramatta Alliance recommended that student housing be recognised as a form of affordable housing.

Scape and Willowtree Planning were concerned about the likely tax treatment of this housing type, what they perceived to be inflexible non-discretionary development standards, and were concerned that the transitional arrangements would be inadequate.

PCA recommended continued work with student housing providers to determine specific needs for a possible future definition of this housing type. The University of Wollongong recommended that finalisation of the Housing SEPP be deferred until a resolution is achieved between the university sector and DPIE regarding a definition and associated standards for student accommodation, or the Education SEPP is reviewed to include student accommodation.

PCA and Linkcity recommended that the standards make provision for cluster rooms. PCA recommended that student housing have a minimum private room size of 10sqm to ensure developments can feasibly accommodate cluster room arrangements.

Lake Macquarie City Council noted that student housing should be located close to educational institutions and close to public transport.

Other comments in relation to specific proposed elements of the co-living housing typology as they would apply to student housing have been dealt with under relevant headings in this section on co-living housing.

4.3.3. Car parking

The consultation draft proposed a non-discretionary development standard for car parking within the Greater Sydney region the lesser of the maximum number of car parking spaces permitted under a relevant planning instrument, or 0.5 car parking space for each private room.

36 submissions commented on this proposal. Of these, one submission from Wollongong City Council supported the proposal, while five others commented on the proposal. Wollongong City Council supported a different car parking rate for areas outside of the Greater Sydney region, and recommended a visitor-specific car parking requirement also be specified

29 submissions opposed the proposal. These included suburban councils (Ryde, Northern Beaches, Canterbury Bankstown, Liverpool, The Hills and Penrith) who were concerned that the proposed standards were not suitable for their LGAs and would result in insufficient car parking being provided onsite.

Northern Beaches Council suggested a car parking rate of one space per room, while Canterbury Bankstown Council suggested a car parking rate of one space per room for residential zones specifically and a rate of 0.5 for other zones. Canterbury Bankstown Council suggested a car parking rate of one car space per employee in connection with the development and who is residing on the site. The Save Marrickville Resident Group suggested a car parking rate of one space per room, arguing that such a rate would reflect the demand for medium-income singles and couples who largely make up the demographic for co-living housing.

The Hills Shire Council wrote that car ownership is higher in The Hills compared to other areas of Greater Sydney, and inadequate car parking rates may increase demand for on-street car parking. Council argued that requiring certain developments to be in close proximity to key amenities may not always correlate with readily or conveniently accessible public transport, and all development in the SEPP should comply with car parking controls of respective uses within Council's DCP. At a minimum, The Hills Shire suggested the SEPP should increase the car parking rate to at least one space per room. Penrith City Council also requested that parking align with their DCP requirements, which also specify whether a stacked or covered car parking space is required.

Submissions from developers, peak industry groups and two councils (Randwick and Willoughby) raised concerns that the proposed car parking rate was too high, especially in areas close to public transport with good access to amenities and services.

Urban Taskforce suggested the car parking rate did not reflect the needs and preferences of co-living housing residents, and that the car parking requirements would destroy the feasibility of co-living housing development. PCA suggested car parking rates in highly accessible locations close to regular public transport services should be low, arguing excessive carparking requirements often trigger the need for costly basement car parking, driving increase in rents.

PIA recommended lower car parking rates for co-living housing developments in accessible areas, and also suggested that car parking rates should be reduced in instances where car share spaces and share bikes are provided.

Unilodge and Cedar Pacific believed the car parking rate was unsuitably high for student housing specifically. UniLodge believed the proposed car parking rate would render student housing unfeasible and would not be used due to a lack of demand, as students typically do not own vehicles or motorcycles.

Randwick City Council suggested a rate of 0.2 car parking spaces per room for co-living housing within 400m of a local centre business zone. Willoughby City Council noted that the

proposed car parking rate of 0.5 car spaces per room would provide a much higher rate than applies for an RFB in the Willoughby LGA. Willoughby City Council suggested car share and electrical vehicle charging stations should be provided, and less car parking with proximity to public transport is encouraged.

4.3.4. FSR bonus

The consultation draft proposed the introduction of a 10% FSR bonus for co-living housing until August 2024.

37 submissions commented on this proposal. Two submissions (SSROC, Waverley Council) supported the proposal, 26 did not support it, and the remainder made general comments.

Of those who did not support the proposed bonus, a number (predominantly developers), did so because they thought it was not sufficient:

- Developers (including Picket & Co, UKO, Urban Revolutions, Freedom Group, Mecone NSW Pty Ltd, Six C), PCA, Urban Taskforce, the Asia Pacific Student Association, EducAT Parramatta Alliance and Mark Shapiro Architects were of the view that the proposed bonus would be too low. Picket & Co, Urban Taskforce, UKO and Mark Shapiro were of the view that the proposed bonus would make co-living housing unfeasible. The Asia Pacific Student Accommodation Association requested a “reasonable” FSR bonus for student housing. EducAT Parramatta Alliance were concerned that the proposed 10% FSR bonus would not be sufficient to facilitate affordable rents for students. Freedom Group recommended the FSR bonuses available to boarding houses under the ARHSEPP remain. PCA and Urban Revolutions recommended that the FSR bonus be increased to 25%, Six C that it should be 0.5:1.
- Four developers (Picket & Co, Scape, Urban Revolutions, Wee Hur Capital) and PCA recommended that the time limitation on the FSR bonus be removed. Willowtree Planning submitted that the time-limited bonus would not encourage long term growth of purpose-built student accommodation. Shelter NSW recommended retaining the FSR bonus after August 2024 for developments with an affordable housing component. PCA recommended that, if the deadline on the FSR bonus is retained, appropriate savings and transitional provisions be included to capture co-living housing proposed in concept development applications.
- Three developers (Picket & Co, SGCH and the owners of 263 Broadway, Glebe), recommended that any FSR bonus be accompanied by a height bonus to allow developers to realise the full FSR bonus. SGCH suggested providing that the height limit for co-living housing attracting an FSR bonus may exceed the maximum building height by no more than 3.5 metres.
- Picket & Co recommended the introduction of a 20% FSR bonus for a new category of low cost co-living housing, with aligned building heights, and applicable in all zones where co-living housing is permissible – or that internal communal space be excluded from calculation of the gross floor area.
- CHIA NSW recommended the in-fill affordable housing density bonus be extended to co-living housing.

Of the remainder of those who did not support the proposed bonus:

- Three councils (City of Sydney, Randwick, Woollahra), the AIA and COTA NSW were of the view that FSR bonuses should only be available to development that is being used entirely or in part for affordable housing.
- PIA recommended requiring that any FSR bonus provided to co-living housing be used for affordable housing in perpetuity.
- Inner West Council and Northern Beaches Council submitted that there was no justification for providing any FSR bonus. Northern Beaches Council was concerned that doing so would negatively impact local character. Inner West Council indicated that the ability to provide reduced private room sizes should be sufficient benefit.
- Willoughby Council submitted that an FSR bonus has the ability to undermine local strategic planning.
- Greens NSW recommended that FSR remains consistent with updated LEPs.
- Save Marrickville Resident Group were concerned that an FSR bonus would undermine LEP density and height provisions. In their view, density provisions should not be sacrificed to achieve affordable housing goals.
- Ku-ring-gai Council did not support any FSR bonus.

City of Sydney and Goulburn Mulwaree councils recommended that heritage conservation areas be excluded from the application of any FSR bonus.

Mosman Council and City of Newcastle Council requested clarification around how this and other bonuses in the Housing SEPP should be applied where an LEP provides for a bonus.

COTA NSW was concerned that without access to benefits, co-living housing would not be financially appealing to investors without high rents, which will put this form of housing out of reach of older people on a pension. They recommended that this bonus be reviewed prior to its expiry in 2024 to determine whether it is facilitating investment.

4.3.5. Permissibility

The consultation draft proposed that co-living housing be permitted wherever residential flat buildings or shop top housing are permitted under another EPI – except in the R2 zone.

22 submissions commented on this proposal. Of these, 20 expressed concern about one or more aspects of the proposed permissibility, with few clear trends among sectors. Willoughby Council and Waverly Council supported the proposed permissibility.

Two councils (Port Stephens, Woollahra), Urban Taskforce and two developers (Picket & Co and Mecone NSW) did not support the proposed permissibility. Port Stephens Council and Picket & Co were concerned that the proposed permissibility would significantly reduce the sites available for development. Mecone NSW did not support limiting co-living housing to zones where residential flat buildings or shop top housing are permitted.

Picket & Co recommended that co-living housing be able to be delivered in all business zones. Urban Taskforce recommended that co-living housing be permitted in all residential and business zones. Woollahra Municipal Council recommended that co-living housing only have SEPP-mandated permissibility in the B2 and B4 zones, with council able to elect whether to permit it elsewhere.

In relation to co-living housing in the R2 zone, the proposed permissibility was supported by Ryde Council, Pi Capital and Mark Shapiro Architects. Urban Taskforce submitted that the effective prohibition of co-living housing from the R2 zone destroys its feasibility. UDIA and Shelter NSW recommended permitting co-living housing in the R2 zone. PCA recommended mandating permissibility in this zone. Gus Fares Architects indicated that this form of development, if not permitted in the R2 zone with more incentives, would not be feasible. City of Newcastle Council did not support the restriction of this land use type in the R2 zone. They note that they need student housing (and therefore co-living housing) to be permissible in this zone as this is where their universities are located. PIA recommended that the permissibility of co-living housing in the R2 zone be clarified and that this housing type be permitted in that zone provided developments are capped at 12 rooms, limited to accessible areas, and have no access to any density bonus.

In relation to co-living housing in business zones:

- Camden Council recommended excluding co-living housing from B3 Commercial Core zone. In their view, the B3 zone should be reserved for commercial purposes.
- Hornsby Shire Council held the view that co-living housing should not be permitted in business zones.
- Pi Capital recommended making co-living housing permissible in the B4 and B5 zones.
- The Hills Shire Council recommended excluding co-living housing from B2 zones.

Camden Council recommended excluding co-living housing from heritage conservation areas.

4.3.6. Communal open space

The consultation draft proposed a non-discretionary development standard for communal open space (COS) of at least 20% of the site area, each with minimum dimensions of 3m.

14 submissions commented on this proposal, with 12 objections and two comments (one from Randwick City Council and one developer).

The City of Sydney, Ryde Council and Northern Beaches Council were concerned the provisions would not provide sufficient levels of COS. EducAT Parramatta Alliance were concerned that the proposed communal space requirement would not adequately support social needs of students. The City of Sydney suggested a minimum dimension of 4m, and that it be scaled so that the minimum dimension gets larger as the communal open space gets larger. Randwick City Council suggested a COS minimum of 20sqm that increases to at least 20% of the site area. Northern Beaches Council suggested a higher rate of 25%, citing the recommendation of the Council Boarding House Working Group.

Eight submissions were received from developers and peak industry groups (including Picket & Co, UDIA and PCA) who suggested the proposed requirements were excessive and would inhibit feasibility of co-living housing development. PCA argued the COS minimum should be reduced for locations in close proximity to public transport and substantial open space. UniLodge wrote that the that the COS minimums do not serve the needs of students.

4.3.7. Private room size

The consultation draft proposed a minimum room size of:

- 12sqm for a single occupant
- Otherwise 16sqm

With a maximum of 25sqm for all private rooms. All values exclude any area used for the purposes of private kitchen or bathroom facilities.

Twelve submissions commented on the proposed standards.

Two submissions (one community member, one architect) supported the proposed minimum room size.

Five submissions did not, including The Hills Shire Council who considered it to be inadequate, suggesting the minimum be 35sqm for a studio apartment or what is otherwise stated in the ADG. Gus Fares Architects suggested a minimum of 30-40 m². CHIA NSW recommended 25sqm.

UniLodge were concerned that proposed minimum room size was too high and would not best serve the needs of students and reduce yield for developers. Urban Revolutions submitted that the provisions would require co-living housing to provide larger bedrooms than residential flat buildings. Two community members suggested 10 m².

City of Ryde Council recommended that the minimum room size not be a discretionary development standard.

Three submissions commented on the proposed maximum room size. Mark Shapiro Architects supported the proposed standard. CHIA NSW recommended 35 m². Willowtree Planning recommended that no maximum room size be included, to provide flexibility.

4.3.8. Setbacks

The consultation draft proposed that front, side and rear setbacks for co-living housing development are not less than:

- for R2 zone or R2 zone—the minimum setbacks for multi dwelling housing under a relevant planning instrument
- for R4 zone—the minimum setbacks for RFBs under a relevant planning instrument

Eight submissions commented on this proposal. Of these, one submission from Northern Beaches Council supported the proposal. Northern Beaches supported linking minimum setbacks to those under a relevant planning instrument, though queried whether that meant an LEP or other EPI, noting that most LEPs do not contain setback standards.

Seven submissions objected to the proposal. The submissions argued the setbacks are too onerous and financially unfeasible.

Picket & Co suggested that setback controls be specified in the SEPP—rather than deferring to local planning instruments—to avoid confusion in the assessment process.

SJB Planning shared concern that the setback standards, as with other standards for co-living housing in the SEPP, were unclear and run contrary to the intention for ADG to be read as a guideline within a suite of controls, not in isolation.

4.3.9. Communal living area

The consultation draft proposed a communal living area requirement as a non-discretionary development standard. For co-living housing containing six private rooms, a total of 30sqm and minimum dimensions of 3m was proposed. For co-living housing containing more than six private rooms, a total of at 30sqm plus a further 2sqm for each private room in excess of six private rooms was proposed, with minimum dimensions of 3m.

10 submissions commented on this proposal. Of these, two submissions (from Ryde Council and Shelter NSW) supported the proposal.

Six submissions opposed the proposal. The City of Sydney and Blacktown City Council wrote that the proposed development standard for communal living areas were not adequate. The City of Sydney suggested the communal living area should require a further 4sqm for each private room rather than a further 2sqm. Blacktown City Council suggested specifying a minimum area for a communal living area to prevent multiple small rooms, and suggested specific requirements to encourage study/work pod areas within larger communal areas of co-living housing.

Submissions from developers and peak industry groups argued the proposal prioritised design and amenity ahead of feasibility and affordability.

Shelter NSW recommended that more specific requirements be set for communal living areas. EducAT Parramatta Alliance were concerned that the communal space required under the co-living housing provisions would not adequately support the student and social needs of students. Ryde Council stressed that communal living areas should be well ventilated and have adequate solar access, and these requirements embedded in a design guideline.

4.3.10. Height of buildings

The consultation draft did not propose a height of buildings standard for co-living housing. It is intended that the height of buildings for co-living housing will be determined by the relevant environmental planning instrument.

Five councils and one developer (Urban Revolutions) commented on this proposal. Urban Revolutions suggested that the height of buildings be allowed to increase in line with the FSR bonus for co-living housing.

City of Ryde and Shellharbour City councils recommended the height of buildings be in line with their LEPs. Northern Beaches Council and Hornsby Shire Council sought clarification that the Height of Buildings would be subject to their local LEPs.

4.3.11. Building separation

The consultation draft proposed a building separation distance to comply with the minimum building separation distances specified in the ADG, for co-living housing development exceeding three storeys.

Five submissions commented on this proposal. Four did not support the proposal, one was a comment.

UniLodge Australia did not support the proposed building separation distance being tied to the ADG, concerned that this would elevate the ADG to a firm set of quasi-statutory controls that stifle development opportunities.

Willowtree Planning noted that separation distance requirements are only one way of achieving the objectives in the ADG, and that applying those requirements as development standards would disregard alternative measures that could be used to achieve the same, or better, design outcomes.

The City of Sydney suggested determining building separation distances via merit assessment, rather than requiring compliance with the ADG.

4.3.12. Minimum lot size

The consultation draft proposed minimum lot sizes of:

- In the R2 zone – the lesser of the minimum lot size requirements for manor houses under a relevant planning instrument, or 600 m²,
- In the R3 zone – the minimum lot size requirements for multi dwelling housing under a relevant planning instrument,
- Otherwise, the minimum lot size requirements for residential flat buildings under a relevant planning instrument.

Four submissions commented on this proposal. Northern Beaches Council supported the proposed minimum lot sizes. CHIA NSW submitted that these minimum lot sizes would be too small. Picket & Co did not support the proposed minimum lot sizes as, in their view, minimum lot sizes should be set in the Housing SEPP instead of deferring to local planning instruments. UDIA was concerned that the Housing SEPP defers to LEP standards instead of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Codes SEPP) minimum lot sizes for co-living housing product types. They were concerned that this would restrict further co-living housing products.

4.3.13. Bicycle and motorcycle parking

The consultation draft proposed a non-discretionary development standard for bicycle parking of one bicycle parking space for each private room and for motorcycle parking of at least one for every five private rooms.

Five submissions commented on the proposed bicycle parking standard. Ryde Council supported the parking minimum, suggesting it would promote sustainable travel and assist accessibility. The remaining submissions did not support the proposed standard, arguing that it was excessive. UniLodge recommended that one bicycle parking space for each three private rooms would be a suitable provision for student housing.

Three submissions commented on the proposed motorcycle parking standard, with both UniLodge and Willowtree Planning submitting that the standard would be too high for student housing.

PCA held the view that the proposed standards would be too high given that co-living housing will generally be located in highly-accessible areas.

4.3.14. Private open space

The consultation draft did not propose that any private open space be required to be provided for co-living housing.

Three submissions commented on this proposal. Ryde Council supported this approach. Shelter NSW recommended mandating private open space for up to 50% of private rooms.

Northern Beaches Council recommended requiring that a minimum of 4 m² of private open space be required for each private room.

4.3.15. Management

The consultation draft proposed that co-living housing have a managing agent who provides management services 24 hours a day, including maintaining shared facilities and managing the development in accordance with a plan of management. It also proposed that an appropriate workspace be provided for a manager, either within the communal living room area or in a separate space.

Ryde Council supported this proposed approach.

CHIA NSW recommended that any requirement for an onsite manager be limited to co-living housing developments of 30 private rooms or more.

Inner West Council recommended that the manager's workspace be required to be separate to the communal living area. Cumberland City Council recommended that any area required to provide the mandatory manager's workspace be in addition to the minimum area required to be provided as communal living area.

Bungree Aboriginal Association recommended that co-living housing being targeted for Aboriginal people be exempted from the requirement for on-site management.

4.3.16. Other

42 submissions made other comments about the proposed co-living housing provisions.

PCA, Picket & Co and Pi Capital were extremely concerned about the tax and tenancy treatment of co-living housing. They noted that if co-living housing falls under the Residential Tenancies Act 2010 this would jeopardise its commercial residential status. Picket & Co also:

- sought a land tax concession for this housing type
- recommended that co-living housing not be introduced until these issues have been resolved.
- Recommended introducing a definition of "low cost co-living", for which operators would charge rent 10% below the market value of a studio for at least 10 years. Such a category should attract an ongoing density bonus and be excluded from the retention of existing affordable rental provisions and from affordable housing contributions.

Ms Jenny Leong MP and Mr Jamie Parker MP (The Greens) recommended that co-living housing be required to be affordable in perpetuity, given this housing product is likely to be primarily used by students and its access to an FSR bonus and other benefits in terms of room size, location and provision of amenities.

Shelter NSW queried why there was no minimum affordability requirement for co-living housing, and why it is being targeted towards particular demographics rather than allowing for a diversity of tenants. Blacktown City Council recommended that co-living housing include some percentage of affordable housing. A community member similarly recommended requiring affordability for this housing type. PCA suggested communal areas

be exempt from FSR calculations, but that height controls and other standards still apply to limit built form.

PCA supported the increase in the number of non-discretionary standards.

PCA recommended that any provisions which reference a DCP or Guideline in the SEPP be removed, to avoid the need to lodge a clause 4.6 variation to vary the relevant development standard. They suggested that if the ADG must be referenced as a design consideration, the relevant provision be relocated into a future design guide for co-living housing.

Camden Council recommended that the exclusion of co-living housing from the ADG be reconsidered. Ryde Council noted that the proposed provisions adopt some elements of the ADG and recommended that, for consistency, co-living housing adopt all the requirements of the ADG for studio apartments. In their view, any guidelines specific to co-living housing that do not apply to studio apartments within the ADG should be drafted in collaboration with councils to ensure optimum design outcomes and to deliver on the intention of the Housing SEPP.

The Law Society of NSW noted that the consideration of local character is subjective and is therefore not a development standard. They recommended that consideration of local character should be in a separate clause as in clause 30A of the ARHSEPP.

Maitland City Council recommended requiring three hours' solar access to 70% of rooms.

Northern Beaches Council supported the proposed link to local landscaping requirements, but queried what should occur where there was no local landscaping requirement.

HIA was concerned that the proposed controls will inhibit commercial viability.

Inner West Council recommended that the definition of non-heritage land be amended to include HCAs.

Iglu recommended that specific definitions be included for 'private room' and 'communal / cluster' rooms, with cluster rooms having a communal area of 8sqm.

COTA NSW recommended that bathrooms be required to be provided in each room.

Lake Macquarie City Council recommended that the Housing SEPP make ownership of co-living housing by a co-operative an option, rather than a building held in a single ownership.

LAHC did not support the proposed distinction between boarding houses and co-living housing, concerned this would be likely to perpetuate the stigma around boarding houses.

The University of Sydney noted that the COVID-19 pandemic has underscored the importance of good quality housing offering space and flexibility, which in their view is not necessarily delivered by this housing type.

Wee Hur Capital sought an exemption for developments which have already received Secretary's Environmental Assessment Requirements (SEARS) from DPIE.

4.4. Seniors housing

The proposed seniors housing provisions included:

- prescribed zones where seniors housing will be permissible and removal of the SCC process

- updated requirements for vertical villages, including new FSR bonuses to incentivise this form of development.
- a new land use term 'independent living unit' (ILU) to replace reference to 'self-contained dwelling' under the Seniors SEPP.
- retention of the Metropolitan Rural Area (MRA) exclusion, but allowing seniors housing in business and residential zones within the MRA.
- The moratorium on seniors housing in HCAs has been extended to 1 July 2022.
- Introduced an allowance for roof plant and lift overruns and increased height development standard to 9.5m.
- updates to the schedule of 'environmentally sensitive land'.
- updated age limit of seniors from people aged over 55 years to people aged 60 years and over.

131 submissions commented on the proposed changes to seniors housing provisions.

Peak bodies and seniors housing providers expressed general support for the proposed changes noting that they will provide greater flexibility, and certainty. Councils indicated strong concerns about some of the changes, particularly permitting seniors housing in all business zones.

Restricting ILUs in the R2 zone was the number one issue raised across all stakeholders strongly objecting to this proposal and recommending that the Housing SEPP permit all types of seniors housing in the R2 zone.

A number of stakeholders including COTA NSW, AIA, Shelter NSW, PIA, The Greens and Councils (Northern Beaches, City of Sydney, Randwick) were not supportive of the FSR bonus incentive for seniors housing along with the bonus height citing conflict with community expectations of building bulk and scale. However, peak bodies including UDIA and seniors housing providers were critical of the bonus incentive suggesting the rates of bonus are insufficient to satisfy the differing financial imperatives between independent living / aged care and developer led residential development.

Twelve submissions did not support the change to increase the minimum age to access seniors housing from 55 years to 60. Willoughby City Council and Goulburn Mulwaree Council supported this change.

UDIA welcomed the inclusion of residential care facilities as State Significant Development (SSD) under the State Environmental Planning Policy (State and Regional Development) 2011. However, they commented that the requirement for the residential care facility component of the proposed development to comprise at least 60% of the capital investment value of the proposed development is onerous and does not support the trends for co-location with ILUs or mixed-use developments.

Several submissions from seniors housing developers expressed concern that the update to the definition of environmentally sensitive land, in particular land identified as 'flood planning' could potentially exclude large areas of land from the SEPP where the actual flood hazard is minor.

4.4.1. Prescribed zones

The consultation draft proposed prescribed zones where senior housing will be permissible. to address the uncertainty over the definition of 'land zoned primarily for urban purposes' and 'land adjoining land zoned primarily for urban purposes'. The prescribed zones are Residential zones (R1-R4) and Business zones (B1-B8), RE2 Private Recreation (RE2 zone), RU5 Village, SP1 and SP2 (Hospital). The SEPP only applies to Residential Care Facilities (RCFs) in the R2 zone.

Over 35 submissions were received objecting to the exclusion of independent living units in the R2 zone. Anglicare noted that limiting the development in R2 zones only to RCFs, but not permitting ILUs, reflects a misunderstanding as to how aged care and seniors housing is delivered by aged care operators, not only to make a development feasible but also to meet the needs of our residents.

LAHC indicated they regularly use the Seniors SEPP to redevelop existing sites and that one of its key planning mechanisms is the delivery of two storey seniors housing in the R2 zone. The draft SEPP would prevent this, resulting in abandonment of a number of dwellings currently in the pipeline.

Established seniors housing developers, such as Lendlease, Uniting Care, Anglicare, Stockland, Cranbrook Care and Montefiore Homes have noted that ILUs in low density zones enables residents to age in place and have access to a broader range of care services. It is also inconsistent with emerging industry best-practice that seeks to deliver integrated seniors housing projects that co-locate a full range of accommodation and service types to provide a continuum of aged care.

CHIA NSW, UDIA, Shelter NSW, Centurion Group, Urban Taskforce, LASA, COTA NSW, PCA and HIA state that such an approach will reduce opportunities for the supply of a broad range of seniors housing in established communities. This includes regional areas, where the supply of higher density land is often limited.

Five councils (Randwick, Shoalhaven, Sutherland, Ku-ring-gai and Blacktown) objected to the exclusion of ILUs in the R2 zone identifying the delivery of seniors housing as an important part of enhancing housing choice and diversity in lower density residential areas.

Blacktown City Council and UDIA noted that existing developments would become non-conforming uses and will have to rely on existing use provisions. PCA requested that provisions be introduced recognising the existing use rights for seniors' development on R2 zoned land to support future redevelopment of outdated facilities.

CHP Link Wentworth commented that the exclusion of ILUs from the R2 zone restricts the potential for housing designed and located to meet the needs of resident in a low density residential environment that forms the majority of residential areas in cities and towns in NSW.

Hornsby Shire Council supported the exclusion of ILUs from the R2 zone noting that their concerns stem from the scale and intensity of the developments, not necessarily the type of seniors housing. They suggested that the development standard in the SEPP for R2 zoned land be based on scale and design rather than the type of seniors housing.

BaptistCare, Wesley Mission and Japara suggested allowing seniors housing developments that are operated under the Retirement Villages Act 1999 in the R2 zone. Wesley Mission

also suggested a 50 dwellings per hectare density development standard as an alternative to a blanket prohibition of ILUs in the R2 zones.

PIA suggested that if provisions are made to allow expansion on surrounding R2 zoned sites for existing seniors housing developments, adequate local character and built form controls should be ensured, through character assessment and development standards. This approach was echoed by PCA.

Port Stephens Council recommended the Housing SEPP retain SCCs for regional areas noting the criteria-based approach in the existing SEPP is an efficient, risk based approach to meeting demand for this type of development.

Metropolitan and regional councils (Randwick, Ryde, Woollahra, Willoughby, Goulburn Mulwaree) were particularly concerned with permitting seniors housing on land zoned RE2, as it would enable and accelerate the loss of recreational space. PIA recommended the need for a detailed Social Impact Assessment where senior housing is to be undertaken on land for the purposes of a registered club.

City of Newcastle raised concern that RE2 zoned land in their LGA does not have a maximum FSR or height of building control under the LEP. As such the move to prescribed zones and no stringent requirements for bulk and scale considerations in the SEPP will lead to overbearing development adjoining low density residential zones and open space.

Shelter NSW and COTA NSW recommended mandating a minimum of 10% affordable housing on seniors housing developments by a registered club.

Registered clubs such as Blacktown Workers Club and Oatlands Golf Club requested that the RE2 zone should not have any restrictions. This position was supported by Mirvac and Retire Australia.

Eight councils (Bayside, Camden, Cumberland, Ryde, Blacktown, Hornsby, Ku-ring-gai and Northern Beaches), LGNSW and PIA raised concern that permitting seniors housing in all business zones has the potential to undermine the economic and commercial function of that business zoned land. Ms Jenny Leong MP and Mr Jamie Parker MP (The Greens) also objected to seniors housing in some business zones (B5, B6, B7 and B8) as these zones do not offer the adequate services and infrastructure to support this housing type. AIA considered land in the B3, B5, B6, B7 zones to be unsuitable for seniors housing given the deserved amenity of residents in seniors housing.

Bayside Council noted that of specific concern is the B3 Commercial Core located at Eastgardens near the Botany Industrial Park (BIP). A Quantitative Risk Assessment for the BIP identifies a societal risk increasing with increasing population.

Shelter NSW considered land in the B5, B6, B7 and B8 to not be conducive to seniors housing as they lack the proper amenity, services and infrastructure that is required for this specialist housing type.

SSROC noted that the proposal to mandate seniors housing in the B3 zone is inconsistent with the zone objectives as the purpose of seniors housing is to provide residential accommodation.

Seniors housing provider Ingenia requested RU2 Rural Landscape to be included in the list of prescribed zones subject to a location and access criteria. Urban Taskforce and PCA

noted the removal of rural zones will affect the ability to develop new villages on the outskirts of regional towns where locals prefer to live.

A number of seniors housing developers (University of Wollongong, Lendlease, Southern Cross Care, Wesley Mission, Catholic Healthcare, Cranbrook Care, BaptistCare) and the NSW Vice-Chancellor's Committee recommended the SP2 zone be treated the same as the SP1 zone. In particular, they recommended that seniors housing be recognised as a permissible use in both the SP1 and SP2 zones on land which is typically owned by Australian universities. Wollondilly Shire Council noted the requirement in the SP2 zone for at least 50% of the site to adjoin a residential zone is not practical.

Wollongong City Council stated that the inclusion of SP1 as a prescribed zone should be reviewed or be more specific. The SP1 zone label is used for a range of uses where seniors housing or any form of residential uses are not appropriate including roads, cemeteries, port of Port Kembla (industrial uses). The existing nominated uses should include a residential use.

4.4.2. Location and access to facilities

The consultation draft that point-to-point transport cannot be used for the purpose of meeting the accessible location requirements for seniors housing. The proposed provisions also differentiate between accessible location requirements for RCFs and ILUs.

Northern Beaches Council supported the proposed requirements.

A number of seniors housing providers such as Opal Healthcare, Twilight Aged Care and Cranbrook Care and peak body LASA recommended that in the case of RCFs, the onus should be on the developer to ensure its residents will have access to facilities, without relying on the public transport system.

Southern Cross Care suggested that there should be greater flexibility around the requirements for access to services and facilities for seniors housing in regional areas.

Planning consultant Levy Planning noted the footpath gradients in the draft Housing SEPP are inconsistent with council standards. The Association of Consultants in Access Australia also noted that typically, existing pedestrian infrastructure have varied gradients. The gradients should be used as a guide and interpolation allowed so that other gradients are not precluded.

Newcastle City Council suggested requiring applicants to demonstrate that local services are capable of adequately servicing the needs of residents.

Senior housing providers such as Uniting, Cranbrook Care, Lendlease, Catholic Healthcare and Meg Levy planning sought clarification on the term 'directly' in the context of the location and access clause.

Ingenia supported the removal of the word 'public' from the transport service requirement, however, noted this terminology is not used consistently throughout the SEPP.

PCA suggested incorporating the use of transport access provisions for co-located developments which include both RCF and ILUs.

4.4.3. Schedule 1 – Environmentally sensitive land

The draft SEPP included an updated schedule of environmentally sensitive land exclusions for the seniors housing provisions. The proposed exclusions align the seniors housing

provisions with current environmental sensitive land constraint tools and mapping, including for coastal protection, wetlands, flooding, and bushfire prone land.

A number of Councils (Willoughby, Fairfield, Maitland, City of Newcastle) sought clarification on the definition of flood planning. Seniors housing providers such as Cranbrook Care, Knowles Group, Anglicare, Ingenia, SNL Building Constructions, Stockland, Catholic Healthcare, Uniting and LAHC raised concern that land identified as 'flood planning' will be automatically excluded, whereas currently this exclusion only applies to land identified as 'floodway' or 'high flooding hazard'. This could potentially exclude large areas of land from the Housing SEPP where the actual flood hazard is minor. Uniting suggested that a well-designed proposal could easily minimise the site flooding characteristics and deliver safe outcomes for occupants.

Lendlease and PCA noted the "open space" exclusion appears superfluous given the prescribed zones. PIA recommended the term 'open space' in Schedule 4 be defined given the different ways local governments may have classified and described this land.

Sutherland Shire Council supported the proposal to update the environmentally sensitive land exclusions and recommended the inclusion of terrestrial biodiversity, groundwater vulnerability, riparian land and watercourses and environmental and scenic qualities of natural landforms.

Northern Beaches Council considers that "bushfire prone land" that is identified in another planning instrument should also be listed as environmentally sensitive land.

Levy Planning recommended that all environmentally sensitive land maps need to be readily available on DPIE's planning portal.

DPIE's Green and Resilient Places team identified seniors housing as a sensitive land use on flood prone land, as occupants are more vulnerable, and there is a need for a higher level of planning to keep these occupants safe during a flood event. As such they suggested a 'flood prone land' clause is added to the Housing SEPP to ensure compatibility with the current local planning direction.

Greens NSW expressed that any development near flood prone land should have access to a safe and time-efficient flood evacuation route.

4.4.4. Height of building

The EIE proposed that the building height definition be consistent with the Standard Instrument LEP definition. In response to this feedback, the Housing SEPP proposed to increase height limits to 9.5m metres for ILUs and RCFs to account for building elements that are included in the building height definition under the Standard Instrument. An additional allowance for rooftop plant and machinery was also proposed in the draft SEPP.

Six councils (Northern Beaches, Mosman, Ku-ring-gai, Blue Mountains, Shellharbour, Hornsby) and LGNSW indicated general support for amending the definition of 'height' for seniors housing to be consistent with SILEP however raised concern that the height limit is generally higher than what is permissible in the R2 zone and shouldn't override established LEP standards.

Shelter NSW take the position that planning bonuses such as height have value and should therefore be linked with community benefits such as delivering a percentage of affordable

housing within each development. Additionally, they state these draft provisions require review to enable clear design and assessment parameters.

Centurion Group and Sala Solutions noted that 4.6 variations would be required to justify an increase from the non-discretionary development standards for height.

Twilight Aged Care suggested that existing LEP provisions for density and building height should prevail where seniors housing is proposed in other non-residential zones, or separate common standards introduced for these zones as well.

Anglicare recommended that the additional 2m building height allowance for mechanical plant extend to RCFs where the mechanical plant is located below the roof or between floors, as opposed to located on the rooftop only.

Levy Planning, Centurion Group, Cranbrook Care and LASA noted that the adoption of this height limit will preclude pitched roof forms.

Lendlease suggested an 11.5m height development standard only apply to land in a residential zone where residential flat buildings are permitted. Stockland suggested that consideration be given to enable the flexible application of SEPP provisions in circumstances where local controls are less onerous.

LAHC stated that consideration be given to synchronising the height limits for ILU's with LAHC's self-approval threshold by increasing the latter to 9m.

Opal Healthcare recommended incentivising good design by providing an additional 10% to the maximum building heights, if developments meet design excellence criteria.

4.4.5. Car parking

The consultation draft proposed to reduce the requirement from one car parking space per 10 beds, to one space per 15 beds for RCFs. Private car accommodation requirements for ILUs were also updated to increase the percentage of accessible car spaces from 5% to 10%. The draft SEPP also sought to clarify that not all car parking spaces are required to be delivered as 'accessible' spaces.

Lane Cove Council recommended that car parking requirements for seniors housing be set in council's DCP rather than the same standard applying across the state.

Sutherland Shire Council noted that the proposed car parking requirements provide for lower car parking rates than community expectations in outer ring LGAs. Liverpool Council echoed this stating the car parking requirements will have impacts on on-street car parking availability, which is already an issue for the community in many areas.

Willoughby City Council objected to the proposed car parking requirements, stating that they would result in a much higher provision of onsite car parking than required for a residential flat building in the Willoughby LGA. They recommended less car parking should be provided in areas with proximity to good levels of public transport.

Penrith City Council did not support the proposed provisions for different car parking rates between private developments and developments on LAHC land and requested that car parking rates are consistent for both LAHC and private dwellings.

The Association of Consultants in Access Australia objected to the provisions of the SEPP to only require 10% of resident car parking spaces be designed to enable 3.8m width. Further,

they noted the Australian standards referenced were outdated and fail to recognise the needs of older people and people with disabilities.

4.4.6. Deep soil

The consultation draft proposed a deep soil zone on at least 15% of the site area, where each deep soil zone has minimum dimensions of 6m and, if practicable, at least 65% of the deep soil zone is located at the rear of the site.

LAHC objected to this proposal stating the requirement would reduce potential yield, making redevelopment of some sites no longer financially viable.

AIA have stated that these requirements may not be practical given the nature of infill sites. A minimum dimension of 3m may be more suitable, in the location best determined by the site analysis, noting corner sites may have no dedicated rear location.

Cranbrook Care recommended the requirement of at least 65% of the deep soil zone to be located at the rear of the site be deleted.

Centurion Group noted that the deep soil requirements are not warranted, and site planning should be on orientation, solar access, reference to outlook etc.

4.4.7. Vertical villages

The consultation draft proposed the following:

- remove the requirement for an SCC to be obtained to utilise the provisions;
- remove the requirement for the provision of affordable housing in the vertical village;
- permit vertical villages where RFBs are permissible; and.
- provide the following bonus provisions for vertical villages on sites where the minimum site area is 2,000 sqm:
 - an additional 15% FSR for ILUs;
 - an additional 20% FSR for RCF;
 - an additional 25% for combined ILU/ RCF; and
 - additional building height of 3.8m
- apply a base FSR of 0.5:1 on land where an FSR not applied.

LGNSW and nine councils (City of Sydney, Randwick, Willoughby, Ryde, Woollahra, Hornsby, Ku-ring-gai, Northern Beaches and Shellharbour) opposed the proposed FSR bonuses. Northern Beaches Council also opposed the proposed additional building height of 3.8m for vertical villages as it has the potential to result in buildings up to 15.3 metres in residential flat zones where only 2-3 storey buildings (8.5-11.5 metres) are normally permitted.

SSROC recommended the vertical villages provision include additional amenity and character criteria and that the bonus height and FSR be subject to a merit assessment. In addition, they suggested the proposed bonus provisions should not be available on sites that have been the subject of a planning proposal process that resulted in an increase in height or FSR in the preceding five years.

PCA recommended that a simple, viable and more effective approach would be to apply 25% across the board to these types of developments. Seniors housing providers including Anglicare, Lendlease, Wesley Mission, Cranbrook Care, Sala Solutions BaptistCare, Uniting Care, Pathways Residences, Catholic Healthcare and Japara were of the view that the proposed bonuses would not be sufficient and would not provide as much additional FSR as is currently available under the Seniors SEPP. Uniting suggested that financial viability of seniors housing would be further reduced by introducing a minimum lot size requirement. Centurion Group recommended amending the proposed bonus structure to maintain the current bonus amounts for sites with an existing FSR of up to 2:1.

UDIA and PCA recommended the FSR bonuses apply in any zone where shop top housing is permitted. This was echoed by seniors housing providers such as Montefiore Homes, Wesley Mission, Southern Cross Care, Stockland, Lendlease, Anglicare and Uniting Care. Anglicare and Plantino Properties further suggested that bonuses should be applied where larger format developments are anticipated such as SP2 zone and business zones.

Urban Taskforce suggested the introduction of larger floor space bonuses in B3 to B8 zones to allow seniors housing to compete for land in those zones and facilitate the development of seniors housing that is conveniently located and reduce the reliance on residential care facilities.

AIA, COTA NSW and PIA objected to the removal of the affordability component requirement to access the bonus. Councils such as Northern Beaches and Randwick also raised concerns that the FSR bonuses are accessible without requiring a percentage to be affordable.

Ms Jenny Leong MP and Mr Jamie Parker MP (The Greens) were of the view that seniors housing should include affordable housing options in perpetuity. Further, any increase to FSR should only be allowed where all parts of the development are made fully wheelchair accessible.

COTA NSW supported incentivising the development of vertical villages, but stressed the importance of mandating a minimum percentage of affordable housing (such as 5%) within such developments when significant bonuses are available to the developer.

CHIA NSW recommended that the 2000sqm minimum lot size requirement be reviewed to ensure that it is feasible and does not disincentivise the development of vertical villages. Montefiore Homes suggested that while the 2000sqm minimum lot size may be appropriate for more suburban locations, it presents significant constraints for site availability near and within town centre locations within inner urban locations. Southern Cross Care suggested the minimum site area should be 1500sqm.

Retire Australia noted the current drafting is too prescriptive in referencing RCFs for vertical integrated senior housing developments that qualify and can access the bonus. As such, this proposal should be broadened to include private aged care services provided under the Retirement Villages Act.

A number of seniors housing providers (Stockland, Lendlease, Cranbrook Care, Montefiore Homes, Anglicare, Uniting Care, Catholic Healthcare, Wesley Mission, Pathways Residences and Japara) recommended the 0.5:1 default FSR on land without FSR standards be deleted as it will disincentivise seniors housing in higher density zones where prevailing built form and density controls result in development in excess of a 0.5:1 FSR.

Sala Solutions, Centurion Group, Pathways Residences, Catholic Healthcare, BaptistCare noted that providing a height bonus is in many cases just as important as an FSR bonus. Anglicare consider that any building height increase must be proportional to the increase in FSR so that bonus FSR is not curtailed by a height limit.

Hornsby Council and PIA suggested that a definition for vertical villages be provided for clarity and consistency.

4.4.8. Age limit for seniors

The consultation draft proposed to update the definition of seniors from people aged over 55 years to people aged over 60. Four submissions were received in support and nine submissions were received opposing this proposal.

UDIA and PCA objected to this proposal stating that the change to the preservation age under superannuation legislation is unlikely to affect the age at which people consider downsizing, but rather when they decide to retire. COTA NSW also objected to the proposal to increase the age stating it will impact many older people that rely on affordable ILUs that still exist within some retirement village developments in NSW.

CHIA NSW suggested the current definition for seniors be maintained while a review of the definition be undertaken to ensure it adequately reflects the range of services provided by seniors housing providers. CHIA NSW recommended that this review be undertaken in consultation with providers, including Aboriginal housing providers.

Lendlease and BaptistCare noted the proposed change will impact vulnerable groups such as 55-59 year old single women and indigenous people who the Seniors SEPP has assisted in providing affordable housing.

Ageing on the Edge suggested the existing definition be maintained including the age for seniors.

The Bungree Aboriginal Association Limited and DCJ recommended that Aboriginal and Torres Strait Islander people who are 50 years of age should be categorised as seniors as they are eligible for a range of programs and services and incentives from both the Commonwealth and NSW Government.

4.4.9. SSD Pathway for seniors housing

The consultation package proposed to amend the State and Regional Development SEPP to provide a SSD pathway for residential care facilities (RCFs), with proposed capital investment value (CIV) thresholds being:

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

A number of seniors housing providers (Sala Solutions, Opal Healthcare, Wesley Mission, BaptistCare, Montefiore Homes, Anglicare, Uniting Care, Catholic Healthcare, Southern Cross Care, Pathways Residences, Lendlease and Japara) and CHIA NSW welcomed the recognition of large seniors housing projects as SSD, however considered that the 60% requirement should be deleted, so that the SSD pathway is available for any seniors housing development that includes a RCF.

Uniting Care noted that the relatively low threshold value of \$20m/\$30m will mean there is a disproportionately large cost impost for small scale RCF developments, shifting them from

regional development to state significant, with the additional cost of preparing reports, state design review panel, etc.

BaptistCare recommended that the CIV for SSD development be reduced to \$20m throughout Greater Sydney and all other areas, in recognition of the average development costs for RCF beds for BaptistCare being approximately \$250,000 per bed.

Urban taskforce recommended that applications that include ILUs and are over a certain CIV threshold should also qualify for the SSD pathway especially if they include innovation and/or affordable disability housing.

PCA suggested that the SSD pathway should be available for any seniors housing development that includes a RCF, where the RCF has a capital investment value meeting relevant capital investment value threshold, irrespective of the contribution of the ILUs to the overall value of the development.

UDIA noted the requirement for the residential care facility component of the proposed development to have a value of at least 60% of the capital investment value of the proposed development, is onerous and does not support the trends for co-location with ILUs or mixed-use developments. They recommended that the percentage should be for any combination of Seniors housing for ILUs and residential care facilities.

Shelter NSW endorsed the introduction of an SSD pathway however take the position that planning bonuses and fast-track approval pathways have value and should therefore be linked with community benefits and delivering a percentage of affordable housing within each development.

Ms Jenny Leong MP and Mr Jamie Parker MP (The Greens) objected to the proposed SSD pathway for seniors housing developments with a capital investment value of \$20/\$30 million or more unless such developments contain a mandatory percentage (such as 30%) of affordable seniors housing in perpetuity.

Six councils (City of Sydney, Randwick, Ryde, Maitland, Northern Beaches, Blacktown) did not support the proposed SSD pathway. Blacktown Council and SSROC suggest that the threshold be increased to \$100 million, consistent with the requirements for BTR housing.

City of Sydney Council recommended they be specifically excluded from this provision given the unique function and member composition of the Central Sydney Planning Committee.

Lane Cove Council supported applying a \$30 million SSD threshold for seniors housing, stating this would align with other land uses.

4.4.10. Heritage conservation area moratorium

The moratorium on seniors housing in HCAs has been extended until 1 July 2022. While this amendment has already been made and was not included in the Housing SEPP, several submissions commented on this issue.

Six submissions were received from community members on this issue recommending the moratorium be permanently applied.

Six councils (Campbelltown, Willoughby, Woollahra, Hornsby, Ku-ring-gai and Randwick) recommend the moratorium on seniors housing in HCAs should be permanent.

Goulburn Mulwaree Council suggested the HCA moratorium should also apply to areas outside of Sydney.

Camden Council noted that an extension of the moratorium beyond 1 July 2022 may be needed to enable Council to finalise its Local Housing Strategy and make any necessary amendments to planning controls.

LASA, Cranbrook Care and Twilight Aged Care object to the HCA moratorium suggesting it be lifted with the making of the new SEPP.

PCA noted it is unnecessary to exclude RCFs from HCAs citing there are adequate protections in place for items and areas that are heritage listed under national, state, and local legislation.

CHP Link Wentworth requested the exclusion of a specific site from the HCA moratorium to facilitate the development of the site for additional affordable seniors housing.

4.4.11. Other comments

Mr Jamie Parker MP (The Greens) questioned if the requirement for restrictions on occupation to be registered against the title has been omitted from the SEPP. If that is case, then there needs to be a mechanism included in the Housing SEPP to ensure the intention of restricting occupation to seniors and people with disability and their households will be retained.

UDIA noted that the draft Housing SEPP provisions would apply to all seniors development, even where seniors housing is permitted under an LEP. They suggested that this is a concern where the LEP and DCP would provide more generous development standards and controls than the Housing SEPP.

PCA recommended the savings provisions incorporate a concept development application granted on or before the repealed day. They also requested that the SEPP include savings and transitional provisions to allow existing villages in the RE2, SP1, RU5 and R2 zones to continue to be subject to the provisions of the previous SEPP so that there is a clear planning pathway for those villages to seek planning approval to enable them to be upgraded, redeveloped or expanded over time.

Levy Planning and Sala Solutions suggested the solar access requirements be consistent with the ADG standards. AIA recommended that the term 'daylight' should be replaced with 'sunlight'; and the term 'natural ventilation' should be replaced with the term 'cross-ventilation'. LASA and Cranbrook Care suggested that solar access should be assessed against the relevant DCP controls.

Southern Cross Care recommended the landscaped area requirements for ILUs by social housing providers should provide a choice between 35m² per dwelling or 30% of the site area, whichever is less, to ensure dispensation is given to social housing providers as intended. Cumberland Council also proposed this and noted it should apply to all developers.

The Law Society suggested the SEPP should adopt the SILEP definition of gross floor area and have specific exceptions for seniors housing if that is considered necessary.

Liverpool Council supported prohibiting seniors housing in rural zones and the MRA, which will better ensure that new development is close to necessary services to support residents.

The Hills Shire Council recommended excluding seniors housing from the B2 zones particularly where located within the MRA.

Wollondilly Council considered that where a council has determined that seniors housing is permissible with consent within the MRA, then the Housing SEPP should apply.

Blue Mountains City Council stated that council should remain exempt from the seniors component of the proposed Housing SEPP, instead relying on local provisions to plan for local needs.

Water NSW recommended that the Housing SEPP reinstate existing clause 28 under the Seniors SEPP relating to sewer and water. This will ensure that suitable water and sewerage infrastructure is available to service the development.

The Association of Consultants in Access Australia have noted that AS4299 referenced within the SEPP is redundant and should be removed. Further, there has been many advances in technology regarding lighting, telecommunications, electrical appliances, and more affordable lifts hence there are items within the SEPP should be reviewed. The Australian Network for Universal Housing Design recommended the SEPP be drafted on the basis that the NSW Government implements the NCC Livable Housing Design standard (Silver) in the NCC in 2022.

Seniors housing providers including Lendlease, Uniting Care, Wesley Mission and Stockland advocated for an appropriate FSR and building height incentive clause that provided for renewal of ageing villages.

Blacktown Council have requested that for the purposes of seniors housing, the Housing SEPP take precedence over the requirements of the Growth Centres SEPP that apply specifically to the Blacktown LGA.

Bayside Council recommended that existing clause 40(4)(c) of the Seniors SEPP that limits developments to one storey in the rear 25% of the site be reintroduced.

Southern Cross Care and PCA recommended preserving the ability to subdivide land within B3 zones, to support the feasibility of seniors housing in areas of greater density by enabling developers to subdivide and sell parts of the site. Southern Cross Care also recommend the Housing SEPP apply to state heritage listed sites as the design of seniors housing developments on such sites is carefully considered during the development application process.

AIA held the view that in terms of ground floor uses clarity be provided on the suitability of uses such as car parking and non-residential components such as communal living areas. Further clarity is also needed on how the requirement for fire sprinklers in RCFs can be satisfied in the development application process. They also strongly recommended the comprehensive site analysis clause is reinstated. The suggestion to reinstate the site analysis requirements was also supported by Shelter NSW.

Urban Taskforce and Sala Solutions suggested that planning panels be created to determine seniors housing applications and should include experts in the operations, social impact as well as architects with experience in the design of seniors housing.

Sutherland Shire Council requested the section 94 direction be reviewed to exempt only the social housing floor space/components of each seniors housing development provided by a social housing provider from developer contributions.

Seniors housing provider Vasey Communities recommended the removal of the ADG statutory weighting.

4.5. Secondary dwellings

4.5.1. Secondary dwellings in rural zones

A new optional clause 5.5 was introduced into the SILEP in 2021 to give councils options to set a maximum size for secondary dwellings in a rural zone and the maximum distance a secondary dwelling in a rural zone can be located from the principal dwelling. The consultation draft inserted this optional clause 5.5 into the LEPs of councils that have elected to adopt this optional clause.

Byron Bay Shire Council's submission sought to insert this optional clause following a Council resolution.

Bayview & Ingleside Residents Association and two community member submissions expressed concern that the insertion of clause 5.5 to certain local environmental plans in this way was at odds with information provided in DPIE's frequently asked questions document and that councils should be required to lodge a planning proposal to introduce size limitations to secondary dwellings on rural zones. They also noted discrepancies with the reference to Pittwater LEP.

Wollongong City Council supported the inclusion of the previously nominated secondary dwellings standards for secondary dwellings on rural zoned land.

Hornsby Shire Council noted the amendment is in accordance with Council's adopted position and is supported.

Greens NSW noted that provisions must be made in the SEPP or elsewhere that allow councils to gain additional rates revenue when second dwellings are erected.

The Hills Shire Council noted that a separate planning proposal seeking to achieve the same development outcome has now been finalised and the SEPP is not needed to amend the Hills LEP to reflect the rural secondary dwellings size criteria.

Willoughby City Council reiterated their objection to the proposed amendments to clause 4.6 proposed by DPIE earlier in the year allowing clause 5.4 *Controls relating to miscellaneous permissible uses* to be varied.

HIA supports the proposal for councils to have the discretion to set a maximum size and distance from the principal dwelling for secondary dwellings in rural zones.

NSW Department of Primary Industries recommended reinstating size restrictions for secondary dwellings. They were concerned that councils would be allowing larger secondary dwellings in rural zones by setting a separate control than what currently applies to residential land.

4.5.2. Minimum lot size

Landcom recommended that minimum lot size requirements be reduced to allow greater diversity. DCJ queried whether it would be possible to reduce the minimum site area from 450 m² to 425 or 400 m² to enable greater take-up.

Shellharbour City Council recommended that the minimum lot size requirement of 450 m² for attached or detached secondary dwellings requiring development consent under ARHSEPP be adopted by the Housing SEPP. The Housing SEPP proposed that this minimum lot size be a non-discretionary standard for detached secondary dwellings and a requirement for accessing a complying development pathway for attached dwellings.

UDIA was concerned that the non-discretionary standard of a minimum lot size of 450 m² for detached secondary dwellings would preclude secondary dwellings on smaller lots and particularly those that have a rear lane and narrow frontage. They advised that this is currently a commonly delivered product.

4.5.3. Secondary dwelling size

DCJ supported the proposed secondary dwelling maximum floor area.

Landcom recommended that the maximum floor area be increased to 70 m². In their experience, this would be more useful as a housing type suited to more households so that the home could include more than one bedroom.

City of Ryde Council recommended that councils be able to set the maximum size of secondary dwellings across all zones; not just rural zones.

HIA recommended the introduction of a sliding scale for secondary dwelling size that references lot size for secondary dwellings in residential zones.

4.5.4. Flood control

Goulburn Mulwaree Council noted that most rural areas do not have flood studies because they are not feasible due to low development levels, and that the availability of data to inform flood studies is often limited. They noted that complying development in areas without flood studies presents an increased risk to human safety in more isolated locations, and recommended that, in the absence of a flood study:

- either a flood assessment should be undertaken, or
- the development should require consent.

Forbes Shire Council noted that the proposed flooding controls go beyond what is required under many development control plans across the State. They recommended amending the Housing SEPP to refer to DCPs.

DPIE's Resilient Places team recommended that the development standards for flood control lots be amended to:

- Make clear that pedestrian access to a refuge needs to be above the probable maximum flood (PMF), or to replace the word "refuge" with "area".
- Update the language outlining a requirement for a joint report from a hydraulic engineer and a civil engineer to bring it into line with Local Planning Direction 4.3 (Flooding).

Correct the terminology for ARI and update the definition of flood planning level to reflect current use.

4.5.5. Other

Canterbury Bankstown Council and Fairfield City Council indicated that secondary dwellings are a major issue within their LGAs. SSROC and Canterbury Bankstown Council recommended that the Housing SEPP:

- limit the number of bedrooms in secondary dwellings to two,
- require the provision of off-street car parking for this housing type,
- require dedicated private access that does not impinge on the privacy or the private open space of either dwelling

Canterbury Bankstown Council recommended that outbuildings and covered ancillary development attached to secondary dwellings not be permitted, as they have potential for conversion to additional rooms which exceed the maximum allowable floor area. Fairfield City Council recommended only permitting secondary dwellings where there is one other detached structure on the site; that any enclosed ancillary structure be included in the maximum floor area of a secondary dwelling; and that any open ancillary structure such as an alfresco area be limited to 12 m². SSROC recommended that ancillary development be prohibited altogether.

Canterbury Bankstown Council recommended that secondary dwellings be required to comply with the Livable Housing Design Guidelines.

SSROC, Canterbury Bankstown Council and Fairfield City Council recommended that minimum private open space be required for secondary dwellings under the SEPP.

Shellharbour City Council recommended that additional car parking be required for secondary dwellings.

The Institute for Sustainable Futures, University of Technology Sydney, suggested allowing more flexible multi-household configurations, for example two dwellings of equal sizes.

Sydney Water requested that secondary dwellings over 60 m² continue to be referred to Sydney Water and not be processed as complying development.

UDIA recommended that the cumulative impact of development, design, and resilience (bush fire) standards for secondary dwellings be modelled to understand the impacts on financial feasibility.

4.6. In-fill affordable housing

4.6.1. Duration of use as affordable housing

The Housing SEPP proposed that the gross floor area of in-fill affordable housing being used for the purposes of affordable housing must be used for that purpose for a minimum of 15 years – an increase from the 10 years currently required under ARHSEPP. 26 submissions commented on this proposal.

Councils almost unanimously supported the proposal. Six councils (City of Sydney, Woollahra, Randwick, Inner West, Canada Bay, Blacktown) supported increasing the duration of affordability to 15 years but recommended that it be required in perpetuity. NSW Greens, SSROC, Canterbury Bankstown Council, Greens NSW and Shelter NSW similarly recommended that in-fill affordable housing be used for this purpose in perpetuity. Greens NSW noted that such a requirement would be consistent with Schedule 1, principle 6 of the Housing SEPP.

CHIA NSW also supported the proposal but recommended that the mandatory affordability period be longer, in the order of 15 to 20 years.

City of Ryde Council, SMEC, SGCH and Smith & Tzannes also supported the proposal. SMEC noted that many CHPs will have 10 year finance terms so extending the mandatory affordability duration period may impact their ability to refinance.

The proposal was not supported by the PCA, UDIA, Landcom, Southern Cross Community Housing, DANCOM Builders and Old for New Pty Ltd. PCA considered that the existing 10 year term is fit for purpose and should not be extended. Landcom was concerned that this requirement may be restrictive for CHPs wishing to dispose of assets to better manage their residents and their property portfolio.

BaptistCare and the Catholic Archdiocese of Sydney recommended that feasibility modelling be undertaken to determine the likely impacts of this amendment on the supply of affordable housing. University of Sydney indicated that they were potentially supportive of the proposal, however they were unaware of the evidence base for the proposal.

Wollongong City Council was uncertain how this timeframe would be enforced. Ryde Council and CHIA NSW were concerned that there was no requirement for securing the affordability requirement via registration on title. SSROC, Canterbury Bankstown Council and Old for New Pty Ltd supported a requirement for registration of the mandatory affordability period on title.

4.6.2. FSR bonus

The Housing SEPP proposed to retain the FSR bonus already being offered for in-fill affordable housing under the ARHSEPP, and introduce a requirement that any additional FSR be used for the purposes of affordable housing.

12 submissions commented on the FSR provisions for in-fill affordable housing, however they did not relate to the specific proposed change.

Ms Jenny Leong MP and Mr Jamie Parker MP (The Greens) did not support any FSR bonus given the time-limited mandatory affordability period for this housing type.

PIA recommended that additional FSR provided by any bonus be required to be used for affordable housing in perpetuity.

Inner West Council recommended that the FSR bonus not apply in heritage conservation areas.

Camden Council queried why the in-fill affordable housing FSR bonus was capped at 20% when the bonus for boarding houses was being increased to 25%.

The Hills Shire Council was concerned about the application of a density bonus to manor houses and terraces, and the potential for non-compliance with local controls and the vision for the Sydney Metro Northwest Corridor.

PCA, CHIA NSW, DCJ, BaptistCare and Catholic Archdiocese of Sydney noted that it was often difficult to achieve the full allowable FSR bonus without a height bonus. They recommended such a height bonus be introduced.

4.6.3. Other

Twenty-five other submissions were received in relation to the in-fill affordable housing provisions of the Housing SEPP.

- The Housing SEPP proposed to continue the existing requirement under the ARHSEPP for at least 15% of a site area to be set aside as deep soil zone, with at least 65% of the zone located at the rear of the site (if practicable), but to increase the minimum dimension of this zone from 3m to 6m. PCA and LAHC opposed the proposed change to the minimum dimension. AIA held the view that these requirements may not be practical, and recommended a minimum 3m dimension in the location best determined by the site analysis. CHIA NSW recommended retaining the existing deep soil requirements under the ARHSEPP for development by not-for-profit CHPs. SGCH recommended excluding residential flat buildings from the proposed increase in the minimum dimension of deep soil zones. and reducing the percentage of the site area required to be set aside as deep soil zone from 15% to 7% to align with ADG requirements.
- Mosman Council did not support the reduced landscaped area compared to that required by local planning instruments. Smith & Tzannes recommended deleting the landscaped area standard and replacing it with a 25% COS as per the ADG.
- Sutherland Shire Council and SMEC supported the proposed changes to minimum dwelling sizes. PCA, Common Equity NSW and Southern Cross Community Housing did not support these changes. LAHC did not support the introduction of new minimum floor areas for dual occupancies and multi-dwelling housing.
- PCA, Landcom and CHIA NSW were concerned that the accessibility requirements may exclude development of in-fill affordable housing outside Sydney, Newcastle and Wollongong. Common Equity NSW did not support the proposed accessible area requirement.
- PCA recommended that the in-fill affordable housing provisions be extended to all sites in regional centres that are in proximity to transport services or town centres, regardless of zoning.
- Mosman Council and Fairfield City Council did not support reduced onsite car parking for this housing type compared to those required by local planning instruments. Fairfield City Council noted that low density areas of its LGA are poorly serviced by public transport and that residents are reliant on private vehicle use to access essential services. Wollongong City Council recommended that the car parking standard be higher for regional / non-metropolitan areas.
- PCA recommended that the requirement that bonus FSR be used for the purpose of affordable housing be removed.
- Inner West Council supported the design requirements for this housing type, but recommended that further clarification be provided to assist the development application process. SMEC was concerned that the proposed “local character” clause would be unclear and open to misuse. Shelter NSW recommended the provision of more guidance and clear criteria around the assessment of a development’s compatibility with its local area. CHIA NSW recommended the establishment of an

industry working group to jointly prepare guidelines that address how developers can achieve the best development and housing outcome while addressing community concerns.

- SSROC recommended amending the minimum site area requirement to align with council lot size controls. In their view the current requirement is inadequate to accommodate the proposed dwellings, setbacks to adjoining residential land, private open space and landscaped areas, driveways and vehicle manoeuvring areas.
- SSROC also recommended allowing for consideration of LEP FSR standards, rather than the Low Rise Housing Diversity Design Guide. They were concerned that reference to that design guide would allow for greater FSR than envisaged under council LEPs.
- University of Sydney recommended undertaking sensitivity testing to ensure that private providers will continue to take up the incentives being offered given the extended affordability period requirement.
- Landcom recommended that in-fill affordable housing be allowed on heritage land.
- UDIA was concerned that the proposed development standards would be onerous and would severely impact feasibility of affordable housing development.
- Smith & Tzannes recommended reducing solar access for affordable dwellings to 2 hours, in line with the ADG.
- UDIA and SMEC noted that the Seniors Living Policy referred to was out of date.

4.7. SEPP 70

Four submissions referenced affordable housing contributions, including three from councils.

The City of Newcastle suggested the policy allow for a flat rate of affordable housing contributions within an LGA. The thinking behind the request was to streamline the ability of Council to charge a rate without having to prepare multiple planning proposals for different sites.

Picket & Co mirrored these comments however further suggested the flat rate be prepared in the SEPP rather than deferring to a local provision in an LEP.

Inner West Council, and the Inner West Council's Housing Affordability Advisory Committee (in a separate submission) both recommended that affordable housing contributions be directed to a council's affordable housing fund (where established) to enable the contributions to be re-invested into the development of new affordable housing in the same LGA which generated the contribution.

4.8. Retention of existing affordable housing

The Housing SEPP did not propose any substantive changes to the existing ARHSEPP provisions for the retention of existing affordable housing.

Ms Jenny Leong MP and Mr Jamie Parker MP (The Greens) supported the measures outlined in these provisions to ensure that councils continue to address the loss of existing affordable housing by requiring monetary contributions, including allowing councils to levy monetary contributions to offset the loss of dwellings that were low-rental at any time within the 5 years preceding the lodgement of the development application. However, they

recommended that additional assistance be provided by the State government to councils to help them develop affordable housing schemes and deliver affordable housing.

PIA recommended that a consent authority, when considering a development application to demolish, alter or change the use of a building used partly or entirely as affordable rental housing, consider whether a development would be likely to replace housing for people on very low incomes with housing for people on low or moderate incomes. In their view, such a provision would ensure that a diversity of affordable housing would be provided and retained across the income spectrum.

DCJ recommended expanding these provisions to regional centres in light of the current housing affordability issues across NSW – in their view, this would allow local councils to collect levies for the loss of affordable housing.

Inner West Council recommended that development contributions for affordable housing be transferred to the council associated with the development where the council has: (a) a dedicated Affordable Housing Fund or (b) where the council wishes to offer the contribution to a CHP willing to invest the proceeds to development new affordable housing in the local government area from which the contribution was generated.

City of Newcastle Council expressed concern that the provisions did not include stringent requirements for the provision of affordable accommodation in the same area as the affordable accommodation being replaced.

DCJ also recommended that the prescribed requirements for the imposition of conditions requiring affordable housing contributions include a reference to the Guidelines for the Retention of Existing Affordable Rental Housing and the Environmental Planning and Assessment (Planning Agreements) Direction 2019.

4.9. Residential flat buildings (social housing providers, public authorities and joint ventures)

The Housing SEPP did not propose any substantive changes to the existing provisions at Division 5 of the ARHSEPP.

Ms Jenny Leong MP and Mr Jamie Parker MP (The Greens) expressed concern about the 10 year mandatory affordability period for this housing type being too short in high-value locations. Liverpool City Council recommended that the mandatory affordability period be extended to at least 15 years, to align with the proposed in-fill affordable housing provisions.

SSROC, Canterbury Bankstown Council and Fairfield City Council did not support the use of site compatibility certificates for this housing type, concerned that it would result in development inconsistent with council master plans and would not ensure good planning outcomes for the community.

DCJ recommended expanding these provisions to include additional regional towns and development by or on behalf of Landcom.

5. Feedback on matters not included in the consultation package

5.1. Build-to-rent housing

The consultation draft did not include the BTR housing provisions, which were introduced in February 2021. Despite this, a number of stakeholders provided comments on BTR housing.

5.1.1. SSD pathway

The regulatory framework for BTR housing currently provides an SSD pathway for BTR housing development with a capital investment of more than \$100 million (Greater Sydney region) or \$50 million (elsewhere) provided certain conditions are met.

City of Sydney Council, City of Canada Bay Council and City of Ryde Council expressed concern about this pathway. City of Ryde Council recommended that councils remain responsible for assessing BTR housing in their local government areas, given the built form was similar to residential flat buildings. In their view, councils are best placed to assess the building form and character. City of Canada Bay Council recommended increasing the CIV threshold for this approval pathway.

5.1.2. BTR housing in the B3 zone

BTR housing is currently permitted in the B3 zone under the ARHSEPP.

City of Canada Bay Council, City of Sydney Council, Parramatta Council, Ryde Council and Camden Council were opposed to allowing BTR housing in this zone. Ryde Council considered this land use inappropriate in this zone. Camden Council indicated that if this provision was to be retained, they would recommend BTR housing be retained for this purpose in perpetuity, to prevent the possibility of strata residential units on commercial land.

City of Parramatta Council recommended prohibiting BTR housing in the B3 zone in perpetuity.

5.1.3. Subdivision of BTR housing

Under the ARHSEPP, subdivision of BTR housing is prohibited in perpetuity in the B3 zone, and for 15 years elsewhere.

City of Ryde Council and City of Canada Bay Council objected to the 15-year prohibition on subdivision on land other than in the B3 zone. Ryde Council was concerned that allowing for subdivision removes valuable rental supply from the market. City of Canada Bay Council recommended that this prohibition remain in place in perpetuity for all BTR housing in all zones.

5.1.4. Other

City of Ryde Council recommended that the same car parking rates be applied to BTR housing as to residential flat buildings, including an allowance for car visitor parking. The Hills Shire and Camden councils recommended that car parking be determined by the relevant LEP or DCP. Blue Mountains City Council recommended the introduction of a mechanism to ensure that BTR housing would not be available for short term rental accommodation.

5.2. Group homes, caravan parks and manufactured home estates

The existing caravan parks, manufactured home estates and group homes provisions will be transferred generally in their current form to the Housing SEPP when it is made, with a comprehensive review of these provisions to take place later in 2021. The existing provisions were not included in the consultation package.

Despite this, 16 submissions were made in relation to group homes, and three in relation to caravan parks and manufactured home estates. These submissions will be considered when the review of these provisions takes place.

5.3. STRA

At the time of the exhibition of the consultation package, a new regulatory framework for short term rental accommodation had been made but not yet commenced.

In relation to this new regulatory framework, Blue Mountains City Council recommended the introduction of a mechanism to ensure that boarding houses, co-living housing and BTR housing would not be available for short term rental accommodation.

University of Sydney recommended that LGAs with tight rental housing pressures be permitted to prevent conversion of existing or new homes to STRA in certain circumstances.

5.4. Adaptive re-use of existing development

Meriton and Urban Taskforce recommended the inclusion of a pathway for conversion of serviced apartments to residential flat buildings. Urban Taskforce recommended that such a pathway be time-limited and that there should be no requirement to comply with the updated ADG.

UDIA recommended a broader approach, in the form of a flexible assessment pathway to enable adaptive re-use of serviced apartments/hotels, office and commercial buildings for affordable, diverse and seniors housing.

5.5. Other

Ms Jenny Leong MP and Mr Jamie Parker MP (The Greens) expressed concern that the Housing SEPP will preference investors and developers at the expense of renters and other homemakers, and will not ensure the development of a range of affordable housing which will remain affordable into the future. They were particularly concerned that the Housing SEPP will incentivise the delivery of increasingly small dwellings with minimal amenity under the guise of affordability. They recommended that the Housing SEPP guarantee a high proportion of affordable housing in perpetuity across various housing types.

The **Registrar of Community Housing** and DCJ recommended that, whenever there is a statutory requirement for housing to be affordable and managed by a registered CHP:

- the development consent must state that the affordable housing is to be managed by a registered CHP;
- the NSW Affordable Housing Ministerial Guidelines must be applied; and
- the affordable housing must demonstrate to the satisfaction of the Registrar that the housing is being used for the purposes of affordable housing; and
- Registrar of Community Housing be informed of the development, and

- evidence of an agreement with a registered community housing provider must be provided,

prior to issue of an occupation certificate. CHIA NSW supported these recommendations as they relate to in-fill affordable housing, and recommended that they be secured through registration of a restriction on title.

Liverpool Council and Blacktown Council observed that the **relationship between the Housing SEPP and other SEPPs** needs to be clarified. They noted that the current drafting of many SEPPs (including the Housing SEPP and the Growth Centres SEPP), states that each SEPP prevails to the extent of any inconsistency with another SEPP. Blacktown Council pointed to a recent Land and Environment Court case¹ which they believe highlighted the need for clarity with respect to which SEPP takes precedence. Western Sydney Airport recommended that it be made clear that in the case of an inconsistency between the Housing SEPP and the Aerotropolis SEPP, the Aerotropolis SEPP takes precedence. Southern Cross Care recommended that the aviation safeguarding provisions of the Aerotropolis SEPP be clearly identified to take precedence over the provisions of the Housing SEPP.

Canterbury Bankstown Council was of the view that principle 2 of Schedule 1 (**Affordable housing principles**) is inconsistent with the proposed affordable housing definition, as it only caters for very low, low and moderate income households, not high income households. They recommended that principle 2 be amended to replace “representative of all income groups” with “representative of very low, low and moderate income groups”.

The Registrar of Community Housing, DCJ and Landcom recommended removing principle seven from Schedule 1 (Affordable housing principles). The Registrar observed that the principle’s restriction on the use of rental income would be unnecessary, as registered CHPs would be sufficiently regulated under the National Regulatory Code, and that this principle would unduly restrict private sector involvement in the provision of affordable housing. Landcom observed that this would save consent authorities from having to consider rental income for affordable housing when determining development applications.

Bungree Aboriginal Association was concerned that the Housing SEPP did not appear to give consideration to an **Aboriginal and Torres Strait Islander** housing perspective. In their view, the proposed provisions do not take into consideration how Aboriginal communities are currently delivering services and programs. They noted that the draft SEPP does not include any definitions of Aboriginal people or any categories of purpose-built dwellings suitable for Aboriginal people.

Mosman Council opposed **FSR bonuses** for in-fill affordable housing, boarding houses, co-living housing and seniors housing. They were concerned about bulk and scale, resident amenity and traffic impacts, as well as increased demand on local services.

DCJ:

- Noted that affordable and social housing projects are highly sensitive to cost burden imposed by development controls. New provisions under the Housing SEPP should not further restrict where new affordable housing can be delivered. They also recommended that any changes to existing provisions support improving **viability**

¹ Principal Healthcare Finance Pty Limited v Blacktown City Council [2021] NSWLEC 1247

and increasing yield, for example, by providing for height bonuses where FSR bonuses are provided.

- Recommended that aim (3)(c)(iii) refer to all affordable housing providers, not just LAHC.
- Recommended that the Secretary of DCJ be included with the other housing agencies in the definition of "social housing provider" in the Dictionary, as they remain a housing agency.

UDIA recommended that a **10 year timeframe** for properties to be held as affordable be applied across the Housing SEPP to align with investment decisions and enable operators to deliver a pipeline of projects.

UDIA also recommended **modelling** of the impacts of:

- new or more stringent design requirements on development feasibility for affordable housing developments,
- FSR bonuses, to ensure they are encouraging affordable housing,
- the proposed standards on the financial feasibility of secondary dwellings,
- the standards and guidelines on the feasibility of seniors living projects.

PCA was concerned about the exclusion of co-living housing, affordable housing and seniors housing from the R2 zone, and the impacts this would have on medium to high density residential areas.

The Hills Shire Council recommended that clarification be provided regarding what "more onerous standards" means, in relation to **non-discretionary clauses**, for example, in relation to car parking and design standards.

In relation to the **savings** provision in Schedule 6, the Law Society of NSW was concerned that it may be difficult for users engaging the provision to know what weight should be given to provisions of the Housing SEPP that prohibit certain land uses (e.g. boarding houses and ILUs in the R2 zone). They recommended amending the savings provision to expressly provide that no weight should be given to any provision of the Housing SEPP, to the extent that it prohibits a certain land use.

Picket & Co was concerned about the lack of clarity around savings and transitional provisions. They recommended providing for a five plus year transition to the new SEPP. Landcom recommended that transitional provisions defer the application of new provisions for two years to allow for the lodgement and determination of development applications on foot. Alternatively, this could apply to Landcom's sites only (scheduled within the Housing SEPP).

The Hills Shire Council noted that requiring certain types of development to be in close proximity to a business zone may not always correlate with conveniently accessible public transport. PCA and UDIA NSW recommended that further consideration be given to the way **accessible locations** are defined.

LAHC requested:

- That their self-approval thresholds be amended to reduce the total number of dwellings to 40, but increase the height limit to 15m where this height is allowable under a relevant LEP.
- That the ARHSEPP definition of 'consent' be transferred to the Housing SEPP.

- That clause 6(2) of the ARHSEPP be reinstated to make clear that residential development is taken to be for the purposes of affordable housing if the development is on land owned by LAHC.

DCJ queried whether elements of the **self-assessment** pathway set out for LAHC boarding houses in might be extended to Landcom.

Liverpool Council recommended that LAHC developments be exempted from affordability requirements only where more stringent obligations in relation to affordable housing and community outcomes apply to these types of development.

Greens NSW noted that there is no mention of building standards that promote **energy efficiency** or allow for heat mitigation. A community member noted the importance of ensuring the environmental sustainability and climate resilience of housing.

The Institute for Sustainable Futures, University of Technology, suggested the development of **other affordable housing typologies**, including "small-scale multi-household developments" and "cohousing". A community member supported the introduction of "cohousing". Cohousing Australia recommended the introduction of a definition of cohousing, a resident-led and resident-managed housing model able to be applied to a range of dwelling sizes and types. A community member noted that the need to provide for housing diversity for all different family sizes is a serious omission.

Blue Mountains City Council was generally unsupportive of the Housing SEPP. In their view, council is best placed to meet local needs, through local provisions informed by its local housing strategy and Local Strategic Planning Statement. They were concerned that the new housing types would increase the regulatory burden for councils. They also observed that the Housing SEPP is very Sydney-centric, and does not seem to have given consideration to the differences between regional and metropolitan NSW.

Inner West, Hornsby Shire and Goulburn Mulwaree councils recommended that the **definition of non-heritage land** be updated to include land within a HCA.

SGCH recommended declaring developments by not-for-profit CHPs **SSD** where projects are valued over \$50m and the housing will be held and operated as affordable housing for a minimum of 15 years. In their view, this would mirror the planning pathways for BTR housing and mixed-use Communities Plus projects, but at a lower threshold. This lower threshold would reflect the scale and size more appropriate for larger stand-alone social and affordable housing projects being brought forward by individual CHPs.

Hornsby Shire Council recommended that no exemptions from **section 7.11 or 7.12 development contributions** be permitted for particular land owners.

Penrith City Council was concerned that the Housing SEPP does not go far enough to consider or include mechanisms to increase **affordable housing for purchasers**.

Woollahra Municipal Council considered the standards in the Housing SEPP to be favourable to developers, and recommended that they be excluded from the application of **clause 4.6** of the SILEP.

Picket & Co recommended that **affordable housing contributions** be set in the Housing SEPP and not deferred to LEPs, and that 'low cost co-living' should be excluded from any requirement to pay affordable housing contributions.

Campbelltown City Council raised strong concerns about increasing the **number of housing types** beyond the existing 33, which in their view would increase the complexity of the existing planning framework and hinder the efficient delivery of housing in NSW.

Ageing on the Edge recommended that 20% of new social housing builds be dedicated to older people in need.

A community member observed that increases in electric charging requirements particularly for cars had not been well considered. They recommended that **shared car** space management be included.

A community member noted that **government-owned land** should remain public land and be used for public benefit.

6. Response to the submissions

All feedback provided in the submissions received in response to the consultation draft has been carefully considered. This section sets out the changes that have been made to the Housing SEPP in response to this feedback. Other changes may be adopted in response to ongoing review of the policy.

6.1. Overarching matters

The following overarching changes have been made to the Housing SEPP:

- All forms of affordable housing under the Housing SEPP will be required to be notified to the Registrar of Community Housing, be managed by a registered CHP, apply the NSW Affordable Housing Ministerial Guidelines, demonstrate to the satisfaction of the Registrar that the housing is being used for the purposes of affordable housing, and evidence of an agreement with a registered community housing provider must be provided prior to issue of an occupation certificate.
- The car parking standards across the Housing SEPP have been amended as follows:
 - For BTR housing in Greater Sydney, boarding houses, co-living housing – 0.2 car parking spaces must be provided per dwelling, boarding room or private room in accessible areas, otherwise 0.5 spaces are required – unless an LEP or DCP specifies a requirement for a lower number of spaces, in which case that lower number applies.
 - The undefined term “land zoned primarily for commercial purposes” has been replaced with “land in a business zone” throughout the SEPP.

The standardised car parking provides certainty to industry and is more in line with encouraging active and public transport use.

- Some controls for co-living housing and boarding houses have been amended from standards that cannot be used to refuse consent to matters that the consent authority must consider.

6.2. Boarding houses

The following changes have been made to the proposed boarding house provisions:

- The proposed definition has been amended to include a reference to a building “or place”.

- The definition of “social housing provider” has been omitted from this part – there will no longer be separate standards for development by social housing providers.

6.3. Co-living housing

The following changes have been made to the proposed co-living housing provisions:

- Co-living housing will be permitted with consent wherever RFBs or shop top housing are permitted.
- Building separation requirements will be a consideration for the consent authority, rather than a development standard that needs to be complied with. The wording of this standard will also be changed to apply the requirements to buildings of “3 or more storeys”, to ensure consistency with SEPP 65.
- It has been clarified that compatibility of a development with the local character is not a development standard but a matter that should be considered by a consent authority.
- A note has been added to the Housing SEPP to advise that the co-living provisions may be used by off-campus student housing providers.

6.4. Seniors housing

The following changes have been made to the seniors housing provisions:

- It is proposed to permit LAHC, and providers that operate under the Retirement Villages Act 1999 to develop ILUs in the R2 zone.
- Land zoned SP2 Infrastructure and RE2 Private Recreation can be developed for seniors housing if it adjoins any prescribed zone. This will not be limited to land that adjoins residential zoned land.
- Application of vertical village provisions has been extended to land where shop top housing is permissible, and in the B3 Commercial Core zone. This change responds to feedback from seniors housing providers and peak bodies concerned that the existing provision prevents the bonus being used in all business zones where shop top housing is the primary form of residential accommodation.
- The minimum site area for vertical villages has been reduced to 1500 m².
- The term ‘directly’ to access and facilities be replaced with ‘on-site’ for clarification.
- The SEPP will no longer include a base FSR of 0.5:1 where an FSR is not specified by an LEP. Where the site does not have an FSR, the applicant can negotiate a built form outcome based on building envelopes and other council controls that apply to the site.
- Schedule 4 has been amended to exclude the development of seniors housing on land where clause 5.22 of the Standard Instrument applies. All LEPs include compulsory flood planning provision which will apply to all seniors’ development where a potential flood risk may exist. The proposed amendment only excludes the development of seniors housing where it may be considered as sensitive and hazardous development due to the flood affectation on the land.
- Several submissions expressed confusion regarding the definition of the term “vertical villages”. It is proposed to address this issue by reframing the vertical village provisions as bonuses for seniors housing.
- The SSD pathway has been broadened to apply to any form of seniors housing that has a value of 100% of the CIV of the proposed development. Part of the 100% of the CIV of the development that is seniors housing must include an RCF. The non-

seniors housing component must not involve development that is prohibited under an EPI applying to the land.

- The height standards are being increased to 9.5m to reflect what would be available in an LEP. In higher density zones the SEPP bonuses are available in addition to LEP Height and FSR controls.
- The minimum dimension for deep soil zones is being reduced from 6m to 3m.
- Clause 28 'Water and sewer' from the Seniors SEPP.
- Definition of gross floor area now excludes space for the loading and unloading of goods and access to that space.
The solar access requirement has been reduced from 3 hours to 2 hours to be consistent with the ADG.

6.5. Secondary dwellings

The following changes have been made to the secondary dwelling provisions:

- It has been made clear that it is a non-discretionary standard that the number of parking spaces provided on a site on which a secondary dwelling is built is the same as the number of parking spaces on the site immediately before the development was carried out.
- A typographical error in the reference to the Pittwater LEP has been amended.

6.6. BTR housing

The Housing SEPP has been amended to:

- Require that a consent authority be satisfied that it would be reasonably possible for a BTR development in a B3 zone to undergo a change of use to another land use permitted on the land under an EPI before granting development consent.
- Enable greater flexibility at ground floor in business zones, provided active street frontages are not negatively impacted.

6.7. Other matters

The Housing SEPP has also been amended to:

- Introduce provisions which will enable the reversion of serviced apartments to RFBs, where the building was originally approved and constructed for that use. The consent authority must not consider the ADG in determining such an application.
- Reduce the minimum dimension for deep soil zones for in-fill affordable housing from 6m back to 3m.
- The aims of the SEPP have been reviewed to reflect the concepts and language of the NSW Housing Strategy 2041 and the draft State Planning Principles.
- The SEPP 70 principles have been amended to considerations, and principle 7 (restriction on the use of rental income) has been omitted in response to feedback from the Registrar of Community Housing.
- The LAHC self-assessment pathway has been amended to allow self-assessment of residential development with a maximum building height of 9 m.
- Save environmental impact statements for which environmental assessment requirements have been issued by the Secretary of DPIE prior to the commencement of the Housing SEPP for as long as they remain valid.