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Creating for Generations

Property Council of Australia
ABN 13 00847 4422

Level 1, 11 Barrack Street
Sydney NSW 2000

T. +61 2 9033 1900
E. nsw@propertycouncil.com.au

propertycouncil.com.au
 @propertycouncil

20 May 2021

Ms Sandy Chappel
Director Housing Policy
Department of Planning, Industry and Environment
Locked Bag 5022
PARRAMATTA NSW 2124

Email – housingpolicy@planning.nsw.gov.au

Dear Ms Chappel,

Housing SEPP 2021 – Co-Living

The Property Council of Australia welcomes the opportunity to provide comments on the proposed co-living provisions of the Housing Diversity State Environmental Planning Policy.

As Australia's peak representative of the property and construction industry, the Property Council's members include investors, owners, managers and developers of property across all asset classes. This submission has considered the views of many of our members feedback and provides comments for consideration.

The Property Council acknowledges the Department has listened to the feedback provided to it during the recent EIE exhibition and has actively sought to talk with many of the developers and operators of "Next Generation" boarding houses.

We have identified three (3) threshold issues that unless satisfactorily addressed, will have a significant impact on the financial feasibility of the economic model for this housing type. The proposed changes to the definition of boarding house, FSR changes and land use permissibility are critical issues that must be addressed in our view to retain the current diverse and affordable housing supply.

Should you have any questions regarding the content of this submission, please contact Lauren Conceicao, NSW Deputy Executive Director, on lconceicao@propertycouncil.com.au or 0499 774 356.

Yours sincerely



Jane Fitzgerald
NSW Executive Director
Property Council of Australia

PROSPERITY | JOBS | STRONG COMMUNITIES

Submission to the Department of Planning, Industry and Environment

Housing SEPP 2021: Co-Living

20 May 2021

1.0 Introduction

The Property Council welcomes the opportunity to provide comments to the Department on the revised provisions that are intended to apply for co-living development. These changes are being proposed to supplement those set out in the Department's Explanation of Intended Effects (EIE) released in July 2020.

1.1 Housing diversity

We support the Department's efforts to establish a planning framework that will increase the supply of diverse housing typologies. The scope of the EIE addressed many housing types including those allowed by:

- *State Environmental Planning Policy (Affordable Rental Housing) 2009*
- *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*
- *State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes)*

Recently many local councils have undertaken the preparation of their local housing strategies and many have identified a shortage of diverse housing types for singles, couples, seniors and very low to low-income earners. In the absence of provisions within local plans to deliver these types of housing, the above State instruments are needed to facilitate diverse housing types.

1.2 Changes to proposals exhibited in EIE

It is intended to amend the current definition of boarding house to require that these developments to be affordable. The Department has relied on advice provided by the Council Boarding House Working Group (CBHWG) and is seeking to impose a requirement that boarding house rooms are affordable. The definition of a boarding house was to be amended so that it would become an "affordable rental building" managed by a not-for-profit community housing provider (CHP).

Since the introduction of planning controls for "Next Generation" boarding houses in July 2009 under *State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP)*, there have been a significant number of proposals developed across Sydney. As at 2014, there were more than 770 boarding houses registered by the Department of Fair Trading in NSW. More than 80% of these being located in Greater Sydney. These play an important role in the supply of an affordable alternative for low-income earners compared to renting an apartment at market rents.

Unlike traditional rental accommodation, a boarding house can include shared facilities such as a communal living room, bathroom, kitchen and laundry. Some boarding houses are let to tenants furnished which can assist a tenant by reducing the significant upfront costs of purchasing furniture and household appliances. Most boarding houses do not offer car parking allocated to every room, which contribute towards lower rents for tenants.

Another important point of difference between boarding houses and the private rental market, is the operation of a boarding house is regulated under the *Boarding Houses Act 2012* and the *Boarding Houses Regulation 2013*. Tenants and landlords are not subject to the provisions of the *Residential Tenancies Act 2010*.

All of these factors contribute to next generation boarding houses playing an important role in Sydney's housing picture. Often described as "micro-apartments", these premises will typically have fewer shared facilities compared to a "traditional" boarding house and may be let at market level rents due to the self-contained facilities and modern condition of the buildings.

It is our view that “Next Generation” boarding houses pay a small but nonetheless important role helping to improve housing affordability across Greater Sydney and other parts of NSW. A concern from our perspective, is the lack of both qualitative and quantitative data on “Next Generation” boarding houses. We suggest that in the Department needs to fully understand how this housing type contributes to increasing the supply of affordable accommodation for low and middle-income earners. **For this to occur it must collect more evidence and make those statistics publicly available.**

Following the release of the EIE in July 2020, it is understood the Department has made a number of amendments to the provisions relating to boarding houses and the proposed co-living category of housing. A presentation to stakeholders dated May 2020, detailing proposed changes, is the basis of the following comments. Those changes can be described as threshold issues and additional issues. We provide the following comments in respect of those changes:

2.0 Threshold Issues

The EIE that was released for consultation in July 2020 proposed a number of significant policy changes to the operation of Division 3 of Part 2 of the ARH SEPP. These changes will have a fundamental impact on the financial viability of “Next Generation” boarding house developments.

It is our position there are three (3) policy changes that are threshold issues that, if adopted, will have the perverse outcome of reducing housing diversity and contributing towards reduced housing affordability.

2.1 Boarding House and Co-Living Definitions

The Department has proposed the following reforms to the current boarding house provisions:

- (a) The boarding house definition is to be amended to require boarding house development to be “affordable”.
- (b) It is proposed to introduce a new definition of co-living in the Standard Instrument LEP that would refer to a building held in a single ownership.

The changes effectively shutdown the existing planning pathway for “Next Generation” boarding houses and open a new pathway that does not work from a financial viability perspective.

It is also relevant to note that a change as simple as renaming ‘boarding house’ to ‘co-living’ would have major ramifications on adjacent legislation (particularly around taxation) and devastate the investment proposition for this sector.

A ‘boarding house’ is a defined legal term that is recognised in taxation legislation and Foreign Investment Review Board (FIRB) requirements. As such, both foreign and domestic investors can receive favourable GST treatment, and foreign investors are permitted to invest in boarding houses through Managed Investment Trusts and pay a lower rate of withholding tax. This makes Australian co-living (when developed under the boarding house provisions) the ‘highest and best use’ for sites in NSW and supports the growth of this sector.

Co-living is not a recognised term in taxation legislation and FIRB requirements and as such it would not qualify for treatment as ‘commercial residential’. This means there would be unfavourable GST treatment for local investors and a blanket prohibition by foreign investors in co-living. This means that co-living (when developed under the boarding house provisions) would no longer be the ‘highest and best use’ and would bring investment in this asset class to a standstill.

We recommend the Department fully consider the impact that the changes to these definitions will have on the viability of the affordable rental housing market.

2.2 Land Use Zoning

Currently, the boarding house provisions of the ARH SEPP apply to a wide range of land use zones, including residential zones (R1, R2, R3 and R4) and business zones (B1, B2 and B4).

Having regard to the May 2021 presentation to stakeholders, the Department is proposing to only permit co-living development in zones where the following land use types are permissible:

- Residential Flat Buildings (typically R3 and R4 zones)
- Shop-top housing (typically B1, B2, B4 and B5 zones)
- Multi-dwelling housing (typically R3 and R4 zones).

These changes being proposed will result in a significant reduction in the availability of land for the development of this alternative type of housing. Proponents undertaking the development of co-living developments will have to compete against larger residential developers for available development sites. We understand that these changes will severely reduce the ability for developers of co-living developments to find suitable development sites to provide for this unique housing type.

2.3 Floor Space Ratio

The current planning controls that apply to “Next Generation” boarding houses involve the application of a density bonus – that is applied pursuant to clause 29(1)(c) of the ARH SEPP.

The density of a boarding house development, expressed as a Floor Space Ratio (FSR), will be the greater of the following:

<ul style="list-style-type: none"> • Land where residential accommodation is permitted on the land. 	The existing maximum FSR for any form of residential accommodation permitted on the land,
<ul style="list-style-type: none"> • Land within a zone where no residential accommodation is permitted on the land. 	The maximum FSR for any form of development permitted on the land,
<ul style="list-style-type: none"> • Land within a zone in which residential flat buildings are permitted. 	The maximum FSR for any form of residential accommodation permitted on the land plus 0.5:1, if the existing FSR is 2.5:1 or less or 20% of the existing maximum FSR if the existing maximum FSR is greater than 2.5:1.

The Department has proposed the removal of the density bonus for “Next Generation” boarding houses (apart from those that are let as affordable housing at below market rents) and proposes the maximum FSR will be in accordance with the Local Environmental Plan applying to the land.

2.4 Cumulative impact of changes

The Property Council acknowledges that many communities have strong views against the development of “Next Generation” boarding houses because of their bulk and scale, inconsistency with local character, lack of off-street carparking and in some cases, because of operational and management issues. These views have seen many proposals refused by local authorities and appeals to the NSW Land and Environment Court, where many have been approved.

Over the past ten years, the NSW Government has provided several concessions to local government to address growing community concern about boarding house developments:

- **May 2011** – inclusion of a local character clause (clause 30A),
- **February 2019** - a size restriction (12 rooms maximum) for boarding houses in the R2 Low Density Residential zone.
- **June 2018** - increased car parking requirements for boarding houses not carried out by social housing providers.

The proposed changes to definitions, land use zones and floor space ratio will contribute to further erosion of the financial viability of “Next Generation” boarding houses that will ultimately result in the loss of this housing typology. We recommend the Department reconsider these changes in order to result in a significant decrease in housing diversity.

3.0 Non-Threshold Issues

The Department is proposing several other changes to the planning controls within the ARH SEPP that will apply to co-living housing, which include:

- Car parking – maximum of 0.5 spaces per room or the parking requirement under the number of spaces under the DCP or LEP for multi-dwelling housing in zones R2 & R3 and for RFB in all other zones.
- Minimum 1 bicycle and 1 motorcycle per 5 rooms,
- Minimum room size – 12m² for single room and 16m² in any other case,
- Maximum room size – 25m²
- Minimum of 35m² communal space plus 15m² per 5 rooms above 6 rooms
- Communal Open Space – 25% of site area with a minimum dimension of 3 metres
- No requirement for private open space.

The Property Council has previously raised concern with the Department with respect to other policy changes to the parking requirements for boarding houses. We have objected to increases in car parking rates for highly accessible locations close to regular public transport services and locations with good access to amenities and services. We have also raised with the Department the consequences of excessive carparking requirements that often will trigger the need for basement carparking, which ultimately increases the rents paid by tenants and impacts affordability.

The requirements for communal open space also have a significant cost implication on the feasibility of boarding house developments. Requiring 25% of the site area to be provided as communal outdoor space can be challenging for some developers, particularly in locations with high site acquisition costs. We suggest that there be a reduced rate applied to locations that are located in 800m distance of areas of regional open space or substantial areas of local open space.

The other design-related changes will have varying degrees of impact on individual proposals. However, unless the threshold issues are resolved, it is unlikely that there will many proposals for co-living housing proposed under the revised planning controls.

4.0 Conclusion

The Property Council welcomes the opportunity to provide comments to the Department on the updated planning controls for co-living housing. We acknowledge the Department has listened to the feedback provided in response to the recent EIE exhibition and has actively sought to talk with many of the developers and operators of “Next Generation” boarding houses.

We have identified three (3) threshold issues that unless satisfactorily addressed, will have a significant impact on the financial feasibility of the economic model for this housing type. The proposed changes to the definition of boarding house, FSR changes and land use permissibility are critical issues that must be addressed in our view to retain the current diverse and affordable housing supply.

We encourage the Department to continue its engagement with the development industry and, in particular, the developers and operators of these housing products, as it prepares its final advice to the Minister for his consideration.