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11 September 2020

Mr Jim Betts
Secretary
Department of Planning, Industry and Environment
Locked Bag 5022
PARRAMATTA NSW 2124

Dear Mr Betts

Explanation of Intended Effect for a new Housing Diversity SEPP

The Property Council welcomes the opportunity to provide the Department with comments on the Explanation of Intended Effects (EIE) for a new Housing Diversity State Environmental Planning Policy (SEPP). The release of the EIE, in conjunction with the Department's broader planning reform agenda, are welcome initiatives that will assist in the recovery of the housing sector, as well as the broader economy, after the COVID-19 induced recession.

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. We recognise, in particular, the economic significance of residential construction with recent analysis by the National Housing Finance and Investment Corporation revealing that every \$1 million of residential construction supports nine jobs.

Policy objectives

The intention of the draft SEPP to facilitate the delivery of housing that meets the needs of the State's growing population is broadly supported and inclusion of three new emerging housing typologies – Build-to-Rent, student housing and co-living – into the planning system is welcome. As the housing continuum continues to evolve to meet changing household preferences, it is essential that the proposed policy balances the importance of recognising and defining these different housing types while still facilitating innovation and diversity in housing typologies. Rigid or onerous planning requirements could impede the emergence of these new housing forms.

The policy also seeks to consolidate three existing housing-related State environmental planning policies to streamline the planning system by reducing the number of State policies. This aspect of the proposal is also supported, subject to our comments below.

Build-to-Rent as a stimulus measure

The Government's interest in Build-to-Rent housing, demonstrated through land tax concessions, identification as State significant development and recognition of the need for specific design requirements, is very positive. As you know, BTR is well-established internationally, providing long

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term rental accommodation and a better rental experience via improved security of tenure and higher quality stock.

Given Build-to-Rent will be a new housing product in the NSW context, we urge the Government to be as flexible as possible when establishing the planning provisions and strongly encourage accelerating the Build-to-Rent aspects of the EIE to support jobs and deliver much needed housing supply as we work our way through the COVID-19 induced recession. A similar approach was undertaken in the United Kingdom during and after the global financial crisis where the government recognised the role Build-to-Rent could play as a counter-cyclical measure which kept housing being delivered and kept critical jobs in the property and construction industries.

impact for seniors housing and other specialised housing types

It is unfortunate that the positive aspects of this proposal are in part, undermined by a number of other changes proposed to the Affordable Housing SEPP and the Seniors Housing SEPP that will significantly reduce the supply of specialised housing types intended for seniors, people with disabilities and key workers.

In particular, the SEPP does not apply to heritage conservation areas within the Greater Sydney Region (until at least 1 July 2021) and metropolitan rural areas in the Greater Sydney Region. Amendments to the policy, that were not subject to public consultation, were made recently to exclude the policy's operation in these areas.

There is a clear need for more appropriate housing for seniors across all of Sydney. Diversity of housing choice should reflect the demand for housing types that accommodate our ageing population, and be located close to services, health and transport infrastructure. The automatic exemption from the state-wide planning rules will encourage Councils to avoid implementing the development local planning controls for these much-needed diverse housing types.

We urge the Department to reconsider these changes and instead look at how local Councils can use their strategic planning work underway to seek exemptions from the provisions of State planning controls.

Other considerations

In addition to the issues noted above, the following matters should also be addressed in order for the SEPP to be able to achieve its aims of supporting the supply of diverse housing in NSW:

- There is a need to recognise that the economic conditions have changed due to the COVID-19 induced recession, and as such it is critical that consideration be given to fast-track or accelerate planning approvals to stimulate and incentivise development of the diversity of housing stock this strategy seeks to enable the market to deliver.
- The Housing Diversity SEPP must be an enabler of housing diversity and provide detailed planning controls that override local planning controls where they are inconsistent with the relevant local council LEP.
- Housing diversity must reflect the diverse needs between city dwellers, and those who live in rural and regional areas - there is not a 'one-size-fits-all'.
- It should be acknowledged Build-to-Rent housing, student housing and co-living are different from traditional apartment developments. They have more communal than private spaces, they need to accommodate tenants moving in and out in their design of corridors and stairs, and require lower off-street parking rates, recognising locations tend to be close to public transport and residents more likely to utilise car-share options.
- There are some inconsistencies between local, state and state to state regulations (i.e. between boarding houses and co-living) that require resolution. We acknowledge the efforts to do this,

but further work is required. In addition, in order to deliver on the outcomes being sought, State policy must prevail over local provisions.

- The scope of this proposed housing diversity SEPP is very broad and will impact many businesses across the housing continuum. Therefore, we urge the Department to consider a staged approach to the implementation of these changes to provide industry to adjust to the new arrangements.

These points are discussed further in our submission. Furthermore, we request that the draft instrument should be publicly exhibited once it has been drafted by Parliamentary Counsel, and we would be happy to provide further feedback throughout this process.

If you have any questions regarding the content of this submission, do not hesitate to contact Troy Loveday, NSW Policy Manager, on 0414 265 152 or tloveday@propertycouncil.com.au

Yours sincerely



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Property Council of Australia

Submission to the Department of Planning, Industry and Environment

Explanation of Intended Effects for a new Housing Diversity SEPP

11 September 2020

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1.0 Introduction

The Property Council welcomes the Government's commitment to planning reform and the release of the EIE for a new Housing Diversity SEPP.

1.1 Timely response to COVID-19 induced recession

As the Productivity Commission Green Paper notes, the NSW planning system is currently failing to deliver economic outcomes, resulting in a failure to deliver enough housing over many years.

The Government's commitment to planning reform is crucial in ensuring NSW emerges from the COVID-19 induced recession in a stronger economic position and with more productive and efficient policy settings.

If implemented effectively, the proposed Housing Diversity SEPP – particularly the recognition of Build-to-Rent housing – will support jobs and deliver much needed new housing. Recent analysis by the National Housing Finance and Investment Corporation indicated that every \$1 million of residential construction supports nine jobs¹.

1.2 Need for greater housing diversity in Sydney & NSW

In June 2020, the NSW Government released a discussion paper for "a Housing Strategy for NSW". The strategy would form a whole-of-government approach to meeting the housing needs of the community for the next 20 years and beyond. Government and industry data indicate that housing needs and preferences of the community have changed over time and will continue to change.

Housing diversity is a broad concept and includes diversity for many different parts of the community, including the housing needs of older people, younger people, different cultural groups, household types, different types of housing tenure from social housing, to affordable rental housing to home ownership. The Housing Diversity SEPP should balance the importance of recognising and defining different housing types, with the importance of allowing flexibility in policy settings to encourage innovation and dynamic responses to changing consumer preferences.

The need for a more diverse mix of housing types and tenures is just as important in regional and rural NSW as it is in the Greater Sydney region. However, the planned response in regional and rural areas must recognise the unique nature of the demands arising from population change, and the ability of markets to deliver that change in these areas. In other words, it is not a one-size fits all solution for the whole of NSW and it is important this is part of the strategic planning framework.

1.3 Need for alignment between State and Council planning objectives

It is very clear that many SEPPs have been introduced over the last 40 years (see Appendix 1) to address the critical issue of housing diversity that was not being delivered through council-led local planning. Our planning framework must be designed with sufficient strategic vision and flexibility to allow the market to respond to the ever-changing needs of households and families and deliver housing that matches these demands.

This is an issue of strategic and economic significance and should rightly remain within the State Government's control. We are concerned that the proposed policy will downgrade the status of State planning controls and they will become less impactful and place much needed housing diversity at risk. It is concerning that many of the detailed design requirements and development standards will become more localised as those standards will now be determined by councils.

¹ National Housing Finance and Investment Corporation, Building Jobs: How residential construction drives the economy, June 2020

1.4 Implementation

The Housing Diversity SEPP must be an enabler of housing diversity and provide detailed planning controls that override local planning controls where they are inconsistent with the relevant local council LEP. It is vital that the State Government provide a pathway in the planning system for the implementation of greater housing diversity especially where councils and their local plans fail to deliver that diversity.

There are aspects to the policy that will require more direct intervention by the State Government if local councils are not supportive of the housing types allowed by the SEPP. We strongly argue that the three emerging housing types, Build-to-Rent housing, student housing and co-living, will fail to attract investment unless they have certainty and clarity regarding their planning requirements. They will need appropriate design standards without being constrained by highly prescriptive design obligations imposed by local councils.

Given the very broad scope of the proposed changes, consideration should be given to implementing the SEPP in stages. This would allow for the many changes being made progressively implemented rather than all at once.

We would welcome the opportunity to provide the Department with constructive feedback on the proposed legal instrument after the Parliamentary Counsel Office has finalised its drafting.

Should the Department be seeking to establish a working group to provide advice regarding the policy's implementation, we would have members with technical expertise and industry knowledge who would be willing to assist with this process.

1.5 Recommendations

Below is a summary of the recommendations the Property Council has provided for the Department's consideration. Each of these recommendations relates to issues raised throughout the body of this submission.

Build-to-Rent

- 1) Define Build-to-Rent in the new SEPP but ensure this definition and the related planning requirements do not impede the flexibility and innovation required to support the emergence of this new housing type.
- 2) Ensure that local councils cannot mandate a certain number of dwellings in Build-to-Rent housing to be rented at affordable rents separate from any obligation to provide affordable housing under a SEPP 70 Affordable Housing Contribution Scheme.
- 3) Not proceed with a 3-year minimum tenancy for Build-to-Rent as part of this SEPP as this is not a valid planning consideration.
- 4) Seek to provide incentives to encourage long-term institutional investment in Build-to-Rent housing and less focus on its transition to Strata-subdivision.
- 5) Mandate Build-to-Rent as permissible uses within the B5-Business Development and B6-Enterprise Corridor zones.
- 6) Ensure that the SEPP provides an opportunity for a reduced rate of off-street carparking in locations that are near frequent public transport services.
- 7) Ensure that local councils cannot impose additional off-street carparking requirements for visitor parking.
- 8) Consider opportunities for a reduction in off-street carparking requirements where provision is made for car share services within a Build-to-Rent housing development.
- 9) Provide a temporary reduction in the threshold for State Significant Development from \$100 million to \$50 million for a period of 5 years following the SEPP's commencement.
- 10) Consider opportunities to encourage local councils to fast-track Build-to-Rent housing projects during the COVID-19 recovery period.

- 11) Review the proposed exemption from State Significant Development for the entire City of Sydney LGA and have a consistent SSD threshold applied across the State with no areas carved out from this requirement.
- 12) Consider incentives or discounts from full infrastructure contributions whilst Build-to-Rent housing is still an emerging housing typology.
- 13) Undertake stakeholder consultation with the advice on specific design issues for Build-to-Rent housing as soon as possible.
- 14) Revise the definition of Build-to-Rent housing for regional NSW that refers to a smaller number of dwellings.
- 15) Consider mandating Build-to-Rent as a permissible use for the R1, R2, RU5 and B2 zones in Regional NSW.
- 16) Reduce the SSD threshold to projects over \$20 million for regional parts of NSW.

Student housing

- 17) Clarify the definition for student housing regarding what is meant by teaching periods and if the housing can be used outside of formal university terms or semester periods.
- 18) Identify areas close to tertiary institutions where student housing could be provided under the Housing Diversity SEPP using Site Compatibility Certificates or mandated zones where this type of housing will be permissible.
- 19) Apply a merit-based approach to communal and open space requirements, rather than fixed requirements.
- 20) Lead a process with local councils in regional NSW to identify any shortage in student accommodation with a view to identifying the appropriate locations to allow student housing to be developed.

Co-living Housing

- 21) Refer to studies or evidence to justify the recommended room size or clarify the range of acceptable room sizes for co-living housing developments as between 18sqm and 28sqm.
- 22) Consult with local councils with regard to business zones (B2 and B3) where small co-living housing developments would be compatible with local character.
- 23) Impose a reduced carparking rate of 0.2 spaces for each room.
- 24) Provide guidance for applicants in the form of examples of what it considers acceptable practices for meeting these requirements.
- 25) Extend the updated FSR bonus that will apply to affordable boarding houses to co-living housing developments.
- 26) Provide a set of standardised design guidelines for co-living housing that will prevail over any local requirements.

Affordable Housing

- 27) Not proceed with the proposal to change the current threshold for retention of low-rental dwellings beyond those as at 28 January 2000.
- 28) Not proceed with the proposal to require applicants to demonstrate that buildings do not contain low-rental dwellings affected by this clause.

Seniors Housing

- 29) Ensure that councils benefiting from the current heritage conservation area moratorium implement their strategic planning work before the current moratorium expires on 1 July 2021.
- 30) Review the current prohibition applying to seniors housing in the MRA to make it temporary and provide a defined expiry date.
- 31) Undertake further consultation regarding the review of environmentally sensitive land to be included in Schedule 1.
- 32) Allow for consideration of point to point transport services and ride sharing services for the purpose of meeting accessibility requirements.

- 33) Not proceed with this requirement that a registered club must be a registered club at the time the application for a site compatibility certificate is made.
- 34) Retain the long-standing requirement that the provisions of a State policy prevail over local provisions in the event of an inconsistency.
- 35) Provide further clarification regarding the proposed clause 4.6 and 20% cap to be applied to development standards in the Seniors SEPP.

Social Housing

- 36) Require LAHC to refer to the most up to date requirements and advice from Transport for NSW regarding carparking rates.

Miscellaneous

- 37) Include a savings and transitional arrangements clause in the instrument.
- 38) Include the prohibition on Seniors Housing within the MRA as part of this post-implementation review.

2.0 New Housing Types

The EIE introduces three new housing types, Build-to-Rent housing, purpose-built student housing and co-living, which are proposed to be allowed under the new SEPP.

Further consideration of each housing type is provided below. We would welcome the opportunity to review and provide feedback as the guidelines for these new housing types are developed further.

2.1 Build-to-Rent

We applaud the Government's leadership in recognising the important role Build-to-Rent housing can provide in NSW's housing supply continuum. As set out in the EIE, Build-to-Rent is well-established internationally, providing long term rental accommodation and a better rental experience via improved security of tenure and higher quality stock.

Given Build-to-Rent will be a new housing product in the NSW context, we urge the Government to be as flexible as possible when establishing the planning provisions – this will allow the market to respond and evolve to customer needs and enable this asset class to emerge and flourish over time. We include more specific comments below.

We would also strongly encourage accelerating the Build-to-Rent aspects of the EIE to support jobs and deliver much needed housing supply as we work our way through the COVID-19 induced recession. This includes the proposed State Significant Development approach set out in the EIE, although we would recommend a lower capital investment value threshold during the COVID-19 recovery period. Unlike a typical build-to-sell medium or higher density development, Build-to-Rent does not rely on pre-sales as a financing option. This means it can be launched much more quickly fuelling economic activity and job creation as well as provide housing supply in circumstances where it might otherwise not eventuate.

2.1.1 Proposed definition

The EIE has proposed the following definition for Build-to-Rent housing:

“a building or place that:

- (a) contains at least 50 self-contained dwellings that are offered for long term private rent;*
- (b) is held within a single ownership;*
- (c) is operated by a single management entity; and*
- (d) includes “on-site management”.*

This definition is generally supported, however we note that:

- with respect to the 50 dwellings minimum – note that care will need to be taken with this element of the definition to ensure that a Build-to-Rent asset can be included where the dwellings are held in more than one building, but are still within the same project (e.g. townhouses and apartments within the same project). The Department should also consider a reduced number of dwellings for regional areas (refer to section 2.1.6 below).
- with respect to the management requirements – overwhelmingly Build-to-Rent assets will have a single manager, but it will be important to ensure asset owners are free to determine whether they deliver management and building services internally (provided by the asset owner) or by external managers.

Recommendation 1: The Department should define Build-to-Rent in the new SEPP but ensure this definition and the related planning requirements do not impede the flexibility and innovation required to support the emergence of this new housing type.

2.1.2 Proposed planning provisions

Local council affordable housing requirements

The Government has recognised that Build-to-Rent housing delivers a new form of at-market rental product which provides greater diversity of choice for people who rent.

Concerningly, Table 1 of the EIE notes that with respect to the Build-to-Rent category, local provisions will apply concerning affordability. Given the emerging nature of the Build-to-Rent product, we do not support local councils being authorised to impose requirements for a proportion of a development to be offered at reduced rents. Should there be any obligation to contribute to an existing affordable housing contribution scheme, it should be at the developer's discretion whether that obligation is satisfied through a monetary contribution or dedication of land/dwellings.

Recommendation 2: The Department should ensure that local councils cannot mandate a certain number of dwellings in Build-to-Rent housing to be rented at affordable rents separate from any obligation to provide affordable housing under a SEPP 70 Affordable Housing Contribution Scheme.

Minimum tenancy requirements

Table 1 of the EIE indicates that a minimum tenancy of 3 years will apply to rental dwellings. This is not consistent with the preferences of tenants, who would prefer the flexibility of shorter leases with the knowledge that the institutional ownership model behind Build-to-Rent housing provides them security of tenure.

Furthermore, the length of a tenancy should not be a planning consideration for Build-to-Rent housing.

Recommendation 3: The Department should not proceed with a 3-year minimum tenancy for Build-to-Rent as part of this SEPP as this is not a valid planning consideration.

Minimum hold period

As Build-to-Rent housing developments are to be held in single ownership, the EIE proposes a restriction on Strata-subdivision for a term of at least 15 years (except for the B3 – Commercial Core zone where strata subdivision will be prohibited in perpetuity).

While we understand the intent behind requiring a minimum hold period, we believe this is unnecessary given the long-term investment horizons of the institutional investors in Build-to-Rent housing.

In the event that a minimum hold period is deemed essential, the EIE does not provide any explanation to indicate why a 15-year restriction on Strata-subdivision was selected. A shorter timeframe, say 10 years, may be suitable in some situations. Covenants to hold Build-to-Rent for this time period (as happens elsewhere) could be deployed to achieve this, especially if it has greater recognition in the planning system.

We do not believe there needs to be any mechanisms incorporated in the SEPP to manage the transition from Build-to-Rent housing to a strata-subdivided apartment development – in particular, there should be no requirement for a minimum percentage of dwellings to be retained as affordable housing given Build-to-Rent housing is an at-market product. Furthermore, providing tenants with a right to buy could discourage institutional investors who are seeking long term safe cashflows. This type of condition of consent would limit the growth of Australia's Build-to-Rent sector.

Recommendation 4: The Department should seek to provide incentives to encourage long-term institutional investment in Build-to-Rent housing and less focus on its transition to Strata-subdivision.

Locations and zones

The EIE has suggested that Build to Rent would be compulsory permitted uses in the following zones:

- R4 – High Density Residential zone,
- B3 – Commercial Core,
- B4 – Mixed Use and
- B8 – Metropolitan Centre zones.

It would also be permitted in R3 Medium Density Residential zone where residential flat buildings are permitted. We support the proposal to mandate Build-to-Rent housing in identified land use zones.

Councils that identify shortages of land for employment land uses should be able to seek exclusion of Build-to-Rent housing from their business and employment zones where they can demonstrate there will be a significant impact upon their ability to meet jobs targets.

Consideration should also be given to allowing Build-to-Rent housing as permissible land uses in the B5 - Business Development zone & B6 – Enterprise Corridor zone where it would not be inconsistent with the zone objectives and where those zones are close to public transport corridors.

Recommendation 5: The Department should mandate Build-to-Rent as permissible uses within the B5-Business Development and B6-Enterprise Corridor zones.

Parking requirements

The EIE has indicated that carparking would be required at the minimum rate of 0.5 spaces per dwelling. This requirement may be appropriate in some locations, however there will be many other locations where off-street carparking should be imposed as a maximum requirement. Many areas where a Build-to-Rent housing development will be developed will be in close proximity to a frequent public transport service and a reduced rate of car parking would be a more appropriate outcome.

Recommendation 6: The Department should ensure that the SEPP provides an opportunity for a reduced rate of off-street carparking in locations that are near frequent public transport services.

There should be no additional visitor parking required and if visitor parking is to be included in the development, it should be dual spaces provided for both residents and their visitors.

Recommendation 7: The Department should ensure that local councils cannot impose additional off-street carparking requirements for visitor parking.

Build-to-Rent housing developments that also make provision for car share services (such as Go Get, Car Next Door and the like) should be taken into consideration for a reduction in their overall off-street carparking obligations. Many residents of this type of housing are less inclined to own a private motor vehicle and would prefer to either use a car sharing or ride sharing services.

Recommendation 8: The Department should consider opportunities for a reduction in off-street carparking requirements where provision is made for car share services within a Build-to-Rent housing development.

2.1.3 State Significant Development pathway

The EIE has identified a Capital Investment Value (CIV) threshold of \$100 million that will determine if a development can proceed through the State Significant Development (SSD) assessment pathway.

We welcome this aspect of the proposal that will allow large Build-to-Rent housing proposals being categorised as State significant development. The proposed CIV threshold will only

capture the largest Build-to-Rent proposals (300 plus dwellings) which would ordinarily be reasonable. However given one of the aims of the new SEPP is to assist the State's economic recovery following COVID-19, we would suggest a temporary reduction to \$50 million for a period of 5 years following the SEPP's commencement which would apply to Build-to-Rent housing schemes with about 150 dwellings.

Recommendation 9: The Department should provide a temporary reduction in the threshold for State Significant Development from \$100 million to \$50 million for a period of 5 years following the SEPP's commencement.

All other Build-to-Rent housing proposals should be considered regional development and be determined by regional planning panels.

In the context of a COVID-19 response and economic recovery, consideration should be given to providing incentives that will encourage local councils to fast-track or accelerate the assessment stages of Build-to-Rent projects. Incentives could take the form of grants for open space and sporting facilities and other items of community infrastructure.

Recommendation 10: The Department should consider opportunities to encourage local councils to fast-track Build-to-Rent housing projects during the COVID-19 recovery period.

We have noted that no Build-to-Rent housing projects will be categorised as SSD within the City of Sydney LGA no matter its CIV. We do not support this proposal because NSW needs a planning framework that should be consistent across all LGAs with no exceptions or carved out areas. This reflects the position strongly advocated previously by Minister Stokes and the City of Sydney.

Recommendation 11: The Department should review the proposed exemption from State Significant Development for the entire City of Sydney LGA and have a consistent SSD threshold applied across the State with no areas carved out from this requirement.

2.1.4 Local and State infrastructure contributions

At this stage there is no clarity regarding how development contributions will be levied on Build-to-Rent housing. In the absence of any clear advice, industry will make assumptions that the same contributions regime that applies to residential flat buildings will also apply to Build-to-Rent.

Other contributions such as Special Infrastructure Contributions, voluntary planning agreements and levies under Affordable Housing Contribution Schemes will also be relevant to determine the financial viability of Built-to-rent projects. Given this will be an emerging housing typology that will fill an important segment of the housing continuum, there should be incentives provided to encourage these developments to be pursued and be viable.

Recommendation 12: The Department should consider incentives or discounts from full infrastructure contributions whilst Build-to-Rent housing is still an emerging housing typology.

2.1.5 State Environmental Planning Policy No.65 & the Apartment Design Guide

We welcome the statement made in the EIE that the provisions of SEPP 65 & ADG should only be used as a "guide" for Build-to-Rent housing developments. There will be aspects of these guidelines that will not be relevant to Build-to-Rent as they are to traditional build to sell apartments.

The statement that the Department of Planning, Industry and Environment will be preparing specific advice on design issues is a positive signal to the Build-to-Rent housing industry. It is important that there is wide consultation on this design advice with industry stakeholders.

Poorly prepared design guidelines could have a detrimental impact on the viability of Build-to-Rent housing projects. The Property Council and our members are looking forward to

reviewing a draft of this advice when it is finalised, which should be as close as possible to the commencement of the relevant provisions of the SEPP.

There are several aspects of SEPP 65 and the ADG where a modified approach can be applied for Build-to-Rent housing when compared with traditional apartment developments. This includes recognition of the provision of more communal spaces and less private spaces, inclusion of indoor recreation facilities (gymnasiums, games rooms, etc) and the design of corridors and stairs – where they should be designed to avoid damage through frequent movement of furniture as tenants move in and out.

Recommendation 13: The Department should undertake stakeholder consultation with the advice on specific design issues for Build-to-Rent housing as soon as possible.

2.1.6 Build-to-Rent in Regional Areas

The EIE is seeking feedback regarding appropriate provisions for Build-to-Rent housing in regional areas. We suggest regional areas should include both the Hunter and Illawarra regions and the Central Coast as these areas operate independently of the Sydney housing market.

The definition of Build-to-Rent for regional areas should be altered to allow developments of less than 50 dwellings – this would better reflect the scale of housing in these markets.

Recommendation 14: The Department should revise the definition of Build-to-Rent housing for regional NSW that refers to a smaller number of dwellings.

Most regional cities and towns have a limited number of zones within their Standard Instrument LEPs. For this reason, we request that the Department consider Build-to-Rent housing being included as a mandated land use in the following zones in regional NSW:

- R1 - General Residential;
- R2 - Low Density Residential;
- RU5 – Village; and
- B2 – Local Centres.

Recommendation 15: The Department should consider mandating Build-to-Rent as a permissible use for the R1, R2, RU5 and B2 zones in Regional NSW.

The EIE has proposed a CIV amount of \$50 million for assessment as State Significant Development. For Build-to-Rent to become accepted as an alternative housing product in broader NSW, it needs to be supported during its emerging planning and development stage and that may mean greater State intervention until it becomes established. For this to occur there may need to be more Build-to-Rent housing approved as State Significant Development. Therefore, we strongly request the Department to consider reducing this threshold to \$20 million for regional parts of NSW.

Recommendation 16: The Department should reduce the SSD threshold to projects over \$20 million for regional parts of NSW.

2.2 Student Housing

Australia's tertiary education sector is one of the nation's primary exports. The growth in international students studying at NSW universities has led to the need for purpose-built student accommodation.

Purpose-built student accommodation is different to other classes of residential assets with significant shared facilities including common rooms, laundry and gyms. These buildings are usually managed by an on-site team who have responsibility for the running of the buildings, providing maintenance and conducting interviews for new tenants.

Changes to the existing planning requirements for purpose-built student accommodation should be carefully considered to ensure they do not adversely impact future supply. Any reduction in the supply of purpose-built student accommodation could place further pressure

on housing markets, particularly in areas near university precincts. If students are unable to find beds in purpose-built student accommodation they will need to turn to the private rental/sales market for their housing needs.

2.2.1 Proposed definition

The EIE proposes the following definition:

“A building that:

- (a) provides accommodation and communal facilities principally for students enrolled to study at an educational establishment during teaching periods; and*
- (b) may incorporate some fully self-contained dwellings”.*

The Department will need to clarify whether this definition allows for the use of student housing buildings outside of defined teaching periods. In many cases, universities offer summer schools and alternative teaching calendars that do not follow strict interpretations of “teaching periods”. The definition needs to be clear to ensure that the use of student housing is not unnecessarily restricted by its definition.

Recommendation 17: The Department should clarify the definition for student housing regarding what is meant by teaching periods and if the housing can be used outside of formal university terms or semester periods.

2.2.2 Proposed planning provisions

Locations and zones

Student housing is generally a land use that is provided in close proximity to a tertiary campus and close to the types of services that university students require.

The EIE indicates that the Government does not propose to make student housing a compulsory permitted use in any land use zone. Instead the intended approach will involve local Councils determining the locations where student housing will be permissible and providing for this through their LEPs.

Unless student housing is mandated as permissible use in compatible zones, many Councils will choose not to identify areas where this type of housing can be developed. There will be areas close to tertiary institutions where there is greatest need for student housing and those areas could either be identified either using a Site Compatibility Certificate process or through zones being mandated within the *Standard Instrument LEP Order*.

Recommendation: 18: The Department should identify areas close to tertiary institutions where student housing could be provided under the Housing Diversity SEPP using Site Compatibility Certificates or mandated zones where this type of housing will be permissible.

Parking requirements

The EIE has stated there is no minimum number of spaces required for student housing developments and the failure to provide any off-street carparking cannot be used as grounds for refusal.

As most student housing is located close to public transport and in locations with high level of services used by tertiary students, it is very unlikely that considerable off street carparking will be required and any parking provided on site should be only to serve loading/deliveries and caretaker/onsite management employees only.

We support this aspect proposal.

Room Size

The EIE is proposing a minimum room size of 10sqm which based on the minimum room sizes found in other jurisdictions and is reflective of current industry practice.

A 10sqm minimum room size is supported. Developers and operators of student housing should have flexibility to provide rooms above this minimum based on the market and occupant preferences, however, there should be no penalty for a development that is fully compliant with the 10sqm minimum room size.

Communal and Open Spaces

The EIE has proposed a requirement for a minimum of 15sqm of indoor communal areas per 12 students for the study, social and religious needs of students. The indoor space target is reasonable, however there should be some consideration to other areas being included in this such as gyms, cinema rooms, yoga rooms, communal kitchens etc.

In addition, proposals for student housing that are located more than 400m from a university campus will need to provide 2.5sqm of outdoor space per student (balconies, decks, roof terraces). The outdoor space requirement will be too onerous if the 400m is strictly applied. This requirement should be considered as part of a merit-based assessment. Acquisition of development sites suitable for student housing within a 0.5 to 1-kilometre radius of a university campus within in Sydney is challenging. Imposition of this outdoor space requirement does seem to be unreasonable.

Instead we suggest that this distance be expanded to approximately 1.5-kilometre, and that the requirement of 2.5sqm be a high-end target only, that includes indoor and outdoor space. We would recommend a merit-based approach to these standards.

Recommendation 19: The Department should apply a merit-based approach to communal and open space requirements, rather than fixed requirements.

2.2.3 Student Housing in Regional areas

Student housing is just as important in regional areas as it is in Greater Sydney. Where demand for student housing cannot be met on campus, there should be opportunities provided for allowing student housing to be developed off campus.

As most of the tertiary institutions (universities, TAFE and other skills-based training facilities) in regional NSW tend to be set in campuses settings within suburban or semi-rural areas, providing for off-campus student housing would most likely involve locating within a low-density residential zone or equivalent zoning.

We would encourage the Department to lead a process with councils in regional areas to identify any shortages in student accommodation and identifying the appropriate locations to allow student housing to be developed. Given the intensive nature of this type of strategic planning process, it should be led by the Department working across several LGAs at once.

Recommendation 20: The Department should lead a process with local councils in regional NSW to identify any shortage in student accommodation with a view to identifying the appropriate locations to allow student housing to be developed.

2.3 Co-living Housing

Co-living development is a new housing definition that has been introduced to capture the type of housing that is currently labelled as “new generation” boarding houses under the ARH SEPP since 2009. These provide an affordable housing option, albeit mostly at market rents, for singles and couples usually in highly accessible locations or near employment centres such as hospitals and universities.

We welcome the recognition of this new housing type, but are concerned that the proposed planning requirements will not meet the needs of the market and make this product financially unviable.

This type of housing differs from traditional rental accommodation as they are usually:

- Fully furnished with up to \$10,000 of appliances and furniture per unit (reducing up-front capital cost);

- Flexible (provides greater degree of flexibility for tenant depending on employment or education situation);
- Secure (on site management provides greater security);
- Privacy (unlike share house accommodation);
- Affordable (rents are inclusive and often fully furnished);
- Location (close to work and services and public transport); and
- Maintained (by onsite management).

Co-living developments provide a unique entry point into the housing continuum for singles and couples. They offer a good sense of community that can be lacking in other housing types found across Sydney. They can also offer an affordable point of entry into the housing market when furnished. The large capital cost of buying furniture and household appliances can become a significant barrier to entry for young people leaving home and living alone. New generation boarding houses provide an easy pathway into the housing market and if these types of developments were to cease being supplied, there will be adverse consequences on younger generations.

2.3.1 Proposed definition

The EIE has proposed the following definition for co-living that will be included into the Standard Instrument LEP Order:

“A building held in single ownership that:

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

The EIE indicates a standard room in a co-living development will be approximately 30 to 35sqm. This is higher than the 12-25sqm room size for a boarding house. There is no information provided in the EIE to indicate why this particular standard was selected. As 30sqm room sizes are approaching the size of a typical studio apartment, a reduced room size between 18sqm and 28sqm would be more appropriate, and better recognises the greater use of communal areas which negates the need for typically sized apartments.

The proposed SEPP needs to be clear regarding this standard as the non-alignment of these standards is very confusing. The Department should point to studies or other evidence to justify the choice of this numerical requirement as it will have significant implications on the financial viability and business models for the development and operation of co-living developments.

Recommendation 21: The Department should refer to studies or evidence to justify the recommended room size or clarify the range of acceptable room sizes for co-living housing developments as between 18sqm and 28sqm.

2.3.2 Proposed planning provisions

Locations and zones

The EIE has proposed for co-living apartments to be made a mandated permitted use through the Standard Instrument LEP Order in all zones where residential flat buildings are currently permitted. It has indicated that appropriate zones would be R4 – High Density Residential zone, B4 – Mixed Use zone and R3 – Medium Density Residential in some areas where residential flat buildings are permissible in that zone. Unfortunately, in many of these zones, residential flat buildings will be the higher and best use which will limit development of alternative housing types.

Councils should also be encouraged to permit small co-living housing developments in other zones where they are appropriate, including B2 – Local Centres and B3 – Commercial Core where they are consistent with the local character of the area.

Recommendation 22: The Department should consult with local councils with regard to business zones (B2 and B3) where small co-living housing developments would be compatible with local character.

Parking requirements

The EIE has identified a requirement for co-living housing developments to provide 1 car spaces for every 2 rooms within the development. This requirement will be a non-discretionary standard. The carparking requirement will significantly increase construction costs, particularly for inner city locations, and impact project feasibility. We would urge the Department to undertake surveys of car ownership within co-living developments to determine if this requirement aligns with actual rates of motor vehicle ownership.

Recommendation 23: The Department should impose a reduced carparking rate of 0.2 spaces for each room.

The EIE does not indicate any requirement for visitor parking to be provided. Any visitor parking must be met from the above requirement and local councils should not be allowed to impose a separate obligation to provide car parking spaces for visitors.

Car share is becoming an increasingly accepted form of transport in inner city areas. Where a development can provide carparking spaces for car share companies within their developments, this should be encouraged through parking development standards for these development types.

Communal and open space

The EIE is proposing a requirement for both communal living areas (minimum of 20sqm and 2 sqm per room above 10 rooms) and private open space (4sqm per room). Increasing the requirement for private open space to 4sqm per room will be a further challenge to project feasibility.

A requirement for 25% of the site area to be provided as communal open space is also proposed. This requirement may be reduced where all dwellings have private open space that exceeds the minimum requirements. A merit-based approach is required for these standards.

The proposed SEPP should provide examples of what would be considered acceptable to meet these requirements. Given there are many possible innovative design responses such as balconies, wintergardens, rooftop terraces and the like, it would be useful from a project design perspective to understand what would be needed to meet the requirements of the SEPP. This is particularly important where local councils will be assessing development applications and the Council assessment staff have preconceived ideas about what would and wouldn't meet these requirements.

Recommendation 24: The Department should provide guidance for applicants in the form of examples of what it considers acceptable practices for meeting these requirements.

Application of local provisions

The EIE has proposed that important planning controls such as building height and FSR should be in accordance with the relevant LEP. It states that maintaining LEP standard will ensure that new development is compatible with local character and consistent with community expectations.

As co-living housing developments are currently categorised as boarding houses under the ARH SEPP, they are designed to the development standards contained in that policy. Boarding houses are subject to the LEP height but there is a generous FSR incentive bonus provided by clause 29(1)(c) of the policy. It is imperative for co-living housing to continue to

be a viable alternative housing model it must be allowed to continue with the current planning provisions that are allowed under the ARH SEPP.

Based on the new planning framework that has been developed for co-living housing within the SEPP, it is highly likely that this housing type will no longer be supplied due to the business model no longer being financially viable. This is because, without the density bonus that apply to boarding house developments, the incentive to develop co-living housing will be lost and this important housing type simply won't be developed. Just as boarding houses, co-living is a housing type which contributes to greater housing diversity, especially in parts of Sydney where singles and couples would ordinarily struggle to buy a home or rent a traditional apartment at market rents.

Recommendation 25: The Department should extend the updated FSR bonus that will apply to affordable boarding houses to co-living housing developments.

Design issues (DCP and design guidelines)

In the absence of any specific design advice set out within the proposed Housing Diversity SEPP for co-living housing, the requirements of the relevant council DCP would be applied to assess issues such as setbacks, building articulation, landscaped area, etc.

The EIE indicates that design guidelines for co-living may be developed. It is crucial that there is a standard set of design requirements applied consistently across the State. Unless the Department intervenes and imposes design guidelines, projects for co-living will be assessed against hastily prepared policies or councils will seek to impose design controls for residential flat buildings.

Recommendation 26: The Department should provide a set of standardised design guidelines for co-living housing that will prevail over any local requirements.

3.0 Updating Existing Provisions

This section of the EIE proposes a series of amendments to the following three environmental planning instruments:

- *State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP)*
- *State Environmental Planning Policy (Housing for Senior or People with a Disability) 2004 (Seniors Housing SEPP); and*
- *State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP)*

3.1 Boarding Houses

3.1.1 Definition of Boarding House

The EIE proposes several significant changes to the definition of boarding house (which have been highlighted in red underlined text below).

“An affordable rental building that:

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

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

The changes to this definition are generally supported, however should the definition also not include student accommodation, which is now proposed to be separately defined.

We understand that this change has been made in response to a long history of concerns raised to the Department that many ‘next generation’ boarding house developments have not been let to tenants at affordable rents. The criticism is that the ARH SEPP planning pathway and density bonus have been exploited to develop an alternative housing product that has been offered at market rents.

These changes will have a detrimental impact on the supply of these ‘next generation’ boarding houses which have developed as a unique housing type over the last decade - without the generous density bonus.

Feedback is also being sought on whether this 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 would revert to market rates.

It is not clear whether these changes have been socialised with the Community Housing Provider (CHP) sector. Managing boarding houses would be an additional responsibility for that sector which is currently expanding to manage council-owned properties. It is also unclear how existing boarding houses managed by private owners will be treated after these amendments are made in terms of gaining existing use rights under the *Environmental Planning and Assessment Act 1979*.

3.1.2 Boarding Houses in the R2 Low Density Residential Zone

The EIE is proposing to remove boarding houses as a mandated land use within the R2 Low Density Residential zone. Clause 26 of the SEPP identifies the land use zones where the policy applies and includes most residential and business zones.

Since February 2019 there has been a 12-room limit for boarding houses within the R2 Low Density Residential zone. This restriction was made to reduce the impact of large boarding house developments in low-density residential areas.

The industry has had almost two years to adapt to this amendment and the complete prohibition of boarding houses from the R2 Low Density Residential zone is appropriate but does reduce housing diversity by ending the development of small niche boarding houses.

3.1.3 FSR bonus for boarding houses

Currently there is a floor space bonus in the ARH SEPP that applies to boarding house developments in zones where residential flat buildings are permitted.

- 0.5:1 if the existing maximum FSR is 2.5:1 or less.
- 20% of the existing maximum FSR, if the existing maximum FSR is greater than 2.5:1.

The EIE is proposing the introduction of a flat 20% FSR bonus to the existing maximum FSR, regardless of whether the existing maximum FSR is above or below 2.5:1.

We suggest that this FSR bonus should be carried over to apply to co-living housing as it has been applied to boarding houses as outlined under recommendation 25.

3.1.4 Car Parking

The EIE states that the ARH SEPP currently provides a reduced minimum car parking rate for boarding houses lodged by or on behalf of social housing providers. This reduced rate will be maintained.

This is an appropriate outcome.

3.2 Affordable Rental Housing SEPP provisions

3.2.1 Amendment to Part 3 of Affordable Rental Housing SEPP (former SEPP 10)

Remove References to 28 January 2000

Part 3 of the ARH SEPP includes the requirements of the former *State Environmental Planning Policy No. 10 – Retention of Low-Cost Rental Accommodation* (SEPP 10). Clause 51 of the SEPP permits a council to levy a monetary contribution as a condition of consent if it considers that approval of a proposed development would result in the loss of affordable housing on land that is the subject of the application.

Currently this requirement only applies to buildings that were ‘low-rental residential buildings’ as at 28 January 2000, which was when *State Environmental Planning Policy No 10 – Retention of Low-Cost Rental Accommodation (Amendment No.6)* was made.

The EIE has proposed modification of this clause so that it would be applied to low-rental residential buildings at any time within the last 5 years preceding the lodgement of a development application. This change will significantly expand the application of this clause to include buildings that were not low-cost rental premises after 28 January 2020 but may become so into the future.

Consequently, Councils will be entitled to levy contributions for affordable housing where a building that has been a “low-rental residential building” in the past 5 years for any development that will demolish, alter or add to the internal/external fabric or strata-subdivide the building.

The EIE has not included any information to assess the regulatory impact of this amendment or the number of additional buildings that will be subject to the amended clause. Given the significant expansion to the application of this policy, the Department should provide more justification for this major policy shift.

Recommendation 27: The Department should not proceed with the proposal to change the current threshold for retention of low-rental dwellings beyond those as at 28 January 2000.

Developers to demonstrate whether a building is low-rental

The other change proposed in the EIE is to reverse the current onus of providing evidence that a building did not contain low-rental dwellings at the relevant time from the Council the applicant.

At face value it would appear appropriate to make this reversal if the test to determine the application of the policy remained buildings that were or became low rental before or as at 28 January 2000. However, as the EIE also intends to expand the policy to consider all buildings that were low-rental in the last 5 years, the change will add a considerable administrative burden and expense to a very large number of development applications.

We do not support these changes as the costs associated with these changes will add considerable cost to the supply of new housing.

Recommendation 28: The Department should not proceed with the proposal to require applicants to demonstrate that buildings do not contain low-rental dwellings affected by this clause.

3.2.2 Secondary Dwellings

This proposal will allow rural councils to permit secondary dwellings in rural zones through their LEPs. Currently a Council can allow a secondary dwelling using a clause within the Standard Instrument LEP Order. The maximum size of a secondary dwelling is limited to the greater of 60sqm or a nominated percentage of the floor area of the principal dwelling. The proposal is to amend the ARH SEPP so that councils have discretion to set a maximum size for secondary dwellings in rural zones that is not connected to the floor area of the principal dwelling.

Having regard to the justification provided in the EIE, this change is appropriate and therefore not opposed.

3.3 Seniors Housing

As the baby boomer generation gets older, the number of people in NSW aged over 55 in 2036 will increase to 3.1 million. Demand for seniors housing in suitable locations will continue to grow, as will demand for other smaller dwelling types, as this ageing population seeks to 'rightsize' their dwellings to villa homes, townhouses and secondary dwellings.

The proposed Housing Diversity SEPP will consolidate the current provisions of the Seniors Housing SEPP and implement several new proposals described below. Critically, we are concerned that the proposed changes will impede the supply of suitable housing for seniors and people with disabilities.

It is important that the right types of housing are developed in locations that are close to services, such as health and transport infrastructure. We also know that people in making their last housing purchase, prefer to do so within 5km of where they are established in their communities, close to family and results in significantly improved health and wellbeing outcomes.

3.3.1 Application of SEPP to heritage conservation areas and metropolitan rural areas

This SEPP does not currently apply to heritage conservation areas within the Greater Sydney Region (until at least 1 July 2021) and metropolitan rural areas in the Greater Sydney Region. Amendments to the policy, that were not subject to public consultation, were made recently to exclude the policy's operation in these areas.

Heritage conservation areas

A temporary moratorium is in place until 1 July 2021 to allow Councils time to ensure the seniors housing provisions align with their local strategic plans and local housing strategies. The 12-month extension granted in June 2020 was provided due to the unforeseen impacts of COVID-19 that have delayed some councils completing their strategic planning work.

As many local councils have progressed draft local housing strategies through to community consultation, there is a clear need for more appropriate housing for seniors across all of Sydney. It is imperative that the State Government ensure that Councils implement their strategic planning work before the current moratorium ends on 1 July 2021.

Recommendation 29: The Department should ensure that councils benefiting from the current heritage conservation area moratorium implement their strategic planning work before the current moratorium expires on 1 July 2021.

Metropolitan rural area

The EIE supports the adoption of recommendations from the Greater Sydney Commission's report *'Investigation into the cumulative impacts of Seniors Housing in the rural areas of The Hills and Hornsby local government areas'*, which was published in November 2019 but only released after amendments were Seniors SEPP on 29 July 2020. The amendments prevent new proposals for Seniors Housing on land within the Metropolitan Rural Area (MRA) of Greater Sydney. The MRA is identified in the *Greater Sydney Regional Plan – A Metropolis of Three Cities* and stretches across Greater Sydney's outer edge in all directions.

The Property Council is concerned about the impact these significant changes to the Seniors Housing SEPP will have on the supply of suitable housing for seniors and people with disabilities. Although we support local councils undertaking the very important strategic planning work of investigating local needs and opportunities for supply, the prohibition should only be temporary and have a defined expiry date.

For instance, it is unclear whether the Department has considered incentives for the development of seniors housing developments within infill locations now that all opportunities in greenfield locations have been 'turned off'.

Recommendation 30: The Department should review the current prohibition applying to seniors housing in the MRA to make it temporary and provide a defined expiry date.

3.3.2 Definitions

The EIE identifies the definitions in the Seniors SEPP have not been updated in line with the Standard Instrument LEP Order and seeks to update or amend them to align with the definitions contained in the Standard Instrument to provide a consistent approach with other environmental planning instruments.

The Property Council supports the adoption of common definitions across planning instruments.

3.3.3 Update Schedule 1 (Environmentally Sensitive Land) of the Seniors SEPP

Currently the Seniors Housing SEPP does not apply to land identified in Schedule 1. It is understood that many of the terms used in this schedule have not become obsolete following the introduction of the Standard Instrument LEP in 2008 and others subject to much debate in the legal proceedings. Greater clarity is needed to identify land to which the SEPP applies.

The Property Council looks forward to further consultation on the specifics of this proposal in this area through a draft instrument for further consultation.

Recommendation 31: The Department should undertake further consultation regarding the review of environmentally sensitive land to be included in Schedule 1.

3.3.4 Location and Access to Facilities

It is proposed to amend the provisions for 'location and access to facilities' in the Housing for Seniors SEPP so that point-to-point transport, including taxis, hire cars and ride share services, cannot be used for the purpose of meeting accessibility requirements.

The Property Council understands the nature of transport is subject to ongoing modernisation and technical disruption. Our planning instruments will need to adapt to this change. The NSW Government's trial of on-demand bus services is an example of how public transport

requirements can be met without the regimented, timetabled standards of conventional bus and train timetables of the past.

To this extent, the EIE does not provide sufficient examples where current controls are insufficient and require further restrictions. The Property Council encourages the Department to exercise a cautious approach prior to ruling out future transport modes.

Recommendation 32: The Department should allow for consideration of point to point transport services and ride sharing services for the purpose of meeting accessibility requirements.

3.3.5 Site Compatibility Certificates

Validity

A site compatibility certificate (SCC) is usually valid for 24 months. Once a SCC has been issued, development consent is sought through a development application lodged with the consent authority, which in most cases is the local council.

Because of the 24-month timeframe for validity of a SCC, and the time needed to prepare and assess seniors housing proposals, SCCs sometimes expire before a development application has been determined.

It is proposed to introduce provisions in the new SEPP so that a SCC is valid for 5 years. This is supported.

Development applications must also be lodged within 12 months of the date on which the SCC is issued. Given the often complex nature of preparing studies to support the preparation of a development application, and the fluctuating demand for consultants across the economic cycle, the Property Council suggests the 12 month period be either extended to 24 months or provision be made for an applicant to demonstrate that significant effort has been made to prepare an application within the prescribed time period.

Registered clubs

Currently, a SCC application can be made on land that is used as an existing registered club. It is proposed to reinforce the requirement that if a SCC application is being made on the basis that the land is being used for the purpose of a registered club, the club must be a registered club at the time the SCC application is made.

The Property Council does not believe this approach will boost housing diversity or opportunities to deliver seniors housing or that this is a valid planning consideration. As the intention is not to provide seniors with access to a registered club, it is to provide opportunities for development of suitable land or to allow registered clubs to diversify their income stream. This change could preclude the redevelopment of a sites suitable for seniors housing and this may become more widespread as the economic impacts of COVID-19 have significant impacts on hospitality venues.

Recommendation 33: The Department should not proceed with this requirement that a registered club must be a registered club at the time the application for a site compatibility certificate is made.

3.3.6 Application of Local Development Standards

Currently, clause 5 of the Seniors Housing SEPP allows development for the purpose of seniors housing to be carried out despite the provisions of any other environmental planning instrument. It is proposed to amend the SEPP provisions to clarify that development standards in a LEP prevail to the extent of any inconsistency with the SEPP.

The Property Council objects to this aspect of the proposal because:

- It undermines the traditional planning hierarchy, where State planning instruments take precedence over local planning controls;

- The approach is unlikely to improve housing diversity or improve the supply of seniors housing;
- Local planning controls significantly increase the cost of delivering seniors housing and are not tailored to meet the unique needs of this market, and
- Is this the start of something bigger? What are the implications of this change in terms of the interpretation of planning law within Land and Environment Court appeals?

It is unclear what legal precedent will occur as a consequence of elevating local development standards over those in the SEPP to the extent of any inconsistency. This change is not supported.

Recommendation 34: The Department should retain the long-standing requirement that the provisions of a State policy prevail over local provisions in the event of an inconsistency.

3.3.7 Changing the effect of clause 4.6

It is proposed that the development standards in the Seniors Housing SEPP could be varied using a clause similar to clause 4.6 of the Standard Instrument LEP, but only to a maximum of 20%.

The EIE does not fully explain why such a change is necessary or how the change would operate. Is it the intention to insert a clause similar to clause 4.6 within the SEPP and that clause could be relied upon to vary the numerical standards contained within Seniors Housing SEPP. How will this change be applied by Councils and the Land and Environment Court.

Recommendation 35: The Department should provide further clarification regarding the proposed clause 4.6 and 20% cap to be applied to development standards in the Seniors SEPP.

3.4 Social Housing

The EIE proposes amendments to the ARH SEPP and Seniors Housing SEPP to support the delivery of social housing. These instruments contain provisions to facilitate the development of social housing by the NSW Land and Housing Corporation (LAHC) and other social housing providers. Following a review of the relevant provisions to ensure they are fit-for-purpose and aligned with wider Government priorities, the following changes were considered necessary:

3.4.1 Proposed changes to the social housing provisions of the ARH SEPP

Increase maximum number of dwellings that LAHC can self-assess

LAHC can currently deliver under the ARH SEPP provisions small scale redevelopments with up to 20 dwellings with a maximum height of 8.5 metres (2 storeys). These can be self-assessed by LAHC provided the number of dwellings does not exceed 20 on one site.

The EIE proposes to increase the number of dwellings that LAHC can self-assess to 60 dwellings. No changes are proposed to the current height restriction.

This change is supported.

Design Guidelines for LAHC development

LAHC is required to consider the *Seniors Living Policy: Urban Design Guidelines for Infill Development* when self-assessing projects. LAHC also uses its own design guidance material and standard in these assessments. The EIE indicates that all relevant guidance material will be updated to better reflect contemporary practice.

This change is supported.

Car Parking requirements for LAHC development

The EIE indicates that it is proposed to apply a minimum car parking rate of 1 space per 2 dwellings (0.5 spaces per dwelling) to all projects including social, affordable and private dwellings in a development undertaken by or on behalf of LAHC, on government-owned land. If a lower carparking rate is proposed in a LAHC development, there would be an option to lodge a development application with the relevant council for a merit assessment.

These changes are supported in-principle. However, it would be appropriate for LAHC to refer to the most up to date Transport for NSW requirements and advice regarding carparking rates, especially for locations that are close to frequent public transport services and other amenities.

Recommendation 36: The Department should require LAHC to refer to the most up to date requirements and advice from Transport for NSW regarding carparking rates.

Expand the range of affordable dwelling types that attract a density bonus

Currently the ARH SEPP provides a density bonus for certain infill affordable housing, including dual occupancies, multi-dwelling housing and residential flat buildings. The EIE proposes to increase the range of developments that can be carried out under this provision to other types of residential accommodation such as manor homes and terraces.

This change is supported.

Clarify the types of developments that LAHC can self-assess

The EIE proposes to clarify the types of developments that LAHC can self-assess. It is intended that this will include any type of residential accommodation that is permitted with consent under another environmental planning instrument. This will include dwellings and dual occupancies permitted under a LEP, as well as manor homes and terraces that are allowed under the Codes SEPP. Boarding house developments under the ARH SEPP can also be self-assessed.

These changes are supported.

3.4.2 Proposed changes to the social housing provisions of the Seniors SEPP

Parking concessions for seniors housing

The Seniors Housing SEPP currently provides reduced minimum car parking rates for development applications lodged by or jointly with a social housing provider.

The EIE indicates that it is proposed to clarify that the reduced parking rates also apply to the private dwelling component of a seniors housing development carried out by or on behalf of LAHC on government-owned land. These amendments are to improve the feasibility of delivering new communities under the development model of a mixture of social, affordable and private housing.

These changes are supported.

Clarify application of lift access exemption

The Seniors Housing SEPP includes a requirement that new self-contained dwellings for seniors located on or above the second floor must have lift access. However, there is an exemption from the lift access requirement for development applications made by, or jointly with a social housing provider.

The EIE explains that it is proposed to clarify that the lift access exemption applies to all seniors housing delivered by or on behalf of LAHC, including any dwellings that are not proposed to be used for the purpose of social housing.

These changes are supported.

3.4.3 *Proposed changes to the social housing provisions of the SRD SEPP*

The EIE intends to further streamline the assessment of LAHC projects by simplifying the pathway for major projects to become State Significant Development. This will occur through an amendment to the SRD SEPP so that projects will become State significant if:

- They are carried out by or on behalf of LAHC; and
- They have a CIV of more than \$100 million (increased from \$30 million).

LAHC sites that are of State significance will no longer need to be identified on a map within the SRD SEPP.

For Government-owned land within the City of Sydney, the Minister for Planning will be the consent authority for projects with a CIV over \$100 million, with the power to delegate to the City of Sydney, if deemed appropriate.

These changes are supported.

4.0 Miscellaneous

4.1 Savings and Transitional Clause

It is important that the legal drafting of the new instrument includes a savings and transitional clause that will preserve existing development applications that might be impacted by the proposed changes to existing SEPP provisions.

The clause should refer to the preservation of any development application made to a Council before 29 July 2020.

Recommendation 37: The Department should include a savings and transitional arrangements clause in the instrument.

4.2 Statutory review of new SEPP

The EIE states that the Department will review the provisions of the new SEPP within 24 months of its introduction to ensure they are functioning as intended. We support this and would also recommend that this review also include the recent prohibition on Seniors Housing SEPP proposals within the Metropolitan Rural Zone should that prohibition be continued when this new SEPP is made.

Recommendation 38: The Department should include the prohibition on Seniors Housing within the MRA as part of this post-implementation review.

5.0 Conclusion

The intention of the draft SEPP to facilitate the delivery of housing that meets the needs of the State's growing population is broadly supported and inclusion of three new emerging housing typologies into the planning system is welcome.

The Government's interest in Build-to-Rent housing, demonstrated through land tax concessions, identification as State significant development and recognition of the need for specific design requirements, is very positive. The EIS has proposed a range of indicative planning controls that are under consideration and the application of local development standards (such as building heights and FSR) are workable provided there is flexibility in the design guidelines that will be applied under SEPP 65 and the ADG.

It is unfortunate that these significant outcomes have been accompanied by other amendments that will place boarding house and seniors housing developments at risk. We urge the Department to reconsider these changes and instead look at how local Councils can use their strategic planning work underway to seek exemptions from the provisions of State planning controls.

The automatic exemption from the state-wide planning rules will encourage Councils to avoid implementing the development local planning controls for these much-needed diverse housing types.

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Appendix 1: Timeline of housing policy

Over the last 40 years there have been at least fifteen (15) State Environmental Planning Policies (SEPP) and Regional Environmental Plans (REP) made with the primary intention of encouraging greater housing diversity in NSW. The table below provides a summary of the key policies that have been implemented to encourage greater housing diversity and choice.

Year	Policy	Purpose
February 1982	<i>State Environmental Planning Policy No 5 – Housing for Aged or Disabled Persons</i> (SEPP 5)	To support the supply of housing for older people and people with disabilities and provide a wider choice of residential accommodation for aged persons and disabled persons. In 2004 this policy was replaced by <i>State Environmental Planning Policy (Seniors Living)</i> following a comprehensive review of its operation. Recent amendments have seen the provisions of the SEPP disabled in heritage conservation areas within Greater Sydney and land within the Metropolitan Rural Area.
October 1983	<i>State Environmental Planning Policy No 9 – Group Homes.</i>	To facilitate the establishment of permanent group homes in which socially disadvantaged persons or disabled people may lead as normal a life as possible by living permanently in an ordinary residential household instead of an institutional environment.
1984	<i>State Environmental Planning Policy No 10 – Stata Subdivision of Buildings Used for Residential Purposes</i> (SEPP 10)	To facilitate the conservation of rental accommodation provided in buildings used for residential purposes for people on low to moderate incomes. In 1989 SEPP 10 was renamed <i>State Environmental Planning Policy No. 10 Retention of Low-cost Rental Accommodation.</i>
April 1983 & April 1986	<i>State Environmental Planning Policy No.8 – Surplus Public Land</i> (SEPP 8) and <i>Sydney Regional Environmental Plan No. 7 (Multi Unit Housing: Surplus Government Sites)</i> (SREP 7)	To implement the Government's urban consolidation policies my making certain parcels of Government land available for good examples of multi-unit housing.
1987	<i>Sydney Regional Environmental Plan No 12 – Dual Occupancy</i> (SREP 12) and <i>State Environmental Planning Policy No 25 – Residential Allotment Sizes</i>	To encourage more medium density housing in Sydney by allowing dual occupancy housing to be developed. also made in 1987 enabled take up of dual occupancy developments when most council planning controls did not support this type of housing product. A stated objective of this policy was

	<i>and Dual Occupancy Subdivision (SEPP 25)</i>	to encourage innovation and diversification in subdivision patterns and building designs.
September 1989	<i>State Environmental Planning Policy No 28 – Town Houses and Villa Houses (SEPP 28)</i>	To encourage urban consolidation and respond to changed and changing housing needs in terms of social, demographic and economic trends by increasing the range of dwelling types available in residential zones and promoting the availability of a range of smaller dwelling units. A further aim of SEPP 28 was to increase the supply of rental accommodation available.
November 1991	<i>State Environmental Planning Policy No. 32 – Urban Consolidation (Redevelopment of Urban Land)</i>	To provide for the redevelopment of certain urban land for multi-unit housing. A stated objective of the policy was to ensure any redevelopment would result in “a greater diversity of housing types within a particular locality to meet demand generated by changing demographic and household needs”.
April 1992	<i>State Environmental Planning Policy No. 21 – Caravan Parks (SEPP 21)</i>	To encourage the orderly development of land used as caravan parks used for tourists and long-term residents.
July 1993	<i>State Environmental Planning Policy No 36 – Manufactured Home Estates</i>	To facilitate the establishment of manufactured homes as a contemporary form of medium density residential development that provides an alternative to traditional housing arrangements.
December 1993	<i>Greater Metropolitan Regional Environmental Plan No 1-Redevelopment of Urban Land</i>	To provide a greater choice and diversity of housing types and the fuller use of existing and likely future services, public amenities and physical and social infrastructure.
September 1997	<i>State Environmental Planning Policy No 53 – Metropolitan Residential Development (SEPP 53)</i>	To broaden the provision of housing in metropolitan areas and reduce the consumption of land for housing on the urban fringe. The policy repealed a number of other earlier policies, including SEPP 25 and SREP 12. Between 1997 and 2011 all local government areas who which the policy applied were granted exemptions to its operation once they had endorsed residential strategies adopted.
June 2000 & May 2002	<i>Environmental Planning and Assessment Amendment (Affordable Housing) Act 2000 and State Environmental Planning Policy No. 70 – Affordable</i>	These established a framework for the development of inclusionary zoning for affordable housing schemes. Two recent amendments have been made to SEPP 70.

	<i>Housing (Revised Schemes) (SEPP 70)</i>	In April 2018, an amendment listed five (5) additional local government areas where a need for affordable housing had been identified and in February 2019, an amendment was made that identified a need for affordable housing in each area of the State.
July 2009	<i>State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP)</i>	To provide a consistent planning regime for the provision of affordable rental housing. This State-wide policy provided pathways for the approval of infill affordable housing, boarding houses and secondary dwellings (granny flats). The new policy transferred the existing provisions of SEPP 10 and repealed that policy.
August 2014	<i>State Environmental Planning Policy (Sydney Region Growth Centres) Amendment (Housing Diversity) 2014</i>	To encourage greater diversity of housing supply, including manor houses and small lot housing. These changes applied to precincts located in both the North West Growth Centre and the South West Growth Centre.
2018	<i>Low-Rise Medium-Density Housing Code.</i>	<p>“Missing Middle” is a term coined to refer to the shortage of housing typologies between detached houses and high-density apartments. The NSW Government exhibited a new complying development housing code in 2018 to provide for greater diversity of housing types as complying development, including duplex housing, attached terraces and manor homes.</p> <p>On 1 July 2020, the code was renamed the <i>Low-rise Housing Diversity Code</i> to reflect the housing choice that it provides.</p>