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22 December 2022

Department of Planning, Industry & Environment
Draft Housing SEPP
Locked Bag 5022
PARRAMATTA NSW 2124

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](https://twitter.com/propertycouncil)

Housing SEPP Explanation of Intended Effects

The Property Council welcomes the opportunity to provide feedback to the Department of Planning and Environment (the Department) on the proposed amendments to the Housing State Environmental Planning Policy (Housing SEPP).

Property is the nation's biggest industry, representing one-ninth of Australia's GDP and employing more than 1.4 million Australians, as well as being the largest employer in Australia. In NSW, the industry creates more than \$581.4 billion in flow on activity, generates around 500,000 jobs and provides around \$36 billion in wages and salaries to workers and their families.

Our members are the nation's major investors, owners, managers, and developers of properties of all asset classes. They create landmark projects, environments, and communities where people can live, work, shop, and play. The property industry shapes the future of our cities and has a deep long-term interest in seeing them prosper as productive, sustainable and safe places.

We note the Property Council's [2023 Election Platform: Building NSW: Homes, Jobs and a Sustainable Future](#) has several recommendations which aim to support the delivery of more diverse housing, including affordable and social housing, seniors housing and purpose-built student accommodation.

We also have worked closely with community and social housing providers, including homelessness service providers through the Good Growth Alliance to recommend a number of measures which would support specific targets for social housing and mechanisms which could be utilised by the government to encourage delivery through partnerships. These recommendations can be found [here](#). As such, the Property Council is supportive of any steps the NSW Government can take to ensure more efficient delivery of housing which suits the needs of all NSW residents.

The Property Council provides in-principle support for the proposed amendments to Housing SEPP and the stated objective of making it easier to plan and deliver housing for people with particular needs, including those on very low to moderate incomes, seniors, and people with disability.

We note that the Housing SEPP and the Standard Instrument Local Environmental Plan provisions relating to the following are currently being reviewed:

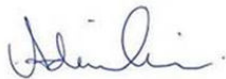
- In-fill affordable housing
- Planning pathways for social housing and affordable housing
- Group homes and hostels
- Temporary supportive accommodation
- Seniors independent living unit accessibility standards, and
- Boarding houses.

The proposed amendments are sensible and well calibrated. However, the Department should use this opportunity to introduce further amendments to the Housing SEPP to address inconsistencies in the policy and maximise the flow of new housing supply into the system. The Property Council's recommendations are outlined below, with further detail on each provided in the attachment:

- The Department should be more ambitious in its application of FSR bonuses to increase the supply of affordable housing into the system and seek to eliminate any planning control barriers which limit full uptake of the bonus.
- The Department should preference models which incentivise private developers to deliver affordable housing rather than encouraging an expanded use of affordable housing contributions.
- The Property Council recommends the Department retain an option for developers to use the council assessment pathway for large residential developments which qualify for the SSD pathway under the Department's affordable housing threshold criteria.
- The Department should aim to create a competitive market for the delivery and management of affordable housing, through partnerships and incentives, rather than condition specific use of CHPs in large residential developments.
- The Property Council recommends that if the non-discretionary standards should not be treated similarly to the non-refuse standard in the former housing instruments and that these provisions be altered in this round of amendments to provide clarity on the matter.
- The Department should consider an exclusive zoning provision for retirement living to enable providers to bid for land in metro areas and exclude developers of 'build to sell' leveling the playing field for the industry.

Should you wish to discuss these recommendations or the detailed commentary in this submission, please contact Michael Player, NSW Policy Manager via email mplayer@propertycouncil.com.au or phone on 0424 698 189.

Yours sincerely



Adina Cirson
Acting NSW Executive Director
Property Council of Australia

DETAILED COMMENTARY – ATTACHMENT A

In-fill Affordable Housing Provisions

The Property Council welcomes the expansion of existing incentives to help increase the delivery of affordable housing dwellings in NSW, and supports the proposed amendments to:

- Increase the in-fill affordable housing floor space bonuses available by 25 per cent, and
- Lower the FSR threshold associated with calculation of the FSR bonus from 2.5:1 to 2:1.

The Property Council understands these provisions are available where 20 per cent of a development's gross floor area (GFA) is delivered as affordable housing. Given the scope of the housing supply crisis, the Department should be more ambitious in the application of FSR bonuses. Historically, density and height bonuses have been the most effective mechanisms for increasing the supply of well-located affordable housing as a percentage of total stock.

However, as the Department has previously acknowledged, it can be difficult for developments to achieve the full FSR bonus due to the impact of other planning controls, such as height restrictions, even when the variation from planning controls is marginal and the overall planning outcomes are consistent with the objectives of the local area. As such, any expansion of the FSR bonus should be monitored closely to identify and eliminate barriers to its full uptake.

Recommendation:

The Department should be more ambitious in its application of FSR bonuses to increase the supply of affordable housing into the system and seek to eliminate any planning control barriers which limit full uptake of the bonus.

Affordable Housing Contribution Scheme

The Property Council of Australia notes that the Department is updating the Guideline for Developing an Affordable Housing Contribution Scheme (AHCS) as part of the proposed Housing SEPP amendments.

The Property Council remains concerned that AHCS is the wrong mechanism to increase the supply of affordable housing into the system. An AHCS allows development consent conditions to be imposed requiring either:

- the dedication of part of the development site free of cost to be used for affordable housing, or
- the payment of a financial contribution for affordable housing provision.

In this way, the AHCS operates either as form of 'inclusionary zoning' or a tax on development, which ultimately undermines project feasibility for new planning proposals. Unless bonus FSR provisions are in place, the effect of the AHCS is to simply force developers to increase the price of market homes to offset the cost of the affordable housing contribution.

As such, it is not clear that housing overall is being made more affordable through this scheme. As the NSW Productivity Commission has outlined, local contributions should be used to fund development-contingent costs – specifically costs that would be avoided if a development did not go ahead¹. Affordable housing does not fall within this definition. Beyond the efficiency of the scheme, local councils are not well placed to provide affordable housing to a market they do not understand or have the expertise to service. Requiring councils to provide affordable housing within their local government areas also risks diverting resources away from the provision of core infrastructure services to communities.

As the Department has previously noted, the limited uptake of affordable housing schemes by councils suggests the contributions play a minor role in the provision of affordable housing supply.

¹ NSW Productivity Commission, Review of Infrastructure Contributions in NSW – Final Report, NSW Treasury, November 2020

Furthermore, the increased uptake of the AHCS risks cancelling out the benefits that would be delivered through an expansion of the FSR bonus available for developers.

Recommendation:

The Department should preference models which incentivise private developers to deliver affordable housing rather than encouraging an expanded use of affordable housing contributions.

State Significant Development (SSD) Pathway for Social and Affordable Housing

The Property Council supports the introduction of a new SSD pathway for large residential developments with a CIV of more than \$100 million and that include a minimum 20 per cent of GFA as either affordable housing or floor space delivered by a social housing provider. The Property Council also supports the proposed introduction of a new SSD pathway for affordable housing to be delivered by the Transport Asset Holding Entity (TAHE) on its land.

While we welcome these amendments, the Property Council is cognisant that some councils are more efficient than others in the timely assessment of applications that meet this threshold. Indeed, there may be cases where - due to resource constraints at the Department - the SSD pathway is slower than an assessment pathway through council. As such, the Property Council recommends the Department retain an option for developers to use the council assessment pathway for large residential developments which meet the Department's threshold criteria.

We also note that in keeping with existing provisions under the Housing SEPP, developments that include an affordable housing component will be conditioned to require it be retained and managed by registered community housing providers for a minimum 15 years. This approach risks precluding the emergence of new providers in the affordable housing market. As such, we recommend the Department instead use policy levers which encourage contestability of affordable housing supply in large residential developments

Recommendation:

The Property Council recommends the Department retain an option for developers to use the council assessment pathway for large residential developments which qualify for the SSD pathway under the Department's affordable housing threshold criteria.

Recommendation:

The Department should aim to create a competitive market for the delivery and management of affordable housing, through partnerships and incentives, rather than condition specific use of CHPs in large residential developments.

Clause 4.6 Variation Requests

The Property Council understands it is necessary to lodge a Clause 4.6 variation request for a development that does not comply with a *non-discretionary development standard* in the Housing SEPP. However, it was always understood that the *non-discretionary development standards* in the Housing SEPP would effectively replace the *standards that cannot be used to refuse consent* in the Seniors SEPP and the ARH SEPP.

The Courts ruled that Clause 4.6 variation requests were not required for the "non-refusal" standards in the former Seniors SEPP (and as it would follow, the ARH SEPP). We understand this anomaly has been created by the amended wording for those standards in the Housing SEPP – ie. the change to "*non-discretionary development standards*."

The Property Council believes it was not the intention for these non-discretionary standards to be treated as development standards (that if not complied with, would require a formal variation request under Clause 4.6). This is reflected in the early EIE for the Housing Diversity SEPP (dated July 2020)

in which there are numerous references to “non-discretionary” standards being “must not refuse” provisions.

The implications of this could include:

- Introducing a higher threshold in assessment for standards such as the 70 per cent solar access provision that have always either been “must not refuse” standards or guidelines (and not development standards).
- A situation where a site may benefit from additional floor space ratio and height pursuant to Section 87 of the Housing SEPP that yields maximum provisions well above the non-discretionary height and FSR standards in Sections 107 and 108 of the Housing SEPP. In that scenario, despite being afforded the additional FSR and height, the Applicant would still technically be required to submit a Clause 4.6 variation to vary the lesser non-discretionary standards.
- Clause 4.6 requests would be required to vary balcony size, solar access etc that would, for any other form of residential flat development, be determined on a merit basis against ADG design criteria (e.g. we are currently faced with preparing a 4.6 variation for a development that satisfies the ADG design criteria for balcony sizes but that has a small section of the balcony that has a dimension of less than 2 metres (a 1m wide section is allowed under the ADG).

Recommendation:

The Property Council recommends that if the non-discretionary standards should not be treated similarly to the non-refuse standard in the former housing instruments and that these provisions be altered in this round of amendments to provide clarity on the matter.

Retirement Living, Independent Living and Aged Care

The Property Council is supportive of the intent to streamline and simplify the planning system for seniors and independent housing. The Property Council has been and remains committed to driving policy outcomes that deliver diverse housing opportunities through simplified planning pathways and incentives. Through consultation with our members several suggestions have been made as areas of interest that would be prudent for the Government to investigate. A significant limiting factor for retirement living development is the open competition with developers for land in metro Sydney. Having a zoning class specifically for retirement living would allow competition within the asset class but limit external developers who are selling product to all age purchasers, increasing the price of land, and preventing retirement development in areas close to city centres and community essentials.

Recommendation:

In addition to the specific retirement zoning of land, the Property Council and our members believe the following also need to be addressed:

- Regarding Savings and Transition Provisions, the Department needs to be clear in relation to concept and staged development applications.
- The compliance with non-discretionary development standards, i.e. cl 4.6 requirement for essentially the non-refundable standards needs to be reassessed.
- Revision of the GFA definition needs to exclude car parking.
- Bonus FSR not aligning with bonus height in high density zones (its useful at 3-4 storeys, while diminishes above that, where the SEPP is trying to encourage seniors housing in high density locations).
- Include Schedule 3, environmentally sensitive land maps in the Housing SEPP (this criteria may effectively prohibit a proposal, while the current/relevant maps are hard to source online and from various web sites).
- The Schedule 4, accessibility standards update sets out that all first car spaces must be accessible (i.e. minimum 3.8 wide). While this is may be appropriate for villas (generally with a garage) it requires large basements and affects cost/viability for apartments. Our understanding of this proposed update is that it would require 100 per cent of seniors needing accessible parking spaces. Instead of proceeding with this amendment, we recommend further analysis be undertaken regarding parking requirements of operational facilities, including the utilisation of parking within existing like developments.

- Application of ADG to seniors housing - updated draft Seniors Housing Design Guide are not clear how these interact with the ADG. The Design Guide provides great information but very general – needs one section (suggest Chapter 6) to be reinforced and to be the section that must be addressed in DA consideration.
- SSDA planning pathway – now allowed provided that a RACF is part of the DA, however it needs to be expanded to include emerging models of independent living/assisted living that provide a range of care services, but not necessarily an RACF.