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Ms Deborah Brill  
Director, Housing and Infrastructure Policy  
NSW Department of Planning and Environment  
GPO Box 39  
SYDNEY NSW 2000

Dear Ms Brill,

**Draft amendment to parking provisions for boarding houses**

This letter is a submission concerning the currently exhibited Draft amendment to parking provisions for boarding houses.

That draft amendment is to *State Environmental Planning Policy (Affordable Rental Housing) 2009* (ARHSEPP).

Part 2 of the ARHSEPP relates to new affordable rental housing. Division 3 of Part 2 relates to boarding houses.

Clause 29 within Division 3 sets out development standards and specified matters associated with those standards. If those standards are complied with, then the consent authority must not refuse consent on the grounds of the specified matter. A consent authority may still approve a proposal that does not comply with the specified standard.

Item 29(2)(e) provides a minimum parking rate for boarding houses in an “accessible area” (which is defined in clause 4 of the Policy) of 0.2 spaces for each boarding room. It provides a minimum rate for boarding houses not in an “accessible area” of 0.4 spaces per boarding room. It also provides a maximum parking rate of one parking space for each boarding room for each person employed as part of the boarding house who is resident on-site, without specifying that one space is a minimum requirement for such a person.

The proposed changes to clause 29(2)(e) will make the deemed-to-satisfy parking rate 0.5 per boarding room, regardless of whether the boarding house is in an accessible area.

MB Town Planning has assisted, and is continuing to assist, several clients interested in pursuing boarding house developments. In one case the site is within an R2 – Low density residential zone outside of an accessible area and a boarding house may be pursued because the development is permissible in the zone, but not pursuant to ARHSEPP. In another case, the site is within an R3 – Medium density residential zone and is within an accessible area. In a further case, the site is within an R2 zone within an accessible area. The proposed change would render each of those projects as being non-feasible. Even in the former case, the ARHSEPP would likely serve as a guide because the relevant development control plan does not provide parking rates for boarding houses.

There seem to be two main categories of boarding house projects for the purposes of understanding the impact of the proposed changes. They are:

1. Large scale: Projects that are akin to residential flat developments. Those typically include basement parking and are potentially capable of complying with a 0.5 rate, although potentially

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necessitating an additional basement level. In some cases, large scale projects do not provide significant parking because they are in the City of Sydney or are in unique locations such as Iglu Chatswood, adjacent to the Chatswood Transport Interchange. Those projects provide even less than the current ARHSEPP rate.

2. Small scale suburban: Projects that typically have the appearance of a single dwelling. They may have a conventional two car garage with a turning area in the front setback that is well-screened by landscaping. They tend to have no more than 10 boarding rooms, so as to comply with class 1b construction under the *Building Code of Australia*.

The focus of this submission is on the second category.

Small-scale suburban projects are typically only feasible without basement construction. From my discussions with developers, the rental returns are not sufficient to justify the expense of full basement parking. Aside from that financial consideration, the character of the development will tend not to be compatible with the locality if full basement construction is proposed in a low-density area. Additionally, full basement construction will only be physically feasible on sites of at least 15.2 square metres width, and even that is marginal. 15.24 Metres is of course a common site width across Sydney.

The primary reason that it makes sense for boarding houses in an accessible area to have a relatively low parking rate is that they are essentially similar to, but are a proper form of, housing that is provided in any case in the form of informal share housing.

I don't think that it is necessary for me to point out to your team that the great majority of "boarding house" accommodation provided in Sydney is in an informal arrangement. You will be aware of research demonstrating this to be so.

There may be a "share household" in which the lease is in the name of one of the tenants and that "head tenant" (legally the only tenant) chooses who may live in the share house. That head tenant then takes cash from each tenant, either on the basis of a fair apportionment of the lease amount or possibly taking more than that amount.

Alternatively, the landlord individually rents out each room. The tenant of each room pays rent to the landlord. That is surely a "boarding house". Typically, there will be one of the residents that pays less rent than the others and acts as a kind of agent.

Often associated with these kinds of arrangements are unauthorised internal fitouts – particularly the installation of additional bathrooms or the installation of partitions. There have been well-publicised cases of overcrowding in the highest demand areas – even situations where people take turns to sleep in a particular bed!

It is unclear whether a "share household" that is not run by a head tenant is a "boarding house", but it is probably not feasible for local authorities to prevent such uses. Sometimes there is a pre-existing social connection and sometimes the social connection is established through flatmates.com or similar.

In my opinion it is clear that a "share household" involving separate payments to a non-resident landlord is a "boarding house".

As mentioned, these kinds of arrangements are very common. To take an example, if these arrangements were not common then one would have expected a very enthusiastic response around universities to the introduction of the boarding house provisions in 2009 or in the near-following years. I think that it is fair to say that there has indeed been a proliferation of large scale student housing projects – such as Iglu and others. However, I don't think that there has been a great proliferation of these projects at the smaller, suburban scale.

One would expect to see a lot of smaller scale boarding houses around Macquarie University or at Waratah West, near to Newcastle University, for example. Yet there are only 20 in the whole of the Newcastle Local

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Government Area and none at Waratah West. There are only eleven registered boarding houses in the City of Ryde, where Macquarie University is located.

The ease with which investors can gain rental returns taking an informal approach normally significantly outweighs the trouble associated with gaining development consent. They may be taking a risk in terms of insurance, but it seems enough operators are willing to take that risk.

It is to be noted that those operations not only compete with legitimate boarding houses as an investment option – they also compete in terms of the rent levels that renters are willing to pay.

In suburban contexts car parking provided to these share houses is normally a maximum of two spaces. Some residents would be expected to park on the street. There is no control over proximity to frequently operating buses for such arrangements.

For these kinds of informal boarding houses, there are no proper fire regulations and there is no provision of access for people with a disability (except perhaps in rare cases).

Unfortunately, in these cases a person's acceptance into the boarding house will be based on whether the other residents like the person. For example, if I had a facial disfigurement and went to meet the residents of a share house (through, say, flatmates.com), then I would be unlikely to be accepted. If I was a 50-year old divorced woman then I would also tend to struggle to be accepted.

The lack of regulation in the informal share housing sector may also lead to financial abuse particularly if the residents have an unclear immigration status. In severe cases this may lead to sexual abuse/servitude or effective slavery. Of course, that is at an extreme end of the scale. But certainly residents of an informal boarding house may not have good protection in relation to their tenancy rights.

Even for residents who manage to live in a reasonably equitable share house arrangement, it tends to offer a lower standard. For example, there are the typical problems working out responsibilities for cleaning and the like, and there is the problem of having one's food stolen in some cases.

It is beside the point whether a socially-based share house, as opposed to the model where the owner receives rent amounts separately, formally requires development consent. That matter does not affect the way in which it serves as an alternative investment model to investing in a formal boarding house.

MB Town Planning is not suggesting that socially-based share houses should not be allowed. MB Town Planning is simply pointing out that they serve as competition to formal share houses that:

- are registered;
- operate under a plan of management that gives rights to tenants as well as managing amenity impacts to neighbours;
- operates under proper letting agreements;
- is governed by the *Boarding Houses Act 2012*;
- complies with relevant fire safety regulations;
- is built to a proper standard;
- provides appropriate facilities such as common areas, open space, laundry facilities, outdoor clothes drying, waste facilities, and some parking including for bicycles and for motorbikes or scooters;
- provides typically 2 out of 10 rooms as being suitable for people with a disability and provides access to people with a disability to the relevant facilities; and
- Is subject to the need for development consent, and therefore to a proper environmental assessment.

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As mentioned, if someone can get a good rental return without going to the trouble of gaining development consent (in the face of fierce resistance and at great cost) and of constructing the boarding house to the appropriate standard, then why would they pursue that option?

It might be suggested that they might pursue that option in some instances due to the bonus floor space that is available. However, that bonus floor space is not typically available in low density areas. In any case, it is typically a false offering because the character test needs to be satisfied, and typically the two considerations are at odds.

Also stacked against the boarding house option is that investment decisions are competing against alternatives that can be strata subdivided so that the development can be funded off the plan or in stages.

It is really hard to see why anyone pursues smaller scale boarding house developments. At least if one is approved, then they can offer a better rental return than informal options and provide for a more secure insurance situation. Even the improved rental return becomes comparatively marginal, at least in tourist areas where Air B&B options are taking hold. There are really only limited cases where the option is worth pursuing. And that is despite the obviously much greater social benefits of properly registered boarding houses compared to the informal alternatives.

Into this picture we see the introduction of the proposed increased parking limit from 0.2 spaces per boarding room in an accessible area to 0.5 spaces. This will surely see the end of formal boarding houses in suburban areas. But it won't see the end of boarding houses – informal or illegal boarding houses will become a much more attractive option.

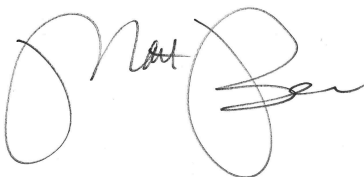
The case for the changes in terms of the impacts on available car parking spaces in a locality is weak for the reasons set out above – there is already a thriving share house sector and that involves adults sharing houses and often each owning a car.

Furthermore, the proposed changes go directly against the whole direction of planning in the Sydney Metropolitan Area, which is meant to promote the use of public transport in accessible areas – in conjunction with upgrades to public transport. The proposed changes in the controls will mean that there is a greater investment in car parking infrastructure (to the extent that large scale boarding houses will still be carried out). That investment will be reflected in higher rent levels for boarding rooms with parking spaces, and renters paying for those garages will be more inclined to take that benefit by owning a car. Once they are owning a car (and paying the various recurrent costs) they are more likely to use that car and contribute to the amount of traffic on the roads. If they do not have their own parking space, they are more likely to avoid the costs associated with a car and are more likely to rely upon alternatives such as public transport, cycling and/or walking. The proposal is a retrograde step in terms of transport policy.

I therefore urge the Minister for Planning not to proceed with the proposed changes.

Please let me know if there are any questions.

Yours faithfully,



Matthew Benson  
Principal - MB Town Planning  
3 April 2018