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Director, Housing Policy  
Department of Planning and Environment  
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### **Draft amendment to the Affordable Rental Housing SEPP**

Reference is made to a proposed amendment to *State Environmental Planning Policy (Affordable Rental Housing) 2009* (ARHSEPP) being exhibited by the Department for comment until 19/12/18.

The amendment proposes to restrict boarding houses in the R2 – Low Density Residential zone to having a maximum of 12 boarding rooms.

The purpose of this submission is to highlight the importance of including appropriate savings provisions within the amendment so that it does not apply retrospectively to development applications already lodged.

This submission is made with specific reference to a development application which at the time of writing, had been lodged with Northern Beaches Council and was under assessment but not determined.

We acknowledge that the Department cannot offer comment on a development application for which it is not the consent authority. We only make particular reference to this application because it illustrates why it is important to include savings provisions so that it and others like it can be determined fairly on their merits under the planning controls that applied when they were lodged.

The application is DA2018/1166 for a boarding house with 122 boarding rooms at Nos 613 & 615 Pittwater Rd & No 11 May Rd, Dee Why. The site is zoned R2 under Warringah LEP 2011 and has a combined area of 3,169m<sup>2</sup> (with a large battleaxe lot, No613 Pittwater Rd, comprising 1,981m<sup>2</sup> of this area).

The DA was lodged on 06/07/2018. An appeal against deemed refusal of the DA was filed with the Land & Environment Court on 21/09/2018 (No2018/289481).

Shanahan Planning prepared the Statement of Environmental Effects (SEE) and Boarding House Plan of Management (PoM) submitted with the DA.

If the proposed ARHSEPP amendment were to proceed, there are strong reasons supporting a savings provision so that it does not apply to this and other development applications already lodged for boarding houses with more than 12 boarding rooms in the R2 zone. These reasons include:

- Under-utilisation of scarce urban land resources;
- Under-provision of affordable rental housing at a time of high need;
- Diminished industry confidence in the NSW planning system.

These reasons are addressed in detail overleaf.

### *Under-utilisation of scarce urban land resources*

The site is currently occupied by three dwelling houses, one on each of the three lots making up the site. The R2 zoning under Warringah LEP 2011 is highly restrictive and does not permit even dual occupancies within the R2 zone.

A townhouse development adjoining the site to the south was approved under an earlier planning regime where multi dwelling housing was permissible in the low density zone but that is no longer a permissible use under the current LEP.

The uses permissible with consent in the R2 zone are (with residential highlighted):

*Bed and breakfast accommodation; Boarding houses; Boat sheds; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Dwelling houses; Educational establishments; Emergency services facilities; Environmental protection works; Exhibition homes; Group homes; Health consulting rooms; Home businesses; Hospitals; Places of public worship; Recreation areas; Respite day care centres; Roads; Secondary dwellings; Veterinary hospitals*

Home-based child care and Home occupations are permissible without consent. Apart from these, all uses other than those listed above are prohibited.

Boarding houses are one of just four residential uses permissible in the R2 zone, the most prevalent use in the zone of course being dwelling houses. The use of this site of over 3,000m<sup>2</sup> for just three dwelling houses or up to 36 boarding rooms represents a gross under-utilisation of highly valuable urban land.

Boarding house is a permissible use in the zone and the site is ideally located for that purpose, being adjacent to Dee Why town centre (the major business and civic centre of the Northern Beaches) and close to high frequency public transport (including the B-Line bus service from Mona Vale to Wynyard).

It is worth noting that the permissible uses include others that are typically of larger built form than dwelling houses such as centre-based child care facilities, community facilities, educational establishments, health consulting rooms, places of public worship and veterinary hospitals. It therefore cannot be said that the proposed boarding house needs to be limited to 12 rooms to ensure it is compatible with the objectives of the zone, as the zone itself contemplates larger scale uses (particularly in a location such as this adjacent to a major centre).

Limiting the development of this site (particularly No613 Pittwater Rd) to a boarding house of 12 rooms would therefore be contrary to the object of the *Environmental Planning & Assessment Act 1979* "to promote the orderly and economic use and development of land" (s1.3(c)).

This object is partly given effect through the Local Planning Directions for residential zones issued under s9.1 of the Act. The directions include the requirements that a planning proposal must:

- (a) broaden the choice of building types and locations available in the housing market, and*
- (b) make more efficient use of existing infrastructure and services, and*
- (c) reduce the consumption of land for housing and associated urban development on the urban fringe, and*
- (d) be of good design.*

The Directions further require that a planning proposal:

*must not contain provisions which will reduce the permissible residential density of land.*

While the Directions only apply to local planning instruments and not to SEPPs, they are the point at which the Government's strategic planning for residential zones is given statutory effect. It therefore would be a perverse result if a SEPP were to have the opposite effect as intended by the Directions.

That is arguably the consequence of the proposed 12-room limit but would certainly be the case if a savings provision was not included if that amendment were to proceed.

The object of the Act noted above would be better served if a savings provision was included in the ARHSEPP amendment so that this and similar applications can be determined fairly on their merits under the current planning controls.

#### *Under-provision of affordable rental housing at a time of high need*

The SEE submitted with the DA included an analysis of the social and economic impact of the development. An extract is enclosed at **Attachment 1**.

That analysis remains equally valid today, but further developments since it was written are worth noting.

Firstly, the SEE noted that Council intends to provide for the development of new affordable housing through an "inclusionary zoning" mechanism that will require 10% of dwellings in urban renewal or greenfield development to be dedicated as affordable rental housing (Northern Beaches Council *Affordable Housing Policy* adopted 28/08/18).

In November 2018, the Department of Planning & Environment announced that the proposed rezoning of Ingleside, the major urban release initiative of the Northern Beaches, will not proceed due to bush fire safety concerns and that a comprehensive review will be conducted to determine an appropriate level of development for the area.

Council's proposed 10% inclusionary zoning mechanism would have yielded up to 350 affordable rental dwellings out of the 3,500 dwellings that were to be developed at Ingleside. The decision to completely review the appropriateness and scale of future development in Ingleside means that this supply of affordable dwellings will be much delayed and in all likelihood, substantially diminished (as 70% of the planned dwellings were within 100m of radiant heat exposure).

Secondly, many property market observers anticipate that the ongoing slump in Sydney home prices will see an increasing number of recent property buyers unable to meet mortgage commitments made during the peak of the property boom, with some being forced to remain in (or return to) the rental housing market. This would see even greater pressure placed on the existing rental housing stock, particularly at the lower end of the rental market.

Thirdly, some submissions on the proposed development have questioned whether boarding house accommodation can be characterised as affordable.

In the SEE, it was noted that:

*While rents within the development are not regulated and will respond to market demand, they will generally be lower than apartments because of the smaller accommodation size, reduced availability of on-site car parking, the sharing of facilities and the different tenure arrangements...*

Support for this view is provided by a recent UNSW study commissioned by the City of Sydney and Southern Sydney Regional Organisation of Councils.

While many of the subjective conclusions of that report are ill informed and challengeable, one useful piece of hard evidence it noted was that boarding rooms in the SSROC and City of Sydney area (excluding specialised student accommodation in and around the universities) were let at a discount of between 10% and 40% compared with one-bedroom units in the same area.<sup>1</sup>

A discount of this magnitude includes the 20%-25% discount to market range which is identified by State Government as a benchmark for affordable housing.<sup>2</sup>

The site is not near a university and is designed to principally attract key workers employed in local employment nodes such as the Dee Why major centre, Brookvale industrial area, Warringah Mall and the planned strategic centre (Frenchs Forest Health & Education Precinct) focused on the recently opened Northern Beaches Hospital, a planned new town centre adjacent to the Hospital and the surrounding Frenchs Forest Business Park.

Under the *North District Plan* released by the Greater Sydney Commission, housing location and choice for key workers and students are important considerations and are considered *economic infrastructure*.

The evidence therefore suggests that this proposal will make a substantial and valuable contribution to the supply of affordable housing and diversity of housing choice in the area. Importantly, this will be funded entirely by the private sector without the cross subsidies inherent to all social housing.

The proposed development therefore offers the opportunity of a substantial supply of affordable housing for key workers at a time when supply is highly constrained and is poised to experience even greater demand due to broader economic and property market factors.

### *Diminished industry confidence in the NSW planning system*

There is a general presumption that new laws should not apply retrospectively. The inclusion of savings provisions is important in fostering the level of confidence and stability which the development industry requires to commit to the high upfront expenditure in housing delivery. A higher level of risk and cost borne by the industry is ultimately passed on as delayed delivery and higher housing costs to the end consumer.

The Department recently amended ARHSEPP in June 2018 to double the amount of carparking required in boarding houses within the R2 zone. From discussion with Department officers, it is understood that the unorthodox decision to not include a savings provision in that change was made on the basis that Clause 29(4) of ARHSEPP already provides an in-built flexibility for councils to approve a lesser rate of parking in circumstances they considered appropriate.

With respect, that assumption failed to recognise how the thresholds of Clause 29 are applied by councils in practice. With few exceptions, they are applied as minimum development standards with which councils demand strict compliance.

Shanahan Planning has dealt with over 50 boarding house DAs and several were caught out by this change and had to be withdrawn and/or heavily modified to meet the new parking "standard" (including two others in Northern Beaches LGA) with consequent loss of boarding room yields, reworking of designs and supplementary reports costing thousands of dollars, additional DA fees and ultimately higher construction costs.

<sup>1</sup> AHSEPP and affordable housing in Central and Southern Sydney, UNSW City Futures Research Centre 2018, p30.

<sup>2</sup> [www.facs.nsw.gov.au/providers/housing/affordable/about/chapters/how-are-affordable-housing-rents-set](http://www.facs.nsw.gov.au/providers/housing/affordable/about/chapters/how-are-affordable-housing-rents-set)

The development process involves heavy upfront expenditure before a DA can be lodged in conducting due diligence investigations, preparing draft designs, commissioning an ever-widening array of specialist technical reports and attending pre-DA meetings.

The normal practice of including savings provisions is consistent with the general presumption against retrospectivity and helps alleviate this risk, delay and cost.

In conclusion, the high and increasing demand for affordable housing in the Northern Beaches, together with the worsening prospects for its delivery, warrants a pragmatic approach of supporting delivery at every opportunity. This includes the normal practice of including within the ARHSEPP amendment a savings clause so that it does not apply to DAs already lodged and they can be fairly determined based on the current planning controls.

Yours sincerely



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**Director**

## ATTACHMENT 1 – EXTRACT FROM SEE (pp21-22)

### ***Social & economic impact***

The development will have a positive social and economic impact by providing additional affordable rental housing within an area of high demand at a time when there is a critical shortage of accommodation affordable for key workers in the Northern Beaches.

While rents within the development are not regulated and will respond to market demand, they will generally be lower than apartments because of the smaller accommodation size, reduced availability of on-site car parking, the sharing of facilities and the different tenure arrangements (Occupancy Agreements under the *Boarding Houses Act 2012*) which provide greater flexibility but less autonomy than Residential Tenancy Agreements under the *Residential Tenancies Act 2010* (which apply to standard rental houses and units).

In December 2016, Council prepared an *Affordable Housing Needs Analysis* with input from Council's (then) Affordable Housing Strategic Reference Group (of which the author was a member). Council's *Affordable Housing Policy Action Plan* was subsequently developed using the evidence documented within the Needs Analysis.

Key points from the Needs Analysis include:

- In 2011, **79%** of households renting in the Northern Beaches were in housing stress (paying more than 30% of their income on rent). This is expected to have since increased due to continually rising rents and slow wages growth.
- *Expansion of the leisure and hospitality and the health and education industries, including the opening of the Northern Beaches Hospital, will fuel demand for affordable housing to **attract/retain 'key workers' occupations**.*
- *Provision of affordable housing for key workers is a specific challenge for local businesses due to **the poor public transport connections into the northern beaches**, for those workers who can't afford to live locally. This was highlighted in the recent Council Business Survey.*
- *Households tend to move within the Northern Beaches, however there is a recent trend for households, especially 24-34 and 35-44 year olds, to **relocate out of the region** to the Central Coast, north to Hornsby or Kuring-gai or further afield to Gold Coast or Sunshine Coast, due possibly to rising housing costs.*
- *Meanwhile, the **supply of affordable housing** to rent or buy within the Northern Beaches is at historically low levels, and is significantly below the Sydney average.*
- *As at June 2015:*
  - *1% of rental properties in the Northern Beaches were affordable to very low income households compared to the 3% Sydney average;*
  - *For low income households only 3% of rental properties in Manly, 5% in Warringah and 7% in Pittwater are considered affordable, compared to 18% for Sydney average;*
  - *For moderate income households only 26% of rental properties in Manly were affordable, 30% in Pittwater and 40% in Warringah (compared to 60% for Sydney region).*
- *There is, therefore, an urgent need for action to increase the supply of affordable, especially rental, housing which is targeted at low to moderate income households, who are required to live and work in the Northern Beaches to support its community and economy. There are a number of opportunities arising with current Structure Planning undertaken by*

*Council in key locations e.g. Northern Beaches Hospital and Ingleside precincts.*

The opportunity referred to in the final point above is a proposed inclusionary zoning requirement that will be imposed on future residential development within the new higher density zones proposed in the *Northern Beaches Hospital Precinct Structure Plan* and at Ingleside. Under this mechanism, 10% of new dwellings will be dedicated to Council and managed by a community housing provider as affordable housing (and 15% within the new town centre on the Forest High School site).

This mechanism may eventually result in several hundred affordable rental apartments, however these will be produced incrementally over many years and will not be available for a long time after the hospital opens later this year. For example, the affordable units arising from development in the new town centre cannot be produced until new school premises have been established for Forest High, the existing school site has been cleared and its redevelopment has been approved and constructed completed - a very lengthy process.

Council's Needs Analysis noted that the new hospital will further fuel affordable housing demand at a time when need is already at a critical level and key workers are leaving the Northern Beaches. The proposed boarding house is within a short bus ride to the new hospital and can provide affordable rental accommodation in a relatively short timeframe to help meet some of the additional housing need it will generate.

Similarly, employment floorspace in Dee Why is expanding as the centre is developed in accordance with the Dee Why Town Centre Masterplan. The proposal will enable additional workers employed in the centre to live within walking distance of their work. The site is also within easy commuting distance of Brookvale industrial precinct and Warringah Mall, both major Northern Beaches employers of low and middle income workers.

It is concluded that on balance, the overall impact of the proposed development will be positive.