

Director, Housing and Infrastructure Policy
Department of Planning and Environment
GPO Box 39 Sydney 2000

Our Ref:
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17 December 2018

Dear Sir/Madam

COUNCIL SUBMISSION TO DRAFT AMENDMENT TO THE AFFORDABLE RENTAL HOUSING STATE ENVIRONMENTAL PLANNING POLICY (SEPP)

Thank you for the opportunity to make a submission on this matter. Council raises a number of issues for consideration. In particular the proposed changes do not account for the particular circumstances under Wollongong Local Environmental Plan 2009 (WLEP2009) as outlined below. Though they may be outside the scope of the proposed changes Council is also of the view that the Department should take this opportunity to ensure at the aims of the Affordable Rental Housing SEPP (SEPP) can be achieved. In terms of ensuring local character is addressed, Council is of the view that where Councils have a Design Review panel (DRP), that this panel should be mandatory to assist in this assessment. Finally Council believes that consideration should be given to mandatory conditions of consent to ensure that boarding houses continue to achieve the aims of the SEPP.

WLEP2009 and Challenges in Wollongong

The challenges for many boarding house developments in Wollongong can be summarised as follows:

- Incompatible bulk and scale, incompatible with local character,
- Privacy and overshadowing,
- Increase in noise and disorderly behaviour, and this will also cause a social impact,
- Parking and traffic impacts,
- Waste collection,
- Lack of evidence that they will actually provide affordable housing.

The proposed changes only appear to apply to the SEPP; however WLEP2009 also permits boarding houses within R2 zones without restriction on room numbers and this would need to be changed for consistency. The main issue arising from this is that WLEP2009 permits residential flat buildings in the R2 zone; therefore under clause 29 of the SEPP a proponent can access bonus floor space which would not be consistent with the intended effect of the changes to the SEPP.

Aims of the Affordable Rental Housing

It is noted from the explanation of intended effect that the SEPP was introduced to increase supply and diversity of affordable rental and social housing in NSW. The document also states that the SEPP has been instrumental in facilitating the provision of diverse affordable rental housing across NSW. However, there is no mechanism in the SEPP which ensures that this form of housing is actually meeting the needs of those the SEPP aims to target.

For example, there is no mechanism in the SEPP which ensures that the development is tied to a particular cohort. Arguably there is an inability of consent authorities to impose conditions requiring letting at "affordable housing" income requirements. There is no requirement under the SEPP for boarding houses to be restricted to occupation as "affordable housing" defined in Clause 6. This is only required by clause 17 for infill affordable housing approved under Division 1 or by clause 38 for residential flat buildings approved under Division 5, there is no equivalent provision to these clauses in Division 3. As noted below, boarding houses are 'affordable by design'. The LEC has consistently rejected rent-capping conditions for boarding houses on the few occasions these have been suggested by councils – for example: *Modog Pty Limited v North Sydney Council*

[2013] NSWLEC 1134 at [95]; Revelop Projects Pty Ltd v Parramatta City Council [2013] NSWLEC 1029 at [50]; Prasino P/L v Ashfield Council [2012] NSWLEC 1257.

In the Wollongong statistical area a maximum rent of \$349 per week per room can be charged. The Illawarra and Sydney statistical region median income is very similar (Sydney is \$50,422 and Illawarra is \$49, 454). There has also been some media attention on this lately (see attached SMH article) and the market rates appear to be out of reach of those most in need.

The above matters could be addressed if the State Government was of a mind to amend the SEPP to permit Councils to impose conditions restricting to occupation as “affordable housing” for a finite period.

Conditions

Council currently places conditions of consent on boarding houses so that they continue to achieve the aims of the SEPP including operational issues such as plans of management. However, as mentioned above, arguably there is an inability of consent authorities to impose such conditions. It appears that Department is of the view that that form will create function, insofar as the design will effectively preclude persons who do not fit the definition of low and moderate income households from residing there. In other words they are ‘affordable by design’ through the compact size of the accommodation, shared recreational and open space facilities, restricted car parking and the more flexible but less autonomous tenure arrangements (Occupancy Agreements under the Boarding Houses Act rather than residential leases under the Residential Tenancies Act). It appears that the Department has deliberately steered away from the type of provision under clause 38 of the SEPP. However there is no actual evidence that form creates the function to meet the aims of the SEPP nor is there any legal mechanism to oblige the building owner to ensure that the aims of the SEPP are achieved on an ongoing basis.

DRP

Council presently refers all boarding houses to its DRP (established under SEPP65) in relation to clause 30A of the SEPP as most applications in the Wollongong area rely on the SEPP for permissibility. This has always resulted in positive changes to building design and function without sacrificing yield. Where a Council has a formal DRP, consideration should be given to making this process mandatory under clause 30A to assist in ensuring that development is compatible with the character of the local area.

Please contact me should you require further information.

This letter is authorised by

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NATIONAL NSW

\$500 to rent a boarding house room as developers exploit planning laws

By [Lisa Visentin](#)

17 June 2017 — 2:06pm



As many people struggle to secure housing in Sydney's expensive rental market, developers are building high-end "boarding houses" with rents as high as \$500 per week by exploiting planning laws designed to help low-income earners find homes.

It comes amid a surge in the construction of boarding houses around Sydney, while councils say they are powerless to ensure the housing is actually affordable.



A 40-room boarding house in Avoca Street, Randwick, where rooms are currently advertised as "furnished designer studio" for lease for \$500 per week, DARBS DARBY (ANDREW DARBY)

"It's dividing the community," Randwick mayor Noel D'Souza said. "Developers are building these and the rents are not reflecting affordable housing."

<https://www.smh.com.au/national/nsw/500-to-rent-a-boarding-house-room-as-develop...> 10/12/2018

In Randwick, more than 500 boarding house rooms have been built since the State Environmental Planning Policy for Affordable Rental Housing was implemented in July 2009.

Half of these were approved in the last two years, according to a report prepared by Randwick Council last week, which included the findings of a survey of all boarding houses in the council area.

The survey found newer boarding houses built under the policy were leased at between \$390 and \$500 per week, about double the price of rooms in older traditional boarding housing with shared facilities, which ranged between \$200 and \$250.

One example uncovered by the council was a 40-room boarding house in Avoca Street, Randwick, which it approved in 2010, where single rooms are currently advertised for lease at \$500 per week and marketed as "furnished designer studios".

Cr D'Souza said developers were treating the policy as a "cash cow", and new rental controls were needed to ensure the rooms remained subsidised for low-income earners and key workers.

"What we are seeing is developers taking advantage of generous incentives to get bigger developments built in residential areas under the guise of helping the community, yet they are charging market rates which are way out of reach of those most in need."

Following the report's finding, Randwick council has requested the Department of Planning conduct "a comprehensive review of the effectiveness of the policy", including an audit of the location and number of boarding houses approved under the policy, and the rents charged.

A spokesman for the Department of Planning confirmed the role of the policy was "to support the delivery of affordable rental housing".

In a bid to encourage developers to build this type of housing, the policy includes enticements such as bonus floor space and permits the construction of units as small as 12 square metres – almost three times smaller than the minimum size for studio apartments.

"The rents are set by the boarding house owner. However, by the nature of their size, boarding houses are more affordable than other accommodation," the department spokesman said.

Canada Bay council also approached the planning department with their concerns last month, after receiving seven applications from developers to build boarding houses since 2014, including multiple applications for the same street in Concord West.

Mayor Helen McCaffrey said developers "were trying to exploit the policy" for financial gain, and said the council had "limited capacity to refuse development

<https://www.smh.com.au/national/nsw/500-to-rent-a-boarding-house-room-as-develop...> 10/12/2018

applications" providing developers complied with the minimum standards prescribed by the policy.

A spokesman for the Department of Planning said the policy was currently under review as part of a broader state policy review program.



Lisa Visentin



Lisa Visentin is state political reporter. She has previously covered urban affairs, and worked in federal parliament.
