

9 September 2020

To whom it may concern,

RE: Proposed new Housing Diversity SEPP - Explanation of Intended Effect

Shelter NSW welcomes the development of the proposed Housing Diversity SEPP (HD-SEPP). As the peak body for housing advocacy in NSW, we value the opportunity to share our views on planning policies that aim to facilitate the supply of diverse and affordable housing throughout the state.

The Explanation of Intended Effect (EIE) has closely followed the exhibition of related reforms including the *NSW Housing Strategy, Design & Place SEPP* and *Infrastructure Contributions Review*. As such, it marks a significant period for housing policy reform in NSW at a time that COVID-19 has pulled the significance of secure housing into sharp relief for the entire community.

We approach all of these matters from the perspective of low-income households who struggle to afford good-quality and well-located housing in the private market. In identifying the challenges and solutions to providing secure housing to this group, Australia is fortunate to benefit from a highly developed research sector that provides an evidence base for our submission.

This includes reports on the potential to deliver affordable housing through Built-to-Rent schemes (Pawson et al 2019) as well as multiple reports evaluating the efficacy of the Affordable Rental Housing SEPP (ARH-SEPP) (Gurran et al 2018; Troy et al 2018). Shelter NSW has itself commissioned reports on the growth of the boarding house sector in NSW (Martin 2019) and the potential dwelling yields from the Greater Sydney Commission's inclusionary planning scheme (Phibbs & King 2018).

Based on this research, we have organised our comments on the HD-SEPP to both indicate support for particular provisions and recommend a series of changes. Beyond commenting on its general aims and potential outcomes, our feedback largely focuses on the new and amended provisions for Build-to-Rent and compact dwelling uses summarised in an appendix to this submission.

Overall, we support intended effect of the HD-SEPP to facilitate the supply of Build-to-Rent as a more professional and secure form of private rental housing. Where this new use is developed by registered community housing providers, we hope to see part of this sector support the supply of affordable rental housing. To that end, we also welcome the new provisions for boarding houses.

However, we remain concerned at the lack of strategic aims of the HD-SEPP. In not being linked to a broader strategy to increase the nominal supply of affordable housing, we expect it only to produce similar results to the ARH-SEPP which have been unpredictable, unmonitored and underwhelming.

To discuss any of our feedback, Shelter NSW would be pleased to participate in any further consultation on the development of the HD-SEPP. Please contact our Senior Policy Officer Ryan Harris at ryan@sheltersnsw.org.au or on 0422 073 786 to do so.

Best wishes,

John Engeler
CEO
Shelter NSW

General comments on aims, monitoring and principles

The HD-SEPP should give effect to an affordable housing strategy with measurable targets

While we welcome the consolidation of existing SEPPs into a single instrument, the HD-SEPP does not appear to have a strategic aim in relation to affordable housing. Notably, the EIE has been exhibited before the release of the final NSW Housing Strategy for which Shelter has made a submission advocating a coordinated approach to increasing supply.

Without this link, we expect that the HD-SEPP will produce similar results as the ARH-SEPP. AHURI research estimates that instrument facilitated the supply of over 13,000 new dwellings between 2009 and 2016, amounting to less than 1% of Greater Sydney's housing supply. However, the types of dwellings delivered under the ARH-SEPP have not achieved its intended affordability aims. This includes nearly 11,000 secondary dwellings, over 2,000 boarding rooms and roughly 1,200 infill dwellings, most of which were not subject to on-going affordability requirements.

The HD-SEPP can and should play an important role in increasing the supply of affordable housing. To do so, its provisions should be designed to support a coordinated strategy with measurable targets. As it stands, it is unclear what outcomes it will deliver.

Data on its outcomes should be centrally collected, published and evaluated on a regular basis

Multiple reports have noted insufficient data collection on development facilitated by the ARH-SEPP. In attempting to evaluate its outcomes, researchers have had to manually review individual development applications and bond registries in the absence of a central source of information. The Department should remedy this by collecting and publishing information on the number, location and rent levels of dwellings facilitated by the HD-SEPP. This should include the duration of any affordability requirements in order to monitor any expiring supply.

Planning privileges should be directed to regulated non-profit providers of affordable housing

Shelter NSW is a strong supporter of using the planning system to support affordable housing. However, the outcomes of the ARH-SEPP have demonstrated that applying bonuses, concessions and exemptions to private development has not produced a significant or permanent supply. As a principle, then, we believe that any future planning benefits with an affordability objective should be restricted to community housing providers. This provides a cost-effective and assured means of achieving their intended purpose given that CHPs can leverage other concessions associated with their charitable status and compliance regimes.

Comments on Build-to-Rent

We welcome the introduction of a distinct land use for Build-to-Rent housing

Shelter NSW supports the emergence of a Build-to-Rent asset class in Australia. This potentially marks the professionalisation of the private rental market which is currently dominated by amateur landlords focused on capital gains rather than long-term rental income. Accompanied by appropriate regulation, Build-to-Rent could help achieve important housing policy objectives of greater security of tenure, better construction quality and improved maintenance in the private rental market.

However, we do not view the private model of Build-to-Rent as a vehicle for affordable housing. As an immature market with thin feasibility margins, we expect it to provide a premium rental product in well-located areas with added services and amenities. Where we do see its potential for delivering affordable housing is in community housing providers developing such projects.

Any additional privileges for Build-to-Rent should be directed to community housing providers

The HD-SEPP appears to offer only limited benefits to Build-to-Rent uses including expanded permissibility, lower rates of parking and a state approval pathway. We do not hold strong views on these privileges which, on top of previously announced tax concessions, may provide initial support for the industry in establishing itself. However, we would be cautious of any additional benefits being accorded to private developments where these are intended to improve affordability outcomes. As previously suggested, any additional privileges should be directed to community housing providers who can leverage them based on their regulated charity status.

Subdivision of Build-to-Rent developments should require a change of use

We note that the HD-SEPP's conditional provision for subdivision of Build-to-Rent developments after 15 years supports a particular business model of Build-to-Sell-Later. This contrasts with our conception of Build-to-Rent as an asset class resembling infrastructure with investors focused on long-term rental income rather than (delayed) capital gain. Given the commercial implications of restricting subdivision outright, we do not hold especially strong views on the matter.

However, if a development is approved under a Build-to-Rent use then it stands to reason that a new application should be lodged to change its use at the intended time of subdivision. This would provide an opportunity to ensure compliance with any development standards that would have otherwise applied. In the event that the development also included low-cost rental housing, the change of use would potentially trigger contributions for its loss provided for by the HD-SEPP.

The Design and Place SEPP should provide specific design guidance for Build-to-Rent

Shelter NSW recognises that Build-to-Rent developments have positive design and management features which distinguish it from traditional Build-to-Sell developments. As such, it is appropriate that specific design guidance be developed to address such matters including the operational requirements associated with long-term asset management and community facilities.

Given its specific purpose and concurrent development, we recommend that the Design and Place SEPP, and not the Housing Diversity SEPP, be the instrument that provides for these matters. We would have confidence in the Government Architect to prepare specific guidelines that are consistent with *Better Placed* and ensure residential and public domain amenity without exceptions based on the ownership model. Shelter NSW has lodged a separate submission on that SEPP.

Comments on boarding houses, co-living and student housing

We welcome the introduction of distinct uses for student housing, co-living and boarding houses

One of the most significant outcomes of the ARH-SEPP was the creation of so-called new generation boarding houses. At around 12-25 sqm, these developments were more akin to micro-apartments, being largely self-contained and leased under standard tenancy agreements. While arguably exposing a demand for luxury studios, they blurred the definitional line of traditional boarding houses which generally provide less privacy and tenure security. Defining these uses separately is therefore a welcome development as it allows for more appropriate regulation.

We support the affordability and management requirements applying to boarding houses

The development of new generation boarding houses under the ARH-SEPP is a case study in how lowering the cost of private rental housing has not produced affordable housing. In its amendments to the boarding house provisions, the EIE appears to acknowledge this outcome and we welcome its moves to remedy it. The new definition of a boarding house as an affordable rental product that is managed by a community housing provider offers a valuable opportunity to expand the supply of this housing type for its intended purpose.

Our only concern is the EIE's consideration of a 10-year duration limit on the affordability requirement. Ideally, the HD-SEPP should negate this need by extending the definition of a boarding house to be a type of affordable housing that is both owned and managed by a community housing provider. In any case, the provisions should not limit the development and management of boarding houses by the Land and Housing Corporation.

We support the concessions and bonuses for boarding houses—they should not be extended

We note that the updated density bonus of 20% for boarding houses has not been extended to co-living and student housing uses. While some concessions such as reduced parking requirements may have merit in their own right, we affirm the decision not to provide benefits intended to produce affordable housing to privately owned and managed rental housing. As a minor point of clarification, we otherwise note that the parking rate of 0.2 spaces for social housing providers should be stated to specifically include community housing providers.

Distinct leasing provisions should apply to co-living and boarding house developments

Consistent with their perception as private apartments, most new generation boarding houses developed under the ARH-SEPP appear to have been leased under residential tenancy agreements. To clearly distinguish their respective uses, the HD-SEPP should provide for co-living uses to be leased under residential tenancy agreements and boarding houses to be leased under occupancy agreements consistent with the Boarding Houses Act.

The Design and Place SEPP should provide specific design guidance for compact dwellings

While the inclusion of minimum development standards in the HD-SEPP may provide additional certainty for proponents, they do not draw a clear link to minimum standards of amenity. Given its intended purpose and concurrent development, the HD-SEPP should defer all design matters to the Design and Place SEPP. In making this comment, we note that the HD-SEPP has set a minimum room size for co-living dwellings of 30-35 sqm which may restrict its development. Whether the planning system should allow or prohibit micro-apartments in the private rental sector is a question worthy of further discussion for which the Design and Place SEPP provides an opportunity.

Comments on inclusionary planning provisions

In-fill bonuses should only be offered to registered providers of permanent affordable housing

Shelter NSW supports the expanded use of both voluntary and mandatory inclusionary planning mechanisms. However, we do not believe the density bonus that currently applies to in-fill housing should be provided to private developers of time-limited affordable housing. Restricting these benefits to community housing providers can produce additional value for government in that they can leverage other concessions afforded by their charitable status.

The definition of affordable housing under the ARH-SEPP should also be amended to account for local rental markets. Currently, it applies to housing that costs no more than 30% of household income for households earning up to 120% of the median household income in Greater Sydney. This can lead to perverse outcomes where benefitting developments can be rented out at \$630 per week in areas where median rents and household incomes are significantly lower. Amending the bonus to account for local conditions and restrict its use would help community housing providers compete more effectively in acquiring sites and cater to a diverse range of income profiles.

We welcome the retention of the SEPP 70 provisions and urge more ambitious targets

We note that the HD-SEPP will incorporate the SEPP 70 provisions which allow for the creation of affordable housing contribution schemes by local councils. While it is beyond the scope of the HD-SEPP to mandate targets for these schemes, we reiterate the need for the HD-SEPP to be linked to a broader affordable housing strategy with nominal supply targets. As it stands, the outcomes of these schemes are unpredictable with research commissioned by Shelter estimating the yield of the GSC's percentage target of 5-10% producing a huge variance of between 3,000-12,000 dwellings. These schemes can and should be planned to deliver more.

The HD-SEPP should record and map all Affordable Housing Contribution Schemes

As with the ARH-SEPP, monitoring of the retained SEPP 70 provisions will be hampered by a lack of centralised data collection. Once these schemes are prepared, there does not appear to be a single source of information for checking where they apply and what contributions they require. This will require both planners and developers to check individual schemes with individual councils. To enhance the usefulness of the HD-SEPP, it should therefore include both a schedule and maps of all Affordable Housing Contribution Schemes that apply across NSW.

General comments pertaining to other provisions

We acknowledge that the HD-SEPP will make additional amendments to provisions related to group homes, low-cost rental housing and secondary dwellings. Being relatively minor and positive changes, we do not hold strong views on these matters. In relation to seniors housing, we note an apparent inconsistency in the definition of this use under the Standard Instrument and otherwise reiterate our support for the Design and Place SEPP to provide for all design matters.

We also acknowledge the multiple amendments to provisions related to development by the NSW Land and Housing Corporation. While Shelter NSW holds concerns about the redevelopment of social housing in NSW, these issues pertain to matters of social housing policy rather than planning provisions. We therefore do not hold strong views on these amendments.

References

- Gurran, N., Gilbert, C., Gibb, K., van den Nouwelant, R., James, A. & Phibbs, P. (2018) *Supporting affordable housing supply: inclusionary planning in new and renewing communities*, AHURI Final Report No. 297, Australian Housing and Urban Research Institute Limited: Melbourne.
- Martin, C. (2019) *Boarding houses in New South Wales: growth, change and implications for equitable density*, Report prepared for Shelter NSW, City Futures Research Centre: Sydney.
- Pawson, H., Martin, C., van den Nouwelant, R., Milligan, V., Ruming, K., & Melo, M. (2019) *Build to rent in Australia: Product feasibility and affordable housing contribution*, Report, Landcom: Sydney.
- Phibbs, P. & King, L. A. (2018), *Potential affordable dwelling yields from a NSW inclusionary zoning scheme*, Report prepared for Shelter NSW, Shelter NSW: Sydney.
- Troy, L., van den Nouwelant, R. & Randolph, B. (2018) *State Environmental Planning Policy (Affordable Rental Housing) 2009 and affordable housing in Central and Southern Sydney*, Report commissioned by Southern Sydney Regional Organisation of Councils, City Futures Research Centre: Sydney.

Appendix: Overview of proposed provisions applying to Build-to-Rent and compact dwellings

PROVISION	BUILD-TO-RENT	STUDENT HOUSING	CO-LIVING	BOARDING HOUSES
Definition	Building with min. 50 self-contained rental dwellings held in single ownership, managed by single entity inc. on-site management	Accommodation and communal facilities for enrolled students which may inc. self-contained dwellings	Building with min. 50 private rooms and communal facilities, though may inc. self-contained dwellings, held in single ownership with on-site management, providing a principal place of residence for min. 3 months	Affordable rental building managed by a CHP with share facilities and rooms that may have private kitchen/bathroom, providing one-to-two adult lodgers with principal place of residence for min. 3 months.
Permissibility	Compulsory in R4, B3, B4 and B8 zones, and R3 where RFBs permissible	Not compulsory in any zone	Unspecified	No longer compulsory in R2 zone (exc. LAHC on public land)
Approvals	State Significant Development pathway for projects over \$100m (exc. City of Sydney) or \$50m in regional areas	Unspecified	Unspecified	Unchanged
Size	Unspecified	Min. room size 10 sqm (smaller if adequate amenity demonstrated)	Min. room size 30-35 sqm; min. private open space 4 sqm per room	Unchanged (12-25 sqm)
Facilities	Unspecified	Min. indoor common area 15 sqm per 12 students; min. outdoor common area 2.5 sqm if located 400m away from university	Min. communal space 20 sqm + 2 sqm per room above 10; min. communal open space 25% of site (lower if all private open space exceeds min. size)	Unchanged
Design	Specific guidance to be developed	Specific guidance to be developed	Specific guidance to be developed	Unchanged
Parking	0.5 car spaces per dwelling	0 car spaces required, 1 bicycle space per 3 rooms; 1 motorbike space per 5 rooms	0.5 car spaces per room	0.5 spaces per room, 0.2 for social housing providers (councils can accept fewer)
Leasing	Min. term (potentially 3 years)	Unspecified	Unspecified	Unspecified
Subdivision	Prohibited for first 15 years, and in-perpetuity in B3 zones;	Unspecified	Prohibited	Unspecified
Strata	Mechanisms to be developed e.g. right-to-buy, retention of affordable housing	Unspecified	Inapplicable	Unspecified
Location	Regional area provisions to be developed for medium density	Area requirements to be considered	Unspecified	Unspecified
Affordability	Unspecified	Unspecified	Unspecified	Requirement applies; expiration after 10 years to be considered
Bonuses	Unspecified	Unspecified	Unspecified	+20% FSR