

SHELTER NSW SUBMISSION

Public Exhibition of the Explanation of Intended Effect - Proposed amendments to the SEPP (Housing) 2021

NSW DPE - Nov 2022

22 December 2022



About Shelter NSW

Founded in 1975, Shelter NSW is a non-profit organisation that is concerned about the housing crisis in NSW and the rising trends of homelessness, housing rental stress as well as impacts of poor-quality housing, particularly on low-income households.

Shelter NSW conducts housing research and advocacy on housing reforms, representing a diverse range of household types that aim to plan for equitable growth to benefit our economy, society, and environment.

Shelter NSW is a member-based organisation engaging our members, experts and partners that represents a diverse network of other organisations and individuals who share and can advance a vision of a sustainable housing system that provides a secure home for all.

Executive Summary

Shelter NSW welcomes the opportunity offered to contribute ideas for the Department of Planning and Environment's (DPE) Explanation of Intended Effect (EIE) for the proposed amendments to the in-fill affordable housing, group homes, supportive accommodation and social housing provisions of the State Environmental Planning Policy (Housing 2021) (November 2022).

Shelter NSW support the Department's vision for future growth that is well planned, sustainable and meets the changing needs of our community in the current iteration of the EIE. In particular, Shelter NSW acknowledges the current iteration of the EIE aims to introduce amendments to the Housing SEPP and standard LEP instrument structured around the timing of the broader housing supply over the next 20 years which includes making it easier to plan and deliver housing for all, including those on lower incomes, seniors, people with a disability and those in crisis.

Importantly, with 45,200 new homes forecasted to be delivered by 2041 and with significant associated density and population increases, the SEPP amendments represent a prime opportunity to ensure any new development delivers on affordable rental housing outcomes for those households on average incomes and particularly those households on lower-than-average incomes experiencing chronic rental stress in the private rental market. The 10% affordable rental target represents 4,550 dwellings of the total forecast housing supply forecast or 228 dwellings in real terms per annum for the next 20 years across NSW.

Shelter NSW welcomes the proposed changes aimed at facilitating the supply of social and affordable rental housing by creating more flexibility for councils on how they apply Affordable Housing Contribution Schemes (AHCS) in their Local Government Areas (LGAs)

using alternative legislative pathways. Shelter NSW is also using this opportunity to make some additional recommended incentivised actions that should be captured by these SEPP amendments to provide greater flexibility and scope to deliver affordable rental housing. The additional legislative approaches recommended, relate to geographically wide AHCS's which derive a public benefit across all development types; affordable housing as affordable in perpetuity; planning controls that are designed to include bonuses; aligning delivery of affordable rental housing to the timing of staged development on sites / areas and an affordable rental housing definition that can be regulated and therefore monitored.

The creation of Affordable Housing Contribution Schemes (AHCS) are critical to the delivery of affordable rental housing across LGAs, as are, powers for complying development pathways when dealing with high support and hostel accommodation. No group home (as currently known) should require a Development Application (DA) lodged with Council given the vital nature of this type of accommodation. A DA assessment for these types of development is adding a level of unnecessary delay and uncertainty to the viability of and ability to deliver on housing for those most at need and requires resolution by these SEPP amendments.

Having amendments to the Housing SEPP and standard LEP instrument in place give the market and community certainty about the right type and amount of housing to be delivered for all.

Key findings and Recommended Actions

Shelter NSW welcomes the DPE's announcement of the proposed amendments to the provisions of the Housing SEPP 2021. Shelter NSW recommends various actions related to lever for and unlock the potential to best support more affordable rental housing, more social housing and planning pathways for more temporary supportive accommodation and hostels.

Shelter NSW has consulted as widely as the time available has allowed on these issues with those affected in the social services sector. For the sake of legibility, the comments on implications / impacts and recommended actions of the changes to the Housing SEPP seek to follow **the themed headings in the EIE as follows on:**

- **supporting more affordable housing**
- **planning pathways for social housing**
- **group homes** (renamed high support accommodation and supported living including standards in Appendix 1)
- **temporary supported accommodation** (for without development consent and complying development pathways, temporary use of vacant land and Appendix 3: plans of management details)

- **accessibility and usability standards for independent living units** (includes Appendix 4).
- opportunities for **boarding house developments**

Supporting more Affordable Housing

Affordable Housing Contribution Schemes: Contribution rates and feasibility studies

Page 8 of the EIE acknowledges that many local Councils have encountered administrative and procedural barriers to developing Affordable Housing Contributions Schemes ('AHCS'). The EIE then goes on to flag on page 12 that changes to the Department Guidelines for creating AHCS may occur to make the process simpler for local Councils, namely that the Guidelines may make explicit provision for:

- 1) *[Introducing] an affordable housing clause in an LEP that identifies potential areas and/or sites to be rezoned in the future. Basic feasibility analysis should be undertaken at this stage to identify a maximum applicable rate for the mapped sites. The contribution would then be triggered by a developer-initiated planning proposal for a mapped site, provided the council, as the consent authority, decides that it is reasonable to impose a condition on the development consent requiring the payment of an affordable housing contribution given the site-specific area.*
- 2) *[Introducing] an affordable housing clause in an LEP that states a contribution rate may be applied for any developer-led planning proposal that seeks uplift on a site. The applicable rate would first need to be calculated by the developer. At the planning proposal stage the council, as the consent authority, would need to review the proposed rate and agree that it is reasonable to impose a condition on the development consent requiring payment of an affordable housing contribution given the site-specific area.*

With respect to point 1, Shelter NSW asserts that the Department of Planning & Environment ('DPE') should set the "maximum affordable housing contribution rate" in alignment with the Greater Cities Commission ('GCC') *Six Cities Discussion Paper*. **The GCC Discussion Paper calls for a "10 per cent affordable housing target for new rezonings where there will be a housing uplift"**¹. In our submission to the GCC, we recommended a higher target of 10-15% apply to residential rezonings and development. A more modest rate should apply to any other major rezoning or development activity which would generate significant commercial/industrial investment (or changes to planning rules for floor area and height of building controls in E-, B-, IN- zones). Significant commercial/industrial investment and associated planning control changes tend to induce local/regional demand for housing by new or augmented workforces. The City of Sydney

¹ GCC. (September 2022, p. 42). *Six Cities Region Discussion Paper*. Retrieved from [Six Cities Region | Greater Cities Commission](#)

presently uses a tiered Affordable Housing contribution rate system to apply to residential and non-residential development².

A base rate of 10-15% also aligns with many national and international practices of mandatory inclusionary zoning for affordable housing. In South Australia, a State-wide affordable housing contribution rate of 15% or more applies to “significant developments”³. The Constellation Project, a consortium of not-for-profit organisations and alliance organisations (such as National Australia Bank), recommends mandatory inclusionary zoning at 10% minimum be applied to all metropolitan areas in Australia⁴.

Setting the affordable housing contributions range (10-15%) at the State Government level for regions/cities in the 6 Cities Metropolis would eliminate the need for local Councils to undertake cumbersome feasibility testing at the local level. Not only would this setting of acceptable contribution rate ranges by DPE expedite the AHCS process for local Councils, it would also harmonise with the known direction/vision of GCC’s 6 Cities Metropolis. If local Councils wish to impose contributions above or below the accepted Affordable Housing contributions range (10-15%), only then would viability and economic feasibility studies be required to support the AHCS Planning Proposal process.

As for point 2, specific guidance on how developers are to calculate and propose a “reasonable” Affordable Housing contribution rate will need to be created and circulated widely. Training of local Council planning staff in interrogating developer-proposed contribution rates will also be required. This training and guidance requirement to further point 2 is even more pressing in regional contexts outside of the 6 Cities Metropolis. As noted in the *Regional Housing Taskforce Findings Report*:

[Councils identified] *the difficulty of applying the [affordable housing scheme] viability tool across regional LGAs that contain a broad range of development contexts and highly differentiated markets. It was suggested that the existing guidance and tool should be reviewed to consider applicability to diverse regional contexts.*⁵

² City of Sydney. (24 August 2020). *Affordable Housing Program*. Retrieved from https://www.cityofsydney.nsw.gov.au/-/media/corporate/files/publications/affordable-housing-contributions/city-of-sydney-affordable-housing-program/city-of-sydney-affordable-housing-program_24-august-2020_final.pdf?download=true

³ Renewal South Australia. (2022). *Affordable Housing*. Retrieved from <https://renewalsa.sa.gov.au/building-our-future/affordable-housing/>

⁴ The Constellation Project. (September 2021). *Mandatory Inclusionary Zoning: A National Framework*. Retrieved from [MIZ national framework_v6.pptx \(theconstellationproject.com.au\)](https://www.constellationproject.com.au/miz-national-framework-v6.pptx)

⁵ NSW DPE. (September 2021, p. 35). *Regional Housing Taskforce: Findings report*. Retrieved from <https://www.planningportal.nsw.gov.au/regional-housing>

It is not known what targeted actions have come about as a result of the above Finding. Shelter suggests DPE addresses this issue before introducing another layer of complexity (i.e. developer-proposed contribution rates) to the AHCS system via point 2.

Overall, we see point 2 as being an inferior option to point 1, and much more “hit and miss” in meeting GCC’s own goals for a Metropolis-wide contribution rate in the order of 10 to 15 percent. Moreover, point 2 will serve to further frustrate regional and rural Councils still grappling with how to apply the Department’s existing viability tool.

Affordable Housing: Comprehensive register/database

At present, there is no publicly available or inter-Departmental register of Affordable Rental Housing granted consent and created as a result of provisions in the *Housing SEPP 2021* (or repealed *Affordable Rental Housing SEPP 2009* and *SEPP No. 70*). Given the compliance role often required of Department and Communities & Justice (‘DCJ’) in ensuring Community Housing Providers are meeting Affordable Housing obligations, Shelter NSW laments the lack of data shared and available on this topic.

How is DPE monitoring the success of the Housing SEPP in delivering Affordable Rental Housing outcomes? At any point in time, is DPE aware of the number of Affordable Rental properties which are due to “expire” as they meet their 10- or 15-year affordable rent-setting horizons? What assistance is DPE able to offer local Councils enquiring about the effectiveness of AHCS in other Council areas, as a benchmarking comparison?

Recommendations:

- 1) Set an acceptable contributions range in the Housing SEPP and/or model LEP clause on Affordable Housing, for all Councils earmarked as being part of the 6 Cities Metropolis
 - a) Acceptable contributions range being 10-15% in alignment with GCC *Six Cities Discussion Paper*
 - b) Waive viability/feasibility studies for Councils in the 6 Cities Metropolis proposing contributions rates in the abovementioned range.
- 2) Similarly in the Housing SEPP and/or model LEP clause on Affordable Housing, expand scope of Affordable Housing contributions beyond residential-only development, to include any major rezoning activity which would:
 - a) generate significant commercial/industrial investment (or favourable changes to planning rules for floor area and height of building controls in E-, B-, IN- zones), and
 - b) induce local/regional demand for housing by new or augmented workforces.
- 3) Postpone introduction of the planning mechanism which would allow for developer-proposed contribution rates to be calculated and submitted to Councils, per point 2 on page 12 of the EIE
 - a) Indefinitely postpone this initiative until such time that regional and rural Councils have been offered resources and comprehensive training in use of the existing Department viability tool (or future non-metropolitan viability tool).

- 4) At the very least, create and widely circulate specific guidance to industry and Councils on how developer-proposed contribution rates are to be calculated for a “reasonable” outcome
 - a) Training of local Council planning staff will be required in how to interrogate developer-proposed contribution rate calculations and their reasonableness.
- 5) Maintain and publish data on Affordable Rental Housing granted approval and created under the provisions of the Housing SEPP (and former SEPP versions such as ARHSEPP 2009 and SEPP 70)
 - a) This database/register shall track information on approval status, development status, timeframe status (i.e. housing being “affordable” in perpetuity from x date, or time-limited), and locations (LGAs, suburbs) of Affordable Housing made possible by the Housing SEPP. This includes housing built in accordance with Affordable Housing Contributions Schemes as well as Affordable Rental Housing reliant on provisions from Chapter 2 of the Housing SEPP.
 - b) In time, this register should be expanded to include data on affordable housing made possible by Voluntary Planning Agreements.

Additional Recommended Actions for alternative pathways:

To progress delivery of housing for those people with particular needs, including those on very low to moderate incomes, seniors, people with a disability and those at risk of or homeless by creating more flexibility for councils on how they apply an AHCS in their LGAs using alternative pathways. Explicit amendments to the Housing SEPP and the Standard LEP Instrument are sought so that additional recommended actions for alternative pathways to support more affordable rental housing include:

A reportable definition of affordable “rental” housing so that it can be monitored

An explicit amendment is sought to the Housing SEPP and standard LEP instrument to reflect the product difference between social and affordable rental housing to help regulate for the definition of affordable rental housing alone. This will have the added benefit of helping to distinguish affordable rental housing from social housing and more commonly understood notions of affordable housing by those in the private market.

This clarity is essential to delivery of the right type and number of homes built in the right places over time. A reportable definition of affordable rental housing means affordable rental housing can be monitored for operation as intended and this will help facilitate the its supply.

Recommended Action: To better understand affordable rental housing, an explicit amendment is sought to the Housing SEPP and Standard LEP instrument so that the definition of “affordable housing” defined by Clause 1.4 (1) of the EP&Act 1979 and the definition in the Housing SEPP includes the term affordable “rental” housing.

Affordable housing contribution rates applied to both residential and non-residential land uses

The key intention to deliver on the potential for affordable rental housing is to provide a public benefit in the form of a community contribution derived from the increased land value from any rezoning / intensification.

Rezoning of areas (including non-residential uses) can increase the number of sites on offer which represent more significant uplift to help compensate for those sites constrained due to existing value in improvements, fragmentation and or heritage limitations and or less than ideal built form outcomes.

Assessing viability of affordable rental housing on a case-by-case basis at the site level provides greater flexibility and scope to deliver a percentage of affordable rental housing on sites undergoing redevelopment within an area.

The viability of affordable rental housing appears possible assisted by densification of employment uses in employment zonings adopted by the standard LEP instrument. This in turn captures a public benefit across a broader range of uses and LGA geography.

Recommended Action: To support affordable rental housing, an explicit amendment to the Housing SEPP and standard LEP instrument is sought so an affordable housing contribution can be applied to both residential / employment generating development across an area / site undergoing development linked to an affordable housing contribution scheme (AHCS).

Following on from the point above, an explicit amendment is also sought to the Housing SEPP and Standard LEP instrument to those sites where an affordable rental housing rate could be increased over time rather than as a fixed rate when applied to the whole precinct.

Both points practically contribute to realising a 10% affordable housing target set by the Greater Cities Commission (GCC) to deliver on the localised potential for affordable rental housing with LGAs.

Affordable rental dwellings as affordable in perpetuity

The Planning Institute of Australia's (PIA) previous submission to the Housing Diversity SEPP Explanation of Intended Effect in September 2020 states Affordable housing development that has received a concession under the proposed SEPP should remain affordable in perpetuity⁶. PIA maintain that Affordable Rental Housing should be in perpetuity in their response to the current iteration of the publicly exhibited EIE to the Housing SEPP 2021.

Shelter NSW note that affordable rental dwellings in perpetuity need to be registered on title. This will ensure dwellings are affordable for the life of the development and provide much needed certainty for the community. A fixed 15-year term may incentivise private developers as described by the EIE but falls short in genuinely re-addressing the current imbalance.

Further, a definition for affordable rental housing in perpetuity (registered on title) needs to be monitored as such, to operate as intended for the life of the development. This will best support both unmet, current and future demand for affordable rental housing enabling people to age in place in their respective communities.

Recommended Action: An explicit amendment is sought to the Housing SEPP and standard LEP instrument so that affordable rental dwelling clauses within the amended SEPP and standard LEP instrument are for dwellings in perpetuity (registered on title) and the definition needs to be regulated so that it can be monitored.

FSR bonuses

Proposed increases in density / height bonuses may be targeted but are not always viable following a feasibility study of the required density for sites constrained due to significant⁶ value in existing improvements, low development value, fragmentation, heritage limitations and built form requirements (appropriate scale to surrounding development). To deliver on good planning outcomes for local communities, all planning controls should include FSR bonuses which helps realise the development potential of sites and involves less risk to developers through the application of non-discretionary standards.

Recommended Action: An explicit amendment is sought to the Housing SEPP and Standard LEP instrument so that all planning controls include bonuses rather than increases as proposed by amendments contained within the EIE as a more suitable solution to affordable rental housing provision for local communities across Greater Sydney and regional NSW.

Applicable Affordable Housing Contribution rates

Any considerations for alternative pathways need to clearly communicate any applicable contribution rate prior to rezoning to give market certainty about the amount of affordable housing to be provided so it can be factored into underlying land prices (as concluded by the EIE on page 13 of the amendments to the SEPP).

⁶ Planning Institute Australia (9 September 2020). *PIA Submission to the Housing Diversity SEPP Explanation of Intended Effects*. Retrieved from <https://www.planning.org.au/documents/item/10881>

Recommended Action: An explicit amendment is sought to the Housing SEPP and Standard LEP instrument so that any applicable contribution rate is applied prior to rezoning to give market certainty about the amount of affordable housing to be provided so it can be factored into underlying land prices⁷.

Clause 4.6 reforms related to FSR bonuses

To improve guidance for developers and improved certainty the local communities in relation to how Clause 4.6 reforms can be applied for various development types where affordable rental housing bonus provisions are proposed to be delivered, nominated locations / areas need to be considered where FSR alongside height, setbacks, landscaping could be reviewed for commercial feasibility of the required density (asset pricing model)⁸.

Recommended Action: Amend Clause 4.6 of the Standard Instrument LEP to make variation requests for a development standard contravention in relation to in fill affordable rental housing provisions be subject to the “betterment” of the planning outcome in each particular case to produce an improved social, economic and environmental outcomes (page 12 of the EIE to the SEPP (Housing)). In other words, density that is viable as well as allowable as well as done well.

Staging of affordable housing provision

In order to understand the opportunities and challenges for affordable rental housing within sites/areas, it is based on the site / area meeting requirements of a residential population. To increase densities to the estimated levels required under the feasibility tipping point for a site / area, delivery as envisioned by the noted potential needs to be staged over the short, medium, and longer term as redevelopment occurs in each of the sites / areas.

Recommended Action: An explicit amendment is sought to the Housing SEPP and Standard LEP instrument to align proportionate delivery commitment of Affordable Rental Housing contributions in schemes to the broader timing of redevelopment capacity in the short, medium, and longer term across all parts of an area / site.

⁷ Cameron K. Murray. (2020). *Feasibility Guide for Town Planners - Density needs to be viable as well as allowable*. https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewi4xPrk7on8AhV_UGwGHskbCLkQFnoECA0QAQ&url=https%3A%2F%2Fosf.io%2F62wsn%2Fdownload&usg=AOvVaw0o-w-BTXau2b56DGQXQEYv

⁸ *ibid*

Reportable definition of affordable rental housing that can be monitored as such

A reportable definition of affordable rental housing will ensure as intended affordable rental dwellings delivered in kind / through a contribution in perpetuity are recorded for monitoring. This will help to regulate the “in perpetuity” requirement and locations of the 10% affordable rental dwellings (4,550 dwellings) expected to be delivered over the next 20 years.

Recommended Action: An explicit amendment is sought to the Housing SEPP and standard LEP instrument to monitor for affordable rental dwellings in perpetuity and their locations over the next 20 years and how this has met the GCC 10% set target.

Every affordable rental dwelling needs to reflect Universal Housing Design

To ensure consistent design standards across all infill affordable rental housing for independent living for the life of the build, universal design should be applied to all applications made, enabling fair and reasonable access and ageing in place provisions.

An explicit amendment is sought to the Housing SEPP and standard LEP instrument to adopt universal design guidelines for affordable rental dwelling design in line with best practice universal design principles from Liveable Housing Australia (LHA)⁹.

15% target for strategic centre designations set by the Greater Sydney District Plans

Concentrating affordable rental housing in strategic centres acts as an opportunity for equitable growth commensurate with the strategic centre status under the District Plans prepared by the GCC (such as Chatswood, Hornsby and Parramatta) to deliver on affordable rental housing target in the order of 15% in Greater Sydney.

Setting a higher target for nominated strategic centres by the District Plans assisted by zoning provisions which draw on the positive benefits from: rail / bus interchange; a diverse mix of land uses from residential, health, education, retail/commercial through to recreational uses; which promote walking accessibility and public engagement in an inclusive destination for all of its community should be a key outcome of the currently exhibited SEPP amendments.

⁹ Living Housing Australia. (2017). *Liveable Housing Design Guidelines* https://livablehousingaustralia.org.au/wp-content/uploads/2021/02/SLLHA_GuidelinesJuly2017FINAL4.pdf

There is a prime opportunity to deliver additional affordable rental housing in the order of 15% of any redevelopment in strategic centres of Greater Sydney and needs to be incentivised through legislative pathways of the SEPP amendments.

Recommended Action: An explicit amendment is sought to the Housing SEPP and standard LEP instrument to deliver on a minimum target of 15% affordable rental housing of any redevelopment of land within the nominated strategic centres for Greater Sydney Regional Plan.

Further, an explicit amendment is sought to the Housing SEPP and standard LEP instrument to monitor for the 15% affordable housing target in those strategic centres of Greater Sydney to deliver on affordable rental dwellings in perpetuity over the next 20 years¹⁰.

Universal design guidelines standards for all High Support Accommodation and Supported Living

An explicit amendment is sought to the Housing SEPP and standard LEP instrument to adopt universal design guidelines as part of the design criteria standards for high support accommodation and supported living in line with best practice universal design principles from Liveable Housing Australia (LHS)¹¹.

Planning Pathways for Social Housing

Increased self-assessment powers by LAHC and SSD pathways for more social housing are welcomed.

¹⁰ State of New South Wales Greater Cities Commission. (2022). *The Greater Sydney Regional Plan – A Metropolis of Three Cities*. Retrieved from <https://greatercities.au>

¹¹ Living Housing Australia. (2017). *Liveable Housing Design Guidelines* https://livablehousingaustralia.org.au/wp-content/uploads/2021/02/SLLHA_GuidelinesJuly2017FINAL4.pdf

Group Homes and Temporary Supportive Accommodation

18 months stay

It is understood the name and definition of Transitional Group Homes is to be amended by the changes to the SEPP. Group homes are proposed to be renamed as high support accommodation and supported living. This also includes amendments to complying development provisions for both types of accommodation in Appendix 1 of the EIE to the SEPP for Housing on exhibition.

It is unclear if the intention of this change both in name (from “transitional group home” to “high support accommodation”) is to repurpose the short term (3 month) type of accommodation currently provided by the existing group home provisions to a more permanent accommodation arrangement (18 month)?

Shelter NSW has consulted with a variety of organisations that work in or represent the social services sector. Feedback from the three sources includes:

- **Homelessness NSW:** recommend a stay up to 24 months for emergency accommodation to help enable services to be flexible with client stays which is essential at present and for the foreseeable future due to the very significant shortage of transitional and longer-term accommodation in NSW. This shortage means there is often limited or no exit options for people staying in emergency accommodation.
- **A Tier Three Provider of Domestic Violence Crisis Accommodation** (refuges for women and children escaping domestic violence): stays up to 3 months generally works well for women and children to get on track with Centrelink, safe phones, legal advice, schooling, health appointments and start housing applications. They move onto transitional housing properties and from there seek longer term solutions.
- However, due the crisis in the social housing sector and private rental market, it is very hard for women (generally through these women’s refuges) to find suitable housing options so they are unable to move on. During Covid this was a significant issue. Women on temporary visas are particularly hard to find suitable housing options due to their ineligibility. The practice is not to exit women and children to homelessness as there is high risk, they will return to the perpetrator due to nowhere to go.
- **Community Housing Industry Association of NSW (CHIA):** Consultation with CHIA reveals the stay should be as long as needed particularly involving the current disruption to children in this care.

Recommended Action: A stay up to 24 months is deemed acceptable by parts of the sector but an appropriate standard requires a more informed and collaborative discussion including with all types of therapeutic care providers delivering across the sector including those not directly consulted by this submission (aged care sector and or disability care sector).

No limit on Occupants

It is understood there will be no limit on occupants who can be accommodated in High Support Accommodation. There is, however, a site coverage requirement (reduced by 25% percent from 75% to 50% and a two-story height limit as part of the changes to the SEPP). The requirement for high support accommodation is one staff member on site or on call 24 hours a day.

In the absence of being able to locate a standard for minimum room size area (space requirement per occupant) and or a reference to single use rooms within the minimum design requirements for a high support development in Appendix 1 of the advertised SEPP, it is unclear how the need for independence, safety and wellbeing will be applied as the key outcomes of these amendments within high support accommodation.

For the purpose of a guide in this response, the average bedroom type has a range. A small (m) dimension for a minor bedroom is 2.8 x 2.5 and a large (m) for a minor bedroom is 14sqm (large (m) 4 x 3.3)¹². The Institute of Architects advise 14sqm should be a minimum size provision especially in situations where people are unrelated and each room should have a window that produces an outlook that enhances amenity. In other words, not a compromised outlook such as looking into a fence one metre from the window.

Homelessness NSW advise the Core and Cluster model for Domestic Violence Crisis Accommodation seems to be the present and future for all emergency accommodation including for women and children escaping DFV, young people, men, etc. This seems to be widely accepted across Australia – not just in NSW. Providing independent living rather than communal is simply better. Core and Cluster is discussed in the DV Crisis Accommodation Functional Design Brief (2022)¹³ and in the Design Guidelines (Housing Plus + Custance Architects) (2022)¹⁴.

¹² Build Search. *Average Room Sizes (An Australian Guide)*. Retrieved from <https://buildsearch.com.au/average-room-size>.

¹³ DPIE. (2022). *Domestic Violence Crisis Accommodation Functional Design Brief*. Retrieved from https://www.dpie.nsw.gov.au/_data/assets/pdf_file/0006/508704/Domestic-Violence-Crisis-Accommodation-Functional-Design-Brief_Accessible.pdf.

¹⁴ Housing Plus + Custance Architects. (2022). *Design Guide – Best Practice Design Standards for those affected by Domestic and Family Violence*. Retrieved from <https://www.housingplus.com.au/wp-content/uploads/2022/12/Design-Guide-Specialist-Domestic-Violence-Accommodation.pdf>

As such, it makes sense that the new SEPP would be encouraging Core and Cluster style and not communal style building options. On page 20 of the proposed amendments, it states that “High support accommodation would be premises that – (point 1) have private rooms which may have private kitchen and bathroom facilities”. This needs to be amended to reflect self-contained units with individual entrances and private kitchen and bathroom facilities.

Therefore given that Group Homes currently encompass a broad range of users providing therapeutic care in different forms this needs to be reflected by the amendments to occupancy provisions of high support accommodation in the EIE to the Housing SEPP and standard LEP instrument.

Recommended Action: An explicit amendment is sought to the Housing SEPP and standard LEP instrument to amend the definition of high support accommodation so that occupancy in communal building options includes:

- a self-contained, private room with minimum dimensions of 14sqm (4m x 3.3m) to comfortably fit a bed and allow for sufficient circulation space for mobility needs
- the individual room is fitted with a large window with low sill heights to enable views through the window in bed
- the window needs to promote and exhibit how it maximises natural light access (operable without staff assistance to a minimum 30cm opening for natural ventilation)
- the window provides an appropriate outlook to enhance the occupant’s amenity with an ensuite compliant for people with physical disabilities and kitchenette facilities.

In terms of crisis accommodation, an explicit amendment is sought to the Housing SEPP and Standard LEP instrument to ensure high support accommodation are:

- self-contained units with individual entrances and include private kitchens and bathroom facilities.

Recommended Action: An explicit amendment is also sought to the Housing SEPP and Standard LEP instrument to ensure an upper limit of 10 bedrooms is maintained to reassure the social services sector, encompassing a broad range of users, that the intention of the EIE for the proposed amendments to the Housing SEPP to move away from institutions will not result from the currently exhibited amendments.

Site Coverage and two storey height limits for high support accommodation

The amendments include a reduction of 25% percent (from 75% to 50%) as a site coverage requirement and introduces a 2-storey height limit. This is interpreted to mean that high support accommodation will be limited to smaller scale home style settings over institutionalised settings.

The 25% reduction in site coverage and a 2-storey height limit may pose a challenge in all of the metropolitan locations highlighted by 5 of the 9 Domestic Violence crisis accommodation case studies provided in the Design Guide produced by Housing Plus + Custance Architects for group homes used as crisis accommodation. The examples referenced by the Design Guide were all recently built between 2018 and 2022, including Evolve Housing, Guildford Sydney, Women's Housing Limited in Bayswater Melbourne, Blackwattle apartments in Metropolitan Sydney, Nightingale Fresh Hope, Sydney and Viv's Place, Launch Housing, Outer Metropolitan Melbourne¹⁵.

Given the proposed 18-month timeframe for high support accommodation, spatial relationship details which seek to optimise independence, safety, and wellbeing for those re-entering the community have been arrived at for those exiting domestic and family violence and are essential qualitative guides for any future planning. The standards set out in the best practice guidelines in the Functional Design Brief (2022) for DV Crisis Accommodation should be included in Appendix 1 Summary of existing and proposed standards for high support accommodation¹⁶.

Recommended Action: Amend the definition of high support accommodation in the Housing SEPP and standard LEP instrument to retain the existing 75% site coverage and height standard in Appendix 1 of the Housing SEPP. This will enable flexibility in the design of high support accommodation to ensure adequate fit for purpose accommodation where there are varying site constraints in metropolitan locations.

Appendix 1 for High Support Accommodation and Supported Living standards

An explicit amendment is sought to the Housing SEPP and standard LEP instrument to adopt universal design guidelines as part of the design criteria standards in Appendix 1 for the rebranded temporary support accommodation and supported living in line with best practice universal design principles from Liveable Housing Australia (LHA).¹⁷

Temporary Supportive Accommodation

The SEPP acknowledges the need for change over the “potential for community backlash” (page 20 of the EIE) and potential for “stigma associated with group homes” (page 20 of the EIE), a “complying development pathway... is usually significantly faster to obtain approval

¹⁵ *ibid*

¹⁶ DPIE. (2022). *Domestic Violence Crisis Accommodation Functional Design Brief*. Retrieved from https://www.dpie.nsw.gov.au/_data/assets/pdf_file/0006/508704/Domestic-Violence-Crisis-Accommodation-Functional-Design-Brief_Accessible.pdf

¹⁷ Living Housing Australia. (2017). *Liveable Housing Design Guidelines* https://livablehousingaustralia.org.au/wp-content/uploads/2021/02/SLLHA_GuidelinesJuly2017FINAL4.pdf

for a new group home than a DA pathway” (page 20 of the EIE). In response to the no limit on occupancy amendment, it is unforeseen what community reaction and delay this may involve for the social sector using the DA pathway to consent for high support accommodation.

The NSW’s government commitment to reducing street homelessness by 50% across NSW by 2025 through the without development (public authorities) and complying development pathway is welcomed.

Both the without development consent and complying development pathway need to capture physical works to repurpose an existing building to make the building fit for purpose as temporary supportive accommodation to avoid any unnecessary delays through a Council determined development assessment process.

Recommended Action: An explicit amendment to the Housing SEPP and standard LEP instrument needs to include all physical works required to repurpose an existing building to make it fit for purpose as temporary supportive accommodation. Such applications requiring physical works should either be without consent (public authorities) or as a complying development pathway not a Development Application for determination by Council. The social services sector requires the greatest outcome certainty over legislative complexity / cost / technical difficulty posed by a Development Application requiring Council approval.

Accessibility and usability standards for independent living units

An explicit amendment is sought to the Housing SEPP and standard LEP instrument to adopt universal design guidelines as part of the design criteria standards in Appendix 4 for accessibility and usability standards for independent living units as per best practice universal design principles from Liveable Housing Australia (LHA)¹⁸.

More opportunities for boarding house development

There does not appear to be a restriction on who can reside in boarding houses and “this raise concerns that the provisions may be being exploited by for profit developers to deliver housing for the general market” (page 20 of DPE – Explanation of Intended Effect for the SEPP – Housing”).

¹⁸ *ibid*

Recommended Action: An explicit amendment is sought the Housing SEPP and standard LEP instrument so that the definition of temporary supportive accommodation (either as repurposed residential, tourist, visitor accommodation including former backpacker / accommodation etc) explicitly restricts housing people who are eligible for social housing and or affordable rental housing (as defined by the EP&A Act 1979, as amended) and allocations for affordable rental housing are made on the basis of income eligibility tied to the definition of affordable rental housing in the SEPP (Housing) 2021. In this way, the definition of temporary supportive accommodation is reportable and can be monitored (operate as intended).

Draft Seniors Housing Design Guide (2022)

Clear Design Criteria sought

“The Aged Care star ratings launched by the Government have exposed the scale of the sector’s problems...Aged Care Minister Anika Wells has said “you can’t improve what you can’t measure”¹⁹

It is unclear how the as Seniors Housing Design Guide design Guide 2022 will be interpreted as statutory requirements. Statutory guidelines need to provide clear design criteria to support construction that focuses on the value of project objectives for developing seniors housing.

While page 8 of the Draft Senior’s Living Guideline refers to the input by architects who specialise and are experienced in the design and delivery of all forms of seniors housing is respected at face value, the lessons learned from The Royal Commission into Aged Care Quality and Safety in 2021 is at risk of being lost on successful implementation of the draft Senior’s Housing Guidelines to move away from the current models of aged care facilities without an evidence based approach.

The evidence based approach needs to focus on good design through adopting universal design principles that aim to create lasting value of design outcomes in our physical environment to create a user-centred process (resident control and choice driven by overall health and wellbeing) in decision making processes.

In the absence of an equivalent guide for residential care facility design guidelines here in NSW we have drawn from the Office of the Victorian Government Architect (OVGA) who best articulate good design on health and wellbeing in the Good Design + Health design publication²⁰. While the OVGA guideline is specific to healthcare settings, universally designed environments, are transferrable as good design practice to improve health and wellbeing in a variety of healthcare settings and buildings types. This could include Aged Care Facilities and Independent Living Units proposed by the Draft Senior’s Living Guidelines.

Recommended Action: The exhibited Draft Senior’s Living Guideline should be reviewed in context of the Good Design + Health design guideline which focus on a user-centred process based on universal design principles to achieve good design produced by OVGA²¹. This publication may provide directly transferrable architectural and urban design advice

¹⁹ The Sydney Morning Herald. (21 December 2022). *Two-thirds of homes found short on care*. Retrieved from page 6 <https://www.smh.com.au/todays-newspaper>

²⁰ The Office of the Victorian Government. (2022). Good Design + Health. Retrieved from <https://www.ovga.vic.gov.au/good-design-health>

²¹ (ibid).

that should be considered for inclusion in the design criteria of any finalised Senior Living Guideline.

Recommended Action: An explicit amendment is sought to the Housing SEPP, standard LEP instrument and Seniors Housing Design Guide (2022) to provide clear design criteria for amenity-based controls are sought to enable best practice in both design and construction for developing seniors housing in line with design informed approaches specific to healthcare settings²².

Universal housing design

To ensure all seniors, nurses, personal care workers and allied health professionals including clinicians access to residents' universal design guidelines to ensure adaptable and accessible dwellings including entire buildings and facilities for developing Seniors Housing are anchored by best practice universal design principles.

Recommended Action: An explicit amendment is sought to the Housing SEPP and standard LEP instrument to adopt universal design guidelines for developing seniors housing to ensure the provision of adaptable and accessible dwellings / single use module rooms (for those in high care situations) and whole facilities are designed consistently in line with best practice universal design principles from Liveable Housing Australia (LHA)²³.

Minimum size dimensions for single use rooms

A minimum dimension for single use rooms has not been found for developing seniors housing guidelines. Similar advice provided above on Group Homes is recommended to be adopted.

Recommended Action: An explicit amendment is sought to the Housing SEPP and standard LEP instrument and Seniors Housing Design Guide (2022) to adopt a design guideline to ensure individual resident room modules have a minimum dimension of 14sqm (4m x 3.3m) which can comfortably fit a bed and allow for sufficient circulation space for mobility needs exclusively. The individual resident room module is to be provided with an ensuite (adjoining the 14qm single use module room) compliant for people with physical disabilities and kitchenette facilities.

Minimum 1.5m setback of any window to an individual resident room module from a boundary

²² *ibid*

²³ Living Housing Australia. (2017). *Liveable Housing Design Guidelines* https://liveablehousingaustralia.org.au/wp-content/uploads/2021/02/SLLHA_GuidelinesJuly2017FINAL4.pdf

An explicit amendment is also sought to the Housing SEPP and Standard LEP instrument and the Senior's Housing Design Guide (2022) to adopt design criteria requiring a minimum setback of 1.5m (at least) from any boundary to enable deep soil planting and the establishment of suitable screen planting vegetation for privacy and promote and exhibit an enhanced outlook to maximise amenity for the resident.

Responsive design

To ensure amenity-based controls are applied when developing Seniors Housing an explicit amendment is sought to the Housing SEPP and Standard LEP instrument and Senior's Housing Design Guide (2022) to adopt design criteria to ensure the large window of an individual resident room module should be operable accessed without staff assistance and have a minimum opening 30cm. The noted large window size should promote and exhibit maximised natural light, cross ventilation and an outlook (view / vistas) from an in-bed resident.

Size of a large-scale residential care facilities and independent living unit developments

An explicit amendment is sought to the Housing SEPP, Standard LEP Instrument and Seniors Housing Design Guide (2022) to ensure the 16-unit upper limit of occupants / independent living units is deemed acceptable by way of an informed and collaborative discussion with the Aged Care Sector including Aged and Community Care Providers association (head Tom Symondson), Aged Care Crisis (Advocacy Group Lynda Saltarelli) specific to aged care settings based on holistic universal design principles. A reference used for this is based on key design principles and approaches to achieve good design in healthcare settings²⁴.

This will include an evidence base case for all design criteria to suit the provision of care and serviceability for staff and carers but also to ensure the amenity of residents and their holistic care needs are not compromised as key outcomes of the Senior's Housing Guide (2022). This is a priority to ensure the Royal Commission's recommendations establish best practice both in planning and in operation.

Best practice in design excellence

An explicit amendment is sought to the Housing SEPP and standard LEP instrument and Seniors Housing Guide (2022) for design criteria that promotes and exhibits design excellence in its built form and human scale design (using a datum line for human scale design), best practice in environmental suitability measures (re purposing materials) and promotes permeability, walkability, cohesion and engagement in a well-designed, coherent (promotes spatial awareness), inviting and inclusive development for all of its community.

²⁴ The Office of the Victorian Government. (2022). *Good Design + Health*. Retrieved from <https://www.ovga.vic.gov.au/good-design-health>

Promote external / internal use and movement

Senior's control and choice should extend to access / freedom to doorways. An explicit amendment is therefore sought to the Housing SEPP and Standard LEP instrument and the Seniors Housing Guide (2022) so that design principles of the Seniors Housing Guide require design criteria for integrated outdoor internal communal spaces subject to amenity-based controls. Automatic electric doors to outdoor area is a minimum standard to ensure all seniors (including those in bed transfers / bedridden / high care residents) have control and choice to doorways to communal areas.

Well- designed undercover protection in transitional al fresco areas.

To maximise senior's control and choice of indoor / outdoor use of space, an explicit amendment to the draft Senior's Housing Guidelines is sought for design criteria that provides for well designed, at grade level undercover protection in transitional al fresco communal areas on ground level. Well-designed transitional areas should be subject to design excellence.

Lifts

All lifts need to allow for in bed transfer / larger equipment including wheelchairs beyond current minimum standards.

Climate control for residents

An explicit amendment is sought to the Seniors Housing Guidelines to ensure design criteria include climate control informed by senior's control and choice. All climate control measures should be informed by best practice in comfort level design measures and sustainability. Climate control design criteria needs to include:

- operable windows to all individual rooms that do not require staff assistance, having a maximum 30cm opening.
- Use of fans as well as air conditioning needs to be available in all individual residents' rooms.

Wayfinding

Wayfinding of internal and external spaces needs to reflect seniors' control and choice to orientate themselves through the facility and outdoor spaces.

Enhance the meaning of communal outdoor spaces for seniors

Sensory stimulation design criteria should be embedded in the Senior's Housing Guidelines so that opportunities for sight, sound, touch, hearing and taste (e.g. running water). This might include observing dappled light, views up through tree and shrub (palm) canopies, listening to wind through rustling leaves of trees, deciduous vegetation to experience seasons, meandering paths which not only encourage spatial awareness but

discovery, curiosity and flowering plants which attract native animals (including birds) and insects fruit tree and herb pruning (for those able) experiencing the residual warmth of the sun of a timber log seat, swinging slowly enjoying summer breezes, listening for birdlife, reading, reflecting, relaxing watching a sun dial in action. This is not an exhaustive list for holistic design but the list provides an insight into meaning and a meaningful experience to all residents, clinicians, staff, and visitors alike.

An explicit amendment is sought to the Housing SEPP, standard LEP instrument and design principles of the Seniors Housing Guide (2022) to promote and exhibit the positive benefits of sensory stimulation for meaningful and therapeutic experiences in largely landscaped outdoor spaces. Sensory stimulation needs to include sight, sound, touch, hearing and tasting experiences in outdoor, largely landscaped spaces to create meaning for residents. Incidental experiences focusing on sensory input should feature in design criteria to ensure a varied range of experiences embedded and driven by best practice in holistic design which reflects seniors' control and choice.

Groundcover, shrubs and trees in communal outdoor areas

An explicit amendment is sought to the Housing SEPP, standard LEP instrument and design principles of the Seniors Housing Guide (2022) to require outdoor settings, which are largely landscaped, to provide vegetation ranging from a variety of ground cover, shrubs and mature trees (requiring deep soil planting) that enable opportunities to more fully experience a natural setting of a largely landscaped area to the build.

Natural / recycled materials to enhance meaningful experiences of outdoor areas

An explicit amendment is sought to the Housing SEPP, standard LEP instrument and Seniors Housing Guide (2022) to require design criteria for outdoor furniture as attractive, comfortable, preferably made of natural recycled materials so occupants can more fully experience meaning in largely landscaped outdoor areas.

Companion / Therapy Animals

An explicit amendment is sought to the Housing SEPP, standard LEP instrument and design principles of the Seniors Housing Guide (2022) to allow for companion animals and therapy animals for those occupants who are unable to care for an animal (e.g. in high care environments) essential to holistic design and contributes to a meaningful end of life for occupants.

Thank you for reviewing our submission

Shelter NSW appreciates the opportunity to comment on the Explanation of Intended Effect related to the SEPP (Housing) 2021. We hope that the comments and insights we have provided will bring application value to realising a fairer system for all.

If you wish to discuss our submission in more detail, please contact Pilar Aberasturi on 0450 554 659 or by email at pilar@shelternsw.org.au.

Sincerely Yours,

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