

Department of Planning, Industry and Environment  
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29 August 2021

Our Reference: URB/20/211

### **City of Ryde Council Submission: Review of State Environmental Planning Policy (Housing) 2021**

I write in response to the Department of Planning, Industry and Environment's (the Department's) request for feedback on draft *State Environmental Planning Policy (Housing) 2021* (the draft Housing SEPP) currently on public exhibition from 31 July to 29 August 2021. City of Ryde Council Staff (Council) have reviewed the exhibited material and provide a detailed submission in **Attachment 1**

Council welcomes efforts to simplify the planning system and to deliver suitable housing outcomes and help improve housing affordability.

These are significant concerns for our local community, and it is important they are directly included and involved in this process of improving the system.

Council has reviewed the draft Housing SEPP and support material and a detailed submission is included in **Attachment 1**. The primary concerns raised are the:

- Incompatibility of the development standards for boarding houses and co-living housing.
- Introduction of 'prescribed zones' to permit seniors housing.
- Provisions (or lack of) to keep all types of housing allowed under the draft Housing SEPP affordable, and the inconsistent provisions that apply to development led by the LAHC.
- Ensuring good design for vertical villages, particularly due to the increase in FSR bonuses.

We welcome the opportunity to work collaboratively moving forward to ensure changes in policy deliver on the State Government's commitment to delivering sustainable, productive and liveable communities across Greater Sydney.

If the Department has any questions regarding any of the matters raised in this submission, please contact Sonia Jacenko, Senior Strategic Planner, at the City of Ryde on 9952 8105 or [soniaj@ryde.nsw.gov.au](mailto:soniaj@ryde.nsw.gov.au).

Regards,

Liz Coad  
Director City Planning and Environment

# City of Ryde Submission

**City of Ryde Council Submission: Review of State  
Environmental Planning Policy (Housing) 2021**

**Submission Date: 29 August 2021**



## Introduction

The City of Ryde Council (Council) has prepared this submission with a review of the following consultation material available on the NSW Planning Portal:

- Draft Housing SEPP consultation draft
- Draft Environmental Planning and Assessment Regulation amendment
- Draft Standard Instrument Order
- FAQs and Plain English Supporting Document.

Comments have been made on the proposed changes that are most pertinent to the City of Ryde. The absence of a comment in response to a draft provision or clause infers neither support nor objection.

The submission has been structured in the following manner:

### 1. Overview

- a. Content of draft Housing SEPP
- b. Changes since the exhibition of the Housing Diversity EIE
- c. Affordable housing vs diverse housing
- d. Definition for student house

### 2. Boarding Houses

- a. Permissibility
- b. Development standards – Non-discretionary (Clause 23)
- c. Development standards – Discretionary (Clause 24)
- d. Affordability of boarding houses
- e. Self-assessment of boarding houses by LAHC

### 3. Co-living

- a. Permissibility
- b. Development standards

### 4. In-fill Affordable housing

### 5. Seniors Housing

- a. Permissibility
- b. Development for vertical villages
- c. Environmentally Sensitive Lands
- d. State Significant Development (SSD) Pathway for seniors housing

# 1. Overview

## 1a. Content of draft Housing SEPP

The draft Housing SEPP proposes to update and consolidate the following State Government housing-related SEPPs into a single instrument:

- State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARHSEPP);
- State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 (Seniors SEPP);
- State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes) (SEPP 70);
- State Environmental Planning Policy No 36 – Manufactured Home Estates (SEPP 36); and
- State Environmental Planning Policy No 21 – Caravan Parks (SEPP 21).

Council welcomes planning reform to simplify the planning system, improve transparency, and remove ‘red tape’ caused by inconsistencies in legislation and duplication across policies. Council is also supportive of a planning framework that delivers suitable housing outcomes and helps improve housing affordability.

However, changes to key housing policies in the consolidation process need to ensure qualitative local outcomes are not inappropriately compromised in the pursuit of simplicity. While it is acknowledged that improved simplicity and usability is important, oversimplification brings a new set of risks, potentially just as damaging as overcomplication.

It is Council’s view that creating an all-encompassing housing related policy that is appropriate for all LGAs across NSW must be limited to those matters that are minimally affected by local conditions and the differences between communities and their places. It is important to ensure application of State-wide policy does not prevent necessary local responses to the place-based variances in the built environment across the state and LGAs.

This is to ensure that any housing reforms are successful in achieving the intention and objectives of the draft Housing SEPP; and do not have unacceptable, unintended, adverse impacts on local communities and economies. This has the added benefit of ensuring sufficient planning authority remains with local communities, particularly in relation to land use permissibility. Council acknowledges some positive improvements to the proposal in this regard, particularly in relation to the permissibility of Boarding Houses in R2 Low Density zones. However, a number of concerns are retained from Council’s submission to the Housing Diversity EIE.

As no report summarising submissions received in relation to the EIE has been provided as part of the consultation material, it is unclear how those concerns have been understood or assessed. Further, it is unclear how they compare with other communities affected by the proposed changes. This limits the ability for Council to provide refined feedback and to ensure our communities concerns have been understood. It also reduces the transparency of the process and is a missed opportunity to build confidence in the reform process and the system in general. Council would strongly recommend that a submissions outcome report be published in relation to the feedback received to the EIE.

While this opportunity to provide further comment on the remaining elements of the previously exhibited materials, it is disappointing that some of the proposed changes that were outlined in the Housing Diversity EIE have already been implemented. Council’s submission in **Attachment 2** strongly opposed the introduction of Build to Rent (i.e. residential accommodation) in the B3 Commercial Core as it is inconsistent with the objectives of the B3 zone. Council reiterates the

inappropriateness of introducing residential accommodation into the commercial core.

Varying from the exhibited EIE, the draft Housing SEPP also proposes to transfer the existing SEPP provisions for caravan parks, camping grounds and manufactured home estates, as well as the group homes in their current form. The consultation material advises that a comprehensive review of these provisions will be carried out in late 2021. Council trusts that Councils, key stakeholders and the community will be consulted on any proposed changes to these provisions in due course.

## 1b. Changes since the exhibition of the Housing Diversity EIE

The FAQ that accompanies the draft Housing SEPP very briefly outlines the changes made to the proposed SEPP following the exhibition of the EIE in mid-2020. The FAQ comments that the Housing SEPP “has changed in a number of ways since the exhibition of the Housing Diversity EIE”; however, this is not adequately explained in the FAQ or summary document. Furthermore, as no Consultation Outcomes Report has been published it is unclear how the feedback has informed the draft SEPP and how the concerns raised in the submissions are proposed to be addressed. The ‘list’ of changes the FAQ outlines are included below in Table 1, along with a response from Council:

Change from EIE	Council Response
The Housing SEPP will consolidate five SEPPs instead of the originally-proposed three;	Given this involves transferring the existing controls in their current form from the additional two SEPPs ( <i>State Environmental Planning Policy No 36 – Manufactured Home Estates; and State Environmental Planning Policy No 21 – Caravan Parks</i> ) into the Housing SEPP, this is considered to be a non-policy, administrative change and does not generate reform in policy.
The policy has been made in phases, with some provisions (such as those for build-to-rent housing) being made in advance of the Housing SEPP consultation draft, and others (such as those for group homes) to be reviewed after the making of the Housing SEPP;	As above, this is only considered to be a process and administrative change; it is not a change or update to the proposed housing policies sought comment on in the EIE. Council retains its objections to Phase 1 and 2 and is disappointed responses to key concerns raised in submissions during the EIE exhibition have not been provided as part of this current exhibition. As discussed in <b>Attachment 2</b> , Council had (and continues to have) strong concern with changes relating to the LAHC self-assessment for social and affordable housing as it would further undermine Councils’ planning powers. The introduction of BTR in the B3 Commercial Core was strongly opposed as it would undermine the objectives of the zone.
A number of proposed provisions set out in the EIE have changed, and some additional provisions relating to the housing types covered by the EIE have been introduced or amended; and	This is general and provides limited detail on the changes to the proposed provisions.
A separate definition of, and provisions for, student housing is no longer being included.	Council’s feedback in <b>Attachment 2</b> asserted that a new definition for ‘student housing’ had no merit if the accompanying built form and planning controls mirrored those of boarding houses. The current ARHSEPP for boarding houses deliver poor built form outcomes that negatively impact on local traffic, parking, amenity and local character. The proposed controls in the EIE for student housing were considered more problematic than boarding houses and were not supported on planning merits. These objections are retained.

**Table 1: Council response to ‘changes’ in the SEPP**

It is Council's view that for the consultation process to be fulsome and transparent, a Consultation Outcomes Report should be released prior to the finalisation of any changes so Councils, communities, and stakeholders can consider the responses. In the absence of this information, the potential for this round of feedback to further improve outcomes is limited.

## 1c. Affordable housing vs diverse housing

The draft Housing SEPP categorises the different housing types as follows:

### Affordable Housing (Chapter 2)

- Infill affordable housing
- Boarding houses
- Boarding houses – Land and Housing Corporation
- Supportive accommodation
- Residential flat buildings – social housing providers, public authorities and joint ventures

### Diverse housing (Chapter 3)

- Secondary dwellings
- Group homes
- Co-living housing
- Seniors housing

Part 1 Clause 3 of the current ARHSEPP outlines that the primary aim of the policy is the delivery of affordable rental housing across the state. The housing types included in Diverse Housing (Chapter 3) of the draft SEPP are currently referenced in Part 2 of the ARHSEPP as 'new affordable rental housing' (except Seniors Housing, which is governed by its own SEPP). Council understands that one of the objectives is to consolidate a number of housing related policies into one SEPP. This is supported in principle provided the process does not undermine the objectives and aims of the existing SEPPs. It is Council's view that further consideration is required to ensure the changes do not result in outcomes that are inconsistent with the aims of the SEPPs.

The draft Housing SEPP proposes to categorise certain housing types as 'diverse' to provide "*greater clarity for all stakeholders on the housing types that are required to be used for the purpose of affordable housing under the proposed SEPP.*" Council is concerned that the 'diverse' housing types (which from our assessment would deliver compromised habitable spaces, room sizes, and amenity) can be progressed under state planning policy and bypass Council LEPs and place-based bespoke planning controls without adequately addressing any housing affordability requirements. This provides a path for developers to intensify development in areas often where the infrastructure cannot accommodate an increase in population and undermine local evidence-based planning, without necessarily achieving supply of more affordable products to the market. There is significant risk of abuse of FSR bonuses, with the draft provisions leaving approval bodies unable to prevent low-quality proposals with small private and communal rooms and poor urban design to maximise the number of rooms, which will be rented out at or above market prices.

Division 5 of the draft Housing SEPP relates to residential flat buildings (RFBs) delivered by social housing providers, public authorities and joint ventures. Clause 39(1) (which is a translation of Clause 38(1) of the current ARHSEPP) includes the requirement that at least 50% of the dwellings within the development must be used for affordable housing for 10 years. However, this is not required for development on land owned by the LAHC or to a development application made by a public authority. This means only development delivered by a social housing provider on private land is required to deliver at least 50% of dwellings for affordable housing purposes; and the LAHC and public authorities have no binding commitment to deliver affordable housing in their developments. While Council acknowledges the need for all developers, public and private, to have a level of flexibility to ensure that the mix of housing within a project suits the local needs as well as the wider housing portfolio, there is also a need to provide transparency so that the community can be in no doubt that public authorities are providing a leading example.

Further, the affordable housing challenge facing metropolitan Sydney in particular, requires permanent solutions and the 10-year provision requirement is considered to be unhelpful in this regard, leaving communities with additional densities and associated infrastructure challenges, while deferring rather than actually addressing the affordable housing challenge. Whilst this has been transferred from the current

ARHSEPP, if the state housing policies are being overhauled and reviewed, this presents an opportunity for improvement.

It is Council's view, supported by available research, that having a mix of housing tenures (i.e. social, affordable and private) in one development can assist in social cohesion and the delivery of mixed and balanced communities. LAHC should lead by example and commit to the delivery of a minimum percentage of affordable housing in their RFBs. In addition, providing a mixture of social and affordable housing in LAHC developments will help deliver on the strategic priorities of the Future Directions for Social Housing in NSW policy that aims for “*more opportunities, support and incentives to avoid and/or leave social housing*” and “*better social housing experience*”. Providing more opportunities for affordable housing has the added benefit of providing more opportunities for those in social housing to transition into other tenures.

Unlike the new provisions included in the Regulations for boarding houses, there are no provisions for RFBs as to what constitutes affordable housing and how affordability will be maintained. Whilst the draft SEPP requires the affordable housing component to be managed by a registered community housing provider, it is recommended that the same provisions that apply to boarding houses, whereby the community housing provider needs to apply the Affordable Housing Guidelines and demonstrate to the satisfaction of the Registrar of Community Housing that the dwellings are being used for the purposes of affordable housing. The new Housing SEPP also has removed the requirement for a restriction to be registered on the land title under 88E of the *Conveyancing Act 1919* to ensure that the nominated affordable housing dwellings will be retained for 10 years as affordable housing. That means there is no legal mechanism securing the use of the dwellings for affordable housing. It is strongly recommended that this be reinstated in the draft SEPP to ensure the sufficient protection is provided for these dwellings. The update to the Regulations requires this of Boarding Houses, and it should be applied for any affordable housing.

## 1d. Definition for student housing

The draft Housing SEPP no longer proposes to introduce a separate definition or development standards for student housing. This is supported given Council's view (see **Attachment 2**) that a new definition for 'student housing' had no merit if the accompanying built form and planning controls mirrored those of boarding houses from the ARHSEPP (which deliver poor built form outcomes that negatively impact on local traffic, parking, amenity and local character). Following assessment, the proposed controls in the EIE for student housing were considered more problematic than those of boarding houses and were not supported on planning merits (see **Table 1** in **Attachment 2**).

Whilst the definition of student housing has been removed, the new Housing SEPP proposes for off campus student housing developers to use co-living housing planning provisions. The consultation material asserts that this approach recognises the similarities between co-living and student housing typologies and responds to concerns expressed by both educational establishments and private sector developers. As discussed below under 'Co-Living Housing', given the similarity to the development standards for Boarding Houses it is unclear how this change adds value, given the issues identified below.

## 2. Boarding Houses

### 2a. Permissibility

Following the exhibition of the Housing Diversity SEPP EIE in mid-2020, the Department contacted Council in April 2021 regarding the permissibility of boarding houses. It stated that while many councils indicated support to remove boarding houses from the R2 zone, some councils indicated that they would like to continue allowing for new boarding house development in the R2 zone in their respective LGA. On 27 April 2021, Council emailed the Department reaffirming its position made in the EIE to remove boarding houses from the R2 zone and is pleased to see that boarding houses are now proposed to be prohibited. This is a welcome improvement to the proposal and will assist local communities in ensuring land use align with desired future character and available infrastructure at a local level.

### 2b. Development Standards – Non-discretionary (Clause 23)

Table 2 includes a comparison of the current proposed development standards within the draft Housing SEPP against the development standards within the ARHSEPP. Additional scrutiny was applied in this review given these are the development standards that cannot be used to refuse development approval of a boarding house if met.

Clause 23(2) Housing SEPP	Current ARHSEPP	Council Comment
(a) for development on non-heritage land in a zone in which residential flat buildings are permitted—a floor space ratio not exceeding—	(c) if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register—the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus—	Support simplifying the land exemptions regarding heritage affectations and boarding house development in zones that permit RFBs.  The definition of ‘non-heritage land’ included in the draft SEPP includes all the heritage affectations included in the current ARHSEPP.
(i) the maximum permissible floor space ratio for residential accommodation on the land, and	(a) the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or	Whilst the bonus percentage has increased, Council supports the requirement that the additional FSR must be used for the purposes of a boarding house. Whilst Clause 28 requires boarding houses developed by the LAHC to comply with Clause 23(2) and 24(1) relating to development standards, Clause 25 does not require LAHC to retain the boarding house as affordable housing in perpetuity.  As discussed below in ‘Affordability of boarding houses’, this is not supported. The same requirements should apply to all boarding houses, especially where a bonus FSR is permitted. The additional GFA will result in a larger built form, and even with design standards, will likely result in development that is incompatible with local character and amenity. The
(ii) an additional 25% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of the boarding house,	(i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or  (ii) 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.	

Clause 23(2) Housing SEPP	Current ARHSEPP	Council Comment
		community 'trade off' of this larger built form is that it is to be used for affordable housing purposes. However, if the SEPP does not protect its use for a boarding house in perpetuity, then it will eventually result in the larger building being used for other forms of residential accommodation, and not delivering on the intention of the SEPP.
(b) if paragraph (a) does not apply—a floor space ratio not exceeding the maximum permissible floor space ratio for residential accommodation on the land,	A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than— (a) the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or	No change; Council supports FSR needing to be in accordance with the LEP. This will help with managing development compatibility with local character and amenity.
Not included in the draft Housing SEPP.	(b) if the development is on land within a zone in which no residential accommodation is permitted—the existing maximum floor space ratio for any form of development permitted on the land, or	The current ARHSEPP allows boarding houses in R1-R4 residential zones, and B1, B2 and B4 centre zones. These zones permit residential accommodation, therefore the removal of this clause is inconsequential.  The FAQ states that as a definition for student housing (i.e. 'new generation' boarding houses) is no longer a proposed use, the development standards for co-living housing (Chapter 3 Part 3) is to be used for student housing / 'new generation' boarding houses. The suitability of this is discussed below under 'Co-Living Housing'. Otherwise, it is Council's understanding that on campus student accommodation (for example, at Macquarie University) will be facilitated through State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017.
(c) for development on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential—the minimum landscaping requirements for multi dwelling housing under a relevant planning instrument,	(b) landscaped area if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located,	No objection is raised.
(d) for development on land in Zone R4 High Density	(b) landscaped area if the landscape treatment	The rationale for this change has some logic (i.e. deliver comparable landscaping

Clause 23(2) Housing SEPP	Current ARHSEPP	Council Comment
Residential—the minimum landscaping requirements for residential flat buildings under a relevant planning instrument,	of the front setback area is compatible with the streetscape in which the building is located,	for typical building outcomes in that zone to help boarding houses contribute positively to the streetscape). In this instance the Apartment Design Guideline would apply under SEPP 65, which is considered a suitable approach.
(e) at least 3 hours of direct solar access provided between 9am and 3pm at mid-winter in at least 1 communal living area,	(c) solar access where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,	No change; this is considered appropriate.
(f) for a boarding house containing 6 boarding rooms—  (i) a total of at least 30m <sup>2</sup> of communal living area, and  (ii) minimum dimensions of 3m for each communal living area  (g) for a boarding house containing more than 6 boarding rooms—  (i) a total of at least 30m <sup>2</sup> of communal living area plus at least a further 2m <sup>2</sup> for each boarding room in excess of 6 boarding rooms, and  (ii) minimum dimensions of 3m for each communal living area,	A discretionary development standard is included that says “if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,”  <b>communal living room</b> means a room within a boarding house or on site that is available to all lodgers for recreational purposes, such as a lounge room, dining room, recreation room or games room.	Introducing a minimum square metre size for a communal living room, which increases per additional room, as a non-discretionary development standard is an improvement from the current ARHSEPP. This will help ensure all boarding houses are delivering a consistent level of space and amenity and help improve the living experience. However, the minimum room size in the draft SEPP has been moved to a discretionary development standard. Whilst a minimum square metre communal living space is required, this cannot be at the expense of room sizes. Both communal spaces and room sizes should be non-discretionary development standards to deliver appropriate amenity.
(h) communal open spaces— (i) with a total area of at least 20% of the site area, and (ii) each with minimum dimensions of 3m,	(d) private open space if at least the following private open space areas are provided (other than the front setback area)— (i) one area of at least 20 square metres with a minimum dimension of 3 metres is provided for the use of the lodgers, (ii) if accommodation is provided on site for a boarding house manager—one area of at least 8 square metres with a minimum dimension of 2.5 metres is provided adjacent to that accommodation,	Council does not have an objection to the proposed communal open space clause. The requirement to provide 20% of the site area, with minimum 3mx3m dimensions, may result in multiple communal spaces which often is more suitable to the layout of a boarding house compared to providing one large space. However, Council recommends the clause be amended to ensure the front setback cannot contribute to the communal open space where the amenity impacts to neighbours are unacceptable. The use of the front setback as open space often can direct lodgers to socialise towards the street impacting on noise and amenity for surrounding residents. This can result in complaints and contributes to community concern around the suitability of boarding houses where the wider streetscape is not designed to accommodate such uses in the front

Clause 23(2) Housing SEPP	Current ARHSEPP	Council Comment
		<p>setback. In addition, if the front setback is used as open space in such settings, it does not provide enough landscaping to meet the character requirements.</p> <p>Council notes that the requirements for open space for a boarding house manager has also been removed, in addition to the requirement to have a boarding house manager. This is not supported and discussed further below.</p>
<p>(i) for development carried out by or on behalf of a social housing provider—            (i) in an accessible area—at least 0.2 parking space for each boarding room, or            (ii) otherwise—at least 0.4 parking space for each boarding room</p>	<p>(e) parking if—            (i) in the case of development carried out by or on behalf of a social housing provider in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and            (ii) in the case of development carried out by or on behalf of a social housing provider not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and</p>	<p>The parking provisions have not changed in the Housing SEPP. As raised in the EIE submission, the existing parking controls are not suitable. Insufficient parking is provided onsite which forces lodgers to park on local streets and causing additional congestion (see <b>Attachment 2</b> for more detail). The parking provisions need to be revised to ensure suitable onsite parking is provided. This would assist in maintaining local character and in managing community opposition to these forms of development.</p>
<p>(j) if paragraph (h) does not apply— (i) for development within the Greater Sydney region—at least 0.5 parking space for each boarding room, or            (ii) otherwise—at least 1 parking space for each boarding room,</p>	<p>(e) parking            (ii) in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room, and            (iii) in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,</p>	<p>See comment above.</p> <p>It is believed that Clause 23(2)(j) refers to the incorrect subclause when outlining parking rates for development within Greater Sydney. It currently refers to Clause 23(2)(h) which relates to communal open space. Clause 23(2)(i) is the correct reference as it refers to boarding houses provided by a social housing provider, and when this is not the case, then Clause 23(2)(j) applies.</p> <p>Council notes that the requirement for staff parking has been removed, in addition to the requirement to have a boarding house manager. This is not supported and is discussed further below.</p>
<p>(k) at least 1 motorcycle parking space for every 5 boarding rooms,</p>	<p>These are currently discretionary development standards.</p>	<p>The inclusion of motorcycle and bicycle parking requirements within the non-discretionary development standards is supported. This is consistent in encouraging alternative and active transport as per state and local planning and transport policy.</p>
<p>(l) at least 1 bicycle parking space for each boarding room</p>		

Clause 23(2) Housing SEPP	Current ARHSEPP	Council Comment
<p>The proposed SEPP has moved this to being discretionary standard.</p>	<p>f) accommodation size if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least—            (i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or            (ii) 16 square metres in any other case.</p>	<p>Council recommends the clause be reinstated as a non-discretionary development standard. This will help ensure all boarding houses are delivering a consistent level of space and amenity and help improve the living experience. As discussed above, both communal spaces and room sizes should be non-discretionary development standards to deliver appropriate amenity.</p> <p>Having room size as a discretionary standard is particularly problematic if the consent authority is not Council (i.e. in the instance where the LAHC or public authority is self-assessing boarding houses). This can result in room sizes being reduced to deliver as many rooms as possible in order to deliver maximum return in investment. This is not supported.</p>
<p>Not included in the draft Housing SEPP.</p>	<p>(3) A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.</p>	<p>As the minimum room size has been moved to a discretionary standard, Council is of the opinion that this existing clause has been removed in the draft Housing SEPP to remove any reference to rooms having private facilities, in efforts to support the shift towards delivering boarding houses where lodgers rely on communal facilities only.</p>

**Table 2: Comparison of proposed and current non-discretionary development standards for boarding houses**

It is noted that the draft Housing SEPP removes the Maximum Height of Building (HOB) control from the non-discretionary development standards for boarding houses. Council is of the understanding that the HOB permitted under the relevant EPI (in the case of Ryde, the RLEP 2014) would continue to apply.

## 2c. Development Standards – Discretionary (Clause 24)

Table 3 includes a comparison of the current proposed development standards within the draft Housing SEPP against the development standards within the ARHSEPP. Development consent may be granted if the consent authority is satisfied that the development meets the development standards.

Clause 24(1) Housing SEPP	Current	Comment
(a) the design of the development will be compatible with the character of the local area, and	30A Character of local area A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.	The draft SEPP amends clause numbers and is considered a non-policy change; no objection is raised.
(b) no boarding room will have a gross floor area, excluding an area, if any, used for the purposes of private kitchen or bathroom facilities, of more than 25m <sup>2</sup> , and	(b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25 square metres,	The draft SEPP amends clause numbers and is considered a non-policy change; no objection is raised.
(c) no boarding room will be occupied by more than 2 adult residents, and	(c) no boarding room will be occupied by more than 2 adult lodgers,	The draft SEPP amends clause numbers and is considered a non-policy change; no objection is raised.
(d) adequate bathroom, kitchen and laundry facilities will be available within the boarding house for the use of each resident, and	(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,	Other than the inclusion of the word 'laundry' there is no substantial change, and no objection is raised.
(e) for a boarding house on land in Zone R2 Low Density Residential or an equivalent land use zone—the boarding house will not have more than 12 boarding rooms, and	30AA Boarding houses in Zone R2 Low Density Residential A consent authority must not grant development consent to a boarding house on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone unless it is satisfied that the boarding house has no more than 12 boarding rooms.	No objection is raised.
(f) for a boarding house on land zoned primarily for commercial purposes—no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits the	(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another	The draft SEPP amends clause numbers and is considered a non-policy change; no objection is raised.

Clause 24(1) Housing SEPP	Current	Comment
use, and	environmental planning instrument permits such a use,	
(g) for a boarding house containing at least 6 boarding rooms—the boarding house will have at least 1 communal living room, and	(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,	Council has no objection to increasing the number of rooms that trigger the inclusion of a communal living room from five to six. Most boarding houses have a minimum of six rooms, therefore this change is considered reasonable.
(h) the minimum lot size for the development is not less than—  (i) for development on land in Zone R2 Low Density Residential—the minimum lot size requirements for manor houses under a relevant planning instrument, or 600m2,  (ii) for development on land in Zone R3 Medium Density Residential—the minimum lot size requirements for multi dwelling housing under a relevant planning instrument,  (iii) for development on other land—the minimum lot size requirements for residential flat buildings under a relevant planning instrument,	Current development standards do not include a minimum lot size for boarding houses.	No objection is raised to the minimum lot sizes.
(i) the front, side and rear setbacks for the development are not less than—  (i) for development on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential—the minimum setback requirements for multi dwelling housing under a relevant planning instrument,  (ii) for development on land in Zone R4 High Density Residential—the minimum setback requirements for residential flat buildings under a relevant planning instrument,	Current development standards do not include setbacks for boarding houses.	No objection is raised.
(j) if the boarding house exceeds 3 storeys—the building will comply with the minimum building separation distances specified in the Apartment Design Guide,	Current development standards do not include Apartment Design Guide (ADG) compliance for boarding houses.	Council supports the ADG requirement for building separation for boarding houses above three storeys. However, it is requested that the clause be updated to reflect the principles of SEPP 65. This will help mitigate design concerns and may

Clause 24(1) Housing SEPP	Current	Comment
<p>(k) the development has a gross floor area, excluding an area, if any, used for the purposes of private kitchen or bathroom facilities, of at least the following for each boarding room—</p> <p>(i) for a boarding room intended to be used by a single resident—12m<sup>2</sup></p> <p>(ii) otherwise—16m<sup>2</sup>.</p>	<p>Current SEPP includes the below as a non-discretionary development standard.</p> <p>(f) accommodation size if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least—</p> <p>(i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or</p> <p>(ii) 16 square metres in any other case.</p>	<p>help community perception around boarding houses.</p> <p>Council recommends the clause be reinstated as a non-discretionary development standard. This will help ensure all boarding houses are delivering a consistent level of space and amenity and help improve the living experience. As discussed above, both communal spaces and room sizes should be non-discretionary development standards to deliver appropriate amenity.</p> <p>Having room size as a discretionary standard is particularly problematic if the consent authority is not Council (i.e. in the instance where the LAHC or public authority is self-assessing boarding houses). This can result in room sizes being reduced to deliver as many rooms as possible in order to deliver maximum return in investment. This is not supported.</p>
<p>The draft Housing SEPP proposes to remove the requirement for a boarding house manager.</p>	<p>(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on-site dwelling will be provided for a boarding house manager,</p>	<p>Council agrees with this provided community standards for boarding houses with capacity to accommodate less than 20 lodgers, such as ensuring noise and any anti-social behaviour is managed and communal areas are maintained, will be met by Plans of Management that are implemented by Community Housing Providers or the LAHC.</p>

**Table 3: Comparison of proposed and current discretionary development standards for boarding houses**

## 2d. Affordability of boarding houses

As per its submission in **Attachment 2**, Council supports the amendment to the definition of a boarding house to include mean a building “*used to provide affordable housing*”. However, the submission commented that the EIE did not contain information around what constitutes ‘affordable’ or how rents would be protected from market pressure. The EIE outlined that the Department was considering only requiring the building to be used for affordable housing for 10 years, after which time it could then be subject to full market prices. This was not supported. The affordability challenge facing metropolitan Sydney requires more permanent solutions and the provision of incentives for temporary affordable increases densities and associated infrastructure challenges, while only deferring and not addressing the affordability challenge.

Clause 25 of the draft Housing SEPP requires boarding houses to retain affordable housing rates in perpetuity. The supporting draft Environmental Planning and Assessment Regulation amendment includes the requirements to enforce affordable housing rates and implement the SEPP. These require boarding houses to be managed by a registered Community Housing Provider (CHP) that must apply rents in line with the NSW Affordable Housing Ministerial Guidelines. Registered CHPs are overseen by the Registrar of Community Housing, who monitor rents to ensure boarding houses remain affordable. Council supports these requirements and recommends that a regular audit of all boarding houses be implemented to ensure sufficient checks are being carried out to ensure rents remain affordable. However, these requirements do not apply to development on land owned by the LAHC or to a development application made by a public authority.

The requirement for boarding houses to be protected and retained for affordable housing in perpetuity should be a requirement of all boarding houses; irrespective of the landowner or developer. This will help ensure the intention of Clause 25 is met and boarding houses are affordable. The affordable housing challenge facing metropolitan Sydney in particular, requires permanent solutions and the temporary requirement is considered to be unhelpful in this regard, leaving communities with additional densities and associated infrastructure challenges, while deferring rather than actually addressing the affordable housing challenge. Whilst this has been transferred from the current ARHSEPP, if the state housing policies are being overhauled and reviewed, this should be reassessed.

## 2e. Self-assessment of boarding houses by LAHC

Clause 28 of the draft SEPP allows the LAHC to self-assess boarding houses where the use is permitted with consent under the relevant EPI. The FAQ states this is to “*facilitate ongoing supply of social housing to meet the needs of vulnerable residents by eliminating the time delays and costs associated with external approval of these proposals*”. Firstly, boarding houses are a type of residential accommodation to be used for affordable housing purposes, not social housing. Secondly, the draft Housing SEPP does not require the registered community housing provider managing a boarding house developed by or on behalf of the LAHC to charge rents aligned with the NSW Affordable Housing Ministerial Guidelines. It also does not require the boarding house to be used for affordable housing in perpetuity. As discussed above, the requirement for boarding houses to be protected and retained for affordable housing in perpetuity should be a requirement of all boarding houses; irrespective of the landowner or developer. This will help ensure the intention of Clause 25 is met and boarding houses are affordable.

As raised in Council’s submission to the EIE, allowing the LAHC to self-assess boarding houses is not supported due to the implications this will have on streetscapes and amenity of local neighbourhoods. Councils have an in depth understanding of the local planning issues and community concerns of their LGA and therefore are the appropriate consent authority to assess the site-specific merits of boarding houses (particularly built form).

## 3. Co-living housing

### 3a. Permissibility

The draft Housing SEPP and Standard Instrument Order includes a new land use definition and planning provisions for 'co-living housing'. Co-living is:

*a building or place that:*

- a) *has at least 6 private rooms, some or all of which may have private kitchen and bathroom facilities, and*
- b) *provides occupants with a principal place of residence for at least 3 months, and*
- c) *has shared facilities, such as a communal living room, bathroom, kitchen or laundry, maintained by a managing agent, who provides management services 24 hours a day.*

The EIE explained that the boarding house provisions of the ARHSEPP are currently being used to develop co-living developments commonly known as 'new generation' boarding houses. The EIE advised that a new land use is required to facilitate 'new generation' boarding houses.

Part 3 Clause 63 states that development:

*Development for the purposes of co-living housing may be carried out with consent on land in a zone in which development for the purposes of co-living housing, residential flat buildings or shop top housing is permitted under another environmental planning instrument, other than Zone R2 Low Density Residential.*

The draft Standard Instrument Order proposes to include co-living housing into the Land Use Table in Direction 5 to allow councils to insert it into other zones as they see fit. Considering this, Council's interpretation is that co-living is not permissible in the R2 zone unless a Council includes it in their LEP. Being 'new generation' boarding houses, Council supports keeping co-living housing out of the R2 zone for the reasons discussed within the submission to the EIE at **Attachment 2**. This relates to the building typology being similar to a residential flat building and site compatibility, local character, amenity, traffic and built form issues.

### 3b. Development standards

The co-living development standards (non-discretionary and discretionary) are very similar to those that apply to boarding houses. As discussed above under 'Boarding Houses', Council has concerns with a number of the development standards and request they be revised. The current issues caused by boarding houses under the current controls of the ARHSEPP will continue to be perpetuated under the draft Housing SEPP (in addition to Tables 2 and 3, **Attachment 2** discusses these in more detail).

The few differences between the development standards of boarding houses and co-living housing are included below in Table 4:

Co-living Housing	Boarding Houses	Comment
A 10% FSR bonus on non-heritage land in a zone which permits RFBs is allowed if the additional floor space is to be used only for the purposes of co-living housing. However, in August 2024 the restriction relating to heritage affected land is being removed, and the bonus can be achieved on all land that permits RFBs, irrespective of whether it is heritage affected or not.	A 25% FSR bonus on non-heritage land in a zone which permits RFBs is allowed if the additional floor space is to be used only for the purposes of a boarding house.	There is no rationale or explanation as to why the restriction relating to heritage affected land is being removed on August 2024. Any bonuses, like boarding houses, should only be permitted on non-heritage land to protect heritage values.

Co-living housing will contain an appropriate workspace for the manager, either within the communal living room area or in a separate space.	No provisions are included for a manager in a boarding house.	As discussed in 'Boarding Houses', Council agrees with this provided community standards for boarding houses with capacity to accommodate less than 20 lodgers, such as ensuring noise and any anti-social behaviour is managed and communal areas are maintained, will be met by Plans of Management that are implemented by Community Housing Providers or the LAHC.
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**Table 4 – Differences between co-living and boarding houses under the proposed SEPP**

The consultation material states that “*defining co-living housing as a separate housing type provides developers with a pathway for development of a similar product but introduces some new standards to ensure resident amenity and to differentiate this housing type from boarding houses, residential flat buildings, and serviced apartments.*” However, there is no affordability requirement for this housing type. This will likely result in developers maximising FSRs (including the 10% FSR bonus), maximising the number of rooms with the minimum size (or less as this is a discretionary development standard), resulting in a development with poor amenity, being delivered at market rates. This fails to achieve the purpose of the SEPP and perpetuates the affordability crisis, while simultaneously undermining objectives seeking to deliver high quality housing. It is recommended that the proposed FSR bonus be removed and the development standards be reviewed as discussed in sections 2b and 2c of this submission.

## 4. In-Fill Affordable housing

The draft Housing SEPP proposes that any additional incentive floor space allow by the bonus must be used for affordable housing purposes. This is supported by Council.

However, the draft SEPP has removed the requirement for a restriction to be registered on the land title under 88E of the Conveyancing Act 1919 to ensure that the affordable housing dwellings will be retained for 15 years as affordable housing. That means there is no legal mechanism securing the use of the dwellings for affordable housing. It is strongly recommended that this be reinstated in the draft SEPP to ensure the sufficient protection is provided for these dwellings. The update to the Regulations requires this of Boarding Houses, and it should be applied for any affordable housing.

Further, it is noted that if the development is on land owned by the LAHC or is within a development application made by a public authority, that the requirement for the housing to be used for affordable housing for 15 years is not applicable. As discussed in this submission, a consistent approach to the protection of affordable housing is required (irrespective of the landowner or applicant) to ensure the intentions of the SEPP are delivered.

## 5. Seniors Housing

### 5a. Permissibility

#### Current

The current Seniors Housing SEPP permits seniors housing on certain categories of land subject to proponents first obtaining a Site Compatibility Certificate (SCC). Site compatibility certificates (SCCs) were predominantly used for ‘land that adjoins land zoned primarily for urban purposes’, land zoned special use, a registered club site, and vertical village applications. The intention of the SCC is to ensure seniors development is broadly compatible with surrounding land uses (even on land where it would otherwise be prohibited by the zoning).

Council in its submission to the EIE explained how the SCC process has limited planning merit. The SCC generates a myriad of planning issues as the SCC process sidesteps the Planning Proposal process

required to ensure such permissibility questions are answered in accordance with the strategic objectives and priorities established in the planning framework. A Planning Proposal involves a detailed assessment of site constraints, surrounding land use compatibility, alignment with the local and state strategic planning framework (including the Ministerial Directions), and community consultation to ensure any changes to the land use permissibility of a site is suitable.

The current process under the Seniors Housing SEPP does not adequately address these considerations as part of the SCC process and, therefore, results in development applications being assessed on a site where the land use is not permitted. This results in unsuitable development outcomes, often not in public interest.

## **Proposed**

The draft Housing SEPP removes the need for the SCC process by introducing 'prescribed zones' where seniors housing is permissible with development consent. The prescribed zones are Residential zones (R1-R4) and Business zones (B1-B8), RE2 Private Recreation, RU5 Village, SP1 and SP2 (Hospital).

The consultation material states that the prescribed zones were chosen following a review of the zones where the Seniors SEPP currently applies (see above) and where permissible in LEPs. The draft Housing SEPP includes some restrictions on prescribed zones, for example, at least 50% of land adjoining sites zoned RE2 and SP1 must be residential prescribed zones for seniors housing to be permissible.

The consultation material states that the prescribed zones are being adopted to address the uncertainty over the definition of "land zoned primarily for urban purposes" and "land adjoining land zoned primarily for urban purposes". This is to remove the need for a technical assessment of sites by the applicant, council, and department officers. The prescribed zones are to deliver certainty and transparency for applicants, allowing applicants to proceed directly to the development application process, rather than seeking an initial assessment of a site compatibility for seniors housing.

This is strongly opposed by Council and has less planning merit than the current SCC process. Whilst Council opposes the SCC process, the prescribed zones approach has no assessment or framework to account for, and respond to, the site-specific place-based contexts of each site.

The land uses 'permissible with consent' in each zone of an LEP have been carefully considered in line with the objectives and aims of the zone and local planning priorities of an LGA. The 'prescribed zone' approach in essence undermines having land use zones, and makes them obsolete, given the draft Housing SEPP includes residential zones (R1-R4) and business zones (B1-B8), RE2 Private Recreation, RU5 Village, SP1 and SP2 (Hospital) as prescribed zones.

Council does not support the inclusion of prescribed zones. The change is likely to encourage poor design outcomes, incompatible development outcomes, increase the number of development applications for sites that do not have strategic merit, increase assessment timeframes, and can place additional pressure on the relevant consent authority to negotiate on development standards in order to determine the DA on a site where the use may not be permissible under the LEP.

Council specifically wants to raise concerns with permitting seniors housing on land zoned for RE2 Private Recreation. In the context of a registered club, allowing seniors housing on RE2 land can enable and accelerate the loss of recreational space. The provision of sufficient open and recreational space is crucial in delivering on the Greater Sydney Region Plan's commitment to delivering liveable, productive and sustainable cities. Private recreation space has an important role in the mix of recreation lands required to support the community. Once land is redeveloped for alternative uses (particularly residential uses which then further compounds the existing deficit in open and recreation space experienced across Sydney) the opportunity to protect and maintain this land for the future is lost.

In addition, permitting seniors housing in all business zones has the potential to undermine the economic and commercial function of that business zoned land. It risks sterilising floorspace within that zone for business and commercial uses to support the needs of the surrounding community. This is particularly concerning in the B3 Commercial Core, as prior to the recent 'steamrolled' inclusion of Build-to-Rent housing by the Department in the B3 zone, it did not permit any residential uses (as discussed throughout this submission).

It is recommended that a process that aligns with the Planning Proposal process is implemented to ensure the suitability of the land use be adequately assessed before a DA is lodged. This will also assist in streamlining the DA assessment process as adequate consideration of permissibility and compatibility has been carried out upfront before the DA is lodged.

## 5b. Development for vertical villages

As per Part 6 Clause 45 of the Seniors Housing SEPP, development for the purposes of a vertical village may be permissible if it is on land that RFBs are permitted under another EPI. The provisions for vertical villages have been broadly transferred into Chapter 3 Division 8 of the draft Housing SEPP with changes, including to the FSR bonus.

Under the draft Housing SEPP, development consent may be granted for development to which this Division applies if the development will result in a building with:

(a) *the maximum permissible floor space ratio plus—*

*(i) for development involving independent living units—an additional 15% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of independent living units, or*

*(ii) for development involving a residential care facility—an additional 20% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of the residential care facility, or*

*(iii) for development involving independent living units and residential care facilities—an additional 25% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes.*

The communication material states that the FSR bonus is to incentivise the development of vertical villages to help increase seniors' developments in centres with higher density land uses to increase options for people to 'age in place'.

The proposed FSR bonuses are a significant increase from the 0.5:1 FSR bonus currently permitted in the Seniors Housing SEPP. The receipt of this bonus was predicated on the requirement for at least 10% of the dwellings to be affordable (amongst other requirements). In addition to increasing the FSR bonus, the proposed Housing SEPP removes the affordability requirement for vertical villages, therefore the FSR bonuses are accessible without requiring a percentage to be affordable.

The communication material states this is because the Commonwealth Government bed licencing system provides funding to aged care providers for the accommodation of persons with limited financial capacity based on an assessment of income and wealth. Additionally, the Commonwealth Government provides residential aged care supplements to help with accommodation costs, and costs of meeting specific care needs.

At the time of writing this submission Council is unable to comment on the suitability of this statement and its implications on delivering affordable seniors housing. However, concern is raised on the extent of the FSR bonuses proposed in the draft Housing SEPP. Whilst nothing in the draft Housing SEPP affects the application of SEPP 65 Design Quality of Residential Apartment Development, vertical villages would benefit from specific design guidelines to ensure amenity and living experience for senior residents.

## 5c. Environmentally sensitive land

The draft Housing SEPP updates the provisions for environmentally sensitive lands to reflect the improvements made since the drafting and commencement of the Seniors SEPP in 2004. The consultation material states that the changes align the seniors housing provisions with the most recent environmental sensitive land constraint tools and mapping, including coastal protection, wetlands, flooding, and bushfire prone land.

Council has no objection to initiatives to simplify the NSW planning system and provide consistency in the interpretation and application of the SEPP by developers and consent authorities. Council acknowledges

'housekeeping' or administrative changes are often required to ensure the intended outcome or application of a planning policy is being achieved. Therefore, non-policy changes to improve the validity of the SEPP in relation to environmentally sensitive lands are encouraged.

The City of Ryde has a number of environmentally sensitive lands that are currently not contained within Schedule 1 and currently are under threat from development. To address this, a Planning Proposal has been prepared by Council to ensure these lands are protected in the future from development. As a result, this will limit the amount of land available for seniors housing; however, it is a necessary update to the schedule to protect these lands.

#### **5d. State Significant Development (SSD) pathway for seniors housing**

In response to NSW's aging population, the draft SEPP proposes to introduce a SSD pathway for residential care facilities. The SSD process is proposed to apply to developments with a proposed capital investment of \$30 million for Greater Sydney Region. This change in assessment process will further remove planning responsibilities from local councils, and is likely to result in developments that are out of character with the surrounding local area.