

Inner West Council Housing and Affordability Advisory Committee (HAAC)

Submission to the Department of Planning, Industry &
Environment (DPIE) on the Housing SEPP consultation
draft and related documents

Disclaimer: This submission reflects the views of HAAC members only,
not the Inner West Council.

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HAAC submission on Housing SEPP

Introduction

A draft *State Environmental Planning Policy (Housing) 2021 (Housing SEPP)*, together with a draft *Environmental Planning and Assessment Amendment (Housing) Regulation 2021 (Proposed Regulation)* and draft *Standard Instrument (Local Environmental Plans) Amendment (Miscellaneous) Order 2021 (Proposed Standard Instrument)*, has been released by the NSW Government for public consultation.

These three instruments comprise 'Phase 3' of housing-related reforms. Their stated aims are to deliver more housing supply and address the need for diverse, affordable housing types. It is also stated that the instruments are designed to help the home building sector recover from the COVID-19 pandemic.

Key changes

If made, the Housing SEPP will consolidate and repeal five existing SEPPs:

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

The Housing SEPP is divided into two key chapters: 'affordable housing' and 'diverse housing'. The affordable housing chapter contains provisions for the development of affordable housing and retention of existing affordable housing. The diverse housing chapter contains provisions for secondary dwellings, group homes, co-living housing, and seniors housing.

Focus of submission

This submission will mainly focus on key elements relating to changes involving affordable housing in the Housing SEPP.

Refer to the Table 1 below.

Table 1 – Responses to the proposed provisions of the Housing SEPP

Subject/Clause	Provisions	Response
CHAPTER 1 PRELIMINARY		
Interpretation – general – cl 4	Unless otherwise specified words used in this policy will have the same meaning as in the Standard Instrument.	HAAC supports this change. It provides important consistency across different instruments.
CHAPTER 2 PART 2 DIVISION 1 IN-FILL AFFORDABLE HOUSING		
Design requirements – cl 18	Development consent must not be granted to development unless the consent authority has considered whether the design of the development is compatible with the character of the local area.	HAAC supports this clause and similar throughout the SEPP. However, this aspect is often a highly contested aspect of affordable housing development applications. HAAC recommends that further guidance should be provided to define 'compatibility' and 'character'.

<p>Must be used for affordable housing for at least 15 years - cl 20</p>	<p>Development consent must not be granted under this Division, unless the consent authority is satisfied that for a period of at least 15 years commencing on the day an occupation certificate is issued—(a) the affordable housing component of the development will be used for affordable housing, and(b) the affordable housing component will be managed by a registered Community Housing Provider.</p>	<p>HAAC recommends that in-fill affordable housing be provided in perpetuity and managed at all times by a registered Community Housing Provider.</p> <p>This would better align with Schedule 1 Principle 6 for buildings to be ‘managed so as to maintain their <u>continued use</u> as affordable housing’.</p>
<p>CHAPTER 2 PART 2 DIVISION 2 BOARDING HOUSES</p>		
<p>Non-discretionary development standards – cl 23</p>	<p>(2)(a)(ii) an additional 25% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of a boarding house.</p>	<p>HAAC recommends that the maximum bonus floor space should be 20% in line with SEPP ARH 13(2)(b). 20% is already a challenging bonus to accommodate within often tight built form envelopes. The proposed provision may result in excessive bulk and scale and impact negatively on areas of heritage significance.</p> <p>HAAC also recommends that heritage conservation areas should be excluded from bonus floor space provisions.</p>
<p>Non-discretionary development standards – cl 23</p>	<p>(2)(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.</p>	<p>HAAC recommends that <u>all</u> clauses phrased in this way be amended to ensure that DCPs are captured by this clause. Most requirements related to landscaping and setbacks are contained in DCPs which are not planning ‘instruments’.</p>
<p>Non-discretionary development standards – cl 23</p>	<p>2(f) for a boarding house containing 6 boarding rooms—(i) a total of at least 30m² of communal living area, and (ii) minimum dimensions of 3m for each communal living area.</p>	<p>HAAC recommends that <u>all</u> clauses phrased in this way should refer to the number of residents rather than number of rooms. As each room could be single or double occupancy, the difference in number of residents can vary as much as 100% which would mean either an over or under provision of communal living area.</p>
<p>Non-discretionary development standards – cl 23</p>	<p>2(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.</p>	<p>HAAC recommends that <u>all</u> clauses related to communal open space require provision of solar access. As individual rooms are not required to have sun, all communal spaces, both internal and external should have solar access.</p>
<p>Standards for boarding houses – cl 24</p>	<p>(1)(d) adequate bathroom, kitchen and laundry facilities will be available within the boarding house for the use of each resident.</p>	<p>HAAC recommends that <u>all</u> clauses related to these facilities be provided with more guidance as to what is considered ‘adequate’. For example, the NCC does not require kitchens and laundries in Class 3 buildings. In the absence of any other guidance, no kitchens and laundries may be able to be considered adequate.</p>

Standards for boarding houses – cl 24	(1)(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 use.	HAAC recommends that ‘land zoned primarily for commercial purposes’ be defined for clarity as it is not a formal planning term.
Standards for boarding houses – cl 24	If the boarding house exceeds 3 storeys, the building will comply with the minimum building separation distances specified in the Apartment Design Guide.	This means for 4 storeys or more. HAAC recommends adjusting to ‘at least 3 or more storeys’ to align with SEPP 65 (4)(b).
Standards for boarding houses – cl 24	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— (i) for a boarding room intended to be used by a single resident— 12m ² (ii) otherwise—16m ² .	HAAC recommends that further guidance should be provided on how minimum room areas are measured. The use of the term ‘gross floor area’ is inaccurate in this clause. Consideration should be given to whether corridors and internal wall thicknesses should be included in the minimum area as these reduce the amount of space that is ‘usable’ and can greatly impact amenity and living quality.
Must be used for affordable housing in perpetuity – cl 25.	(1) Development consent must not be granted under this Division unless the consent authority is satisfied that from the date of the issue of the occupation certificate and continuing in perpetuity— (a) the boarding house will be used for affordable housing, and (b) the boarding house will be managed by a registered Community Housing Provider.	HAAC supports this change. The need for more affordable boarding house rooms is well recognised.
PART 3 RETENTION OF EXISTING AFFORDABLE RENTAL HOUSING		
Contributions for affordable housing – cl 44	It is currently the practice that contributions for affordable housing are transferred to the Department of Communities and Justice (DCJ). There is no requirement for the contribution to fund the development/replacement of affordable housing in the LGA that generated the contribution. This is an antiquated practice pre-dating the acquisition of affordable housing portfolios by many councils.	HAAC recommends that contributions for affordable housing be transferred to the council associated with the development where the council has: (a) a dedicated Affordable Housing Fund or (b) where the council wishes to offer the contribution to a Community Housing Provider willing to invest the proceeds to development new affordable housing in the local government area from which the contribution was generated.
DICTIONARY		
Dictionary	Non-heritage land means land – (a) not containing a heritage item, and (b) not the subject of an interim heritage order under the Heritage Act 1977, and (c) not listed on the State Heritage Register	HAAC recommends that the definition of ‘non-heritage land’ [Dictionary] also exclude heritage conservation areas, particularly as ‘non-heritage land’ is associated with FSR bonuses which will have an impact on the character of sensitive areas.

FREQUENTLY ASKED QUESTIONS		
Frequently Asked Questions – p 9	New design guidance will be developed for seniors housing, BTR housing, boarding houses and co-living housing	HAAC supports this change. These documents will be important to improving design quality. HAAC would like to see these documents formally exhibited to the community.
STANDARD INSTRUMENT (LOCAL ENVIRONMENTAL PLANS) AMENDMENT (MISCELLANEOUS) ORDER 2021		
Land Use Table, Zone R2 Low Density Residential – sch 1 [4]	Omit “Boarding houses” from item 3	HAAC supports this change. This gives councils discretion as to whether or not boarding houses will be permitted in the R2 – Low Density Residential zone (R2 zone).
Definition of boarding house - sch 1 [6]	The definition of boarding house will be changed by the Proposed Standard Instrument to the following: ‘boarding house means a building that— <i>(a) provides residents with a principal place of residence for at least 3 months, and</i> <i>(b) has shared facilities, such as a communal living room, bathroom, kitchen or laundry, and</i> <i>(c) has rooms, some or all of which may have private kitchen and bathroom facilities, and</i> <i>(d) is used to provide affordable housing, but does not include backpackers’ accommodation, co-living housing, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.’</i>	HAAC supports this change.
ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (HOUSING) REGULATION 2021		
Conditions relating to certain boarding houses - cl 98G	The Community Housing Provider will be required to manage the boarding house in accordance with a plan of management, apply Affordable Housing Guidelines, and be accountable to the Registrar of Community Housing.	HAAC supports this change.

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