

The Property Owners' Association of New South Wales



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To: NSW Department of Planning, Industry and Environment
NSW Planning Portal - Online Submission
<https://www.planningportal.nsw.gov.au/proposed-new-housing-diversity-sepp>

Proposed New Housing Diversity SEPP: Explanation of Intended Effect.

September 2020

Submission on behalf of the:

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DISCUSSION PAPER:

Thank you for the opportunity to provide our feedback on the NSW Department of Planning, Industry and Environment Proposed New Housing Diversity SEPP: Explanation of Intended Effect, September 2020¹

BACKGROUND:

The Property Owners Association of NSW Inc (POA NSW) is the peak body that has represented property owners in NSW since 1951. POA NSW relies on the feedback and support of our membership base, which is predominantly “mums and dads” investors who collectively account for some 96% ² of all property owners in NSW.

¹ <https://www.planningportal.nsw.gov.au/proposed-new-housing-diversity-sepp>. [https://shared-drupal-s3fs.s3-ap-southeast-2.amazonaws.com/mastertest/fapub_pdf/000/00/Housing+Diversity+SEPP+EIE+\(1\).pdf](https://shared-drupal-s3fs.s3-ap-southeast-2.amazonaws.com/mastertest/fapub_pdf/000/00/Housing+Diversity+SEPP+EIE+(1).pdf). https://shared-drupal-s3fs.s3-ap-southeast-2.amazonaws.com/master-test/fapub_pdf/000/00/Frequently+asked+questions+HDSEPP.pdf. https://shared-drupal-s3fs.s3-ap-southeast-2.amazonaws.com/master-test/fapub_pdf/000/Report+to+the+Minister+from+the+Council+Boarding+House+Working+Group.pdf. https://shared-drupal-s3fs.s3-ap-southeast-2.amazonaws.com/master-test/fapub_pdf/000/Seniors+Housing+Investigation+Report+-+Greater+Sydney+Commission%2C+2019.PDF

² “According to the ATO there are just over 2 million property investors in Australia: Where 71% owned just one investment property; 19% owned two properties; 6% owned three properties; 2% owned four properties; 1% owned five properties; 1% owned six or more investment properties”. (Note this data does not include the even larger pool of homeowners in Australia) <https://www.yourinvestmentpropertymag.com.au/news/how-many-property-investors-own-258529.aspx>

EXPLANATION OF INTENDED EFFECT.

We appreciate this Explanation of Intended Effect (EIE) has been developed very quickly during a health and economic crisis, instead of a more comprehensive draft proposal that would contain greater details.

That given, we have attempted to predict implied meaning. We caution that this may have an unintended effect on the way our submission is in turn interpreted.

Further we believe it will be difficult to provide a proper assessment of any proposed SEPP until it's in draft form. Often the 'devil is in the detail', and this detail is required before a robust submission can be made.

SUMMARY:

We strongly endorse a regulatory system that encourages and supports micro suppliers to meet the ongoing changes in demand for housing in NSW.

We are concerned that the Proposed New Housing Diversity SEPP, while conceptually is a step in the right direction, is likely to fail to encourage market supply to deliver 'riskier' diverse housing options.

This submission will focus on some of the main concerns raised by our 'mums and dads' property investors:

STATED PROPOSED DIVERSITY SEPP OBJECTIVES.

We endorse the proposal to support a greater diversity of housing supply. A lack of diverse housing options has an adverse effect on consumers who don't fall into the rigid housing supply options available.

The proposed Diversity SEPP 'headline' suggests it intends to ameliorate this regulatory constraint. Given this, we endorse many of the objectives stated in the EIE. In particular..

Create Jobs assist the State's economic recovery following COVID-19... EIE pg9

Adds Diversity ... facilitates the delivery of housing that meets the needs of the State's growing population... EIE pg9

Adds Viscosity ... in a format capable of being expanded and amended as future needs may require...EIE pg9

*Provide Certainty ... SEPP that will provide greater clarity and **certainty** for the residential development sector... (bold added).EIE pg9*

Encourage affordable supply... Housing affordability is another major issue across NSW, but particularly in the Sydney metropolitan area... EIE Pg3

Provide Incentives to improve viability of supply ... the Government is proposing to incentivise the delivery of build-to-rent (BTR) housing through the NSW planning system. EIE pg 7.

If these policy objectives can be delivered broadly to a wide range of housing suppliers, we predict that the market will move to deliver more jobs, more diverse housing options, and better affordability.

But we remain concerned that these stated objectives are not consistent with the proposed policy initiatives, and the likely outcome from Diversity SEPP as presented will be inferior economic and supply outcomes.

Areas of concern include:

1. PART 3: NON - PARETO OPTIMAL IMPACT.

We are extremely concerned about the proposed amendments to Part 3 of the ARHSEPP....

The proposed SEPP will ... allow a council to levy monetary contributions to offset the loss of dwellings that were low-rental at any time within the 5 years preceding the lodgement of the development application. EIE Pg 17.

Our interpretation of this is that going forward any rental property, at any stage, in the 5 years prior to a development application whose rental slips below the comparable median rent will be liable to a monetary levy as a condition of consent.

Obviously, we have already received a number of alarmed calls from suppliers who are concerned about being caught out by this proposal and they are currently reviewing their rental agreements so as to ensure that their rents do not lie below the median rents.

But what is even more disturbing about the feedback is the incredibly complex knock-on effect this policy will have. Basically, the market will have to add 'risk premium' to cover the cost of regulatory change, which is ultimately born by the consumer.

Let's examine the effect imposing a penalty on low rental suppliers will have on various segments of the market, in particular low rental supply:

Bottom Quartile Rentals

For those housing suppliers that sit well below the median rate, they will have to discount the anticipated 'low rental retention levy' and pass that cost onto the consumer in the form of higher rents, or as research data¹²⁶ shows, lower levels of maintenance so poorer quality housing will prevail in that quartile. Further investment in this sector will be discouraged, reducing overall supply. The combination of these forces will lead to relatively higher rents.

Middle Quartile Rentals

But what about those suppliers who are very close to their median comparable rental? This is very complex, and it will revolve around an instable equilibrium vortex that will keep pushing median rents higher.

Firstly, we expect suppliers will adjust their rates so as to ensure they do not fall below the median. But the median is a variable position, so median rents will naturally move in line with overall rentals over time (eg: if rents broadly go up, the median will rise, and vice versa). Suppliers will be forced to anticipate these future movements in median rents by the market. (Note they will be mindful that their competitors will be driven by the same incentive.)

¹²⁶ <https://www.brookings.edu/research/what-does-economic-evidence-tell-us-about-the-effects-of-rent-control/>

This puts property owners in a very difficult position, which is made more complex because of the regulatory impact of the RTA which restricts rental increases. So, property owners will not have the flexibility to adjust rents as the median moves, they'll all have to anticipate future changes and add an additional risk premium to the median.

It's not just higher rents that will prevail, but higher supply costs and an overall reduction in supply will as well. This is because we envisage the market will move away from 'riskier' longer term tenure to shorter tenures. This will lead to greater turnover costs and reduced supply (supply is lost between turnovers).

Top Quartile Rentals

Relatively, we would expect a shift in housing investment to properties that would fall safely in the top quartile of rents.

Discounted Rents:

Another excellent point raised by one long term property investor is the impact such a low rental retention levy will have on suppliers that generously provide 'discounted rents', whether it be for long term secure tenures or to help out a tenant in difficulty. For example, in the current covid crisis, many tenants have been given significant rental discounts. Those suppliers will be harshly penalized for such Samaritan acts if they slip below the median and seek a development application within the next 5 years.

Alternatively, say a property is due redevelopment or reoccupation. Currently it would be offered at a negotiated discounted rate, to compensate the fact that it will be subject to major works. These properties would all have to be withdrawn from the supply pool to avoid being caught out at below median rents.

Uncertainty effect

While another more vexing issue for all property owners will be whether council's decision to approve a development application will be jeopardized by the 'loss of a low rental property'. This is an unknown, and we will require further analysis, but the bottom line is that this additional regulatory uncertainty will lead to sub optimal resource use and pricing, which stifles supply and pushes up rents.

ONUS OF PROOF

We have identified some significant logistical issues with “ .. *the onus for providing evidence that a building not contain a low-rental dwelling at the relevant time rests with the applicant..*” pg 17.

We envisage, for this to operate effectively, every property owner will be required to maintain 5 year rolling records of rentals. Note this will include homeowners as well, as they'll have to be able to prove they lived in that site for the whole 5 years and did not rent or sublet below the median comparable rent at any stage.

Firstly, this is a significant ‘red tape’ impost on millions of NSW residential property owners. It will lead to millions of hours of lost productivity every year, to verify, record, and store at a standard that can be relied upon as ‘evidence’.

Secondly, what will happen in the 5 years preceding the start of an ‘onus of proof’ imposition? It would be unreasonable to retrospectively require 5 years of proof when record keeping requirements have not been flagged. Will a moratorium apply for the first 5 years until record keeping can catch up? Or will the inability of the property owner to adequately provide 5 years evidence automatically trigger low rental status?

Further what will prevail if a person wants to buy an existing home. They may like to upgrade it within 5 years of purchase. How will they prove if it's not been a low rental property in the years prior to purchase? What if vendor can't or won't provide evidence? Should the vendor be legally required to provide verified rental evidence? Would this be required in the sale contract? If not, how will that uncertainty affect its market price?

OVERVIEW

We have been inundated with further mind-boggling examples of unintended impacts such a policy will have on rental supply, just too many to list here.

Overall the impact of imposing penalties on low rental supply will be to increase rents (cost and risk premiums) and increase operating costs (shorter tenure cycles and associated turnover costs). Further it will discourage investment in properties that would sit near the median rent and well below the median rent. Also, it will discourage maintenance of properties that sit well below the median rent. Investment in these sectors will also diminish, leading to further supply loss and thereby increases in rents, which sets off the vicious cycle for those rentals near the new higher median rent.

The bottom line is that this policy will lead to non pareto optimal outcomes for all, with higher rents, higher operating costs and less supply of low and median rentals.

RECOMMENDATIONS:

PROPOSED LOW RENTAL RETENTION LEVY.

1. As outlined above, the Part 3 proposed low rental retention levy will act as a punitive penalty on low rental supply, and it should be abolished. Further we suggest the NSW Planning Minister, (and/or the Premier for greater reassurance) should publicly revoke this proposal to ease suppliers concerns and remove this uncertainty risk that already hangs over the market. This should be done as soon as possible.
2. In the event this policy proposal is not abolished, we suggest a broad and sound economic analysis of these proposed Part 3 changes is commissioned. This in-depth study should be undertaken by a highly regarded academic team from a reputable institution. It should; review previous comparable national/international studies, identify & quantify the direct and indirect economic impacts of these changes on the various stakeholders, (especially renters seeking affordable accommodation) over the short, medium and long terms. This study should be; peer reviewed, made publicly available and included in any further public consultation on this matter.

2. DIVERSITY AND AFFORDABILITY:

‘The proposed introduction of an affordability requirement for boarding house development as set out above in this EIE would mean that this type of housing is no longer facilitated by the planning system’. page 11 of the EIE

The proposed substantial pull back of; development concessions, incentives and a loss of certainty (with loss of ‘can not refuse’ provisions by council) and imposition of

mandatory community housing provider management will trigger a collapse in new diverse housing construction in NSW. The greatest impact will be in the proposed Co-Living and Boarding House developments segment¹²⁷.

PUBLIC V SOCIAL V MARKET HOUSING.

Each of the suppliers and managers of housing (Public Housing, Social Housing and Market Suppliers) have an important role to play in providing alternative and diverse housing options. The competitive tensions that interplay between these different suppliers drives each of them to excel at their relative strengths and to moderate their respective weaknesses¹²⁸.

Market suppliers have a very important role to play in this mix. They can deliver diverse and affordable housing efficiently, with relatively small amounts of upfront or ongoing taxpayer assistance.

Further some 96%¹²⁹ of property investors are small housing suppliers. These micro-suppliers are often highly invested and motivated small businesses who will deliver if presented with viable options. The regulatory framework should encourage and facilitate these micro suppliers to realise niche supply opportunities.

This is not the case with Social housing suppliers, their cost structures often exceed market suppliers who can deliver more at less cost. We predict these social housing models will be an ongoing heavy burden on the public purse and are only justifiable in a targeted way to address specific crisis and/or care housing needs. We believe these pressures will bear out in the longer term, especially when the ‘silent killer’ depreciation and amortisation takes hold of buildings, and the cash flow impact of major refurbishments is required.

Further, a preliminary review of NCAT 2018-2019 Consumer and Commercial Division workload and performance results¹³⁰, indicates a large number of NCAT Social Housing applications relative to its size. This NCAT (and other sources of) data

¹²⁷ We would require further analysis and data to establish the impact on the Student accommodation market, its outcome will be in the hands of the various councils that control developments near educational institutions.

¹²⁸ We will outline other counterproductive forces, such as the corrosive impact of illegal suppliers later.

¹²⁹ “According to the ATO there are just over 2 million property investors in Australia: Where 71% owned just one investment property; 19% owned two properties; 6% owned three properties; 2% owned four properties; 1% owned five properties; 1% owned six or more investment properties”. (Note this data does not include the even larger pool of homeowners in Australia) <https://www.yourinvestmentpropertymag.com.au/news/how-many-property-investors-own-258529.aspx>

¹³⁰ Table 4 Pg 35. <https://www.parliament.nsw.gov.au/tp/files/76848/NCAT%20Annual%20Report.pdf>

should be analysed and a report produced to rate the performance of the Community Housing Provider sector.

A model weighted towards market supply to address more general affordability and diversity needs is a pareto optimal use of tax-payer funds.

AFFORDABILITY MANDATE

We believe that the proposed mandating of Community Housing Provider management in new Boarding Houses is a step in the wrong direction. This will discourage new investment and limit the diversity and viscosity of a wider range housing suppliers.

For example, there are over 2 million Australian workers in casual employment¹³¹ or workers whose place of work changes regularly, so they need a flexible ‘easy in easy out’ form of housing that is affordable and generally available in diverse geographic locations, especially near amenities and transport nodes so that they can access labour markets.

I’m a nurse, so I’m a shift worker. They get us on contracts, 3 months here, 6 months there. Flick a coin, I could be at Westmead or POW next month. I can’t get stuck with the hassles of a lease. I don’t want to. Plus, I can’t deal with flatmates dramas, I’m in Theatre most days. It just doesn’t work for me. It’s got to be affordable, clean & quiet and all set up and ready to go.

This is a very large and important sector of housing demand, and these essential workers play a critical role in the economy. Micro market suppliers are suitably placed to cater for this segment of the market, if the planning system is able to deliver certainty and viability.

PAGE 14: THE GOVERNMENT IS SEEKING FEEDBACK..

The EIE on page 14 poses the following alternative to mandatory Community Housing Providers.

¹³¹ More than two million Australians are employed casually. Women account for just over half of all casuals and 40% of casuals are aged 15-24 years, compared with 14% of other employees.

https://www.australianunions.org.au/casual_workers_factsheet

”The Government is seeking feedback on whether it would be more appropriate to require rooms in new boarding houses to be rented at affordable rates for a minimum of 10 years, after which they could revert to market rates”. Pg14

This model is superior to mandatory community housing management and will deliver better affordable housing supply, but it assumes that the 10 year affordability proviso can still enable viability of market supply. This becomes a complex prediction of discounting loss of yield for ten years and then trying to guesstimate property values in 10 years time. This uncertainty will invariably have to be priced, and adds a premium for the inevitable uncertainty.

A better model is using incentives to encourage markets to provide ongoing diverse and affordable housing supply. It would include incentives paid to all suppliers who meet housing targets, such as affordability and/or tenure conditions (whether it be long term tenure for families, or flexible access to transient workers). A ‘carrot’, rather than a ‘stick’ that could be tweaked as demand needs evolve so as to facilitate supplies response.

RECOMMENDATIONS:

INCENTIVES AND DEVELOPMENT CONCESSIONS.

A long term stable system of incentives and planning concessions are required to provide greater certainty and improve the viability of market supply in housing segments that are wanting. Some examples of policies include:

1. Development concessions:
 - i. Such as those currently available in the AHRSEPP. These could be reviewed and refined so as to mitigate unacceptable outcomes as has been done in the past.
 - ii. Reinstatement of reasonable ‘must not refuse’ provisions to provide certainty and clarity for micro suppliers who don’t have the resources to undertake complex council development assessments.
 - iii. 0.2 Parking concession to be reinstated for sites in higher density zones and next to high quality transport nodes. Car ownership is extremely low in affordable housing, and new modes such as car-

- sharing and ridesharing will further reduce individual car ownership overtime.
- iv. Bulky developments in low density zones could be mitigated with similar measures as the 12 room maximum, instead of removing the R2 zone mandate.
2. Incentives tied to affordable rentals.
 - i. Introduce targeted rolling land tax concession incentive agreements with market suppliers. Studies could be undertaken to establish the levels that will be required to achieve viability of supply, then the market will move to address these weak spots. Fixed rental targets that reflect comparable median rentals could be set and then averaged or indexed during agreement periods and suppliers must meet targets before incentives are provided. The NSW Department of Communities and Justice have produced various examples of such targets, eg Table of Rents for the Boarding House Financial Assistance Program- New supply¹³², which counterbalances local viability constraints with affordability targets.
 - ii. Council rate reductions could be offered in LGA where there are specific needs; or segments with specific challenges such as insurance or essential services maintenance costs in Boarding Houses could be targeted for additional support.
 3. These incentive and concession programs could be tweaked as market needs shift, but they need to remain fundamentally stable over the long term as housing investment is long term and ‘lumpy’, and tends to lag the market and needs time to gain momentum.
 4. The current ‘one size fits all’ tenancy laws forces suppliers to offer standard products, deterring supply of diverse tenure options to consumers, which causes market failure. Laws and regulations need to trade-off suppliers risks, tenure and pricing so as to encourage diverse options, whether it be for long term secure tenure or alternatively flexible easy access housing.
 5. Suppliers should be encouraged and enabled to offer flexible terms that suit resident’s needs, and any rigidities imposed should have degrees of flexibility to permit a greater range of diverse supply. For example:

¹³² <https://www.facs.nsw.gov.au/download?file=374943>. See Appendix A for a copy of TABLE OF RENTS FOR THE BOARDING HOUSE FINANCIAL ASSISTANCE PROGRAM - 2019

- i. The minimum 3 months tenure, should be amended to enable viscosity, for example 75% occupancies must meet a 3 month minimum, so as to cater for the plethora of diverse affordable demand situations efficiently. Some examples:
 1. There should be scope for an open ended 18 week stay that is subject to employment contract renewal in the 9th week, without punitive impact on the supplier, otherwise they won't offer it and unless a low paid essential worker can easily find viable housing, they won't accept the employment contract. This then has ramifications on the employers capacity to deliver their supply.
 2. There are a large and growing number of essential low paid workers that live regionally but work a few days a week in metro areas. Say one party needs accommodation mid-week, while another on the weekend. Rolling team-ups should be enabled, given all parties are agreeable. Thereby regional workers will have affordable, flexible but also stable source of housing supply.
 - ii. These are just two of many examples of demand needs that are not smoothly catered for because of unnecessary rigidities in planning and occupancy laws that prevent compliant affordable¹³³ supply from easily catering for niche demand needs. So this everchanging demand must turn to illegal suppliers. This then corrodes compliant supply. Regulations must enable and encourage compliant suppliers to efficiently cater for these demand needs. In the long run this will prevent ongoing frictions in housing markets, as market supply will constantly move to meet everchanging demand.
6. Imposition of mandatory community housing provider management will substantially reduce the diversity, efficiency, and viscosity of affordable supply vis-a-vis market managed suppliers that can respond to everchanging micro demand needs. Further, as acknowledged in the EIE¹³⁴, such 'stick' approaches will inevitably lead to a withdrawal of existing and new market supply. This will have a corrosive impact on affordably options for consumers and especially essential low paid workers that are the cornerstone of the NSW's metropolitan economy.

¹³³ There are multiple existing sources of 'unaffordable' supply, such as hotels and motels, but they are too costly for a essential workers on low pay rates.

¹³⁴ *The proposed introduction of an affordability requirement for boarding house development as set out above in this EIE would mean that this type of housing is no longer facilitated by the planning system*". page 11 of the EIE

7. Social and Public housing resources should be targeted towards complex housing demand needs that market suppliers even with low levels of incentives cannot viably supply, (eg crisis accommodation, or members of society with ‘special needs that require special care services’) so that public funds are effectively utilised.

3. BUILD TO RENT

We support the proposed introduction of land tax incentives to encourage long term tenure. It is a step in the right direction to encourage market supply.

But we remain concerned about the societal impacts of large high density housing and large single property ownership models.

Large high density projects will put significant pressure on local infrastructure and amenities and have the potential to turn into ghettos. While single ownership will encourage oligopoly suppliers who could abuse market power. Further it encourages a less egalitarian land ownership structure in NSW which is a step in the wrong direction. These are not ideal societal outcomes.¹³⁵

¹³⁵ The great strength of housing supply in NSW is the large percentage of housing supply owned by micro suppliers. Some 96%¹³⁵ of suppliers own less than 3 properties, and only 1% own more than six properties. These micro-suppliers are often ‘mums and dads’ investors, who are highly motivated and committed.

This ownership structure is an important feature of the housing market. It is a market where there are a large number of sellers. In very basic simple theoretical economic terms this housing market is most akin to a perfect competition market.

*Perfect Competition: There are a large number of buyers and sellers in a perfectly competitive market. The sellers are small firms, instead of large corporations capable of controlling prices through supply adjustments Perfect competition is a benchmark, or "ideal type," to which real-life market structures can be compared..... Perfect competition is theoretically the opposite of a monopoly, in which only a single firm supplies a good or service and that firm can charge whatever price it wants since consumers have no alternatives and it is difficult for would-be competitors to enter the marketplace.*¹³⁵

Given mobility constraints that prevail in established areas, especially in Sydney, large scale operators (ie more akin to an oligopoly or monopoly) could easily corner supply ownership in the various geographic segments. Armed with significant market power, they can use greater leverage to realise short term supply opportunities, but in the long run this will deliver an inferior pareto optimal supply structure. This will inevitably produce inferior societal outcomes, especially for the middle and lower classes in NSW, if property ownership becomes highly concentrated.

Instead the regulatory framework should encourage and facilitate micro suppliers to realise these normal short term supply opportunities, despite their lack of market power, so as to encourage a continuation of property ownership by widest possible range of people.

RECOMMENDATIONS:

BUILD TO RENT

1. Broaden Build to Rent development concessions and tax incentives so they are available to all suppliers who provide housing that meet essential targets such as long term tenure, affordability, and/or provides flexible easy access:
 - a. This will encourage smaller ‘mums and dads’ developments in a wider range of areas to address ongoing changes in demand.
 - b. Less high density developments will have a milder impact on infrastructure, amenities and communities.
 - c. Areas with high levels of amenities do not require additional ‘in-house’ amenities. Further in-house amenities lead to barriers and segregation within broader communities. This is anti-social, and not conducive of a cohesive integrated society.
 - d. More construction jobs can be generated from a greater number of projects.
 - e. Greater diversity and competition will prevail with a larger number of smaller suppliers instead of a few large and powerful suppliers.

2. Regarding the feedback request on page 9: *“the appropriate mechanisms that could be incorporated into the SEPP to manage the transition from BTR housing to a strata-subdivided apartment development”*.
 - a. We understood BTR in other jurisdictions was predominantly a long term and ongoing rental model. A 15 year limit seems to curtail this stated objective.
 - b. Also subdividing the building will compromise that sites capacity to remain in a *‘format capable of being expanded and adapted as future needs arise’*(EIE)
 - c. Further governments should be cautious they don’t inadvertently incentivise developers to hold sites so as to avoid GST and then sell individually after building warranties expire. This may have a perverse impact on building standards and BTR motivation.
 - d. On balance, ongoing rental should be encouraged with ongoing incentives, beyond 15 years, but at 15 years the option should be made available for strata division if appropriate targets are met, to incentivise BTR development.

3. A 0.5 parking concession should only be granted if BTR are located very close to significant transport nodes that enable easy access to amenities and labour markets. Otherwise social problems will prevail in those sites disconnected from amenities and the labour market.

RECOMMENDATIONS:

CO-LIVING.

1. The proposed definition of Co-living should be broadened so that smaller than 10 bedroom Co-living developments can be constructed. We suggest the minimum number should be closer to 6 dwellings. We understand that most states in Australia that permit similar structures, set minimums in the range of 5 to 7 dwellings. As noted in our BTR recommendations, this will encourage smaller scale developments in a wider range of areas and be accessible to micro suppliers.
2. Legislation that covers non exclusive use agreements should be adapted to cater for the unique nature of share accommodation's non-exclusive use that will prevail in Co-Living premises. For example, residents need to respect other residents, use communal facilities in a responsible manner, and keep them clean and tidy.
3. Incentives, such as BTR land tax concessions should be made available to Co-living sites that meet housing supply targets like affordable housing and or easy access flexible tenure, to support supply of housing for essential workers often on contracts who need to live near work(eg shift workers at hospitals) or transport nodes.

4. EXISTING BOARDING HOUSES IN NSW:

Existing Boarding Houses have been playing a vital role in supplying easy in alternative accommodation with flexible tenure in established areas at affordable rates since English settlement in NSW. Most suppliers are small family businesses that have provided stable homes for residents for decades.

The following provides some key data on boarding houses:

In total, Census data and Boarding House registration results provide that there are around 16196 residents¹³⁶ living in NSW boarding houses. This amounts to about 0.214% of NSW's population of 7.544 million people.

There were 1109 registered General Boarding Houses in NSW on 10 January 2020¹³⁷. 17 of these were Assisted Boarding Houses that cater for "persons with additional needs".

The majority of registered boarding houses contain 5-12 residents, with the average size estimated at 10¹³⁸.

The City of Sydney, Inner West, Randwick, Newcastle and then Waverley contain the majority of NSW boarding houses.

In 2017, 616¹³⁹ boarding houses (about 60%) complied with Revenue NSW criteria for low cost accommodation supply.

Affordable registered boarding houses operate with very little government assistance. In fact, in 2013 it is estimated the land tax concession amounted to just \$2.67¹⁴⁰ per

¹³⁶ Pg 9 & 10 Martin C. Boarding Houses in NSW: growth, change and implications for equitable density. Chris Martin. UNSW City Futures Research Centre. July 2019 for Shelter NSW

¹³⁷ <https://www.parliament.nsw.gov.au/tp/files/77910/Report%20on%20the%20Statutory%20Review%20of%20the%20Boarding%20Houses%20Act%202012.pdf> pg 13

¹³⁸ Pg 9 & 10 Martin C. Boarding Houses in NSW: growth, change and implications for equitable density. Chris Martin. UNSW City Futures Research Centre. July 2019 for Shelter NSW

¹³⁹ Parliament of NSW. Parliamentary Questions #8378 BOARDING HOUSE LAND TAX EXEMPTIONS, Greenwich, Alex to the Minister for Finance, Services and Property. Question asked on 17 May 2018 (session 56-1) and printed in Questions & Answers Paper No. 183. Answer received on 21 June 2018 and printed in Questions & Answers Paper No. 192 <https://www.parliament.nsw.gov.au/la/papers/pages/qanda-tracking-details.aspx?pk=239231>

¹⁴⁰ Being 720 boarding houses with an average of 10 dwellings per building and the value of the exemption being \$7m in the 2013 calendar year. Based on Table: Appendix 9.10: Office of State Revenue data BOARDING HOUSES ACT 2012 EVALUATION REPORT 1, 2014. Final Report. Dr. Gabrielle Drake, Dr. Hazel Blunden, Kathy Newton, and Esterina Lentini. 29 September, 2014. University of Western Sydney, and as estimated in: Martin C. Boarding Houses in NSW: growth, change and implications for equitable density. Chris Martin. UNSW City Futures Research Centre. July 2019 for Shelter NSW.

dwelling per day (note tariffs in boarding houses generally include all bills and furnishings). This is quite considerably less than Social or Public housing suppliers.

In a recent 5 year study of Boarding Houses, residents of registered general boarding houses were found to experience above average levels of satisfaction with their well being based on seven indicators (5.42-7.58 out of 10) and above average scores ranging from 5.83 to 7.74 out of 10 for overall satisfaction with their boarding house accommodation¹⁴¹.

There are a considerable number of unregistered boarding houses. Some are small boarding houses (ie under 5 occupants) that are not required to register, but are still required to meet council conditions.

There are a very large number of Boarding Houses that operate illegally. They are not registered by NSW Fair Trading, and they are likely to be operating without appropriate council and fire/safety approvals. Their number is unknown and difficult to establish as they seek to remain undetected, but some estimates have put it at 25%¹⁴² or even 100% of the number of registered boarding houses. Residents in such illegal houses face significant health and safety risks and illegal suppliers undermine compliant supply and tarnish the industries reputation.

In terms of 'fit for purpose', Boarding houses, (especially those existing 616 micro suppliers that meet the Revenue NSW low cost supply criteria), play a crucial role in providing a diverse range of easy access furnished accommodation in a wide range of locations at low cost affordable rates with very little tax payer assistance. Further, residents in these houses experience above to high levels of satisfaction. These long established compliant suppliers are clearly 'fit for purpose'. (The same can not be said for the large number of illegal operators that fly under the radar and need to be brought into line.)

A number of compliant suppliers have expressed concerns about the proposed change in the SI definition of boarding houses, ie the mandatory requirement of Community Housing Provider management. They are concerned such a move will impact existing long established suppliers.

Any adverse changes to the SEPP should not apply retrospectively, as it would have adverse impacts on their viability and thereby the preferred housing mode for the bulk of the 16000 residents of existing boarding houses in NSW.

¹⁴¹EVALUATION OF THE BOARDING HOUSES ACT 2012 –FINAL REPORT. DRAKE. 2018

<https://www.newtowncentre.org/uploads/5/1/5/0/51502997/evaluation-of-the-boarding-houses-act-2012-report-4-and-final-report-2018.pdf>

¹⁴² NSW Registrar of Community Housing, Regulation of Boarding Houses in NSW, Final discussion paper, From the viewpoint of the NSW Registrar of Community Housing, October 2019, pg 3

Further, existing suppliers are concerned about the impact the proposed SEPP will have on any future DA applications to existing Boarding Houses. As the Diversity SEPP is currently proposed, any future DA would have harsh effects, such as the imposition of a mandatory community housing provider and the loss of development concessions. These adverse effects plus the loss of certainty would be prohibitive and deter any future works, which in turn will lead to a slow decline in standards and overall supply of this long established market source of affordable housing.

RECOMMENDATIONS:

EXISTING HOUSING SUPPLIERS

1. Clear confirmation to be provided that any adverse impacts of a proposed new SEPP does not apply retrospectively to existing housing suppliers.
2. Existing housing suppliers be ‘grandfathered’ from proposed SEPP changes, so that future alterations and additions to existing affordable established operations are not adversely affected by proposed changes.

5. OTHER:

ILLEGAL HOUSING SUPPLIERS.

A lack of diverse housing options is one of the results of a planning system that presumes that demand for housing is not fluid and sits at an arbitrary norm. As Alain Bertaud ¹⁴³explains.

¹⁴³ Alain Bertaud (Senior Research Scholar New York University author of Order without Design, How Markets Shape Cities)

“Urban planner thinks in terms of norms and needs... if you ask a urban planner what is the optimum size of housing they’ll tell you a number, something like 50 or 60m2. If you ask the same question to an economist, the economist will say it all depends. Planners don’t think about viscosity. They consider what is important is what people need, and they decide on what people need based on norms.... and anything below that is socially unacceptable and they won’t allow anybody to build that. The effect of course is that in areas where people are relatively poor, and construction (&) land is expensive, they eliminate a large number of people from having legal housing. They don’t of course exclude people from the city. People don’t go away. They will just go ... (into)... either crowding existing housing or building illegally”¹⁴⁴. (Alain Bertaud)

No one disputes the need for genuine reasonable minimum standards, but the effect of inflexible regulation that doesn’t motivate healthy market outcomes is ultimately to fuel an inferior market outcome, ie to fuel illegal housing.

And it’s not just the occupant that is at risk within illegal housing...

From a broader community perspective, the widespread and uncontrolled provision of illegal dwellings and the associated ‘hidden’ increase in population, generates a number of problems for provision of social services and facilities. At the local level, a proliferation of illegal dwellings undermine analysis and planning for public open space and community facilities to meet the needs of the increased population. At State level, a significant, under-enumerated informal sector undermines analysis and planning for new/additional capacity in schools, hospitals, public transport and social support services¹⁴⁵.

Further the illegal supply undermines legal supply, which is burdened by regulatory forces and is stuck at a competitive disadvantage to illegal supply. Over time, illegal supply flourishes at the expense of legitimate supply. So, the net effect of greater consumer protection and regulation is actually the opposite, a deterioration in the housing standards and options for consumers. This is a vicious cycle that must be reversed, so as to encourage acceptable housing outcomes.

Sound Regulatory Enforcement.

¹⁴⁴ Alain Bertaud (Senior Research Scholar New York University author of Order without Design, How Markets Shape Cities) <https://www.youtube.com/watch?v=MIac1nhgCs4>. 2.00 minutes

¹⁴⁵ Pg 39 Gurrán, N, Pill, M, Maasen, S, Alizadeh, T and Shrestha, P (2019) *Informal accommodation and vulnerable households: scale, drivers and policy responses in metropolitan Sydney*, University of Sydney Policy Lab.

Installing a sound regulatory framework to mitigate the demand, and thereby supply, of illegal housing is one important part of the illegal housing problem, the other important mitigating force lies with compliance and policing of illegal supply, a role predominantly undertaken by councils.

POANSW accepts councils have a difficult role, but we believe many local councils have failed to adequately address hidden illegal housing suppliers. Regulating compliance is a core duty of local government, and our feedback is that many councils don't appear to have the appetite or the structure to execute their compliance duties in a sound and effective manner.

“Consistent with each of the interval reports, participants from local councils, as well as agency staff from community organisations, continued to raise concerns about the ability of local governments to monitor and enforce the Act within existing resources.”¹⁴⁶(2012)

A better more effective system of managing illegal and non-compliance in the housing market is required. Resources need to be directed at significant and flagrant breaches of regulations rather than low risk petty misdemeanours.

As one residential property investor noted:

“Councils are clearly in the dark, and they're just looking under the light posts”

Consumer Protection laws (RTA etc)

While it is acknowledged that a large and very important segment of demand for rental accommodation is the mainstream market (ie Residential Tenancies), but there is also a large demand for accommodation that does not fit into this rigid regulatory framework that deters suppliers from providing a diverse range of supply options.

One example of this is the impact the Residential Tenancy Act has on many consumers access to a rental lease...

Interviewees reported that single people receiving unemployment benefits, disability support payments, or the old age pension, were particularly affected by housing affordability pressures, and unable to find affordable

¹⁴⁶ Pg 31 Evaluation of the Boarding Houses Act 2012 Final Report Associate Professor Gabrielle Drake Associate Professor Gabrielle Drake February 2018 ACU

accommodation in the formal sector of the market. Despite being able to pay up to \$200 in rent (with the Commonwealth Rental Assistance (CRA) subsidy), these low income earners are unable to access self-contained accommodation in the private rental sector but rather need to seek share accommodation, lodging, or a boarding house room. “We find that access to some properties through certain real estate agents is becoming increasingly hard...they’ll straight up admit that they won’t take anyone who’s on Centrelink .. They want people that are working.” (Housing advocate) 147

Supply barriers created by residential tenancy conditions are not just limited to the lower income and vulnerable groups. These supply barriers also make it very difficult for the 2 million Australian workers in casual employment¹⁴⁸ or workers whose place of work changes regularly.

The reality is that mainstream supply, (ie residential tenancies) housing options are being denied to a large number of people at the edges seeking affordable flexible accommodation.

A functioning housing market is one that can cater for all types of demand. Both a healthy mainstream and alternative market is needed. Both these markets are different and have different characteristics, and each will have living arrangements that present trade-offs between location, cost, tenure security, privacy, and household formations.

This trade-off is done differently by different households. It’s a very very important thing¹⁴⁹. (Alain Bertaud)

Flexible housing supply options need to be encouraged to meet all demand needs, and this innovative motivation will be deterred by ongoing tightening of regulatory frameworks that disable and discourage rental supply options.

We don’t have a magic wand... the occupant ends up wearing it. Water always finds its level. (Residential housing supplier)

The following conclusion drawn by Martin(2015)¹⁵⁰ is also used in the conclusion of *Informal accommodation and vulnerable households: scale, drivers and policy*

¹⁴⁷ Pg 19I Gurran, N, Pill, M, Maasen, S, Alizadeh, T and Shrestha, P (2019) *Informal accommodation and vulnerable households: scale, drivers and policy responses in metropolitan Sydney*, University of Sydney Policy Lab.

¹⁴⁸ More than two million Australians are employed casually. Women account for just over half of all casuals and 40% of casuals are aged 15-24 years, compared with 14% of other employees.

https://www.australianunions.org.au/casual_workers_factsheet

¹⁴⁹ Alain Bertaud (Senior Research Scholar New York University author of *Order without Design, How Markets Shape Cities*) <https://www.youtube.com/watch?v=Mlac1nhgCs4>. 4.30 minutes

¹⁵⁰ C Martin. (2015) The informal lodging sector in NSW. A regulatory blindspot. Concluding remark. City Blog. 14/9/15

*responses in metropolitan Sydney*¹⁵¹ Gurran et al,(2019). It captures the direction in which regulators should move so as to address the illegal market and encourage compliant alternatives to fill the demand voids caused by regulatory failures in mainstream housing supply.

..... We need to reform the regulation of marginal rental accommodation, to more definitely draw a line between arrangements that are exploitative, unsafe and unacceptable, and those that are tolerable for their specific purpose of relatively short-term, accessible accommodation. Such a reform would probably mean relaxing the requirements regarding development consent and related prescriptions that currently notionally apply – but in so doing could put the informal lodging sector more clearly on the radar of regulators.^{152,153}

BTR “PROFESSIONAL ON SITE MANAGEMENT”

How will this new standard of professional on-site management differ from existing professional property management? Will a new standard of qualification be required for BTR managers, or will they have the same qualifications as existing property managers? How will these ‘superior’ standards be regulated, and what provisions will be installed to ensure BTR fulfil the proviso on page 8 of EIE “*focused on providing a good experience for tenants through the provision of on-site services and facilities*”

Will residential tenancy agreements also regulate BTR occupancies? If so, will the qualifications that property managers carry fall under the same provisions as those currently under The Property Stock and Business Agents Act 2002? If not, how will property managers differentiate the differences between general property managers and those in the BTR sector who need to manage the same type of residential tenancies"

¹⁵¹ <https://apo.org.au/node/232186>

¹⁵² C Martin. (2015) The informal lodging sector in NSW. A regulatory blindspot. Concluding remark. City Blog.

14/9/15. <http://blogs.unsw.edu.au/cityfutures/blog/2015/09/the-informal-lodging-sector-in-nsw-a-regulatory-blind-spot/>

¹⁵³ Pg 52 Gurran, N, Pill, M, Maasen, S, Alizadeh, T and Shrestha, P (2019) *Informal accommodation and vulnerable households: scale, drivers and policy responses in metropolitan Sydney*, University of Sydney Policy Lab

BUILDING CODE CLASSIFICATIONS.

How will the new buildings, Co-Living, Student and BTR be classified under the building code of Australia. Will Co-Living and Student accommodation fall under class 1b or Class3 buildings?

ROLLING 24 MONTH REVIEW.

We concur that it is very prudent to fully ... *review the provisions of the new SEPP within 24 months of its introduction to ensure they are functioning as intended* pg10.

We expect that many of the provisions as proposed will have adverse unintended consequences, particularly in relation to the supply of affordable housing, and suggest that reviews be scheduled every 2 years, so that these impacts can be reversed as soon as possible.

CONCLUSION.

Small property investors make up 96% of housing suppliers in NSW. This critical source of micro housing suppliers should be encouraged to move towards satisfying the everchanging housing demand needs in NSW.

The planning system needs to move towards providing greater certainty for suppliers who seek to invest non-mainstream housing options. Further development concessions and long-term incentives are needed to improve viability of supply in segments that are wanting, while efficiently allocating taxpayer funds.

Land tax incentives, such as BTR concessions, tied to housing supply outcomes is a step in the right direction, and they should be broadened to smaller developments and expanded to support other targets such as affordability and easy access housing.

Imposing punitive measures on affordable suppliers, such as; Part 3 retention levies, mandatory community housing supplier management, and the ‘pullback’ of development concessions will have a corrosive impact on existing supply levels and deter future investment in these sectors.

Consumers, particularly those who don’t fit into the mainstream, will be the most harshly affected by these proposed changes.

Yours Faithfully,

On behalf of The Property Owners Association of NSW.

Peter Dormia

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APPENDIX A

TABLE OF RENTS FOR THE BOARDING HOUSE FINANCIAL ASSISTANCE PROGRAM - 2019

Maximum Tariffs for Rooms for the Boarding House Financial Assistance Program - New Supply for 2019

Based on March Quarter Rent and Sales Report on median rents and Office of State Revenue tariff limits for boarding houses

In certain LGAs tariffs higher than the Office of State Revenue are permitted due to higher median rentals (highlighted in table)

Weekly Tariffs for 2019 (\$)

LGA (Local Government Areas)	Rent threshold single accommodation no board and lodging	Rent threshold double accommodation no board and lodging	Rent threshold single accommodation with board and lodging	Rent threshold double accommodation with board and lodging
OFFICE OF STATE REVENUE THRESHOLDS	261	432	389	643
Albury	261	432	389	643
Armidale Regional	261	432	389	643
Ballina	261	432	389	643
Balranald	261	432	389	643
Bathurst Regional	261	432	389	643
Bayside	375	432	389	643
Bega Valley	261	432	389	643
Bellingen	261	432	389	643
Berrigan	261	432	389	643
Blacktown	261	432	389	643
Bland	261	432	389	643
Blayney	261	432	389	643
Blue Mountains	261	432	389	643
Bogan	261	432	389	643
Bourke	261	432	389	643
Brewarrina	261	432	389	643
Broken Hill	261	432	389	643
Burwood	370	432	389	643
Byron	274	432	389	643
Cabonne	261	432	389	643
Camden	261	432	389	643
Campbelltown	261	432	389	643
Canada Bay	353	432	389	643
Canterbury-Bankstown	270	432	389	643
Carathool	261	432	389	643
Central Coast	261	432	389	643
Central Darling	261	432	389	643
Cessnock	261	432	389	643
Clarence Valley	261	432	389	643
Cobar	261	432	389	643
Coffs Harbour	261	432	389	643
Coolamon	261	432	389	643
Gundagai	261	432	389	643
Cowra	261	432	389	643
Cumberland	263	432	389	643
Western Plains Regional	261	432	389	643

Dungog	261	432	389	643
Edward River	261	432	389	643
Eurobodalla	261	432	389	643
Fairfield	261	432	389	643
Federation	261	432	389	643
Forbes	261	432	389	643
Georges River	300	432	389	643
Gilgandra	261	432	389	643
Glen Innes Severn	261	432	389	643
Goulburn Mulwaree	261	432	389	643
Greater Hume Shire	261	432	389	643
Griffith	261	432	389	643
Gunnedah	261	432	389	643
Gwydir	261	432	389	643
Hawkesbury	261	432	389	643
Hay	261	432	389	643
Hilltops	261	432	389	643
Hornsby	285	432	389	643
Hunters Hill	308	432	389	643
Inner West	325	432	389	643
Inverell	261	432	389	643
Junee	261	432	389	643
Kempsey	261	432	389	643
Kiama	261	432	389	643
Ku-Ring-Gai	334	432	389	643
Kyogle	261	432	389	643
Lachlan	261	432	389	643
Lake Macquarie	261	432	389	643
Lane Cove	370	432	389	643
Leeton	261	432	389	643
Lismore	261	432	389	643
Lithgow	261	432	389	643
Liverpool	261	432	389	643
Liverpool Plains	261	432	389	643
Lockhart	261	432	389	643
Maitland	261	432	389	643
Mid-Coast	261	432	389	643
Mid-Western Regional	261	432	389	643
Moree Plains	261	432	389	643
Mosman	345	432	389	643
Murray River	261	432	389	643
Murrumbidgee	261	432	389	643
Muswellbrook	261	432	389	643
Nambucca	261	432	389	643
Narrabri	261	432	389	643
Narrandera	261	432	389	643
Narromine	261	432	389	643
Newcastle	261	432	389	643
North Sydney	410	432	410	643
Northern Beaches	350	432	389	643
Oberon	261	432	389	643

Orange	261	432	389	643
Parkes	261	432	389	643
Parramatta	308	432	389	643
Penrith	261	432	389	643
Port Macquarie-Hastings	261	432	389	643
Port Stephens	261	432	389	643
Queanbeyan-Palerang	261	432	389	643
Regional				
Randwick	355	432	389	643
Richmond Valley	261	432	389	643
Ryde	308	432	389	643
Shellharbour	261	432	389	643
Shoalhaven	261	432	389	643
Singleton	261	432	389	643
Snowy Monaro Regional	261	432	389	643
Snowy Valleys	261	432	389	643
Strathfield	293	432	389	643
Sutherland Shire	270	432	389	643
Sydney	410	432	410	643
Tamworth Regional	261	432	389	643
Temora	261	432	389	643
Tenterfield	261	432	389	643
The Hills Shire	281	432	389	643
Tweed	261	432	389	643
Upper Hunter Shire	261	432	389	643
Upper Lachlan Shire	261	432	389	643
Uralla	261	432	389	643
Wagga Wagga	261	432	389	643
Walacha	261	432	389	643
Walgett	261	432	389	643
Warren	261	432	389	643
Warrumbungle Shire	261	432	389	643
Waverley	430	432	430	643
Weddin	261	432	389	643
Wentworth	261	432	389	643
Willoughby	400	432	400	643
Wingecarribee	261	432	389	643
Wollondilly	261	432	389	643
Wollongong	261	432	389	643
Woollahra	360	432	389	643
Yass Valley	261	432	389	643

Source of OSR thresholds: <https://www.revenue.nsw.gov.au/help-centre/resources-library/lt104>