

9th September 2020

Mr Luke Walton
Executive Director
Department of Planning, Industry and Environment
Locked Bag 5022, Parramatta NSW 2124
E: Luke.Walton@planning.nsw.gov.au

Dear Mr Walton

Draft Housing Diversity SEPP- Explanation of Intended Effect

I write in relation to the *Proposed new Housing Diversity SEPP Explanation of Intended Effect (July 2020)* (the draft SEPP) placed on public exhibition by the Department of Planning, Industry and Environment (the Department) for comment until 9th September 2020.

The Urban Taskforce welcomes the intention of a Housing Diversity SEPP

The Housing Diversity SEPP (draft SEPP) is broadly welcomed in so far as it acknowledges new and important housing building types that, within the right planning framework, have the potential to help meet Sydney's dwelling targets, provide more affordable and flexible housing options, and help support a post COVID-19 economic recovery. Urban Taskforce welcomes the Government's messaging around 'housing diversity'.

The new Housing Diversity SEPP, when made, should be about facilitating a broad range of housing typologies, across different price points throughout different locations. Diversity gives people housing choice for different stages of their life and their household journey. It offers the choice to upsize or downsize; either to in a different locality or within the same one.

However, Urban Taskforce members are very concerned that the details in the draft SEPP could actually work against providing housing diversity and choice in NSW. It may be worth considering implementing the new SEPP in stages while industry works with government to resolve any unintended consequences noted below.

The drive to deliver more affordable housing types is contradicted by the draft SEPP's removal of FSR bonuses and the application of some prescriptive minimum standards which will drive prices up and render many of these affordable housing types unfeasible.

By restricting permissibility (by allowing Councils to determine where certain housing types will be permitted), the feasibility and ultimately the supply of the different housing typologies included in the SEPP is threatened. Issues of affordability and equality of access to housing across the state are too important to be left to individual councils. It was councils' failure to deliver adequate choice, supply and diversity that drove the need for SEPPs in these areas in the first place. The Productivity Commission has further stated that the key driver of housing prices (and therefore un-affordability) in Greater Sydney is the lack of supply. This, according to both the Reserve Bank of Australia and the NSW Productivity Commission (an arm of NSW Treasury) is due, primarily, to over regulation by the NSW Planning system – that is: by the Department of Planning and Councils.

The NSW Productivity Commission has also clearly advised the NSW Government that complexity drives prices up. This Draft SEPP is complex.

A number of
the proposed

provisions in the draft SEPP, in particular those relating to co-living, boarding houses and seniors' housing; add yet another layer of regulation and in some cases effective prohibition of these new housing types.

Notwithstanding our concerns Urban Taskforce is determined to work with DPIE and the Government to highlight what we believe to be unintended consequences, so the proposed changes do not result in the inhibition of supply and further reductions in affordability.

Aims of the draft SEPP

The draft SEPP aims to deliver a planning framework that:

- will assist the State's economic recovery following COVID-19
- consolidates existing State level housing-related planning provisions into a single instrument
- is in a format capable of being expanded and amended as future needs may require
- facilitates the delivery of housing that meets the needs of the State's growing population.

Urban Taskforce contends that the proposed provisions of the draft SEPP fail to deliver on these worthy objectives.

While the NSW Government states the draft Housing Diversity SEPP has been prepared in the context of ensuring "an adequate supply of new dwellings that are affordable, well-designed and located in places that people want to live" the draft SEPP in its current form will actually work against this broad objective and specific aims as set out above.

The contradictions of between the SEPP's aims and its draft provisions are detailed below.

Co-living

The draft SEPP correctly describes the relatively new class of dwellings that can be defined as Co-living. However, not only does it not respond to consumer demand for Co-living, it completely misreads the market for this product.

Co-Living is a viable and sought-after option for a range of people that are looking to live in areas that are located in close proximity to reliable public transport and/or places of work or study, that are seeking fully furnished accommodation with flexible medium term (3 – 12 month) rental periods, or are looking to live in a setting which offers a sense of community and social interaction between residents. Co-living is ideally suited to mobile young workers (typically aged 20 – 35), who in many cases are willing to trade size of living spaces for the features noted above. Co-living also caters to the specific needs of various other groups that are not well serviced by the existing housing market, including regionally based workers who are employed in the city during the week; recently separated people; key-workers including nurses and emergency workers; people from regional areas temporarily located to the city for short term work opportunities or for medical treatments; fly-in fly-out (FIFO) workers from interstate (not all FIFO workers work in remote areas); and those seeking short term accommodation including people escaping domestic violence environments.

The prescriptive planning and design controls in the draft SEPP do not reflect the requirements of all the possible users of co-living. They appear to have been drafted to reflect a permanent residence scenario of long term rental only, and they do not recognise the willingness of co-living users to trade size of living spaces for the various other attributes that this form of housing offers.

Co-living and Open Space

The proposed provision of open space is excessive. The currently proposed provision of private open space to every room (4m² per room) in addition to the communal open space (minimum 25% of the site area) will destroy the feasibility of co-living on most sites.

Urban Taskforce members who are developing in the co-living space advise that requiring private open space to all rooms, on all sites, will be hugely prohibitive and often contrary to consumer preferences.

Any mandated, minimum open space requirement should be focussed on communal areas. However, the proposed 25% of site area being available for communal open space is difficult to achieve on small lots, sites within business zones, or in dense urban areas. Accordingly, a more merit based approach needs to be applied to considering open space, when the development:

- includes communal open space via a landscaped roof top terrace
- provides internal common space in excess of the minimum requirements
- includes private open space for a proportion of rooms
- demonstrates good proximity to public open space and facilities, and/or
- provides contributions to public open space

Co-living and Parking

Urban Taskforce believes that the prescription for a minimum parking standard of 0.5 spaces per room is unnecessary. Our members tell us that co-living developments generally only work when located close to public transport and market experience suggests that car ownership and usage rates in co-living developments are far lower than those in residential flat buildings.

We suggest a sliding scale of parking ranging from zero spaces per room: for example where the site is within an accessible area radius (for example, up to 800m) from a train, metro, ferry or light rail stop; to 0.5 car spaces per room where a site is considered outside of a centre/accessible radius. In light of recent research suggesting one car share parking space can replace more than 10 vehicles¹, car share spaces should be included in the sliding scale.

Co-living - Room Sizes

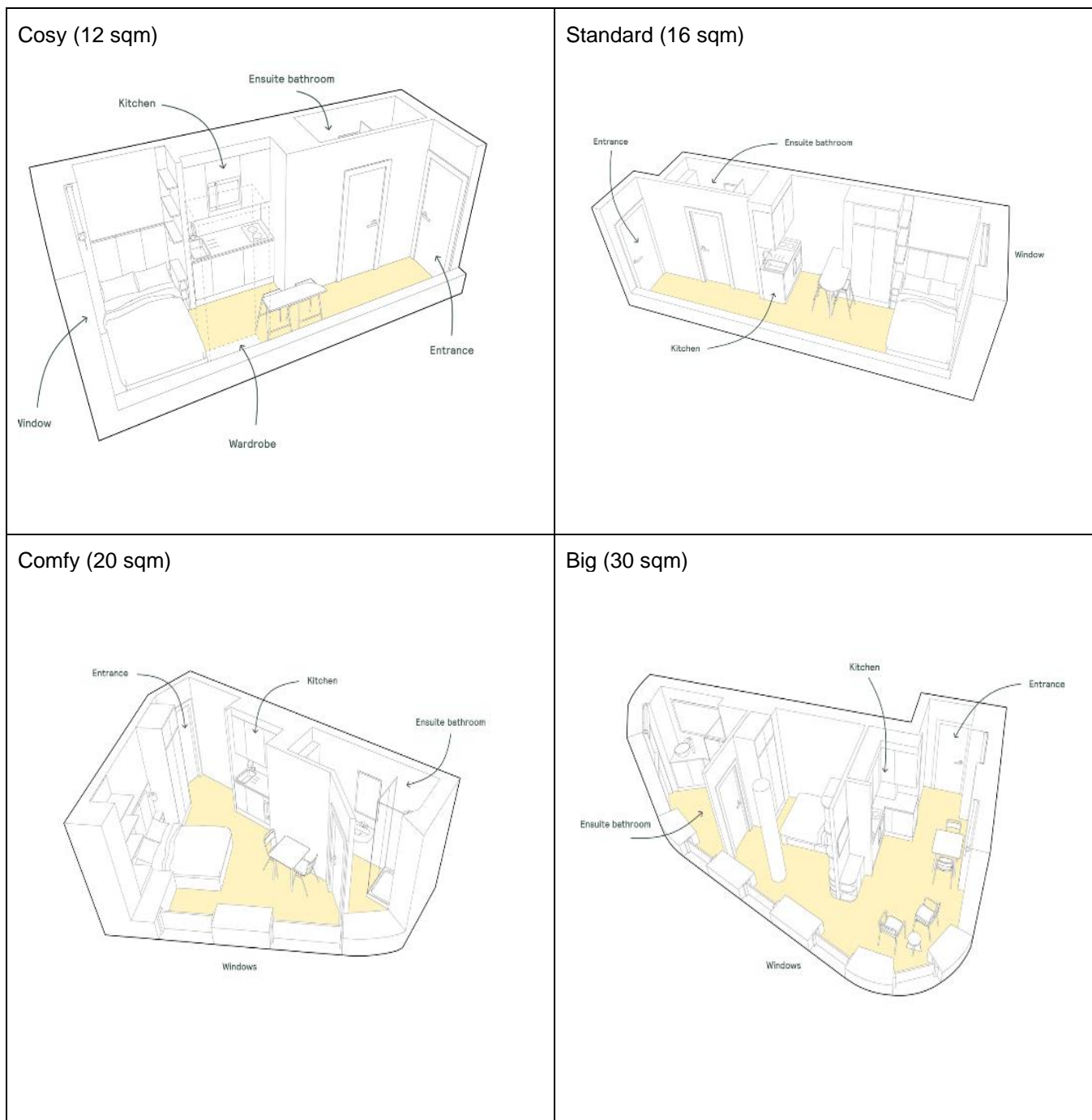
Urban Taskforce members have strongly advised that the co-living model cannot and will not be financially viable if minimum room sizes of more than 20m² are prescribed. It is noted that small unit sizes are absolutely fundamental to making the co-living affordable for residents, and a financially viable model for developers/operators.

The minimum room size of 30-35m² appears to have been derived from an assumption that the co-living inhabitants will be long term. It also fails to recognise the willingness of co-living users to accept small room sizes in exchange for the locational, flexibility, community benefits and access to communal areas that co-living offers.

The proposed standards are far in excess of not just internationally accepted standards (which are closer to an average of 20m²), they are in excess of approved and successfully operating co-living buildings that already exist in Sydney.

¹ Dorima Pajani et. al, 2017, 'Freeing up the huge areas set aside for parking can transform our cities', in 'The Conversation' (accessed September 2020) <https://theconversation.com/freeing-up-the-huge-areas-set-aside-for-parking-can-transform-our-cities-85331>

For example, the highly lauded 700 bed 'The Collective' at Canary Wharf, London has room sizes ranging from 12m² to 30m². The Collective room plans are shown as below:



The Collective at Canary Wharf has been at almost full occupancy since its opening, demonstrating occupiers' willingness to accept smaller room sizes in return for all the other benefits that co-living offers.

Locally, one of the first co-living operators in Sydney, UKO (currently operating locations in Stanmore, Paddington, and Newtown) offers room sizes ranging from 18 to 28m². These would not be allowed under this draft SEPP.

It is noted the proposed minimum room size 35m² correlates with the minimum dwelling size for a studio under SEPP 65. Co-living is not just a collection of studio apartments. The desire of occupants

to benefit from an organised communal approach to living, along with the provision of on-site shared facilities and spaces - and the need for the product to be affordable - must be recognised in determining room sizes.

Consistent with known, local market preferences, some Urban Taskforce Members suggest a minimum room size closer to 15m². An alternative or accompanying suggestion is a control that supports a mix of room sizes, like in residential flat buildings (where there is a control on the number of studio, one-bed, two-bed, and three-bed ratios per building). Such a provision could allow for a mix of smaller Co-living rooms and some larger ones. This approach would be beneficial in responding to local consumer preferences and would ultimately allow for greater architectural flexibility and improved design outcomes.

Co-Living - FSR Incentives

We note that existing co-living developments have been realised under the Boarding House provisions in the Affordable Rental Housing SEPP (ARH SEPP). These provisions include an FSR bonus that ranges from 20-100%. Urban Taskforce believes that a flat percentage bonus would be a better tool for supporting co-living developments, given:

- a significant proportion of allowable floor area will need to be dedicated to non-revenue generating communal areas
- the Government's stated desire to encourage the supply of affordable housing broadly
- the Minister's messaging around affordable and diverse housing options being available to all - irrespective of location and income.

Urban Taskforce also suggests that merit-based concessions be considered in the application of any building envelope controls for residential flat buildings to co-living developments, in order to accommodate the FSR bonus.

Build to Rent

Urban Taskforce congratulates the Government for supporting supply of this positive initiative by recognising this housing product in the draft SEPP and further supporting its delivery through the discount on land tax. The State Significant Development pathway for BTR developments with a value of greater than \$100 million is supported. A similar pathway should be considered for all developments of this value in the interests of job creation and meeting the demand for new housing in Greater Sydney.

It is critically important that the draft SEPP does not effectively *disadvantage BTR housing* projects compared to existing rental properties. A motif of this draft SEPP is the over-prescriptive planning, which in the case of BTR, pushes up costs and reduces feasibility and thus supply. We are concerned that the draft SEPP tries too hard to create long-term rental housing options and forgets about the need to offer choice to all those in the market. The draft SEPP fails to fully realise the opportunity that BTR could deliver in terms of housing supply and affordability.

BTR - Tenure, Ownership & Management

The draft SEPP is proposing to impose more stringent conditions on the owners of BTR rental properties than those existing for landlords in the usual rental market. For example, the draft SEPP proposes a minimum tenancy of 3 years or more. This provision acts to limit feasibility, choice, and supply. It works against the stated objectives of the SEPP.

There are no such restrictions in the general rental market. Urban Taskforce acknowledges that this requirement will work for some tenants in giving them certainty, but many tenants would be

deterred by locking into a fixed 3-year rental agreement. So, the provision will make BTR dwellings harder to rent – therefore reducing their viability in an uncertain economic, rental and property market. There needs to be flexibility for both the tenant and the owner.

The Urban Taskforce also disputes the proposal to require on-site management for BTR. In practice, most rental properties are managed by real estate agents off-site. Strata body corporate management is also typically off-site. The standards should reflect the current system where the tenants have direct access to a property manager and the body corporate, but these management services do not always need to be located on-site.

The final SEPP should recognise that if BTR is built in the Business zones (B3, B4 and B8) as is proposed, a flexible approach that allows the commercial and retail components of the mixed development to be strata subdivided and sold separately. The residential component could still be mandated to be in single ownership.

BTR - Permissibility and FSR Categorisation

Opportunities should be explored of including BTR as a permissible use in the IN1 General Industrial Zone and IN2 Light Industrial zones. In these cases, criteria could be provided to ensure BTR housing is only permitted in locations which are amenable to such a use, and are appropriately located in proximity to everyday services, facilities, and transportation. Criteria may include:

- site must be within 800m of railway/metro station/light rail or transit way stop
- site must include a fixed percentage of employment (broadly defined) floor space at ground level
- the residential component of the site cannot be subject to future strata subdivision.

In the interests of facilitating investment in BTR in commercial centres, BTR should be included as part of the 'non-residential' component, when calculating FSR. Such an approach is consistent with that applied to serviced apartments. The feasibility of BTR in commercial centres is destroyed when included as part of the residential component of a development when calculating FSR. When BTR is included as the residential component, the feasibility is simply not there – as is the case for Urban Taskforce members trying to develop BTR within the existing planning framework, including sites within the higher density areas under the Crows Nest St Leonards 2036 Plan.

BTR - Minimum number of dwellings

The draft SEPP proposes BTR should have a minimum of 50 dwellings. This proposal should be removed as any minimum number of dwelling requirements will deter the production of BTR on the exact kind of sites that suit this asset class. Well located in terms of transport and employment opportunities, such sites are often smaller, with limited capacity for site consolidation.

BTR - Parking

The draft SEPP states "BTR housing is generally... situated in well-located areas, close to transport and amenity". Accordingly, the proposed car parking standard of 0.5 spaces per dwelling is excessive and unnecessary. In practice, in many urban areas the requirement for car spaces is decreasing. The City of Sydney, for example have approved residential dwellings with zero on-site car parking provision in select areas.

Whilst the Urban Taskforce agrees that consideration of car parking provision is required, we believe the proposed standard of 0.5 per dwelling is too high. As with co-living, a sliding scale of car parking

requirements dependent on the site's distance from public transport and inclusive of car share parking spaces should be considered.

Purpose Built Student Housing

The proposed provisions relating to purpose built student housing are generally supported, although meeting demand and market price points will be challenged if height and FSR controls are determined on a council by council basis and no FSR bonus is made available.

Boarding Houses

Modern or next generation boarding houses are becoming an increasingly attractive option for people because they are affordable, are increasingly well-designed and are salt-and-peppered among the suburbs so they do not stand out. The market has delivered these outcomes despite the mismanagement of policy controls in this field.

Under the existing planning regime boarding houses are borderline feasible option for development as they are incentivised by floor space ratio bonuses and being permissible on sites where regular apartments are prohibited.

It is acknowledged that its usually the old-style boarding houses that are regarded with fear and trepidation by neighbours. Unfortunately, this deep seeded NIMBYism seems to be evident in the policy development for the draft Housing Diversity SEPP.

If the Government is committed to delivering affordable and diverse housing types, why discourage private sector investment in a housing type that has been providing an affordable housing option for many, often vulnerable, people for decades.

Boarding Houses - Definition

It is clear that the draft SEPP has been framed to disincentivise the private development and operation of Boarding Houses. The proposed definition of 'boarding house' as meeting 'affordability' rules in terms of its rental, requiring it to be managed by a not-for-profit community housing provider and removing any incentives to build a product that has traditionally been delivered to market with comparatively low profit margins will unfortunately render this housing type unfeasible. Accordingly, the current workable definition under the Affordable Rental Housing SEPP (ARH SEPP) should be retained.

Currently there is a negative perception in many communities that all Boarding Houses are just social welfare housing and that all boarding house residents are on welfare with most residents having anti-social behaviours. These perceptions are regularly raised during assessment of Boarding House DAs. **This is not the case** and many private operators are working hard to change those community perceptions as well as helping-out the most vulnerable in our community. If the Government redefines Boarding Houses to only being provided by not-for-profit community housing providers, the Government will be entrenching, or re-enforcing, those negative, or stereotype, community attitudes that all boarding house residents are welfare dependent. Some Urban Taskforce members suggest a change to the name of this housing product may assist in facilitating altered community perceptions. Suggestions include 'Micro Housing', 'Mini House' or 'Tiny Housing'.

Boarding Houses - Permissibility and FSR Bonus

Boarding houses, are generally developed on the basis of a lower profit margin than most other forms of residential development and are able to be delivered to market on the basis of the current

floor space bonus of between 20 to 100% and their permissibility in the R2 Residential Zone. Additionally, boarding house development applications cannot be refused on the grounds of density and scale if they comply with the maximum floor space ratio for any form of residential accommodation on the site (plus the bonus, if any). These existing provisions protect boarding house developments from being penalised relative to other forms of residential development. The draft SEPP will all but eliminate this housing type and thus works directly against the stated objectives of the Minister and the draft SEPP.

The Urban Taskforce understands that there may be areas zoned R2 considered unsuitable for Boarding House developments due to location and comparative bulk and scale, particularly when the full FSR bonus of up to 100% is realised. We recommend that Boarding Houses remain permissible in the R2 zone when the site is within 400m of a train or metro station and that the FSR bonus remain, but at a flat percentage rate (e.g. a 50% bonus) irrespective of the local control.

Boarding Houses – Parking

In finalising the Housing Diversity SEPP, a review should be undertaken of actual car parking demand from boarding house developments. Urban Taskforce members report the existing, and proposed to be retained, standards are too onerous, not just in terms of feasibility but also, in terms of user take-up.

As with the other housing models under the draft SEPP, we suggest a sliding scale of parking ranging from zero spaces per room: for example where the site is within an accessible area radius (for example, up to 800m) from a train, metro, ferry or light rail stop; to 0.5 car spaces per room where a site is considered outside of a centre/accessible radius. The standard should apply to both private operators and community housing providers and should include car share spaces.

Seniors' Housing

The Government appears to be sending a clear signal that providing a range of affordable and diverse housing for seniors is not a priority, by straight out amending the Seniors Housing SEPP to exclude any land covered by the Metropolitan Rural Lands overlay. The Urban Taskforce condemns the complete lack of consultation with industry or with seniors' groups on this amendment. This is contrary to the open approach to policy development hitherto espoused by the NSW Government during the COVID-19 period.

The amendment has effectively prohibited Seniors Housing from the entire Blue Mountains LGA, approximately 70% of the Hills Shire LGA as well as swathes of land across another 11 council areas. There is enormous unmet demand for seniors housing in many of these Council areas, the outcome being that this SEPP amendment alone could force elderly people out of the communities they have lived in all their lives.

The SEPP, as drafted, will negatively impact the supply of housing for seniors. This is particularly concerning when the proportion of people aged 65 and over double by 2054-55² and the supply of housing options for older residents is already not keeping up with demand, with "product availability (or lack thereof) identified as a significant impediment to seniors downsizing."³

If the Government is genuine about meeting the demand for affordable Seniors' Housing, and evidence base is critical for decision making. The Government should be looking for more, not less, areas to facilitate this housing type. Urban Taskforce believes there is additional potential for Seniors

² Commonwealth of Australia (March 2015) 2015 Intergenerational Report Australia in 2055.

³ Judd, B. et. Al. in Annand K, Lacey W, & Webb E. (2015) Seniors downsizing on their own terms: Overcoming planning, legal and policy impediments to the creation of alternative retirement communities. National Seniors Productive Ageing Centre

Housing on land currently zoned R2 Residential where it immediately adjoins sites zoned SP2 – Infrastructure, particularly those hosting schools or hospitals. Seniors Housing next to schools and hospitals recognises many of these sites' accessibility to transport and other local infrastructure and services, as well as a range of health and well-being co-location opportunities.

Development Standards

The ARH SEPP has to date allowed Seniors Housing developments to be carried out 'despite the provisions of any other environmental planning instrument'. The proposal to reverse this so that 'development standards in an LEP prevail to the extent of any inconsistency' will allow councils who are fundamentally opposed to new seniors housing developments in the LGAs to use local provisions to refuse these applications to exclude seniors from remaining in their communities. Further to this, the proposed limit of 20% to allowable departures from a development standard under Cl4.6 will additionally constrain Seniors' Housing development and is inconsistent with the general position for all other types of development where there is no limit to a Cl4.6 variation.

Adding to the likelihood of a dwindling supply of Seniors' Housing is the proposal to remove point -to point transport options in meeting site access related requirements. This proposal is ill-considered, particularly when it come to sites with challenging gradients and/or those that include a residential aged care facility component, where pedestrian foot traffic to and from the site is limited.

The proposed changes to the policy bely the need for the SEPP in the first place – that was – Councils were failing to meet demand for this housing type. The changes proposed in the draft SEPP are contrary to the objectives of the SEPP and work against a clear demographic need for more housing for this growing cohort.

'Loss of affordable rental housing' Levies

The draft SEPP will alter the trigger point for the charging of 'affordable housing' levies that are imposed when development applications are lodged in relation to 'low-rental residential buildings' for their demolition or upgrade. This levy is additional to any other affordable housing levies that are routinely charged by councils. It is proposed BEFORE the NSW Productivity Commission has completed its review into infrastructure fees and charges. At the same time as the Minister has called for a review into levies and charges, this draft SEPP effectively introduces a new tax (levy).

The impact of the existing regime is limited by the fact that it only applies to buildings that were 'low-rental residential buildings' as of 28 January 2000, so the scheme does not presently apply to any building that becomes a low-rental residential building after that date.

This is crucial as it means that any building where quality has degraded in the last 20 years (such that it recovers rental at or below the 'median' level) is not subject to this existing levy regime on re-development. The draft SEPP will remove this date restriction. This effectively means that the levy regime will be extended to apply to the re-development of existing buildings that were previously exempt, by reason that their deterioration post-dated the year 2000.

Further, because the median rent is determined on an entire LGA basis where there are often a range of markets (like the Northern Beaches Council for example), rental housing in entire suburbs will be below the "median" rents level for that LGA. This provision taxes the upkeep or improvement or redevelopment of those properties. This is akin to saying, "we want to keep the quality down, so it remains affordable". A better solution is to increase supply.

This provision as proposed will increase costs and reduce feasibility. This new regime, as proposed, represents a tax of any upgrade. The draft SEPP as proposed would create a perverse incentive for some landlords to take active steps to ensure that their buildings do not rent out at or below median

market rents (even at the expense of bringing forward minor upgrades to make rents more expensive). This may actually reduce the availability of affordable housing.

Design Guidelines

The draft SEPP states that Design Guidelines will be developed for BTR, co-living and student housing. Further, the draft states that when assessing development applications for BTR, the consent authority should be "guided by design quality principles in SEPP 65".

It is essential that a pragmatic and cost focussed approach be taken in developing specific design guidelines for each typology under the draft SEPP. Put simply, much needed smaller and affordable room sizes will not and cannot comply with the existing ADG.

Savings and Transitional Provisions

In the interests of avoiding uncertainty for the planning and development sector and minimising the perception of investment risk in NSW, it is recommended that the final SEPP includes saving and transitional provisions for development applications under assessment at the time of the SEPP commencement.

Conclusion

While the stated intent of the draft Housing Diversity SEPP is supported by the Urban Taskforce, many of the proposed provisions are not supported as they will deliver the opposite to the stated intent. The practical outcome from the draft SEPP is the addition of prescriptive controls and extra costs that will reduce the relative feasibility of delivering a range of housing types to market. Ultimately, this will have the effect of limiting both supply and affordability.

The proposed additional regulation will mean reduced choice.

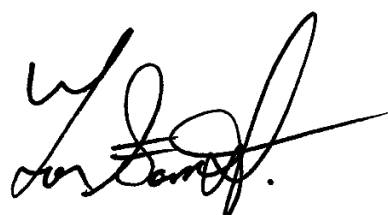
Handing powers to Councils protects the interests of current occupants but rarely (if ever) leads to meeting the public demand for more affordable housing or the needs of future populations who are essential to our economic growth.

Prescriptive controls for each category of housing simply reduces viability and feasibility.

Urban Taskforce welcomes the policy intent of the draft Housing Diversity SEPP and we are determined to work with the Government to ensure that the positive intent is realised.

The Urban Taskforce is always willing to work closely with the Government to provide a development industry perspective on these issues.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tom Forrest', written over a horizontal line.

Tom Forrest
Chief Executive Officer