



PLANNING FOR BOARDING HOUSE DEVELOPMENT

Report to the Minister

**from the Council Boarding
House Working Group**

August 2019



Published by NSW Department of Planning, Industry and Environment

dpie.nsw.gov.au

Title: Report to the Minister from the Council Boarding House Working Group

First published: August 2019

Department reference number: IRD19/46289

Acknowledgements

The Department thanks the following people for their valuable contributions to this Report:

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Executive Summary and Recommendations

In June 2019, the Minister asked the Department to work with a group of councils to provide advice on how councils could be exempted from the boarding house provisions of the *State Environmental Planning Policy (Affordable Rental Housing) 2009* (ARHSEPP).

Specifically, the Minister asked for advice on:

- The criteria under which councils could justify an exemption from the boarding house provisions;
- A preferred process of approval and assurance; and
- The criteria under which the provisions would be re-applied.

Nine councils were invited to be part of the Working Group and representatives from these councils attended four workshops with officers from the Department and Local Government NSW (LGNSW) throughout July and early August 2019.

The Department acknowledges the contribution of Penrith City Council, City of Sydney Council, City of Parramatta Council, Northern Beaches Council, City of Canterbury Bankstown Council, Randwick City Council, Newcastle City Council, City of Canada Bay Council and Inner West Council. The skills and experience of the officers from these councils, who worked in collaboration with officers from the Department and LGNSW, has been invaluable in developing the recommendations in this Report for the Minister's consideration.

It should be noted that not all officers supported all recommendations but agree the fourteen recommendations fairly represent the Working Group's position on each recommendation.

Overarching findings of the Working Group

The three overarching findings of the Working Group are:

- Councils which have demonstrated that they have adequately responded to the need for boarding house development in their local government area (LGA) should be able to seek an exemption from the boarding house provisions of the ARHSEPP. The exemption should be subject to on-going monitoring to ensure the local planning approach was working.
- The definition of boarding house in the ARHSEPP should be amended to include a requirement that boarding house rooms are affordable. All recommendations in this Report are predicated on this change.
- The boarding house provisions of the ARHSEPP should be reviewed and amended to provide a better assessment framework for those councils which do not wish to seek an exemption.

Recommendations of the Working Group

In response to the Minister's request, the Working Group developed recommendations in relation to affordability, an exemption framework, changes to the ARHSEPP and potential changes to the *Standard Instrument (Local Environmental Plan) Order 2006* (SILEP). These recommendations are set out below.

The Working Group also recommended that the Minister be advised that the group found the process of working in collaboration with the Department and LGNSW valuable and recommended that similar Working Groups should be established to assist in future policy development.

Key Recommendation

- Recommendation 1 - Amend the definition of boarding houses in the ARHSEPP to ensure that boarding houses are affordable

Recommendations for an exemption framework

- Recommendation 2– Councils to establish an evidence base of demand and supply issues relating to boarding house development
- Recommendation 3 – Councils to propose a local planning response that responds to the need for boarding house development in the local area
- Recommendation 4 – How an exemption request would be evaluated
- Recommendation 5 – Local and State Government monitoring program
- Recommendation 6 – Re-applying the boarding house provisions

Recommended changes to the ARHSEPP

- Recommendation 7 – In the R2 Low Density Residential zone either prohibit boarding houses, tighten the accessibility requirements or further restrict boarding house development by limiting the number of lodgers
- Recommendation 8 – Explore options for providing for student housing outside the ARHSEPP framework
- Recommendation 9 – Strengthen Clause 30A by including additional local character considerations and review Clause 29 and 30
- Recommendation 10 - Develop additional design guidance for boarding house development
- Recommendation 11 – Change boarding house FSR bonus to 10% (or potentially another percentage) bonus above existing FSR

Recommended changes to the SILEP

- Recommendation 12 – Align the SILEP definition of boarding house with the proposed ARSHEPP definition
- Recommendation 13 - Explore options for providing for student housing in the SILEP
- Recommendation 14 – Explore options for a local provision for boarding house development in the SILEP

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Section 1 - Background and Context

1.1 Boarding houses in NSW

Boarding houses in NSW have traditionally provided low-cost rental housing for people looking for short-term, managed accommodation. In the past, a boarding house resident typically paid a fee to occupy a room under an occupancy agreement and shared facilities such as kitchens, living areas and bathrooms with other residents. This meant that boarding house residents were considered to be lodgers and had tenure under the *Boarding Houses Act 2012* rather than under the *Residential Tenancies Act 2010* and its antecedents.

In 2006, in line with the traditional use, the SILEP defined a boarding house as a building that:

- a) is wholly or partly let in lodgings; and
- b) provides lodgers with a principal place of residence for 3 months or more; and
- c) may have shared facilities, such as a communal living room, bathroom, kitchen or laundry; and
- d) has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers,

but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.

In 2009, the ARHSEPP defined a boarding room as 'a room or suite of rooms within a boarding house occupied or so constructed or adapted as to be capable of being occupied by one or more lodgers'.

It is important to note that the terms 'lodgers' and 'rooms' (carrying a notion of temporariness) have a different meaning to 'dwelling' and 'domicile' (carrying a notion of permanence). It is also important to note that boarding houses registered under the *Boarding House Act 2012* are subject to different provisions relating to occupancy principles, occupancy agreements and entry rights for proprietors that do not apply to most other types of residential accommodation.

1.2 Traditional role of boarding houses

Prior to the introduction of the ARHSEPP, the number of boarding houses in NSW was falling.

Rather than providing short-term accommodation for workers, boarding houses increasingly catered for residents who were vulnerable and reliant on government benefits. Many residents were older and also had complex health needs. As well, many residents were staying in boarding houses for longer periods, sometimes exiting only when they entered aged-care facilities.

Boarding houses were increasingly providing housing options to people who would have otherwise found it difficult to secure rental accommodation, potentially because they were unemployed, did not have a rental history or had insufficient money for a rental bond.

Prior to the introduction of the ARHSEPP, new boarding houses were not being constructed, partly because local planning controls limited the areas where boarding houses could be built and partly because some local planning controls restricted the installation of private facilities, such as ensuites and kitchenettes, in boarding house rooms.

The boarding house building stock was aging and becoming increasingly expensive to maintain and update to current building standards. As well, there was pressure for the redevelopment of some older boarding houses in gentrifying areas to single family homes.

It was in this context that the ARHSEPP was introduced to stimulate a range of new affordable rental housing types, including boarding houses.

1.3 Introduction of State Environmental Planning Policy (Affordable rental housing) 2009 (ARHSEPP)

The Government introduced the ARHSEPP in 2009 to facilitate the increased supply and diversity of affordable rental and social housing, including boarding houses, in NSW.

The aims of the ARHSEPP include:

- a) to provide a consistent planning regime for the provision of affordable rental housing; and
- b) to facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.

The types of affordable rental housing for which the ARHSEPP provides a consistent assessment regime are listed in divisions in Part 2 of the SEPP as:

- in-fill affordable housing which must be used for affordable housing for 10 years;
- secondary dwellings;
- boarding houses;
- supportive accommodation;
- residential flat buildings developed by social housing providers, public authorities and joint ventures with the Land and Housing Corporation;
- residential development carried out by the Land and Housing Corporation; and
- group homes.

1.4 Boarding house provisions in the ARHSEPP

Division 3 of the ARHSEPP includes provisions that facilitate the development of both traditional boarding houses with shared facilities and ‘new generation boarding houses’ with self-contained rooms that include a bathroom, laundry and cooking space and function as a separate domicile. The terms ‘new generation boarding house’ and ‘traditional boarding house’ are not defined in any planning instruments.

The ARHSEPP contains bonuses and concessions to incentivise new boarding house developments, including wider permissibility, limits on councils’ ability to refuse consent and increased development potential in some circumstances. Incentives also include lower parking rates for social housing providers and an assessment pathway which avoids certain design requirements such as those in *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* (SEPP 65) and the Apartment Design Guide (ADG). These incentives are offered in recognition of the contribution that boarding house development makes to housing supply, diversity and affordability across NSW.

The ARHSEPP permits boarding houses in the following zones:

- R1 General Residential;
- R2 Low Density Residential zone (only in ‘accessible areas’);
- R3 Medium Density Residential;
- R4 High Density Residential;
- B1 Neighbourhood Centre;
- B2 Local Centre; and
- B4 Mixed Use.

Clause 29 of the ARHSEPP includes development standards for boarding houses which, if met, cannot be used as grounds on which a consent authority could refuse consent to a boarding house development application.

Clause 30 of the ARHSEPP includes development standards for boarding houses, such as maximum room sizes and limits on the number of adult lodgers, which must be met before a development application can be approved.

1.5 Amendments to the boarding house provisions in the ARHSEPP

The boarding house provisions in Division 3 of the ARHSEPP have been amended three times in the past eight years.

In 2011, Clause 30A was added to the boarding house provisions in Division 3 in response to concerns about the compatibility of boarding house development in the local context. Clause 30A requires a consent authority to consider whether the design of a proposed boarding house development is compatible with the character of the local area.

In June 2018, Clause 29 was amended to increase car parking requirements for boarding house development. Car parking standards for boarding houses, except where provided by a social housing provider, are now 0.5 spaces per room in all locations. This standard is a ‘standard which cannot be used to refuse consent’.

In February 2019, Clause 30AA was added to Division 3 to limit boarding house development to 12 boarding rooms per site within the R2 Low Density Residential zone to ensure boarding house development better reflects the scale, local character and built form of development in this zone.

1.6 The role and affordability of boarding houses delivered under the ARHSEPP

The intention of the boarding house provisions introduced by the ARHSEPP in 2009 was to provide for both traditional boarding houses as well as ‘new generation’ boarding houses with self-contained rooms in a compact, affordable form.

It was expected that ‘new generation’ boarding rooms would be more affordable than other similar residential development in the same area, due to their small size and shared facilities.

There is evidence that the ARHSEPP has facilitated new boarding house development, principally in metropolitan areas. An unintended consequence of the ARHSEPP, however, and one that does

not flow from its stated objectives, is its facilitation of large numbers of boarding house rooms for student housing, particularly in areas close to tertiary education facilities.

In addition, in recent years, there is increasing evidence that new boarding house developments are no longer fulfilling their traditional role of providing low-cost housing, but rather tend to be rented at rates close to those of studio accommodation in the same area.

The best available dataset on **registered** boarding houses in NSW is the Boarding House Register, established under the *Boarding Houses Act 2012*.

The Boarding House Register, maintained by the NSW Department of Fair Trading, provides data about the location, proprietor and type of boarding house, that is whether it is a:

- ‘General’ boarding houses accommodating 5 or more fee-paying, unrelated lodgers; or an
- ‘Assisted’ boarding houses accommodating two or more people who have additional needs.

An examination of the Boarding House Register by the Department in October 2017 found there were about 1000 registered boarding houses in NSW. Of these, more than half were located in three Sydney council areas, namely: 27% in the City of Sydney; 20% in the Inner West and 8% in the City of Randwick.

It was also found that of the total 15,000 people living in boarding houses across NSW in 2017, about 88% lived in Greater Sydney and 12% lived in other parts of NSW.

The Boarding House Register has been in place for five years and councils have raised a number of concerns about how it operates. For example, there is no requirement for information to be provided on whether a boarding house has a valid development consent or is compliant with its consent.

There is also a significant issue that many known boarding house developments not registered. Newtown Neighbourhood Centre reports that up to 50% of known, mostly traditional, boarding houses across inner Sydney are not registered.¹ There are also many recently built ‘new generation’ boarding houses which are not registered.

The City Futures Research Centre at UNSW Sydney also found that it is clear from other data that there are many more boarding houses in NSW than what is suggested by the numbers on the Boarding House Register².

The City Futures Research Centre has prepared two reports on behalf of the Southern Sydney Regional Organisation of Councils (SSROC) in the last year, which provide information on whether the development produced under boarding house provisions is contributing to policy’s aims to increase the supply and diversity of affordable housing.

The first SSROC Report, ‘State Environmental Planning Policy (Affordable Rental Housing) 2009 and affordable housing in Central and Southern Sydney’ (2018), noted a considerable increase in the construction of boarding houses under the ARHSEPP from 2009 to 2017³.

¹ Tenants’ Union of NSW 2018, ‘Five Years of the Boarding Houses Act 2012 in New South Wales’, Sydney, Australia.

² Troy et al 2018, ‘State Environmental Planning Policy (Affordable Rental Housing) 2009 and affordable housing in Central and Southern Sydney’, City Futures Research Centre, UNSW, Sydney. Australia.

³ Troy et al 2018, ‘State Environmental Planning Policy (Affordable Rental Housing) 2009 and affordable housing in Central and Southern Sydney’, City Futures Research Centre, UNSW, Sydney. Australia.

However, a large proportion of these boarding houses were being delivered as student accommodation, predominantly in areas with already high rates of both rental and small accommodation. Findings of this report included:

- nearly 300 new boarding houses were approved across the SSROC region since the ARHSEPP began;
- over 9,000 new boarding rooms were approved (including through expansions of existing boarding houses);
- nearly two-thirds of the rooms were in the City of Sydney local government area;
- over half of the rooms were targeted student accommodation, concentrated around universities; and
- rooms were only marginally cheaper than 1-bed units near the universities.

The second SSROC Report, ‘Occupant Survey of Recent Boarding House Developments in Central and Southern Sydney’ (2019)⁴, aimed to investigate the housing outcomes of boarding house units delivered under the ARHSEPP across the SSROC region. The report used development application data, the Boarding House Register and also Rental Bond Data. Findings of this report included:

- gender of boarding house residents was split fairly evenly;
- the age profile skews lower than Sydney’s population as whole, with over 60% under 34 years, following similar skews found in Sydney’s private rental generally rather than the traditional profile of older boarding houses;
- the occupants were also more culturally diverse than Sydney as a whole, with roughly two-thirds born overseas;
- notably, the occupants had a high level of education, with over 60% having a tertiary qualification; and
- over two thirds of the occupants were working at least part-time and around half were studying (including about one quarter who were both studying and working).

The main conclusion from the 2019 SSROC Report is that the boarding rooms are meeting the needs of a younger population, either working, studying or both, and fairly low incomes.

Similar findings were made in a 2017 survey of residents of 52 new generation boarding houses in inner and middle ring LGA by Clinton (2018)⁵, particularly with regard to the demographic characteristics of residents in micro-apartments.

Although the research mentioned above is limited to certain areas and does not provide information on what is happening in other parts of Sydney or NSW, it does indicate that new boarding house development in these areas is not delivering affordable rental housing in line with the aims of the ARHSEPP.

⁴ Troy et al 2019. ‘Occupant Survey of Recent Boarding House Developments in Central and Southern Sydney’, City Futures Research Centre, UNSW, Sydney, Australia.

⁵ Clinton. E 2018, ‘Micro-apartments: Housing affordability solution or the erosion of amenity standards?’, UNSW, Sydney, Australia.

1.7 Council and community issues with boarding house development

Councils who participated in the Working Group recognise the need for affordable and diverse housing and support the retention and development of various affordable housing types, including boarding houses, in their local areas.

However, both councils and communities have advised the Department that the boarding house provisions in the ARHSEPP are not resulting in genuinely affordable housing as intended by the policy. The recent studies highlighted above have provided evidence to support this position.

Appendix A provides an overview of key community and council issues relating to boarding house development, including:

1. Lack of affordability of boarding house rooms;
2. Use of the boarding house provisions to develop student housing;
3. Excessive scale and bulk of boarding house development;
4. Compatibility of boarding house development with low-density residential areas;
5. Clustering of boarding house development; and
6. Lack of amenity for boarding house residents.

Section 2 - Local Strategic Planning in NSW

In 2018, changes to the *Environmental Planning and Assessment Act 1979* (the Act) elevated the importance of local strategic planning in NSW.

Under the Act, councils are now required to prepare a Local Strategic Planning Statement (LSPS) to set out the 20-year vision for their local government area. As part of their LSPS, councils need to set a vision on how they will deliver housing to meet the future needs of their community and many councils will need to further detail this in a Local Housing Strategy.

A Local Housing Strategy establishes the evidence base and roadmap for new housing to meet council's vision for housing as outlined in its LSPS. All Greater Sydney councils and some regional councils, if required in their relevant district or regional plan, must prepare a Local Housing Strategy.

Local Housing Strategies offer an opportunity for councils to demonstrate that they can appropriately respond to the need for diverse and affordable housing, including boarding houses, in their local government area.

The Greater Sydney Commission (GSC) will have an assurance role in approving local housing strategies and LSPSs to ensure consistency with the relevant District Plan and Greater Sydney Region Plan.

Section 3 - Boarding House Working Group

In June 2019, the Minister asked the Department to work with a group of councils to establish the parameters under which councils could be exempted from the boarding house provisions of the ARHSEPP.

In July and August 2019, officers from the Department, LGNSW and nine councils worked together to formulate how and under what circumstances councils could be exempted from the boarding house provisions of the ARHSEPP.

The Working Group was tasked with providing advice on:

- the criteria under which councils could justify an exemption from the boarding house provisions;
- a preferred process of approval and assurance; and
- the criteria under which the provisions would be re-applied.

The Working Group's recommendations are set out in Sections 4, 5, 6 and 7.

Section 4 discusses the key recommendation of the Working Group that the ARHSEPP should be amended to ensure boarding houses are affordable.

Section 5 includes the Working Group's groups recommendations on the key elements of an exemption framework.

Section 6 includes the Working Group's recommendations on changes it considers are required to the boarding house provisions of the ARHSEPP so that the State policy provides a sound framework for councils which don't seek an exemption.

Section 7 includes the Working Group's recommendations on proposed changes to the SILEP, including the introduction of a new definition for student housing.

It should be noted that while there was general agreement on the recommendations, the Working Group had some diverse views relating to the various approaches suggested in some of the recommendations.

It should also be noted that the views of council officers do not necessarily reflect the views of their councils.

Section 4 – Key Recommendation

Recommendation 1 – Amend the definition of boarding houses in the ARHSEPP to ensure that boarding house rooms are affordable

The Working Group was of the view that boarding houses facilitated by an affordable rental housing State policy should result in the provision of affordable housing.

The Working Group considers that the ARHSEPP incentives for boarding house development, which include floor space ratio bonuses, lesser car parking requirements as well as exemptions from design requirements such as those in SEPP 65 and the ADG, should be linked to the delivery of genuinely affordable housing.

The key recommendation of the Working Group therefore, on which all other recommendations are predicated, is that the definition of boarding house in the ARHSEPP should be amended to require that boarding house rooms are affordable.

The Act defines affordable housing as housing for very low-income households, low income households or moderate-income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument.

Although the ARHSEPP does not have a definition of affordable housing for the purposes of boarding house development, it does have one for in-fill affordable housing. For this type of development, a household is taken to be a very low-income household, low income household or moderate-income household if the household:

- (a) has a gross income that is less than 120 per cent of the median household income for the time being for the Greater Sydney (Greater Capital City Statistical Area) (according to the Australian Bureau of Statistics) and pays no more than 30 per cent of that gross income in rent, or
- (b) is eligible to occupy rental accommodation under the National Rental Affordability Scheme and pays no more rent than that which would be charged if the household were to occupy rental accommodation under that scheme.

In *State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes)*(SEPP 70), very low income households, low income households and moderate income households are those whose gross incomes fall within the following ranges of percentages of the median household income for the time being for the Greater Sydney (Greater Capital City Statistical Area) or the Rest of NSW (Greater Capital City Statistical Area) according to the Australian Bureau of Statistics:

Very low income household	less than 50%
Low income household	50 or more but less than 80%
Moderate income household	80–120%

The Working Group considered these definitions and concluded that the key element of the proposed definition should be that all boarding houses must be managed by a **registered not-for-profit community housing provider**, to ensure the boarding house is regulated under the *Community Housing Providers (Adoption of National Law) Act 2012 (NSW)* and to assist with ensuring compliance with the affordability requirement.

The Working Group recognised that there may be benefits in further exploring the definition of affordable housing, regardless of whether it is delivered under a SEPP or a VPA, to provide more

certainty for State and local government that affordable housing remains affordable in perpetuity and that the compliance burden does not fall on councils.

The Working Group noted that the definition could be finessed by considering:

- requiring a consent authority to impose conditions of consent requiring covenants for development approved under the ARHSEPP to ensure on-going affordability;
- requiring registration of all boarding houses under the *Boarding Houses Act 2012*;
- differentiating household income between Greater Sydney and the rest of NSW, as was recently done in SEPP 70; and
- requiring a guarantee that boarding house rooms are let at rents that are considered affordable to very low, low and moderate income households.

The Working Group also considered that the current requirement that a consent authority must not grant consent to the strata subdivision or community title subdivision of a boarding house, which is included in the miscellaneous provisions of the ARHSEPP, should be embedded in any proposed new definition of a boarding house.

Section 5 – Exemption framework

The Working Group considered that there should be an option for councils which have demonstrated they have provided adequately for the need for boarding house development in their local area to seek an exemption from the boarding house provisions of the ARHSEPP.

The Working Group noted that the need for an exemption framework is directly related to whether or not other changes are made to the ARHSEPP. If changes are made, there may not be interest in seeking exemptions or the criteria for gaining an exemption could be much higher.

It was noted by the Working Group that in some LGAs there may be a limited need for boarding house development in its traditional form and that councils may propose an alternate planning approaches to address the affordable housing needs of their communities, such as smaller apartments (this is discussed further in Section 6).

The recommendations in this section relate to the evidence and documentation that a council would be required to provide to support its exemption request from the boarding house provisions of the ARHSEPP.

There are also recommendations on the processes the Minister could use to consider an exemption request.

Recommendation 2 – Establish an evidence base

The Working Group considered that a request for exemption would need to be accompanied by an evidence base that demonstrated a good understanding of housing demand and supply issues associated with boarding house development in the local area. This would include consideration of:

- housing demand and supply in the local area;
- affordable housing demand and supply in the local area;
- social housing, including current provision in the local area and housing in the development pipeline;
- number and types of boarding houses in the local area and the role they play in the local housing continuum (including number of student housing developments, traditional boarding houses, new generation boarding houses and boarding houses managed by Community Housing Providers);
- trends in boarding house development in the local area including the role that boarding houses have played in responding to demand for affordable housing;
- future demand for boarding house development and boarding house type development (ie small dwellings or studio apartments) in the local area (including consideration of income levels, levels of housing stress, homelessness, household types, demographic trends and changing land uses); and
- number of boarding house development applications (including how many rooms and how many lodgers can be accommodated) that have been approved since 2009.

Many councils are preparing a Local Housing Strategy that contain detailed demographic information for their local areas which could be used to develop the evidence base for an exemption, although the Working Group noted that a more fine-grain analysis could be required to support an exemption request.

A number of councils have also adopted affordable housing strategies that will assist in understanding demand and supply issues for boarding house or affordable rental housing typologies.

Recommendation 3 – Propose a local planning approach to respond to the demand for boarding house development in the local area

The Working Group considered that a local planning approach should set out how a local council would respond to the identified need for boarding house development in its local area and include a clear plan for how and where boarding house development would be delivered as part of a council's overall delivery of its housing targets.

A local planning approach could propose areas in which boarding house development would be permitted and could include proposed development controls for boarding house development.

Additionally, the Working Group considered that a local planning approach could have the flexibility to propose a planning approach that provided other housing typologies to meet the identified affordable housing needs of the local community, for example smaller lot sizes for houses or increased numbers of smaller apartments in residential flat building developments.

The Working Group was of the view that a local planning approach should be supported by an analysis of its proposed viability and include consideration of expected take-up rates.

Recommendation 4 – How an exemption request would be evaluated

The Working Group anticipated that exemption requests would vary significantly across local government areas. For example, some councils may support the development of boarding houses in most zones, subject to new development controls to be included within the local planning framework. Other councils may allow more diverse and compact housing forms in response to a local need for low cost housing.

The Working Group recommends that the Minister should consider the following in deciding whether or not to exempt a council from the boarding house provisions of the ARHSEPP:

- whether the proposed local planning approach (or an alternate affordable housing typology) will meet the need established by the evidence base;
- whether the proposed local planning approach (or an alternate affordable housing typology) will contribute to meeting a council's dwelling target in Regional and/or District Plans;
- whether the proposed local planning approach (or an alternate affordable housing typology) is consistent with and complements a council's LSPS and endorsed Local Housing Strategy;
- whether the council has prepared an affordable housing contribution scheme, supported by an affordable housing requirement in an LEP or a planning proposal to progress an LEP; and
- whether the proposed implementation and monitoring proposal would enable council to demonstrate and then monitor the effectiveness of the local planning approach.

The Working Group noted that it was likely that the LEP amendment which facilitated the local planning approach would need to be made before a council could be exempted from the ARHSEPP, which could have timing and 'signalling to market' implications.

The Working Group also considered that there may be an opportunity for councils which have endorsed a project plan for a local planning approach (including the timeframe for detailed needs analysis, urban design studies to be undertaken and a community consultation programme) to be allowed a temporary exemption from the ARHSEPP until such time as an LEP amendment to implement the local planning approach is made.

Recommendation 5 – Develop a Local and State government monitoring program

The Working Group considered that the objective of the local planning approach with regards to whether it is trying to achieve more diverse housing, or increase numbers of affordable dwellings, would need to be made clear at the outset, so that monitoring is able to take place.

The Working Group recognised the difficulties associated with measuring the contribution of boarding houses developed under the ARHSEPP to affordable housing to date and noted that boarding house rooms often contribute more to the diversity of housing in general, rather than providing genuinely affordable housing.

The Working Group agreed that there are opportunities offered by new strategic planning processes, particularly Local Housing Strategies, which include annual reviews of housing delivery and supply as well as five-yearly reviews of housing delivery and supply against the broader aims of District and Regional Plans.

The Working Group considered that a local planning approach could be monitored in line with these timeframes. However, the Working Group was of the view that it would take 5-7 years to understand whether a proposed local planning approach was working and noted that measuring the housing delivered under a new planning framework is complex, particularly in the context of unpredictable market conditions.

The Working Group noted that the individual circumstances of each council would need to be taken into account, as each council has different housing needs, different demographic and cultural needs, different infrastructure capacity and differing community aspirations.

The Working Group considered that measuring the housing delivered under a local planning approach could include consideration of:

- DA applications, approvals and completions for boarding houses or the housing type identified in the exemption request;
- rental bonds received and rents charged for boarding houses;
- changing demographics and whether there is a continued need for this form of housing;
- consideration of broader market trends and contextual indicators such as whether the pipeline may have slowed down or sped up in accordance with how the market is operating;
- consideration of what is happening in neighbouring areas;
- occupation survey of boarding houses undertaken every five years, to understand who is using them and the residents' perception of amenity and to allow early identification of any amenity concerns resulting from the application of local controls; and
- comparison with other approvals/completions in the local government area.

The Working Group considered that new boarding house developments should contribute to affordable housing targets and that boarding house rooms should be counted as dwellings for the purpose of meeting the GSC's housing targets.

Recommendation 6 – Re-applying the boarding house provisions

The Working Group considered the foreseeable circumstances under which the Government would seek to re-apply the boarding house provisions of the ARHSEPP to a council which had been exempted.

The main difficulty, which also applies to monitoring housing delivery in general, is that factors outside the planning framework have significant impacts on housing demand and supply. These factors range from Federal policies on immigration and international students, through to financing, taxation and interest rates.

The second difficulty, which again relates to monitoring housing delivery in general, is the timeframe over which residential development is planned and delivered. Although economic viability of development can be tested and assumptions can be made on take-up rates, market conditions can change and stagnate for considerable times.

There are precedents in the NSW planning system for exempting councils from state policies. For example, in 2002, councils could be exempted from the State policy for seniors housing where they could demonstrate that the local area contained a sufficient choice of housing to meet the needs of older people and people with a disability. There are few, if any, examples of situations when councils have been exempted from State policies and then had the policy re-applied.

In light of the above, the Working Group recommends that the ARHSEPP provisions should only be re-applied in circumstances where it can be clearly demonstrated that a council's local planning approach is not producing housing in line with agreed targets relating to affordability and diversity.

In addition, the Working Group recommends that ARHSEPP provisions should only be re-applied after councils have been given an opportunity to address any issues and after consideration of whether the ARHSEPP would deliver better outcomes.

Section 6 – Recommended changes to the ARHSEPP

Regardless of whether or not councils are given an opportunity to be exempted from the ARHSEPP provisions, the Working Group considers it is important that other changes are made to the boarding house provisions of the ARHSEPP.

The Working Group suggested it could be better to ‘fix’ the ARHSEPP, rather than ask councils to undertake the extensive and time-consuming work required to gain an exemption from its boarding house provisions.

In addition, the Working Group noted that, if the ARHSEPP is amended to respond to council and community issues, it is likely that fewer councils will seek exemptions.

In addition to its key recommendation (Recommendation 1 - that boarding houses are by definition affordable) the Working Group considers that the boarding house provisions should be amended in line with the following recommendations.

Recommendation 7 – In the R2 Low Density Residential zone, either prohibit boarding houses, tighten the accessibility requirements, or further restrict boarding house development by limiting the number of lodgers

Several councils, both during the workshops and previously in writing to the Minister, have suggested that boarding house development should not be permitted in the R2 zone. Some councils consider that boarding houses are fundamentally incompatible with low density residential areas due to their bulk, scale and nature and suggest they are better located in existing town centres and higher density residential zones.

Councils have also noted that boarding houses are a mandated use in the R2 zone under the SILEP, regardless of whether they are in an accessible area or not. The Working Group considers that this irregularity, where the SILEP mandates boarding houses in R2 zones outside the ARHSEPP’s accessible areas, should be addressed.

If boarding houses are continued to be allowed in the R2 zone under the ARHSEPP, the Working Group recommends that the accessibility requirements be tightened.

The current accessibility requirements for boarding houses in the R2 zone in locations close to public transport services are:

(a) In the Sydney Region

- within 800m walking distance of a railway station or a Sydney Ferries wharf;
- within 400m walking distance of a light rail station; or
- within 400m walking distance of a bus stop used by a regular bus service that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.

(b) Outside of Sydney Region

- Must be within 400m walking distance of land within a B2 Local Centre or B4 Mixed Use zone, or within an equivalent land use zone.

The Working Group suggested that the “400m walking distance of a bus stop used by a regular bus service” does not necessarily equate to an area well-served by public transport. The Working Group suggested that the accessibility definition be tightened to ensure the location is within 400m walking distance of a bus stop with regular bus services of at least 4 per hour and up to 10pm, or of a bus stop on a T-way or the like.

Additionally, in the R2 zone, the Working Group suggested that consideration be given to restricting boarding house development so there be no more than 12 lodgers, rather than the current restriction of 12 rooms, which could equate to 12-24 lodgers.

Recommendation 8 – Explore options for providing for student housing outside the ARHSEPP framework

The Working Group was of the view that student housing development, which currently is able to be assessed as boarding house development under the provisions of the ARHSEPP, should be moved outside the ARHSEPP framework. The Working Group identified that more work needs to be done on an appropriate planning framework for student housing and this is discussed further in Recommendation 13 below.

Recommendation 9 – Strengthen Clause 30A by including additional local character considerations and review Clauses 29 and 30

Clause 30A of the ARHSEPP states that a consent authority must not consent to boarding house development unless it has taken into consideration whether the design of the development is compatible with the character of the local area.

The Working Group noted issues with assessing development applications against the relatively weak ‘compatibility test’ required by Clause 30A, and advised it is difficult for a council or the Land and Environment court to refuse a development application on the grounds of compatibility.

The Working Group recommended that Clause 30A be strengthened and additional matters for consideration, similar to those outlined in the Department’s Local Character and Place Guideline (February 2019) be included in the ARHSEPP.

The Working Group also suggested a number of changes to Clause 29 and 30 of the ARHSEPP, noting the opportunity for:

- improving private open space controls so they reflect the number of rooms in a proposed boarding house, rather than be a blanket control;
- reconsidering maximum and minimum room size requirements for boarding houses, having regard to standards set in the ADG for studio rooms, and being based on the inclusion, rather than exclusion, of the kitchenette and ensuite area; and
- requiring solar access to boarding house rooms as well as to communal living rooms.

In terms of minimum room sizes, one council considered that all forms of housing, regardless of whether affordable or not, should meet the minimum size requirements in the ADG (35m² for a studio apartment), and that no person should have to live in housing smaller than the minimum size apartment set by the ADG, simply because they have fewer financial means.

Recommendation 10 – Develop additional design guidance for boarding house development

The Working Group considers there is scope to provide design guidance for boarding house development, including by adopting relevant aspects of SEPP 65 and the ADG.

There is also scope to develop standards and/or provisions for boarding house development in the new standard DCP provisions to be released by the Department.

Matters to be addressed in the guidance could include setbacks, building depth and separation, public domain interface, communal open space, solar access, ventilation, visual privacy, universal design, vehicle access and parking.

Recommendation 11 - Boarding house FSR bonus is changed to a 10% (or potentially another percentage) bonus above existing FSR

Clause 29 of the ARHSEPP includes an FSR bonus on land within a zone in which residential flat buildings are permitted of:

- 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or
- 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.

The Working Group notes that in the case of an existing FSR of 0.5:1 this bonus effectively doubles the allowable FSR and contributes to excessive bulk and scale of some boarding house developments.

The Working Group recommends that the existing FSR bonus be changed to a 10% (or potentially another percentage) bonus above existing FSR. The 10% bonus is consistent with bonuses given for design excellence and the Working Group notes that this would result in development which is more responsive to its context. The Working Group emphasises that bonuses should only apply to genuinely affordable development.

The Working Group recognised that consideration would need to be given to the impacts of the proposed changes on the viability of boarding house development, particularly with regard to the potential for reduced housing supply.

Section 7 - Recommended changes to the SILEP

The Working Group also recommended a number of changes to the SILEP which would work in tandem with the proposed changes to the boarding house provisions of the ARHSEPP to facilitate local strategic planning for boarding houses.

Recommendation 12 – Align the SI definition of boarding house with the proposed ARSHEPP definition

Should the boarding house definition in the ARHSEPP be amended to ensure boarding houses are affordable, the definition in the SILEP should be amended in the same way.

The Working Group also suggested that there may be opportunities to align definitions across other NSW legislation, including the *Boarding Houses Act 2012*.

Recommendation 13 – Explore options for providing for student housing in the SILEP

Under the current planning framework in NSW, student housing is not a defined land use and the boarding house provisions of their ARHSEPP, including their incentives, are being used to develop student housing.

The Working Group recommended that the student housing is defined as a separate land use in the SI dictionary and not mandated in any zone. Councils could then determine through local strategic planning processes in which zones 'student housing' would be permitted.

The Working Group considered that student housing should have its own provisions dealing with the particular planning and design issues associated with the use.

The Working Group noted that this change may be difficult to introduce and suggested that a transitional period for a new planning framework for student housing may be appropriate.

Recommendation 14 – Associated local provision for boarding house development

The Working Group considers that there may be value in providing a new SILEP local provision for boarding house development to allow councils to include specific planning controls for boarding house development in LEPs, such as:

- locational requirements;
- clustering provisions; and
- built form and open space requirements.

It is envisaged that any local provision would link back to councils LSPS and Local Housing Strategy work.

Section 8 – Summary

In response to the Minister's request, the Working Group considered how councils could develop a local planning approach to providing either boarding house development (or an alternative housing typology) to meet the affordable housing needs of the local community. The local planning approach would subsequently allow councils to request to be exempted from the boarding house provisions of the ARHSEPP.

Recommended Exemption Framework Process

The Working Group developed a proposed framework for the process for exemptions which includes the following steps:

Step 1: Council will prepare a request for exemption including:

- An analysis of affordable housing demand and supply, including for boarding house development, in the local area;
- A proposed local planning approach, and an assessment of its viability, that responds to the demand for boarding house development;
- An implementation plan setting out how the proposed local planning approach will complement the Local Housing Strategy and LEP review process (including timeframes); and
- A programme to monitor and report on the proposed local planning approach.

Step 2: The Minister will consider the request for exemption based on the following criteria:

- Whether the proposed local planning approach for boarding house development (or an alternate affordable housing typology) is consistent with and complements a council's LSPS and Local Housing Strategy;
- Whether the proposed local planning approach will meet the identified affordable and diverse housing needs of the local community;
- How the proposed local planning approach will assist meeting Council's dwelling targets (in conjunction with the GSC, when relevant);
- How the proposed local planning approach will be delivered and monitored; and
- Whether the exemption is justified based on the evidence base prepared by council.

Step 3: Council which are granted exemptions will be listed in the ARHSEPP

Prior to any exemption being granted, it would be necessary to amend the SILEP so that boarding houses are not listed as mandatory uses in any zones. This would mean that the permissibility of boarding houses in the R1, R2, R3, R4, B1, B2 and B4 zones is established solely by the ARHSEPP.

Step 4: Councils will monitor and report on the effectiveness of their local planning approach.

It is likely this will occur alongside the monitoring of a council's Local Housing Strategy, in particular on how the dwelling targets in the District and Regional Plans are being met. This means there will be annual reviews of housing delivery as well as five-yearly reviews against the District and Regional Plans to ensure that the Local Housing Strategy is aligned with these plans.

The Working Group considered that a local planning approach could be monitored in line with these timeframes. However, the Working Group was of the view that it would take 5-7 years to understand whether

It is likely that ePlanning initiatives, such as DA Online, will be able to be used in the future to measure aspects of the proposed local solution, including number and type of affordable dwellings approved as part of development applications.

Should a local solution not deliver on its expected targets, the ARHSEPP could be re-applied to the LGA.

Recommended ARHSEPP and SILEP changes

The key recommendation of the Working Group is to amend the definition of boarding house in the ARHSEPP to ensure boarding house rooms are affordable. All other recommendations in this Report are predicted Recommendation 1 being implemented.

The Working Group considers that other amendments need to be made to the ARHSEPP and SILEP. This will both provide a sound framework for councils not exempted from the provisions and also allow councils to undertake local strategic planning for different types of residential development that currently fall under the definition of 'boarding house'.

The Working Group recommends the following changes be made to the boarding house provisions of the ARHSEPP:

- housing types which do not have an affordability requirement, such as student housing, are removed from the ARHSEPP;
- additional design guidance is provided for boarding house development;
- in the R2 zone, either boarding houses are prohibited or accessibility requirements are tightened; and
- the boarding house FSR bonus is changed from a flat FSR increase to 10% above existing FSR.

The Working Group recommends the following changes be made to the SILEP:

- a new definition for student housing; and
- a new local provision that would allow council to include locational or site requirements for these forms of housing.

Recommended consultation

The Working Group considered that it was important that all NSW councils and communities were given an opportunity to review and comment on the recommended changes, noting the focus of the Working Group was on boarding house development in the metropolitan context and may not necessarily reflect the affordability and diversity challenges experienced in regional areas.

Appendix A - Issues with boarding house development

Most councils recognise the need for affordable and diverse housing and support the retention and development of various affordable housing types, including boarding houses, in their local areas.

However, both councils and communities have advised the Department that the boarding house provisions in the ARHSEPP are not resulting in genuinely affordable housing as intended by the policy. Recent studies have provided evidence to support this position.

As well, both councils and communities have advised that some boarding house development assessed and approved under the provisions of the ARHSEPP has unacceptable environmental and amenity impacts.

The six key community and council issues relating to boarding house development are:

1. Lack of affordability of boarding house rooms;
2. Use of the boarding house provisions to develop student housing;
3. Excessive scale and bulk of boarding house development;
4. Compatibility of boarding house development with low-density residential areas;
5. Clustering of boarding house development; and
6. Lack of amenity for boarding house residents.

1. Lack of affordability

There is evidence that many recently constructed boarding houses are not affordable for their occupants. This is particularly obvious in the inner and middle-ring suburbs of Sydney where there have been significant increases in property values and rents since 2012.

Both councils and communities have raised concern that boarding house developments are able to rely on the incentives and relaxed development standards in the ARHSEPP but are not being rented at affordable rates.

If boarding houses are not affordable, it could be argued that the bonuses and concessions offered by the ARHSEPP are not delivering on the objectives of the ARHSEPP or the social benefit expected, but rather are enabling a form of apartments that do not have to comply with the design requirements placed on other forms of residential development.

The City of Sydney Council recently undertook a high-level analysis of boarding houses in their local government area (LGA) and found that some new boarding house rooms are being rented at \$585 per week, which is the same as median rent in the LGA.

Research undertaken by Randwick Council in 2017 found that about 700 boarding house rooms had been approved in the LGA since the ARHSEPP was introduced, mostly close to the University of NSW and the hospital precinct. Council's research indicated that while traditional boarding house rooms in the LGA rented for \$200 to \$250 a week, 'new generation' boarding house rooms rented for \$390 to \$500 a week and were subsequently unaffordable to very low, low and moderate income groups.

In the Inner West LGA, research undertaken in 2016 indicated the majority of households needing affordable rental housing in the local government area were excluded from the rental market. The only affordable option for very low-income households were lower amenity boarding house rooms

in only a few suburbs, while low income renters could only affordably rent a studio or one-bedroom apartment in a few suburbs.

In 2019, the SSROC occupancy survey of occupants of new boarding house developments in Central and Southern Sydney found that, despite the fact that most occupants surveyed (64%) were on low incomes of less than \$800 per week, nearly all (90%) were paying more than a third of their income on rent.

2. Use of the ARHSEPP to deliver student housing

There is evidence that increasing numbers of large, purpose-built student housing developments are being constructed under the boarding house provisions of the ARHSEPP. Several councils have raised concerns that the same standards apply to boarding houses under the ARHSEPP regardless of whether that boarding house be a traditional boarding house, a new generation boarding house or purpose-built student accommodation with several hundred rooms. The provisions of the ARHSEPP were not designed for large scale boarding houses and student accommodation, and have resulted in some poor development outcomes.

International students make a significant and growing contribution to the economy of Australia and NSW. International education is Australia's largest services export, and third largest export overall, contributing \$30.8 billion to the Australian economy in 2017. Based on the most recent data on a 12-month comparison, numbers of students have risen 12 percent from 556,987⁶ students in May 2018 to 622,050⁷ students by May 2019.

NSW has more international students than any other state or territory. In 2015, NSW received about \$7.7 billion (or 36 per cent) of the export income generated by international students, who also contributed nearly \$2.8 billion in direct spending in the state. International students make a significant contribution to job growth in NSW, with Tourism Australia Research indicating that there is one FTE job created for every four students.

Unlike universities in the UK and the USA, Australian universities do not have a strong tradition of providing accommodation for students on campus. Given the increasing cost of housing and rents, there is a growing gap between the demand for student housing, particularly around Sydney's major universities, and the availability of suitable accommodation. Students are therefore forced to find accommodation in the private rental market. This increases demand for rental accommodation in these locations as students compete for private market rental with local residents.

The 2019 SSROC report noted a considerable proportion of boarding houses under the ARHSEPP were student accommodation and predominantly in areas with already high rates of both rental and more compact accommodation.

For example, in the City of Sydney LGA, about 5,500 boarding house rooms have been approved since 2009, and about 4,600 of these were approved as student housing. Examples of recent purpose-built student accommodation in the City of Sydney LGA which are not affordable are the Urbanest development at Redfern (which charges about \$450 for a single room with an ensuite in a shared apartment) and the Iglu development at Broadway (which charges about \$470 for a similar room).

⁶https://docs.education.gov.au/system/files/doc/other/education_and_training_annual_report_2017-18_0.pdf

⁷ <https://internationaleducation.gov.au/research/International-Student-Data/Documents/MONTHLY%20SUMMARIES/2019/May%202019%20MonthlyInfographic.pdf>

Given the importance of international students to the nation and state economy, and the need to ensure adequate student accommodation is available for all students, planning policy needs to be in place to encourage the development of student housing in the right location and ensure that the housing provided responds to the needs of students.

3. Excessive scale and bulk of boarding house development

A common issue with boarding house development applications submitted under the provisions of the ARHSEPP relate to the bulk and scale of the proposed development, particularly in low density residential zones. The issue is exacerbated when a boarding house proposal has the building form of a townhouse or residential flat building in an area where the predominant building form is single, detached houses.

Although building height controls of the surrounding area must be adhered to, the FSR bonus available under the ARHSEPP can allow for greater bulk and scale of a building. In an R2 zone with a 0.5:1 FSR, bulk is effectively doubled with the 0.5:1 bonus. The FSR bonus results in additional built form which can exceed community expectations and consequently reduce confidence in the planning system.

In addition to raising concerns about the physical bulk and scale of boarding house development, councils and communities have raised concerns about the higher density of residents associated with boarding house development compared with typical density of residents in other forms of residential development permitted in the surrounding zone.

As well, the ARHSEPP has no minimum rear and side setback requirements, which has resulted in proposed two and three storey boarding houses being located very close to neighbouring properties, resulting in overshadowing, loss of deep soil and landscaping, and loss of privacy and amenity for these properties.

In addition, *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* (SEPP 65) and the Apartment Design Guide (ADG), which provided consistent planning design standards for apartment dwelling across NSW, do not necessarily apply to boarding house development.

4 Compatibility of boarding house development with low-density residential areas

Communities and councils across NSW are concerned that the boarding house provisions in the ARHSEPP are resulting in the development of boarding houses in low density residential zones that are fundamentally incompatible with the character of the surrounding residential development.

This is despite the requirement of Clause 30A of the ARHSEPP that a consent authority must not consent to development unless it has taken into consideration whether the design of the development is compatible with the character of the local area. Councils have noted that the term 'compatibility' is poorly defined and difficult for a council to rely on as a reason for refusal.

It is possible that the recent amendment to the ARHSEPP to limit the number of rooms in a boarding house in the R2 Low Density Residential zone to 12 rooms will assist in addressing the compatibility issue. However, some councils consider that the occupancy rate of a 12-room boarding house (which could vary between 12 to 24 people depending on the breakdown between single and double rooms) still results in development which is incompatible with the other residential development in the R2 zone, by virtue of the number of people housed.

5. Clustering of boarding house development

Councils and communities have particular concerns about the clustering of boarding house development and would like controls to be introduced to limit the number of boarding houses that can be developed in a particular area.

Penrith City Council has highlighted this as being a particular issue in Kingswood, noting that in February this year, 24 of the 32 existing and planning boarding houses in the Penrith LGA were in Kingswood. Many Kingswood residents have written to Council and the Department about their concerns with the rapid redevelopment of their area with boarding houses and the impact this has on the character of their suburb.

The City of Parramatta Council is also concerned about the clustering of boarding house development and has previously requested the ARHSEPP be amended to restrict boarding houses being within 100 metres of another boarding house in the R2 zone.

The City of Canada Bay has advised that clustering of boarding house development is a particular issue in the R3 zone. Council provided a recent example of three adjacent detached dwellings in an R3 zone being redeveloped as boarding houses with a total of 120 rooms to illustrate the impacts associated with the concentration of boarding houses in one area.

Clustering has the potential to result in cumulative amenity impacts on neighbours, particularly in terms of increased traffic and loss of on-street car parking. Some councils also consider that clustering of boarding houses can have social impacts, particularly if appropriate management and on-going support of boarding house residents is not provided.

Clustering of boarding house development also impacts on the ability of councils to plan for services and infrastructure that would otherwise not have been required in a particular area based on the expected density of development under its zone.

6. Poor amenity for boarding house residents

The Apartment Design Guidelines do not apply to boarding house development and some councils consider that some boarding house developments have poor amenity for residents due to the lack of detailed development controls in the ARHSEPP. Council concerns with regard to the amenity of boarding house residents include:

- whether a 20sqm room (which assumes the minimum 12 sqm room, 3 sqm ensuite and 5 sqm kitchenette) is an adequate size;
- whether the ARHSEPP requires adequate, usable shared facilities to compensate for the small room sizes;
- sunlight and natural ventilation in boarding rooms;
- visual and acoustic privacy;
- ceiling heights;
- compliance with universal design;
- whether adequate open space is provided, particularly given that currently the ARHSEPP only requires a flat minimum rate of an area of 20m² with a 3m width, regardless of whether there are 20 or 200 lodgers;
- whether there are existing local controls, including requirements for Plans of Management to ensure sound amenity, safety and health outcomes for residents; and

- whether the current accessibility requirements in the ARHSEPP result in boarding houses being well-located in terms of access to public transport and amenities.