



Submission on

Explanation of Intended Effect for the new Housing Diversity SEPP

September 2020



Acknowledgement to Country

Byron Shire Council recognises the traditional owners of this land, the Bundjalung of Byron Bay, Arakwal people, the Widjabal people, the Minjungbul people and the wider Bundjalung Nation.

We recognise that the most enduring and relevant legacy Indigenous people offer is their understanding of the significance of land and their local, deep commitment to place.

Thank you for inviting Council to provide feedback the Explanation of Intended Effect (EIE) for the new Housing Diversity State Environmental Planning Policy (SEPP).

Overall, Byron Shire Council supports the review of the three Housing Policies (SEPP (Affordable Rental Housing) 2009 (ARHSEPP); SEPP (Housing for Seniors and People with a Disability) 2004 (Seniors SEPP); and SEPP70- Affordable Rental Housing (SEPP 70) resulting in an integrated Housing Diversity SEPP.

We support initiatives to deliver diverse, affordable and resilient housing needed in NSW over the next 20 years and look forward to continued discussions with DPIE.

To summarise, Council is seeking:

- a delay in new SEPP until the NSW housing strategy is finalised
- a review of the aims of the SEPP to make diversity the priority not economic recovery
- better recognition of the fact that the population is extremely diverse group and tailored strategies should cater for and acknowledge this diversity in the housing response.
- a recognition of the role and value of Council housing strategies
- an expansion of the scope to cover all state regulations affecting housing diversity, including short term rental accommodation
- greater allowances for local responses and provisions
- better linkage between housing delivery and infrastructure planning and delivery, particular with regard to the allowance of bonuses/concessions.

The following provides the reasoning behind this request:

Timing of the new SEPP

Comment:

Council recognises the important role the planning system will play in helping the NSW economy recover from the current COVID-19 pandemic. The timing and intent behind the Explanation of Intended Effect (EIE) for the new Housing Diversity State Environmental Planning Policy (SEPP) however must be questioned.

Council is highly supportive of the NSW government's shift to a strategic-led planning framework. Tools such as local strategic planning statements and the pending NSW Housing Strategy work to achieve successful consolidation. They help provide a clear line-of-sight between key strategic priorities identified at state and regional scales and the finer-grained local and neighbourhood planning leading to more certainty for all stakeholders in the NSW planning system.

Byron Shire Council recently provided a submission to the Department on the NSW Government's Housing Strategy for NSW discussion paper (NSW Housing Strategy DP). It is understood the NSW Housing Strategy, once finalised, will set, as a pivotal tool for housing delivery, a 20 year vision, key priorities and actions. The NSW Housing Strategy DP submissions need to be addressed and the NSW Housing Strategy Housing finalised, prior to the introduction of a new Housing Diversity SEPP.

Recommendation:

1. That the NSW Housing Strategy be finalised, addressing the submissions received, prior to the introduction of a new Housing Diversity SEPP to ensure proper alignment and effective delivery of the Housing Strategy.
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Aim and Intent

Comment:

The EIE for the new Housing Diversity SEPP identifies four proposed aims:

- Aim 1. will assist the State's economic recovery following COVID-19 (such as the EIE reference to the '*government is encouraging the development of **build-to-rent** housing as it responds to the need for more rental housing during the recovery from COVID-19 and **would generate more construction jobs.***);
- Aim 2. consolidates existing State level housing-related planning provisions into a single instrument;
- Aim 3. is in a format capable of being expanded and amended as future needs may require; and
- Aim 4. facilitates the delivery of housing that meets the needs of the State's growing population. '

An initial observation is that the order of aims has an effect of prioritising (in the reader's mind) that the key the purpose of the SEPP is to help with economic recovery and that actual delivery of diverse housing is the lowest priority.

Furthermore, Aim 1 has the propensity to undermine Aim 4 and the goals behind the NSW Housing Strategy. Tying housing affordability to the current COVID situation, as the EIE does, downplays (if not ignores) that this issue and a lack of housing diversity — in tenure, choice, type, and accessibility — are both longstanding and on the rise.

As early as 1972, the then NSW Planning and Environment Commission in a Technical Bulletin 10 *Town Houses* recognised '*pressure for living space created the need to investigate forms of dwellings other than the common low density detached cottage.*' Now and into the future, Council sees the pressures of living space extending to a need to investigate how to deliver more housing outside the traditional market driven response. Council holds concern that a linkage to economic recovery may have a propensity to perpetuate a market driven response and to not look at the bigger picture.

To effectively meet current and future needs of the State's growing population, a fundamental policy shift is needed where housing is seen as a significant long term community infrastructure investment. Byron Shire Council is well down the track of preparing a draft Residential Strategy to guide housing delivery in the Shire for the next 20 years. It is a culmination of over three years work and largely well supported by our community. The process has entailed understanding our community and our current housing stock - what is available, how it is being used and by who, where can adaptations or improvements be made for its more effective use (such as in regulations, tenure or build form). This is complemented by investigations into alternative housing delivery models, where these could go, for whom the priority should be and importantly how this aligns with employment patterns and other infrastructure services such as water, transport and social services.

Council's approach is generally consistent with that outlined by the NSW government in the [Local Housing Strategy Guideline](#).

The EIE for the SEPP overlooks the importance of local housing strategies in guiding secure diverse housing delivery for residents (State's growing population) appropriate to each region and local area.

Council's draft Residential Strategy, exhibited in Aug 2019 well before the COVID situation, identified housing affordability and access as key issues. The loss of affordable housing cannot be attributed to the COVID situation, nor should it be a reason for this SEPP as the issues are far broader.

Within the Byron Shire urban area there are some 11,300 dwellings and 22,700 residents, a ratio of around one home for every 2 people. Never-the-less the Shire experiences significant mortgage and rental stress. It is recognised as one of the most unaffordable locations to live. For the Shire, this can be more accurately attributed to factors such as 17.6% of the total Shire's housing stock being listed as online holiday let equating to fewer homes for local residents and that our region's substantially under provided social housing stock. In 2017, Byron Shire attracted more than two million visitors who stayed some 4.5 million visitor nights.

Our residents face living in insecure and/or unaffordable housing due to demands being placed on the available stock by tourist's/holiday home owners and their capacity to pay. For many housing costs do not reflect an affordable share of income.

Whilst in larger centres 'build to rent housing' (BTR) may stimulate the economy and alleviate rental demands, in regional areas, this is unlikely if the SEPP provisions do not enable Councils to tailor regulations suited to the local area. A change is more likely where there is regulatory, financial and community support. For Byron Shire this involves:

- a updated tenancy agreement system that provides renters with long term rental security within a secure rental cost arrangement

- addressing the over representation of properties available for short term rental accommodation

- the current investment attractiveness and availability to small investors in regional areas to undertake small scale 'built to rent' projects being complemented by a 'built to rent to share in home ownership' projects that are supported by larger sector private or government investment in housing options for high risk / vulnerable / low income people/households.
- improved state government investment in regional long term infrastructure planning and delivery for services that go hand in hand with housing such as water supply and public/active transport, this is not a cost smaller Councils can carry on their own.

Byron Shire Council has been endeavouring to address the above at a local level over the last decade as evidenced by the following case study.

Case Study: Secondary Dwellings

To help provide a more stable rental environment Council has already implemented what could be considered a hybrid of the state's 'built to rent' program and bonuses. In 2011 Council introduced a waiver on infrastructure contributions for secondary dwellings. The aim of the waiver was to make rental housing cheaper by increasing supply and thereby reducing the median weekly rent for these types of dwellings. The waiver was conditional on approved dwellings being used as affordable rental housing under SEPP 70. Whilst in over 400 secondary dwellings were added to the Shire's housing supply, a review of the program in 2019 found:

- in practice the large majority of these dwellings were being put to short term rental accommodation (STRA).
- the waiver had no impact on the rate of increase of median rents for single bedroom dwellings
- by not collecting developer contributions for secondary dwellings Council has forgone a significant benefit to both the water and sewer fund and the section 94 funds.

Further to this, the program resulted in:

- Council having to devise a compliance strategy to ensure the dwelling is used for its approved purpose. A task made difficult with the current legislative flux on STRA. Council's submission to the NSW government STRA reform package strongly advocated for affordable rental housing SEPP 70 properties to be excluded from the STRA SEPP.
- Members of the community disconcerted, as this program entailed a financial concession for individual property owners at a cost to the greater community; it was felt that Council should be able to set a SEPP 70's maximum period of rental security greater than 10 years. However, the existing SEPP 70 does not enable local Council to do this.

Based on these and other learnings Council in its draft Residential Strategy Council looked at other avenues to provide a more stable rental environment. In particular, the Strategy supports amendments to the Byron Local Environmental Plan (LEP) 2014 to facilitate:

- a) a SEPP 70 Affordable housing contribution scheme – Council has recently adopted an [Affordable Housing Contribution Policy](#) to guide this process
- b) better management of STRA
- c) a new land use - tiny house development – proposed for Council owned or managed land – this housing prioritised for people experiencing (or at risk of) homelessness
- d) a new Residential 1 Zone - proposed for Council owned land (Lot 22 in Mullumbimby) – as a pilot project to potentially gain leverage for larger sector of government/private investment in housing - the R1 Zone facilitating under an integrated structure plan, alternative housing tenure models and types such as micro lot housing, temporary/pop up for tiny homes for the most vulnerable and urban ecovillage (intentional communities).

The EIE outlines a government’s commitment to ensuring an adequate supply of new dwellings that are ‘affordable, well-designed and located in places that people want to live’, however unless on the ground initiative/actions of local councils are supported and enabled by the planning framework, it is unlikely to facilitate the delivery of housing that meets the needs of all Regional NSW’s growing population. Whilst it is agreed that *‘there are currently no impediments in the NSW planning system to the development of new housing for rental purposes’*, there are significant impediments in the NSW planning system to the retention of housing stock for permanent residents.

Recommendations continued

- 2. That the new SEPP aims recognise the role local growth management strategies play in local housing delivery and incorporate reference to *“secure and diverse housing delivery for residents (State’s growing population) **appropriate to each region and local area**”*.
- 3. The SEPP, whilst setting minimum terms for rental arrangements, should incorporate provisions for Council to extend the minimum duration in circumstances where a landowner/ developer has gained from a bonus or contribution waiver that has been provided at a cost to the wider community. (A principle not dissimilar to the upzoning under a SEPP Affordable Housing Contribution Scheme)

Council supports Aim 2 ‘consolidate housing-related planning provisions’ however as outlined in the EIE this consolidation appears limited and more focussed on affordability rather than truly on diversity. This is because whilst the SEPP theme is ‘Housing Diversity’, it is difficult to see how it aligns with the NSW Housing Strategy Discussion Paper which describes DIVERSITY as: *“This theme considers different types of housing and looks at how a diverse choice of housing can reflect the needs and preferences of households”*.

The NSW Housing Strategy themes — supply, diversity, affordability, and resilience — and key objective to better coordinate diverse housing policy, largely align with the policy directions of Council’s draft Residential Strategy.

The EIE outlines a SEPP containing a select set of housing regulations with a largely metropolitan focus for:

- Housing types
 - o boarding house and
 - o co – living (new generation boarding house)
 - o secondary dwellings (a minor change for rural areas only)
- Housing supply, tenure and delivery arrangements
 - o Built to rent
 - o LAHC
- Household types
 - o group households
 - o seniors
 - o students

The EIE recognises that metropolitan based housing models do not necessarily translate in regional areas however is largely silent on the alternatives. In its submission on the NSW Housing Strategy Discussion Paper Council suggested examination of a variety of housing and economic models that respond to trends of decentralization and regionalization. It also raised concern that responses to Aboriginal and Torres Strait Islander housing and living on country are largely hidden amongst the greater text.

At a glance, it is considered there are two additional SEPPs currently in place to help facilitate the delivery of diverse housing types in NSW, being SEPP No 21 – Caravan Parks and SEPP No 36 – Manufactured Home Estates, with aims including ‘promoting the social and economic welfare of the community’ and ‘encourage the provision of affordable housing in well-designed estates’.

In 2015, the Department with the Office of Local Government prepared a Discussion Paper to seek feedback on proposed improvements to improve the planning and approval process for manufactured homes and estates, caravan parks, and camping grounds. Following exhibition of the Discussion Paper in late 2015 the review has yet to be completed.

Caravan parks and manufactured home estates have a role to play in the delivery of diverse housing types and contribute to housing affordability. They hold capacity for facilitating opportunities for traditional owners to living on country and temporary/pop up homes for the most vulnerable.

Furthermore, the NSW Housing Strategy Discussion Paper described STRA as *an innovative housing activity*. The new Housing Diversity SEPP also provides an opportunity for the Department to incorporate housing-related planning provisions for STRA, such as:

- a BTR not being able to be strata titled for the first 15 years – this could as easily be applied to any new dwelling or any existing dwelling purchased using under a first home buyers grant not being able to be STRA for the first 15 years, regardless of whether current owner was the recipient of the grant.
- *Retention of Low-Cost Rental Accommodation* – where a proposed development contributes to a reduction in the availability of affordable housing, Council is permitted to levy monetary contributions as a condition of consent if they consider that approval of a

proposed development would result in a loss of affordable housing on the land that is the subject of the application. This levy could also be applied to STRA using similar determinant template.

The EIE outlines the government's commitment to ensuring an adequate supply of new dwellings that are 'affordable, well-designed and located in places that people want to live'. However, by not considering SEPP 21, SEPP 36 and STRA as part of this process it is leaving out critical components of housing diversity and affordability.

Recommendations continued

4. That the Aim 2 of the new Housing Diversity SEPP be reframed to "consolidate all SEPPs and state housing-related planning provisions currently in place to facilitate the delivery of diverse housing types, including State Environmental Planning Policy No 21 – Caravan Parks, State Environmental Planning Policy No 36 – Manufactured Home Estates and STRA", OR
5. That consideration is given to renaming the new integrated SEPP, the **Housing 'Affordability'** SEPP and limit the scope to housing initiatives and types specifically aimed at addressing affordability.

Aim 3 — a 'format capable of being expanded and amended'— holds significant merit. It is suggested however that the word 'understood' is missing from this aim. Local communities often grapple with understanding the nuances between the many development provisions including the Seniors and Affordable rental housing SEPPs etc. and those pertaining to other low rise medium density development.

The introduction of the NSW government's Low Rise Housing Diversity Code (LRHDC) design guidelines for development has been a step in the right direction, setting out more clear development standard expectations. The community is coming to terms with many of the design guides aspects such as the Design Principles and acknowledgment of the importance of local character via a design verification statement. To this extent Byron Shire Council has taken the time to help the community understand the guide and recently updated its LEP and DCP to integrate with these documents and provide greater guidance around interpretation.

To continue providing the community (and Councillors) with a clearer, more transparent and hopefully one stop document the format the new Housing Diversity SEPP should give consideration to how this can integrate with the low rise housing design guide.

This is particularly relevant with the intent to enable the Land and Housing Commission (LAHC) to can carry out, self assessed, any type of residential accommodation, including manor houses and terraces, where it is permissible under an environmental planning instrument, implement bonuses and self-assess applications for subdivision of government-owned land.

Recommendations continued:

6. That consideration is given to adding the word 'understood' to Aim 3
 7. That consider be given to a format for the new Housing Diversity SEPP and any associated design guide/s relating to low rise development that could integrate with the low rise housing design guide to provide a one stop style document.
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The following comments are offered in relation to the locational requirements and development provisions raised in the EIE for the SEPP in relation to local environmental plan (LEP) & development control plan (DCP) provisions:

Comments:

- i. Support the concept for BTR developments in regional areas to be at a smaller scale and could take the form of multi-dwelling housing or terraces rather than apartments. Potentially this could be appropriate applied at half the metro rate.
- ii. Student Housing - support that it is not proposed to make student housing a compulsory permitted use in any of the land use zones. However further clarity is to be is needed on what constitutes "student".
- iii. Support for the proposed choice of zones for BTR, being: a compulsory permitted use in B4 Mix Use & permitted in R3 – Medium Density Residential where residential flat buildings are permitted. However, should also enable LEPs to set minimum lot sizes for new defined uses, this includes co-living.
- iv. Council's Business and Industrial Land Strategy supports in the B4 Zone, active street frontages - this should be built into the definitions if housing is to be delivered in essentially commercial streetscapes.
- v. Support for BTR permissible in other land use zones at discretion of Council through amendments to their LEPs.
- vi. Support for Councils to determine the relevant height and Floor Space Ratio (FSR) controls for BTR housing through their LEPs. However, provisions need to address LEPs or areas within LEPs where FSR are not applied. Furthermore, the issues that the LRMD design guide FSRs do not always align with LEP provisions needs to be resolved to further confusion.
- vii. Support provision that BTR cannot be strata for first 15 years and mechanisms incorporated into the SEPP to manage the transition from BTR housing to a strata-subdivided apartment or low rise medium density development. The SEPP should be flexible for each Council to determine any minimum percentage of dwellings for sale at the end of the 15 years and

those required to be retained as affordable housing. This could also be interlinked with a SEPP 70 AHC clause /schedule a LEP. Furthermore Council should also be able to apply on those sold a prohibition on use for STRA for a further 15 years.

- viii. Boarding house definition – Unclear if it is meant to limit to accommodating one or two adult lodgers? Does this preclude a parent and child/children? This form of housing in regional areas may be an important short term housing resource for family members escaping domestic violence situations or natural disaster events such a flood and bushfires?
- ix. Boarding houses are designed to short term tenure - they should not have the ability to be strata subdivided as this form of housing is purpose built and in some cases entails a converted house or disused commercial or industrial building.
- x. Support removing the requirement for boarding houses to be mandated within the R2 – Low Density Residential Zone.
- xi. Support for the simplification for the FSR bonus for boarding house development to 20%;
- xii. Term on requiring boarding houses to remain affordable – suggest that where development bonuses have been awarded or contributions concession provided at a cost to the greater community then rooms in new boarding houses should be rented at affordable rates for perpetuity and the land identified potentially in a LEP schedule 1 under an SEPP 70 AHC Scheme clause. If concessions where not granted it is reasonable that after 10 year they could revert to market rates.
- xiii. Support for Councils to have the discretion to set a maximum size for secondary dwellings in rural zones.
- xiv. Support for the intent for the SEPP provisions to clarify that development standards in a LEP prevail to the extent of any inconsistency with the SEPP.
- xv. Support for BRT, student housing, boarding house and co-living a design guide/s to be developed. However there also needs to be a connection with character, local standards and relationship to the Low rise medium density code design guide provisions. Particularly when in the longer term some of these developments may convert/revert to a form of LRMD development.
- xvi. Generally support for quicker and easier process to allow an existing dwelling to be used as a group home. Additional guidance may be needed on standards.
- xvii. Support for the introduction of co-living, though the minimum size of 10 bedrooms is out of step with the regional areas. This form of housing would integrate better with a minimum of 4-5 bedrooms.
- xviii. Generally support co-living locational requirements as mandatory permitted use wherever residential flat buildings are currently permitted however clarity is required on manor houses as to whether this includes manor houses (as a form of residential flat building) if so this will expand the zones available for co-living.

Recommendations continued

8. That BTR and co-living in the B4 zone should support active street frontages, with this built into the definition.
9. That for BRT: (i) Councils should be able to determine the minimum percentage of dwellings for sale and the percentage to be retained as affordable housing (suggest may be able to interlinked with a SEPP 70 AHC clause /schedule a LEP); and (ii) those sold should prohibit use for STRA for a further 15 years.
10. That for Student Housing, clarity be provided as to what constitutes a “student”.
11. That clarity is provided on for co-living does a residential flat building include a manor house.
12. That Council should be able to set LEP minimum lot sizes for new uses.
13. That the building envelope controls for residential flat buildings under the relevant DCP to apply.
14. That design guidelines for co-living be developed to accompany the new SEPP. The design guidelines could address issues such as built form, internal and external amenity, storage, solar access, natural ventilation, visual and acoustic privacy. See comments on SEPP Aim 3 above.
15. That the boarding house definition should not preclude a parent and child/children residency.
16. That boarding houses should not have the ability to be strata subdivided as this form of housing is purpose built for short term tenure.

Comments on the implications of the new SEPP to infrastructure planning including parking ratios & transport accessibility

Comments:

Council supports planned for low rise medium density development to help improve housing diversity. In planning for diverse housing delivery Byron Shire Council has sought to integrate the residential strategy with infrastructure planning.

As with our housing, Council is embracing local solutions to more efficient and cost-effective infrastructure delivery. For Byron Shire this includes water recycling, car share schemes, park and ride and solar farms. The implications of the SEPP, particularly potential ad hoc placement of density bonuses, on car parking, water and waste-water servicing in regional areas needs to be carefully managed to avoid undermining sound forward infrastructure planning.

This includes recognising that in regional areas some bus stops with a regular bus service are in semi-rural locations such as park and ride stops. These locations due to other planning considerations are not appropriate to supporting 'bonus' residential development, including the potential to impact on the State and Regional road networks.

[Id profile – community](#), a recognised data provider, found that analysis of car ownership in 2016, indicates 51% of households in Regional NSW had access to two or more motor vehicles, compared to 50% in Greater Capital Cities. Furthermore, the ability of the population to access services and employment is strongly influenced by access to transport. This includes students, not only do they attend the educational establishments; more-often-than-not, students need to work part time to pay their way. In regional areas, where public transport is limited, this means relying on a car.

Council's is trialling a share car scheme as part of sustainable transport initiative. In support of this scheme, the Seniors location and access to facilities' provisions should retain accessibility to car share schemes. As this scheme develops car parking needs for other forms of development may be able to be reviewed, at this stage it however would be premature to support a reduction.

Whilst parking rate reductions around boarding houses may seem more acceptable, provided they are near services, inadequate onsite parking provision in medium density developments can have significant impacts on local traffic and amenity.

The car parking rate is a standard that cannot be used to refuse consent under the proposed SEPP, despite the above concerns that may be raised through the development assessment process.

Recommendations continued

17. That Seniors "location and access to facilities" provisions should include accessibility to car share schemes.

18. That the SEPP appropriately distinguishes between the different requirements of metropolitan areas versus regional NSW to ensure development does not adversely impact on local traffic and parking and infrastructure.
19. That expanding the density bonus outside of the metropolitan areas for other forms of dwelling types that were introduced with the Low-Rise Medium Density Housing Code in July 2018 is NOT supported.
20. That expanding the density bonus outside of the metropolitan areas to locations that satisfies the definition of 'accessible area' within the SEPP, rather than a limit to within 400 metres of land zoned B2 – Local Centre, or B4 – Mixed Use is NOT supported, unless the location is recognised in a local housing strategy as an area appropriate to residential intensification.
21. That all development is required to provide on site parking for service providers to residents.

Review of Seniors SEPP

Comments:

One clear example arising from the current COVID situation is the inadequacy of current aged care models and the vulnerability of seniors being grouped together and isolated from the broader populations and community.

The SEPP model should be directed to the delivery of seniors care and appropriate aged care rather about maximising urban/residential yields where other urban uses may not be permitted (i.e. adjoining a residential zone). The SEPP does not adequately address the specific needs of older or people living with a disability being able to live with communities. Universal/adaptable housing should be a standard particularly in all medium density developments.

Recommendations continued

22. That the Seniors SEPP Review recognises that the older population is an extremely diverse group and housing response strategies should accommodate this diversity.
23. Support for provisions of *Schedule 1 – Environmentally sensitive land of the Seniors SEPP* to align with current legislative and planning conditions.
24. That the SEPP provisions clarify that development standards in an LEP prevail to the extent of any inconsistency with the SEPP and that the development standards in the Seniors SEPP could be varied using clause 4.6 of the Standard Instrument LEP, but only to a maximum of 20%.
25. That a minimum threshold be set for providing universal housing in new or refurbished multi-unit development to increase the support of housing suitable for older persons or persons living with a disability.

26. That infrastructure planning to consider the needs of older people – such as location of seniors housing and integrating allied facilities for older people in the expansion of transport networks including continued improvement of pedestrian access to encourage active ageing.
