



THE LAW SOCIETY  
OF NEW SOUTH WALES

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Policy, Planning Systems and Reform  
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Dear Sir/Madam

### **Affordable Rental Housing SEPP Review**

The Law Society appreciates the opportunity to comment on the review of the State Environmental Planning Policy (Affordable Rental Housing) 2009 (AHSEPP).

The paper produced by the NSW Department of Planning (Department) as part of its review of the AHSEPP has been considered by the Law Society's Environmental Planning and Development Committee (Committee). Membership of the Committee is drawn from experienced legal practitioners and other stakeholders whose expertise has been developed variously in representing the interests of local government, government instrumentalities, corporate and private clients.

### **General Issues**

*AHSEPP incentive schemes facilitate poor design, loss of amenity and development not in keeping with the character of the locality*

The AHSEPP facilitates the provision of incentives to housing providers for the delivery of low cost housing at the expense of good design and amenity outcomes in infill developments. The AHSEPP ought to be amended so as to ensure that such incentive schemes are only implemented after appropriate consideration is given to the types of development permitted in the particular zone as well as issues such as density, location and design. This will ensure that the development is suitable for that area and that the amenity of neighbouring properties is not adversely affected.

The AHSEPP should be amended so as to ensure the long term supply of affordable housing. Incentives to low cost housing providers should only be considered by the Department where it is guaranteed that the affordable housing component will not revert to private ownership after a 10 year period. This could be achieved by introducing an affordable housing levy based on the cost of development to accumulate the funds necessary to develop affordable housing projects which would not revert to the private market and to ensure that affordable housing projects are situated in appropriate locations.

#### *Lack of objective decision making and transparency*

The AHSEPP review proposes to retain the existing threshold of a capital investment value (CIV) of more than \$5 million for the determination of AHSEPP proposals by a Joint Regional Planning Panel (JRPP).

The Committee considers that councils are better placed to objectively and transparently determine such applications on their merits – balancing the need for low cost affordable housing with the needs of all local residents. The AHSEPP should be amended to reflect this and either raise the CIV to \$10 million or replace the JRPP as amending authority with the council in all cases.

#### **Infill Affordable Housing**

The AHSEPP should be amended to require strict compliance with a council's development controls to ensure that development is within the environmental capacity of the site, consistent with local character and will not cause a reduction in the amenity of neighbouring properties. The broad approach of the AHSEPP is incompatible with these principles and can result in a development that negatively impacts upon the local community.

#### *Floor space Ratio (FSR) Bonus*

The scheduled reduction in the FSR for low rise infill development from 0.75:1 to 0.5:1 will fail to achieve satisfactory design standards that are compatible with existing development in a locality, particularly when located within low density residential zones. Local FSR controls are calculated after extensive urban design studies and capacity studies are undertaken to match other development standards. Sites developed to the amended FSR will place pressure on local services and facilities that are not addressed through any section 94 contributions.

The Committee considers that the FSR incentive should be removed from the AHSEPP.

#### *Setbacks, site area and private open space*

All residents are entitled to well located and good quality housing. The AHSEPP disregards this principle; it penalises occupants of affordable housing developments by disregarding factors such as density and good design. In the Committee's view, it is inequitable to apply the 'Seniors Living Guidelines' to affordable housing projects as this may result in inadequate private open spaces for residents who may be younger and more mobile and able-bodied than the occupants of developments for which those guidelines were designed. Instead of amending the AHSEPP in the manner proposed, the AHSEPP should retain emphasis on a council's development control plan to better regulate key design matters such as setbacks and private open spaces.

### *Budget studio accommodation*

The Committee opposes the proposal to reduce the minimum floor area for a studio apartment developed as infill affordable rental housing from 35 square metres to 25 square metres. The design requirements in the publication *Housing NSW Design Requirements* prepared by Housing NSW for Social Housing Projects need to be followed in order to establish the minimum floor areas for affordable housing developments.

In the event that the scheduled reduction is implemented, the AHSEPP should include a clause that requires the submission of diagrams showing furniture layouts so as to ensure that an acceptable furniture layout can be achieved while maintaining amenity and circulation space. In addition, the AHSEPP should contain appropriate controls to ensure that these apartments will remain as affordable housing rather than revert to private housing after a prescribed period.

The recent Land and Environment Court case of *Sterling Projects Pty Limited v The Hills Shire Council* [2011] (unreported) shows that the current AHSEPP provisions can work effectively to control infill development with the application of guidelines under the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 and taking account of the importance of character in a locality.

In that case Commissioner Tuor dismissed the applicant's appeal on the basis that the development in the context of the SEPP Seniors Living guidelines was unacceptable.

Changes to the AHSEPP and the implementation of new guidelines may not be necessary as it would appear the Court can properly and effectively determine the merits of affordable housing under the current regime.

### **Secondary Dwellings**

#### *Dual key apartments*

It is not clear whether the "dual key apartments" proposals apply to both new and existing multi-unit housing projects. Clarification is also required as to the impacts dual key apartments may have on car parking provision and section 94 contributions.

The AHSEPP also requires amendment to include a clause which establishes that both apartments within a dual key arrangement are to be contained within a single strata lot.

### **Boarding Houses**

#### *Location*

The boarding house provisions within the AHSEPP require amendment so as to be applicable only to councils within areas which are equipped with access to efficient and frequent public transport services and centres such as the Inner West, Sydney City and Eastern Suburbs.

#### *Parking*

While an affordable housing project should not be planned for a car dependent locality, the requirement of parking provisions in the AHSEPP should depend on locality, zoning, transport availability and proximity to services.

### *Complying development*

The Committee considers that it is not appropriate to apply complying development provisions to boarding houses. Due to the higher density nature of such developments, boarding house applications should be fully assessed by a council based on merit, together with consideration of the character of the area and the location with respect to services and transport.

### *Design guidelines*

There are currently no specific design guidelines in the AHSEPP for low rise boarding houses. The AHSEPP requires implementation of appropriate guidelines so as to ensure that local development controls will prevail and that developments are compatible with the character of the locality.

### **Residential Development – Land and Housing Corporation**

The AHSEPP currently requires Housing NSW to notify relevant councils and the occupants of adjoining land of a proposed development and to take into consideration submissions made within 21 days. The review paper notes that stakeholders have expressed concerns about the adequacy of the consultation provisions. The Committee shares the concern about the current level of consultation and considers that the consultation period should be consistent with a council's policy, or a minimum period of 21 days, whichever is the greater.

The proposal to expand the NSW Housing Self-Assessment Threshold from 20 to 30 units is opposed. The Committee considers that the local council should remain as the consent authority because developments with potential for wider community impacts (such as parking) need to be considered by an authority with intimate knowledge of the area.

### **Conclusion**

The Committee recognises the significant challenge presented by the long term decline in the availability of affordable rental housing and social housing and the growing community concern about the decline. It is critical, however, in addressing these important concerns, that the tools chosen facilitate the long term supply of affordable rental housing that delivers housing that is appropriately located and designed to a standard that maintains a high level of amenity for all residents.

Once again, the Committee thanks you for the opportunity to comment on the review of the AHSEPP.

Yours faithfully,

  
**Stuart Westgarth**  
President