

Submission

No 56

INTERNATIONAL STUDENT ACCOMMODATION IN NEW SOUTH WALES

Organisation: The City of Newcastle

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Date Received: 17/10/2011

The NSW Government has made it easier and more viable to build new generation boarding houses that provide self contained boarding house rooms to a wide range of tenants. In June 2009, the NSW Government introduced a new Affordable Rental Housing - State Environmental Planning Policy (AH SEPP) to help increase the amount and diversity of affordable housing in NSW and address criticisms waged against older style boarding house accommodation. New style boarding houses can provide low cost, flexible rental accommodation to a wide range of tenants, particularly single retirees, people who are homeless, working singles, students and young couples.

More recently Newcastle developers have focused on meeting the student accommodation market. Since the AH SEPP has been in place, some 300 boarding house rooms are at various stages of assessment within the development application pipeline, with several approvals under the AHSEPP. Whilst the majority of these proposals are under ten rooms, there has been one significant development of over 100 rooms yet to be determined by the Joint Regional Planning Panel.

Student Accommodation in Newcastle

The housing available to students in Newcastle is varied ranging from purpose built and managed residential housing on campus, to private facilities promoted as boarding houses which target the student accommodation market; to private dwellings available for rent either by dwelling or by room under the control of either property owners or real estate agents.

The University provides a degree of coordination in off campus accommodation and properties are listed on the University website in "good faith". The University has considered a rating system for student accommodation; however, there are significant resource issues for the university in monitoring such a system, particularly when the majority of housing is made available through local real estate agents.

The University of Newcastle is proposing to build some 800 additional student units on site at their Jesmond Campus to accommodate the demand from students.

"Illegal" Boarding Houses and Council

Council regularly receives community complaints in regards to perceived illegal boarding houses. The demand for student housing has resulted in many residential properties legitimately being let to groups of students, particularly in the vicinity of the University. Typically, complaints focus on parking related issues (cars on lawns and kerbs), failure to take out the garbage, long grass, maintenance, personal perceptions around international students and illegal building works (someone living in the garage; more people onsite than known bedrooms). Under the AH SEPP, minimal on-site parking is not grounds for refusal of a Development Application for a boarding house.

In some cases, the scale of activity constitutes unauthorised development with minor building alterations that have not been approved by Council, but in most cases student share accommodation is consistent with a normal family way of living, and as such is not considered to be illegal boarding houses.

Council has been guided by independent legal advice obtained in 2008 in determining what constitutes a boarding house. Under the terms of the Newcastle Local Environmental 2003, (the planning instrument current in 2008) boarding houses were a prohibited use in 2(a) residential zones.

In general, the advice concluded that a distinction could be made between the occupation of a standard residential dwelling by three to six students and the occupation by twelve or more students in a twelve bedroom house designed specifically to operate as a boarding house. It was noted in the advice that rooms being let out, rather than the whole of the premises, does not necessarily lead to a conclusion that the premises are being used as a boarding house.

Council's compliance efforts therefore focus on those cases where there are impacts on the health and safety of occupants or neighbours, or environmental impacts. The investigation and enforcement of boarding house complaints can be extraordinarily difficult to prove for a number of reasons and these include:

- Council has no right of entry to residential property, therefore must seek "consent" to enter the property ie. Council must be allowed into the premises by a resident.
- The need to gather sufficient evidence that complies with the "rules of evidence".
- The transient nature of renters and hence dwelling occupancy numbers.

Further issues related to enforcement include:

- The transient nature of unauthorised minor building works that can be reinstated after Council action.
- If an order is issued against an owner, Council is responsible to ensure that people who are being made homeless are appropriately rehoused.
- The overall costs to local government in identifying issues, collecting evidence and undertaking legal proceedings can be high and protracted.
- Changes to legislation - An example of this occurred where Council refused a 12 bedroom boarding house which then went to the Land and Environment Court. The decision was upheld by the Court. The process was a significant financial impost to Council resources overall. The legislation changed shortly afterwards and the development proposal was permitted under the new legislation.

Under the *Local Government Act 1993* and Local Government (General) Regulation 2005, local Councils have certain responsibilities in relation to licensed and unlicensed boarding houses. However, these are limited to fire safety requirements and basic standards relating to the maximum number of boarders and lodgers, and the cleanliness and general amenity of the premises. Councils are not required to maintain records of boarding houses within their area.

Planning Instruments

There are currently no standards applicable to student housing apart from those referred to under the AH SEPP in terms of room size, location and zonings.

The AH SEPP introduced boarding houses as a permissible use within the current 2a Residential (residential) zone where they were previously prohibited. While this may have been unpopular with residents in this residential zone, it has addressed a need for boarding house areas near the University. The AH SEPP was amended in May 2011 to require that sites could only be used for boarding houses within 400m of a B2 or B4 zone.

Table 1 below illustrates the current and proposed LEP zones in the Newcastle LGA. Where previously boarding houses could be in any residential area under the AH SEPP, this has now been significantly constrained.

Table 1: Current LEP 2003 zones and the draft proposed LEP 2011 zones

Current Zoning NCC LEP 2003	Draft Zoning LEP 2011
3(a) Local Centre	B1 Neighbourhood Centre
3(b) District Centre	B2 Local Centre
3(c) City Centre	B3 Commercial Core
3(d) Mixed Use	B4 Mixed Use
4(a) Urban Services	B5 Business Development

Whilst in theory this requirement is strategically appropriate, there are assumptions about the nature of those zones and where education facilities actually operate which is not accurate in reality. The University, as a large educational facility is zoned 5(a) Special Uses Zone (Newcastle Local Environmental Plan (LEP) 2003) and will be SP2 Infrastructure Zone (Draft Newcastle LEP 2011). The Jesmond Campus of the University of Newcastle is located at least one kilometre from the nearest potential B2 zoned area in Newcastle.

There is a critical need to maintain a social justice perspective within any legislative amendments and that these amendments can be equitably applied across all of NSW and its regional areas, rather than be mainly suitable and applicable in Sydney.

Council Comments

It is unclear yet whether the AH SEPP is resulting in better outcomes in terms of student accommodation quality and there is no simple "objective test" that can be applied in determining the quality, amenity and safety of a boarding room. While small rooms are sometimes considered to be poor quality, this isn't necessarily the case if the amenity and facilities provided within the development are reasonable. The 'boarder room' sizes within the SEPP appear acceptable but are dependent on further issues as outlined below:

1. The **communal living room provisions** needs to be further clarified. The inclusion of adequate sized communal living areas is potentially being limited by the maximising of the number / size of boarder rooms (ie. which decreases the overall amenity and potentially the developments should have less boarder rooms). It is noted that the definition only says '*..available to all...*' and does not offer any requirements for size / adequacy (although it infers it). Clause 30 AH SEPP also does not include any minimum standards. Potentially a minimum area for a communal living room plus increase in size per boarder may be an appropriate approach.
2. Stemming from point 1, it is noted that the AH SEPP allows for the rooms to include private kitchen and bathroom facilities. While this is not objected to, in combination with the lack of communal area requirements, it can lead to developments which predominately appear to be designed as *urban housing* or 'units' with the *communal living room* 'tacked on' as an after thought. This can even occur to the extent where each room is separately accessible and the communal area is separate from the rooms and questions have been raised as to whether this would comply with the current definition of a communal area. There is little in the AH SEPP which prevents this and the effect is that these controls appear to be used to circumvent controls within Council's DCP aimed at *urban housing*.

3. **Parking** – The SEPP relies now on the concept of *accessible area* to limit the required parking (29(2)(e)).

'accessible area means land that is within:

- (a) 800 metres walking distance of a public entrance to a railway station or a wharf from which a Sydney Ferries ferry service operates, or
- (b) 400 metres walking distance of a public entrance to a light rail station or, in the case of a light rail station with no entrance, 400 metres walking distance of a platform of the light rail station, or
- (c) 400 metres walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) 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.'

This is a significant improvement over the parking provisions originally included (ie. which restricted providing more parking). An issue of concern is that the nature of the Newcastle LGA often results in many students' still needing cars to access employment, service and educational facilities, which results in parking problems. The reliance on the *accessible area* concept and within 400m from B2 or B4 zones, assumes a better transport / retail access than may actually be achieved within Newcastle and hence the assumption of lower car use may be unfounded. It is important to note that this is a standard on which a development cannot be refused.

4. **Design Controls** - The AH SEPP has limited controls for design and landscaping. Clause 29 controls, on which development cannot be refused, are between reasonable (eg. use existing LEP heights) to relatively generous (eg. parking) and do not offer much assistance. It is noted that the private open space required is less than what would be required for one *urban housing* dwelling in Newcastle and at 20m² is likely to be dominated by clotheslines. It is further noted that 30A below is very broad:

'30A Character of local area

A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.'

Alternatively, it would be clearer for the AH SEPP to have design controls similar to the SEPP Housing for Aged for infill development or for the AH SEPP to more clearly allow for Councils' development controls to specifically complement boarding houses.

5. **Affordable Housing** – while the AH SEPP aims to assist in housing affordability, it is of concern that the use of privately developed boarding houses may not be achieving appropriate outcomes in terms of specific student housing (eg. international students potentially exposed to greater difficulties in finding reasonable accommodation or subject to rorts / scams). Potentially a greater proportion of housing aimed specifically at students should be developed by the universities themselves, although it is acknowledged that the control of boarding houses which don't have consent is difficult. There is potential to license boarding houses and student accommodation boarding houses (which could be a difficult definition to resolve) via control of an institution and backed by the authority of a government agency would be appropriate.

Associated Legislation and Boarding Houses

The Building Code of Australia (BCA) provides some guidance in regards to building standards eg. safety, however, does not provide guidance for amenity and wellbeing.

The *Youth and Community Services Act 1973* (YACS Act) provides for the licensing of boarding houses by Ageing, Disability and Home Care, Department of Human Services (ADHC). Residents of boarding houses are considered homeless (tertiary) because they have no tenancy rights in respect to the accommodation that they live in, and rely on shared facilities such as bathrooms and kitchen facilities.

Under the YACS Act, where there are more than two (2) people with a disability living in a premises, these boarding houses are supposed to be licensed. However, boarding house owners regularly fail to seek a licence under this Act and hence remain unlicensed with no form of oversight from any agency. When a premise is actually licensed, ADHC may not have the resources to ensure the boarding houses comply with their licenses or even be able to gain right of entry to the premises to ensure that persons with a disability are accommodated in housing of a sufficient standard that provides for their health, comfort, safety and proper care as required under the *Youth and Community Services Regulation 2010*.

Further Comments

Council notes the stated objectives of the proposed Environmental Planning and Assessment Amendment (Boarding Houses) Bill NSW 2010 and makes the following comments:

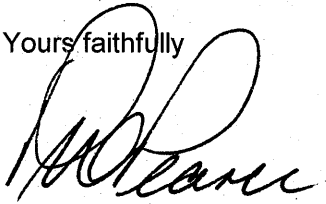
- The language used within the proposed amendment should be consistent with the language and definitions as used in the current NSW standard local environmental plan templates and overseen by the NSW Department of Planning and Infrastructure.
- The proposed amendment should relate or refer to the *Youth and Community Services (YACS) Act 1973* and *YACS Regulation 2010*, particularly in regards to the definition, registration and management of boarding houses.
- There is potential for three (3) State Agencies (Planning, Human Services and Services, Technology and Administration) to be involved in some facet of boarding houses with a boarding house register proposed to be held by Fair Trading with oversight by the Director General. A more centralized and coordinated approach would have more efficient administrative and community outcomes.
- The YACS Act (and any other associated legislation) should also be reviewed to ensure that the legislation reflects current community concerns and definitions; and that the line of responsibility is clearly identified, articulated, accountable and funded.
- The Bill proposes to give Council officers enhanced rights of entry to premises suspected of being a boarding house and that the Court may rely upon circumstantial evidence in proceedings against an alleged un-authorized boarding house. Similar provisions have been incorporated in recent years into laws regarding investigation of brothels. Informal legal advice supports the view that it would be very courageous to go to court on these matters with only circumstantial evidence, notwithstanding the provisions of the relevant Act.
- While these amendments would raise community expectation that Council could and would act swiftly against those hundreds of student rooms being let individually, in reality it would still be a fairly drawn out process establishing the numbers and identity of persons allegedly living in a dwelling.

- In addition, it does seem somewhat draconian to imagine Councils being able to enter, without permission, premises where people live and demand they answer questions regarding their identity.
- The Bill foreshadows above normal scrutiny of Council officers' actions in instances of entry without permission by giving the NSW Ombudsman a special brief to review Council officers' actions in this regard.
- The proposed Bill is about increased compliance activity. It follows that if this compliance activity is successful, it may potentially reduce the number of rooms available to people to live in shared accommodation, if boarding houses are only able to gain planning approval in areas set out in the Affordable Housing SEPP and the draft NLEP 2011.

Council would require significant additional resources from the State Government if additional compliance and enforcement levels were required.

Thank you for the opportunity to make a submission to the Legislative Assembly Social Policy Committee inquiry and your generous extension of a submission date to 14 October 2011. For further enquires in regards to this submission, please contact Judy Jaeger, Director Future City (City of Newcastle) on 4974 2709.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Phil Pearce', written over the typed name.

Phil Pearce
GENERAL MANAGER