Submission

No 65

INTERNATIONAL STUDENT ACCOMMODATION IN NEW SOUTH WALES

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Date Received: 31/10/2011

Forwarded to socialpolicy@parliament.nsw.gov.au on 31 October 2011.

Submission to

NSW Parliamentary Social Policy Committee Hearing into "International Student Accommodation in New South Wales". Public Hearing for Ryde Residents.

Scheduled for Thursday 3rd November 2011 in the Ryde Civic Centre Top Ryde at 11AM.

Submitted by: Mick De Giorgio BA, LLB, GAICD

Overview

I am a resident of Marsfield and have lived in the City of Ryde since 1954.

This submission is essentially confined to recommendations that the Social Policy Committee is urged to consider, and adopt, in the context of its terms of reference and the proliferation of so-called boarding houses, illegal and otherwise, in the suburb of Marsfield, as a consequence of Macquarie University and other educational institutions attracting international students to the Ryde area.

However, it is worth observing that there exists a lack of clarity in respect of the use of the expressions "student housing". "*student accommodation*", "*affordable housing*" and "*boarding houses*". This needs to be borne in mind, as appropriate, the essential point being that "*student accommodation*" should not be confused with boarding houses in the general community.

The reason why this submission has confined its scope is the awareness that the Committee has already held a public hearing on 23 October, 2011 and has heard evidence from various persons including, inter alia, Mr Alan Patrick, the Spokesperson for the resident group known as MARS (Marsfield Against Residential Suffocation). It has also received some documentation from MARS.

Therefore, it is not sought to repeat here things of which the Committee may already be aware. However, the focus of this submission is the protection of vulnerable low density and medium density residential areas and the right of bona fide residents of those areas to not have their established way of life diminished by those pursuing financial gain.

The recommendations that this submission urges the Committee to consider and adopt include the following:-

Interests of Bona Fide Residents Not to be Subordinated

1. The Government should pass legislation to entrench the principle that, in relation to the provision of accommodation for international students in low density and medium density residential areas, the interests of the bona fide residents of a low density or medium density residential locality must not be arbitrarily subordinated to the interests of transient residents (for example, international students). To do so would be unfair, oppressive and unreasonable.

Adequate Student Accommodation to be Provided by Educational Institutions

2. The burden of providing adequate international student accommodation should be borne by each educational institution which actively seeks to attract international students with a view to gaining a commercial financial return for itself. Such educational institutions must not be subsidized, either directly or indirectly, by the bona fide residents of adjacent or nearby low density or medium density residential localities.

   Accordingly, it should be mandatory that each such educational institution make adequate, appropriate and acceptable arrangements to house its international student population before it accepts them as students.

   The essential point here is that commercial activities (and this includes educational institutions seeking to gain additional income by attracting international students) must not be given a subsidy by governments through the forcing of adjacent residential areas and communities to provide the student accommodation necessary to meet the housing needs of international students.

   Therefore, a party seeking to alter the status quo (or whose activities have the inevitable consequence of altering the status quo) of any residential area or community should bear the cost of any negative impact on such residential areas or communities.

Specific Zoning Areas to be Designated for Student Accommodation

3. When zonings are planned there should be specific areas designated for international student accommodation and these areas should not be located within low density or medium density residential areas or communities (existing or future).

   This is because the ad hoc alteration of existing low density or medium density residential areas, to enable student accommodation to be provided therein, is prima facie wrong and immoral and has the potential to cause serious disquiet in

established residential communities. This can impact detrimentally on both students and residents.

EP&A Act to be Applied, Councils to be Educated and L&E Court Directed

4. Councils must be obliged (and appropriately educated) to properly consider the requirements of the EP&A Act in relation to a Development Application **("DA"**). It is not simply a matter of *"ticking the boxes"* in relation to the **State Environmental Planning Policy (Affordable Rental Housing) 2009 (2009 SEPP)** and then ignoring the key requirements of section 79C(1) of the ***Environment Planning and Assessment Act 1979*** **(EP&A Act")**, a practice that many councillors seem to have adopted.

   Furthermore, legislative action needs to be taken to ensure that the Land and Environment Court also properly and substantially (rather than merely in form) considers every aspect of the requirements mandated by section 79C(1) of the EP&A Act and accepts, understands and properly applies the principle that the provisions of the 2009 SEPP do not override that obligation. The Land and Environment Court should be legislatively prohibited from simply adopting a "ticking the boxes" approach to these sorts of matters that might come before it.

Prescription of EP&A Act Matters to be Considered by Councils

5. At least in respect of student accommodation DAs, the NSW Parliament must prescribe the form and substance of those things that must be taken into consideration by local councils when considering the requirements mandated by section 79C(1) of the EP&A Act. One of those things must include the impact that such a DA approval might have on the well-being and amenity of an established residential neighbourhood, including the potential to change the character of that neighbourhood.

   The recommendations to councillors from Council officers and the Council record of approval or rejection of the DA must have minimum requirements as to format and content (including reasons) and those minimum requirements should be established with a view to enabling reasonable and proper objective scrutiny of the recommendation and decision to occur, so as to eliminate bias (including political bias).

Obligation to Identify and Protect Vulnerable Residential Areas

6. Councils must be obliged to identify low density and medium density residential areas or communities that are particularly vulnerable to the impacts of commercial or other non-residential activity by reason of the proximity of those areas to such activities, for example, proximity to a University that actively seeks to attract international students without making adequate provision to house the students that it has attracted.

Those residential areas or communities that are so identified as being vulnerable should be given an appropriate measure of protection with a view to ensuring that any social or economic burden that they are asked to bear is no greater than that which residential areas of communities are asked to bear generally.

Need for Advocate of the Public Interest

7. The Environmental Defender's Office should be charged with the capacity to represent and advocate the public interest on behalf of the bona fide residents of low density or medium density residential areas or communities who might be impacted by DA applications that have the potential to diminish those areas and communities in terms of being family oriented places intended to benefit ordinary families and bona fide residents as distinct from transient residents.

   Such a public interest advocate is, particularly, necessary in relation to DA applications that are to be dealt with in the Land and Environment Court and that involve the provision of student accommodation in low density or medium density residential areas or communities.

Need for NSW Crown Solicitor's Office to Represent Councils

8. Consideration should also be given to the NSW Crown Solicitor's Office representing Councils where a there is an appeal to the Land and Environment Court in respect of a failed DA application relating to proposed student accommodation development in low density or medium density residential areas or communities.

   This would serve to overcome the legal costs fear that some councilors seem to harbour. Perhaps, such an obligation on the part of the Crown Solicitor could be made subject to he/she receiving a petition (signed by at least 20 residents from the suburb where the development is proposed) requesting that such representation be provided by the Crown Solicitor.

DA Applicant to Bear Onus of Establishing Entitlement to Approval

9. It must be mandated that the DA applicant, for a development for student accommodation in low density or medium density residential areas, must have the onus of <u>positively establishing</u> its entitlement to development consent.

   This onus must be discharged to a certain mandated and <u>prescribed standard</u> so as to provide greater guidance for, and consistency from, local councils as to how these matters need to be dealt with. An appropriate legislative rule of thumb to adopt would be a presumption against approval with the DA applicant being obliged to establish a positive entitlement in favour of approval.

Mechanisms for Mandatory Community Consultation

10. There should be formal mechanisms established and mandated through which local councils are compelled to identify and ascertain the thinking of relevant communities in low density and medium density residential areas that might be impacted by DA applications or proposals in relation to student accommodation.

    At present councillors seemingly do not have the means, capacity or desire to properly be guided in this area. In fact, there is evidence to even suggest that some councillors do not really want to know what communities are thinking in relation to these matters because those councilors think that they know best.

Mandatory Impact Statements in a Prescribed Form

11. Any DA application for student accommodation for low density or medium density residential areas must be accompanied by impact statements, in a prescribed form, relating to social and economic impacts of the proposed development and why the proposed development is not contrary to the public interest.

    The public interest impact statement, in particular, should provide justification beyond a reasonable doubt that the proposed development is not contrary to the public interest. It should be mandated that the Land and Environment Court actively consider and specifically rule on these issues in any matter that comes before it in relation to DA applications for student accommodation in low density or medium density residential areas.

Proposed Legislation to be Prospective

12. Any proposed legislation to regulate boarding houses (including student accommodation) should be prospective and, in the first instance, only apply to any DA that was approved on and from the date that the 2009 SEPP came into force.

    The reason for this is to avoid any unintended consequences in respect of boarding houses that were legally operating prior to that date, particularly, in areas where it would be difficult to immediately adhere (both in practical and financial terms) to the requirements of such legislation without allowing an appropriate transitional period of time.

    The penalties for illegal boarding houses outside a radius of say 4 kilometres from the Sydney GPO should be onerous and no DA application should be considered whilst the subject property conducts an illegal boarding house or illegal student accommodation, as the case may be.

New Offences for Councils and Councillors

13. It should be made an offence for a local council to intentionally, knowingly or recklessly fail to formally and actively seek the views of, and engage with the bona fide residents of relevant residential communities, where there is a reasonable likelihood that there will be DAs or proposals submitted to the council for student accommodation developments in low density or medium density residential areas.

    It should also be made a prima facie offence where it can be demonstrated, on the balance of probabilities, that a councillor has intentionally, knowingly or recklessly subordinated applying the law to such DAs or proposals in favour of vested interests or groups. What is also being advocated here is a shift in the onus of proof.

Immediate Suspension of the Boarding House Provisions of the 2009 SEPP

14. The boarding house provisions of the 2009 SEPP should be immediately suspended to allow the Government sufficient time to properly consider the impact of the SEPP in the context of international student accommodation.

    This is necessary to avoid a windfall being conferred on DA applicants who might seek to push through their DAs before changes are made.

Other Matters Advocated by MARS

15. There should also be adopted each of the matter advocated by MARS in its letter to the Director General, Department of Planning – Policy, Planning Systems and Reform, dated 25 February 2011, to the extent that it has not been covered by the foregoing.

    A copy of the text of this letter is reproduced below for the convenience of the Committee. The attachments to that letter can be made available to the Committee, if required.

I am available to discuss with the Committee any of the material contained in this submission.

Text of letter from MARS to the Director General, Department of Planning – Policy, Planning Systems and Reform, dated 25 February 2011.

25 February 2011

Mr Sam Haddad
Director General
Department of Planning – Policy, Planning Systems and Reform
GPO Box 39
SYDNEY NSW 2001

Dear Mr Haddad

Submission

Subject: ***State Environmental Planning Policy (Affordable Rental Housing) 2009*** **(2009 SEPP) – Boarding House Provisions.**

Why this submission is being made to the NSW Department of Planning ("Department")

In accordance with the provisions of the 2009 SEP, the Department is conducting a review of the 2009 SEPP and is inviting submissions from interested parties.

This is a response to that invitation and is made by and on behalf of a resident group called **MARS** which is very concerned as to the impact that the application of the Boarding House Provisions of the 2009 SEPP are having on the Marsfield area specifically, and the Ryde area generally.

The Submission

MARS's Submission is confined to the Boarding House provisions of the 2009 SEPP. The details of MARS's Submission are contained in the attached copy documents, namely:-

1. Statement of Facts and Contentions made in Case number 10540 of 2010 (Land and Environment Court of New South Wales);
2. Draft BOARDING HOUSE POLICY Framework for the City of Ryde; and
3. The Marsfield Against Residential Suffocation Story.

All statements and contentions contained in the above documents form a part of this Submission and should be read as such.

However, MARS particularly submits that the following conditions, or conditions to the following effect, should be a mandatory component of any DA approval/consent given in relation to a Boarding House:-

1. development approval or consent is only contingent on there being no breaches of approval conditions and, in the event of any breach, then the approval/consent immediately lapses.

2. approval/consent is contingent on the boarding house provisions of the 2009 SEPP and the 2010 LEP boarding house provisions continuing to remain in force so that, in the event that those boarding house provisions
    a. are repealed, the approval/consent lapses, on the expiry of 12 months immediately following such repeal, or
    b. are amended, the approval/consent lapses, on the expiry of 12 months immediately following such amendment, to the extent that the subject premises no longer comply with the 2009 SEPP and/or 2010 LEP (in each case, as amended).

3. where the subject matter of the DA application is in a *low density* or *medium density* general residential, zone under the 2010 LEP, then
    a. the subject premises must not be occupied by more than 6 adult lodgers;
    b. no boarding room, designated as such in the approval/consent, will be occupied by more than 1 adult lodger;
    c. the subject premises must have at least 2 bathrooms and 2 toilets;
    d. no activity or thing will be undertaken or permitted in, on or around the subject premises, that might indicate, or has a tendency to indicate, to the reasonable person bystander that the subject premises is being used, or is likely to be used, as a boarding house;
    e. except on days designated for garbage collection for the subject premises, there must be no garbage receptacle visible from the street at any time.

4. a contractual right for Council officers to enter (during daylight hours) and inspect the subject premises, upon the giving of one (1) hour's notice (oral or otherwise) to any occupant of the subject premises.

5. a continuous warranty of compliance with
    a. all conditions of approval/consent imposed by Council (including each condition of any plan of management required by Council as part of the DA consent/approval) in relation to the boarding house DA approval/consent, and
    b. all laws applicable to the subject premises,

    so that if the warranty is breached, then the DA consent/approval is immediately negated and lapses forthwith.

6. if a consent/approval lapses for any reason whatsoever, then Council is entitled to reject any subsequent DA application for a boarding house in relation to the property, the subject of the lapsed approval/consent, for a period of five (5) years after the date of the lapsing.

7. the DA applicant, upon approval/consent being given to the boarding house, must immediately (and in writing) notify the Australian Taxation Office that the subject premises is/will be used as a boarding house as well as the maximum number of adult lodgers authorised for the subject premises, and a copy of such notification must be forwarded to the General Manager of Council.

8. any other conditions that render transparent all payments made by boarders in relation to their occupancy of the subject premises, as Council's officers might from time to time determine.

9. the compulsory mowing of all lawns on the property at least once per fortnight and the keeping of all gardens in a clean and tidy condition.

10. the prohibition of all garbage receptacles from being visible from the front of the property except from 6pm on the date immediately preceding the scheduled collection of the garbage by Council and/or its contractor.

Further comments follow as a commentary and also as a part of this Submission.

MARS

MARS (Marsfield Against Residential Suffocation) was formed as a response to the "suffocation" of the bona fide residents in the Marsfield Area (a suburb of Ryde), whose ability to peacefully live their lives is being adversely impacted upon by its geographical proximity to Macquarie university and the Macquarie Business Park. This proximity makes Marsfield a vulnerable area for its environment and its bona fide residents. MARS does not have any resources or funding.

At Ryde Council's meeting on 27 April 2010 at least 10 speakers addressed the Council on the issue. Furthermore, a petition opposing Boarding Houses was signed by over 1,000 concerned residents and this petition was presented to the NSW Member for Ryde on the steps of Parliament House.

There exists actual and anecdotal evidence that suggests the potential for certain sections of the community being blamed for what is happening. People are naturally muted in this regard lest they be charged with having racial motivations. The development of this type of attitude and thinking is plainly wrong and is detrimental to the fabric which underpins the solid multi-cultural community which has evolved in Marsfield for over 50 years.

The Fundamental Problem

The essential problem is Marsfield's geographical proximity to Macquarie University and the number of international students that attend that University, thereby providing a ready market for persons wanting to buy and convert normal residences into Boarding Houses. Left unchecked this will very quickly convert the relatively new suburb of Marsfield into a University suburb, along the lines of an old suburb like Glebe which has a geographical proximity to the University of Sydney. Ryde City Council must protect Marsfield from such an outcome because Marsfield has always been, is, and must remain a family oriented suburb.

There is currently a proliferation of "illegal" Boarding Houses in Marsfield. This might be in the order of more than 150 and Ryde Council readily acknowledges that it has a problem in this regard. It is suspected that attempts are being made to take advantage of the 2009 SEPP provisions to legitimise those activities. Council officers have a reluctance to note and report to Councillors ownership and use of various properties being used as boarding houses without council approval and to identify the reality of what is happening in Marsfield and emerging business trends. This is partly due to the costs associated with vigilance being maintained in this regard.

A Council officer has even admitted that in at least one case that potential student boarders for Marsfield are recruited overseas and the accommodation arrangements (including payment of monies) is put in place overseas, before students even arrive in Australia.

Vested Commercial Interests & Macquarie University

MARS is concerned about the impacts on the suburb of Marsfield posed by the Boarding House Provisions of the 2009 SEPP. The principal concern of MARS is that the 2009 SEPP will be utilised by commercial interests to legitimise "illegal" boarding houses whose market relies on international full-fee paying students attending Macquarie University and whose accommodation needs cannot be satisfied by on-campus accommodation provided by that University.

The situation is exacerbated by the University continuously trying to attract more such students to generate revenue for itself.

Simply put, residents of the suburb of Marsfield are being asked to subsidise Macquarie University in that University's attempts to generate income. Marsfield is to provide cheap housing for international full-fee paying students and it does not matter what impact this has on the Marsfield area.

Having said that MARS is not opposed to Boarding Houses per se but is opposed to the concentration of, and proliferation of, such Boarding Houses in Marsfield. Boarding

Houses should be spread across the City of Ryde. To that end MARS has submitted a Draft Boarding House Policy Framework in the hope that it might be adopted by Ryde Council. This has not happened. Such a policy should be immediately adopted.

Need to Legally Obligate Macquarie University to Supply Data and Take Other Measures

It has been pointed out that the Boarding House problem in Marsfield, particularly, and Ryde generally, has been mainly caused by the activities of Macquarie University. That University wants the benefits but does not want to bear the burdens associated with its attracting overseas full-fee paying students to the University. It expects the Marsfield residents to subsidise it in this regard.

Accordingly, MARS submits that Macquarie University should be legally compelled to

- Provide statistical information to Ryde City Council, based on the data that the University maintains, showing the number and concentration of its students living in Boarding Houses in geographical areas defined by Ryde City Council (for example, the vulnerable area bounded by Epping. Herring, Agincourt and Culloden Roads, Marsfield and/or various smaller parts within that area);
- Place on its website warnings for students who propose taking up accommodation in an "illegal" boarding house that they should be wary of “illegal” Boarding Houses. This might be considered with a view to protecting the students' interests;
- Reaffirm on its website the need to obtain a receipt for cash payments from accommodation providers. Student surveys might be useful in ascertaining whether or not this is, in fact, happening and whether or not there is compliance by the accommodation providers with bond requirements etc ;
- Require accommodation providers to seek registration with the University and to confirm in writing
    - that they are not operating an "illegal" boarding house;
    - the number of bedrooms in the establishment; and
    - the maximum number of persons who can live in the establishment at any one time;
- Impose and conduct inspections by a Macquarie University officer (or, if the University agrees, by a Ryde Council officer) as a pre-requisite to registration as a Macquarie University accommodation provider, with written agreement also being given by the accommodation provider to regular (but random) inspections;
- Routinely survey Students as to the standard of accommodation, with a view to that standard being maintained;
- Immediately review its strategies for dealing with the accommodation and parking needs of its student population (particularly those students who have an overseas domicile) and, in this regard, to engage in meaningful consultation with the University’s sources of funding (both public and private) as well as local government and local communities, and
- Formally commit to actively pursuing the goal of having its parking needs and student accommodation needs confined within University property boundaries.

Ryde City Council to Recognise/Designate part of Marsfield as a vulnerable area

MARS submits that there is a real need to formally and immediately recognise/designate that the area of Marsfield (bounded by Epping Road, Herring Road, Agincourt Road, and Culloden Road) as a vulnerable area, whose long term residents are vulnerable to the detrimental impacts of the Boarding House provisions of the 2009 SEPP and Ryde LEP 2010, the activities of Macquarie University (which activities are generating a current, serious and unmet need for student accommodation and parking), and the activities of Macquarie Business Parking and Woolworths (also generating a current, serious and unmet need for parking).

Need for an Advocate of the Public Interest

The interpretation of the Boarding House Provisions of the 2009 SEPP are clearly misunderstood by Ryde Council officers either intentionally or unwittingly and, accordingly, are not being properly applied. At Ryde City Council there are 2 competing views.

On the one hand the majority of Councillors, anxious to take account of the concerns of the bona fide residents of Marsfield, seemingly favour deferring the approval of the conversion of existing residences from "illegal" to "legal" Boarding Houses until the 2009 SEPP has been properly considered and legal advice obtained as to its scope and what is genuinely in the public interest.

On the other hand, Council staff have taken the decision to recommend approval of all Boarding House applications which meet the technical requirements of the 2009 SEPP and to virtually ignore the requirements of Section 79C of the *Environmental Planning and Assessment Act 1979* **(EP&A Act),** particularly, a consideration of the public interest.

In the only known appeal to the Land and Environment Court to date, the view of MARS is that the Council staff ran "dead" in the matter on the basis that to vigorously defend the matter would have been, in the staff's view, a waste of time and money. In that case MARS is of the firm view that the respective merits were neither properly argued nor considered. The public interest was ignored.

Therefore, in essence, MARS is of the view that there is now no advocate for the public interest and the concerns of the community of Marsfield and for the proper interpretation of the 2009 SEPP. In other words, Council staff is taking the line of least resistance and the approach that is easiest for it - capitulate rather than advocate the public interest.

If the Boarding House provisions of the 2009 SEPP are not properly scrutinised in the context of the EP & A Act, then there will be a proliferation of boarding houses in Marsfield which, due to its proximity to Macquarie University, remains very vulnerable in environmental terms, in that the surroundings of the residents of Marsfield will be

changed forever with Marsfield being effectively turned into a University town, along the lines of Glebe. This would be a very unjust outcome.

MARS does not have the resources or knowledge as to how to properly advocate the public interest and promotion of justice in the context of Land and Environment Court proceedings and, therefore, it seeks the assistance from the Department of Planning in this regard for any future appeals.

A few examples of issues that need to be resolved as to the meaning of the 2009 SEPP are as follows:-

- Does to 2009 SEPP render irrelevant the provisions of Section 79C(1) of the EP&Aact?
- Who has the onus of establishing an entitlement under the 2009 SEPP for a DA to be approved, the DA Applicant or the Council?
- Who needs to be satisfied that the conditions of approval will not be flouted and cannot be satisfied as to the matter set out in Clause 30(1) of the 2009 SEPP – the Councillors themselves OR the Council staff? It is submitted that If there is any suggestion at all that a DA applicant has been, directly or indirectly, involved in operating an illegal boarding house, then it is impossible for Council to be satisfied that the conditions of any approval will not be flouted and it is impossible for Council to be satisfied as to the matter set out in Clause 30(1) of the 2009 SEPP.

MARS rejects the assertions put by a couple of Ryde Councillors that the 2009 SEPP provides the opportunity for illegal activities to be made legal and, if this is not done, those illegal activities will be driven underground. It is submitted that such contentions are devoid of rational thinking and are even politically motivated.

Finally MARS seeks the assistance from the Department of Planning generally in advocating the protection of the fair interests of the residents of Marsfield in the context of the Boarding House Provisions of the 2009 SEP and also Ryde Local Environmental Plan 2010.

Yours sincerely

Alan Patrick

Spokesman for Residential Group called
Marsfield Against Residential Suffocation (MARS).

Attachments:-

1. Statement of Facts and Contentions made in Case number 10540 of 2010 (Land and Environment Court of New South Wales);
2. Draft BOARDING HOUSE POLICY Framework for the City of Ryde; and
3. The Marsfield Against Residential Suffocation Story.