

Item 3.2

Retention of Boarding Houses

File No: S051491

Minute by the Lord Mayor

To Council:

In the City of Sydney Local Government Area there are 311 registered boarding houses with a combined total of 6,352 rooms. While rent may be relatively cheaper than typical housing because they have smaller rooms, possibly lower amenity standards and shared facilities, many older boarding houses are not technically defined as Affordable Housing and are considered market rental accommodation.

Traditional, older stock boarding houses that are not owned and/or managed by Community Housing Providers (CHPs), are now defined as 'co-living' and not counted as Affordable Housing because there is no way to establish or enforce rental rates or tenant eligibility.

Following significant advocacy from the City of Sydney and other councils, changes were made to the boarding housing provisions in the State Environmental Planning Policy (Housing) 2021 (Housing SEPP). Changes included that any new boarding house project must be managed by a Community Housing Provider in perpetuity and rented to eligible households at affordable rents. So we can now be confident that new boarding houses are genuinely 'Affordable'.

However, in the City of Sydney, market conditions have made it financially appealing for owners to redevelop or convert their properties into newer market housing to increase rental or land sale value. Boarding house conversions often also occur because the cost of bringing old stock up to contemporary safety standards can be high.

Planning assessment of boarding house development applications

City staff are required to assess any Development Application (DA) to convert boarding houses to other uses against the Housing SEPP provisions and must take the Affordable Rental Housing SEPP Guidelines for Retention of Existing Affordable Rental Housing 2009 (the Guidelines) into account. These Guidelines are outdated; they do not prevent the loss of housing and do not consider the current housing affordability crisis. They are in desperate need of review.

Currently, the Guidelines set out various criteria that planners must consider when assessing DAs such as the impact of supply of affordable housing in the area, suitable arrangements for residents being displaced, building safety and the viability of maintaining its use as a boarding house. While this criterion must all be considered, the Guidelines prioritise the viability of maintaining the boarding use, identifying it as "a crucial part of the assessment", and asserting it is "unfair and counterproductive to seek the continued operation of a boarding house where that operation could not provide a reasonable return on investment".

The Guidelines include a formula to calculate viability that considers rental income, expenses, depreciation and upgrading costs. The two variables that have the biggest impact on viability are the rental income versus the property value. In the City of Sydney where property values are high, proving a boarding house is viable according to this formula is unlikely.

If an applicant can prove that it is not viable to maintain and operate the property as a boarding house, Councils have little grounds to refuse those applications, even if the application fails on the other criteria, and is unlikely to be overturned on appeal by the Land and Environment Court.

Where an application fails the viability test under the Guidelines and is approved resulting in a loss of housing, the applicant is required to pay a contribution towards Affordable Housing to “mitigate” the loss. This contribution is paid to the Department of Communities and Justice and then distributed to Community Housing Providers, however it’s unclear how much has been collected to date and how and where the contributions have been spent.

Since 2000, the City has received 29 DAs to convert boarding houses to other residential uses, with three DAs lodged this year alone. Only one was refused because it failed to prove the boarding house was not viable.

The City is also experiencing the loss of other low-income rental housing through the redevelopment of older residential flat buildings into newer residential buildings with fewer homes, particularly in the eastern part of our city.

Earlier this year, Council resolved to review the impact of boarding house conversions in the City of Sydney and provide recommendations on how we can retain boarding houses rather than sites being redeveloped. The City has now completed this review. Council also resolved to investigate what objectives and planning controls it could include in the Sydney Local Environmental Plan 2012 to protect against a reduction in housing when sites are redeveloped. This review is underway.

Action taken

Sydney welcomed many visitors during the bicentenary events in 1988 and we first saw boarding houses being converted to backpacker accommodation to accommodate them. As the former Member for Bligh, I was concerned this trend would continue or worsen in the lead up to the Sydney Olympics in 2000. At that time, boarding house owners were disincentivised from building, owning and operating boarding houses as their residential rating subjected them to particular council rates and land tax costs. Even at this time, boarding houses were already at risk of neglect and redevelopment.

I introduced the Local Government (Boarding and Lodging Houses) Amendment Bill 1994 which redefined boarding houses as ‘residential’ instead of ‘business’ which cut boarding house owners’ council rates. I also introduced the Land Tax Legislation (Amendment) Bill 1992 which would extend boarding house land tax exemptions to low-income rental properties. I withdrew the land tax bill as these changes were incorporated into the then NSW Government’s own legislation. Thirty years later, we still need to do more to increase the amount of Affordable Housing in our area.

In 2020, the former NSW Government released a report on the statutory review of the Boarding Houses Act 2012 ('the Act'). However, since then no changes to the Act or regulations have progressed. The City has many boarding houses in our local area, and we should review any proposed changes to the Act before they are made.

While housing is primarily the responsibility of the NSW Government, the City is using every lever available to us to deliver and support more Social and Affordable Housing across our local area. This includes through levies, subsidised City-owned land sales, through Voluntary Planning Agreements, and City grants to not-for-profit housing providers from our Affordable and Diverse Housing Fund.

The City's Affordable and Diverse Housing Fund has funded or committed to funding 483 'diverse' dwellings across our Local Government Area including housing for older women at risk of homelessness, housing for Indigenous students and housing for young people leaving out-of-home care. While not typically 'registered boarding houses', this accommodation is all non-private which generally functions like a boarding house i.e., rooms for people on low incomes with shared facilities.

While the City continues to play its part in delivering Affordable Housing, the NSW Government must review and update as necessary, the Housing SEPP and the Guidelines. The review should consider how all forms of low-income housing, including boarding houses, can be retained, and upgraded as necessary and how new boarding houses can be incentivised.

Recommendation

It is resolved that:

- (A) Council note the City has reviewed boarding house redevelopments and conversions in the City of Sydney and outlined options to retain them;
- (B) Council note the City is investigating what objectives and planning controls it could include in the Sydney Local Environmental Plan 2012 to protect against a reduction in housing when sites are redeveloped;
- (C) the Chief Executive Officer be requested to brief the Housing for All Working Group about the findings and recommendations of the boarding house review at its next meeting; and
- (D) the Lord Mayor be requested to write to the Premier, the Minister for Planning and Public Spaces, the Minister for Housing and the Minister for Better Regulation and Fair Trading asking the NSW Government to:
 - (i) implement the recommendations of the report on the statutory review of the Boarding Houses Act 2012 and consult with Local Government before any legislative changes are finalised;
 - (ii) immediately review the Affordable Rental Housing SEPP Guidelines for Retention of Existing Affordable Rental Housing October 2009, including the viability provisions, in consultation with Local Government to allow for a more balanced assessment of DAs resulting in a loss of boarding house stock;

- (iii) review the circumstances in which contributions are to be paid when development results in a loss of affordable accommodation so the loss is appropriately mitigated and contributions allocated in the area the housing is lost, in consultation with Local Government;
- (iv) provide funding for boarding house owners to bring stock up to contemporary standards, noting that any such funding should only be provided where owners do not increase rents beyond affordable rates; and
- (v) include requirements for financial compensation of displaced residents where a DA has been approved for a change of use from a boarding house.

COUNCILLOR CLOVER MOORE AO

Lord Mayor