



Lifestyle and opportunity @ your doorstep

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Enforcement Policy

Boarding Houses

October 2013

1. Scope

The scope of this policy is to define and regulate boarding houses to appropriate standards. This policy explains the criteria for legal boarding houses and the enforcement approach adopted by the City of Ryde in relation to unauthorised boarding houses and share housing accommodation.

The City of Ryde understands that not all student accommodation arrangements are boarding houses. The broad definition of a *boarding house* under the *Ryde Local Environmental Plan 2010* and the lack of a planning definition for other forms of shared housing has brought a number of living arrangements to be scrutinised as illegal boarding houses, where in fact, no development consent should be required nor any enforcement action taken. These are normally situations where there is no overcrowding of the premises and no illegal building works have been erected.

This policy will detail the appropriate information that determines the difference between a boarding house and a shared house arrangement and the steps taken by Council staff to reasonably determine that difference.

This policy should be read in conjunction with Council's Enforcement Policy - Boarding House Guidelines.

This policy was adopted by the City of Ryde on 8 October 2013 and came into effect on 30 October 2013.

2. Purpose of the Policy

The purpose of the policy is to provide the community with a common sense enforcement approach to the regulation of boarding houses and the enforcement of illegal boarding houses whilst allowing for share accommodation that is consistent with the "typical family arrangement" in terms of the number of occupants and quality of accommodation.

3. Guidelines/Procedures

Boarding houses and student share accommodation will have to meet appropriate standards in order to remain operating. The specific standards are detailed in the Boarding House Guidelines attached to this policy.

4. References

The primary legislation for the regulation of illegal boarding houses is the *Environmental Planning and Assessment Act 1979* and the *Boarding Houses Act 2012*.

5. Review Process and Endorsement

This Policy will be reviewed within 3 years of its adoption by the City of Ryde.



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Boarding Houses

Guidelines and Procedure

1. Introduction

This policy guideline explains the enforcement approach adopted by the City of Ryde in relation to share accommodation or rooming house, unauthorised boarding houses and registrable boarding houses.

Due to the significant student population in the City of Ryde and the limited affordable housing supply, a number of unauthorised boarding houses and share accommodation arrangements have been established. These accommodations primarily cater for the overseas student population.

The City of Ryde understands that not all share accommodation arrangements should require formal development consent to operate as a boarding house. The broad definition of a *boarding house* under the *Ryde Local Environmental Plan 2010* (RLEP 2010) and the lack of a planning definition for other forms of shared accommodation housing has brought a number of living arrangements to be scrutinised as illegal or unauthorised boarding houses, where in fact, no development consent should be required nor enforcement action be a priority. These are normally situations where there is no overcrowding of the premises and no illegal building works erected.

This approach co-incides with the introduction of the *Boarding Houses Act 2012* which recognises that boarding houses with more than 5 lodgers should be registered.

This policy guideline is intended to support the *Boarding Houses Act 2012* and the *Local Government (General) Regulation 2005*. The policy aims to provide the community with a common sense enforcement approach to the regulation of unauthorised boarding house development allowing for accommodation that is consistent with the “typical family arrangement” in terms of the number of occupants and quality of accommodation so as to prevent overcrowding and unsafe living arrangements.

This policy will detail the enforcement approach for share house accommodation, unauthorised boarding houses and approved boarding houses.

2. Purpose of the Guideline

The purpose of the policy guideline is

- To provide clarity in the expectations of Council with respect to shared housing arrangements and boarding house developments.
- To provide certainty to residents, landlords and tenants regarding the enforcement of unauthorised boarding houses and to reaffirm that the City of Ryde has a minimal tolerance approach to unauthorised building works and unauthorised boarding houses but is supportive of appropriate shared housing arrangements.
- To provide a practical guide to the community on the types of share accommodation arrangements that are considered appropriate.
- To allow for alternative student accommodation arrangements that can be reasonably deemed to be a share house accommodation arrangement.
- To provide consistency in the enforcement of unauthorised boarding houses, and to ensure transparency, procedural fairness and natural justice to residents, students and landlords.
- To use a standardised matrix of requirements that can assist staff to determine what can be reasonably deemed a boarding house and a share house.
- To establish an annual registration scheme and inspection program of approved boarding houses until a legislated system has been implemented.

- To promote the supply of appropriate student housing
- To provide certainty and information to landlords and property owners the relevant information as so they may comply with laws that aim to protect public health and safety.
- To provide tenants and students taking up rental accommodation with relevant information.
- To promote tenant/resident safety by way of fire safety measures
- To protect streetscape amenity of existing streets for the residents of Ryde.

3. What is a boarding house?

The NSW planning definition of a boarding house is broad and captures most share house accommodation arrangements where room(s) are let for a fee. The standard definition of a *boarding house* in NSW and in the Ryde LEP is as follows:

3.1 Definition of a Boarding House

A boarding house is defined in the Ryde LEP as a building that:

- (a) *is wholly or partly let in lodgings, and*
- (b) *provides lodgers with a principal place of residence for 3 months or more, and*
- (c) *may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and*
- (d) *has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers,*

but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.

In general terms, a boarding house is where the individual room is let.

As most student living arrangements are transient and short term, leases are very rarely entered into. A lease may bind a student into a property for a period longer than the student needs. Tenancy Agreements (Leases) are not mandatory for boarders/lodgers under the *Residential Tenancy Act 2010*.

The only distinguishing difference between an illegal boarding house and a share house is the presence of a residential tenancy agreement (lease).

3.2 Registration of Boarding Houses

The *Boarding Houses Act, 2012* commenced in January 2013 and introduced a number of reforms, including:

- Compulsory registration and inspection of registrable boarding houses
- Enhanced occupancy rights for residents
- Enhanced powers of entry for authorised service providers and advocates
- Increased penalties for offences
- The introduction of a circumstantial evidence provision

A registrable boarding house under the *Boarding House Act 2012* is a boarding premises that provides beds for a fee or reward, for use by 5 or more residents (not counting and residents who are proprietors or managers of the premises or relatives of the proprietors or managers).

3.3 Boarding houses in Ryde

The City of Ryde acknowledges that some legitimate share accommodation arrangements are broadly defined as boarding houses however do not cause safety issues for the lodgers nor amenity issues for neighbours. This would include houses accommodating one lodger per room with a maximum number of 4

lodgers. The City of Ryde will categorise these share accommodation arrangements as low priority in terms of enforcement. The priority will be on illegal registrable boarding houses, illegal building works and breaches of development consent of approved boarding houses.

To operate as a legal boarding house within the City of Ryde, the following criteria must be met:

- a) Boarding House (5 lodgers or greater)
 - o Development consent required. The development application must comply with Council's Boarding House Development Control Plan and the State Environmental Planning Policy (Affordable Rental Housing) 2009.
 - o Plan of Management approved and displayed
 - o Licensed and registered with the Department of Fair Trading
 - o Bi-annual inspections carried out by Council staff

4. What is an illegal Boarding House?

An illegal boarding house is a building operating as a boarding house without prior development consent from Council. For the purposes of this policy guideline, priority will be given to the following:

- A house with 5 or more lodgers with no development consent and/or not registered
- A house with 4 or less bedroom and more lodgers than bedrooms
- Houses with lodgers and illegal building works have been carried out
- An approved and registered boarding house with breaches of the development consent and plan of management

This approach has the intention of allowing suitable short term accommodation while preventing overcrowding of existing dwellings and amenity impacts for neighbours.

4.1 What evidence does Council staff look for?

The *Boarding Houses Act 2012* allows Council staff to use circumstantial evidence in order to identify that a property is a boarding house. Some of the evidence may include:

- a) Where additional bedrooms have been created without prior development consent to accommodate more lodgers.

The creation of additional bedrooms requires the prior consent of Council so as to prevent overcrowding. Council staff will commence enforcement action to have the unauthorised walls and bedrooms removed.

- b) Where the number of lodgers is greater that the number of lawfully created bedrooms

This will be deemed as overcrowding and a potential risk to the health and safety of the occupants as well as a potential impact on the existing amenity of the area.

- c) Where the maximum number of lodgers exceeds the number of lawfully created bedrooms.
- d) "Rooms to let" advertisements in newspapers, education establishment noticeboards and online
- e) The layout of the premises
- f) Sign at the premises
- g) Multiple beds in bedrooms

- h) Potential fire safety issues such as exposed electrical wires and absence of fire detection/alarm systems
- i) The numbers and types of lodgers entering and leaving the premises
- j) The maintenance standard of the property such as overgrown lawns
- k) Undersized rooms (less than 12m²) used as bedrooms where no development records are available. This will prevent study's or storage areas being used as bedrooms
- l) Evidence from neighbours

It should be noted that not all of the above scenarios alone may not deem a building to be operating as a boarding house, however, they represent a number of common factors consistent with boarding houses. Council staff can use these to assess the probability of the use being a boarding house.

5. What is share house accommodation?

5.1.1 Share house accommodation

There is currently no standard planning definition in NSW for *share house accommodation*. The term is often used to describe a group of unrelated people sharing a dwelling. Unrelated people living together often represent a share house arrangement. Often there may be a lease in place but not all lodgers are listed on the lease due to the short term nature of their accommodation.

As a result of the *Boarding Houses Act 2012* prescribing the minimum standards for boarding house registration for 5 bedrooms or more, the City of Ryde proposes to place a greater emphasis on enforcement action on these non-compliant developments.

For the purposes of this policy, Council staff will place a lower priority on the enforcement of non- registrable boarding houses or share house accommodation. Council staff will still apply the following requirements for non- registrable and share house accommodation:

- a) The number of lodgers is to be no more than the number of lawfully created bedrooms (up to a maximum of 4 bedrooms).

Note: *this calculation includes bedrooms in secondary dwellings (granny flats).*

- b) Where the owner lives on site and sublets the lawfully created bedrooms (one person per bedroom and a maximum of 4 lodgers, excluding the owner).

Note: *this calculation includes bedrooms in secondary dwellings (granny flats).*

- c) Smoke detectors installed
- d) Documented emergency evacuation procedures provided to lodgers
- e) Lawns and gardens to be maintained
- f) Adequate numbers of rubbish bins provided
- g) Only one kitchen has been installed in the building
- h) No multiple beds in bedrooms
- i) No undersized rooms (less than 12m²) used as bedrooms where no development records are available.

Numerous complaints from neighbours will result in action being taken by Council staff

6. Investigating Suspected Illegal Boarding Houses

The City of Ryde has formalised procedures for the investigation of illegal boarding houses. The following describes the process for the investigation of an illegal boarding house:

6.1 Step 1 - Investigation Initiation

When a customer request is received, it is registered in Councils Customer Request Management System and allocated to a Council Officer.

- Council staff will contact the customer to seek further details.
- Council staff will review council records to determine the following:
 - Any previous development approvals for the subject premises.
 - The most recently approved set of floor plans for the subject premises.
 - Any attributes that are connected to the subject premises, i.e. heritage, flood prone etc.
 - View aerial photographs

6.2 Step 2- Site Inspection

- Council staff will inspect the property. Prior written notice of the inspection will be given to owners or lodgers. If no-one is home, a business card will be left on site followed by a further letter seeking access.
- If there is no response to Council's inspection request or access is denied, then staff will obtain a search warrant from the Local Court in accordance with the *Environmental Planning and Assessment Act 1979* and the *Boarding Houses Act 2012*.

6.3 Step 3- Investigation

- When access is provided, Council staff will interview the lodgers, the owners and nearby residents.
- During an investigation staff will be looking for:
 - Illegal bedrooms
 - Conversions of garages to bedrooms
 - A Copy of a Residential Tenancy Agreement or Occupancy Agreements
 - Details of Registration
 - Numbers displayed on bedroom doors
 - Signs detailing "house rules" on walls such as house rules etc.
 - The condition of the property such as lawn maintenance, quality of pool water etc.
 - Smoke alarms installed and working
 - Emergency evacuations plans
 - Availability and management of bins/waste.
 - Number of kitchens.
 - General amenity and safety of house, e.g. no exposed wires.
 - Availability of approved car spaces
- Photographic evidence may be collected.
- Evidence of occupancy contracts will be requested

6.4 Step 4 - Enforcement Action

Council staff has a number of enforcement options to pursue in relation to regulating illegal boarding houses. Typically, the following enforcement actions are used by staff:

6.4.1 **Serve an Order on the owner of the property.**

An order is a written direction to do something. In the case of an illegal boarding house, orders are served for the removal of illegal building works and to stop the use as a boarding house. Council must issue a Notice of Intention to serve an Order prior to serving the Order to allow the owner an opportunity to make representation to the terms and timeframe of the Order. The most common orders that would be served include:

- Serve an order to demolish illegal walls or to reinstate a room to its original state
- Serve an order requiring the unauthorised use as a boarding house to cease
- Serve an order to upgrade fire safety
- Serve an order requiring the owner to clear overgrown vegetation and treat pool water

Failure to comply with an Order will result in Council serving a fine.

6.4.2 Issue a Fine (Penalty Infringement Notice)

Fines are issued for the erection of illegal works and also for failing to comply with a Council Order as identified below:

- Serve a Penalty Infringement Notice (fine) for carrying out of illegal work. The amount of the fines are \$750 for an individual or \$1500 for a Corporation.
- Serve a Penalty Infringement Notice (fine) for not complying with an order. The amount of the fine are \$1500 for an individual or \$3000 for a Corporation.
- Serve a Penalty Infringement Notice (fine) for not registering a boarding house. The amount of the fines are \$4125 for an individual and \$8250 for a corporation.

Multiple fines will be issued where no action is taken or the owner is slow to act.

6.4.3 Commence legal proceedings

Where there is a lack of co-operation of behalf of the owner to meet the terms of the Order, Council will commence legal proceedings to remedy the breach. This may include seeking the Courts assistance to effect the demolition of illegal works or to prevent the property from being used as a boarding house.

In circumstances where Council staff feel that the occupation of the building by lodgers may be a risk to their safety, Council staff may pursue a Court Attendance Notice (CAN) and bypass Orders to achieve immediate remedy.

6.4.4 Moratorium on illegal boarding houses

For the first three months following the adoption of this policy, the City of Ryde will initiate a moratorium on illegal boarding houses to allow owners and operators to lodge a development application seeking consent for the use of the property as a boarding house and to register with Department of Fair Trading.

7. Seeking development consent to operate a boarding house

Boarding Houses are now a permissible development, with consent, in the City of Ryde in the following zones:

R1 – General Residential
 R2 – Low Density Residential
 R3 – Medium Density Residential
 R4 – High Density Residential
 B1 – Neighbourhood Centre
 B4 – Mixed Use
 B6 – Enterprise Corridor

To convert an existing dwelling to a boarding house, prior development consent is required.

Before a Development Application for a boarding house suspected as operating as a boarding house can be determined, the following Council resolution must be complied with :-

“That Council refuse to consider DA’s for boarding houses that are operating illegally until they are fined and the premises restored to an unmodified state”.

Therefore, the following must occur before a development application for a Boarding House can be considered:

- The house is converted back to its original status
- The boarding house use has ceased

Property owners interested in seeking development approval for a boarding house are encouraged to consult the following documentation:

- *State Environmental Planning Policy (Affordable Rental Housing) 2009*
- *City of Ryde Development Control Plan 2010 – Part 3.8 Boarding Houses*
- *Ryde Local Environmental Plan 2010.*

Council has a Pre-lodgement service where staff will provide written feedback on the merit of a development application for a fee. Appointments are made through Council's Building and Development Advisory Service in the Ryde Planning and Business Centre.

Supporting information required to accompany a development application that seeks to convert an existing dwelling to a boarding house includes:

- A Building Code of Australia Compliance Assessment Report
- An Access report
- Statement of Environmental Effects
- Plan of Management
- A waste management plan

8. Registration of Boarding Houses

The *Boarding Houses Act 2012* commenced on 1 January 2013. Proprietors of registrable boarding houses which were operating on 1 January have until 30 June 2013 to register. Proprietors of registrable boarding houses which commence operations after 1 January 2013, or new proprietors of existing boarding houses are required to register within 28 days of commencing operations.

Registering on the Boarding House Register is a new legal obligation. Proprietors of registrable boarding houses must register with Fair Trading even if they are already registered with the Office of State Revenue or local council, or licensed by Ageing Disability & Home Care.

There is a one-off fee of \$100 to register.

COMPLETING REGISTRATION

To complete registration:

1. The registration form must be completed, including a signed declaration by the proprietor or the proprietor's nominee
2. The registration fee of \$100 must be paid to Fair Trading (see payment details below)
3. The completed form must be lodged with a Fair Trading Centre (phone 13 32 20 or visit www.fairtrading.nsw.gov.au for Fair Trading Centre locations) or post the registration form with payment to:

Boarding House Register,
NSW Fair Trading,
PO Box 972,
PARRAMATTA NSW 2124

9. Annual audits of approved boarding houses

Council staff will initially conduct bi-annual audits of approved boarding houses. The audit will review the conditions of development consent and the requirements of the Plan of Management to ensure that the boarding house is being managed according to the consent. There will be a fee applicable for the inspection and will be in accordance with Council's adopted Fees and Charges.

After two years of bi-annual inspections, the owner can apply to Council to have the number of inspections reduced to annually if no breaches of consent have been identified previously.

10. Review of the Policy

This Policy will be reviewed within 3 years of its adoption by the City of Ryde.