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REGULATORY GENTRIFICATION: DOCUMENTS, DISPLACEMENT AND THE LOSS OF LOW INCOME HOUSING

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Regulatory Gentrification: Documents, displacement and the loss of low-income housing

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Abstract Within the vast literature on gentrification, law is not often discussed. Where it is mentioned, law tends to be discussed as a contributor to wider processes of displacement and dispossession. This paper takes a different approach, examining law itself as a site of gentrification. My focus is the regulatory framework for the development of boarding houses in Sydney, Australia, contained within the *State Environmental Planning Policy (Affordable Rental Housing) 2009* (ARH SEPP). In the midst of a growing housing crisis, the ARH SEPP introduced provisions to stem the loss of older boarding houses and to incentivise new construction. While intended for low income accommodation, these provisions have increasingly been used for other purposes. The ARH SEPP has enabled new forms of housing for a far more affluent population, sometimes directly displacing low income residents. Like other laws noted in other studies, the ARH SEPP can be understood as a contributor to the gentrification of various parts of Sydney. Yet there is more at play. Like so many physical spaces in which gentrification takes place, the ARH SEPP has itself changed in character, becoming a space for more privileged users.

Keywords boarding houses, houses in multiple occupation (HMO), legal geography, urban planning, urban governance

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Introduction

Studies of gentrification rarely focus on law. Where law is mentioned, it tends to be discussed either as a technique of or a bulwark against broader processes of displacement and dispossession (Ashkar, 2018; Blomley, 1997, 2004; Hubbard and Lees, 2018; Layard, 2018; Valverde, 2012). My aim in this paper is to contribute to the small but significant body of work on law and gentrification, and particularly the role of law in resisting gentrification (Hubbard and Lees, 2018).

I want to do this with a provocation: we know that law can and does contribute to the gentrification of many places, but might law itself also be a site of gentrification?

Beyond enabling or resisting colonisation by the middle class, my claim is that law can itself be an object of colonisation. By law I mean not just legal texts, but the range of rules, practices and understandings through which those texts take effect in the world. I make this claim about the gentrification of law by reference to one particular law, the *State Environmental Planning Policy (Affordable Rental Housing) 2009* (ARH SEPP), which regulates the development of boarding houses in the state of New South Wales. My reflection on the ARH SEPP draws primarily on two engagements with planning in Sydney. One, a study into housing diversity commissioned by the state government, led by architects with inputs from economics, geography and law. My role was to examine regulatory barriers to alternative housing forms and, from this, to identify strategies for more diverse and affordable housing. The other, service as a member of an approval body determining applications for development consent in the City of Sydney. This includes many proposals for housing, from single homes to high rise towers, low cost boarding houses to luxury apartments. In both contexts, the incentives for boarding house construction under the ARH SEPP have generated significant interest.

Figure 1: Traditional boarding house, Glebe

This is a boarding house for which our panel granted consent for renovations in 2018. It was typical of many boarding houses in Sydney: a three-storey Victorian terrace in the inner-city suburb of Glebe. It has operated as a registered boarding house since at least the 1970s, with five boarding rooms, a shared kitchen, common room and three shared bathrooms. Each room was furnished with a bed, a wardrobe and a desk. Built around 1900 as a relatively grand home, the building had

not been well maintained. The balcony had been boxed-in, the paint was peeling, the outdoor spaces were filled with bins, weeds, a crumbling shed and a makeshift clothesline. While not particularly attractive, it is well located; walking distance from the city, good public transport, a major hospital, university and many public services as well as cafes, shops and Blackwattle Bay with its views across Sydney harbour. Rooms were some of the most affordable in the area, renting for less than half of what a self-contained apartment would cost and providing homes to some of the most vulnerable people in the city.

The proposal changed the character of the accommodation considerably. Instead of shared bathrooms and a communal cooking area, an ensuite bathroom and kitchenette were to be provided in every room. Common areas were to be reduced, allowing for two new rooms, and new facilities added, including intercom, an alarm system, landscaping and a barbecue replacing the shed. The building was to be upgraded, including reproduction Victorian lacework on the reinstated balcony. Instead of vulnerable residents characteristic of older style boarding houses – "battlers and down and outers" (Dalton et al., 2015: 12) – future tenants are more likely to be students and young professionals.

This is consistent with trends over recent decade. Older boarding houses have been disappearing across Sydney, and particularly within the City of Sydney where the majority are located (City of Sydney, 2008; Dalton et al., 2015; Greenhalgh et al., 2004). The disappearance of these boarding houses is part of wider processes of displacement (Atkinson et al., 2011; Davison et al., 2012). My aim in this paper is to examine whether the loss of this boarding house can be understood an example not just of the gentrification of Glebe and areas like it, but of gentrification of the legal framework through which the development of boarding houses is regulated.

Despite Bruno Latour's derision of documents as "the most despised of all ethnographic subjects" (Latour, 1988: 54), there is a growing literature focused on rules, policies, plans and other texts as sites of study (Freeman and Maybin, 2011; Harper, 1998; Navaro-Yashin, 2012; Riles, 2006; Smith, 1990). In thinking about law as site of gentrification, I draw on this work, in which documents are understood as vital spaces, active and affective, not neutral, self-contained or sterile (Navaro-Yashin, 2012). I draw particularly on Dorothy Smith's claims about the constitutive role of documents in contemporary society (Smith, 1990).

Smith argues that texts are key organisers of social relations, essential to and pervasive in contemporary industrial societies. Central to this organisational ability is the way that texts abstract meaning. Documents are "objectified and objectifying", externalizing and abstracting processes of reasoning, knowledge, memory, decision-making, evaluation and judgment (Smith, 1990: 157). Freed from particular individuals in particular local settings, the textual form enables documents to express and to reproduce social norms and relations of power.

Paralleling Bruno Latour's work on action at a distance (Latour, 1988; Miller and Rose, 2009), Smith sees texts as key sites of struggle for political change. While historical struggles centred on physical sites of power – places like castles, in which rulers could be physically attacked and overthrown – the fragmented and diffuse nature of contemporary government means that: "Making change must, in contemporary society, go to work on a terrain constituted by what

institutional ethnographers call the ruling relations, that is, relations in which people's doings are coordinated in the technologically multiple forms of text" (Smith, 2007: 8).

The ARH SEPP is of course not a site for gentrification in the sense that London or Glebe are sites for gentrification, it is not a physical place that can be altered in material ways. As a regulation delineating forms of development that can be approved and constructed in physical places, it more akin to conceived space (Lefebvre, 1991). The ARH SEPP altered the conceptual space of the city by establishing a new form of permissible development, something that previously could not be built (except illegally). In establishing this new form of permissible development, the ARH SEPP created an opening, a new possibility for material things to be built and experienced in the world. It is that opening that is the subject of this paper. When the ARH SEPP was first introduced, it was an opening with a particular character, centred on the production of accommodation for people on low and very low incomes. Over time, this has shifted. Instead of boarding houses for vulnerable people, the ARH SEPP has increasingly been deployed for the benefit of very different populations: mobile professionals, students, wealthy investors. Can this shift be understood as a form of gentrification?

I begin in part one by describing the ARH SEPP and its place in the legal system regulating boarding houses in NSW, outlining the housing crisis that prompted its introduction, how the ARH SEPP works and how this has shifted over time. Recognising that the definition of gentrification remains unsettled, in part two I use Mark Davidson and Loretta Lees' (2005) framework to examine these shifts and to argue that the ARH SEPP can indeed be understood as gentrified. In part three I consider one recent document generated by the ARH SEPP – a judgement in which the middle class colonisation of the SEPP was contested – to illuminate the particular way in which gentrification operates in documentary form. I conclude by reflecting on the implications of thinking about law in this way.

1. Boarding houses under the *Affordable Rental Housing SEPP*

The ARH SEPP was introduced in 2009 in response to a growing housing crisis. With Sydney regularly ranked as one of the world's most unaffordable cities, housing has been under extreme pressure for many years (Dufty-Jones and Rogers, 2016; Gurran and Bramley, 2017; O'Flynn, 2011). Older boarding houses have been especially vulnerable, their prime inner-city locations and Victorian architecture making them ripe for renovation and redevelopment.

Boarding houses have been disappearing since the 1960s. With the introduction of strata titling in 1961, which meant that individual apartments could be sold on separate titles, many were subdivided and sold to private owner-occupiers at prices far beyond the reach of boarders (Taylor, 1989). Boarding houses have been vulnerable also to upgrading for tourist accommodation, particularly in the lead up to the Olympic Games in 2000 (Atkinson et al., 2011; Blunden, 2007; Greenhalgh et al., 2004). Once gone, this kind of accommodation is rarely replaced: modern planning standards make new builds far more expensive.

By the 1980s, the loss of boarding houses had become a pressing social and political issue (Williams, 1987; Willis, 1988). Boarding houses have been crucial for people suffering family breakdown, illness, addiction, employment loss and personal crisis – people who often have no other options (Greenhalgh et al., 2004). The loss of boarding houses often results in homelessness, after which it becomes increasingly difficult to retain links to the community, to find employment or to access housing (Atkinson et al., 2011; City of Sydney, 2008; Greenhalgh et al., 2004).

The ARH SEPP followed a number of earlier efforts to stem the decline in boarding houses. In the early 1980s, some councils tried refusing to grant consent for subdivision, though this was generally not successful when challenged in court (Taylor, 1989). In 1988, boarding houses were given protection under *State Environmental Planning Policy No 10 – Retention of Low-Cost Rental Accommodation* (SEPP 10). State Environmental Planning Policies are made under the *Environmental Planning and Assessment Act 1979 (NSW)* (EPA Act), the legislation that provides the framework for planning and development in NSW, including the requirement for development consent and the processes by which applications for consent are determined. After 1988, councils within the area covered by SEPP 10 could not grant consent for the subdivision of a boarding house unless they had considered the potential impact on the loss of low cost rental accommodation within the area, and whether displaced residents would be likely to have difficulty finding comparable accommodation in the locality if the development was carried out. SEPP 10 was amended several times, expanding to include demolition, alterations and changes of use as well as subdivision and, later, to cover all councils within the Sydney region.

The ARH SEPP replaced SEPP 10 in 2009.[1] The ARH SEPP continued and extended the requirement in SEPP 10 to consider and mitigate the loss of affordable housing, enabling consent authorities to impose conditions requiring financial contributions when granting approval for developments likely to result in a loss of affordable housing. The new SEPP provided a formula for the calculation of those contributions, and supporting guidelines provided detailed information to assist councils in determining whether the SEPP applies (Department of Planning, 2009).

After decades of decline, the ARH SEPP was designed not only to reduce the loss of affordable housing, but also to encourage construction of new boarding houses. To address the problems of neighbourhood opposition, a common barrier to affordable and higher density housing (Cook et al., 2012; Thorpe, 2017), the ARH SEPP introduced provisions making it much harder for councils to refuse consent for boarding houses. First, the ARH SEPP made boarding houses permissible in residential zones, overriding local provisions so that councils cannot use zoning to exclude this type of development, even in low density residential areas. Second, the ARH SEPP set out mandatory standards for the assessment of boarding houses, preventing the application of more restrictive local controls. The ARH SEPP also introduced a density bonus to make boarding houses more financially attractive, typically 20 percent above the floor space permissible for a standard residential flat building.

[1] As well as boarding houses, provided for in Part 3, the ARH SEPP introduced a range of other strategies intended to increase the supply of affordable housing (including infill housing, secondary dwellings, group homes, social housing).

The incentives for new boarding houses in the ARH SEPP are particularly significant in the context of other planning reforms. Key among these is *State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development* (SEPP 65). With the proportion of people living in apartments increasing rapidly, SEPP 65 was introduced in 2002 to address concerns about housing quality. SEPP 65 established objectives, principles and processes for the assessment of residential flat buildings, defined to include all buildings with four or more apartments over three or more stories. A design guide provides detailed examples and numerical guidance for features including apartment sizes, room dimensions, solar access, cross ventilation, balconies, communal space, car parking and circulation. SEPP 65 is widely celebrated for improving the amenity and liveability of apartments in NSW (Clare and Clare, 2014), avoiding the "truly terrible" developments being produced in other cities as a result of Australia's overheated property market (Stead, 2016). SEPP 65 is not without critique, however, as these improvements have increased the cost of apartment construction (Bleby and Lenaghan, 2016).

Boarding houses can be developed at significantly lower cost than residential flat buildings. SEPP 65 requires at least 35sqm per unit (50sqm for a one bedroom unit); boarding rooms can be as small as 12sqm. Requirements for expensive features like car parking and lifts are less onerous, and there are no requirements for private open space, solar access, natural ventilation or minimum room dimensions.

The provisions for boarding houses in the ARH SEPP have been amended on several occasions since 2009, including slight increases to car parking requirements, limiting the number of rooms that can be provided in a boarding house in low density areas to 12, and a new 'character' test enabling councils to refuse consent for a boarding house deemed incompatible with the local area (echoing the regulation of multiple occupancy housing in the UK (Layard, 2012)). The basic framework, however, remains largely intact. More significant has been the increasing use of the ARH SEPP to enable the development of 'new generation' boarding houses: micro-apartments with small kitchens and ensuite bathrooms, comparable in many ways to standard residential flat buildings but costing much less to construct.

In line with the aims of the ARH SEPP, new generation boarding houses have been important in meeting the needs of the many people seeking affordable rental housing in NSW. As the NSW Community Housing Industry Association explains, the ARH SEPP created a framework in which "community housing provider development of new generation boarding houses can be feasible, even given the low rental yield received from the very low and low income single people they house" (CHIA NSW, 2018: 5). Within 10 years, community housing providers had developed more than 100 new generation boarding houses (CHIA NSW, 2018: 5).

Increasingly, the ARH SEPP has been used to facilitate another, very different form of housing. A growing number of new generation boarding houses are being developed not for people on low incomes, but for more affluent groups. The ARH SEPP has been used to gain approval for student housing, often to a standard comparable to serviced apartments (Troy et al., 2018: 19). Others have been aimed at mobile professionals. While avoiding expensive features required under SEPP 65 like balconies and car parking, these developments are in many ways high-end, with good design

– including by architects known for luxury housing – good quality finishes, and high amenity locations. They are far from affordable, attracting rents of at least $300 - $400 a week, and often $600 - $700. With unemployment benefits around $500 per week, this is a long way from traditional boarding houses and the vulnerable groups that need them.

High-end boarding houses are possible under the ARH SEPP because the term boarding house is not well defined (Greenhalgh et al., 2004; Martin, 2019). The only real limitation is that boarding houses must be "let in lodgings", which means they can't be subdivided for owner-occupation. "Let in lodgings" is another term that lacks definition, a circular reference back to the accommodation itself. Development as a boarding house does not preclude the letting of rooms on standard residential tenancy agreements, much less the advertising of rooms as studios, co-living spaces or simply apartments. While the term 'boarding house' is used in the development application process, it can be abandoned when it comes to marketing and management. Significantly, there is no requirement under the ARH SEPP that boarding houses are actually affordable: there is no cap on the rents that can be charged.

For property developers and investors, the ARH SEPP provides a useful tool to avoid the requirements of SEPP 65. As a result, the boarding house sector in NSW has moved from decline to growth (Dalton et al., 2015; Martin, 2019; Troy et al., 2018). Much of this growth is in new developments: student housing near universities, inner city micro-apartments. While contributing little to the affordability problem the ARH SEPP was introduced to address, these developments have helped to meet a growing demand for smaller apartments in accessible locations (Troy et al., 2018: 25).

In some cases, new generation boarding houses have not merely failed to improve affordability, they have exacerbated it. As in the Glebe example above, some new generation boarding houses are being created through the conversion of older style boarding houses. Co-living company UKO ("you-co") provides an extreme example. Less than a year after launching their first co-living space in the inner-city suburb of Stanmore, UKO opened a second property in Sydney's more affluent inner East. Both were developed as boarding houses under the ARH SEPP. The Stanmore site was a new development, a purpose-built property that replaced a small commercial building with 33 studio apartments above ground floor commercial space. The Paddington space, in contrast, was a renovation, upgrading two grand but rather dilapidated Victorian terraces. Both of these terraces were long-running boarding houses that had provided affordable homes to people on very low incomes for decades. Despite UKO's claims that co-living "is a solution to Sydney's rental squeeze" (Tan, 2019), by evicting those tenants the Paddington development contributed directly to the loss of affordable housing for some of Sydney's most vulnerable residents.

Glebe, Stanmore and Paddington are key sites of gentrification; Paddington is perhaps the best known example of gentrification in Sydney (Atkinson et al., 2011; Cameron and Craig, 1985). The redevelopment of old, dilapidated buildings into micro-apartments for relatively affluent residents can be understood as an unremarkable example of this process. What is interesting is that these examples were facilitated by legislation intended to protect and increase the stock of boarding houses for people on low and very low incomes. In contrast to the laws described by other scholars that operate to enable gentrification, the ARH SEPP was meant to slow it, or at least to mitigate

its impacts on the most vulnerable. With the increasing use of the ARH SEPP in recent years for opposite effect, might we understand this law itself as gentrified?

2. Gentrification

"gentrification has mutated into a number of different types over time ... These different types of gentrification all share something in common—a socioeconomic and indeed cultural transformation due to middle-class colonization or recolonization."(Lees et al., 2007: 135)

While keen to follow Tom Slater, Winifred Curran and Loretta Lees' call for "less definitional deliberation and more critical, progressive scholarship" (Slater et al., 2004: 1145), a claim that law may be subject to gentrification does require some definition. Far beyond the middle class invasion of working class London described by Ruth Glass (1964), the sites and scale of gentrification have expanded such that it is now a global strategy (Smith, 2002), the actors include not just middle class households but governments and real estate developers, and the forms of gentrification include not just upgrades in disinvested inner city neighbourhoods, but successive waves of regentrification and supergentrification, rural gentrification, commercial gentrification, green gentrification, studentifcation, tourism gentrification and new build gentrification (Atkinson and Bridge, 2005; Lees and Phillips, 2018). Within the vast literature, concerns that these sites, scales, actors and forms stretch the concept too far find much less support than advocates for more elastic, dynamic and inclusive definitions enabling gentrification to encompass processes of spatial, economic and social restructuring that continue to evolve.

At the heart of gentrification is change, and class is central to that change (Smith, 1996). As Robert Beauregard explains, gentrification is a process of socioeconomic and cultural transformation, a form of colonization by the middle class in which existing residents are rendered "economically and politically powerless relative to the gentrifiers" (Beauregard, 1986: 50). Davison and Lees identify four characteristics to define the kinds of change that fall within the scope of gentrification: reinvestment of capital (piecemeal, individual investments as in the traditional gentrification described by Glass; also large scale investment by corporate developers with government backing, as in the riverside examples described by Davidson and Lees); social upgrading by an incoming new middle class (managers, professionals, younger and more educated residents, short-term residents); landscape change with a particular aesthetic (mock-Georgian and Victorian townhouses, New York lofts, transformed slowly through "sweat equity" or rapidly into privatised, commodified landscapes that more transient gentrifiers can buy or rent into); and displacement of low-income groups (Davidson and Lees, 2005). These four characteristics provide a useful framework with which to examine the operation of the ARH SEPP.

2.1 Reinvestment of capital

After years of decline, the boarding house sector is experiencing significant growth. While the data is patchy (the government does not monitor numbers, sizes or locations of approved boarding houses), there are strong indications that stocks are increasing. Census figures show that the number of people living in boarding houses in NSW declined from 7,600 in 2001 to 5,800 in 2011,

but then increased to 6,800 by 2016 (ABS, 2016). The number of boarding houses registered under the *Boarding House Act 2012* (which regulates the operation of boarding houses) increased from 505 in 2013 to 1043 in 2018 (Martin, 2019: 8), though it should be noted that this figure includes new registrations of boarding houses that may have been operating previously without registration. Perhaps most significantly, the number of planning applications for new boarding houses and extensions to existing boarding houses in the South Sydney Region of Councils, where most boarding houses are located, increased from 29 in 2009/10 to more than 80 in both 2015/16 and 2016/17 (Troy et al., 2018: 25).

There has also been a shift in the nature of investment. While boarding houses have typically been provided by not-for-profit organisations and small owner-operators, commercial real estate and investment groups are now prominent proponents. In May 2018, for example, the Property Owners' Association of NSW hosted a seminar on "New Generation Boarding House Development: Maximising Returns from Micro Apartments". Boarding houses are a regular feature in industry publications (Frost, 2019; Jewell, 2015; Mousa, 2017; Needham, 2019), with reports that investors are "really starting to wake up to" the potential investment returns on boarding houses, resulting in "a massive spike in people …wanting a piece of the action" (Needham, 2019) and a market "going gangbusters" (Devine, 2016).

The Urban Taskforce, a lobby group representing property developers and equity financiers, was initially dismissive of the ARH SEPP, arguing that affordable housing was unattractive to investors and that "private funding will, accordingly, be attracted elsewhere. This is a niche policy, which sees, at best, a small amount of additional development to accommodate some lucky renters" (Urban Taskforce, 2010). By 2018, the Urban Taskforce was advocating strongly for new generation boarding houses, arguing that proposed amendments to limit the rooms permissible in new boarding houses in low density residential zones should be abandoned as these might reduce "the feasibility of delivering this important contribution to housing affordability" (Urban Taskforce, 2018). Boarding houses are now a valuable market, no longer the domain of social housing providers and small-scale investors, but well-resourced corporate funders and developers.

2.2 Social upgrading of the locale by incoming high income groups

The ARH SEPP, and particularly the provision for boarding houses within it, was intended to benefit people on low and very low incomes, reducing waiting lists for public housing (Department of Planning, 2009). Over time, however, the focus has shifted to the more middle class 'rental squeeze'.

The Department's latest fact sheet notes the need to provide for households that would otherwise rely on social housing, but also to facilitate transitions into market housing, and to "help workers … find a home closer to where they work" (Department of Planning, 2019: 1). Media reports focus similarly on more affluent occupants, highlighting the benefits of boarding houses as "a smart low-cost solution for key workers that desperately need to get closer to the city and their jobs" (Jewell, 2015), and the very different composition of tenants: "doctors, nurses, health workers, police and emergency services personnel" (Fitzsimons, 2017). Measures to exclude low and very low income residents from boarding houses, setting a minimum weekly income as a condition of consent for development, have even been approved in court (*Gray v Sutherland Shire*

Council (2016) NSWLEC 64). A recent post-occupancy survey of new boarding houses revealed that "the provision of affordable housing for marginal households, as originally intended by the introduction of the SEPP, has not been achieved", with residents "much closer in profile to typical renters than to traditional boarding house occupants or social housing waitlists" (Troy et al., 2019: ii–iii).

This shift is consistent with the rising concern about housing affordability across Australia, and particularly in Sydney. Housing diversity and housing choice are attracting increasing attention, with an emphasis on people in the middle: key workers, young professionals and families with incomes too high for public housing, yet not high enough to access appropriate housing in the private market (Chappell, 2016; Kelly et al., 2011). With the needs of people on low and very low incomes eclipsed by this middle-class housing crisis, the regulatory space created to meet those needs has also shifted.

2.3 Landscape change

The particular aesthetic noted by scholars of gentrification (Ley, 2003) is increasingly apparent in both the marketing and the built form of Sydney's boarding houses. As in the Glebe example above, renovations to enhance heritage elements are often important elements. The marketing for UKO's Paddington property, for example, promises "Future living, in a heritage home", explaining that "Paddington's village feel has attracted artists, designers and fashion addicts for decades" (*UKO*, 2019). Marketing for an un-renovated boarding house in nearby Surry Hills described an "ugly duckling" featuring "high ceilings… frescoes and ornate decorated finishes throughout" (Craze, 2014).

References to New York lofts are also common, as are mentions of artists, diversity and vibrant communities in keeping with Richard Florida's creative class prescriptions (Florida, 2005). Media and industry commentary describe contemporary boarding houses as "akin to the luxury micro-apartment phenomenon currently sweeping through New York and other major international cities" (Mousa, 2017) and "great examples of well-crafted dwellings on a micro scale [which] help create a sense of community, a good vibe and diversity" (Kavanagh, 2015). Boarding houses are also a subject of interest among design professions: the 2019 Sydney Architecture Festival included a sold-out talk on a proposed boarding house development by award-winning architects SJB for Nightingale Housing (*Sydney Architecture Festival*, 2019). As one commentator explains, "boarding houses once derided as havens for junkies, ex-convicts and alcoholics have turned into multimillion-dollar hot properties" (Devine, 2016).

2.4 Direct or indirect displacement of low-income groups

A lack of comprehensive longitudinal data makes it difficult to determine how many low-income residents are being displaced, yet the evidence that is available suggests this is a growing problem. In their review, Tony Dalton et al found "a growing tendency for older establishments to be upgraded or redeveloped with New Generation boarding houses … at the price of rising rents and a declining body of housing affordable to people on the lowest incomes" (Dalton et al., 2015: 22).

The guidelines published by the Department of Planning to support the introduction of the ARH SEPP in 2009 recognised the need to protect older style boarding houses from conversion to

micro-apartments. Beyond demolition, the information provided to assist consent authorities in determining whether a development proposal would result in a loss in affordable rental housing also included building upgrades. Significantly, a list of examples began with "alterations to a boarding-house to provide en-suite facilities which result in tariffs being increased beyond the reach of the low income residents" (Department of Planning, 2009: 5). While these guidelines remain on the Department's website, this direction has not been followed. Cash contributions are not required when granting consent for the addition of ensuite bathrooms and private kitchens to boarding rooms. Council planners assessing these conversions report feeling unable to restrict these kinds of changes for fear that they would fail if challenged in court (personal communication, 2019).

As in the Glebe and Paddington examples above, conversions of traditional boarding houses into micro-apartments are directly displacing low-income residents. These, along with the development of new, high-end boarding houses, are also adding to processes of gentrification that are indirectly displacing other low-income residents in inner city areas. The impacts of this displacement are apparent in rising numbers of people sleeping rough (Homelessness NSW, 2019a), and accessing crisis services (Homelessness NSW, 2019b). Hopes that the ARH SEPP would help to meet the growing need for social housing have proved ill-founded, with the waiting list increasing from around 38,000 in 2011 (Shelter NSW, 2016: 9) to over 60,000 in 2019 (Homelessness NSW, 2019b: 2).

3. Documents

The ARH SEPP took a long and complex debate about boarding houses and condensed this into eight clauses. Detached from particular individuals in particular historical and geographical settings, this abstraction facilitated a shift in the ARH SEPP – from a 'niche policy' to alleviate public housing waiting lists to the enabler of a market 'going gangbusters', only loosely connected to the needs of those on low and very low incomes.

Documents are powerful organisers of society, yet they cannot act alone. As Smith explains, "back and forth work" in the form of discourse, social connections and subsequent texts are necessary for documents to take effect (Smith, 1990: 3). The idea of back and forth work resonates with scholarship in socio-legal studies that highlights the intrinsic openness of meaning, and the ongoing work that is thus required to stabilise the scope of legal texts and practices (Cover, 1983; Hartog, 1985; Thorpe, 2018; 2020). The meaning of a text (whether legal or otherwise) depends in large part on its performance, which is not a single 'act' but "a reiterative and citational practice by which discourse produces the effects that it names" (Butler, 1993: 2). Despite its abstraction, the ARH SEPP – like other laws and other documents – remains open to multiple interpretations, and those interpretations both shape and are shaped by their understanding in the world. The result is that documents go through what Richard Harper describes as a career, involving various stages during which they may be understood and operationalised differently, embodying different courses of social action (Harper, 1998). The meaning of the ARH SEPP is performatively

produced, again and again, and it is this performativity that enables its meaning – and effects – to shift.

Like other texts, the ARH SEPP is operationalised in and by subsequent documents (Harper, 1998; Riles, 2006). As a legal text, cases are particularly important to the operationalisation of the ARH SEPP. In *Micro Nest v Inner West Council* [2019] NSWLEC 1320, the shifting character of the ARH SEPP was a central issue. Among the issues in dispute was an effort by the council to ensure that rooms in a new boarding house proposed in Ashfield, approximately 8km from the Sydney central business district, would be affordable to people on low incomes. The council sought to achieve this by imposing a condition on the planning consent requiring the creation of another document, a covenant on the title restricting the income level of residents and the rents that can be charged to them. Noting the increasing use of the ARH SEPP to enable the construction of housing for more affluent tenants, the council argued that this condition was necessary to achieve the aims of the ARH SEPP.

While recognising that all but one of the seven aims of the ARH SEPP concern the provision of affordable rental housing for people on very low, low and moderate incomes, the Court noted that there was no express obligation to ensure those aims were actually met. With the housing crisis that prompted the ARH SEPP reduced to its text, the Court found in this absence a legislative intention *not* to limit the eligibility of boarders or the rents that can be charged. Finding not only that such a condition was not required by the ARH SEPP, the Court held also that there were no grounds to justify its imposition under other provisions (even "the public interest", a provision that the Court has used to address other matters, like climate change, despite the fact that housing affordability is included in the objects of the EPA Act but climate change is not).

Far beyond community housing providers and people on public housing waiting lists, the ARH SEPP brought new social relations into being. It connected a wide range of actors – financiers, investors, property developers, architects, builders, surveyors, valuers, marketing and real estate agents, journalists, industry associations and lobby groups, activists and support services, researchers and expert witnesses, key workers, students and mobile professionals, among others – coordinating their actions and creating new communities of practice. In *Micro Nest* and in the many other processes through which these actors engaged with the ARH SEPP, different actors presented different interpretations of the legal framework: housing and community groups emphasised the policy aims of affordability for people on low incomes; investors and property developers took a more technical approach, focused on formal diversity. Over time, the repetition of particular interpretations (particularly by actors with political influence, like the real estate sector, especially under the conservative government in power in NSW since 2012) worked to shift the character of the rules regulating boarding houses.

Back and forth work is clearly apparent in this shift. A product of the texts and social relations generated by the ARH SEPP, *Micro Nest* worked with those relations and texts to contribute to the (re)production of the meaning of the regulation. Both parties submitted texts and testimony that drew in other texts: statistics collected by various national and local sources, welfare and affordability measures, recent advertising for a nearby site that highlighted "Rare DA Approval for 33 Self-contained studios" without mentioning that the approval was for a boarding house (the

council argued this demonstrated the need for the condition; the court accepted Micro Nest's claim that this was "wholly irrelevant"), as well as other judgements about the ARH SEPP, the EPA Act, and the responsibilities of the judiciary.

Significant among the texts invoked were two recent cases in which similar conditions had also been rejected (*Lizard Apple Pty Ltd v Inner West Council* [2019] NSWLEC 1146; *Pomering v Hawkesbury City Council* [2018] NSWLEC 1146). Like *Micro Nest*, these earlier cases were determined by Commissioners and thus lack the precedential value of judicial decisions, yet their citation and confirmation in *Micro Nest* adds to their weight. Just as councils feel unable to require financial contributions when older boarding houses are converted into micro-apartments, these decisions and their circulation in subsequent texts – valuations, investment prospectuses and loan applications, marketing materials, planning policies, applications and assessment reports, submissions and objections, media releases, newspaper articles, online posts and tweets, scholarly studies – make it increasingly unlikely that councils will impose conditions to achieve affordability, and increasingly likely that proponents would challenge any attempts to do so. *Micro Nest* both demonstrates and deepens the gentrification of the ARH SEPP.

4. Conclusion

Like a sleepy, neglected neighbourhood that has recently been noticed, the provision for boarding houses in the ARH SEPP has become a site of intense activity by profit-focused developers and middle-class residents. All four of Davidson and Lees' features are present: after years of decline, boarding houses are now attracting considerable investment, focused not on low-income residents paying marginal rents, but more affluent students, key workers and mobile professionals paying market rates for designer housing, and producing high returns. The opening created by the ARH SEPP has been repurposed by and for the middle class.

The idea of regulatory gentrification doesn't map exactly onto established usage. The metaphorical opening created by the ARH SEPP is very different to the physical sites in which other forms of gentrification take place, and the loss of that opening is socially and politically far less significant than the loss of homes and communities in the real world. Even in 2009, the ARH SEPP was not an ideal 'home': the attempt to reduce costs through standards below those deemed acceptable for the wider community highlights the limitations of housing policy in Sydney more generally. Market-based solutions like the ARH SEPP were never going to fix a crisis created by decades of under- and dis-investment in social housing (particularly in Australia where tax incentives for residential investment have exacerbated the commodification of housing). The reshaping of the ARH SEPP is accordingly quite different from the reshaping of the particular places in which it operates.

In many cases, the gentrification of the regulation coincides with the gentrification of particular communities: the middle-class colonisation of the ARH SEPP is a direct contributor to the middle-class colonisation of Glebe, Paddington and other parts of Sydney. Is there any need to think about these two processes separately, to expand the concept in this way?

As Loretta Lees, Tom Slater and Elvin Wyly have argued with respect to other adaptations of the term, gentrification is politically powerful and its expansion can be important in attracting media and political attention, and in turn in challenging processes of exclusion and displacement. The conceptual spaces created by legislation are abstract, intangible and unknown to many people, but their consequences are very real. Conceptual spaces mediate the material world, working with it to produce the lived spaces of daily experience (Lefebvre, 1991). To defend a lived space, then, requires attention also to the conceptual openings that shape the way that space is perceived, including regulations that shape processes of valuation, finance, investment and development. Beyond particular places, defending laws against gentrification might also be useful for low income communities in places where gentrification is not (or not yet) so apparent.

Others have noted the need for more research on law and gentrification, to better understand the ways legality can facilitate and resist gentrification (Hubbard and Lees, 2018; Layard, 2018). Thinking about law as vulnerable to gentrification provides a useful lens for examinations of legality over time, offering a way to explore commonalities and strategies that might be shared between jurisdictions, as well as the specificity of particular laws in particular places.

Thinking about regulation as vulnerable to gentrification, the spaces created by regulation as open to appropriation by the middle class, is useful also in thinking about the contingent nature of law. Discussions of gentrification and urban inequality often suggest that law reform might provide a solution, an end point. Thinking about laws as themselves vulnerable to gentrification highlights the performative nature of legality, and the fragility of any gains. While laws organise actors, they also depend upon actors and other texts for their effects. This back and forth work creates space for change and contingency, but also solidification – including in forms that may not have been expected. Just as scholars and activists need to defend places and communities against gentrification, we might also need to defend the regulations created to protect those communities and the places in which they live.

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