

**From:** noreply@feedback.planningportal.nsw.gov.au on behalf of Planning Portal - Department of Planning and Environment <noreply@feedback.planningportal.nsw.gov.au>  
**Sent:** Monday, 30 August 2021 11:43 AM  
**To:** DPE PS Housing Policy Mailbox  
**Subject:** Webform submission from: Proposed Housing SEPP

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Submitted on Mon, 30/08/2021 - 11:43

Submitted by: Anonymous

Submitted values are:

**Submission Type**

I am submitting on behalf of my organisation

## Name

**First name**

Abe

**Last name**

Strbik

**Organisation name**

0438711996

**I would like my submission to remain confidential**

No

## Info

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**Suburb**

Leichhardt

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2040

**Submission**

Hi,

from a Disability Access Consultant point of view, we deal with the SEPP Seniors and on every project these are the items that are difficult or that are grey and not clear.

the following;

- CI 26 - Please clarify the type of services required in Clause 26, i.e. doctor, hairdresser, church, - is it ok not to have a barber, different type of churches. the current Clause 26 is undefined and it can be never ending on what is "reasonably require" - this is very open ended and difficult to meet. As an access consultant stating that it meets the CI 26 (1) is near impossible. each would have their own interpretation on what is "reasonable".

do they need to be accessible?

who confirms this - the town planner?

- Consider of rise sharing and bookable public transport services.
- Schedule 3
- Siting Standards - why have this at all about site topography? - if a development can satisfy the design requirements with a lift or ramp etc, then should be ok.
- Clarify Accessible parking is to AS2890.1 or AS2890.6-2009 , should it be to current code or previous older code requirements?.
- Clarify bathroom requirements i.e. can the toilet just be visitable / 1900mm - 2000mm wide compartment.
- Get rid of doorway circulation spaces to all doorway approaches, make it the main rooms only.
- Clarify if access is required to balconies.

Happy to discuss further.

Regards,  
Abe Strbik  
ABE Consulting

**I agree to the above statement**

Yes

## PROPOSED HOUSING SEPP

### State Environmental Planning Policy (Housing 2021)

Submission on Draft proposal.

This response supports the ACAA submission 22/08/21 with the addition of comments prepared by Robyn Thompson and Jen Barling with input from Deborah Hammond.

Jen and Robyn are Occupational Therapists and Access Consultants, with extensive experience in the design and construction of SEPP Housing developments over a period of more than 15 years. Deborah is an experienced Occupational therapist who has worked extensively in NSW in home modification.

The combination of our specialised access knowledge, background in Occupational Therapy and previous experience working on similar projects has played an important role in contributing to seniors living projects.

Our experience as occupational therapists working with older people and people with a range of disabilities has enabled us to accurately identify the specific client and staff requirements within these environments.

Because we focus on the user experience and functional performance, we understand more than just compliance and apply our skills to how people interact with their environment to inform design and identify solutions.

In 2016 Jen Barling (Funktion) conducted a series of Post Occupancy Evaluations of seniors living dwellings with residents across four sites. The responses to those POEs have also informed this response. Jen is a registered Assessor of Livable Housing Australia.

Robyn Thompson is a Fellow of Association of Consultants in Access Australia with extensive knowledge and experience of Seniors Housing in NSW. Including an extensive number of SEPP projects for clients including the Anglican Retirement Villages (now Anglicare), OLOC and Uniting.

Robyn is a member of Standards Australia committees responsible for the revision and updating of several standards relevant to the SEPP including:

- AS1428 suite – Design for Access and Mobility
- AS4299 – Adaptable Housing

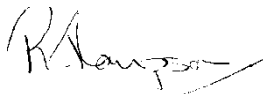
She represents Standards Australia on the ISO standard for access and mobility (recently revised and published in June 2021).

The Adaptable Housing Standard AS4299 was published in 1995 and relies upon cross references to other standards such as AS1428.1 (which has been updated three times since 1995) and as such in our opinion this version of AS4299 is no longer valid.

There have also been many advances in technology regarding lighting, telecommunications, electrical appliances, and more affordable lifts hence there are items within the SEPP which are redundant and should be removed or modified as per our recommendations.

We would welcome and opportunity to meet with the Department to provide any further clarifications if required.

Yours faithfully

A handwritten signature in black ink, appearing to read 'R. Thompson', with a stylized flourish at the end.

Occupational Therapist.

Access consultant

rthompson@midsongroup.com.au

**access associates sydney**



## Division 3 Development standards

### 75 Development standards for hostels and independent living units

#### *Clause (75 Development standards for hostels and independent living units)*

- 1) (Development consent must not be granted for development for the purposes of a hostel or an independent living unit unless the hostel or independent living unit complies with the standards specified in Schedule 5 for the development.
- 2) An independent living unit, or part of an independent living unit, located above the ground floor in a multi-storey building need not comply with the requirements in Schedule 5, sections 2, 7–13 and 15–20 if the development application is made by, or by a person jointly with, a social housing provider.

Note— Development standards concerning accessibility and usability for residential care facilities are not specified in this Policy. For relevant standards, see the Commonwealth aged care accreditation standards and the Building Code of Australia.

#### *Proposed Amendment (75 Development standards for hostels and independent living units)*

- 1) (Development consent must not be granted for development for the purposes of a hostel or an independent living unit unless the hostel or independent living unit complies with the standards specified in Schedule 5 for the development.
- 2) An independent living unit, or part of an independent living unit, **located on a level not serviced by a lift or ramp or accessway in a** multi storey, building need not comply with the requirements in Schedule 5, sections 2, 7–13 and 15–20 if the development application is made by, or by a person jointly with, a social housing provider.

#### *Commentary*

Most housing developments over two-storeys are provided with a lift. To not require independent living units at levels serviced by a lift to comply with the requirements of Schedule 5 is considered discriminatory, regardless of whether the development application is made by a social housing provider.

In some very large multi storey developments, this creates a loophole that is exploited by providers.

For example, an outcome of this concession could be 4 units on the entry level designed as per the requirements of the SEPP and then another 60 units on upper floor levels served by a lift that are not designed as per the requirements of the SEPP. We do not believe that this is the intent of the SEPP.

## Division 4 Site-related requirements

### 82 Location and access to facilities and services – independent living units

#### *Clause (82 Location and Access to Facilities)*

(1) Development consent must not be granted for development for the purposes of an independent living unit unless the consent authority has considered whether residents will have adequate access to facilities and services—

- (a) directly, or
- (b) by a transport service that complies with subsection (2), or
- (c) on-site.

(2) The transport service must—

- a) take the residents to a place that has adequate access to facilities and services, and
- b) for development on land within the Greater Sydney region—
  - (i) not be a passenger service, and
  - (ii) be available both to and from the site at least once between 8am and 12pm each day and at least once between 12pm and 6pm each day, and
- c) for development on land that is not within the Greater Sydney region—be available both to and from the site during daylight hours at least once each weekday.

(3) For the purposes of subsections (1) and (2), access is adequate if—

- a) the facilities and services are, or the transport service is, located at a distance of not more than 400m from the site, and
- b) the distance is accessible by means of a suitable access pathway, and
- c) the gradient along the pathway complies with subsection (4)(c).

(4) In subsection (3)—

- a) a suitable access pathway is a path of travel by means of a sealed footpath or other similar and safe means that is suitable for access by means of an electric wheelchair, motorised cart or the like, and
- b) the distance is to be measured by reference to the length of the pathway, and
- c) the overall average gradient must be no more than 1:14 and the gradients along the pathway must be no more than—
  - (i) 1:12 for a maximum of 15m at a time, or
  - (ii) 1:10 for a maximum length of 5m at a time, or
  - (iii) 1:8 for a maximum length of 1.5m at a time.

(5) In this section—

**facilities and services** means—

- a) shops and other retail and commercial services that residents may reasonably require, and
- b) community services and recreation facilities, and
- c) the practice of a general medical practitioner.

**passenger service** has the same meaning as in the Point to Point Transport (Taxis and Hire Vehicles) Act 2016.

Note— A passenger service is defined as the transport, by a motor vehicle other than a bus, of passengers within, or partly within, this State for a fare.

### **Proposed Amendment (82 Location and Access to Facilities)**

(1) Development consent must not be granted for development for the purposes of an independent living unit unless the consent authority has considered whether residents will have adequate access to facilities and services—

- (a) directly, or
- (b) by a transport service that complies with subsection (2), or
- (c) on-site.

(2) The transport service must—

- a) take the residents to a place that has adequate access to facilities and services, and
- b) for development on land within the Greater Sydney region—
  - (iii) not be a passenger service, and
  - (iv) be available both to and from the site at least once between 8am and 12pm each day and at least once between 12pm and 6pm each day, and
- c) for development on land that is not within the Greater Sydney region—be available both to and from the site during daylight hours at least once each weekday.

(3) For the purposes of subsections (1) and (2), access is adequate if—

- a) the facilities and services are, or the transport service is, located at a distance of not more than 400m from the site, and
- b) the distance is accessible by means of a suitable access pathway, and
- c) the gradient along the pathway complies with subsection (4)(c).

(4) In subsection (3)—

- a) a suitable access pathway is a path of travel by means of a sealed footpath or other similar and safe means that is suitable for access by means of an electric wheelchair, motorised cart or the like, and
- b) the distance is to be measured by reference to the length of the pathway, and
- c) the overall average gradient must be no more than 1:14 and the gradients along the pathway **between landings max 1:40** must be no more than—
  - (i) 1:12 for a maximum of 15m at a time, or
  - (ii) 1:10 for a maximum length of 5m at a time, or
  - (iii) 1:8 for a maximum length of 1.5m **at kerb ramps**
  - (iv) **1:14 for a max of 25m at a time**

**Note - For intermediate gradients between 1:8 and 1:14, interpolation shall be used to determine the maximum length of each section.**

(5) In this section—

**facilities and services** means—

- a) shops and other retail and commercial services that residents may reasonably require **such as supermarkets and convenience stores for the purchase of groceries, pharmacies, banking services, post office**, and
- b) community services and recreation facilities, and
- c) the practice of a general medical practitioner.

**passenger service** has the same meaning as in the Point to Point Transport (Taxis and Hire Vehicles) Act 2016. Note — A passenger service is defined as the transport, by a motor vehicle other than a bus, of passengers within, or partly within, this State for a fare.

### **Commentary**

Typically, existing pedestrian infrastructure have varied gradients. The limitation of lengths for 1:12, 1:10 and 1:8 gradients should be used as a guide and interpolation allowed so that other gradients are not precluded. Interpolation is permitted in AS1428.1 and is a standard industry practice.

It could be useful to develop a parameter for maximum lengths of gradient for 1:14 as this is a grey area. We recommend a maximum length of 25M.

“shops and other retail and commercial services” is open to interpretation and needs to be more definitive to ensure the best possible outcome for residents.

## Division 6 Design principles

### 92 Accessibility

#### *Clause (92 Location and Access to Facilities)*

Development for the purposes of seniors housing should—

- a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and
- b) provide attractive, yet safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors.

#### *Proposed Amendment (92 Location and Access to Facilities)*

Development for the purposes of seniors housing should—

- a) have obvious and safe pedestrian links from the site that provide access to public transport services **and** local facilities **within the context of public footpaths, road crossings, trip hazards and the like** and
- b) provide **attractive, yet** safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors.
- c) **Within retirement villages where residences are linked via roads, separation of vehicle and pedestrian pathways recommended.**

#### *Commentary*

While we agree with the intent of this clause, the term “*safe pedestrian links*” is ambiguous and not measurable. For example is it “safe” to cross a road from the middle of the road or is it mandatory to use a pedestrian crossing?

Similarly, the term “*attractive*” is subjective and open to interpretation

**Shared road and pedestrian accessways are not safe.**

## Schedule 5 Standards concerning accessibility and useability for hostels and independent living units

### Part 1 Standards applying to hostels and independent living units

#### 2 Siting Standards

##### Clause (2 Siting Standards)

- 1) If the whole of the site has a gradient of less than 1:10, all dwellings must have wheelchair access by a continuous accessible path of travel to an adjoining public road.
- 2) If the whole of the site does not have a gradient of less than 1:10—
  - a) the percentage of dwellings that must have wheelchair access must equal the greater of—
    - (i) the proportion of the site, expressed as a percentage, that has a gradient of less than 1:10, or
    - (ii) 50%, and
  - b) the wheelchair access provided must be by a continuous accessible path of travel to an adjoining public road or an internal road or a driveway accessible to all residents.
- 3) Access must be provided in accordance with AS 1428.1 so that a person using a wheelchair can use common areas and common facilities associated with the development.

##### Proposed Amendment (2 Siting Standards)

- 1) If the whole of the site has a gradient of less than 1:10, all dwellings must have wheelchair access by a continuous accessible path of travel to an adjoining public road.
- 2) If the whole of the site does not have a gradient of less than 1:10—
  - a) the percentage of dwellings that must have wheelchair access must equal the greater of—
    - (i) the proportion of the site, expressed as a percentage, that has a gradient of less than 1:10, or
    - (ii) 50%, and
  - b) the wheelchair access provided must be by a continuous accessible path of travel to an adjoining public road or an internal road or a driveway accessible to all residents.
- 3) Access must be provided in accordance with AS 1428.1 so that a person using a wheelchair can use common areas and common facilities associated with the development.

This includes the design of common areas, common facilities and all accessways to the common areas and common facilities from accessible carparking areas associated within the common areas and common facilities and/or dwelling entrances subject to the exemption for areas provided in (2) above.

##### Commentary

Previously sub-clause Clause (3) was titled “**Common areas**” and unambiguous in terms of what the requirements applied to. The current draft is also ambiguous and contradicts sub-clause 2 which permits pathways steeper than 1:14 in some areas of a development. The extent of access needs to be defined based on the siting standards for the development. Currently it is unclear whether the clause relates to the path of travel to the common areas and common facilities OR the common areas and common facilities in isolation.

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### 3 Security

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#### Clause (3 Security)

Pathway lighting—

- a) must be designed and located so as to avoid glare for pedestrians and adjacent dwellings, and
- b) must provide at least 20 lux at ground level (existing).

#### Proposed Amendment (3 Security)

Pathway lighting—

- a) must be designed and located so as to avoid glare for pedestrians and adjacent dwellings, and
- ~~b) must provide at least 20 lux at ground level (existing)~~
- e) clearly illuminate pedestrian pathways including stairs

#### Commentary

Lighting cannot be checked unless a site inspection is provided at night. There are no details on how the 20 lux is to be measured, i.e. every 3M intervals? Lighting methods have advanced substantially with the introduction of LED type lighting and therefore a 20 lux requirement is considered to be outdated. We recommend deletion of the lux requirement.

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### 4 Letterboxes with parcel collection areas

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#### Clause (4 Letterboxes)

Letterboxes—

- a) must be situated on a hard standing area and have appropriate wheelchair access by a continuous accessible path of travel, and
- b) must be lockable, and
- c) must be located adjacent to the street entry—
  - (i) together in a central location, or
  - (ii) or independent living units—together in 1 or more central locations.

#### Proposed Amendment (4 Letterboxes)

Letterboxes—

- a) must be situated on a hard standing area with a circulation area of 1540x2070mm and have appropriate wheelchair access by a continuous accessible path of travel, and
- b) must be lockable, and accessible from the hard standing area. Operable components of the letterbox are to be within the height range of 600-1100mm above the finished floor level.
- c) must be located adjacent to the street or pathway entry—
  - (i) together in a central location, or in 1 or more central locations or
  - (ii) to individual independent living units.

#### Commentary

Adequate wheelchair turning areas are required to ensure usability by all users. The size nominated is the turning space required by AS1428.1. The area of the hard-standing surface needs to be nominated to ensure adequate space is provided. A specified height range ensures letterboxes are within the reach ranges of all residents. These proposed comments comply with the requirements for

letterboxes in NDIS SDA Design Standards (Clause 16.2)

To meet current increased use of parcel post, in situations where letterboxes are separated from individual ILUs a parcel delivery area is recommended.

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## 5 Private car accommodation

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### *Clause (5 Private car accommodation)*

If car parking, not being car parking for employees, is provided as follows—

- a) at least the following amount of car parking spaces must be designed to enable the width of each space to be increased to 3.8m and to comply with the requirements for parking for persons with a disability set out in AS/NZS 2890.6—
  - (i) 10% of the total number of car parking spaces, or
  - (ii) if there are less than 10 car parking spaces—1 space,
- b) a garage must have—
  - (iii) a power-operated door, or
  - a power point and an area for motor or control rods to enable a power-operated door to be installed.

### *Proposed Amendment (5 Private car accommodation)*

1. Car parking provided for residents shall have at least one space for every unit, designed as per below requirements:
  - a) A single enclosed garage must have a minimum 3.8m width X 6.0m length or 5.4m length if the driveway at the rear of the vehicle is at the same level.
  - b) A single carport or outdoor hard stand area must have
    - i. a minimum width of 3.2m or
    - ii. minimum 2.4m width area adjoining a 1.0m width pathway at the same level as the parking space.
  - c) A single parking space in a communal basement must have
    - i. a minimum 3.2m width or
    - ii. 2.4m minimum width adjoining a 2.4m minimum width shared area as per AS2890.6
  - d) Where parking is provided for two cars for an individual ILU, the second car space need not be an accessible space.
  - e) Height clearance to enter the parking space must be 2.2m minimum and over the parking space and shared space 2.5m minimum as per AS2890.6.
  - f) Garages and gated parking shall provide a power operated door or gate to enter the parking area.
  - g) Other design requirements concerning surface gradient and line marking of communal parking areas shall comply with AS 2890.6.
2. For a development of 10 or more dwellings, at least one accessible carparking space in accordance with AS2890.6 shall be provided for every 10 visitor spaces.

### *Commentary*

The “space be increased to 3.8m and to comply with the requirements for parking for persons with a disability set out in AS/NZS 2890.6” is factually incorrect. AS/NZS 2890.6 requires 2.4M wide parking

space with 2.4M wide shared zones, not a 3.8M wide space. The 3.8M wide space is derived from AS4299.

For Clause 97 (j) ILUs, the parking concessions are consistent with existing requirements for LAHC social housing providers.

For Clause 97 (k) ILUs, the requirements for 0.5 parking spaces for every bedroom maintains existing requirements.

However, Schedule 5 – ILUs proposes significant changes.

With respect to an appropriate quantum for seniors housing it is useful to consider the age demographics in NSW and the number of people who hold a Roads and Maritime Services (RMS) Mobility Parking permit.

The RMS reports than for 1st quarter of 2021 there are 404,387 permit holders which represents 19.0% of the over 60s population in NSW. RMS Statistics indicate a year-on-year growth of approximately 5% for people that have an MPS permit.

With such a high proportion of MPS holders it is obvious that the 10% requirement quoted in the SEPP Seniors draft is grossly inequitable.

NSW RMS Mobility Parking Scheme permit holders

	<b>MPS by Age Group</b>		<b>General Population</b>	
<b>60-64</b>	29,670		477,649	
<b>65-69</b>	39,839		418,324	
<b>70-74</b>	83,975		369,519	
<b>75-79</b>	58,268		274,722	
<b>80-84</b>	60,478		186,620	
<b>85-+</b>	92,469		194,944	
<b>Total</b>	364,699		<b>1,921,778</b>	<b>19.0%</b>
<b>All Ages</b>	404,387		<b>1,921,778</b>	<b>21.0%</b>

SEPP HSPWD and its predecessors acknowledged that older people and people with mobility impairments need an accessible parking space to facilitate existing needs or future needs arising from ageing or trauma.

In our opinion the provisions of the current draft to mandate a mere 10% of resident parking spaces be designed to enable 3.8m width is a dramatic change which fails to recognize the needs of older people and people with disabilities. **Use of these spaces by visitors and care services is seen as a priority for older residents.**

The current SEPP HSPWD policy published in 2007 required all resident spaces to be 3.2m minimum width and 20% to be capable of 3.8m width.

From 2011, when AS 2890.6 took effect, the requirements became less clear as AS 2890.6 adopted a different paradigm of a 2.4m width for the car and a 2.4m width shared area, which has been widely accepted in communal open plan car parking layouts and public carparks.



AS 2890.6 has had limited adoption for single enclosed garages where a parking space has walls or caging on both sides as the 4.8m required width has been deemed less efficient by designers and developers. Consequently, the 3.8m width has been applied to the majority of development scenarios. Traffic engineers employed by local government authorities have tended to apply AS 2890.6 which has caused numerous debates and delays in development approval.

Australian Standards had and still has two standards which recommend the size of an accessible parking space. Namely,

- AS 4299 (1995) – Adaptable Housing which specifies 3.8m X 6.0m; and
- AS 2890.1 (1993) – Off Street Parking which specified 3.2m X 5.4m for an unenclosed space and 3.8m X 5.4m for an enclosed space (e.g. a single garage)

In 2009 a separate volume, AS 2890.6, was created for off-street accessible parking for people with disabilities which was then referenced in the Building Code of Australia 2011.

This Standard requires 2.4m + 2.4m width X 5.4m length whereby a 2.4m width area can be a shared between the 2 car spaces for an overall width of 7.2m. This layout is intended for modern technology of ramps and platform lifts to be installed on the side of a motor vehicle such as a VW Multivan. This configuration is very efficient in public car parks or communal residential parking where two parking spaces can use the shared area for transfers in and out of the side doors of a vehicle.

For a single accessible parking space, the AS 2890.6 requirement of 4.8m width is less efficient and unnecessary for the vast majority of MPS permit holders as side loading ramps and platform lifts are less common compared to rear loading ramps and platform lifts, roof mounted wheelchair hoists or simply opening the car door to full stop to use walking frames and other standing transfer methods.

Further exacerbation for the appropriate delivery of parking is the language that appears in SEPP HSPWD whereby the statement “*If car parking (not being car parking for employees) is provided for residents*” is interpreted by some developers to not automatically provide a parking space with the dwelling and to sell or allocate a parking separate to the dwelling, which means they avoid the requirement to comply with schedule 5.

Also note that the currency of AS/NZS will discontinue when part 6 is released as NZS has withdrawn its arrangements with AS for this standard.

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## **6 Accessible entry and external doorways to Private open spaces (POS)**

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### **Clause (6 Accessible entry)**

Every entry, whether a front entry or not, to a dwelling, not being an entry for employees, must comply with sections 4.3.1 and 4.3.2 of AS 4299.

### **Proposed Amendment Clause (6 Accessible entry) and external doorways to private open spaces (POS)**

Every entry, whether a front entry ~~or not~~ or doorways to private open spaces / external areas associated with the dwelling, and not being an entry for employees, must comply with ~~sections 4.3.1 and 4.3.2 of AS 4299~~ AS1428.1

Note including the force required to operate doors other than fire or smoke doors

### **Commentary**

The accessibility of private open space, including balcony and patio areas needs to be clearly stated. We recommend reference to AS1428.1 in lieu of AS4299 generally. AS4299 is an old standard (1995) and does not reflect current requirements. AS1428.1 has been updated in 2021.

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## 7 Interior - general

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### *Clause (7 Interior - general)*

- 1) Internal doorways must have a minimum clear opening that complies with AS 1428.1.
- 2) Internal corridors must have a minimum unobstructed width of 1m.
- 3) Circulation space at approaches to internal doorways must comply with AS 1428.1.

### *Proposed Amendment (7 Interior - general)*

- 1) Internal doorways must have a minimum clear opening that complies with AS 1428.1 **and**
- 2) Internal corridors must have a minimum unobstructed width of 1m **and**
- 3) Circulation space at approaches to internal doorways **to kitchen / laundry, main living areas, main bedroom, main bathroom, and main toilet** must comply with AS 1428.1.

### *Commentary*

The existing clause is contradictory to clause 17 that requires access only to the kitchen, main bedroom, bathroom and toilet. Clause 7 needs to align with clause 17 to minimise confusion and misinterpretation.

Internal door circulation within a room enables a person requiring the use of a wheelchair to enter the room, make a turn and then approach the door to access the handle to exit the room.

SEPP does not mandate a minimum size for the secondary bedrooms or minimum bed size for secondary bedrooms. So secondary bedroom could be as small as 3m x 3m. Once furnished, there is no space available for a wheelchair to enter the room, let alone make a turn and open the door from inside the room. Therefore, clarity is required that this is not the intent of the SEPP.

This will also clarify that for independent living units provided over multiple levels that do not have lift access within the dwelling, door circulation areas in accordance with AS1428.1 are not required at the levels that are not accessible.

With respect to secondary bedroom areas, while an older standard, AS4299 Adaptable Housing (1995) sets the precedent accessibility requirements within the residential setting. Clause 4.6 requires the provision of only one (1) accessible bedroom within an adaptable housing unit. Further, this is required in the post-adapted state, not at time of construction (as per AS4299, clause 2.2 performance requirements – noting that (c)(ii) specifically states the following: to provide space sufficient to manoeuvre a wheelchair with a bedroom...whereby after adaption there will be sufficient space to manoeuvre a wheelchair...). The accessible bedroom is required to have door circulation areas per AS1428.1 after adaption.

The more recent Livable Housing Australia Design Guidelines – Fourth Edition 2017 (LHADG) also support the provision only one accessible bedroom. The LHADG have been developed by industry and the community to provide assurance that a home is easier to access, navigate and live in, as well as more cost effective to adapt when life's circumstances change. The Guidelines include Silver, Gold and Platinum Levels which cater to differing levels of accessibility. Gold and Platinum Levels require that there is a space on the entry level that can be used as a bedroom. Again, there is a requirement for only one bedroom to have circulation areas around the bed. There is no requirement for doorway circulation areas with the LHADG, only clear opening width requirements.

The Universal Housing Design Guidelines (for Landcom projects) is another resource that can be used as an example of the requirement for accessible bedrooms and circulation at doorways to bedrooms generally. This policy defines Universal Housing as follows: homes that are practical and flexible, that meet the needs of people of different ages and abilities over time, and that avoid barriers that may discriminate against people living in or visiting the home. Universal housing is designed to be useable by most people over their lifetime without the need for major adaptation or specialised design. This publication – Key Design Feature No. 8 – requires a bedroom space on the ground floor – similar to both adaptable housing and livable housing requirements.

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## 8 Bedroom

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### Clause (8 Bedroom)

At least 1 bedroom within each dwelling must have—

- a) an area sufficient to accommodate a wardrobe and a bed sized as follows—
  - (i) (for a dwelling in a hostel—a single-size bed,
  - (ii) for an independent living unit—a queen-size bed, and
- b) a clear area for the bed of at least—
  - (i) 1,200mm wide at the foot of the bed, and
  - (ii) 1m wide beside the bed between it and the wall, wardrobe or another obstruction, and
- c) (2 double general power outlets on the wall where the head of the bed is likely to be, and
- d) at least 1 general power outlet on the wall opposite the wall where the head of the bed is likely to be, and
- e) a telephone outlet next to the bed on the side closest to the door and a general power outlet beside the telephone outlet, and
- f) wiring to allow a potential illumination level of at least 300 lux

### Proposed Amendment (8 Bedroom)

At least 1 bedroom within each dwelling must have—

- a) any required internal door circulation area (as required for front approach as per AS1428.1) clear of the bed, and
- b) an area sufficient to accommodate a wardrobe and a bed sized as follows—
  - (i) (for a dwelling in a hostel—a single-size bed (920x2030mm),
  - (ii) for an independent living unit—a queen-size bed (1530x2030mm), and
- c) a clear area for the bed of at least—
  - (i) 1,200mm wide at the foot of the bed, and
  - (ii) 1m wide beside the bed between it and the wall, wardrobe or another obstruction, and
- d) (2 double general power outlets on the wall where the head of the bed is likely to be, and
- e) at least 1 general power outlet on the wall opposite the wall where the head of the bed is likely to be, and
- f) a robe within minimum length of 1500mm.
- g) Where main bedroom has been provided with an ensuite, the ensuite is to be designed as the main bathroom and a space of 1240mm is to be provided between the bed and the ensuite door to allow for door circulation
- ~~f) a telephone outlet next to the bed on the side closest to the door and a general power outlet beside the telephone outlet, and~~
- ~~g) wiring to allow a potential illumination level of at least 300 lux~~

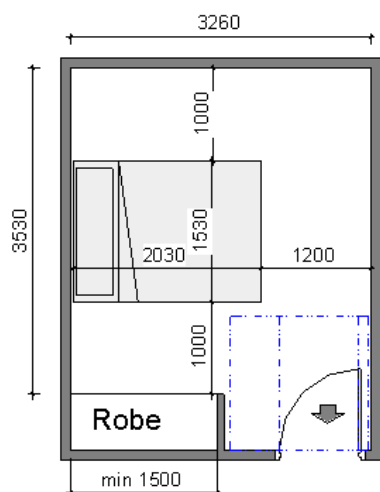
### Commentary

Door circulation clear of the bed needs to be introduced to this clause to ensure accessibility when the room is furnished. There may be confusion as to the approach of the doorway circulation template that can be applied. In this case we would recommend mandating front approach door circulation to the inside of the main entry door to main bedroom as has been done in the SDA Design Standard Clause 10.3 and Figure 16.

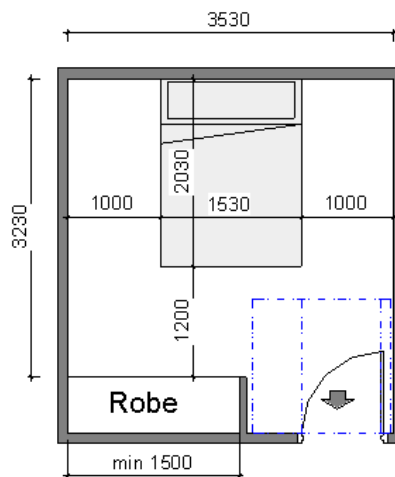
Recommended requirements for door circulation is shown below.

Multiple size of beds are available and a minimum size should be noted for clarity.

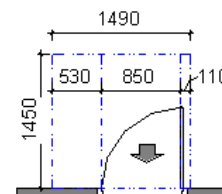
The requirement for the size of a robe should be introduced. The 1500mm length aligns with the SEPP 65 Apartment Design Guidelines. Alternatively, 1400mm length would align with the SDA Design Standard Clause 10.4



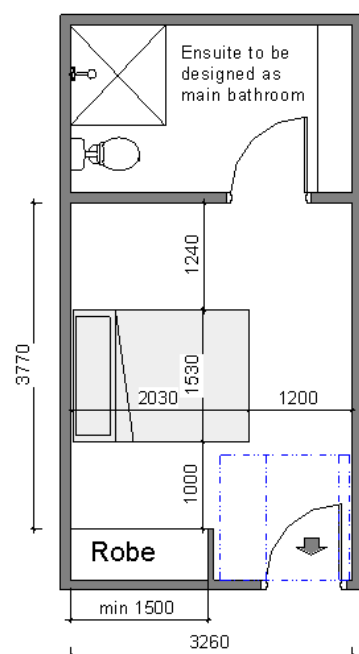
**Sample main bedroom**



**Sample main bedroom**



**Front approach door circulation space inside main bedroom**



**Sample main bedroom**

There have been cases to date where the main bedroom is provided with a small ensuite and the main (accessible) bathroom is outside of the main bedroom. We do not believe that this is the intent of the SEPP and therefore, where an ensuite is provided to the main bedroom, the ensuite should be designed as the main (accessible) bathroom with the required circulation spaces.

If a minimum of 1240mm space is not provided to the side of the bed leading to the ensuite, wheelchair access around the bed is not possible.

Items (f) and (g) are no longer considered relevant given advancements in technology and introduction of the NBN and similar technology.

Wiring potentials are no longer relevant as lighting methods have advanced substantially with introduction of LED type lighting and therefore a particular lux requirement is considered to be outdated. We recommend deletion of the lux requirement.

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## 9 Bathroom

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### Clause (9 Bathroom)

- 1) At least 1 bathroom within a hostel or independent living unit must be on the ground or main floor and have the following facilities arranged within an area that provides for circulation space for a wheelchair around sanitary facilities in accordance with AS 1428.1—
  - a) a slip-resistant floor surface,
  - b) a washbasin with plumbing that would facilitate clearances that comply with AS 1428.1,
  - c) a shower that complies with AS 1428.1, except that the following must be able to be accommodated—
    - (i) a grab rail,
    - (ii) a portable shower head,
    - (iii) a folding seat,
  - d) a wall cabinet sufficiently illuminated to be able to read the labels of items stored in it,
  - e) (a double general power outlet beside the mirror.
- 2) Subsection (1)(c) does not prevent the installation of a shower screen that can easily be removed to facilitate future accessibility.

### Proposed Amendment (9 Bathroom)

- 3) At least 1 bathroom within a hostel or independent living unit must be on the ground or main floor **or serviced by a private BCA compliant lift (not being a stairway platform lift) that is located within the dwelling** and have the following facilities arranged within an area that provides for circulation space for a wheelchair around sanitary facilities in accordance with AS 1428.1—
  - a) ~~a slip-resistant floor surface~~ **a floor surface that achieves a minimum slip resistance rating of P3/R10,**
  - b) a washbasin with plumbing that would facilitate clearances that comply with AS 1428.1 **in the future and at construction includes door circulation space within the bathroom that comply with as1428.1.**
  - c) a shower that ~~complies with~~ **has the spatial requirements and circulation requirements of AS 1428.1 at time of construction, except that.** The following must be able to be accommodated **at a later date**—
    - (i) a grab rail,
    - (ii) a portable shower head,
    - (iii) a folding seat,
  - d) a wall cabinet sufficiently illuminated to be able to read the labels of items stored in it,
  - e) (a double general power outlet ~~beside the mirror~~ **in an accessible location within the meaning of AS14281, this can be within the cabinet if the reach range meets AS1428.1..**
- 4) Subsection (1)(c) does not prevent the installation of a shower screen that can easily be removed to facilitate future accessibility. **Note Ensure waterproofing requirements can comply with removal of screen.**
- 5) Shower screen must have any section greater than 5mm

### Commentary

Provision of a lift within the dwelling would support more building types such as townhouses being used for SEPP. Stairway platform lifts are difficult to use by people with a disability.

The term “slip resistant floor surface” is not measurable and open to debate. Specification of P3/R10 is recommended as it aligns with the requirements of the NDIS SDA Design Standards Clause 7.1.10

We recommend reference to AS1428.1 in lieu of AS4299 generally. AS4299 is an old standard (1993) and does not reflect current requirements.

---

## 10 Toilet

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### Clause (10 Toilet)

- 1) A dwelling must have at least 1 toilet on the ground or main floor and be a visitable toilet that complies with the requirements for sanitary facilities of AS 4299.
- 2) In this section—  
**visitable toilet** has the same meaning as in AS 4299.

### Proposed Amendment (10 Toilet)

- 4) A dwelling must have at least 1 toilet on the ground or main floor ~~or level serviced by a private BCA compliant lift (not being a stairway platform lift) ramp or accessway, that is located within the dwelling and be a visitable toilet~~ that complies with the requirements ~~for sanitary facilities of AS 4299.~~ of AS1428.1, except that circulation areas can be achieved through removal of the shower screen and the WC pan can be replaced with a AS1428.1 compliant pan at a later date. ~~Ensure the plumbing out can accommodate the change in set-out required to meet AS1428.1.~~
- 2) ~~In this section—note plumbing should allow for future relocation~~  
~~**visitable toilet** has the same meaning as in AS 4299.~~
- 2) A floor surface that achieves a minimum slip resistance rating of P3/R10

### Commentary

We recommend reference to AS1428.1 in lieu of AS4299 generally.  
AS4299 is an old standard (1993) and does not reflect current requirements.

Updated wordings are required for clarity.

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## 11 Surface finishes

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### Clause (11 Surface Finishes)

Balconies and external paved areas must have slip-resistant surfaces.  
Note— Advice regarding finishes may be obtained from AS 1428.1.

### Proposed Amendment (10 Toilet)

Balconies and external paved areas must have ~~slip-resistant surfaces.~~ a surface finish that achieves a minimum slip resistance rating of P3/R10.  
~~Note— Advice regarding finishes may be obtained from AS 1428.1.~~

### Commentary

The note to this clause is incorrect – AS1428.1 has no specific slip resistance rating noted.

The term “slip resistant floor surface” is not measurable and open to debate. Specification of P3/R10 is recommended as it aligns with the requirements of the NDIS SDA Design Standards Clause 7.1.10

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## 12 Door hardware

---

### *Clause (12 Door hardware)*

Door handles and hardware for all doors, including entry doors and other external doors, must be provided in accordance with AS 4299.

### *Proposed Amendment (12 Door hardware)*

Door handles and hardware for all doors, including entry doors and other external doors, must be provided in accordance with ~~AS 4299~~ AS1428.1

For glazed sliding doors standard door handles can be provided as long as 35mm to 45mm space is achieved from the back of the door handle to the glass.

Sliding doorway tracks with slotted openings at door threshold are exempt from the maximum gap requirements of accessible path of travel of AS1428.1

### *Commentary*

We recommend reference to AS1428.1 in lieu of AS4299 generally.  
AS4299 is an old standard (1993) and does not reflect current requirements.

Clarifications around glazed sliding doors is required as standard products for glazed sliding doors do not readily achieve all accessibility requirements of AS1428.1. This is similar to the provisions on the NDIS SDA Design Standard.

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## 13 Ancillary items

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### *Clause (13 Ancillary items)*

Switches and power points must be provided in accordance with AS 4299.

### *Proposed Amendment (13 Ancillary items)*

Switches, ~~controls~~ and power points must be provided in accordance with ~~AS 4299~~ AS1428.1.

### *Commentary*

We recommend reference to AS1428.1 in lieu of AS4299 generally.  
AS4299 is an old standard (1993) and does not reflect current requirements.

Word controls is introduced to include video intercoms in multi storey development

## Part 2 Additional standards for independent living units

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### 15 Living room and dining room

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#### *Clause (15 Living room and dining room)*

- 1) A living room must have—
  - a) a circulation space in accordance with clause 4.7.1 of AS 4299, and
  - b) a telephone adjacent to a general power outlet.
- 2) (A living room and dining room must have wiring to allow a potential illumination level of at least 300 lux.

#### *Proposed Amendment (15 Living room and dining room)*

- 1) A living room must have—
  - a) a circulation space ~~in accordance with clause 4.7.1 of AS 4299,~~ of 2250mm diameter clear of furniture, ~~and~~
  - b) a ~~telephone~~ data outlet adjacent to a general power outlet.
- ~~2) A living room and dining room must have wiring to allow a potential illumination level of at least 300 lux.~~

#### *Commentary*

We recommend reference to AS1428.1 in lieu of AS4299 generally.

AS4299 is an old standard (1993) and does not reflect current requirements. In lieu of reference to AS4299, state required dimensions.

Wiring potentials are no longer relevant as lighting methods have advanced substantially with introduction of LED type lighting and therefore a particular lux requirement is considered to be outdated. We recommend deletion of the lux requirement.

---

### 16 Kitchen

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#### *Clause (16 Kitchen)*

A kitchen must have—

- a) a circulation space in accordance with clause 4.5.2 of AS 4299, and
- b) a circulation space at door approaches that complies with AS 1428.1, and
- c) the following fittings in accordance with the relevant subclauses of clause 4.5 of AS 4299—
  - (i) benches that include at least 1 work surface at least 800mm in length that comply with clause 4.5.5(a),
  - (ii) tap sets—see clause 4.5.6,
  - (iii) cooktops—see clause 4.5.7, except that an isolating switch must be included,
  - (iv) ovens—see clause 4.5.8, and
- d) “D” pull cupboard handles that are located towards the top of below-bench cupboards and towards the bottom of overhead cupboards, and
- e) general power outlets—
  - (i) at least 1 of which is a double general power outlet within 300mm of the front of a work surface, and
  - (ii) 1 of which is provided for a refrigerator in a position that is easily accessible after the refrigerator is installed.

#### *Proposed Amendment (16 Kitchen)*

A kitchen must have—

- a) a circulation space ~~in accordance with clause 4.5.2 of AS 4299~~ of at least 1200mm clear between opposing benches that is capable of easy adaption to 1550mm between opposing



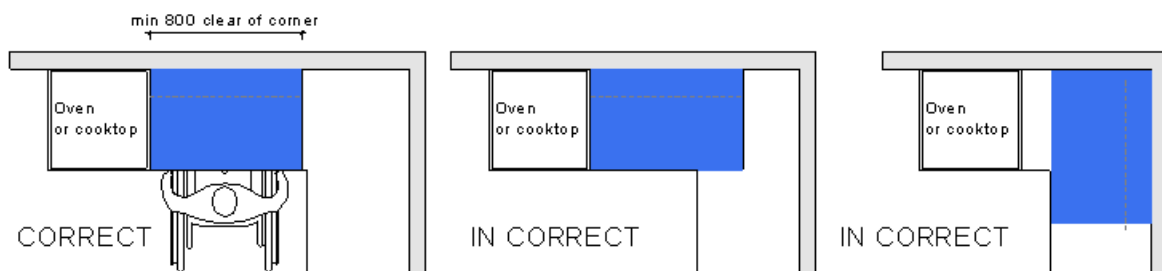
- benches without the modification to any plumbing services, and
- b) ~~a circulation space at door approaches that complies with AS 1428.1~~ circulation space to enter the kitchen area of min 1200mm clear between opposing benches, and
- c) the following fittings ~~in accordance with the relevant subclauses of clause 4.5 of AS 4299~~
  - (i) benches that include at least 1 work surface at least 800mm in length adjacent to the cooktop and adjacent to a wall oven and clear of an internal corner ~~that comply with clause 4.5.5(a)~~;
  - (ii) lever tap sets—~~see clause 4.5.6~~;
  - d) ~~cooktops—see clause 4.5.7, except that an isolating switch must be included,~~
  - (iii) ~~ovens—see clause 4.5.8~~ wall oven with at least part of the operable part of oven door handle located between 600mm and 1100mm above finished floor level, and
  - e) ~~“D” pull cupboard handles that are located towards the top of below-bench cupboards and towards the bottom of overhead cupboards, and~~
  - f) general power outlets—
    - (i) at least 1 of which is a double general power outlet within 300mm of the front of a work surface, and in an easily accessible location from within the kitchen.
    - ~~(ii) 1 of which is provided for a refrigerator in a position that is easily accessible after the refrigerator is installed.~~

### Commentary

We recommend reference to AS1428.1 in lieu of AS4299 generally.

AS4299 is an old standard (1993) and does not reflect current requirements. In lieu of reference to AS4299, state required dimensions.

The recommended changes reflect current kitchen designs that are generally of open plan arrangement rather than being a “room”. The provision of 1200mm between benches, with easy modification to 1550mm is easily achieved in most modern kitchens and is more appropriate to older ambulant people to limit their movement between benches. 1550mm is more appropriate for a person requiring use of a wheelchair for mobility which can easily adapted in the future. This is similar to provision that accessible toilet pan can be provided in the future and shower screens can be removed in the future when required. Also the cost of kitchen is minor and in a life cycle of the dwelling, the kitchen will be renovated multiple times.



Above diagram shows that the 800mm benchtop next to an oven or cooktop to be clear of internal corner for useability

D pull cupboard handles are not considered critical as these are easily replaceable.

GPOs for fridges are rarely accessed. This requirement was valid when there were no frost-free fridges available in the market and hence access was required to the PowerPoint to turn of the fridge. This is no longer the case and therefore this no longer should be a requirement.

Wiring potentials are no longer relevant as lighting methods have advanced substantially with introduction of LED type lighting and therefore a particular lux requirement is considered to be outdated. We recommend deletion of the lux requirement.

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## 17 Access to kitchen, main bedroom, bathroom and toilet

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### *Clause (17 Access to kitchen main bedroom, bathroom and toilet)*

In a multi-storey independent living unit, the kitchen, main bedroom, bathroom and toilet must be located on the entry level.

### *Proposed Amendment (17 Access to kitchen main bedroom, bathroom and toilet)*

In a multi-storey independent living unit, the kitchen, main bedroom, bathroom and toilet must be located on the entry level **or serviced by a lift (not being a stairway platform lift), ramp or accessway that is located within the dwelling.**

### *Commentary*

Lifts are commonly being provided within dwellings so should be addressed.

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## 19 Laundry

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### *Clause (19 Laundry)*

A laundry must have—

- a) a circulation space at door approaches that complies with AS 1428.1, and
- b) provision for the installation of an automatic washing machine and a clothes dryer, and
- c) a clear space in front of appliances of at least 1,300mm, and
- d) a slip-resistant floor surface, and
- e) an accessible path of travel to any clothes line provided in relation to the dwelling.

### *Proposed Amendment (19 Laundry)*

- a) a circulation space at door approaches that complies with AS 1428.1, and
- b) provision for the installation of an automatic washing machine and a clothes dryer, and
- c) a clear space in front of appliances of at least 1,300mm, and
- d) **a slip-resistant floor surface a floor surface that achieves a minimum slip resistance rating of P3/R10, and**
- e) an accessible path of travel to any clothes line provided in relation to the dwelling, **including the external doorway that is to comply with AS1428.1.**
- f) **where a laundry is provided in a cupboard arrangement, the doors will not obstruct the required circulation areas in front of appliances.**

### *Commentary*

The term “slip resistant floor surface” is not measurable and open to debate. Specification of P3/R10 is recommended as it aligns with the requirements of the NDIS SDA Design Standards Clause 7.1.10

It is critical that the doorway that provides access to the clothesline is accessible within the meaning of AS1428.1.

A laundry cupboard is a common design option. The doorways can affect the required circulation areas relating to the applicable and therefore the width of the doorways needs to be clear of the required 1300mm.

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## 20 Storage for Linen

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### *Clause (20 Linen)*

Linen storage must be provided in accordance with clause 4.11.5 of AS 4299.

### *Proposed Amendment (20 Linen)*

Linen storage must be provided ~~in accordance with clause 4.11.5 of AS 4299~~ with a minimum 600mm width adjustable shelving accessed via a living area.

### *Commentary*

AS4299 is an old standard (1993) and does not reflect current requirements. In lieu of reference to AS4299, state required dimensions. We see that linen cupboard is not provided in many cases with the bedroom robes being counted towards linen which is not the intent of the SEPP>

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## 21 Garbage

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### *Clause (21 Garbage)*

A garbage storage area must be provided in an accessible location.

### *Proposed Amendment (21 Garbage)*

A garbage storage area ~~or Garbage chutes~~ must be provided in an accessible location ~~and facilitate wheelchair turning areas of 1540x2070mm per AS1428.1.~~

~~Garbage chutes, where provided shall have circulation area of 1540x2070mm and have appropriate wheelchair access by a continuous accessible path of travel, and be opened at a height range of 600-1100mm above the finished floor level. The handle shall be operable with one hand.~~

~~Garbage areas shall be located within 60m of each ILU.~~

### *Commentary*

The provision of wheelchair circulation areas needs to be clarified to ensure access by all residents.

**From:** noreply@feedback.planningportal.nsw.gov.au on behalf of Planning Portal - Department of Planning and Environment  
<noreply@feedback.planningportal.nsw.gov.au>  
**Sent:** Thursday, 26 August 2021 5:09 PM  
**To:** DPE PS Housing Policy Mailbox  
**Subject:** Webform submission from: Proposed Housing SEPP  
  
**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Submitted on Thu, 26/08/2021 - 17:08

Submitted by: Anonymous

Submitted values are:

**Submission Type**  
I am making a personal submission

## Name

**First name**  
Adam

**Last name**  
Taylor

**Organisation name**  
Personal Submission

**I would like my submission to remain confidential**  
No

## Info

**Email**  
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**Suburb**  
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**Postcode**  
2099

**Submission**  
To whom it may concern,

I am writing this submission to ask for changes to your proposed housing state environment planning policy that you have presented in a draft format. The main topic I would like to discuss is around the changes to the boarding house policy.

Firstly I would like to draw your attention to the rooming house policy in South Australia. The policy is found on their website [sa.gov.au](http://sa.gov.au)

This policy can be implemented with the help of a private certifier. You will need to upgrade the building classification from a 1a to a 1b and that ensures the fire and safety upgrades to the property have been implemented and helps keep the occupants safe in the event of an emergency. You can have up to 5 people who are unrelated residing within the property so for example 1 couple and three single people all residing, creating a new community within the house and the house looks exactly the same as any other residential house in that street without the need for overdevelopment to provide affordable housing.

The next policy that I would like to reference is the Brisbane city council policy. This is in my opinion is also a good policy that allows affordable accommodation within the suburbs without the threat of overdevelopment or ruining the street scape. You require a building certifier to inspect and ensure compliance with a building classification changed to 1b. You can have up to 5 people residing at the property and the most important outcomes you need to meet are MP 5.7 and MP 2.1, also the size of the building must be less than 300m<sup>2</sup>

These are similar policies that I believe Ian Ugarte has proposed for use in NSW. The reason that these policies work is because the properties look like a normal residential house, they are restricted in size and therefore can not be overpopulated. You provide safe and affordable accommodation for the less fortunate, people on lower incomes who service our community but otherwise could not afford to live near their workplace, divorcees who may need to start over again, single people who are lonely or can not afford or justify having to pay rent and utilities on a property just for them selves. This can help facilitate a better community, with social and environmental benefits without disadvantaging the local community surrounding the proposed development. Another great benefit is that this costs the government nothing, mum and dad investors can fund the development without needing funding from big institutions who predominantly overdevelop the site and change the feel of the local community in a negative way. With these smaller developments there should be no reason as to why you would have to remove them from R2 residential zones as they do fit in quite nicely with the above examples in other states as reference.

We currently have rooming houses in other states around the country. Our properties are always full and a majority of our rooms are long term occupants. In one of our places 3 out of the 4 rooms have been occupied for longer than 18 months with one tenant residing there since Jan 2019. In our other property we have one tenant who has been there since October 2019 and for the 2 years she has been with us she has managed to save a deposit and purchase her first property. We have had geologists, child care workers, trainee doctors, council employees, tradesmen, people who work away from their home and only stay during the week, students and nurses. We have never received any complaints from the neighbours or had any issues with our inspections from the local councils.

I truly believe we need to provide affordable accommodation solutions for all of society especially in places such as Sydney where is such an unaffordable place to live. If we limit the opportunity's for small developments then we might be in danger of destroying community's with large scale boarding houses or have many businesses unable to find staff because it could be too far and costly to travel to work for lower paid employment if we restrict boarding houses to certain zones and larger scale developments.

Please consider the opportunity you have to enrich the local community with smaller scale developments in R2 residential zones so people from all walks of life can play, work and live in areas that suits their lifestyle, whilst allowing mum and dad investors to help fund and provide affordable housing solutions with no cost to our government or local community. These developments have a place in a functioning society and if presented properly the negative press that surrounds boarding houses can be presented as a successful and valued housing solution for NSW.

Regards, Adam Taylor

**I agree to the above statement**

Yes

**From:** Alex Salani <alexs@adwjohnson.com.au>  
**Sent:** Monday, 9 August 2021 9:29 AM  
**To:** DPE PS Housing Policy Mailbox  
**Subject:** Draft Housing SEPP enquiry

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Good morning,

We are seeking clarity in relation to the provisions of the draft Housing SEPP.

Division 3, Clause 74 sets out provisions relating development for the purpose of seniors housing involving the erection of a building or alterations and additions to an existing building. Clause 74(3) sets out a building height standard of 11.5m for such development. As drafted, this clause applies to all development for the purpose of seniors housing and is a development standard. We are seeking clarity as to whether Clause 74(3) is intended to apply to all seniors housing development or only to projects for which Clause 74(2)(c) applies – ie development on residential land where RFBs are not permitted. If applicable to all seniors development, this clause may be restrictive of seniors housing in the form of residential flat buildings.

Division 8 sets out standards relating to vertical villages. We are unable to identify a definition in the draft instrument for a vertical village. Could you please advise if it is intended for a definition to be included in the final instrument.

In accordance with Clause 99(4) the applicable FSRs for vertical village developments are the FSR mapped in an environmental planning instrument, or if not mapped 0.5:1 (plus bonuses outlined elsewhere in the division). There is some concern that where a site does not have mapped FSR (as occurs in many regional areas) a maximum FSR of 0.5:1 (plus bonuses) would apply. This may also be restrictive of RFB type developments.

Thank you an advance for your assistance.

Regards,



**Alex Salani**

**Town Planner**

**Hunter Office**

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27 August 2021

NSW Department of Planning, Industry and Environment

**SUBMITTED VIA: NSW PLANNING PORTAL**

**Re: SUBMISSION TO DRAFT SEPP (HOUSING) 2021, PART 4 SENIORS HOUSING**

ADW Johnson Pty Ltd provide this submission as it relates to Part 4 Seniors Housing under draft State Environmental Planning Policy (Housing) 2021.

Seniors Housing and access to all its forms and variations are critical components of the NSW housing system. We support the objectives of the draft policy as it relates to Seniors Housing. We have concerns that various components of the policy, as drafted, do not deliver on those objectives, and in some circumstances, act as a direct disincentive for appropriate housing outcomes. At minimum, they do not clearly and concisely allow proponents to interpret and understand the intended and actual effect, and generate policy confusion. This is not assisted by the broad nature of the explanatory information provided with the consultation material. This is particularly frustrating for medium and largescale projects that are significantly progressed through the design process but will be affected by the new policy once introduced. Overall, we are concerned that the drafting of the legislation in its current form may have unintended consequences.

- 1. Seniors Housing in R2 Low Density Residential** – Clause 76(1)(d) limits seniors housing in the R2 zone to residential care facility (RCF) only, which in effect prohibits any other form of seniors housing. In many LGAs outside of Sydney, R2 zones allow multi-dwelling housing and even residential flat buildings (for example Newcastle). In those circumstances, it is unclear why all forms of seniors housing should then be precluded from being part of the housing diversity and mix in those areas, enabling communities to elect to age in place and stay within their community and in different forms and density of living environments that they are more familiar with. This is particularly important to facilitate as part of the seniors housing market given the draft SEPP removes retirement village complexes on the fringe of urban areas. As drafted, it appears to override any

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opportunity for local authorities to elect to facilitate seniors housing within their zoning structure.

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*The limitation to RCF should only apply in the R2 zone where multi-dwelling housing is also prohibited or where the local EPI does not expressly permit seniors housing. Alternatively, all seniors housing forms should be permitted, allow for consideration on density, design, locational criteria and merit as part of development assessment.*

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2. **Clause 74(3), Clause 96(2)(b) and Clause 97(2)(b) - Height to facilitate appropriate servicing equipment** – The intent behind this provision is supported and introduces flexibility without the need for Clause 4.6 variations for appropriate servicing equipment. However as drafted, Clause 74(3) appears to apply to all forms of seniors housing on all land, which we assume is unintended and otherwise works against of the policy. There is also inconsistency between this and the drafting of other non-discretionary development standards that differentiate servicing equipment heights for different types of seniors housing, which again are not limited only to land in a residential zone where RFB are not permitted. It may be the intent of the policy that these provisions do not apply where RFB are permitted, but we cannot see where that can be relied upon?

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*The content of Clause 74(3) should be limited only to land in a residential zone where RFB are not permitted and should be relocated to sit within Clause 74(2)(c) as new subclause (iii). Alternatively, the clause should be written more broadly to enable additional height up to 2.5m above any other height of building standard for servicing equipment on the roof in the circumstances listed.*

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*Consideration should be given to the structure of this clause and others which enable varying heights for servicing equipment with Clauses 96 and 97, and should be either limited only to land in a residential zone where RFB are not permitted, or written to enable height above any other development standard for the circumstances as listed.*

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3. **Non-Discretionary Development Standards (Clauses 96 and 97)** – The protections afforded by these clauses as reasons for which development cannot be refused are well understood. With the clarification of these as non-discretionary development standards, it is unclear to us the effect of them should an application not comply with them and seek a merits-based design outcome and flexibility as provided for under Section 4.15 (3) of the EP&A Act. Is it the intent that the flexibility would be accommodated only via use of Clause 4.6? Would it be better to build in flexibility within the SEPP itself, that allows for merits assessment similar to DCP controls? Additionally, there are certain standards for the two grouped types of seniors housing which should not apply to all land or circumstances (for example height and FSR). This appears to be picked up at least in part for vertical villages including ILUs, by Division 8 Clause 100, but could be structurally made much clearer. The use of the word non-discretionary implies they must be complied with.



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*Provide a mechanism for flexibility to consider merits-based design outcomes that vary from the non-discretionary development standards listed in Clause 96 and 97 other than Clause 4.6, or be clear that these are standards for which Clause 4.6 would apply. Alternatively, do not identify these as development standards, but simply criteria that if satisfied cannot be used to refuse an application.*

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*Consider circumstances where the standards only apply in residential zones where RFB are not permitted, particularly as it relates to height and FSR.*

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*Specifically identify as part of Clause 96(2) and 97(2) that these are in relation to development for those purposes "other than development undertaken under Division 8", to be clear on hierarchy and application of the standards.*

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4. **Vertical Villages Default FSR** – The intent behind this division is supported and will be critical in facilitating these forms of housing as part of the urban land use mix. It is less restrictive and offers greater bonuses linked to the seniors land use outcomes than current. The allocation of a 'default' FSR of 0.5:1 however is of significant concern and must be revisited. For business and medium density zones where vertical villages are encouraged there should not be a default FSR. Many LEPs outside of metropolitan Sydney have chosen not to apply FSR limits to medium and high density residential and business zones (for example Lake Macquarie, Port Stephens, Maitland). An FSR bonus is not needed if there is no FSR limit to begin with. The effect of the default FSR will unreasonably limit the potential for seniors housing in the most appropriate locations and areas in their LGAs. This is further compounded by the drafting of the clause that means it applies in all instances, whether a bonus is sought or not. The opportunity in the circumstances to benefit from a height bonus, as drafted in Clause 99(2)(b) is welcome and should remain independent of FSR controls.

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*Delete the default FSR component in Division 8*

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5. **Vertical Villages Non-Discretionary Standards** – The intent behind limiting the Clause 96 and 97 standards via Clause 100 is supported in principle. However, it is unclear why standards of height should actually apply (refer also above submission point 3). Again, the wording "non-discretionary" implies mandatory.

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*Review the need for any non-discretionary development standards for vertical villages and how those standards apply in conjunct with other provisions*

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6. **Schedule 4 – Biodiversity Values Map** – The Biodiversity Values Map is a threshold and trigger map with the express purpose of determining whether the biodiversity offset scheme applies and further assessment requirements. It also

regularly changes. Whilst it should be a relevant assessment consideration, it appears unreasonable and against the purpose of the mapping to exclude development altogether.

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*Review the complete exclusion of land mapped on the Biodiversity Values Map by excluding that from Schedule 4 and adding provisions which relate to assessment under the BCA as relevant, in a similar to the way bushfire mapping and protection is provided for within the SEPP. If this is not done, be clear that this schedule exclusion only applies where development is actually proposed within a site, and not the broader lot or title itself (so development in sites can be appropriately design to avoid mapped areas and proceed).*

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- 7. Schedule 4 – Flood Planning** – The Flood Planning reference is too broad and generic and it is unclear specifically what the limitation actually is to enable all users of the policy to clearly and readily identify specific land that is excluded. If the intent is for this to be 'Flood Planning Area' (for which definitions direct people to the Floodplain Management Manual which is a broad risk based manual with multiple definitions), is that the area of land at or below the Flood Planning Level, which includes freeboard, as identified in local DCPS? is that any land below PMF? Whilst flood planning is a relevant assessment consideration for seniors housing, circumstances vary and there are many examples where land that is affected by flood planning that can still reasonably accommodate development including seniors housing, subject to individual circumstances. It appears unreasonable and against the purpose of flood planning to broad prohibit a land use.

In addition, the sterilisation of land, no matter the extent of flood affectation is inconsistent with the principles of the floodplain development manual. The inclusion of "flood planning" as land to which the SEPP applies appears to be an over reaction, we are not aware of development that has occurred in modern times that has placed seniors at risk. It is far better for this matter to remain a merit consideration and for Council to simply refuse development should risk be too high.

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*Review the complete exclusion of land affected by 'flood planning' by either excluding that from Schedule 4 and adding provisions which relate to assessment under flood planning clauses that now form part of the statutory planning system, in a similar way bushfire mapping and protection is provided for within the SEPP. Alternatively, be more specific on what the broad exclusion actually is so that it is clearly defined and communicated.*

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Please do not hesitate to contact Craig Marler (0414689158) or Sandra Hutton (0414689098) should further clarification be required on this submission.

Yours Faithfully

A handwritten signature in blue ink, appearing to read 'Sandra Hutton', with a long horizontal flourish extending to the right.

**SNADRA HUTTON**  
**SENIOR TOWN PLANNER**  
ADW JOHNSON PTY LTD  
HUNTER OFFICE

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**From:** noreply@feedback.planningportal.nsw.gov.au on behalf of Planning Portal -  
Department of Planning and Environment  
<noreply@feedback.planningportal.nsw.gov.au>  
**Sent:** Friday, 6 August 2021 11:25 AM  
**To:** DPE PS Housing Policy Mailbox  
**Subject:** Webform submission from: Proposed Housing SEPP

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Submitted on Fri, 06/08/2021 - 11:24

Submitted by: Anonymous

Submitted values are:

**Submission Type**

I am submitting on behalf of my organisation

## Name

**First name**  
BRENNAN

**Last name**  
BROOK

**Organisation name**  
affordable housing company

**I would like my submission to remain confidential**  
No

## Info

**Email**  
[BBROOK74@GMAIL.COM](mailto:BBROOK74@GMAIL.COM)

**Suburb**  
WAKERLEY

**Postcode**  
4154

**Submission**

These amendments don't provide for affordable accomidation in residential areas, in particular allowing smaller 3-5 bedroom co-housing in R2 zones and allowing certifier approval for this where the development conditions are met.

**I agree to the above statement**  
Yes



## Introduction

The Ageing on the Edge NSW Forum is a coalition of over 60 organisations and individuals. The members of the Forum include people with lived experience, advocates, service providers, peak bodies and private sector organisations working together to address housing and homelessness related issues of older people. The Forum was originally convened as a Reference Group for the Ageing on the Edge project that launched a report in 2017, *The Older I Get the Scarier It Becomes – Older People at Risk of Homelessness in NSW*.<sup>1</sup>

Based on widespread consultation with older people and the community sector in NSW, the Ageing on the Edge Forum has adopted policy recommendations that are critical to addressing the needs of older people facing housing stress and homelessness.

## Recommendations

- Maintain the current definition and age for seniors at 55 years in the State Environment Planning Policy (SEPP).

### Increase in number of older people experiencing homelessness

There is a significant shortage of social and affordable housing across NSW and the current COVID-19 related challenges and bushfires in 2019-20 among other issues exacerbated the demand for affordable housing.

Even before these crises, there was an increase in the experiences of homelessness among older people. From 2011 to 2016, the number of people aged 55 and over experiencing homelessness in NSW increased by 42% (from 4,529 to 6,407).<sup>2</sup>

### Age threshold for seniors

Consistency in policy, practice and data collection across different layers of government is critically important. We are concerned about the increasing of age threshold from 55 years to 60 years.

The rationale to align the age for Seniors SEPP with the changes to *Superannuation Industry (Supervision) Regulations 1994* is problematic and inconsistent with other policies. In particular, this

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<sup>1</sup> J. Fiedler and D. Faulkner, *The older I get the scarier it becomes: Older people at risk of homelessness in New South Wales*, 2017, accessible at: <https://www.older tenants.org.au/sites/default/files/older-i-get-scarier-it-becomes291117.pdf>

<sup>2</sup> Australian Bureau of Statistics, *Census of Population and Housing: Estimating homelessness*, 2016, accessible at: <https://www.abs.gov.au/ausstats/abs@.nsf/mf/2049.0>

is not in line with other policies in the state including Homelessness Strategy 2018-2023 which maintains the definition of older women being those over 55 years.<sup>3</sup> Homelessness—and particularly the disadvantages associated with it—can contribute to premature ageing through earlier onset of health problems more commonly associated with later life.<sup>4</sup>

The NSW Homelessness Strategy recognises that between 2013-14 and 2016-17, NSW saw 88% growth in the number of women over the age of 55 years accessing homelessness services.<sup>5</sup> Housing for the Aged Action Group's *At Risk* report found that an estimated 405,000 women over the age of 45 are at risk of homelessness across Australia, including 110,000 women in NSW.<sup>6</sup> These statistics demonstrate that raising the age to 60 years would result in more people experiencing high levels of housing stress or at risk of homelessness without access to necessary housing.

Pandemic related economic down turn is more likely to negatively impact on older people due to loss of employment, inadequate income support, unaffordable rental market in both metropolitan and regional areas as well as increasing pension age eligibility.

It is also likely that this measure will disproportionately impact Aboriginal and Torres Strait Islander older people. In health and other policy areas, Aboriginal and Torres Strait Islander people over 40 years are considered older people and are given priority access to a range of age related services as result of health concerns and pre-mature ageing.<sup>7</sup>

With the decline in home ownership among older people, the NSW Intergenerational report indicates that if those who retire without owning a home require social housing at a similar rate to today's retirees, this would increase demand for social housing by 68,000 households by 2060-61.<sup>8</sup> The report also highlights that there would also be consequences if this demand is not met, with those on the social housing waiting list typically experiencing acute housing stress.<sup>9</sup>

The relationship between better health outcomes for older people who live in secure housing is strongly supported by research in Australia and internationally.<sup>10</sup> Conversely, those who have insecure housing circumstances are more likely to experience adverse health outcomes. The cumulative effect of homelessness, poverty and disadvantage over long periods may result in people

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<sup>3</sup> Department of Communities and Justice, NSW Homelessness Strategy 2018-2023, accessible at: [https://www.facs.nsw.gov.au/data/assets/pdf\\_file/0007/590515/NSW-Homelessness-Strategy-2018-2023.pdf](https://www.facs.nsw.gov.au/data/assets/pdf_file/0007/590515/NSW-Homelessness-Strategy-2018-2023.pdf)

<sup>4</sup> Australian Institute of Health and Welfare, *Older Australia at a Glance*, 2018, accessible at: <https://www.aihw.gov.au/getmedia/7f3b1c98-c308-45c6-956b-b599893bdf33/Older-Australia-at-a-glance.pdf.aspx?inline=true>

<sup>5</sup> Department of Communities and Justice, NSW Homelessness Strategy 2018-2023, accessible at: [https://www.facs.nsw.gov.au/data/assets/pdf\\_file/0007/590515/NSW-Homelessness-Strategy-2018-2023.pdf](https://www.facs.nsw.gov.au/data/assets/pdf_file/0007/590515/NSW-Homelessness-Strategy-2018-2023.pdf)

<sup>6</sup> Housing for the Aged Action Group, *At Risk: Understanding the population size and demographics of older women at risk of homelessness in Australia*, 2020, accessible at: <https://www.olderrenters.org.au/publications/risk-405000-older-women-risk-homelessness-without-urgent-policy-reform>

<sup>7</sup> Department of Communities and Justice, *Ageing Well in NSW: Seniors Strategy 2021–2031*, accessible at: <https://www.facs.nsw.gov.au/download?file=798429>

<sup>8</sup> NSW Treasury, 2021-2022 NSW Intergenerational Report, 2021, accessible at: [https://www.treasury.nsw.gov.au/sites/default/files/2021-06/2021-22\\_nsw\\_intergenerational\\_report.pdf](https://www.treasury.nsw.gov.au/sites/default/files/2021-06/2021-22_nsw_intergenerational_report.pdf)

<sup>9</sup> NSW Treasury, 2021-2022 NSW Intergenerational Report, 2021, accessible at: [https://www.treasury.nsw.gov.au/sites/default/files/2021-06/2021-22\\_nsw\\_intergenerational\\_report.pdf](https://www.treasury.nsw.gov.au/sites/default/files/2021-06/2021-22_nsw_intergenerational_report.pdf)

<sup>10</sup> World Health Organization, *Social determinants of health: the solid facts* (2nd ed.), 2003.

experiencing age-related health conditions from as early as 45 years of age.<sup>11</sup> The importance of 'ageing-in-place' is also well established, with the opportunity for older people to remain socially connected and use a range of services – such as healthcare, home support and transport – in neighbourhoods that they know and feel comfortable in. Therefore, we recommend maintaining the age at 55 years.

## **Housing options including co-living housing models to support older people**

We maintain that there is a clear need for and the role of the state government to increase social and affordable housing stock. The *NSW Audit Office report on Homelessness in NSW* report found that the construction of purpose-built accommodation for women and children escaping domestic and family violence, and for older women, is significantly behind schedule, although the Department expects they will be delivered within the term of the Strategy.<sup>12</sup>

Data demonstrate that although the proportion of social housing program dwellings in the state and territories has remained stable over time, between 2014 and 2020, the highest growth in the proportion of community housing dwellings was in New South Wales (increasing from 18% to 32%).<sup>13</sup> Furthermore, in New South Wales, the proportion of social housing decreased from 5.0% in 2014 to 4.7% in 2020.<sup>14</sup> These statistics demonstrate the current pressures on the system to meet the growing demand for social and affordable housing.

Co-living housing and other shared accommodation options are appropriate in some cases where the regulations and supports are in place. However, it is important to note that options such as these are part of a suite of solutions and may not be appropriate for many people, particularly older people. Therefore, a balanced approach should be adopted, and due consideration should be given to a holistic strategy that encompasses planning measures as well as funding measures to increase affordable housing stock for older people.

Modelling undertaken by Equity Economics has identified the economic impacts of the COVID-19 pandemic on homelessness in NSW.<sup>15</sup> The community sector has been calling on the government to invest in an additional 5,000 new social housing dwellings every year for the next 10 years just to

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<sup>11</sup> B. Dow, E. Cyarto and F. Batchelor, *Healthy Ageing in Public Health: Local and Global Perspectives* Ed. P. Liamputtong pp. 277 – 293. 2013.

<sup>12</sup> Audit Office of NSW, *Responses to Homelessness*, accessible at: <https://www.audit.nsw.gov.au/our-work/reports/responses-to-homelessness>

<sup>13</sup> Australian Institute of Health and Welfare, *Housing assistance in Australia*, 2021, accessible at: <https://www.aihw.gov.au/getmedia/99cecf0-c493-4fbd-bbc3-953f526852b7/Housing-Assistance-in-Australia.pdf.aspx?inline=true>

<sup>14</sup> Ibid

<sup>15</sup> Equity Economics, *Supporting Economic Recovery In NSW: Investment in Social and Affordable Housing Is Critical to Supporting Jobs Today And Families into the Future*, 2020, accessible at: [https://www.ncoss.org.au/sites/default/files/public/policy/Equity%20Economics%20-%20Supporting%20Economic%20Recovery%20in%20NSW\\_Final\\_220620.pdf](https://www.ncoss.org.au/sites/default/files/public/policy/Equity%20Economics%20-%20Supporting%20Economic%20Recovery%20in%20NSW_Final_220620.pdf)

meet demand prior to COVID-19.<sup>16</sup> Given the rising demand, we recommend that the government dedicate 20% of these housing builds to older people in need.

## Other relevant considerations

The Housing SEPP also states that for development on land in Zone R2 Low Density Residential—the development is carried out only for the purposes of a residential care facility. As highlighted above, it is vital that older people are able to age in place and are able to maintain community connections. Therefore, we recommend that these be extended to a range of appropriate and accessible housing options, including independent living units.

Ageing on the Edge recognises the importance of new housing being fit for purpose for the needs of an ageing population. In April this year, a decision was made at the National Building Ministers Meeting to include minimum accessibility provisions for residential housing and apartments in the National Construction Code (NCC) 2022 based on the Liveable Housing Design Guidelines (LHDG) silver standards.<sup>17</sup>

In practical terms, this means that new housing built to these standards would be suitable for people whose mobility is affected or can easily adapted to be so. For example, doorways that are wide enough for wheelchairs, suitable turning zones for wheelchairs and walkers, staircases that could take a chairlift and reinforcement in bathroom walls so that support bars can be added.

Unfortunately, the NSW Government has not agreed to implement these new standards and to rely on voluntary adherence by the construction industry. As a coalition of community organisations, we support the *Building Better Homes* campaign that is advocating for the construction code to be implemented in NSW. Both the NSW Housing Strategy and the NSW Senior's Strategy exhort the importance of accessible and adaptable housing to allow people of all ages and abilities to continue to live in their homes as they age or develop health or mobility issues. It is vital that new housing, including social and affordable housing is built to this minimum accessibility standard.

Considering the growing demand for accessible, safe and long-term housing needs of the growing older population in NSW, we recommend that the NSW Government adapt the LHDG standards.

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<sup>16</sup> NCSS, Cost of Living/COVID-19 Supplementary Paper: Recommendations to the NSW Government, 2020, accessible at: [https://www.ncoss.org.au/sites/default/files/public/policy/23042020\\_CoLCOVID19\\_SupplementaryPaper%20ONLI%20NE\\_0.pdf](https://www.ncoss.org.au/sites/default/files/public/policy/23042020_CoLCOVID19_SupplementaryPaper%20ONLI%20NE_0.pdf)

<sup>17</sup> See further: Architecture Australia, Minimum housing accessibility standards to be adopted nationally, 3 May 2021, accessible at: <https://architectureau.com/articles/accessibility-standards/>



[REDACTED]

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**From:** Will Roberts <will@alsaker.com.au>  
**Sent:** Thursday, 26 August 2021 4:32 PM  
**To:** [REDACTED]  
**Cc:** DPE PS Housing Policy Mailbox  
**Subject:** SEPP Change Objection

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**To: Local Government and Economic Policy Division**  
**NSW Planning**

I am writing to **object** to the Draft Housing SEPP currently on exhibition (seniors housing). From reading the policy I understand that seniors housing independent living units will no longer be allowed to be developed in R2 residential zone.

This change in policy will have detrimental impact to the aging residents in the eastern suburbs. We have been buying property in Woollahra LGA for many years and there is a shortage of suitable accessible housing to downsize to and the demand is stronger each year.

The standard units on the market are not designed for accessibility and do not offer the circulation (both within the unit and in common areas such as garage and lobbies) and “no step” guidelines of seniors living units. Minute design details like location of power points, night lights in the bathroom and suitable door handles etc are all the design features that makes everyday life so much easier and enable older people to stay independent and age in place.

The policy suggests that all the senior living units should be concentrated in vertical high rise in the middle of a shopping centre. I find this policy direction very restrictive and unsuitable for our LGA:

- Woollahra/Waverley LGA has one of the highest percentage of its residents over 55 year of age, hence more important to have the housing choice for downsizers
- Woollahra/Waverley LGA has a steep topography and currently there is no large unit zone sites, hence by restricting seniors housing units in R2, it will mean no housing choice

- Most people in this age group do not want to move to a large vertical development, which they find more isolating than a boutique development where residents have company and can care for each other.

Recent government statistic shows:

### **Living arrangements**

Most older people (95.3%) were living in households, with 4.6% (181,200 people) living in cared-accommodation. Of all older Australians:

- men were more likely to be living in households (96.8%) compared with women (94.2%)
- women living in households were almost twice as likely to live alone (33.7%) than men (18.1%)
- the likelihood of living in cared-accommodation increased with age from 1.4% of people aged 65 to 79 years (similar to 2015) to 14.3% of people aged 80 years and over (a decrease from 16.1% in 2015)

The statistics show over 95% of older people still living in household and Housing SEPP policy should ensure there are suitable transition housing types rather than just focusing on the in cared-accommodation for 4% of the older population.

Not only will low-rise boutique senior developments have a lesser visual impact, extended-families will find it much easier to visit/care for the residents.

As someone in the property sector we see on the ground everyday what people are requiring and demanding, I want to remain in the familiar LGA and not be forced into an urban jungle of residential towers. I sincerely hope NSW planning will take into consideration my concerns and many others in this local community that feels the same way.

Regards

Will Roberts  
Alsaker | Private Buyers Agents  
0414415760



27 August 2021

Mr Jim Betts  
Secretary  
Department of Planning, Industry and Environment  
4 Parramatta Square  
12 Darcy Street  
Parramatta NSW 2150

**Lodged via the NSW Planning Portal**

Dear Mr Betts

**Submission regarding draft *State Environmental Planning Policy (Housing) 2021***

We refer to the draft *State Environmental Planning Policy (Housing) 2021* (**Draft SEPP**) currently on public exhibition until 29 August 2021, and thank you for the opportunity to make a submission.

As one of the largest not-for-profit providers of social housing, affordable housing, seniors housing and aged care services in NSW, and as a long-term asset owner, Anglicare makes this submission because we consider that unless amended, the Draft SEPP will result in reduced supply and increased costs not only for operators but also for seniors seeking to access quality housing.

This will affect the government's ability to achieve the Draft SEPP's stated aims of:

- ensuring an adequate supply of diverse housing in NSW;
- providing greater clarity and certainty for the housing sector;
- encouraging the development of diverse and affordable housing types; and
- encouraging the development of housing that is designed and located in a manner that meets the needs of residents, especially seniors or people with a disability.

In particular, we are concerned that the Draft SEPP will adversely impact the feasibility of developing affordable and seniors housing to meet the increasing demands for these forms of housing as a result of Australia's ageing population. These implications for feasibility are compounded by the significantly increased regulatory requirements arising from the findings of the Royal Commission into Aged Care Quality and Safety (**Royal Commission**). We also consider that the proposed policy shift towards development in high density areas will make it much more difficult for Anglicare to meet the needs and preferences of our residents to live within their established local communities.

To understand in practical terms the effect the Draft SEPP will have, we have undertaken a review of our property portfolio with our town planning consultants DFP Planning. We set out in this submission the findings of that review to demonstrate adverse implications of the Draft SEPP by providing examples based on certain properties within our portfolio. We make a number of recommendations for amendments to the Draft SEPP which would address these concerns.

Our submission adopts the following structure:

- (a) **Section 1:** summary of requested amendments;
- (b) **Section 2:** comments on the seniors housing provisions in Chapter 3, Part 4 of the Draft SEPP;
- (c) **Section 3:** comments on the boarding house provisions in Chapter 2 of the Draft SEPP; and
- (d) **Section 4:** miscellaneous comments.

## 1 Summary of requested amendments

- 1.1 As explained in detail in the body of this submission, Anglicare requests the following amendments to the Draft SEPP.

Topic	Suggested Amendments
<b>Seniors housing provisions</b>	
Land application and permissibility	Reinstate the permissibility of Independent Living Units ( <b>ILU</b> ) in land zoned R2.
Savings and transitional provisions	Expanded savings and transitional provisions for ILUs on existing villages located in R2 zones (if the proposed prohibition of ILUs in these zones is retained in the final SEPP).
	Provide that the <i>State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (HSPD SEPP)</i> continues to apply to concept development applications under Division 4.4 of the <i>Environmental Planning and Assessment Act 1979 (NSW) (EP&amp;A Act)</i> and modification applications under s4.55 or 4.56 of the EP&A Act.
Environmentally sensitive land	Amend Schedule 4 to make clear that only the part of a land parcel that is mapped as 'environmentally sensitive land' is excluded from the application of the SEPP, <u>and not</u> the whole of the land parcel.
	Amend Schedule 4 to delete the reference to 'flood planning'. If there remains a concern, a further clause could be included in the body of the Draft SEPP to cross-reference cl 5.22 of the Standard Instrument Local Environmental Plan ( <b>Standard Instrument LEP</b> ) imposing special flooding considerations for development of land between the flood planning area and probable maximum flood.
	Amend Schedule 4 to refer to biodiversity values mapped in local environmental plans rather than the Biodiversity Values Map under the <i>Biodiversity Conservation Regulation 2017 (NSW)</i> .
	Amend Schedule 4 so that rather than referring to ' <i>land identified as coastal wetlands and littoral rainforests area within the meaning of State Environmental Planning Policy (Coastal Management) 2018</i> ' ( <b>Coastal Management SEPP</b> ), refer instead to ' <i>land identified as "coastal wetlands"</i>

	or "littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map', so as to exclude land identified as "proximity area for coastal wetlands" and "proximity area for littoral rainforest'.
State Significant Development (SSD) pathway	Remove the 60% requirement for Residential Aged Care Facilities ( <b>RACF</b> ) so that the SSD pathway is available for <u>any</u> seniors housing development that includes a RACF with a capital investment value over \$30m (in Greater Sydney) or over \$20m (outside Greater Sydney).
Development standards	Resolve the apparent inconsistency between the height of building development standard in cl 74 of the Draft SEPP and the non-discretionary development standard in cl 96.
	Amend cl 74(3) and cl 96(2)(a) and (b) of the Draft SEPP to ensure that the additional 2m building height allowance for mechanical plant extends to RACFs where the mechanical plant is located below the roof or between floors, as opposed to located on the rooftop only.
	Amend the proposed definitions of ' <i>maximum permissible building height</i> ' and ' <i>maximum permissible floor space ratio</i> ' within the Dictionary to exclude reference to development control plans.
Vertical villages	Increase the floor space ratio ( <b>FSR</b> ) incentives.
	Delete the base FSR of 0.5:1 in cl 99(4)(b), whilst still providing the 3.8m bonus height for a vertical village for sites to which cl 99(4)(b) applies.
	Permit vertical villages in business zones where 'shop top housing' is permitted with consent, in addition to what is currently proposed.
	Exclude support services from the calculation of gross-floor area (as currently exists in the HSPD SEPP).
<b>Boarding house provisions</b>	
Land application and permissibility	Mandate in the SEPP the permissibility of boarding houses in R2 zones.
Development standards	Provide a FSR bonus for boarding house development in zones where residential flat buildings are not permitted.

## 2 Seniors Housing

- 2.1 Providing an adequate supply and diverse mix of housing for our ageing population is a critical policy issue, as recognised in the recent NSW Housing Strategy Discussion Paper as well as the findings of the Royal Commission.
- 2.2 We would like to acknowledge at the outset those provisions of the Draft SEPP in relation to seniors housing which we support, and the Department's positive response to concerns previously raised in response to the Explanation of Intended Effect. In particular:
- (a) Anglicare supports the change in policy position reflected in clause 8 of the Draft SEPP, that the SEPP will prevail over local controls to the extent of any inconsistency. We consider that this is an essential change to facilitate the supply of seniors housing through consistent State-led policy which provides certainty to aged care developers.

- (b) We also support the provisions in cl 82 and 83 of the Draft SEPP which amend the location and access to facility requirements for RACFs and ILUs and provide greater flexibility to operators.
  - (c) Anglicare supports the introduction of a SSD pathway for RACFs of a certain scale, although as discussed further below we consider that the current drafting requires amendment to ensure that this pathway is not unduly limited in its practical application.
- 2.3 Notwithstanding the above, Anglicare considers that certain provisions in the Draft SEPP will fundamentally undermine the stated aims of the Draft SEPP and result in a significant reduction in both the supply of seniors housing (especially affordable seniors housing) generally and the range of housing types available for residents. This is primarily due to the significant curtailing of the land on which seniors housing will be able to be developed as compared with the current planning framework.

#### **Narrowing zones in which seniors housing can occur**

- 2.4 The proposed move to 'prescribed zones' narrows the breadth of land to which the HSPD SEPP currently applies, given that it removes the opportunity for other suitable sites to be determined through the Site Compatibility Certificate process. This curtailing of available land is significantly compounded by the further restrictions in cl 76 of the Draft SEPP which restricts development in the RE2, SP1, RU5 and R2 zones.
- 2.5 This curtailing of available land must be considered as part of the broader landscape faced by aged care developers following the Royal Commission. As a result of the findings of the Royal Commission, the aged care sector is exploring operating models which would facilitate the provision of greater levels of care and aging in place within ILUs, with less time spent by residents in RACFs. The proposed prohibition of ILUs in R2 zones, fundamentally undermines the ability for this to be achieved.
- 2.6 The Department has said that the intention of the Draft SEPP is to encourage seniors housing in high density zones, with a move away from low density residential and rural zones. This policy position assumes that aged care and seniors housing residents want to retire to high density areas. Anglicare's experience is to the contrary, with our residents preferring a variety of retirement options (including the option of a free-standing villa with a garden) and the opportunity to continue to reside in the area they have previously lived within their established communities. The proposed policy shift, particularly the prohibition on ILUs in R2 zones, will make it much more difficult for Anglicare to meet the needs and preferences of our residents.
- 2.7 Furthermore, the sales rates in retirement villages are generally slow and the time taken to achieve full occupancy can be significant. The policy shift from providing seniors housing in lower density areas to higher density areas (such as through vertical villages) means that seniors housing will not be able to be staged in line with demand for units. This shift in building typology will, in our view, deter development as it requires substantive investment at the initial stage of development without the opportunity for progressive expansion to meet current demand.

Restriction on ILU development in R2 zone

- 2.8 Of all of the changes proposed in the Draft SEPP, of most concern to Anglicare is the proposed restriction on ILU development in R2 zones. We urge the Department in the strongest possible terms to reconsider this restriction.
- 2.9 Limiting the development in R2 zones only to RACFs, but not permitting ILUs, reflects a misunderstanding as to how aged care and seniors housing is delivered by aged care operators, not only to make a development feasible but also to meet the needs of our residents. To be specific, providers such as Anglicare generally co-locate a RACF with ILUs because:
- (a) it is part of the 'continuum of care model'. This enables residents to age in place and have access to a broader range of care services whilst residing in ILUs. This provides higher levels of personal wellbeing for older Australians as compared to living remotely in the general community;
  - (b) the operation of a RACF generally results in a net operating loss, such that the ILUs effectively offset that loss and ensure that the development of a RACF is feasible on a particular site. This is expected to continue with the increased regulatory requirements applying to RACFs as a result of the Royal Commission;
  - (c) it enables residents of ILUs the opportunity to transition to higher levels of care on the same site and without needing to leave their established social networks and communities;
  - (d) couples can remain in the same village even though they may require different levels of care; and
  - (e) it enables Anglicare to be nimble and recycle aged RACF assets to ILU dwellings in appropriate circumstances to meet demand and adapt to changing design requirements. Again, this need for adaptability is expected to increase with the Royal Commission's recommendations that RACFs should be delivered as a 'small household model'.
- 2.10 In our experience, co-locating RACFs and ILUs also provides the best outcome in terms of social impacts for our residents. Our residents tell us that they often want to remain in the community with which they feel familiar to maintain connections with family, social networks and service providers (eg. general practitioners).
- 2.11 These outcomes are undermined by the proposed restriction of all ILU development in the R2 zone and the proposed shift for seniors housing to be located in high density areas.
- 2.12 Furthermore, the findings of the Royal Commission included that residential aged care should transition towards smaller, lower-density congregate living arrangements, including the 'small household model'. Whilst the Draft SEPP proposes that RACFs will be permitted

in the R2 zone, as noted above the practical reality is that the development of a RACF is generally only financially feasible if it is developed in conjunction with co-located ILUs.

- 2.13 The magnitude of impact that this proposed amendment will have in relation to Anglicare's residents and seniors housing offering is clear: approximately 1,800 of Anglicare's existing ILU dwellings are located in R2 zones.
- 2.14 Anglicare currently has 47 seniors housing sites/projects. Of these, over 50% are located in the R2 zone (or partly within the R2 zone) comprising:
- (a) 8 of 23 active existing villages;
  - (b) 6 of 8 existing villages proposed for future redevelopment;
  - (c) 8 of 13 sites proposed for future seniors development; and
  - (d) 2 of the 3 existing villages which are proposed to close.
- 2.15 For all of these sites located in (or partly in) R2 zones, ILU development is not permissible under the applicable local environmental plans, and the development of these sites has relied on the HSPD SEPP. Whilst the Department has indicated that some local councils may 'opt in' to permit all forms of seniors housing within the R2 zone within their local environmental plans, this is not a sufficient mechanism to ensure ongoing supply of this crucial housing type.
- 2.16 In our view, it is likely that many councils will take their lead from the State and prohibit ILU development in R2 zones under their local environmental plans. Many Local Strategic Planning Statements do not make provision for seniors housing at all – and we expect that this is a result of the current facultative provisions of the HSPD SEPP as the pathway for approval of a large proportion of existing seniors housing. This is why facultative provisions to continue the permissibility of ILUs in R2 zones is needed within any new State policy controlling seniors housing.
- 2.17 The proposal to prohibit all ILU development in the R2 zone (unless permissible under the applicable local environmental plan) will have significant implications for Anglicare's development of new seniors housing on R2 zoned land (including land Anglicare owns but has not yet developed) and redevelopment / upgrading of our existing villages on R2 zoned land.

**Example:**

- 2.18 By way of example, Anglicare operates a seniors housing village at 284 Castle Hill Road, Castle Hill with adjoining land at 411-419 Old Northern Road, Castle Hill. Anglicare has operated this site since 1959. In total, the site area is 44 hectares and there are 771 ILU dwellings on the site (with another 120 proposed) together with 5 residential aged care facilities with approximately 760 beds. This site was originally zoned as 'Special Uses A (Community Purposes)' under the *Hornsby Local Environmental Plan 1994* and '*housing for aged or differently abled persons*' was permissible with consent. The zoning was



changed to R2 Low Density Residential with the commencement of the *Hornsby Local Environmental Plan 2013*, under which seniors housing is a prohibited use.

- 2.19 The current HSPD SEPP permits all forms of seniors housing on the site, however the effect of the Draft SEPP will be that no further ILU development may be carried out on that site.
- 2.20 The planning controls applying to this 44ha site have been progressively eroded to the point where a significant seniors housing village (the largest in Sydney) will only be able to redevelop and replace aged stock by relying upon existing use rights and saved consent provisions under the EP&A Act. Such provisions are limited in their application, and will not facilitate upgrading of aged stock to reflect modern standards without significant complexities and uncertainties in the planning process.
- 2.21 Having to rely on existing use rights under the EP&A Act, with its significant limitations and uncertainties, will be a major disincentive for aged care operators such as Anglicare to upgrade existing stock or seek to expand existing villages which have always been earmarked for further seniors development.
- 2.22 Existing use rights will not be available at all in relation to undeveloped land in R2 zones. The Draft SEPP will therefore bring about what is essentially a significant down-zoning of such land.

***Proposed alternative approaches:***

- 2.23 Given the significant implications of this proposed amendment to Anglicare's existing villages and proposed future development and redevelopment opportunities, we urge Government in the strongest possible terms to permit both RACF and ILU development in the R2 zone under the Draft SEPP (and delete cl 76(1)(d)) of the Draft SEPP).
- 2.24 The proposed restrictions will have an enormous impact on future development of residential aged care in NSW, compounding the increase in development and operational risk currently being experienced in the industry as a result of the Royal Commission.
- 2.25 If the Department is nevertheless determined to limit ILUs in the R2 zone in some way, we request that the Department consider potential alternatives (or combination of alternatives) to mitigate the impacts on supply such as:
  - (a) introducing savings and transitional provisions such that the HSPD SEPP continues to apply to existing villages in R2 zones, including in relation to undeveloped land in those villages;
  - (b) allowing social housing providers to develop ILUs in R2 zones, given the need for affordable seniors housing options;
  - (c) permitting ILU development in R2 zones for larger sites. Larger sites provide a greater opportunity to provide innovative design approaches to ensure impacts are minimised while still enabling the co-location of RACFs and ILUs; or
  - (d) introducing consistency with character requirements for ILU development in R2 zones, and introducing controls around their built form and scale.

### **Savings and Transitional Provisions**

- 2.26 We support the draft savings and transitional provisions included within Schedule 6 of the Draft SEPP, such that the provisions of the HSPD SEPP continue to apply to:
- (a) development applications made, but not yet determined, on or before the repeal day; and
  - (b) a development consent granted on or before the repeal day.
- 2.27 However, if the final form of the SEPP restricts the development of ILUs in the R2 Low Density Residential zone, then there is a critical need to broaden the savings and transitional provisions so that the HSPD SEPP continues to apply to all existing village sites (containing ILUs) on land in the R2 zone. Otherwise, without such savings and transitional provisions, a very large number of existing villages in R2 zones will be solely reliant on existing use rights and saved consent rights under the EP&A Act for any future development.
- 2.28 Such an approach would be consistent with the current HSPD SEPP which contains a number of site-specific references. In particular, cl 4(12) of the HSPD SEPP expressly provided that the SEPP was to apply to Anglicare's land at 589-593 and 599-607 Old Northern Road, Glenhaven. This land comprises both Anglicare's existing Glenhaven Green village and adjoining vacant land which is the subject of a development consent for seniors housing. This clause was added to the HSPD SEPP as a site specific amendment to reflect the need for the HSPD SEPP to continue to apply to the existing village and its future extension.
- 2.29 The savings and transitional provisions should also extend such that the HSPD SEPP continues to apply to concept development applications under Division 4.4 of the EP&A Act and modification applications under s4.55 or 4.56 of the EP&A Act.

### **Further exclusions through 'Environmentally Sensitive Land' provisions**

- 2.30 The environmentally sensitive land schedule has been amended in the Draft SEPP to align with current legislation, however some of the new terms now included will have the effect of making the schedule far more wide-reaching in its application than the current position under the HSPD SEPP. By way of illustration, 10 of Anglicare's sites would fall within the draft Schedule 4, yet none of them is identified as 'environmentally sensitive land' within the HSPD SEPP.
- 2.31 It is essential that Schedule 4 be amended to make clear that only the part of a land parcel that is mapped as 'environmentally sensitive land' is excluded from the application of the SEPP, and not the whole of the land parcel. Seniors housing developments generally occur on large lots where it may be that only a very small portion of the lot is caught by the terminology in Schedule 4.
- 2.32 If this amendment is not made, the effect will be to unnecessarily sterilise large areas of suitable land for seniors housing. It will also mean that existing villages on affected land (even if only partly on affected land) will need to rely on existing use rights and saved consent provisions under the EP&A Act for future redevelopment which adds significant complexity and uncertainty to the planning approvals process.

### *Flood planning*

- 2.33 The exclusion of land identified in another environmental planning instrument as 'flood planning' is significantly broader in its application than the terminology in the HSPD SEPP of 'floodway', 'high flooding hazard' and 'natural hazard'. The use of the blanket term 'flood planning' also does not take into account the degree of flood affectation / flood hazard of that land, and therefore will unduly limit the development potential of land which is identified as 'flood planning' without providing the opportunity for assessment of potential design solutions which could adequately address flooding issues (which may be very minor and capable of resolution).
- 2.34 Anglicare has several existing villages located on land which, in part, is identified as 'flood planning' under an environmental planning instrument. In each of those cases, development applications were approved because Anglicare was able to demonstrate after detailed study that flooding impacts could be adequately addressed.
- 2.35 We therefore request that the term 'flood planning' be deleted from Schedule 4 of the Draft SEPP so that such land is not automatically excluded from the operation of the Draft SEPP. If there remains a concern, a further clause could be included in the body of the Draft SEPP to cross-reference cl 5.22 of the Standard Instrument LEP imposing special flooding considerations for development of land between the flood planning area and probable maximum flood. This would be an approach which is more consistent with the existing planning framework at the local level.

### *Biodiversity values*

- 2.36 Schedule 4 also proposes to exclude from the application of the Draft SEPP land identified on the Biodiversity Values Map. Anglicare considers this problematic given that the Biodiversity Values Map is not ground-truthed and does not necessarily reflect the actual biodiversity that is present on a particular piece of land at a particular point in time (for example, it will not reflect vegetation which has been removed lawfully under a planning permission).
- 2.37 We consider that Schedule 4 should refer to biodiversity values mapped in local environmental plans as opposed to the Biodiversity Values Map under the *Biodiversity Conservation Regulation 2017* (NSW).

### *Coastal wetlands and littoral rainforests*

- 2.38 Schedule 4 should be amended so that rather than referring to '*land identified as coastal wetlands and littoral rainforests area within the meaning of [Coastal Management SEPP]*', refer instead to '*land identified as "coastal wetlands" or "littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map*', so as to exclude land identified as '*proximity area for coastal wetlands*' and '*proximity area for littoral rainforest*'.
- 2.39 Such an approach would be consistent with the separate controls within the Coastal Management SEPP for these areas notwithstanding that they are included within the Coastal Wetlands and Littoral Rainforests Area Map.

### *General comment*

- 2.40 Cross-references to other legislation creates significant problems when that legislation is amended. Anglicare requests that the Department reconsider the use of the above terms given that they will serve to further limit the land to which the SEPP will apply, again reducing supply of seniors housing.

### **SSD Pathway**

- 2.41 Anglicare supports the creation of a new SSD pathway for RACFs.
- 2.42 However, the current drafting of the proposed new clause to be inserted within the *State Environmental Planning Policy (State and Regional Development) 2011*, in particular subclause (b) which requires the RACF to comprise at least 60% of the capital investment value of the proposed development, will mean that it is very limited in its practical application and will not be effective in providing an alternative planning pathway to increase supply.
- 2.43 Whilst Anglicare develops RACFs with a capital investment value of over \$30 million in Greater Sydney (and over \$20 million outside of Greater Sydney) they are almost always co-located with ILUs (for the reasons discussed previously in this submission) where the ILUs contribute to the majority of the capital investment value.
- 2.44 The effect of the current drafting of eligibility for the SSD pathway will therefore exclude most of Anglicare's large RACF developments.
- 2.45 Anglicare considers that the 60% requirement should be deleted, so that the SSD pathway is available for any seniors housing development that includes a RACF, where the RACF has a capital investment value meeting a nominated capital investment value thresholds, irrespective of the contribution of the ILUs to the overall value of the development.

### **Height of buildings standards**

- 2.46 Anglicare understands the benefit in amending the definition of building height to align with the Standard Instrument, to avoid confusion between instruments. However, the proposed definitions of '*maximum permissible building height*' and '*maximum permissible floor space ratio*' within the Dictionary should only refer to the maximum height or FSR permitted on the land under an environmental planning instrument, and not also include (as is currently proposed) such a standard under a development control plan. In circumstances where all local environmental plans (and some other environmental planning instruments) contain height of building and FSR maps, there is no basis to include in the definition a reference to a development control plan which may include inconsistent standards for height and FSR and which, in any event, are not mandatory controls.
- 2.47 In relation to the proposed development standards, there appears to be an inconsistency between the height of building development standard in cl 74 of the Draft SEPP (a 9m standard) and the non-discretionary development standard in cl 96 (a 9.5m standard plus allowance for roof plant). We request that this be clarified in the final SEPP to avoid

uncertainty as to the applicable standard and the circumstances in which a cl 4.6 variation request will be required.

- 2.48 The proposed height control in cl 74 could also be problematic for residential zones where residential flat buildings are not permissible (eg. R3 zone) or any of the business zones in which residential flat buildings are not mandated as a permissible use under the Standard Instrument. In those circumstances, the building height controls in the applicable local environmental plans could easily be greater than 9m and a cl 4.6 request would then be required to vary the height standard in cl 74 (even though taller development is permissible under the local environmental plan). This would appear to be an unintended consequence.
- 2.49 In relation to the additional allowance in height for mechanical plant, this is certainly supported by Anglicare. However, we request additional flexibility in the drafting of this clause to recognise that mechanical plant is not always located on the roofs of RACFs, but often can be located below the roof or between floors for operational reasons. These instances would not be captured by the current drafting, but should equally benefit from an increased height allowance.

### **Incentives for Vertical Villages**

- 2.50 Anglicare generally supports the FSR incentives proposed for vertical villages in cl 99 of the Draft SEPP. However, we are concerned that these FSR incentives will not be able to be fully realised, lessening their benefit for aged care operators, as a result of:
- (a) the proposed additional height limit of 3.8m (cl 99(2)(b)). We consider that any building height increase must be proportional to the increase in FSR so that bonus FSR is not curtailed by a height limit; and
  - (b) the application of a base FSR of 0.5:1 if a maximum FSR is not specified under a relevant planning instrument.
- 2.51 The above controls result in practical anomalies which will serve as a disincentive to develop vertical villages, which could not have been the intention.
- 2.52 By way of example, we have considered the town centres in the Blacktown LGA where residential flat buildings are permissible (being the R4 zones in Seven Hills, Blacktown, Rooty Hill, Mount Druitt and St Marys). These are locations where vertical villages would be eminently suitable. In these centres, the local environmental plan prescribes maximum height controls of between 14-20m, but does not prescribe a maximum FSR. For these sites, cl 99(4)(b) of the Draft SEPP applies a base FSR of 0.5:1 to which a bonus may then be applied. If the most generous FSR bonus of 25% were to apply to this land, this would achieve an overall FSR of 0.625:1 which generally equates to a 2 storey building on land where the maximum building height is between 14-20m. This is not proportionate to the height of building controls, character and density clearly sought to be achieved in these areas under the local environmental plan. This example demonstrates that the deemed base FSR of 0.5:1 under cl 99(4)(b) results in no meaningful FSR bonus for vertical villages on such land and will operate as a disincentive for development of seniors housing in these high density areas where the local environmental plan does not specify a maximum FSR

control. Other similar examples can be found in the Penrith and Hornsby LGAs, and we expect many other LGAs also.

- 2.53 We therefore ask the Department to delete the base FSR of 0.5:1 in cl 99(4)(b), whilst still providing the 3.8m bonus height for a vertical village for sites to which cl 99(4)(b) applies and retaining cl 100 regarding non-discretionary development standards for vertical villages. This amendment would ensure that seniors housing is not disadvantaged compared to residential flat buildings that can be undertaken in high density zones.
- 2.54 Additionally, we consider that the application of this clause only to land on which residential flat buildings are permitted under another environmental planning instrument is too limited, especially given the effect of other changes proposed in the Draft SEPP (discussed above) which will mean that aged care operators will be forced to compete for sites with residential developers.
- 2.55 We strongly urge the Department to extend the application of cl 99 to business zones in which shop top housing is also permissible with consent. Such a change would increase the opportunities in which vertical villages could be developed and, by applying the FSR incentives to those zones, would enable aged care providers to compete with residential developers for sites. This change would also be consistent with the government's stated policy position to seek to move seniors housing into centre locations.
- 2.56 Further, the current HSPD SEPP excludes gross floor area used to deliver on-site support services (3 meals per day, personal care, home nursing visits, assistance with housework). This exclusion has been removed from the Draft SEPP. The result is that the support services required as part of the development of a RACF or a combined RACF and ILU would likely absorb the FSR bonus such that it does not in effect provide any incentive for vertical village development. We request that the exclusion for support services be reinstated in the Draft SEPP.

### **3 Boarding Houses**

- 3.1 Anglicare is also a significant provider of social and affordable housing via the government's Social and Affordable Housing Fund.
- 3.2 We are concerned that the Draft SEPP proposes that boarding houses will no longer be mandated in the R2 zone unless permitted under another environmental planning instrument. This means that the supply of this important housing typology in R2 zones is left to local councils to include in their local environmental plans – many of whom we anticipate will take their lead from the Draft SEPP and amend their plans to exclude boarding houses in the R2 zone. This will have the effect of limiting our ability to deliver boarding house development, as we (and other not-for-profit developers) will need to compete with residential developers for land. Furthermore, it will limit Anglicare's ability to repurpose aged seniors housing stock and convert to them boarding houses within R2 zones thereby reducing our ability as a social housing provider to develop rental housing in established areas.
- 3.3 We consider that the requirement in cl 22(2) of the Draft SEPP for boarding houses in R2 zones to be located in an accessible area (in Greater Sydney) or within 400 walking distance of land in B2 or B4 zones (outside of Greater Sydney) is a sufficient limitation of itself without the need for boarding house development in the R2 zone to be reliant on local

planning controls for permissibility. We submit that boarding houses should continue to be a mandatory permitted use in these zones, subject to the accessibility requirement referred to above.

- 3.4 Alternatively, as Anglicare is a social housing provider, we consider that social housing providers should be excluded from this restriction in the same way as the NSW Land and Housing Corporation is excluded.
- 3.5 In order for it to be feasible for Anglicare and other providers to deliver boarding house development, and compete with residential developers for sites, there needs to be a FSR bonus for boarding house development in zones where residential flat buildings are not permitted (being developments which cannot take the benefit of the 25% FSR bonus proposed in cl 23(2)(a) of the Draft SEPP). Without such a bonus, there will be no incentive to provide this kind of housing typology.
- 3.6 We otherwise support the proposed provisions of the Draft SEPP as they relate to boarding house development, especially the removal of the current requirement for an on-site boarding house manager.

#### **4 Miscellaneous**

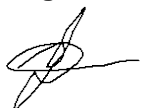
- 4.1 We understand that Guidelines are being prepared in relation to the housing types covered by the Draft SEPP.
- 4.2 We request that the draft Guidelines be made available for public comment before they commence given their potential implications for the supply of new housing development.

Anglicare is firmly of the view that the significant curtailing of the land on which seniors housing may be developed, together with the added complexity introduced by the Draft SEPP, will hinder and deter the supply of seniors housing in NSW and make it very difficult for seniors housing providers to compete in the market - increasing costs not only for operators but also for seniors seeking to access quality housing. This is in direct conflict with the stated aims of the Draft SEPP and the findings of the Royal Commission.

We urge the Department to make further amendments to the Draft SEPP before it is finalised, in order to better achieve the stated aims.

We thank you for the opportunity to make this submission. Further, as one of the largest not-for-profit providers of social housing, affordable housing, seniors housing and aged care services in NSW, we request an urgent meeting with the Department and the Minister before the Draft SEPP is finalised so that we may further speak to the matters raised in this submission and provide examples of the ways in which our operations will be affected.

Your Sincerely,  
**Anglican Community Services**



Peter Paltoo  
**Executive General Manager Property**

[REDACTED]

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**From:** noreply@feedback.planningportal.nsw.gov.au on behalf of Planning Portal - Department of Planning and Environment  
<noreply@feedback.planningportal.nsw.gov.au>  
**Sent:** Sunday, 22 August 2021 3:24 PM  
**To:** DPE PS Housing Policy Mailbox  
**Subject:** Webform submission from: Proposed Housing SEPP

Submitted on Sun, 22/08/2021 - 15:24

Submitted by: [REDACTED]

Submitted values are:

**Submission Type**

I am making a personal submission

## Name

**First name**

[REDACTED]

**Last name**

[REDACTED]

**Organisation name**

[REDACTED]

**I would like my submission to remain confidential**

Yes

## Info

**Email**

[REDACTED]

**Suburb**

[REDACTED]

**Postcode**

[REDACTED]

**Submission**

I am on maternity leave with two children so this will not be as long as I would wish.

All buildings need to be climate proof. They must be able to keep heat out for extended periods of time so people do not die in their homes during heatwaves worsened by global warming, as happened in British Columbia and the Pacific Northwest earlier this year.

Buildings should have low embodied emissions.

Homes should have excellent walking, cycling, and public transport facilities. They should not by default have parking for private vehicles. Private vehicles are polluting and spatially inefficient. The same lane on a street can move 2000 cars per hour, or 14,000 bicycles! We need to move away from a car-centric city. Our planning instruments should support walkable neighbourhoods, with fewer



congestion-causing cars.

It should be safe for children to ride bicycles to school by themselves.

Build to rent homes should be as comfortable as any other apartment. They should also have low energy bills through good design and quality appliances. This policy should not allow lower quality homes to be built.

Homes should be more waterwise, and wherever possible built with rainwater harvesting facilities onsite. Rather than causing problems as stormwater, this useful water should be used to flush toilets, water gardens, and more.

**I agree to the above statement**

Yes

**From:** noreply@feedback.planningportal.nsw.gov.au on behalf of Planning Portal - Department of Planning and Environment  
<noreply@feedback.planningportal.nsw.gov.au>  
**Sent:** Friday, 27 August 2021 7:10 PM  
**To:** DPE PS Housing Policy Mailbox  
**Subject:** Webform submission from: Proposed Housing SEPP

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Submitted on Fri, 27/08/2021 - 19:10

Submitted by: Anonymous

Submitted values are:

**Submission Type**

I am submitting on behalf of my organisation

## Name

**First name**

[REDACTED]

**Last name**

[REDACTED]

**Organisation name**

Armada Property Pty Ltd

**I would like my submission to remain confidential**

Yes

## Info

**Email**

[REDACTED]

**Suburb**

Neutral Bay

**Postcode**

2089

**Submission**

- The proposed change to not allow Seniors Living independent living units in R2 zones completely contradicts the original objective of the SEPP.
- The original purpose of SEPP Seniors Living was to provide for a range of housing types, particularly townhouses and units within low-density zones. One of the main reasons this came about was because Councils did not provide the state government with sufficient quotas of land areas to allow for medium density dwellings.

- With an ageing population there is a need to provide dwellings that older people can downsize to so that they can age in place and continue to live in areas that they want to live in, are accustomed to live in, and areas that are close to friends and family for support.
- Elderly people wishing to downsize should be allowed affordable housing options and not be relegated to locations (such as main road or high-rise) that are unfavourable for family support and socialisation.
- Elderly people deserve housing options where they can downsize to and still have the security of property ownership.
- There are proven social benefits and mental health benefits for elderly people not living alone. The current SEPP seniors living policy promotes multi unit dwellings within a low-density low-density building form which encourages passive socialisation of elderly people within relatively small developments.
- It is beneficial for elderly people to live in a suburban environment where there is a diverse age group – ie, where they can mix with people of all ages.
- Allowing independent living in only medium density zoned areas will not work as traditional townhouse and apartment doors will always be worth more.
- It seems that the Department of Planning is not actually 'planning' in the interest of the majority of the population. It seems that the Department is pandering to local Councils that wish to avoid having to deal with Seniors Living applications that are met with loud objections of NIMBYs who are allowed to amplify their ignorant and selfish opinions through the various social media platforms.
- There is a current and future need for Seniors Living independent living units in R2 zones. The system has been operating successfully for many years and should be allowed to continue in this way.

**I agree to the above statement**

Yes

## **Asia-Pacific Student Accommodation Association**

### **Submission to the NSW Government Department of Planning Industry and Environment regarding the draft SEPP (Housing) 2021.**

#### **Introduction:**

The Asia Pacific Student Accommodation Association (APSAA) is the peak body and membership organisation for tertiary level accommodation providers across the region. In NSW, we currently have 20 active member organisations consisting of Universities, Colleges, and Purpose Built Student Accommodation Providers (PBSA). These members collectively manage 26,261 beds across the state and provide a world-leading accommodation experience for both domestic and international students.

APSAA welcomes the opportunity to engage with the NSW Department of Planning, Industry and Environment regarding the draft State Environmental Planning Policy (Housing 2021) currently open for consultation. Having liaised with the Department following the publication of the Explanation of Intended Effect in 2020, and also participated in the industry roundtable discussion earlier this year, APSAA is disappointed to see the removal of student accommodation as a distinct asset class in the recently published draft.

#### **Request to include student accommodation as a distinct asset class:**

APSAA has advocated on behalf of the sector throughout this process to have student accommodation appropriately defined within the new Housing SEPP, and for reasonable and practicable provisions and exclusions to be made for this asset class to allow for future investment in development and positive outcomes for all stakeholders (including tenants). The current draft does not resolve the well documented issues with current arrangements, nor does it provide a clear and sensible path forward for the sector. The separation of on-campus and off-campus accommodation is not consistent or desirable, and does not provide a comprehensive or cohesive approach that this reform has presumably set out to achieve.

Whilst there are numerous definitions of student accommodation in existence within the industry, APSAA supports the adoption of the definition as provided by DPIE in May 2021:

***Student Housing is a building or a place that;***

- *Provides accommodation and communal facilities for students enrolled to study at an educational establishment during the period of their enrolment*
- *May accommodate other residents who have an affiliation with an educational establishment, and*
- *May include private kitchen and/or bathroom in some or all rooms, and*
- *Includes on-site management*

APSAA believe this definition is applicable to both on-campus and off-campus accommodation, and is consistent across provider types whether they be universities, colleges, or PBSA. Furthermore, the inclusion of a distinct definition will allow for differentiation from co-living developments, which have separate characteristics and requirements. APSAA believes that the Department should aim for a greater level of specificity in this process, and not group distinct market segments unnecessarily.

#### Specifications for student accommodation:

APSAA strongly encourages the Department to include student accommodation as an asset class and revert to the specifications indicated in the Explanation of Intended Effect in 2020, as well as outlined during the industry roundtable discussion in 2021. In particular, the following specifications should apply to student accommodation developments:

<b>Car Parking</b>	0 if justified
<b>Pushbike Parking</b>	1/3 rooms
<b>Motorbike Parking</b>	1/5 rooms
<b>Minimum Room Size</b>	10sqm, or less if justified
<b>Communal Area (Indoor)</b>	15sqm/12 students
<b>Communal Area (Outdoor)</b>	Potentially nil within 400m campus / 2.5 m2 of outdoor space per student.

Furthermore, APSAA requests a reasonable height and FSR bonus be introduced to ensure feasibility of future development in central urban areas such as Sydney. The presence of students in our community provides enormous positive economic and social impact, and on this basis student accommodation should be considered for a bonus allowance under the SEPP.

APSAA believes that these measures are reasonable and logical, and will allow for positive outcomes for stakeholders and the community. APSAA has been pleased to provide this submission and we look forward to being able to engage constructively again in the future for the betterment of student accommodation.

Kind regards,



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ACAA response to  
**PROPOSED HOUSING SEPP**  
State Environmental Planning Policy (Housing 2021)

**About ACAA**

ACAA is a national membership-based professional association for people working to achieve accessibility in the built environment for all. It is the peak national body for access consultancy in Australia and a major partner in advancing equity of built environmental accessibility for people with a disability.

ACAA members in addition to Access Consulting qualifications generally have a background in either Architecture, Building Surveying or Occupational Therapy. Being the assessors that determine compliance with (current) SEPP HSPWD (Housing for Seniors and People with a Disability 2004) projects we are well placed to provide feedback on this component of the Proposed Housing SEPP based on our experience in the field.

**Introduction**

This response has been prepared by four senior Access Consultants (Ms Lindsay Perry, President of ACAA, Ms Farah Madon, Vice President of ACAA, Mr Mark Relf immediate past President of ACAA and Mr Howard Moutrie ACAA COM) who have extensive knowledge and 100 years of collective experience of Seniors Housing in NSW.

Three of the authors are also members of several Standards Australia committees responsible for the revision and updating of several standards relevant to the SEPP including:

- AS1428 suite – Design for Access and Mobility
- AS4299 – Adaptable Housing
- AS2890 – Parking
- AS1735 – Lifts

Additionally, the authors are also registered Assessors of Livable Housing Australia and NDIS SDA (Specialist Disability Accommodation) and have been called as expert witnesses in the Land and Environment Court in NSW on several SEPP HSPWD projects.

The Adaptable Housing standard AS4299 was published in 1995 and relies upon cross references to other standards such as AS1428.1 (which has been updated three times since 1995) and as such in our opinion AS4299 is no longer valid.

There have also been many advances in technology regarding lighting, telecommunications, electrical appliances, and more affordable lifts hence there are items within the SEPP which are redundant and should be removed or modified as per our recommendations.



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We would welcome and opportunity to meet with the Department to provide any further clarifications if required.

A handwritten signature in black ink, appearing to read 'L Perry'.

LINDSAY PERRY

President ACAA

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## Division 3 Development standards

### 75 Development standards for hostels and independent living units

#### *Clause (75 Development standards for hostels and independent living units)*

- 1) (Development consent must not be granted for development for the purposes of a hostel or an independent living unit unless the hostel or independent living unit complies with the standards specified in Schedule 5 for the development.
- 2) An independent living unit, or part of an independent living unit, located above the ground floor in a multi-storey building need not comply with the requirements in Schedule 5, sections 2, 7–13 and 15–20 if the development application is made by, or by a person jointly with, a social housing provider.

Note— Development standards concerning accessibility and usability for residential care facilities are not specified in this Policy. For relevant standards, see the Commonwealth aged care accreditation standards and the Building Code of Australia.

#### *Proposed Amendment (75 Development standards for hostels and independent living units)*

- 1) (Development consent must not be granted for development for the purposes of a hostel or an independent living unit unless the hostel or independent living unit complies with the standards specified in Schedule 5 for the development.
- 2) An independent living unit, or part of an independent living unit, **located on a level not serviced by a lift in a** multi storey, building need not comply with the requirements in Schedule 5, sections 2, 7–13 and 15–20 if the development application is made by, or by a person jointly with, a social housing provider.

#### *ACAA Commentary*

Most housing developments over two-storeys are provided with a lift. To not require independent living units at levels serviced by a lift to comply with the requirements of Schedule 5 is considered discriminatory, regardless of whether the development application is made by a social housing provider.

In some very large multi storey developments, this creates a loophole that is exploited by providers.

For example, an outcome of this concession could be 4 units on the entry level designed as per the requirements of the SEPP and then another 60 units on upper floor levels served by a lift that are not designed as per the requirements of the SEPP. We do not believe that this is the intent of the SEPP.



## Division 4 Site-related requirements

### 82 Location and access to facilities and services – independent living units

#### *Clause (82 Location and Access to Facilities)*

(1) Development consent must not be granted for development for the purposes of an independent living unit unless the consent authority has considered whether residents will have adequate access to facilities and services—

- (a) directly, or
- (b) by a transport service that complies with subsection (2), or
- (c) on-site.

(2) The transport service must—

- a) take the residents to a place that has adequate access to facilities and services, and
- b) for development on land within the Greater Sydney region—
  - (i) not be a passenger service, and
  - (ii) be available both to and from the site at least once between 8am and 12pm each day and at least once between 12pm and 6pm each day, and
- c) for development on land that is not within the Greater Sydney region—be available both to and from the site during daylight hours at least once each weekday.

(3) For the purposes of subsections (1) and (2), access is adequate if—

- a) the facilities and services are, or the transport service is, located at a distance of not more than 400m from the site, and
- b) the distance is accessible by means of a suitable access pathway, and
- c) the gradient along the pathway complies with subsection (4)(c).

(4) In subsection (3)—

- a) a suitable access pathway is a path of travel by means of a sealed footpath or other similar and safe means that is suitable for access by means of an electric wheelchair, motorised cart or the like, and
- b) the distance is to be measured by reference to the length of the pathway, and
- c) the overall average gradient must be no more than 1:14 and the gradients along the pathway must be no more than—
  - (i) 1:12 for a maximum of 15m at a time, or
  - (ii) 1:10 for a maximum length of 5m at a time, or
  - (iii) 1:8 for a maximum length of 1.5m at a time.

(5) In this section—

**facilities and services** means—

- a) shops and other retail and commercial services that residents may reasonably require, and
- b) community services and recreation facilities, and
- c) the practice of a general medical practitioner.

**passenger service** has the same meaning as in the Point to Point Transport (Taxis and Hire Vehicles) Act 2016.

Note— A passenger service is defined as the transport, by a motor vehicle other than a bus, of passengers within, or partly within, this State for a fare.

### **Proposed Amendment (82 Location and Access to Facilities)**

(1) Development consent must not be granted for development for the purposes of an independent living unit unless the consent authority has considered whether residents will have adequate access to facilities and services—

- (a) directly, or
- (b) by a transport service that complies with subsection (2), or
- (c) on-site.

(2) The transport service must—

- a) take the residents to a place that has adequate access to facilities and services, and
- b) for development on land within the Greater Sydney region—
  - (iii) not be a passenger service, and
  - (iv) be available both to and from the site at least once between 8am and 12pm each day and at least once between 12pm and 6pm each day, and
- c) for development on land that is not within the Greater Sydney region—be available both to and from the site during daylight hours at least once each weekday.

(3) For the purposes of subsections (1) and (2), access is adequate if—

- a) the facilities and services are, or the transport service is, located at a distance of not more than 400m from the site, and
- b) the distance is accessible by means of a suitable access pathway, and
- c) the gradient along the pathway complies with subsection (4)(c).

(4) In subsection (3)—

- a) a suitable access pathway is a path of travel by means of a sealed footpath or other similar and safe means that is suitable for access by means of an electric wheelchair, motorised cart or the like, and
- b) the distance is to be measured by reference to the length of the pathway, and
- c) the overall average gradient must be no more than 1:14 and the gradients along the pathway must be no more than—
  - (i) 1:12 for a maximum of 15m at a time, or
  - (ii) 1:10 for a maximum length of 5m at a time, or
  - (iii) 1:8 for a maximum length of 1.5m at a time.

(iv) 1:14 for a max of 25m at a time

**Note - For intermediate gradients between 1:8 and 1:14, interpolation shall be used to determine the maximum length of each section.**

(5) In this section—

**facilities and services** means—

- a) shops and other retail and commercial services that residents may reasonably require **such as supermarkets and convenience stores for the purchase of groceries, pharmacies, banking services, post office**, and
- b) community services and recreation facilities, and
- c) the practice of a general medical practitioner.

**passenger service** has the same meaning as in the Point to Point Transport (Taxis and Hire Vehicles) Act 2016. Note — A passenger service is defined as the transport, by a motor vehicle other than a bus, of passengers within, or partly within, this State for a fare.

### **ACAA Commentary**

Typically, existing pedestrian infrastructure have varied gradients. The limitation of lengths for 1:12, 1:10 and 1:8 gradients should be used as a guide and interpolation allowed so that other gradients are not precluded. Interpolation is permitted in AS1428.1 and is a standard industry practice.

It could be useful to develop a parameter for maximum lengths of gradient for 1:14 as this is a grey area. We recommend a maximum length of 25M.

**“shops and other retail and commercial services”** is open to interpretation and needs to be more definitive to ensure the best possible outcome for residents.

## Division 6 Design principles

### 92 Accessibility

#### *Clause (82 Location and Access to Facilities)*

Development for the purposes of seniors housing should—

- a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and
- b) provide attractive, yet safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors.

#### *Proposed Amendment (82 Location and Access to Facilities)*

Development for the purposes of seniors housing should—

- a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities **within the context of public footpaths, road crossings, trip hazards and the like**, and
- b) provide **attractive, yet** safe, environments for pedestrians and motorists with convenient access and parking for residents and visitors.

#### *ACAA Commentary*

While ACA agrees with the intent of this clause, the term “*safe pedestrian links*” is ambiguous and not measurable. For example is it “safe” to cross a road from the middle of the road or is it mandatory to use a pedestrian crossing?

Similarly, the term “*attractive*” is subjective and open to interpretation

## Schedule 5 Standards concerning accessibility and useability for hostels and independent living units

### Part 1 Standards applying to hostels and independent living units

#### 2 Siting Standards

##### *Clause (2 Siting Standards)*

- 1) If the whole of the site has a gradient of less than 1:10, all dwellings must have wheelchair access by a continuous accessible path of travel to an adjoining public road.
- 2) If the whole of the site does not have a gradient of less than 1:10—
  - a) the percentage of dwellings that must have wheelchair access must equal the greater of—
    - (i) the proportion of the site, expressed as a percentage, that has a gradient of less than 1:10, or
    - (ii) 50%, and
  - b) the wheelchair access provided must be by a continuous accessible path of travel to an adjoining public road or an internal road or a driveway accessible to all residents.
- 3) Access must be provided in accordance with AS 1428.1 so that a person using a wheelchair can use common areas and common facilities associated with the development.

##### *Proposed Amendment (2 Siting Standards)*

- 1) If the whole of the site has a gradient of less than 1:10, all dwellings must have wheelchair access by a continuous accessible path of travel to an adjoining public road.
- 2) If the whole of the site does not have a gradient of less than 1:10—
  - a) the percentage of dwellings that must have wheelchair access must equal the greater of—
    - (i) the proportion of the site, expressed as a percentage, that has a gradient of less than 1:10, or
    - (ii) 50%, and
  - b) the wheelchair access provided must be by a continuous accessible path of travel to an adjoining public road or an internal road or a driveway accessible to all residents.
- 3) Access must be provided in accordance with AS 1428.1 so that a person using a wheelchair can use common areas and common facilities associated with the development.

**This includes the design of common areas, common facilities and all accessways to the common areas and common facilities from accessible carparking areas associated within the common areas and common facilities and/or dwelling entrances subject to the exemption for areas provided in (2) above.**

##### *ACAA Commentary*

Previously sub-clause Clause (3) was titled “**Common areas**” and unambiguous in terms of what the requirements applied to. The current draft is also ambiguous and contradicts sub-clause 2 which permits pathways steeper than 1:14 in some areas of a development. The extent of access needs to be defined based on the siting standards for the development. Currently it is unclear whether the clause relates to the path of travel to the common areas and common facilities OR the common areas and common facilities in isolation.

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## 3 Security

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### Clause (3 Security)

Pathway lighting—

- a) must be designed and located so as to avoid glare for pedestrians and adjacent dwellings, and
- b) must provide at least 20 lux at ground level (existing).

### Proposed Amendment (3 Security)

Pathway lighting—

- a) must be designed and located so as to avoid glare for pedestrians and adjacent dwellings, and
- ~~b) must provide at least 20 lux at ground level (existing).~~

### ACAA Commentary

Lighting cannot be checked unless a site inspection is provided at night. There are no details on how the 20 lux is to be measured, i.e. every 3M intervals? Lighting methods have advanced substantially with the introduction of LED type lighting and therefore a 20 lux requirement is considered to be outdated. We recommend deletion of the lux requirement.

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## 4 Letterboxes

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### Clause (4 Letterboxes)

Letterboxes—

- a) must be situated on a hard standing area and have appropriate wheelchair access by a continuous accessible path of travel, and
- b) must be lockable, and
- c) must be located adjacent to the street entry—
  - (i) together in a central location, or
  - (ii) or independent living units—together in 1 or more central locations.

### Proposed Amendment (4 Letterboxes)

Letterboxes—

- a) must be situated on a hard standing area with a circulation area of 1540x2070mm and have appropriate wheelchair access by a continuous accessible path of travel, and
- b) must be lockable, and accessible from the hard standing area. Operable components of the letterbox are to be within the height range of 600-1100mm above the finished floor level.
- c) must be located adjacent to the street or pathway entry—
  - (i) together in a central location, or in 1 or more central locations or
  - (ii) to individual independent living units.

### ACAA Commentary

Adequate wheelchair turning areas are required to ensure usability by all users. The size nominated is the turning space required by AS1428.1. The area of the hard-standing surface needs to be nominated to ensure adequate space is provided. A specified height range ensures letterboxes are within the reach ranges of all residents. These proposed comments comply with the requirements for letterboxes in NDIS SDA Design Standards (Clause 16.2)

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## 5 Private car accommodation

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### *Clause (5 Private car accommodation)*

If car parking, not being car parking for employees, is provided as follows—

- a) at least the following amount of car parking spaces must be designed to enable the width of each space to be increased to 3.8m and to comply with the requirements for parking for persons with a disability set out in AS/NZS 2890.6—
  - (i) 10% of the total number of car parking spaces, or
  - (ii) if there are less than 10 car parking spaces—1 space,
- b) a garage must have—
  - (iii) a power-operated door, or
  - a power point and an area for motor or control rods to enable a power-operated door to be installed.

### *Proposed Amendment (5 Private car accommodation)*

1. Car parking provided for residents shall have at least one space for every unit, designed as per below requirements:
  - a) A single enclosed garage must have a minimum 3.8m width X 6.0m length or 5.4m length if the driveway at the rear of the vehicle is at the same level.
  - b) A single carport or outdoor hard stand area must have
    - i. a minimum width of 3.2m or
    - ii. minimum 2.4m width adjoining a 1.0m width pathway at the same level as the parking space.
  - c) A single parking space in a communal basement must have
    - i. a minimum 3.2m width or
    - ii. 2.4m minimum width adjoining a 2.4m minimum width shared area as per AS2890.6
  - d) Where parking is provided for two cars for an individual ILU, the second car space need not be an accessible space.
  - e) Height clearance to enter the parking space must be 2.2m minimum and over the parking space 2.5m minimum as per AS2890.6.
  - f) Garages and gated parking shall provide a power operated door or gate to enter the parking area.
  - g) Other design requirements concerning surface gradient and line marking of communal parking areas shall comply with AS 2890.6.
2. For a development of 10 or more dwellings, at least one accessible carparking space in accordance with AS2890.6 shall be provided for every 10 visitor spaces.

### *ACAA Commentary*

The “space be increased to 3.8m and to comply with the requirements for parking for persons with a disability set out in AS/NZS 2890.6” is factually incorrect. AS/NZS 2890.6 requires 2.4M wide parking space with 2.4M wide shared zones, not a 3.8M wide space. The 3.8M wide space is derived from AS4299.

For Clause 97 (j) ILUs, the parking concessions are consistent with existing requirements for LAHC social housing providers.

For Clause 97 (k) ILUs, the requirements for 0.5 parking spaces for every bedroom maintains existing requirements.

However, Schedule 5 – ILUs proposes significant changes.

With respect to an appropriate quantum for seniors housing it is useful to consider the age demographics in NSW and the number of people who hold a Roads and Maritime Services (RMS) Mobility Parking permit.

The RMS reports that for 1st quarter of 2021 there are 404,387 permit holders which represents 19.0% of the over 60s population in NSW. RMS Statistics indicate a year-on-year growth of approximately 5% for people that have an MPS permit.

With such a high proportion of MPS holders it is obvious that the 10% requirement quoted in the SEPP Seniors draft is grossly inequitable.

NSW RMS Mobility Parking Scheme permit holders

<b>MPS by Age Group</b>			<b>General Population</b>	
<b>60-64</b>	29,670		477,649	
<b>65-69</b>	39,839		418,324	
<b>70-74</b>	83,975		369,519	
<b>75-79</b>	58,268		274,722	
<b>80-84</b>	60,478		186,620	
<b>85-+</b>	92,469		194,944	
<b>Total</b>	364,699		<b>1,921,778</b>	<b>19.0%</b>
<b>All Ages</b>	404,387		<b>1,921,778</b>	<b>21.0%</b>

SEPP HSPWD and its predecessors acknowledged that older people and people with mobility impairments need an accessible parking space to facilitate existing needs or future needs arising from ageing or trauma.

In our opinion the provisions of the current draft to mandate a mere 10% of resident parking spaces be designed to enable 3.8m width is a dramatic change which fails to recognize the needs of older people and people with disabilities.

The current SEPP HSPWD policy published in 2007 required all resident spaces to be 3.2m minimum width and 20% to be capable of 3.8m width.

From 2011, when AS 2890.6 took effect, the requirements became less clear as AS 2890.6 adopted a different paradigm of a 2.4m width for the car and a 2.4m width shared area, which has been widely accepted in communal open plan car parking layouts and public carparks.

AS 2890.6 has had limited adoption for single enclosed garages where a parking space has walls or caging on both sides as the 4.8m required width has been deemed less efficient by designers and developers. Consequently, the 3.8m width has been applied to the majority of development scenarios. Traffic engineers employed by local government authorities have tended to apply AS 2890.6 which has caused numerous debates and delays in development approval.

Australian Standards had and still has two standards which recommend the size of an accessible parking space. Namely,

- AS 4299 (1995) – Adaptable Housing which specifies 3.8m X 6.0m; and
- AS 2890.1 (1993) – Off Street Parking which specified 3.2m X 5.4m for an unenclosed space and 3.8m X 5.4m for an enclosed space (e.g. a single garage)

In 2009 a separate volume, AS 2890.6, was created for off-street accessible parking for people with disabilities which was then referenced in the Building Code of Australia 2011.

This Standard requires 2.4m + 2.4m width X 5.4m length whereby a 2.4m width area can be a shared between the 2 car spaces for an overall width of 7.2m. This layout is intended for modern technology of ramps and platform lifts to be installed on the side of a motor vehicle such as a VW Multivan. This configuration is very efficient in public car parks or communal residential parking where two parking spaces can use the shared area for transfers in and out of the side doors of a vehicle.

For a single accessible parking space, the AS 2890.6 requirement of 4.8m width is less efficient and unnecessary for the vast majority of MPS permit holders as side loading ramps and platform lifts are less common compared to rear loading ramps and platform lifts, roof mounted wheelchair hoists or simply opening the car door to full stop to use walking frames and other standing transfer methods.

Further exacerbation for the appropriate delivery of parking is the language that appears in SEPP HSPWD whereby the statement “*If car parking (not being car parking for employees) is provided for residents*” is interpreted by some developers to not automatically provide a parking space with the dwelling and to sell or allocate a parking separate to the dwelling, which means they avoid the requirement to comply with schedule 5.

Also note that the currency of AS/NZS will discontinue when part 6 is released as NZS has withdrawn its arrangements with AS for this standard.

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## **6 Accessible entry and external doorways to Private open spaces (POS)**

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### **Clause (6 Accessible entry)**

Every entry, whether a front entry or not, to a dwelling, not being an entry for employees, must comply with sections 4.3.1 and 4.3.2 of AS 4299.

### **Proposed Amendment Clause (6 Accessible entry) and external doorways to private open spaces (POS)**

Every entry, whether a front entry ~~or not~~ or doorways to private open spaces / external areas associated with the dwelling, and not being an entry for employees, must comply with ~~sections 4.3.1 and 4.3.2 of AS 4299~~ AS1428.1

### **ACAA Commentary**

The accessibility of private open space, including balcony and patio areas needs to be clearly stated. We recommend reference to AS1428.1 in lieu of AS4299 generally.

AS4299 is an old standard (1995) and does not reflect current requirements.

AS1428.1 has been updated in 2021.



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## 7 Interior - general

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### Clause (7 Interior - general)

- 1) Internal doorways must have a minimum clear opening that complies with AS 1428.1.
- 2) Internal corridors must have a minimum unobstructed width of 1m.
- 3) Circulation space at approaches to internal doorways must comply with AS 1428.1.

### Proposed Amendment (7 Interior - general)

- 1) Internal doorways must have a minimum clear opening that complies with AS 1428.1 and
- 2) Internal corridors must have a minimum unobstructed width of 1m and
- 3) Circulation space at approaches to internal doorways to kitchen / laundry, main living areas, main bedroom, main bathroom, and main toilet must comply with AS 1428.1.

### ACAA Commentary

The existing clause is contradictory to clause 17 that requires access only to the kitchen, main bedroom, bathroom and toilet. Clause 7 needs to align with clause 17 to minimise confusion and misinterpretation.

Internal door circulation within a room enables a person requiring the use of a wheelchair to enter the room, make a turn and then approach the door to access the handle to exit the room.

SEPP does not mandate a minimum size for the secondary bedrooms or minimum bed size for secondary bedrooms. So secondary bedroom could be as small as 3m x 3m. Once furnished, there is no space available for a wheelchair to enter the room, let alone make a turn and open the door from inside the room. Therefore, clarity is required that this is not the intent of the SEPP.

This will also clarify that for independent living units provided over multiple levels that do not have lift access within the dwelling, door circulation areas in accordance with AS1428.1 are not required at the levels that are not accessible.

With respect to secondary bedroom areas, while an older standard, AS4299 Adaptable Housing (1995) sets the precedent accessibility requirements within the residential setting. Clause 4.6 requires the provision of only one (1) accessible bedroom within an adaptable housing unit. Further, this is required in the post-adapted state, not at time of construction (as per AS4299, clause 2.2 performance requirements – noting that (c)(ii) specifically states the following: to provide space sufficient to manoeuvre a wheelchair with a bedroom...whereby after adaption there will be sufficient space to manoeuvre a wheelchair...). The accessible bedroom is required to have door circulation areas per AS1428.1 after adaption.

The more recent Livable Housing Australia Design Guidelines – Fourth Edition 2017 (LHADG) also support the provision only one accessible bedroom. The LHADG have been developed by industry and the community to provide assurance that a home is easier to access, navigate and live in, as well as more cost effective to adapt when life's circumstances change. The Guidelines include Silver, Gold and Platinum Levels which cater to differing levels of accessibility. Gold and Platinum Levels require that there is a space on the entry level that can be used as a bedroom. Again, there is a requirement for only one bedroom to have circulation areas around the bed. There is no requirement for doorway circulation areas with the LHADG, only clear opening width requirements.

The Universal Housing Design Guidelines (for Landcom projects) is another resource that can be used as an example of the requirement for accessible bedrooms and circulation at doorways to bedrooms generally. This policy defines Universal Housing as follows: homes that are practical and flexible, that meet the needs of people of different ages and abilities over time, and that avoid barriers that may discriminate against people living in or visiting the home. Universal housing is designed to be useable by most people over their lifetime without the need for major adaptation or specialised design. This publication – Key Design Feature No. 8 – requires a bedroom space on the ground floor – similar to both adaptable housing and livable housing requirements.

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## 8 Bedroom

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### Clause (8 Bedroom)

At least 1 bedroom within each dwelling must have—

- a) an area sufficient to accommodate a wardrobe and a bed sized as follows—
  - (i) (for a dwelling in a hostel—a single-size bed,
  - (ii) for an independent living unit—a queen-size bed, and
- b) a clear area for the bed of at least—
  - (i) 1,200mm wide at the foot of the bed, and
  - (ii) 1m wide beside the bed between it and the wall, wardrobe or another obstruction, and
- c) (2 double general power outlets on the wall where the head of the bed is likely to be, and
- d) at least 1 general power outlet on the wall opposite the wall where the head of the bed is likely to be, and
- e) a telephone outlet next to the bed on the side closest to the door and a general power outlet beside the telephone outlet, and
- f) wiring to allow a potential illumination level of at least 300 lux

### Proposed Amendment (8 Bedroom)

At least 1 bedroom within each dwelling must have—

- a) any required internal door circulation area (as required for front approach as per AS1428.1) clear of the bed, and
- b) an area sufficient to accommodate a wardrobe and a bed sized as follows—
  - (i) (for a dwelling in a hostel—a single-size bed (920x2030mm),
  - (ii) for an independent living unit—a queen-size bed (1530x2030mm), and
- c) a clear area for the bed of at least—
  - (i) 1,200mm wide at the foot of the bed, and
  - (ii) 1m wide beside the bed between it and the wall, wardrobe or another obstruction, and
- d) (2 double general power outlets on the wall where the head of the bed is likely to be, and
- e) at least 1 general power outlet on the wall opposite the wall where the head of the bed is likely to be, and
- f) a robe within minimum length of 1500mm.
- g) Where main bedroom has been provided with an ensuite, the ensuite is to be designed as the main bathroom and a space of 1240mm is to be provided between the bed and the ensuite door to allow for door circulation
- ~~f) a telephone outlet next to the bed on the side closest to the door and a general power outlet beside the telephone outlet, and~~
- ~~g) wiring to allow a potential illumination level of at least 300 lux~~

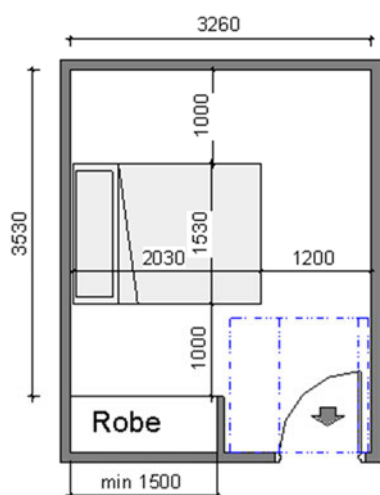
### ACAA Commentary

Door circulation clear of the bed needs to be introduced to this clause to ensure accessibility when the room is furnished. There may be confusion as to the approach of the doorway circulation template that can be applied. In this case we would recommend mandating front approach door circulation to the inside of the main entry door to main bedroom as has been done in the SDA Design Standard Clause 10.3 and Figure 16.

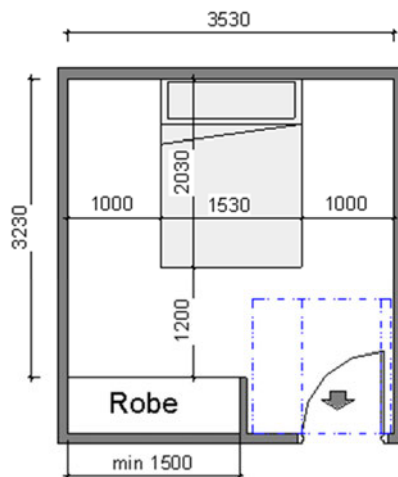
Recommended requirements for door circulation is shown below.

Multiple size of beds are available and a minimum size should be noted for clarity.

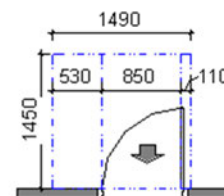
The requirement for the size of a robe should be introduced. The 1500mm length aligns with the SEPP 65 Apartment Design Guidelines. Alternatively, 1400mm length would align with the SDA Design Standard Clause 10.4



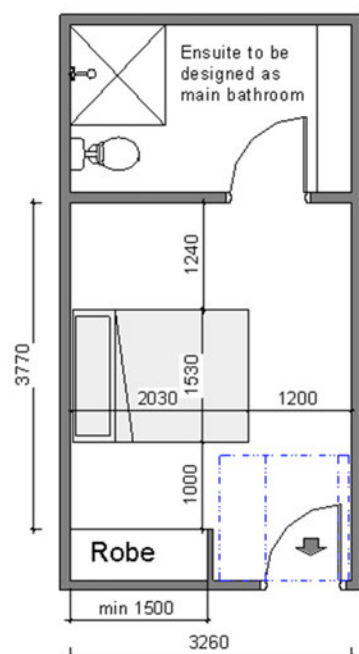
**Sample main bedroom**



**Sample main bedroom**



**Front approach door circulation space inside main bedroom**



**Sample main bedroom**

There have been cases to date where the main bedroom is provided with a small ensuite and the main (accessible) bathroom is outside of the main bedroom. We do not believe that this is the intent of the SEPP and therefore, where an ensuite is provided to the main bedroom, the ensuite should be designed as the main (accessible) bathroom with the required circulation spaces.

If a minimum of 1240mm space is not provided to the side of the bed leading to the ensuite, wheelchair access around the bed is not possible.

Items (f) and (g) are no longer considered relevant given advancements in technology and introduction of the NBN an similar technology.

Wiring potentials are no longer relevant as lighting methods have advanced substantially with introduction of LED type lighting and therefore a particular lux requirement is considered to be outdated. We recommend deletion of the lux requirement.

---

## 9 Bathroom

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### Clause (9 Bathroom)

- 1) At least 1 bathroom within a hostel or independent living unit must be on the ground or main floor and have the following facilities arranged within an area that provides for circulation space for a wheelchair around sanitary facilities in accordance with AS 1428.1—
  - a) a slip-resistant floor surface,
  - b) a washbasin with plumbing that would facilitate clearances that comply with AS 1428.1,
  - c) a shower that complies with AS 1428.1, except that the following must be able to be accommodated—
    - (i) a grab rail,
    - (ii) a portable shower head,
    - (iii) a folding seat,
  - d) a wall cabinet sufficiently illuminated to be able to read the labels of items stored in it,
  - e) (a double general power outlet beside the mirror.
- 2) Subsection (1)(c) does not prevent the installation of a shower screen that can easily be removed to facilitate future accessibility.

### Proposed Amendment (9 Bathroom)

- 3) At least 1 bathroom within a hostel or independent living unit must be on the ground or main floor **or serviced by a private BCA compliant lift (not being a stairway platform lift) that is located within the dwelling** and have the following facilities arranged within an area that provides for circulation space for a wheelchair around sanitary facilities in accordance with AS 1428.1—
  - a) ~~a slip-resistant floor surface~~ **a floor surface that achieves a minimum slip resistance rating of P3/R10,**
  - b) a washbasin with plumbing that would facilitate clearances that comply with AS 1428.1 **in the future,**
  - c) a shower that ~~complies with~~ **has the spatial requirements and circulation requirements of AS 1428.1 at time of construction, except that.** The following must be able to be accommodated **at a later date**—
    - (i) a grab rail,
    - (ii) a portable shower head,
    - (iii) a folding seat,
  - d) a wall cabinet sufficiently illuminated to be able to read the labels of items stored in it,
  - e) (a double general power outlet ~~beside the mirror~~ **in an accessible location within the meaning of AS1428.1.**
- 4) Subsection (1)(c) does not prevent the installation of a shower screen that can easily be removed to facilitate future accessibility.

### ACAA Commentary

Provision of a lift within the dwelling would support more building types such as townhouses being used for SEPP. Stairway platform lifts are difficult to use by people with a disability.

The term “slip resistant floor surface” is not measurable and open to debate. Specification of P3/R10 is recommended as it aligns with the requirements of the NDIS SDA Design Standards Clause 7.1.10

We recommend reference to AS1428.1 in lieu of AS4299 generally. AS4299 is an old standard (1993) and does not reflect current requirements.

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## 10 Toilet

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### Clause (10 Toilet)

- 1) A dwelling must have at least 1 toilet on the ground or main floor and be a visitable toilet that complies with the requirements for sanitary facilities of AS 4299.
- 2) In this section—  
**visitable toilet** has the same meaning as in AS 4299.

### Proposed Amendment (10 Toilet)

- 4) A dwelling must have at least 1 toilet on the ground or main floor or level serviced by a private BCA compliant lift (not being a stairway platform lift) that is located within the dwelling and be a visitable toilet that complies with the requirements for sanitary facilities of AS 4299, of AS1428.1, except that circulation areas can be achieved through removal of the shower screen and the WC pan-can be replaced with a AS1428.1 compliant pan at a later date.
- 2) In this section—  
~~visitable toilet~~ has the same meaning as in AS 4299.
- 2) A floor surface that achieves a minimum slip resistance rating of P3/R10

### ACAA Commentary

We recommend reference to AS1428.1 in lieu of AS4299 generally.  
AS4299 is an old standard (1993) and does not reflect current requirements.

Updated wordings are required for clarity.

---

## 11 Surface finishes

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### Clause (11 Surface Finishes)

Balconies and external paved areas must have slip-resistant surfaces.

Note— Advice regarding finishes may be obtained from AS 1428.1.

### Proposed Amendment (10 Toilet)

Balconies and external paved areas must have ~~slip-resistant surfaces.~~ a surface finish that achieves a minimum slip resistance rating of P3/R10.

~~Note— Advice regarding finishes may be obtained from AS 1428.1.~~

### ACAA Commentary

The note to this clause is incorrect – AS1428.1 has no specific slip resistance rating noted.

The term “slip resistant floor surface” is not measurable and open to debate. Specification of P3/R10 is recommended as it aligns with the requirements of the NDIS SDA Design Standards Clause 7.1.10

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## 12 Door hardware

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### *Clause (12 Door hardware)*

Door handles and hardware for all doors, including entry doors and other external doors, must be provided in accordance with AS 4299.

### *Proposed Amendment (12 Door hardware)*

Door handles and hardware for all doors, including entry doors and other external doors, must be provided in accordance with ~~AS 4299~~ AS1428.1

For glazed sliding doors standard door handles can be provided as long as 35mm to 45mm space is achieved from the back of the door handle to the glass.

Sliding doorway tracks with slotted openings at door threshold are exempt from the maximum gap requirements of accessible path of travel of AS1428.1

### *ACAA Commentary*

We recommend reference to AS1428.1 in lieu of AS4299 generally.  
AS4299 is an old standard (1993) and does not reflect current requirements.

Clarifications around glazed sliding doors is required as standard products for glazed sliding doors do not readily achieve all accessibility requirements of AS1428.1. This is similar to the provisions on the NDIS SDA Design Standard.

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## 13 Ancillary items

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### *Clause (13 Ancillary items)*

Switches and power points must be provided in accordance with AS 4299.

### *Proposed Amendment (13 Ancillary items)*

Switches, ~~controls~~ and power points must be provided in accordance with ~~AS 4299~~ AS1428.1.

### *ACAA Commentary*

We recommend reference to AS1428.1 in lieu of AS4299 generally.  
AS4299 is an old standard (1993) and does not reflect current requirements.

Word controls is introduced to include video intercoms in multi storey development

## Part 2 Additional standards for independent living units

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### 15 Living room and dining room

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#### Clause (15 Living room and dining room)

- 1) A living room must have—
  - a) a circulation space in accordance with clause 4.7.1 of AS 4299, and
  - b) a telephone adjacent to a general power outlet.
- 2) (A living room and dining room must have wiring to allow a potential illumination level of at least 300 lux.

#### Proposed Amendment (15 Living room and dining room)

- 1) A living room must have—
  - a) a circulation space ~~in accordance with clause 4.7.1 of AS 4299,~~ of 2250mm diameter clear of furniture, and
  - b) a ~~telephone~~ data outlet adjacent to a general power outlet.
- ~~2) A living room and dining room must have wiring to allow a potential illumination level of at least 300 lux.~~

#### ACAA Commentary

We recommend reference to AS1428.1 in lieu of AS4299 generally.

AS4299 is an old standard (1993) and does not reflect current requirements. In lieu of reference to AS4299, state required dimensions.

Wiring potentials are no longer relevant as lighting methods have advanced substantially with introduction of LED type lighting and therefore a particular lux requirement is considered to be outdated. We recommend deletion of the lux requirement.

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### 16 Kitchen

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#### Clause (16 Kitchen)

A kitchen must have—

- a) a circulation space in accordance with clause 4.5.2 of AS 4299, and
- b) a circulation space at door approaches that complies with AS 1428.1, and
- c) the following fittings in accordance with the relevant subclauses of clause 4.5 of AS 4299—
  - (i) benches that include at least 1 work surface at least 800mm in length that comply with clause 4.5.5(a),
  - (ii) tap sets—see clause 4.5.6,
  - (iii) cooktops—see clause 4.5.7, except that an isolating switch must be included,
  - (iv) ovens—see clause 4.5.8, and
- d) “D” pull cupboard handles that are located towards the top of below-bench cupboards and towards the bottom of overhead cupboards, and
- e) general power outlets—
  - (i) at least 1 of which is a double general power outlet within 300mm of the front of a work surface, and
  - (ii) 1 of which is provided for a refrigerator in a position that is easily accessible after the refrigerator is installed.

#### Proposed Amendment (16 Kitchen)

A kitchen must have—

- a) a circulation space ~~in accordance with clause 4.5.2 of AS 4299~~ of at least 1200mm clear

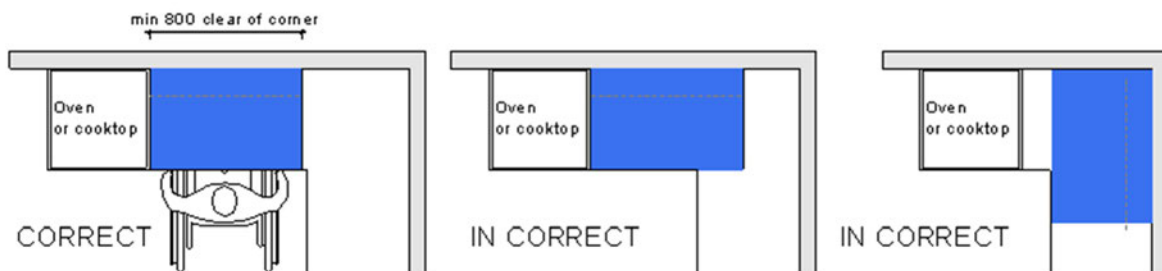
- between opposing benches that is capable of easy adaption to 1550mm between opposing benches without the modification to any plumbing services, and
- b) ~~a circulation space at door approaches that complies with AS 1428.1~~ circulation space to enter the kitchen area of min 1200mm clear between opposing benches, and
  - c) the following fittings ~~in accordance with the relevant subclauses of clause 4.5 of AS 4299~~
    - (i) benches that include at least 1 work surface at least 800mm in length ~~adjacent to the cooktop and adjacent to a wall oven and clear of an internal corner that comply with clause 4.5.5(a),~~
    - (ii) lever tap sets—~~see clause 4.5.6,~~
    - d) ~~cooktops—see clause 4.5.7, except that an isolating switch must be included,~~
    - (iii) ~~ovens—see clause 4.5.8~~ wall oven with at least part of the operable part of oven door handle located between 600mm and 1100mm above finished floor level, and
    - e) ~~“D” pull cupboard handles that are located towards the top of below bench cupboards and towards the bottom of overhead cupboards, and~~
    - f) general power outlets—
      - (i) at least 1 of which is a double general power outlet within 300mm of the front of a work surface, ~~and in an easily accessible location from within the kitchen.~~
      - (ii) ~~1 of which is provided for a refrigerator in a position that is easily accessible after the refrigerator is installed.~~

### ACAA Commentary

We recommend reference to AS1428.1 in lieu of AS4299 generally.

AS4299 is an old standard (1993) and does not reflect current requirements. In lieu of reference to AS4299, state required dimensions.

The recommended changes reflect current kitchen designs that are generally of open plan arrangement rather than being a “room”. The provision of 1200mm between benches, with easy modification to 1550mm is easily achieved in most modern kitchens and is more appropriate to older ambulant people to limit their movement between benches. 1550mm is more appropriate for a person requiring use of a wheelchair for mobility which can easily adapted in the future. This is similar to provision that accessible toilet pan can be provided in the future and shower screens can be removed in the future when required. Also the cost of kitchen is minor and in a life cycle of the dwelling, the kitchen will be renovated multiple times.



Above diagram shows that the 800mm benchtop next to an oven or cooktop to be clear of internal corner for useability

D pull cupboard handles are not considered critical as these are easily replaceable.

GPOs for fridges are rarely accessed. This requirement was valid when there were no frost-free fridges available in the market and hence access was required to the PowerPoint to turn of the fridge. This is no longer the case and therefore this no longer should be a requirement.

Wiring potentials are no longer relevant as lighting methods have advanced substantially with introduction of LED type lighting and therefore a particular lux requirement is considered to be outdated. We recommend deletion of the lux requirement.



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## 17 Access to kitchen, main bedroom, bathroom and toilet

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### *Clause (17 Access to kitchen main bedroom, bathroom and toilet)*

In a multi-storey independent living unit, the kitchen, main bedroom, bathroom and toilet must be located on the entry level.

### *Proposed Amendment (17 Access to kitchen main bedroom, bathroom and toilet)*

In a multi-storey independent living unit, the kitchen, main bedroom, bathroom and toilet must be located on the entry level **or serviced by a lift (not being a stairway platform lift) that is located within the dwelling.**

### *ACAA Commentary*

Lifts are commonly being provided within dwellings so should be addressed.

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## 19 Laundry

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### *Clause (19 Laundry)*

A laundry must have—

- a) a circulation space at door approaches that complies with AS 1428.1, and
- b) provision for the installation of an automatic washing machine and a clothes dryer, and
- c) a clear space in front of appliances of at least 1,300mm, and
- d) a slip-resistant floor surface, and
- e) an accessible path of travel to any clothes line provided in relation to the dwelling.

### *Proposed Amendment (19 Laundry)*

- a) a circulation space at door approaches that complies with AS 1428.1, and
- b) provision for the installation of an automatic washing machine and a clothes dryer, and
- c) a clear space in front of appliances of at least 1,300mm, and
- d) **a slip-resistant floor surface a floor surface that achieves a minimum slip resistance rating of P3/R10, and**
- e) an accessible path of travel to any clothes line provided in relation to the dwelling, **including the external doorway that is to comply with AS1428.1.**
- f) **where a laundry is provided in a cupboard arrangement, the doors will not obstruct the required circulation areas in front of appliances.**

### *ACAA Commentary*

The term “slip resistant floor surface” is not measurable and open to debate. Specification of P3/R10 is recommended as it aligns with the requirements of the NDIS SDA Design Standards Clause 7.1.10

It is critical that the doorway that provides access to the clothesline is accessible within the meaning of AS1428.1.

A laundry cupboard is a common design option. The doorways can affect the required circulation areas relating to the applicable and therefore the width of the doorways needs to be clear of the required 1300mm.

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## 20 Storage for Linen

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### *Clause (20 Linen)*

Linen storage must be provided in accordance with clause 4.11.5 of AS 4299.

### *Proposed Amendment (20 Linen)*

Linen storage must be provided ~~in accordance with clause 4.11.5 of AS 4299~~ with a minimum 600mm width adjustable shelving accessed via a living area.

### *ACAA Commentary*

AS4299 is an old standard (1993) and does not reflect current requirements. In lieu of reference to AS4299, state required dimensions. We see that linen cupboard is not provided in many cases with the bedroom robes being counted towards linen which is not the intent of the SEPP>

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## 21 Garbage

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### *Clause (21 Garbage)*

A garbage storage area must be provided in an accessible location.

### *Proposed Amendment (21 Garbage)*

A garbage storage area must be provided in an accessible location ~~and facilitate wheelchair turning areas of 1540x2070mm per AS1428.1~~.

### *ACAA Commentary*

The provision of wheelchair circulation areas needs to be clarified to ensure access by all residents.



**Australian Institute of Architects**

Thursday 26<sup>th</sup> August 2021

Lindsay Perry  
President ACAA  
president@access.asn.au

Response to:

**STATE ENVIRONMENTAL PLANNING POLICY (HOUSING) 2021 –  
ACAA SUBMISSION**

Dear Lindsay

The Australian Institute of Architects (the Institute) is the peak body for the Architectural profession in Australia. It is an independent, national member organisation with around 12,500 members across Australia and overseas, including 3,000 members in the NSW Chapter.

The Institute actively works to maintain and improve the quality of our built environment by promoting better, responsible, accessible and environmental design.

We would like to commend the ACAA for their recent submission in response to the draft Housing SEPP. We strongly support the key principles set out below as described in the ACAA submission:

- development standards
- site-related requirements
- siting standards
- security
- letterboxes
- doorways
- interiors
- bedrooms

- bathrooms
- toilets
- surface finishes
- door hardware, and
- additional standards for ILUs

We congratulate the ACAA for showing leadership in this area and for striving to bring continued focus to the importance of accessible design.

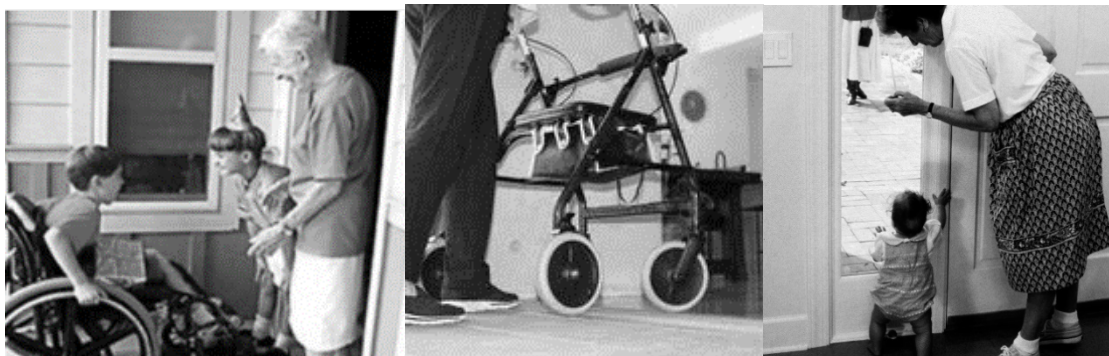
The Institute thanks you for the chance to provide feedback on this work and we look forward to continuing to work closely with you for the benefit of all NSW communities.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Laura Cockburn', followed by a period.

Laura Cockburn FRAIA  
NSW Chapter President  
t: + 61 (2) 9246 4055

*We respectfully acknowledge the Traditional Custodians of the lands on which we work and pay respect to their Elders past, present and emerging.*



**Response by  
Australian Network for  
Universal Housing Design  
to the  
Proposed Housing State Environmental  
Planning Policy (SEPP)**



27 August 2021



**Contact:**

Margaret Ward PSM

David Brant

**Convenors**

[www.anuhd.org](http://www.anuhd.org)

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## Introduction

The Australian Network for Universal Housing Design (ANUHD)<sup>1</sup> represents people from industry, government, the community sector and academia who want the homes we build to be fit for all Australians. To this end, we successfully advocated for a national Livable Housing Design standard (Silver level) to be mandated in the National Construction Code (NCC) in September 2022 for all new housing. A Livable Housing Design standard (Gold level) will also be published as an optional technical provision.

### Our focus

Our submission focuses on **the proposed standards for accessibility** in the consolidation of the three existing housing-related State Environmental Planning Policies (Housing Diversity) 2020.

We note that the proposed new policy aims to facilitate the delivery of diverse and affordable housing to meet the needs of the State's growing population and support the development of a build-to-rent sector.

## Background

### NCC Livable Housing Design standards

The 2022 iteration of the National Construction Code (NCC) will include a minimum access standard for all new housing (here called the NCC Livable Housing Design standard (Silver level)).

The Livable Housing Design standard (Gold level) describes an optional technical provision that would make homes suitable for the needs of the majority of people with mobility limitation, and self-care challenges.

The purpose of the NCC Livable Housing Design standards is to ensure that housing is designed to meet the needs of all the community, including older Australians and others with a mobility-related disability.

The mandated Livable Housing Design standard (Silver level) was developed to:

- improve the design of housing to be more liveable and to adapt to the changing life circumstances of residents
- facilitate community inclusion by allowing people to visit family and friends at home
- respond to the stated desire of older people to remain in their communities and to age in place.

The Building Ministers Meeting in April 2021<sup>2</sup> found that, after considering a wide range of submissions, including the Decision Regulatory Impact Statement (RIS), a regulatory solution would result in significant and lasting net benefits. Most jurisdictions supported the

standards and are now developing their implementation plans, including the drafting of exemptions where required.

## Situation in New South Wales

**New South Wales, (NSW), along with South Australia, have announced that they do not intend to adopt the new accessibility standard that will be included in NCC 2022.** The Hon. Kevin Anderson MP, Minister for Better Regulation and Innovation, considers that:

1. the changes will have negative impacts on housing affordability and the construction sector, and the community; and
2. existing non-mandated strategies in NSW sufficiently meet the needs of the NSW residents<sup>16</sup>.

We refute his **first reason** because the Building Ministers took into consideration the Regulatory Impact Analysis (Cost/Benefit Analysis) which followed the receipt of extensive feedback from industry, and detailed input from accessible housing advocates and from members of the community with lived experience of the effects of the lack of accessible housing. The decision taken by the Ministers in six jurisdictions reflects the view that a regulatory solution will result in significant and lasting net benefits to Australian society<sup>2</sup>.

We refute his **second reason** because NSW residents face particular challenges to find housing that meets their needs, as outlined below:

- 34% of NSW households were renting their home (up from 31% in 2015–16)<sup>3</sup>.
- There is an over-representation of people with disability in social housing with 41% of households including at least one person with disability<sup>4</sup>.
- The supply of social housing has declined from 5% in 2014 to 4.7% in 2020<sup>5</sup>.
- Commonwealth rent assistance has risen 25% in the last 6 years. NSW private rental assistance has risen 30% and home purchase assistance has fallen by 70% in the last 6 years<sup>5</sup>.
- 27% of people living in regional NSW are over 60 years old, yet most accessible dwellings are built in the Greater Sydney region<sup>6</sup>.

## SEPP Reforms

The **proposed standards for accessibility** in the Proposed Housing State Environmental Planning Policy reference the following standards:

- *AS 1428*. To refer to the version of the Australian Standard entitled AS 1428.1:2021, *Design for access and mobility, Part 1: General requirements for access—New building work*. published by Standards Australia. adopted in the *Building Code of Australia*.
- *AS/NZS 2890.6* To refer to the version of the Australian Standard entitled AS/NZS 2890.6–2009, *Parking facilities. Part 6: Off street parking for people*

*with disabilities*, published by Standards Australia, adopted in the *Building Code of Australia*.

- AS 4299. To refer to the Australian Standard entitled AS4299- 1995 , *Adaptable housing* , published by Standards Australia, as in force on the date of commencement of *State Environmental Planning Policy (Seniors Living) 2004 (Amendment No 2 )*.

## Discussion

The NSW Government’s Housing 2041: NSW Housing Strategy<sup>7</sup> aims to have:

- “housing that supports security, comfort, independence and choice for all people at all stages of their lives”; and
- homes in NSW shall be “accessible and suitable for different stages of life or changing circumstances”.

We understand the consolidation of the three existing housing-related State Environmental Planning Policies (Housing Diversity) 2020 is part of Action 2.1. in the 2021-2022 Action Plan<sup>8</sup>.

To date, the NSW Government currently uses numerous standards and guidelines across its various housing programs and policies, including the voluntary Livable Housing Design guidelines<sup>9</sup>, AS1428.1<sup>10</sup>, and AS4299-1995 Classes A, B and C<sup>11</sup>, through Landcom<sup>12</sup>, Apartment Design Guide<sup>13</sup>, NSW Land and Housing Corporation<sup>14</sup>, and SEPP65<sup>15</sup>. This is all well-intentioned, but has left the housing industry with a confusing maze of guidelines, incentives, requirements and interpretations to navigate.

This confusion about what is required of designers and builders leads to avoidable costs from numerous design iterations; negotiations with local authorities, construction errors and rectification works. Further, certifiers are now reluctant or unable to accept retrospective performance solutions.

Home buyers and renters who need accessible housing now are particularly impacted—these new dwellings are hard to find. Salespersons typically do not know about the few that are apportioned to be accessible, and the advertising materials rarely provide specific information. Once the dwellings are sold, they are lost—no tracking system exists.

The Proposed Housing State Environmental Planning Policy further exacerbates this problem by referencing out-of-date and inappropriate standards for housing and by requiring only a portion of housing to be accessible. We calculate that less than 10% of new housing in NSW is accessible.

Across Australia where the NCC Livable Housing Design standard will be implemented, three outcomes are expected: there will be certainty for the housing industry about what is required, 90% of new dwellings will be to a reliable access standard, and buyers and renters will be able to find them.

**The New South Wales Government would more easily meet the commitments in their Housing 2041 Strategy and Action Plan by implementing the NCC Livable Housing Design standards and engaging the housing industry to decide on suitable implementation times and exemptions in line with the majority of jurisdictions across Australia.**

## Recommendation

ANUHD recommends that the Proposed Housing State Environmental Planning Policy:

- be drafted on the basis that the NSW Government implements the NCC Livable Housing Design standard (Silver) in the National Construction Code in 2022, and uses the NCC Livable Housing Design standard (Gold level) as an optional technical provision.
- reference the NCC Livable Housing Design standard (Silver level) for all new housing under the Proposed Housing State Environmental Planning Policy.
- reference the NCC Livable Housing Design standard (Gold level) for all new housing that is apportioned for people with mobility disabilities and older people.
- cease using the AS4299-1995 Class A,B and C for sole occupancy units (SOUs) in Class 2 dwellings and for Class 1a dwellings, once the Livable Housing Design standards are implemented.

ANUHD also recommends there is a central register for accessible dwellings to enable people to find the appropriate type for their individual need. A Central Register run by Customer Services would greatly help residents and developers.

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2 September 2021

The Secretary  
Department of Planning, Industry and Environment  
4 Parramatta Square  
12 Darcey Street  
Parramatta NSW 2150

Attn: Mr Luke Walton

By email: [housingpolicy@planning.nsw.gov.au](mailto:housingpolicy@planning.nsw.gov.au)

Dear Mr Walton,

### **State Environmental Planning Policy (Housing) 2021 – Public Exhibition**

BaptistCare thanks the Department of Planning, Industry and Environment (DPIE) for the opportunity to make this submission on the exhibition draft of the *State Environmental Planning Policy (Housing) 2021 (draft Housing SEPP)*.

BaptistCare is a significant not-for-profit developer and operator of seniors housing, aged care, affordable housing, respite and group homes in NSW and Australia. With a tradition spanning 75 years, BaptistCare has a keen interest in the continued delivery and quality of new seniors and affordable housing in NSW, to meet the continued and growing need for independent living units (ILUs), residential care facilities (RCFs), group homes, respite care and social and affordable housing.

We are strongly supportive of the DPIE's intent of facilitating more diverse housing forms, and we believe that the fundamentals of Part 4 of the draft Housing SEPP are sound. However, BaptistCare is concerned that some of the proposed amendments could have long lasting and significant adverse effects on the delivery and supply of future housing.

The current *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors SEPP)* and *State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP)* has provided the not-for-profit industry with a high level of certainty for years and, in our opinion, has been extremely successful in achieving its aims. The Seniors SEPP in particular has formed the basis of most of BaptistCare's development applications. BaptistCare requests that DPIE further considers and investigates the level of certainty provided to not-for-profits in the new draft Housing SEPP, particularly where it does not support any advantages over private residential developers.

BaptistCare recommends some amendments to the draft Housing SEPP as discussed below, which could result in a transformative public policy for the seniors and affordable housing sectors in NSW. In addition to the recommendations made throughout the submission, a consolidated list is provided as an attachment.

## **1.0 Affordable Housing**

### **1.1 In-fill affordable housing**

#### **Floor Space Ratio**

The floor space bonus currently afforded to in-fill affordable housing developments is critical for incentivising the delivery of affordable housing within Sydney and other metropolitan centres. However, the benefits provided by this additional floor space bonus are often not able to be realised due to the absence of a commensurate increase in

building height under the current provisions. This results in a misalignment of controls and the need for an arbitrary clause 4.6 variation request to achieve the permissible FSR, significantly increasing the costs and risks associated with a development application under this pathway. For this reason, it is considered that the current incentive is not working as intended which is evident from the lack of uptake of developments utilising this bonus.

In addition, concern is raised with the proposal to restrict the bonus floor space provided by the current SEPP for the purposes of affordable housing only. This acts as a further disincentive to the provision of affordable housing by private developers which will be compounded by the extension of the duration in which a dwelling must be used for affordable housing (refer below). This proposed change effectively limits the use of the floorspace bonus to affordable housing providers, rather than encouraging private developers to supply affordable housing which can then be managed by a community housing provider.

**Recommendation 1:** *Clause 16 should provide for a proportionate increase in the maximum building height that corresponds with the floor space incentive to ensure alignment between these key development standards. For example, an additional level would be sufficient for a site with a floor space ratio of 1:1 but sites with a higher FSR would typically require a higher height bonus. On this basis, it is suggested that a height bonus equivalent to an additional storey per four storeys of height would be appropriate.*

*Furthermore, private developers should continue to receive floor space bonus for additional market stock to sell in order to encourage the provision of affordable housing.*

### **Duration of Affordable Housing**

Clause 20 of the draft SEPP seeks to increase the duration in which a dwelling is used for affordable housing from 10 years to 15 years. Whilst the intent of this clause to increase the supply of affordable housing is strongly supported, concern is raised that the amendment, may in fact, further discourage the use of the SEPP in the general development sector for the delivery of in-fill affordable housing (particularly when the full extent of the bonus is unable to be achieved). This is because extending the duration in which a dwelling is mandated for affordable housing alters the feasibility of a project, increasing the time it takes to recoup costs from the significant investment in constructing the housing. Concern is raised that this may result in projects becoming unviable in a highly competitive market, reducing the overall provision of new affordable housing. This issue does not affect BaptistCare specifically as we hold affordable housing in perpetuity.

This change was not identified within the Explanation of Intended Effects and it is unclear what feasibility modelling or consultation has been undertaken in relation to this matter. This is considered necessary to ensure the proposed amendment achieves the aims of the SEPP, including providing incentives for certain development types and a consistent planning regime for the provision of affordable housing.

It is noted that the National Rental Assistance Scheme (NRAS) that has provided financial incentives to the industry since 2016 to stimulate the supply of new affordable rental housing is concluding on 30 June 2026, which in turn will remove this supply from the market. Accordingly, it is crucial to ensure the incentives of the draft Housing SEPP are calibrated appropriately to ensure the continued supply of this socially important housing type, once the NRAS ends. In addition, Clause 12 (1) (b) references NRAS, and this definition will not be relevant after 2026.

**Recommendation 2:** *The Department should undertake feasibility modelling before this proposed change is made to determine the likely impacts of this amendment on the supply of affordable housing. Furthermore, if the duration for affordable housing is increased, it is considered that additional incentives will be necessary to mitigate the additional financial costs and to ensure adequate incentives remain for affordable housing providers. Clause 12 (1) (b) should be reviewed in the light of the limited applicability of NRAS.*

## **1.2 Boarding houses**

### **Removal of boarding houses from R2 zone**

The proposed removal of boarding houses as a mandatory permissible use within the R2 zone is very concerning as this will drastically reduce the amount of available land in which this important development typology can be delivered. Like other uses encouraged under the SEPP, boarding houses struggle to compete with market housing



for scarce land in higher density zones and the R2 zone is where many of these facilities are therefore delivered.

If Councils are able to prohibit the use within the R2 zone, this would potentially exclude over 80,000Ha of zoned land in the Sydney Metropolitan Area, placing even further pressure on the medium to high density residential areas that are already hotly contested for alternative high density forms of development. This would have severe consequences for the delivery of this important housing typology and is contrary to the objective of improving housing diversity and affordability, particularly now that boarding houses are to be restricted to social housing providers for the purposes of affordable housing.

Furthermore, the intent of this proposed amendment is unclear given that the floor space bonus is only available where residential flat buildings are permissible and for development on non-heritage land. Accordingly, there is no urban design basis for the exclusion of this typology in the R2 zone as the scale of development would be no different to other forms of residential accommodation. The social consequences of restricting this use, on the other hand, would be severe and would result in less diverse neighbourhoods and the marginalisation of the vulnerable.

In addition, the cap of 12 boarding house rooms within the R2 zone is questionable given that the use will no longer be mandated in the zone. This further exacerbates the issue of restricted supply in Local Government Areas that rightly elect to encourage boarding houses within the R2 zone. In these instances, boarding houses should not be subject to a more stringent requirement under the SEPP. Rather, the density of the development should be determined by a merit assessment of the relevant controls.

**Recommendation 3:** *The Department should continue to mandate boarding houses as permissible uses within the R2 zone and remove the cap of 12 rooms.*

#### **Non-discretionary development standards**

The proposed non-discretionary development standard in clause 23, providing an additional 25% floor space (previously 20%) for boarding house developments in certain locations is supported. However, as outlined in Recommendation 1 above, it is imperative for this to be accompanied by an equal uplift in height otherwise it will not have the desired impact on the supply of this use as the additional FSR may not be realised.

The benefit of the proposed non-discretionary standards relating to minimum landscape areas is questioned given that the controls defer to the minimum requirements for other land uses under another relevant planning instrument. Boarding house providers rely on a consistent approach to non-discretionary standards for site selection and if these differ between LGAs, certainty is diminished. Instead, it is suggested that the Department implement a standard minimum landscape area which can be applied consistently for boarding houses across the state.

**Recommendation 4:** *Clause 23 should provide for a proportionate increase in building height to correspond with the floor space incentive to ensure alignment between these key development standards.*

**Recommendation 5:** *Clause 23 should include a non-discretionary standard relating to landscaped area rather than deferring to existing controls, to ensure consistency across the State and provide certainty for industry.*

#### **Standards for boarding houses**

The proposed new standard that boarding houses must be 'compatible with the character of the local area' is problematic and presents a key risk for applicants. This standard is highly subjective and can be used by Council as a reason to arbitrarily refuse consent as has been seen with previous seniors housing development which currently has a similar standard under the Seniors SEPP, despite Land and Environment Court precedents on what constitutes compatibility. This draft clause is considered unnecessary given the detailed development standards provided under the SEPP, which if complied with, should ensure compatibility. We therefore encourage the Department to remove this draft provision from the final SEPP.

As with the non-discretionary standards, there are a number of proposed new development standards which defer to existing controls under other relevant planning instruments, including minimum lot sizes and setbacks. This undermines the purpose of having a SEPP, and does not achieve one of the Aims of the draft SEPP which is "to provide greater clarity and certainty for the housing sector". Therefore, it is recommended that the Department introduce standard provisions which can be applied equally across all LGAs.



Similarly, the reference to compliance with the separation distances of the ADG for boarding houses over 3 storeys is considered inappropriate as the ADG has traditionally not applied to this land use. In addition, this provision unduly elevates the weight of the ADG from a guideline to a statutory control which must be complied with – making it more onerous than for a residential flat building.

**Recommendation 6:** Delete clause 24(1)(a) requiring the design of a boarding house to be compatible with the character of the local area.

**Recommendation 7:** Clause 24 should include development standards for minimum lot size and setbacks rather than deferring to existing controls, to ensure consistency across the State and provide certainty for industry. Accordingly, the Department should undertake design analysis to develop minimum acceptable standards for boarding houses which can be inserted into the SEPP and applied consistently across the State.

**Recommendation 8:** Delete clause 24(1)(j) requiring compliance with the minimum building separation distances specified in the ADG.

## 2.0 Diverse Housing

### 2.1 Group homes

The proposal within the Explanation of Intended Effect released in July 2020 to introduce a quicker and easier process to allow an existing dwelling to be used as a group home is strongly supported. Whilst it is acknowledged that the Group Housing provisions will be subject to a subsequent review in Phase 4, this change could be made as part of the current amendments by simply amending Clause 59(1) to state:

*Development for the purposes of a group home, or a change of use of an existing dwelling to a group home, is complying development if the development...*

Any group home would still have to comply with the prerequisites and the development standards at Schedule 3, meaning there would be no additional environmental impacts than if a new group home was to be developed on a site under the same provisions. This relatively minor amendment could bring forward the delivery of this important accommodation typology for people with a disability or people who are socially disadvantaged. Furthermore, this change would not inhibit the subsequent review of the group home development standards which is also supported to ensure that these facilities meet modern standards.

**Recommendation 9:** Amend clause 59(1) to enable the conversion of an existing dwelling into a group home to be complying development.

## 3.0 Seniors Housing

### 3.1 Age change of seniors to 60 years

BaptistCare has specific concerns with the definition of “seniors” changing from 55 years to 60 years. Most notably regarding vulnerable groups such as 55-59 year old single women and recently divorced women with low superannuation who the Seniors SEPP has assisted in providing affordable housing over decades. BaptistCare believe vulnerable groups should be exempted from the age change or the minimum age being retained at 55 years.

**Recommendation 10:** Exempt vulnerable groups such as single women from the age change to 60 years for seniors or maintain the 55 year minimum age.

### 3.2 Prescribed Zones and Restrictions

BaptistCare supports the introduction of prescribed zones as the current Seniors SEPP is often

subjective to its application and at times requires legal interpretation. The prescribed zones approach simplifies the application of the instrument and provides greater certainty.

### 3.2.1 Special Purpose Zones

BaptistCare is however concerned with the limited consideration of the Special Purpose zones. In particular, the only circumstance that the SP2 Infrastructure zone can be used for seniors housing is when the zone is identified for 'Hospital' use. BaptistCare is particularly concerned that these changes will stifle the development of surplus land on many school sites that have potential for intergenerational communities to be created.

By contrast, for SP1 zones under clause 76, seniors housing can only be developed in the SP1 zone in circumstances where:

- A place of public worship, educational establishment, hospital or seniors housing is permitted on the land; and
- At least 50% of the site adjoins a residential zone.

It is noted that SP zones are generally well located within urban areas in relation to the infrastructure and services that seniors housing also benefits from, such as hospitals and health facilities. Importantly, there is no consistent distinction between an SP1 zoned educational establishment and an SP2 zoned educational establishment across the NSW planning system. The two Special Purpose zones have been applied interchangeably for the past 15 years with the SP2 zone being a prevalent zoning for educational establishments in NSW.

BaptistCare is also concerned how consent authorities interpret the requirement of 50% of the site must adjoin residential zoned land, creating inconsistency in its interpretation and uncertainty. It is therefore recommended this is clarified within the legislation to ensure there is no ambiguity.

**Recommendation 11:** *We therefore recommend the SP2 zone be treated the same as the SP1 zone.*

### 3.2.2 R2 Low Density Residential

The restriction on ILUs in R2 zones is the most concerning aspect of draft Housing SEPP for the not-for-profit (NFP) sector and its inclusion within the draft Housing SEPP without prior consultation or explanation is concerning for BaptistCare.

The R2 zone has been a significant contributor of seniors housing since the commencement of SEPP No. 5 in 1982. This is because land values are lower than in higher density zones such as R3 or R4 zones, and seniors housing providers do not need to compete for the acquisition of sites with market residential apartment developers. This has resulted in an enormous amount of successful retirement villages being developed over the past 40 years in the R2 zone across NSW, which has significantly increased supply. The R2 zone equates to approximately 80,000 hectares of land just in the Sydney Metropolitan Area being excluded from ILU development as a consequence of this provision.

Three of BaptistCare's villages are located within an R2 zone, comprising 110 ILUs. These villages are well established with their local communities and are entirely compatible with the character, scale and density of their localities. These villages would become prohibited development and their long-term futures be placed in jeopardy as a consequence of this provision. Furthermore, without the permissibility enshrined within a SEPP, local councils could simply make "seniors housing" prohibited in their R2 zones to align with the draft Housing SEPP. This would render all 3 BaptistCare villages and 110 ILUs as prohibited development and reliant upon the "existing use" rights provisions of the EP&A Act and restrict provision of future ILUs and redevelopment at end of building life.

It is important to note that ILU development in R2 zones is afforded no additional building height or floor space ratio over other forms of permissible development, with an 8m building height and a 0.5:1 FSR maximum as non-refusable standards under clause 50 of the Seniors SEPP. Indeed, a RCF at a 1:1 FSR and a building typology and function more akin to a health services facility than residential dwellings, has arguably a greater impact upon streetscape and neighbourhood amenity than ILUs – yet RCFs remain permissible in the R2 zone. The intent of the draft Housing SEPP is for the delivery of affordable and diverse housing types.

This clause will have the opposite effect.

Notwithstanding this, an alternative is to just allow seniors housing developments in the R2 zone that are operated under the Retirement Villages Act 1999. We understand concern has been raised from a small number of Sydney metropolitan councils regarding situations where a developer secures multiple adjoining parcels in an established low density residential neighbourhood to develop seniors housing using the Seniors SEPP, to then strata subdivide and sell similarly to market residential. This suggested alternative would only permit seniors housing providers to develop ILUs in the R2 zone, who manage villages and provide services under the operation of the Retirement Villages Act 1999. Consent authorities could have certainty through the imposition of a condition of consent that prior to an occupation certificate being issued a restriction is placed on the title requiring the land be managed under the Retirement Villages Act 1999.

Lastly, the removal of all rural zones (apart from RU5) coupled with ILUs no longer being permissible in the R2 zone is an enormous change for the NFP industry and will limit housing choice and people downsizing to age in place. It will also force a significant number of seniors housing providers into direct competition with market residential developers to acquire a small amount of available sites primarily in R4 zones (in order to achieve the vertical villages bonus), thereby increasing land values and therefore the cost of housing.

**Recommendation 12:** *Permit all forms of seniors housing within the R2 Low Density Residential Zone or alternatively, exempt providers that operate under the Retirement Village Act 1999 from the ILU prohibition.*

**Recommendation 13:** *Include other suitable rural zones in the list of prescribed zones, subject to suitable locational criteria (similar to other prescribed zones). It is also noted that development in rural zones would be subject to clauses 82 and 83 of the SEPP, ensuring appropriate access to services and facilities.*

### 3.3 Existing Use Rights

The new prescribed zones framework has the potential to make existing lawfully approved seniors housing developments a prohibited use. This is particularly relevant to existing seniors housing developments in rural zones which the draft Housing SEPP does not apply to. Furthermore, lawful existing independent living unit (ILU) development under clause 76 would become prohibited in the R2 zone.

Just these two changes alone could result in potentially thousands of lawfully approved and successfully operating seniors housing development in NSW becoming prohibited development and therefore being reliant on the “existing use” rights provisions of the EP&A Act.

DPIE inadvertently making potentially thousands of seniors housing developments prohibited development and reliant on the “existing use” rights provisions not only is problematic from a land use planning perspective, but also provides little certainty for any future development or renewal on these sites and could substantially devalue the homes of residents. Furthermore, prohibiting lawful development is likely to have ramifications on debt funding for the renewal of ageing villages.

## 4.0 Development Standards and Non-Discretionary Standards

### 4.1 Development standards

BaptistCare is generally supportive of the rationalised development standards proposed in the draft Housing SEPP. However, there appears to be a drafting error in clause 74(3) that states:

- (3) *The development may result in a building with a height of no more than 11.5m if servicing equipment on the roof of the building—*
  - (a) *is fully integrated into the design of the roof or contained and suitably screened from view from public places, and*
  - (b) *is limited to an area of no more than 20% of the surface area of the roof.*

It is understood the underlying intent of this provision is to provide an additional 2.5m of building height for roof servicing equipment, above the 9m height standard. However, the 9m height standard applies only to residential zones where residential flat buildings are prohibited, whilst the 11.5m servicing equipment height appears to apply to all zones.

For example, land in an R4 zone with a 20m height development standard (or 6 storeys) under an LEP, will require a clause 4.6 variation statement in order to vary the 11.5m height standard of subclause (3), despite the proposal achieving an LEP compliant height of 20m. Clearly, this outcome was not the intent of this provision.

**Recommendation 14:** *Ensure that clause 74(3) is tied to the 9m height standard and only applies to land in a residential zone where residential flat buildings are not permitted.*

## **4.2 Non-discretionary development standards**

BaptistCare welcomes the proposed non-discretionary standards as they have for many years provided certainty and advantages for NFP providers not only in the assessment of development applications but also in the acquisition of sites from a due diligence and feasibility perspective.

### **4.2.1 Non-discretionary terminology**

The change in the name of these provisions from the Seniors SEPP “standards that cannot be used to refuse consent” to the draft Housing SEPP “Non-discretionary standards” is understandable considering the reference to this term in section 4.15 of the EP&A Act, however we would like to bring DPIE’s attention to section 4.15(3)(b) that states:

*(b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard **may be applied** (emphasis added) to the non-discretionary development standard.*

This provision effectively gives a consent authority discretion whether to apply clause 4.6 of a relevant LEP to non-discretionary standards in the Housing SEPP, since clause 4.6 is the provision that allows flexibility in the application of a development standard.

This has never been the intent of the Seniors SEPP “standards that cannot be used to refuse development consent” provisions to act as hard development standards, nor how they have been applied in NSW since they were introduced. This is evident from the fact that the non-discretionary standards have been placed in Division 7 of Part 4 of the draft Housing SEPP, separate to the development standards in Division 3. Furthermore, the intent of the non-discretionary development standards is clearly stated in clause 96(1) of the draft Housing SEPP as follows (with clause 97(1) being drafted in similar terms):

*“The object of this section is to identify development standards for particular matters relating to development for the purposes of hostels and residential care facilities that, **if complied with, prevent the consent authority from requiring more onerous standards for the matters.**”*

The above indicates that non-discretionary development standards are not meant to be applied in the same way as hard development standards. They merely provide certainty to applicants that a consent authority cannot require more onerous standards should they be complied with. If consent authorities apply clause 4.6 to non-discretionary standards, the distinction between non-discretionary and other development standards becomes blurred and is contrary to the intent of non-discretionary standards.

**Recommendation 15:** *DPIE and Parliamentary Counsel’s Office should carefully consider the potential ramifications of this terminology change, and the subsequent legal challenges and L&E Court appeals it could generate.*

### 4.3 Non-discretionary development standards for residential care facilities

BaptistCare queries the inconsistency between the 9.5m non-discretionary height standard of clause 96(2)(a) and the 9m height development standard of clause 74(2)(c)(i). For example, a RCF in an R2 zone where residential flat buildings are prohibited could achieve a building height of 9.5m thereby complying with the non-discretionary standard, however it would breach the 9m height development standard of clause 74(2)(c)(i). This breach would therefore require a clause 4.6 statement to vary the 9m height development standard, despite the fact that a consent authority cannot require more onerous standards where a proposed development complies with a non-discretionary standard.

This is clearly not the intent of the interplay between the development standards of clause 74 and the non-discretionary standards of clause 96 and 97 and will need to be reviewed by DPIE to ensure consistency.

Furthermore, the new standard for internal and external communal open space of 10m<sup>2</sup> per bed, for a 100 bed RCF equates to 1,000m<sup>2</sup> of communal open space which is considered onerous, particularly outside of low density residential zones. BaptistCare believes that 7m<sup>2</sup> per bed would be an appropriate rate and aligns with many of our modern RCFs such as The Gracewood RCF in Kellyville.

**Recommendation 16:** *Review the non-discretionary development standards for RCFs in clause 96, particularly in relation to their interplay with the development standards in clause 74.*

### 4.4 Non-discretionary development standards for independent living units

BaptistCare supports the non-discretionary standards relating to ILUs generally, however question some of their applicability in light of the prohibition of ILUs in R2 zones. The intent of these non-discretionary standards is to set a baseline of compliance, particularly in low density zones (ie R2), where a consent authority cannot refuse consent on that basis should a standard be complied with. In particular, the building height standard of 9m and the FSR standard of 0.5:1 for ILUs relate directly to R2 zoned land, where ILUs are proposed to no longer be permissible development.

This reinforces the prevailing seniors housing industry's perception that the prohibition of ILUs in R2 zones was an inappropriate last moment addition to the draft Housing SEPP without proper consideration by DPIE.

**Recommendation 17:** *BaptistCare therefore again recommends that the prohibition of ILUs in the R2 zone is deleted. Or alternatively, exempt providers that operate under the Retirement Village Act 1999 from the ILU prohibition.*

## 5.0 Site-related requirements

BaptistCare welcomes the update to the existing clause 26 of the Seniors SEPP, an onerous and problematic provision. By removing the word "public" this allows many of our existing villages and emerging villages to provide an alternative private bus service, which is typically the preferred transport method for many of our residents.

Furthermore, this aligns with recent judgments from the NSW Land and Environment Court that acknowledge the frailty and high care needs of residents of RCFs, and that a private bus service is the safest and realistically the only transport option in such circumstances.

## 6.0 Development for vertical villages

BaptistCare supports the intention of this provision to incentivise seniors housing (in particular co-located developments) and to level the playing field in the acquisition of sites for seniors housing providers when competing against market residential developers which is typically the highest and best use.

BaptistCare also supports DPIE removing the need for a Site Compatibility Certificate (SCC) to access the bonus, and also removing the minimum affordable housing and the associated community housing provider requirement. These were significant impediments for the industry utilising the existing vertical village bonus of the Seniors SEPP.



## 6.1 Application to business zones

BaptistCare strongly believes that, in order for this incentive provision to achieve its intent, it must be applied more broadly, and not just restricted to zones where residential flat buildings are permissible as this restricts the application of the bonus primarily just to R4 zoned land and less frequently to R3, R1 and B4 zones. Accordingly, in the opinion of BaptistCare it must also apply where shop-top housing is permitted, which would open up many business zones to the application of the incentive.

Business zones in our commercial centres also provide the highest FSR development standards, which correlate better with a percentage bonus (as proposed) and provide a greater incentive for seniors housing providers as the base FSR increases.

We understand that this is the intent of this provision as publicly stated by the Minister for Planning and Public Spaces in the media regarding the draft Housing SEPP, in that vertical villages will incentivise seniors housing in our city centres and on top of our shopping centres. The current drafting of the draft legislation regrettably does no such thing, with the vertical villages clause not applying to our urban centres or shopping districts.

This incentive applying to business zones is not only to bring seniors into our urban centres from an intergeneration sustainability perspective, but to partially offset the significant amount of land that is proposed to be lost to NFP providers with the draft Housing SEPP no longer applying to rural zones and ILUs being prohibited in the R2 zone.

The proposed changes significantly narrow the land available to the seniors housing industry to higher density zones that are typically outside where seniors housing providers have traditionally operated, given their inherent competitive disadvantage. Accordingly, its application must be broad and its incentives substantial enough to recalibrate the industry into high density zones and not reduce the overall supply of new seniors housing at this crucial time in the demographic history of NSW.

**Recommendation 18:** *Broaden the application of the vertical villages provisions to include land on which development for the purpose of shop top housing is permitted (in addition to residential flat buildings).*

## 6.2 Additional floor space and building height

BaptistCare recommends that a 25% bonus of additional FSR is applied to development for the purposes of ILUs to bring them into alignment with RCFs. From BaptistCare's most recent experience, modern ILUs are on average between 20-30% larger in GFA than standard market residential apartments, and when combining the increased circulation spaces and communal areas of modern ILU developments. Accordingly, a 25% bonus for ILUs is a conservative estimate of the additional GFA required for ILU developments to effectively compete with standard market residential developers in the acquisition of sites in higher density zones.

BaptistCare welcomes however the additional building height of 3.8m to accommodate the floor space bonus without the need to submit a clause 4.6 variation. However, in higher density zones it is unlikely that the available bonus floor space will be able to be accommodated within only a single additional storey, and further bonus for building height in high density zones will be necessary.

**Recommendation 19:** *Increase the FSR bonus for vertical villages involving ILUs to 25% (instead of 15%) and allow an additional storey for every 4 storeys that is permitted in higher density zones to enable the full FSR bonus to be realised. For example, development standard permits up to 4 storeys equates to 1 additional storey, development standard at 8 storeys equates to 2 additional storeys, development standard permits 12 storeys or more equates to 3 additional storeys.*

## 6.3 Default Floor Space Ratio

BaptistCare has significant concerns regarding the default 0.5:1 FSR standard that would apply to land that does not have an FSR standard, this effectively applies an R2 zone FSR to all zones. This is highly problematic given that almost all R3 and R4 zoned land prescribes densities well above 0.5:1, and many R4 zones prescribe densities well above 1:1.

For example, a seniors housing development on a 2,000m<sup>2</sup> site without an FSR development standard but with an R4 zoning, a building height development standard of 20 metres (or 6 storeys) and related DCP built form controls, would have a 0.5:1 FSR + bonus forced upon it. For an ILU development this would equate to an FSR of 0.575:1 which correlates to a 2 storey development in a 6 storey residential locality. This will result in seniors housing in these areas having a significantly lower density and yield than other forms of residential development, which is contrary to the purpose of this provision to incentivise seniors housing in our urban centres.

Removing this ill-conceived and flawed default FSR is therefore strongly recommended and the incentive provision could still operate effectively in areas without an FSR as the building height bonus provides an incentive in itself.

***Recommendation 20:*** *Removing this default FSR is therefore strongly recommended as the incentive provision could still operate effectively in areas without an FSR as the building height bonus provides an incentive in itself.*

## 7.0 State Significant Development Pathway

BaptistCare welcomes the recognition of large seniors housing projects as State Significant Development (SSD) where it provides an opportunity to prioritise and provide consistency to the assessment of RCFs and ILUs and allied health where they sufficiently relate to the residential care use. It is recommended, however, that the CIV for RCF SSD development be reduced to \$20m throughout Greater Sydney and all other areas, in recognition of the average development costs for RCF beds for BaptistCare being approximately \$250,000 per bed. Accordingly, a \$20m RCF equates to an approximately 80 bed facility, which is a significant RCF.

However, the requirement for the CIV component of the RCF in an integrated development to comprise at least 60% of the CIV is concerning, as it does not align with industry practice. In our experience, in almost all integrated large villages the RCF component makes up less than 25% of the overall GFA of a village. A typical integrated large village may comprise a \$20m RCF and \$80m ILUs, which would not be eligible for SSD. Therefore, by requiring the RCF facility be the majority contributor to the threshold for SSD will mean that the trigger to SSD is unlikely to be used regularly. Alternatively, it may mean that the planning process for the development of large sites may be split between part SSD and part Regional or Local development. This would be confusing for consent authorities, applicants and the community, particularly so when attempting to apply the various FSR bonuses of the vertical villages incentive provision.

The Royal Commission into Aged Care Quality and Safety recommended a strengthening of the home care sector and Federal Government has indicated support with additional funding. ILUs and RCFs being co-located on sites or within vertical villages provides continuum of care and the ability for residents to age in place within their own community and social networks, and should be encouraged by planning policy. Accordingly, providing an SSD pathway for RCFs yet limiting the ILU component to a maximum of 40% of total CIV, runs counter to this concept, and will either force large seniors developments out of SSD, or split the planning pathway. Neither of these options support the intention of an SSD pathway for seniors housing.

The 60% minimum CIV for RCFs also could potentially allow third party appeals where an objector could challenge the planning pathway of an SSD following its determination when the non-RCF component of the SSD is near to 40%.

***Recommendation 21:*** *Either remove the requirement for the CIV of the RCF component to be at least 60% of the total CIV, or require both the RCF and ILU components to together comprise at least 60% of the overall CIV.*

## 8.0 Incentives to Renew Ageing Villages

BaptistCare and many other NFP providers own and manage seniors housing stock that itself is ageing and is not in keeping with modern and evolving design standards and resident expectations. Many of these retirement villages and RCFs were developed in the 1980s following the adoption of SEPP 5 which encouraged large village development on urban fringes. These large villages are common throughout Sydney and some large regional centres and are rapidly reaching the end of their economic life.

Often the obsolescence of the stock is incurable, with buildings not originally designed or constructed to enable upgrades (eg wide corridors and rooms for accessibility), to achieve minimum compliance with the Australian Standards and Building Code of Australia and must be replaced. This is of particular importance as life expectancy in Australia has increased by 10 years since the introduction of SEPP No. 5 and the average age of residents in retirement villages is now 81 years, accessibility for older, more frail and impaired residents is of great importance. The draft Housing SEPP needs to address how such stock can be effectively replaced.

Accordingly, renewal and redevelopment are needed to secure the long term future of many of these villages and facilities. However, a major barrier for renewal lies in the fact that many of these villages are either at or near the highest development potential afforded to them under SEPP Seniors and local planning instruments. Therefore, there is little or no additional density or height available under the current planning framework to spark renewal.

Replacement of existing seniors housing at a 1:1 ratio is simply not economically viable given the combined costs of buying back the units as well as ensuring the relocated residents are not economically disadvantaged. Some of our existing villages may become prohibited under the planning controls in which they reside, making their renewal extremely difficult.

Such renewal could provide for seniors housing to be brought up to date with current accessibility requirements and ESD requirements including BASIX. Furthermore, the social benefit to residents of having modern dwelling stock provided in existing villages where they call home is important. Such an incentive provision would allow for villages to be renewed in a staged manner and for existing residents to not have to move villages.

**Recommendation 22:** *BaptistCare would welcome an appropriate FSR and building height incentive clause that provided for renewal of aging villages where the renewal was tied to defined and desirable accessibility, ESD and design standards. The SEPP should also make it clear that renewal of villages is permitted irrespective of the zoning in which the village sits.*

## 9.0 Developer Contributions

BaptistCare is a social housing provider as defined by the Seniors SEPP and therefore is exempt from developer contributions under the section 94E Ministerial Direction from 2007. It is recommended that this exemption is placed within the draft Housing SEPP to provide certainty and reduce complexity.

**Recommendation 23:** *BaptistCare would welcome the exemption from development contribution for social housing providers to be placed with the draft Housing SEPP.*

## 10.0 Conclusion

BaptistCare would like to thank the DPIE for the opportunity to provide a submission in respect of the exhibited draft Housing SEPP. BaptistCare is a significant not-for-profit provider of seniors housing, aged care, affordable and social housing and, therefore, has a keen interest in planning matters that could potentially impact its delivery of future development.

As outlined in this submission, BaptistCare commends DPIE on the draft Housing SEPP and is supportive of the intent of the draft policy to simplify affordable and seniors housing planning legislation in NSW and to incentivise vertical villages in our urban centres.

BaptistCare is however concerned the amendments proposed could have an adverse effect on the delivery of seniors housing in NSW. While it is noted that some amendments are required to the Seniors SEPP, the current instrument has provided the not-for-profit industry with a high level of certainty for years and, in our long experience, has been extremely successful in achieving its aims. Therefore, the DPIE is encouraged to investigate the recommendations outlined above by BaptistCare to allow the continued provision of a viable affordable and seniors housing service offering.



Notwithstanding this, with the modest adjustments proposed to the relevant provisions contained within this submission, BaptistCare is confident that the draft Housing SEPP could deliver the modern seniors housing needed in NSW to meet the rising needs of the ageing population.

We would be happy to discuss any of this further with you or make ourselves available to expand upon this submission. BaptistCare is hopeful that the above submission and recommendations are thoroughly considered by DPIE in its finalisation of the draft Housing SEPP.

Yours sincerely



David Cowdery  
General Manager Property  
BaptistCare NSW & ACT  
0417 216 195  
[dcowdery@baptistcare.org.au](mailto:dcowdery@baptistcare.org.au)

## Recommendations

**Recommendation 1:** Clause 16 should provide for a proportionate increase in the maximum building height that corresponds with the floor space incentive to ensure alignment between these key development standards. For example, an additional level would be sufficient for a site with a floor space ratio of less than 2.5:1 but two or more levels may be required in higher density zones to ensure the full bonus floor space can be achieved

Furthermore, private developers should continue to receive floor space bonus for additional market stock to sell in order to encourage the provision of affordable housing.

**Recommendation 2:** The Department should undertake feasibility modelling before this proposed change is made to determine the likely impacts of this amendment on the supply of affordable housing. Clause 12 (1) (b) should be reviewed in the light of the limited applicability of NRAS.

**Recommendation 3:** The Department should continue to mandate boarding houses as permissible uses within the R2 zone and/or remove the cap of 12 rooms.

**Recommendation 4:** Clause 23 should provide for a proportionate increase in building height to correspond with the floor space incentive to ensure alignment between these key development standards.

**Recommendation 5:** Clause 23 should include a non-discretionary standard relating to landscaped area rather than deferring to existing controls, to ensure consistency across the State and provide certainty for industry.

**Recommendation 6:** Delete clause 24(1)(a) requiring the design of a boarding house to be compatible with the character of the local area.

**Recommendation 7:** Clause 24 should include development standards for minimum lot size and setbacks rather than deferring to existing controls, to ensure consistency across the State and provide certainty for industry.

**Recommendation 8:** Delete clause 24(1)(j) requiring compliance with the minimum building separation distances specified in the ADG.

**Recommendation 9:** Amend clause 59(1) to enable the conversion of an existing dwelling into a group home to be complying development.

**Recommendation 10:** Exempt vulnerable groups such as single women from the age change to 60 years for seniors or maintain the 55 year minimum age.

**Recommendation 11:** We therefore recommend the SP2 zone be treated the same as the SP1 zone.

**Recommendation 12:** Permit all forms of seniors housing within the R2 Low Density Residential Zone or alternatively, exempt providers that operate under the Retirement Village Act 1999 from the ILU prohibition.

**Recommendation 13:** Include other suitable rural zones in the list of prescribed zones, subject to suitable locational criteria (similar to other prescribed zones). It is also noted that development in rural zones would be subject to clauses 82 and 83 of the SEPP, ensuring appropriate access to services and facilities.

**Recommendation 14:** Ensure that clause 74(3) is tied to the 9m height standard and only applies to land in a residential zone where residential flat buildings are not permitted.

**Recommendation 15:** DPIE and Parliamentary Counsel's Office should carefully consider the potential ramifications of this terminology change, and the subsequent legal challenges and L&E Court appeals it could generate.

**Recommendation 16:** Review the non-discretionary development standards for RCFs in clause 96, particularly in relation to their interplay with the development standards in clause 74.

**Recommendation 17:** BaptistCare therefore again recommends that the prohibition of ILUs in the R2 zone is deleted. Or alternatively, exempt providers that operate under the Retirement Village Act 1999 from the ILU prohibition.

**Recommendation 18:** Broaden the application of the vertical villages provisions to include land on which development for the purpose of shop top housing is permitted (in addition to residential flat buildings).

**Recommendation 19:** Increase the FSR bonus for vertical villages involving ILUs to 25% (instead of 15%) and allow an additional storey for every 4 storeys that is permitted in higher density zones to enable the full FSR bonus to be realised. For example, a development standard permits up to 4 storeys equates to 1 additional storey, a development standard at 8 storeys equates to 2 additional storeys, a development standard permits 12 storeys or more equates to 3 additional storeys.

**Recommendation 20:** Removing this default FSR is therefore strongly recommended as the incentive provision could still operate effectively in areas without an FSR as the building height bonus provides an incentive in itself.

**Recommendation 21:** Either remove the requirement for the CIV of the RCF component to be at least 60% of the total CIV, or require both the RCF and ILU components to together comprise at least 60% of the overall CIV.

**Recommendation 22:** BaptistCare would welcome an appropriate FSR and building height incentive clause that provided for renewal of aging villages where the renewal was tied to defined and desirable accessibility, ESD and design standards. The SEPP should also make it clear that renewal of villages is permitted irrespective of the zoning in which the village sits.

**Recommendation 23:** BaptistCare would welcome the exemption from development contribution for social housing providers to be placed with the draft Housing SEPP.

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**From:** noreply@feedback.planningportal.nsw.gov.au on behalf of Planning Portal -  
Department of Planning and Environment  
<noreply@feedback.planningportal.nsw.gov.au>  
**Sent:** Tuesday, 3 August 2021 10:32 AM  
**To:** DPE PS Housing Policy Mailbox  
**Subject:** Webform submission from: Proposed Housing SEPP

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Submitted on Tue, 03/08/2021 - 10:32

Submitted by: Anonymous

Submitted values are:

**Submission Type**

I am making a personal submission

## Name

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barry

**Last name**

cotten

**Organisation name**

Planning.

**I would like my submission to remain confidential**

No

## Info

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Sydney

**Postcode**

2009

**Submission**

i believe Clause 23(2)(j) has mistakley identifies (h) instead of (i)

**I agree to the above statement**

Yes


## Re: Submission on the draft State Environmental Planning Policy (Housing) 2021

We are writing to you to request the removal of clause 8.38 of the draft State Environmental Planning Policy (Housing) 2021.

Page 4 of the document titled “LAHC, Part 3 of ARHSEPP and Secondary Dwelling amendments – Frequently asked questions” on the Department of Planning, Industry and Environment website (link: <https://www.planning.nsw.gov.au/-/media/Files/DPE/Factsheets-and-faqs/Policy-and-legislation/Housing/faqs-LAHC-ARHSEPP-and-secondary-dwellings-amendments-2021-02.pdf?la=en>) outlines the following process (our red box emphasis):

### LAHC, Part 3 of ARHSEPP and Secondary Dwelling amendments

#### Frequently asked questions



For secondary dwellings on land in a rural zone, a new optional clause 5.5 of the Standard Instrument (Local Environmental Plans) Order 2006 will be introduced. The new optional clause responds to request from councils for greater discretion to be able to set the maximum size for secondary dwellings in a rural zone.

The new clause provides councils the ability to set the maximum size of secondary dwellings in a rural zone as the greater of a specified size in square metres or as a percentage of the total floor area of the principal dwelling. The new clause will also allow councils the option to set a maximum distance a secondary dwelling may be from the principal dwelling.

Council's wishing to adopt provisions for secondary dwellings in a rural zone can do so by amendment their local environmental plan via a planning proposal to adopt the new clause 5.5 of the Standard Instrument (Local Environmental Plans) Order 2006.

The above document is a current document on the Department of Planning, Industry and Environment website.

After reading the above document, rural landowners in the Pittwater LGA felt reassured that the Department of Planning, Industry and Environment were planning to follow the process outlined in the Environmental Planning and Assessment Act 1979, should any changes be proposed to the Pittwater LEP.

We note there is a typographical error in the draft State Environmental Planning Policy (Housing) 2021 in that our LEP is referred to as “8.38 Pittwater Local Environmental Plan 2019”, instead of “8.38 Pittwater Local Environmental Plan 2014”.

It appears the Department of Planning, Industry and Environment are now wanting to provide a mechanism for a backdoor change to the Pittwater LEP which bypasses the usual notification and public exhibition process of a planning proposal, and importantly bypasses the process laid out by the Department of Planning, Industry and Environment.

We note one of the Objects of the Environmental Planning and Assessment Act 1979 is to “(j). to provide increased opportunity for community participation in environmental planning and assessment.”

We write to you to request that due to the misinformation published on the Department of Planning, Industry and Environment website, combined with the typographical error in the draft State Environmental Planning Policy (Housing) 2021, that the proposed changes to the Pittwater LEP are omitted from the final State Environmental Planning Policy (Housing) 2021. This will ensure the

planning proposal process as outlined on the Department of Planning, Industry and Environment website will be followed and that a proper public consultation process will be undertaken, should a change be proposed.

28 August 2021

The Honourable R Stokes

Minister, NSW Department of Planning, Industry and Environment

SYDNEY NSW 2000

Dear Minister,

RE: SUBMISSION ON THE DRAFT HOUSING DIVERSITY STATE ENVIRONMENTAL PLANNING POLICY (SEPP)

We thank you for the opportunity to comment on the Draft Housing Diversity SEPP in NSW. The NSW Government is to be commended for taking the initiative to provide affordable housing to a diverse population in NSW, and more specifically in Sydney and the greater metropolitan precinct.

A report by PwC in 2017 stated that there is a growing gap between older home owners and a younger generation who are trying to enter the housing market.<sup>1</sup> As a consequence, these younger people are forced to live farther away from available jobs and transport in order to afford suitable housing.<sup>2</sup> Longer commute times decrease productivity, and reduce family time. With the current housing market, low to moderate income earners find it difficult to locate high amenity accommodation, with added community benefit, that are close to jobs and services. There is a missing middle to provide more affordable accommodation.

#### Smaller Co-living Model

Housing Multiple Occupancies exist and work well in other states, such as Queensland and Western Australia. This model creates housing with micro apartments that are built into a standard housing block, or the micro apartments can be created within an existing family home. This model provides additional opportunities to develop smaller 3-5-bedroom/6-person maximum co-living model. Occupants of these rental spaces are usually:

- Young adults seeking independence or moving away from their parents' home for work
- Tradespeople - people working in low income, essential jobs
- Young professionals starting out in their careers
- Young couples saving for their first home
- Women without shelter due to divorce, death of a partner or domestic violence
- Over 55-year-old women who are the most vulnerable to become homeless in our society
- People with disabilities who want to live independently

A maximum of 6 people occupy the house. It is the goal of such housing to blend in to the surrounding density and residential nature. Evidence from other states show that such limited co-living preserves a sense of community, a sense of home. Such properties are mostly located in R2 zones to allow occupants to

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<sup>1</sup> PwC's Affordable Housing Initiative | March 2017, page 3

<sup>2</sup> <https://www.domain.com.au/news/one-in-five-sydney-workers-spending-two-hours-or-more-commuting-each-day-ceda-report-20180822-h14891-759349/>

maintain connection with the community they are familiar with, and has ties to family and or friends. To be clear – this is not a boarding house. Occupants usually stay for a period of 6 months or more. For example, for a tradesperson, the occupant could potentially stay for the duration of the project. In the case of a major building contract, this could last up to 2 years.

#### R2 Zoning Permissible

In view of the above point, the draft SEPP appear to have omitted the opportunity to allow such smaller co-living model. It is recommended that the above model be permitted and mandated in R2 zones. This will release more available housing stock to provide affordable accommodation opportunities. Such a model has operated successfully in other states, e.g. Queensland, Victoria, Tasmania, and Western Australia.

#### Certifier Approved

The draft SEPP proposes that the approval of co-living in R2 zones be the responsibility of local councils. It is appropriate that local councils continue to be the approving authority for larger 6+ bedroom models, while the smaller model of 3-5-bedroom/6-person maximum co-living model should be able to be approved by a certifier. Certifier approval of such smaller co-living model has worked successfully in other state.

We urge the NSW Government to seriously consider these recommendations so that we can contribute to provide working, achievable solutions to the affordable housing issue.

Yours truly,

A solid black rectangular box used to redact a signature.



**From:** noreply@feedback.planningportal.nsw.gov.au on behalf of Planning Portal - Department of Planning and Environment  
<noreply@feedback.planningportal.nsw.gov.au>  
**Sent:** Monday, 16 August 2021 3:39 PM  
**To:** DPE PS Housing Policy Mailbox  
**Subject:** Webform submission from: Proposed Housing SEPP

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Submitted on Mon, 16/08/2021 - 15:39

Submitted by: [REDACTED]

Submitted values are:

**Submission Type**

I am making a personal submission

## Name

**First name**

[REDACTED]

**Last name**

[REDACTED]

**Organisation name**

[REDACTED]

**I would like my submission to remain confidential**

Yes

## Info

**Email**

[REDACTED]

**Suburb**

[REDACTED]

**Postcode**

[REDACTED]

**Submission**

Please review the 94E Directions. Seniors Housing (Independent Living Units) should not be exempt from Development Contributions. These are money making ventures. The National 'Community Housing Provider' list has every provider on it - it is the way the industry is regulated. It does not mean that they are providing social housing on a site as part of a development. The 94E Direction should only exempt development for true social housing on that particular site and that particular DA. Where a developer (no matter what their provider status) is developing 300+ Independent Living Units, there is a need for community infrastructure - hence contributions should apply. Please ensure these are reviewed before the SEPP is implemented. Thank you

**I agree to the above statement**

Yes



**From:** noreply@feedback.planningportal.nsw.gov.au on behalf of Planning Portal - Department of Planning and Environment <noreply@feedback.planningportal.nsw.gov.au>  
**Sent:** Monday, 30 August 2021 8:19 AM  
**To:** DPE PS Housing Policy Mailbox  
**Subject:** Webform submission from: Proposed Housing SEPP

Submitted on Mon, 30/08/2021 - 08:18

Submitted by: Anonymous

Submitted values are:

**Submission Type**

I am making a personal submission

## Name

**First name**

[REDACTED]

**Last name**

[REDACTED]

**Organisation name**

Personal Submission

**I would like my submission to remain confidential**

Yes

## Info

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**Suburb**

Wahroonga

**Postcode**

2076

**Submission**

Submission on Draft Housing SEPP

Heritage Conservation Areas Moratorium - The moratorium on seniors housing in Heritage Conservation Areas (HCAs) has been extended until 1 July 2022. The exhibition material notes that Councils will need to provide justification for any extension to the HCA moratorium beyond 1 July 2022.

Ku-ring-gai Council wrote to the Department of Planning, Industry and Environment on 21 July 2020 which set out the evidence to support a permanent exemption, and requested that a permanent exemption of seniors housing from HCAs be granted for Ku-ring-gai. Council has not received any response to the formal letter sent 21 July 2020.

Within Ku-ring-gai, HCAs are primarily within R2 Low Density zones. Once the moratorium is lifted on 1 July 2022, residential care facilities will then be permitted in these HCAs. This will result in a built form that will be in stark contrast and unsympathetic to the existing low density, detached dwellings that characterise those areas and thus undermining the heritage integrity of the existing HCAs.

It is noted that Clause 87 intends to provide design guidance for neighbourhood amenity and streetscape. It is unclear how a seniors housing development would complement HCAs.

HCAs often have a clear subdivision pattern, a consistent built form/ design characteristics particularly setbacks, are typically low scale, single storey and importantly are of an age that is consistent. A contemporary seniors housing building would be very difficult to design to fit within the characteristics of a typical HCA.

It is Council's view that seniors housing is not suitable within a HCA, and has sought a permanent exemption. A permanent moratorium for HCAs would incentivise more Councils to permit seniors housing within R2 Low Density zones, providing the potential for greater housing diversity, while protecting those important heritage areas.

Recommendation 8: The moratorium on seniors housing in Heritage Conservation Areas should be permanent and not end on 1 July 2022.

**I agree to the above statement**

Yes

**From:** noreply@feedback.planningportal.nsw.gov.au on behalf of Planning Portal - Department of Planning and Environment  
<noreply@feedback.planningportal.nsw.gov.au>  
**Sent:** Saturday, 7 August 2021 10:06 AM  
**To:** DPE PS Housing Policy Mailbox  
**Subject:** Webform submission from: Proposed Housing SEPP

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Submitted on Sat, 07/08/2021 - 10:06

Submitted by: [REDACTED]

Submitted values are:

**Submission Type**  
I am making a personal submission

## Name

**First name**  
[REDACTED]

**Last name**  
[REDACTED]

**Organisation name**  
[REDACTED]

**I would like my submission to remain confidential**  
Yes

## Info

**Email**  
[REDACTED]

**Suburb**  
[REDACTED]

**Postcode**  
[REDACTED]

**Submission**  
Dear team,

I am reading the proposed new Housing Diversity State Environmental Planning Policy (SEPP), I have a few comments:

1. The policy should allow 3-5 bedroom co-living in the R2 low density residential zone. Smaller Co-Living provisions are easier managed, more popular for the tenants, less complaints from the neighbours, reduce pressure on social housing without extra costing

to government, lots of people like to live in a low-density zone, it preserved existing low-density with no additional strain on infrastructure.

Co-living in the low density residential also means the people can stay close to the community of their families, friends and support networks.

2. The Co-living policy should be allowed for a Complying Development Certifier (CDC) to approve which has been done successfully many years ago in the other state. The council only approval usually very slow even up to years. The CDC follows the rules, speeds up the process to solve the housing affordability problem.

I will be appreciated to receive your reply.

Regards

Binbin Yi

**I agree to the above statement**

Yes



## Land and Environment Court New South Wales

Case Name: **Principal Healthcare Finance Pty Limited v  
Blacktown City Council**

Medium Neutral Citation: [2021] NSWLEC 1247

Hearing Date(s): 2-3 and 25 March 2021

Date of Orders: 13 May 2021

Date of Decision: 13 May 2021

Jurisdiction: Class 1

Before: O'Neill C

Decision: See directions at [89]

Catchwords: DEVELOPMENT APPLICATION – aged care facility –  
application made pursuant to State Environmental  
Planning Policy (Sydney Region Growth Centres)  
2006 – as a matter of statutory construction the  
provisions of State Environmental Planning Policy  
(Housing for Seniors or People with a Disability) 2004  
do not apply to the development – contravention of the  
height of buildings development standard –  
streetscape character – amenity

Legislation Cited: Civil Procedures Act 2005  
Coastal Management Act 2016  
Environmental Planning and Assessment Act 1979 ss  
1.5, 4.12, 4.15, 8.7, 8.15  
Environmental Planning and Assessment Regulation  
2000  
Land and Environment Court Act 1979 ss 34, 39  
State Environmental Planning Policy (Affordable  
Rental Housing) 2009 cl 7, 10, 20, 21, 26, 27  
State Environmental Planning Policy (Building  
Sustainability Index: BASIX) 2004 cl 5, 6  
State Environmental Planning Policy (Coastal  
Management) 2018 cl 5, 6, 10  
State Environmental Planning Policy (Gosford City  
Centre) 2018 cl 1.3, 1.8  
State Environmental Planning Policy (Housing for  
Seniors or People with a Disability) 2004 cl 2, 3, 4,

4A, 4B, 10, 15, 26, 40, 48  
State Environmental Planning Policy No 33—  
Hazardous and Offensive Development cll 5, 11  
State Environmental Planning Policy No 55—  
Remediation of Land cll 5, 7  
State Environmental Planning Policy No 65—Design  
Quality of Residential Apartment Development cll 4, 5  
State Environmental Planning Policy (Sydney Region  
Growth Centres) 2006 Appendix 12 cll 1.3, 4.3, 4.6

Cases Cited: Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC  
90  
Hastings Point Progress Association Inc v Tweed  
Shire Council (2008) 160 LGERA 274; [2008]  
NSWLEC 180  
Initial Action Pty Ltd v Woollahra Municipal Council  
(2018) 236 LGERA 256; [2018] NSWLEC 118  
Mete v Warringah Council (2004) 133 LGERA 420;  
[2004] NSWLEC 273  
Principal Healthcare Finance Pty Ltd v Council of the  
City of Ryde (2016) 222 LGERA 212; [2016] NSWLEC  
153  
RebelMH Neutral Bay Pty Limited v North Sydney  
Council [2019] NSWCA 130  
Universal Property Group Pty Ltd v Blacktown City  
Council [2020] NSWCA 106  
Wehbe v Pittwater Council (2007) 156 LGERA 446;  
[2007] NSWLEC 827

Texts Cited: Blacktown City Council Growth Centre Precincts  
Development Control Plan 2010

Category: Principal judgment

Parties: Principal Healthcare Finance Pty Limited (Applicant)  
Blacktown City Council (Respondent)

Representation: Counsel:  
R White (Applicant)  
L Byrne (Respondent)

Solicitors:  
Mills Oakley Lawyers (Applicant)  
Bartier Perry Lawyers (Respondent)

File Number(s): 2020/233986

Publication Restriction: Nil



## JUDGMENT

- 1 **COMMISSIONER:** This is an appeal pursuant to the provisions of s 8.7(1) of the *Environmental Planning and Assessment Act 1979* (EPA Act) against the deemed refusal of Development Application No. SPP-19-00012 for construction of a two storey 148-bed residential aged care facility including car parking, landscaping, stormwater drainage, signage and associated services (the proposal) at Northbourne Drive, Marsden Park (Lot 2890 DP 1230906) (the site) by Blacktown City Council (the Council).
- 2 The appeal was subject to conciliation on 6 November 2020, in accordance with the provisions of s 34 of the *Land and Environment Court Act 1979* (LEC Act). As agreement was not reached, the conciliation conference was terminated, pursuant to s 34(4) of the LEC Act.
- 3 Leave was granted by the Court on 25 November 2020 for the applicant to amend the application to rely on an amended proposal, subject to an order that the applicant pay the respondent's costs thrown away as a result of the amendment of the application, pursuant to s 8.15(3) of the EPA Act.
- 4 On the first day of the hearing, leave was granted to the applicant to amend the application to rely on amended architectural plans and landscape plans (Ex F). The applicant submitted that the amendments were made to the proposal in response to the agreement of the landscape experts in their joint report (Ex 4).

## Issues

- 5 The Council's contentions can be summarised as:
  - The proposal fails to demonstrate that residents of the proposal will have access to facilities in accordance with cl 26(2) of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors Housing SEPP). The written request to contravene this development standard is not well founded and there

are insufficient planning grounds to justify the contravention of the development standard.

- The height of the proposal is excessive and does not comply with cl 40(4)(c) of Seniors Housing SEPP and cl 4.3 of Appendix 12 Blacktown Growth Centres Precinct Plan (Blacktown Precinct Plan) of the State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (Growth Centres SEPP). The written requests to contravene the development standards do not adequately address the requirements under cl 4.6 of the Blacktown Precinct Plan as there are insufficient environmental planning grounds to justify the contravention of the building height standards under cl 40(4)(c) of the Seniors Housing SEPP and cl 4.3 of the Blacktown Precinct Plan. The proposal exceeds the height limit in cl 40(4)(c) of the Seniors Housing SEPP by proposing a two-storey building along the eastern boundary of the site which is considered to be the rear 25% of the site. There is a significant difference in the proposed levels of the building and the existing level of the land on the adjoining property to the east which will result in direct overlooking from the proposal into the future low-density residential development to the east. The proposed measures to mitigate this amenity impact, external louvres on the windows, are not acceptable because they will compromise the internal amenity of the bedrooms.
- The proposal is not compatible with the character of the local area and will have an unacceptable impact on the streetscape as a result of the built form of the proposed development and the landscaping treatment. The proposal fails to meet the minimum landscaped area required under cl 48(c) of the Seniors Housing SEPP. The landscaped area on the first floor of the proposal does not contribute to landscaped area under the definition for landscaped area in the Seniors Housing SEPP. The extent of hard surfaces, retaining walls and the lack of landscaping along the street frontages responds poorly to the streetscape.

- The excessive depth of the proposed building, particularly to the west, contributes to a design that is out of character with the local area due to its bulk. This is inconsistent with the low density, bulk and scale of the suburban streetscape that is broken up with adequate spacing between dwellings, gardens and landscaping.
- The proposal does not respond to the topography of the site and does not integrate with adjoining properties. The proposal imposes a single level podium across the entire site resulting in excessive high retaining wall along the northern and eastern boundaries of the site. The provision of visitor car parking within the front setback to Northbourne Drive is inconsistent with the character of the low density residential zone.
- The proposal adversely impacts on the amenity of adjoining properties. There is a conflict between the vehicular access to the site and the pedestrian access to the site.
- The proposal is not in the public interest because it results in poor built form and is not consistent with the desired future character of the locality.
- The applicant must provide physical treatment, such as bollards, to the loading area outside the loading bay to prevent unauthorised parking so that the truck turning area is maintained.

### **The site and its context**

- 6 The site is on the south-eastern corner of Northbourne Drive and Bolwarra Drive, Marsden Park. The site is generally rectangular in shape and orientated north to south. The site has a frontage of approximately 70m to Bolwarra Drive to the north and approximately 140m to Northbourne Drive to the west. The site has an area of 1.005 Hectares. The site falls to the north, with a fall

of 3.5m from RL 25.5 at the centre of the southern boundary, to RL 22 at the eastern side of the northern boundary.

- 7 The site is cleared and was created under an approved sub-division, DA-16-05045 for Elara Stockland Residential Community.
- 8 The area is in transition from rural to urban development.
- 9 Bolwarra Drive is made to the north-western corner of the site and is unmade to the east. Northbourne Drive and Bolwarra Drive are both designated as collector roads by the Marsden Park Precinct Development Control Plan (Sch 6 to the Blacktown City Council Growth Centre Precincts Development Control Plan 2010 (DCP 2010)) (Ex 5, ff 188 and 190).
- 10 A super lot adjoins the site to the east and it is zoned R2 Low Density Residential under the Blacktown Precinct Plan. A super lot adjoins the site to the south and it is zoned R2 Low Density Residential under the Blacktown Precinct Plan. Both super lots were created as part of the same subdivision as the site. The super lot to the east of the site is vacant. The super lot to the south of the site is vacant and is the subject of a development application lodged 29 July 2020 and not yet determined for the construction of a single storey centre-based childcare facility accommodating 121 children, 20 staff members and 43 car parking spaces and associated landscaping.
- 11 The Marsden Park public school is under construction on the property on the opposite side of Northbourne Drive. The school will accommodate approximately 1000 students and 50 full-time staff. The school's main entrance, including drop-off areas and some parking is from Northbourne Drive. There is a local park located to the south of the school.
- 12 The area to the north of the site, on the opposite side of Bolwarra Drive, is undeveloped and zoned R3 Medium Density Residential and has a height of buildings development standard of 14m (cl 4.3 and North West Growth Centre Height of Buildings Map – Sheet HOB\_005 of the Blacktown Precinct Plan).

There is a development application for this area for subdivision into 11 super lots and 2 residue lots.

### **The proposal**

13 The application was lodged on 18 October 2019. The application is made pursuant to s 4.12(1) of the EPA Act. The proposal is for development, pursuant to s 1.5(1) of the EPA Act, being for the erection of a building for the use of the land as a residential care facility.

14 The proposal is for a residential care facility that includes:

- 148 aged care beds; 76 bedrooms on the ground floor and 72 bedrooms on the first floor;
- Associated facilities for the care of residents including kitchen and laundry facilities, dining rooms, lounge rooms, activity areas and function/training rooms;
- Allied health facility including exercise and therapy areas to service the residents of the facility and elderly residents outside the facility;
- Staff and administration offices, nurse stations, utility rooms hair salon, café for use by residents, staff and visitors of the aged care facility;
- Vehicular access from Northbourne Drive to 47 car parking spaces, loading area, ambulance and courtesy bus; and
- Associated landscaping, stormwater drainage works and signage.

15 The proposal is 2 storeys high with hipped roofs around internal courtyards. There is a car park at the southern end of the site. The proposal has a setback to Northbourne Drive of a minimum of 4.55m, a setback to Bolwarra Drive of a minimum of 2m, a large side setback on the southern side due to the location of the carpark and a rear setback of a minimum of 4m.

## Planning framework

- 16 The Blacktown Precinct Plan applies to land within the Marsden Park Precinct, at cl 1.3. The site is zoned R2 Low Density Residential pursuant to the Blacktown Precinct Plan. The objectives of the zone, to which regard must be had, are:
- To provide for the housing needs of the community within a low density residential environment.
  - To enable other land uses that provide facilities or services to meet the day to day needs of residents.
  - To allow residents to carry out a reasonable range of activities from their homes, where such activities are not likely to adversely affect the living environment of neighbours.
  - To support the well-being of the community, by enabling educational, recreational, community, religious and other activities where compatible with the amenity of a low density residential environment.
- 17 Seniors housing is a nominate use, permissible with consent, in the R2 zone. Seniors housing, in the dictionary to the Growth Centres SEPP, means residential accommodation that consists of a residential care facility.
- 18 The height of buildings development standard for the site is 9m (cl 4.3 and North West Growth Centre Height of Buildings Map – Sheet HOB\_005 of the Blacktown Precinct Plan). The objectives of cl 4.3 for the height of buildings are:
- (a) to establish the maximum height of buildings,
  - (b) to minimise visual impact and protect the amenity of adjoining development and land in terms of solar access to buildings and open space,
  - (c) to facilitate higher density development in and around commercial centres and major transport routes.
- 19 There is no floor space ratio development standard for the site (North West Growth Centre Floor Space Ratio Map – Sheet FSR\_005 of the Blacktown Precinct Plan).
- 20 Clause 40(4) of the Seniors Housing SEPP is in the following terms:

**(4) Height in zones where residential flat buildings are not permitted** If the development is proposed in a residential zone where residential flat buildings are not permitted—

(a) the height of all buildings in the proposed development must be 8 metres or less, and

Note—

Development consent for development for the purposes of seniors housing cannot be refused on the ground of the height of the housing if all of the proposed buildings are 8 metres or less in height. See clauses 48 (a), 49 (a) and 50 (a).

(b) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height, and

Note—

The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.

(c) a building located in the rear 25% area of the site must not exceed 1 storey in height.

21 Height is defined at cl 3 of the Seniors Housing SEPP as follows:

**height** in relation to a building, means the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point.

22 Clause 26 of the Seniors Housing SEPP is a development standard (*Principal Healthcare Finance Pty Ltd v Council of the City of Ryde* (2016) 222 LGERA 212; [2016] NSWLEC 153 at [77]) that requires the consent authority to be satisfied by written evidence that residents of a proposed development for seniors housing to have access to services that comply with the accessibility requirements of the clause.

23 Clause 48(c) of the Seniors Housing SEPP is a standard that, if met, cannot be used to refuse development consent for residential care facilities and includes:

(c) landscaped area: if a minimum of 25 square metres of landscaped area per residential care facility bed is provided

- 24 The definition of landscaped area at cl 3 of the Seniors Housing SEPP is:

**landscaped area** means that part of the site area that is not occupied by any building and includes so much of that part as is used or to be used for rainwater tanks, swimming pools or open-air recreation facilities, but does not include so much of that part as is used or to be used for driveways or parking areas.

- 25 The Blacktown City Council Growth Centre Precincts Development Control Plan 2010 (DCP 2010) requires that applications for seniors housing are to comply with the controls in clause 4.3.4 of DCP 2010 for multi-dwelling housing, at 4.4.5.2. Multi-dwelling housing is to comply with the controls in table 4-9 of DCP 2010. Table 4-9 of DCP 2010 requires that the front setback is to be a minimum of 4.5m, the corner lots secondary street setback is to be a minimum of 2m, the side setback is to be a minimum of 0.9m and the rear setback is to be a minimum of 4m.

### **Expert evidence**

- 26 The applicant relied on the expert evidence of Dan Brindle (planning), Aaron Lakeman (landscaping), Brian Lennox (waste management), Ross Nettle (traffic) and Alex Washer (acoustic).
- 27 The Council relied on the expert evidence of Sami Ahangari (planning and landscaping), Peta Golla (waste management), Mariano Polisciuk (traffic) and Amelia Tabrett (acoustic).

### **The provisions of the Seniors Housing SEPP do not apply to the development**

#### *The applicant's submissions*

- 28 It is the applicant's case that the provisions in the Seniors Housing SEPP are not relevant to the determination of this appeal. The application is for a residential care facility, as defined under the Growth Centres SEPP, which is a permissible form of development in the R2 zone. The Seniors Housing SEPP applies to the land and development consent for seniors housing could be granted pursuant to the Seniors Housing SEPP, however, in the circumstances of this appeal, the application can either be made under the



Blacktown Precinct Plan or under Chapter 3 of the SEPP Seniors Housing. The applicant elected to make the application under the Blacktown Precinct Plan.

- 29 The applicant can elect which instrument it will proceed under and this is made clear by a long line of authority (*Mete v Warringah Council* (2004) 133 LGERA 420; [2004] NSWLEC 273). The question of whether the application is then assessed under the instruments depends upon the construction of those instruments.
- 30 As is apparent from the aims of the Seniors Housing SEPP, it seeks to increase the supply and diversity of residences that meet the needs of seniors or people with a disability. It does that by setting aside local planning controls that would prevent the development of housing for seniors or people with a disability (see cl 2). As a result, in those circumstances where seniors housing is prohibited under a LEP (or a Precinct Plan), the Seniors Housing SEPP allows that development to be carried out (in accordance with the provisions of the Seniors Housing SEPP) and prevails to the extent of the obvious inconsistency. That is not the circumstance in this case. There is no such obvious, or general, inconsistency.
- 31 Having elected to make the application under the Blacktown Precinct Plan, the question arises how the Seniors Housing SEPP may become a mandatory relevant consideration. Section 4.15(1)(a)(i) of the EPA Act has the potential to make it relevant. The question is for the purposes of s 4.15, whether it is an environmental planning instrument (EPI) that is of relevance to the development the subject of the application. The applicant submits it is not relevant, because the language of the Seniors Housing SEPP makes it clear, in the chapeau of each of the operative provisions and/or standards, that the provisions apply only to "a development application made pursuant to this Chapter...". The words must have a role to play and should not be ignored. The application has not been made pursuant to Chapter 3 of SEPP Seniors Housing. As a matter of first principles statutory construction, this is the correct approach to the interpretation and application of the Seniors Housing

SEPP. It is also consistent with the principle of harmonious operation identified by the Court of Appeal in *Universal Property Group v Blacktown City Council* [2020] NSWCA 106 (*UPG*) at [7] and [12]. In that case it was necessary for the Court of Appeal to consider whether various provisions in each of the Growth Centres SEPP and another SEPP were inconsistent with each other and if so, which instrument prevailed. The presumption therefore is that in this case that there is no inconsistency between the Seniors Housing SEPP and the Growth Centres SEPP, because as a matter of statutory construction, the provisions of the Seniors Housing SEPP do not apply.

#### *The Council's submissions*

32 The Council disagrees with the applicant's submissions regarding the application of the Seniors Housing SEPP, on the following bases:

- Clause 4(1) of the Seniors Housing SEPP states that this policy applies to land within NSW that is zoned primarily for urban purposes. The subject site is zoned primarily for urban purposes and as per cl 4(1), the Seniors Housing SEPP applies to this land. Therefore, the development standards and requirements in this policy are relevant to the assessment of this application.
- Whilst Chapter 3 of the Seniors Housing SEPP provides a provision for senior housing development to be permissible if the development is carried out in accordance with the SEPP, it does not negate the need for senior housing development to meet the development standards under the SEPP if they are permissible under any other instrument.

33 If an EPI applies to the land in question, and that EPI applies to the particular type of development sought by an applicant for consent, that EPI is required by the EPA Act to be taken into consideration by the consent authority in the assessment of the development application for which development consent is sought, pursuant to s 4.15 EPA Act.

- 34 Whilst there may be more than one operative EPI that creates a path for approval in respect of the land and the development in question, there is nothing in the statutory scheme of the EPA Act and Regulations that means, as a matter of law, an applicant for consent can 'elect' which particular EPI it seeks the DA to be determined under, to the exclusion of other EPIs that, firstly apply to the land and secondly, apply to the development. If an applicant does so elect, they run the risk of any appeal being dismissed for want of consideration of other EPIs that must be considered. If the particular development requires a dispensation with a development standard which is not made, any Class 1 appeal has to be dismissed. This is exactly what occurred in *UPG*.
- 35 The statement in the Statement of Environmental Effects that the applicant is making the application under a particular planning instrument as in this case, is informative but does not have the legal consequence the applicant argues. Development applications are made under an enactment, the EPA Act, not subordinate legislation being an EPI. That is clear from s 4.12 of the EPA Act and Div 1 of the Environmental Planning and Assessment Regulation 2000 (the Regulations). The use of the wording "a DA made pursuant to this Chapter" in the Seniors Housing SEPP does not alter that construction. A statutory instrument such as an EPI does not rise higher than its source. Development applications are made pursuant to the statutory authority and power to approve them under the EPA Act. It is a mandatory requirement under s 4.15 of the EPA Act that 'in determining a DA, a consent authority is to take into consideration... the provisions of any EPI... that is of relevance to the development the subject of the DA... that apply to the land to which the DA relates': s 4.15(1)(a)(i). It is accepted that both the Seniors Housing SEPP and the Growth Centres SEPP apply to the land and the development the subject of the application.
- 36 The planning scheme for seniors housing across the State is quite clearly intended to invoke the development standards set out in the Seniors Housing SEPP which provides the necessary detail for the assessment and determination of a proposed development for seniors housing despite the fact

that permissibility for such a development is also available as in this case by a more localised EPI.

- 37 The EPA Act and the Regulations do not speak in the language of 'electing' that a certain EPI and only that EPI applies to an application in respect of land. The fact that there may be more than one pathway for approval over a piece of land does not mean that other relevant EPIs that apply to the proposed development and apply to the land the subject of the proposed development can be simply ignored.
- 38 The words, "this Chapter" throughout Chapter 3 of the Seniors Housing SEPP are there to ensure that for the avoidance of doubt, the provisions of Chapter 3 apply to seniors housing development as defined in cl 10. To limit applications that fall to be considered under the Seniors Housing SEPP to only those applications made pursuant to Chapter 3 would act as an impermissible fetter on the application of s 4.15 of the EPA Act and be contrary to the principles of statutory construction.
- 39 There is no provision under the EPA Act or the Regulations that permits an applicant to 'elect' to rely on one EPI to the exclusion of another that applies to the land and applies to the application. The Court's decision in *Mete* is distinguished on its facts. The application in that matter was made before the gazettal of an earlier version of the Seniors Housing SEPP, therefore it could not be said that the application was made pursuant to the SEPP, see [33]. The process of construction starts with the Act, not with the EPI and an application is made pursuant to the EPA Act.
- 40 The applicant cannot avoid the application of the Seniors Housing SEPP to the application, including the development standards under cll 26 and 40, because it is required under the EPA Act. To determine otherwise would be contrary to the reasoning and findings of the Court of Appeal in *UPG*.

*The applicant's submissions in reply*

- 41 The Council does not advance any argument that the application contravenes the Growth Centres SEPP.
- 42 The Council's submission that an applicant cannot elect under which instrument to make the application is contrary to authority (*Mete* at 420 and 421 and *Hastings Point Progress Association Inc v Tweed Shire Council* (2008) 160 LGERA 274; [2008] NSWLEC 180 (*Hastings Point Progress Association*) at [48]).
- 43 The applicant does not say that once the election is made, it is necessarily made to the exclusion of another, potentially relevant instrument. The question of whether the other instrument becomes relevant depends upon the construction of the instruments. There is nothing in the language of the Growth Centres SEPP or the Seniors Housing SEPP that makes the Seniors Housing SEPP relevant.

*Findings*

- 44 The proposal is for an aged care facility within the meaning of seniors housing in the Growth Centres SEPP and seniors housing is a nominate permissible use in the Land Use Table for land zoned R2 under the Growth Centres SEPP. The applicant elected to make the application pursuant to the Growth Centres SEPP (Ex A, tab 4, Statement of Environmental Effects dated October 2019 Section 4.1). An applicant may elect under which environmental planning instrument (EPI) an application is made (*Mete* at [28] and applied in *Hastings Point Progress Association*).
- 45 The Seniors Housing SEPP applies to the site, at cl 4(1), because the site is zoned primarily for urban purposes. This provision permitted the applicant to nominate that the application was made under the Seniors Housing SEPP. The applicant did not do so and instead opted to make the application under the Growth Centres SEPP, because the proposed development is permissible under the Blacktown Precinct Plan.

### **The operation of the Seniors Housing SEPP**

- 46 I accept the applicant's submission that the question of whether a proposal for seniors housing made under another EPI is to be assessed under the Seniors Housing SEPP is a matter of construing the operation of the SEPP. Importantly, there is no provision in the Seniors Housing SEPP that applies any part of the SEPP to all development for the purpose of seniors housing. This is in contrast to other SEPPs, which operate to apply the SEPP both to particular land and to particular development; see, for example, State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (SEPP 65) and State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH).
- 47 The omission of a provision in the Seniors Housing SEPP applying the SEPP, or parts of the SEPP, to all development for seniors housing is intentional and this is demonstrated by comparing the operation of the Seniors Housing SEPP to other SEPPs which operate to apply certain provisions of those SEPPs to particular development regardless of which EPI an application is made under. It is reasonable to compare the operation of SEPPs because all the SEPPs emanate from a single legislative authority and are intended to operate concurrently. It is clear from the operation of the Seniors Housing SEPP that the legislative authority intended that the SEPP achieve the aim of encouraging the provision of housing for seniors and people with a disability by setting aside local planning controls that would otherwise prevent such development on certain land, at cl 2(1)(a) and 2(2)(a).
- 48 The aims of the Seniors Housing SEPP, at cl 2(1), are to encourage the provision of housing (including residential care facilities) that will increase the supply and diversity of residences that meet the needs of seniors and people with a disability; make efficient use of infrastructure and services; and be of good design. The aims of the Seniors Housing SEPP will be achieved, at cl 2(2), by setting aside local planning controls; setting out design principles that should be followed to achieve built form that responds to the characteristics of its site and form; and ensure that applicant provide support services for

development on land adjoining land zoned primarily for urban purposes. These goals are focused on the overall aim of encouraging the provision of suitable housing for the cohort.

- 49 In other words, the purpose of the policy informing the Seniors Housing SEPP is to overcome a prohibition for seniors housing in the Land Use Table of an applicable EPI in order to increase the availability of land that can be developed for seniors housing, as a means to augmenting the provision, by the private sector, of suitable housing for seniors and people with a disability in New South Wales. It is not an aim of the Seniors Housing SEPP, at cl 2, to dictate development standards or requirements for all seniors housing development the subject of applications made under other EPIs. The references to “good design” (cl 2(1)(c)) and “design principles that should be followed to achieve built form that responds to the characteristics of its site and form” (cl 2(2)(b)) are in relation to the aim to encourage the provision of housing that is appropriate for use by the cohort and responds to the characteristics of the site. The reference to “good design” is not a goal for seniors housing per se.

#### **The operation of SEPP 65 and SEPP ARH**

- 50 SEPP 65 applies to the whole of the State at cl 5(1); and applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component, if the development consists of any one of the criteria under cl 4(1)(a). An application for residential accommodation that is caught by cl 4(1) of SEPP 65 must also be permissible in the Land Use Table of another applicable EPI. In this way, SEPP 65 provides an additional layer of requirements for certain development in addition to those in the applicable LEP (or alternate EPI) under which the application is made, because the development must first be permissible in the Land Use Table of the applicable LEP. For SEPP 65 to be engaged, it must apply to both the site at cl 5(1) and to the particular development, at cl 4(1)(a). Because SEPP 65 applies to the particular development at cl 4(1), the



applicant cannot nominate to make the application under the applicable LEP only.

- 51 SEPP ARH applies to the whole of the State, at cl 7, and applies divisions within the SEPP to land in particular zones and to particular development; see, for example, cl 10 of SEPP ARH, which applies Div 1 of Pt 2 to development for the purpose of in-fill affordable housing. In-fill affordable housing includes certain residential development permitted with consent under another EPI that meets all of the criteria for the land and the development under cl 10. An application for in-fill affordable housing that is caught by cl 10(1) of SEPP ARH must also be permissible in the Land Use Table of the applicable LEP. In the same way as SEPP 65, Div 1 of Pt 2 of SEPP ARH provides an added layer of requirements for certain development in addition to those in the applicable LEP (or alternate EPI) under which the application is made, because the development must first be permissible in the Land Use Table of the applicable LEP. Clauses 20 and 21 of SEPP ARH apply Div 2 of Pt 2 to land in residential zones where a dwelling house is a permissible use (cl 20) and to development for the purposes of a secondary dwelling and ancillary development within the meaning of Sch 1 (cl 21). Clauses 26 and 27 of SEPP ARH apply Div 3 of Pt 2 to land in residential and some business zones (cl 26 as qualified by cl 27(2) and (3)) and to development for the purpose of boarding houses (cl 27). Because SEPP ARH applies to particular development, for example at cll 21 and 27, the applicant cannot nominate to make the application under the applicable LEP only.

**The Seniors Housing SEPP does not apply the SEPP to all development for the purpose of seniors housing or housing for people with a disability**

- 52 The Seniors Housing SEPP applies to certain land within the State (cll 4, 4A and 4B), which permits an application to be made for seniors housing under the Seniors Housing SEPP on that land. However, applying the Seniors Housing SEPP to that land does not mandate that the SEPP applies to all development for the purpose of seniors housing on that land, because there is no provision that applies the Seniors Housing SEPP, or parts of the SEPP, to particular development.



- 53 Chapter 3 of the Seniors Housing SEPP, “Development for seniors housing” explains what Chapter 3 does, at cl 15:

This Chapter allows the following development despite the provisions of any other environmental planning instrument if the development is carried out in accordance with this Policy...

- 54 The purpose of the policy in the Seniors Housing SEPP is to make certain development on certain land permissible under the SEPP where it is not permissible under the applicable LEP (or alternate EPI). The Seniors Housing SEPP permits an application to be made for seniors housing for development that is not otherwise permissible under the Land Use Table of the applicable LEP, as a means of achieving the aims of the Seniors Housing SEPP, at cl 2(2)(a). This is because SEPP Seniors Housing, unlike SEPP 65 and SEPP ARH, does not operate to require a development for the purpose of seniors housing to be permissible under another EPI. This is deliberate in the drafting of the instrument.

- 55 Section 4.15(1)(a)(i) of the EPA Act is in the following terms:

(1) **Matters for consideration—general** In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application—

(a) the provisions of—

(i) any environmental planning instrument

...

that apply to the land to which the development application relates

- 56 Although s 4.15(1)(a)(i) of the EPA Act applies any EPI that applies to the land to which the application relates as a matter for consideration in determining an application, the question is whether the EPI is an EPI that is of relevance to the development the subject of the application. A consent authority is to take into consideration only the matters listed *that are of relevance* to the development the subject of the application, at s 4.15(1). A provision in a SEPP applying the SEPP to the land on which the development

is to be located does not in of itself make the SEPP of relevance to the development the subject of the application. In some SEPPs, the application of the SEPP to the land permits an application to be made under that SEPP where the proposed development would otherwise not be permissible under another EPI; this is the case for the Seniors Housing SEPP. If an application for seniors housing is made under the Seniors Housing SEPP, the engaged provisions of the SEPP are of relevance to the development the subject of the application. Many SEPPs apply to the whole State and their application to land is not sufficient to engage the SEPP as a matter for consideration in determining an application for land within the State, unless the SEPP also applies to the proposed development in some way. Other SEPPs apply to specific land and an application has to be made under that SEPP, or the SEPP provides requirements in addition to the EPI under which the application is made for development on the identified land. See, for example:

- State Environmental Planning Policy No 55—Remediation of Land (SEPP 55) applies to the whole of the State, at cl 5 and requires the consent authority to consider whether the land is contaminated, at sub-cl 7(1). SEPP 55 is engaged for all applications in the State because the consent authority is required to consider whether the land the subject of an application is contaminated; it is not, however, engaged for all applications by the operation of cl 5 alone.
- State Environmental Planning Policy No 33—Hazardous and Offensive Development (SEPP 33) applies to the whole of the State at cl 5 and to development identified by cl 11. SEPP No 33 is only a matter for consideration when it applies both to the land at cl 5 and to the proposed development at cl 11. SEPP 33 is not a matter for consideration in determining an application for proposed development other than for proposed development to which the policy applies at cl 11.
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX) applies to the whole of the State and Lord



Howe Island, at cl 5 and applies to certain development, being BASIX affected or optional development, at cl 6. SEPP BASIX is not a matter for consideration in determining an application for proposed development other than proposed development to which the policy applies at cl 6.

- State Environmental Planning Policy (Coastal Management) 2018 (SEPP Coastal Management) applies to land within the coastal zone, at cl 5, as defined by the *Coastal Management Act 2016* and cl 6. SEPP Coastal Management provides development controls in addition to the requirements of the EPI under which an application is made, for land within the coastal zone and declares certain development to be designated development (sub-cl 10(2)).
- State Environmental Planning Policy (Gosford City Centre) 2018 applies only to land in the Gosford city centre as identified by the applicable map, at cl 1.3 and repeals all other LEPs applying to that land (sub-cl 1.8(1)), so that an application for the land to which the SEPP applies has to be made under the SEPP.

57 In *Mete*, Talbot J held (in addition to finding that an applicant can elect to apply for consent pursuant to the provisions of one concurrently operating EPI) that the State Environmental Planning Policy (Seniors Living) 2004 was a relevant consideration for the consent authority pursuant to cl 12(1)(b) of the Warringah Local Environmental Plan 2000. Clause 12(1)(b) of the LEP required the consent authority to be satisfied that the proposed development was consistent with any relevant SEPP described in a schedule to the LEP, which included State Environmental Planning Policy (Seniors Living) 2004 (at [31]). His Honour did not, in my opinion, make a separate conclusive finding at [31] that the consent authority was to take into consideration the provisions of the SEPP on the basis of s 79C(1)(a) of the EPA Act (now s 4.15(1)(a)(i) of the EPA Act) because the SEPP applied to the land on which the development was proposed. Although Talbot J eluded to this finding at [31], it

was overtaken by the requirement for the consent authority to have regard to the SEPP under the terms of the LEP.

- 58 In this case, there is no requirement under the Growth Centres SEPP to consider the provisions of the Seniors Housing SEPP and so the same issue does not arise.
- 59 The Seniors Housing SEPP, as noted by Talbot J in *Mete* at 427 (regarding the earlier iteration of the SEPP), includes numerous references to “a development application made pursuant to this Chapter”. The language of the Seniors Housing SEPP makes it clear in these operative provisions that the provisions apply only to an application made pursuant to the SEPP.
- 60 The language of the Seniors Housing SEPP makes it clear, in the chapeau of each of the operative provisions and standards, that the provision applies only to a development application made under the SEPP (see cll 17, 18(1), 21, 23(1), 24(1), 26(1), 27(1), 28(1), 29(1), 30(1), 31, 32, 40(1), 41(1), 42(1), 43(1), 46(1), 47, 48(1), 49 and 50).
- 61 The Seniors Housing SEPP specifically applies the SEPP to applications made under the Seniors Housing SEPP and not to development for the purpose of seniors housing. Clause 26(1) of the Seniors Housing SEPP applies the development standard under cl 26 “to a development application made pursuant to this Chapter [Chapter 3 Development for Seniors Housing]”. Clause 40(1) of SEPP Seniors Housing applies the development standards for minimum sizes and building height under cl 40 to “a development application made pursuant to this chapter [Chapter 3 Development for Seniors Housing]”. The Seniors Housing SEPP is not engaged by the application and the development standards under cll 26 and 40(4)(c) of the Seniors Housing SEPP do not apply to the proposal, because the application is made under the Growth Centres SEPP and because there is no provision in the Seniors Housing SEPP applying the SEPP to the proposed development.

- 62 The application has not been made under the Seniors Housing SEPP. As the application is not made pursuant to Chapter 3 of SEPP Seniors Housing, the development standards in cl 26 and 40 do not apply to this proposal. This approach is consistent with the principle of harmonious operation identified by the Court of Appeal in *UPG* at [13].

### **Contravention of height of buildings development standard**

- 63 The proposal has a maximum height of 9.75m pursuant to cl 4.3 of the Blacktown Precinct Plan above existing ground level. The height of buildings development standard for the site is 9m.
- 64 The applicant provided an amended written request seeking to justify the contravention of the height of buildings development standard (Ex E). The written request referred to the exceedance of the height of buildings development standard as, “expected to be ... up to 9.75m” (Ex E, p 5) and the environmental planning grounds justifying the exceedance of the height of buildings development standard generally promoted the benefits of carrying out the development as a whole and did not specifically focus on the aspect of the proposal that exceeds the 9m height of buildings development standard and the justification for that exceedance. Environmental planning grounds relied upon in a written request to contravene a development standard must be sufficient to justify contravening the development standard and the focus must be on the aspect of the development that contravenes the development standard (cl 4.6(3)(b) of the Blacktown Precinct Plan and *Initial Action Pty Ltd v Woollahra Municipal Council* (2018) 236 LGERA 256; [2018] NSWLEC 118 (“*Initial Action*”) at [24]).
- 65 During the hearing, the applicant was directed to amend the written request for the exceedance of the height of buildings development standard (Ex E) to remove the phrase, “expected to be...” in relation to the numerical value of the exceedance of the development standard in order to provide a precise numerical value for the exceedance of the 9m height of buildings development standard; and to augment the environmental planning grounds to address the

requirement for the environmental planning ground/s to justify the exceedance of the development standard by focusing on the aspect of the development that contravenes the development standard. The applicant filed the amended written request on 26 March 2021.

- 66 The consent authority, or the Court exercising the functions of the consent authority, has to be satisfied that the applicant's written request has demonstrated those matters required to be demonstrated by cl 4.6(3) of the Blacktown Precinct Plan (*RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [4]). It would be inconsistent with the overriding purpose of the *Civil Procedures Act 2005* at sub-s 56(1) to have determined the appeal on this jurisdictional hurdle and not to have provided the applicant with an opportunity to amend the written request, particularly as the amendment of the written request did not result in any change to the proposed development. For this reason, I am satisfied that the amendments requested and made to the written request in Ex E are minor within the meaning of s 8.15(3) of the EPA Act.
- 67 The Council's contention (contention 2 of Ex 1) regarding building height focuses on the contravention of cl 40(4)(c) in the Seniors Housing SEPP, although the Council did raise an issue that there are insufficient environmental planning grounds to justify the contravention of the development standard under cl 4.3 of the Blacktown Precinct Plan. The Council's contention regarding insufficient environmental planning grounds to justify the contravention of the height of buildings development standard under cl 4.3 of the Blacktown Precinct Plan is not made out by the evidence before me and I am satisfied that there are sufficient environmental planning grounds to contravene the height of buildings development standard.
- 68 The fundamental justification for the contravention of the height of buildings development standard is the requirement to provide an aged care facility with a uniform floor level across the site, and this was omitted from the written request. The site is large, over 1 ha, with a gentle fall of 3.5m across the site to the north. The proposal includes minor excavation of the existing level of

the site in the southern part of the site. The level change of the ground level at the southern end of the site is accommodated adjacent to the southern boundary, by providing a retaining wall to retain a deep soil zone 2.54m wide at the existing ground level against the southern boundary (landscape section S 13, Ex F) and the car parking at the southern end of the site is at an excavated level of approximately RL 24.1. The nominated reduced level (RL) of the ground floor is RL 24.25. The 24.25m contour on the existing site is approximately the centre of the site. This is a logical level to nominate for the Ground Floor, because it requires some excavation in the southern part of the site and it results in the Ground Floor level being raised above the existing ground level in the northern part of the site. An aged care facility ideally requires a consistent RL across each level to avoid stairs or lifts (other than to access different levels of the building). Because the Ground Floor is raised above the existing ground level in the northern part of the site, the plant room over this part of the two-storey building exceeds the 9m height of buildings development standard.

- 69 The requirement for a single RL across each level, on a gently sloping site, for an aged care facility, is an environmental planning ground within the meaning identified by Preston CJ in *Initial Action* at [23] and I am satisfied that this is an environmental planning ground that is sufficient to justify the contravention of the height of buildings development standard.
- 70 I am satisfied, as required by cl 4.6(4)(a)(i) of the Blacktown Precinct Plan, that the applicant's amended written request seeking to justify the contravention of the height of buildings development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). I am satisfied that compliance with the height of buildings development standard is unreasonable or unnecessary in the circumstances of the case, which include the reasons elaborated by the applicant in the original written request (Ex E) and reiterated in the amended written request, including that the exceedance, considered in the context of the scale of the site and the location of the exceedance on the site, is numerically insignificant and the plant room does not result in amenity impacts on adjoining land.

71 On appeal, the Court has the power under cl 4.6(2) to grant consent to development that contravenes a development standard without obtaining or assuming the concurrence of the Secretary of the Department of Planning and Environment, pursuant to s 39(6) LEC Act, but should still consider the matters in cl 4.6(5) of the Blacktown Precinct Plan (*Initial Action* at [29]).

*Whether the proposal is in the public interest because it is consistent with the objectives of the contravened development standard and the zone*

72 The second opinion of satisfaction in cl 4.6(4)(a)(ii) is that the proposed development will be in the public interest because it is consistent with the objectives of the development standard that is contravened and the zone objectives. The consent authority must be satisfied that the development is in the public interest because it is consistent with these objectives, not simply that the development is in the public interest (*Initial Action* at [27]). The consent authority must be directly satisfied about the matters in cl 4.6(4)(a)(ii) (*Initial Action* at [26]).

73 I am satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the contravened development standard and the zone, at cl 4.6(4) of the Blacktown Precinct Plan, for the reasons given by the applicant in the amended written request, as follows:

- The proposal provides for the housing needs of the community, particularly the frail and vulnerable members of that community, within a low density residential environment;
- The proposal provides for a range of activities that the residents can undertake without impacting on the amenity of neighbouring properties;
- The proposal supports the well-being of the community, by enabling a particular form of seniors housing and related activities in a manner that is compatible with the amenity of the low density residential environment.



## Merit issues

- 74 It was agreed by the planning experts that there is a need for aged care facilities in the locality. I have considered the applicant's Social Impact Assessment (Ex A, tab 19) and I accept its conclusion, in the absence of any contrary evidence, that the proposal will deliver significant social benefits to the local area.

*The proposal does not compromise the amenity of future dwellings to the east*

- 75 The planning experts agreed that the Ground Floor of the proposal ranges from nil to 1.55m above the ground level along the eastern boundary. The terraces are setback 4m from the eastern boundary. The experts agreed that the amended proposal (Ex F) would have an improved relationship with the adjoining property to the east because of the changes to the external terraces on the eastern side of the proposal.
- 76 I accept Mr Bridle's evidence that the ability to overlook adjoining residential development to the east from the first floor of the proposal is adequately addressed by the eastern setback, the design and articulation of the eastern façade, the landscaping of the setback and privacy screens and planters along the first floor eastern elevation. I am satisfied that the proposal is compatible with the future development of the adjoining site to the east because the proposal has a two storey form along the eastern side and provides adequate deep soil to allow for substantial landscaping along the eastern side setback. The external louvres to the eastern window of the first floor sitting room in the north-eastern corner and the screening of first floor balconies on the eastern elevation of the proposal will prevent any overlooking of future dwellings and do not compromise the internal amenity of the rooms. The proposal does not dictate the form and location of the future development of the adjoining site to the east.

*The proposal is compatible with the low density residential character of the area*

- 77 The planning experts disagreed on whether the length of the western elevation to Northbourne Drive is excessive and contributes to a design that is not compatible with the low density residential character of the locality.
- 78 I accept Mr Brindle's evidence that the two storey western façade of the proposal is articulated and expressed as a number of smaller elements to reflect the scale and form of the residential character of the locality. The proposal is compatible with the immediate context of the site, which is a medium density residential zoning to the north, a school complex to the west and a childcare centre to the south. I am satisfied that the proposal will be legible as an aged care facility and that the two-storey scale with low pitched roofs is compatible with the scale and appearance of the low density residential development in the locality.
- 79 The bulk and scale of the proposal are appropriate for an aged care facility in a low density residential zone. It is not possible to read the depth of the building because the roofs are low pitched. An aged care facility (permissible in the zone) is not going to resemble a suburban streetscape of dwellings, just as the school and the childcare centre do not resemble a suburban streetscape of dwellings. This does not make these uses inconsistent with the low density residential character of the locality. The goal is not to camouflage different uses in a locality; it is to ensure that development is compatible and consistent with the desired future character of the locality. Compatibility in an urban design context means capable of existing together in harmony (*Project Venture Developments v Pittwater Council* [2005] NSWLEC 191 at [22]). I am satisfied that the proposal's two storey, domestic appearance is in harmony with the buildings or future buildings in its context and that the proposal is consistent with the low density residential character of the zone.
- 80 I am satisfied that the proposal is compatible with the character of the local area and will have an acceptable impact on the streetscape as a result of the built form of the proposed development and the landscaping treatment. The



extent of hard surfaces, retaining walls and the landscaping along the street frontages is not excessive and there are substantial areas of landscaping along the perimeters of the site, as well as landscaped courtyards within the proposal.

- 81 The proposal responds adequately to the topography of the site within the constraint of having a uniform level for each floor. The retaining wall along the northern and eastern boundaries of the site is not excessively high. The Ground Floor raised terraces on the northern and eastern facades in the north-eastern corner of the proposal (landscape sections S 1 and S 8, Ex F) are approximately 1.6m above ground level, which will give the occupant of the room a comfortable sense of separation, safety and privacy from residents walking along the footpath in the eastern setback or the public on the Bolwarra Drive footpath in these locations. The scale of the proposal in the north-eastern corner is not excessive and is ameliorated by the articulation of the form and landscaping.

#### *Parking and traffic safety issues*

- 82 The provision of visitor car parking within the front setback to Northbourne Drive is an appropriate location for onsite parking. The parking is located between the aged care building and the adjoining site containing the childcare centre. The carpark is at an excavated level with a wide planter along the southern boundary. The location of carparking and loading creates a separation between the aged care building and the childcare centre on the adjoining site. The parking area is visible from Northbourne Drive making it easy to locate and it does not dominate the presentation of the development to the public domain. The location of the parking on the site is suitable for the proposed use and is compatible with the local character.
- 83 The vehicular access to the site and the pedestrian access to the site can work together. I accept Mr Nettle's uncontested expert evidence that the pedestrian access in the proposed location is safe, as follows (p 2, Ex 3):

"The pedestrian crossing corridor across the porte cochere will be clearly defined, there will be quite satisfactory sight distances available and vehicles will be constrained to very low speeds due to the turning circumstances [two changes in direction before reaching the porte cochere]. In reality the pedestrian crossing arrangement is considered to in fact be "at typical" for development of this nature and there will not be any adverse amenity or safety implications."

- 84 The use of signage and markings to identify the loading area is adequate to prevent visitors parking in this area and obstructing delivery vehicles from turning and the presence of the roller door clearly denotes the position of the loading dock. Any aberrant parking by visitors can be dealt with by the management. I do not agree with the Council's position that bollards should be required because bollards would also prevent trucks turning in the loading area without the intervention of the management to move the bollards when necessary.

## **Conclusion**

- 85 The Seniors Housing SEPP is not a relevant consideration in determining this application, because the Seniors Housing SEPP does not apply to the proposal because the application was made under the Growth Centres SEPP and as a matter of statutory construction the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 do not apply to the proposed development.
- 86 I am satisfied that the scale and form of the proposal is acceptable and compatible with the low density residential character of the zone.
- 87 I am satisfied that the parking and traffic management on the site is appropriate.
- 88 I am satisfied that it is appropriate to grant development consent to the proposal. The Council tendered conditions of consent as Ex 8. The applicant filed an amended version of the conditions as Ex H and a statement of reasons for the proposed amendments. The applicant's version of the conditions sought to delete a number of conditions on the basis of obtaining

further legal advice. No submissions were made, and no evidence was adduced, on the competing matters regarding the conditions.

89 The Court directs:

- (1) The parties are to file agreed conditions of consent using the NSW Planning Portal template within 3 weeks. Final orders will be made following the filing of the conditions of consent.

I certify that this and the preceding 28 pages are a true copy of my reasons for judgment.



**Susan O'Neill**

**Commissioner of the Court**

\*\*\*\*\*



File no: F15/1234-03

2 September 2021

Planning and Assessment  
NSW Department of Planning, Industry and Environment Locked Bag 5022  
Parramatta NSW 2124

By email to [housingpolicy@planning.nsw.gov.au](mailto:housingpolicy@planning.nsw.gov.au)

Dear Sir/Madam

### **Blacktown Council's submission on the draft Housing SEPP**

Thank you for providing us with the opportunity to comment on the draft State Environmental Planning Policy (Housing) 2021 (Housing SEPP) which aims to facilitate housing to meet the needs of the people of NSW.

It is noted that due to the time frame given for feedback on the draft Housing SEPP we have been unable to present our submission to Council. Council's reporting framework is fixed and a limited time frame of 4 weeks means that we cannot comprehensively review significant policy while meeting internal reporting deadlines.

We support the NSW Government's proposal to prepare a new Housing SEPP to consolidate and update housing-related policies and provide mechanisms that will increase the provision of social and affordable housing in NSW. We also support those components of the policy that aim to meet the needs of the State's growing and diverse population.

We are however concerned with the cumulative impacts of State planning policies being developed in isolation, or without due regard, to each other, and without consideration to the aggregated impact that this has on the amenity and privacy of residents and the character of neighbourhoods and streetscape. There needs to be assurance that State planning policy is being developed to ensure that these adverse cumulative impacts do not undermine local planning and result in the degradation of the existing character of neighbourhoods.

Blacktown Council has long been an advocate for changes to some of these policies, particularly relating to boarding house development and in-fill affordable housing under the current Affordable Rental Housing SEPP and the current policy's inadequacy in delivering true affordable housing options for our communities. We also have had ongoing concerns with respect to the impact of this development on neighbourhood and streetscape character and support the proposed changes which will allow council.

#### **Connect - Create - Celebrate**

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We are still concerned that a number of the proposed changes undermine councils strategic planning by promoting additional densities that are contrary to our local strategic planning statement, neighbourhood character and provisions in our Local Environmental Plans. Our concerns in this regard are focused on a lack of proper consideration and planning which then increases pressure on the provision of existing services and the capacity for council to provide adequate and appropriate infrastructure to meet the needs of our rapidly growing communities.

We acknowledge that since the exhibition of the proposed Housing Diversity SEPP Explanation of Intended Effects (EIE), there have been changes made to address issues raised in submissions, however we are still concerned that a number of the key issues raised by Blacktown Council in our previous submission have not been adequately addressed.

These include:

- a. **Relationship of the Housing SEPP to other SEPPs:** Providing clarity with respect to the relationship between State Environmental Planning Policies and clarifying which SEPP will take precedence. It is uncertain what the relationship is between the draft Housing SEPP and the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* (Growth Centres SEPP). As the clauses are currently drafted, both policies appear to prevail to the extent of any inconsistencies with other policies (clause 8 of draft Housing SEPP and clause 6 of Growth Centres SEPP).

The Growth Centres SEPP includes a number of definitions which are proposed to be referenced in the Housing SEPP, and which in some cases differ. In order to provide consistency across the EPIs it is recommended that all definitions are consistent. Definitions include, but may not be limited to: *boarding house, group homes, residential care facilities, seniors' housings, secondary dwellings*.

A recent Land and Environment Court Case (*Principal Healthcare Finance Pty Limited v Blacktown City Council*) has highlighted the need for there to be clarity with respect to which EPI takes precedence. We need clarity, particularly with respect to the Seniors Housings provisions proposed to be contained in the Housing SEPP and their applicability in respect to those areas under the Growth Centres SEPP. This is important so as to ensure that the residential character of these low-density areas is not undermined by a lack of applicability of consistent controls.

We are requesting that for the purposes of seniors housing, Part 4 Seniors Housing of the proposed Housing SEPP take precedence over the requirements of the Growth Centres SEPP that apply specifically to the Blacktown LGA.

- b. **Boarding houses – Land and Housing Corporation:** Reiterating our concerns with allowing Land and Housing Corporation the ability to undertake boarding house developments without development consent in the R2 Low Density Residential zone. While we acknowledge the urgent need for the delivery of social and affordable housing, Council needs to retain its role as a consent authority in the approval of such development projects. This is based on the fact that the environmental and amenity impact including infrastructure capacity of the site and surrounding area needs to be appropriate and the wider community needs to be consulted.



In order to ensure that an appropriate level of services and infrastructure are being provided to meet the needs of the community, councils need to understand the cumulative impact of development projects, particularly in areas where there is a high concentration of LAHC land ownership. This becomes difficult where Council is not the consent authority, and where increases in density have not been planned for as part of a comprehensive plan for housing growth across the LGA.

- c. **Co-living housing:** Reiterating our suggestion that a portion of the co-living housing development be delivered as “true” affordable housing, if not in perpetuity, then for a period of between 10-15 years, particularly for developments where a FSR bonus is granted. This will ensure the delivery of not only diverse housing options, but will also facilitate opportunities for private affordable housing delivery.
- d. **Permissibility of Independent Living Unit Developments:** The Housing SEPP is proposed to only apply to Residential Care Facilities in the R2 Low Density Residential Zone. Independent Living Units (ILUs) (previously referred to as self-contained dwellings) are proposed to no longer be permitted under the Housing SEPP in the R2 Low Density Residential zone.

The reason for this proposed change is unclear and its impact will result in existing independent living unit developments, approved under the SEPP Seniors and located in the R2 zone to be a prohibited development and therefore reliant as a non-conforming use on the existing use rights provisions of the Environmental Planning & Assessment Act 1979. We have concerns with the need to draw upon existing use right provisions for a development which is currently permissible.

- e. **Alignment of Implementation of Policy:** We are currently experiencing a significant saturation of NSW Government reform and are concerned that each of these reforms is being undertaken in isolation of the other, which limits Council’s ability to review each of the components and their impact on our City in a comprehensive and consolidated framework. We once again stress that there needs to be a comprehensive and consolidated approach to the finalisation of the Housing SEPP, which takes into consideration the work that is currently being undertaken with respect to the proposed Design and Place SEPP and Employment Lands Review.
- f. **Development of Design Guidelines:** Ensuring that the Housing SEPP is supported by a design guideline, similar to the Apartment Design Guide for all of the new housing types is critical and is key to the success of the delivery of good development outcomes. Any future design guide should be developed to include clear objectives and built form controls that ensure that the built form is in context with the objectives of the zone. There should also be clear and consistent outcomes to ensure that new development is responsive to and addresses sustainability outcomes.
- g. **Savings and transitional provisions:** Our previous submission identified that we did not support the inclusion of savings and transitional provisions in the new SEPP, particularly for development under the Affordable Rental Housing SEPP, and specifically boarding house developments. We acknowledge that the draft Housing SEPP has provided for a savings and transitional provision which proposes to “save” and development application that has been lodged but not determined at the date of gazettal.



Since the release of the draft Housing SEPP, we have already seen an increase in enquiries relating to requests for pre-application meetings and submission of development applications for boarding house developments. Our concern with the proposed savings and transitional provision is it will result in the submission of sub-standard and incomplete development applications, particularly for boarding house developments. This creates more work for our Gateway Assessment Team and puts councils at increased risk of being challenged if we are seeking to return or reject a sub-standard application.

Attached are additional detailed comments on the draft Housing SEPP and associated documentation for your consideration.

We understand that the Department is looking to finalise and gazette the Housing SEPP by October 2021, which means there is limited opportunity for councils to have an open dialogue and elaborate on issues or concerns. Given the SEPPs rapid timeframes for the introduction of the changes and to ensure that there continues to be alignment with other policy which is yet to be finalised, we are suggesting that the Housing SEPP be reviewed after 12 months, rather than 24 months. We would welcome the opportunity to be involved in any future reviews.

Should you have any questions or queries regarding our submission, please do not hesitate to contact Trevor Taylor, Manager Development Policy and Regulation on 9839 6162.

Yours faithfully



Peter Conroy  
Director City Planning and Development

# **Blacktown Council's submission on the draft Housing SEPP**

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## **1. Consolidation of policies**

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We support the consolidation and repeal of existing housing related SEPP, including SEPP 21 and SEPP 36. We look forward to reviewing these changes in context of the broader housing reforms.

## **2. Strategic Framework**

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As outlined above, there is concern that some of the proposed amendments undermine councils strategic planning framework by promoting additional densities that are contrary to our local strategic planning framework, including our LSPS. Specifically, these concerns relate to:

- a. Land and Housing Corporation (LAHC) being able to develop boarding houses without consent in the R2 Low Density Residential zone, subject to being within an accessible area even when they are prohibited in the zone;
- b. The already implemented provision allowing for LAHC to self-develop up to 60 dwellings in the R2 zone;
- c. 25% FSR incentive for boarding houses, as well as the 10% FSR incentive for co-living development, as it may introduce buildings beyond the capacity of the site, with regard to local character;
- d. Mandating BTR housing in the B3 zone, and proposing to include seniors housing in B zones, as well as co-living housing being proposed to be mandated where residential flat buildings or shop top housing (i.e. the B zones) is permitted. We consider that this has the potential to undermine the objectives of the employment zones and may be contrary to our proposed Employment Lands Strategy

## **3. Student Housing**

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We acknowledge that it is no longer proposed to include a definition for student housing in the Housing SEPP. Instead, on-campus accommodation will continue to be facilitated through the SEPP (Educational Establishments and Child Care Facilities) 2017 (Education SEPP), which will be amended to expand student accommodation to accommodate people associated with the education facility (i.e. not just students). Off campus student housing developers will use the co-living provisions. We have no objection to this land use being retained in the Education SEPP.

#### **4. In-fill affordable housing**

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While we support the increase in the requirement for affordable housing from 10 years to 15 years, we continue to advocate that any housing developed under the provisions of the in-fill affordable housing component of the proposed Housing SEPP should be required to retain the housing as affordable in perpetuity. Clauses that time limit affordable housing will, over time, lead to a reduction in the supply of the availability of affordable housing over time. This then becomes an issue because it limits the availability of “true” affordable housing.

#### **5. Boarding houses**

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We are supportive of the revised change to the definition of a boarding house, and support the clarification via a specific clause to ensure that it is to be managed by a community housing provider and this will be identified on the title relating to the land.

We strongly support that boarding houses are to be built and retained in perpetuity as affordable housing.

We are still concerned and object to the inclusion of a car parking requirement for boarding house developments. We continue to be concerned that the modelling used for the proposed car parking rates is not reflective of the suburban nature of Blacktown City and that car parking demand for these developments will not be sufficient, thereby increasing pressure on on-street parking. The proposed rates are a substantial reduction to what we require for similar housing typologies. We continue to advocate that car parking requirements for boarding house developments be determined by council based on locational criteria and availability of access to public transport.

#### **6. Boarding houses – Land and Housing Corporation**

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In addition to the comments provided above, we seek clarity around the guarantee of transparency and safeguards with respect to allowing the self-assessment of boarding house developments by Land and Housing Corporation. In principle, we do not support this proposed pathway for LAHC because we cannot be assured that a rigorous assessment of our concerns will be undertaken and any issues raised will be addressed.

To ensure transparency in the self-assessment process by LACH, we suggest that there be a requirement for an independent review of the proposal. The recommendations of any independent review must be made public.

#### **7. Affordable housing - Residential flat buildings-social housing providers, public authorities and joint ventures**

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We do not support the requirement that no on-site car parking is to be provided for similar reasons outlined above in point 5(c).

For consistency with other affordable housing provisions, the time frame relating to affordability should be increased from 10 years to 15 years.

## 8. Co-living housing

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The definition is very specific in requiring that co-living housing provides occupants with a principal place of residence for at least 3 months. This will be difficult for council to determine ongoing compliance and creates issues around enforcement.

Consideration needs to be given to providing a minimum requirement for communal living areas, preferably as a percentage (sliding scale). In addition, with respect to communal living areas, consider:

- a. Providing a minimum communal living area requirement where there are less than 6 private rooms as this is currently not stipulated. Assessment of current boarding houses under ARH SEPP fail to be of adequate amenity due to the minimal communal areas required.
- b. Increasing the required communal living area requirement (30sqm where there are 6 rooms, plus 2sqm per rooms more than 6 rooms, according to clause 64(2)(d)(i)), to ensure that there is increased amenity and shared areas.
- c. Specifying a minimum area for a communal living area to prevent multiple small rooms that are not useable and cannot be reconfigured. Communal living areas should be designed to be flexible and adaptable (i.e. moveable walls). This should be included as a non-discretionary standard.
- d. Including specific requirements to encourage study/work pod areas within larger communal areas of co-living housing development to facilitate alternatives outside of resident's living areas. This will ensure that there is the flexibility for residents to allow for work from home or study, and may assist in building networks within developments, thereby reducing isolation.

We do not support the proposed car parking requirements for the reasons outlined above in point 5(c).

Clarity across all relevant SEPPs, including the proposed Design and Place SEPP, with respect to the applicability of SEPP 65, the Apartment Design Guide and any future provisions for applications to be considered by a Design Review Panel.

With respect to the room sizes proposed in clause 65, consideration should also be given to requiring minimum storage space within each co-living unit, as well as space for a separate study area, particularly if minimum communal requirements are not included.

Although there is a requirement proposed for a co-living manager who will be responsible for implementing the development's plan of management and must be contactable by phone 24/7, it is not a requirement that the co-living manager lives on site. We support the requirement to have a co-living manager but do not agree that they necessarily do not need to be on-site. This is a requirement that should be determined by councils, as part of the assessment of the individual application. In some circumstances, it may be necessary for a number of reasons, including the public interest, to have an on-site manager living on site, within the development.

## 9. Seniors housing

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We support the minimum lot size and frontage requirements, (1000sqm as specified in clause 74(2)(a) and 20m frontage requirement as specified in clause 74(2)(b)), to ensure that sites proposed to be developed for seniors housing are suitably sized and allow adequate frontage to vehicular access and servicing.

We do not support the proposed pathway for Residential Care Facilities with a CIV for \$30 million to be identified as State Significant Development (SSD) in the SEPP (State and Regional Development) 2011. The proposed \$30 million threshold is significantly lower than the recently introduced \$100 million CIV for Build to Rent to trigger SSD. No justification has been provided in the information exhibited with the draft SEPP for the difference. We suggest that for consistency the threshold be increased to \$100 million, consistent with the requirements for Build to Rent development.

We are supportive of removing the need for Site Compatibility Certificates and replacing this with prescribed zones as it provides greater clarity for our communities. Consideration however needs to be given to ensure that there is alignment with any other work currently being undertaken by the State Government (e.g. Employment Lands Reform).

With respect to some prescribed zones being restricted by certain land uses or adjoining zones, it needs to be ensured that these provisions are clear to remove uncertainty in case of ambiguity if the provisions apply or not to specific sites. Principles could be inserted to assist in this case.

We do not support seniors housing being proposed as a mandated use in the employment zones as this undermines the intent and objectives of these zones and may impact on the viability of employment zoned land.

The draft Housing SEPP is proposed to only apply to Residential Care Facilities in the R2 Low Density Residential Zone. Independent Living Units (ILUs) (previously referred to as self-contained dwellings) are no longer permitted under the SEPP. Existing independent living units located in the R2 zone and that were reliant on SEPP Seniors for permissibility will now be prohibited development and therefore reliant on existing use rights provisions of the EP&A Act. We do not understand the principles for this change and will create significant issues for existing facilities, particularly where they are wanting to intensify developments or undertake modifications.

We support the rationalisation of Schedule 1 Environmentally Sensitive Land. However, the draft policy proposes to exclude land identified as 'flood planning' in another EPI (such as LEP) from the application of the SEPP, whereas currently only 'floodway' or 'high flooding hazard' is excluded. This could potentially exclude large areas of land from the SEPP where the actual flood hazard is minor. Across EPIs in Blacktown (SEPP Growth Centres and Blacktown LEP), we do not have flooding maps under these EPIs (other than in clauses that relate to general flood planning considerations). It is therefore unclear how these provisions will apply to Blacktown City when the relevant flooding maps provisions aren't embedded into the EPI. This needs to be investigated to ensure that flood controls continue to apply accordingly.

## 10. General matters

Concern is raised where permissibility of land uses such as seniors housing are predicated on location to other operational uses within proximity to the site (such as by certain land uses on the site or adjoining land uses) in that there is no certainty that such accompanying land uses will operate in perpetuity. The same concept applies to boarding houses that are in an accessible area at one point but this changes over time because of changing of bus line etc.

We suggest changing the definition of **accessible area** to so that it reads “**accessible area means land within an actual – ...**” to clarify that the 400m and 800m distance is not a radius. By including the suggested phrase, sites within a 400m and 800m radius, but in practice are much further away will be excluded.

Non-discretionary standards are supported over ‘standards that cannot be used to refuse development consent’ as this provides more certainty in assessment and to development proponents. Clarity however is needed from DPIE that by re-labelling these standards as “non-discretionary development standards” that this does not potentially invite the application of clause 4.6 of the Standard Instrument LEP to developments that do not comply.

Considering that the new changes align the seniors housing provisions with the most recent environmental sensitive land constraint tools and mapping, including flooding and bushfire prone land, thought must be given to how proposals in the interim are to be assessed where the council has not yet updated its land constraints mapping to reflect the new framework.

The following table relates to specific clauses where we are requesting further clarity with respect to clarity and/or intent:

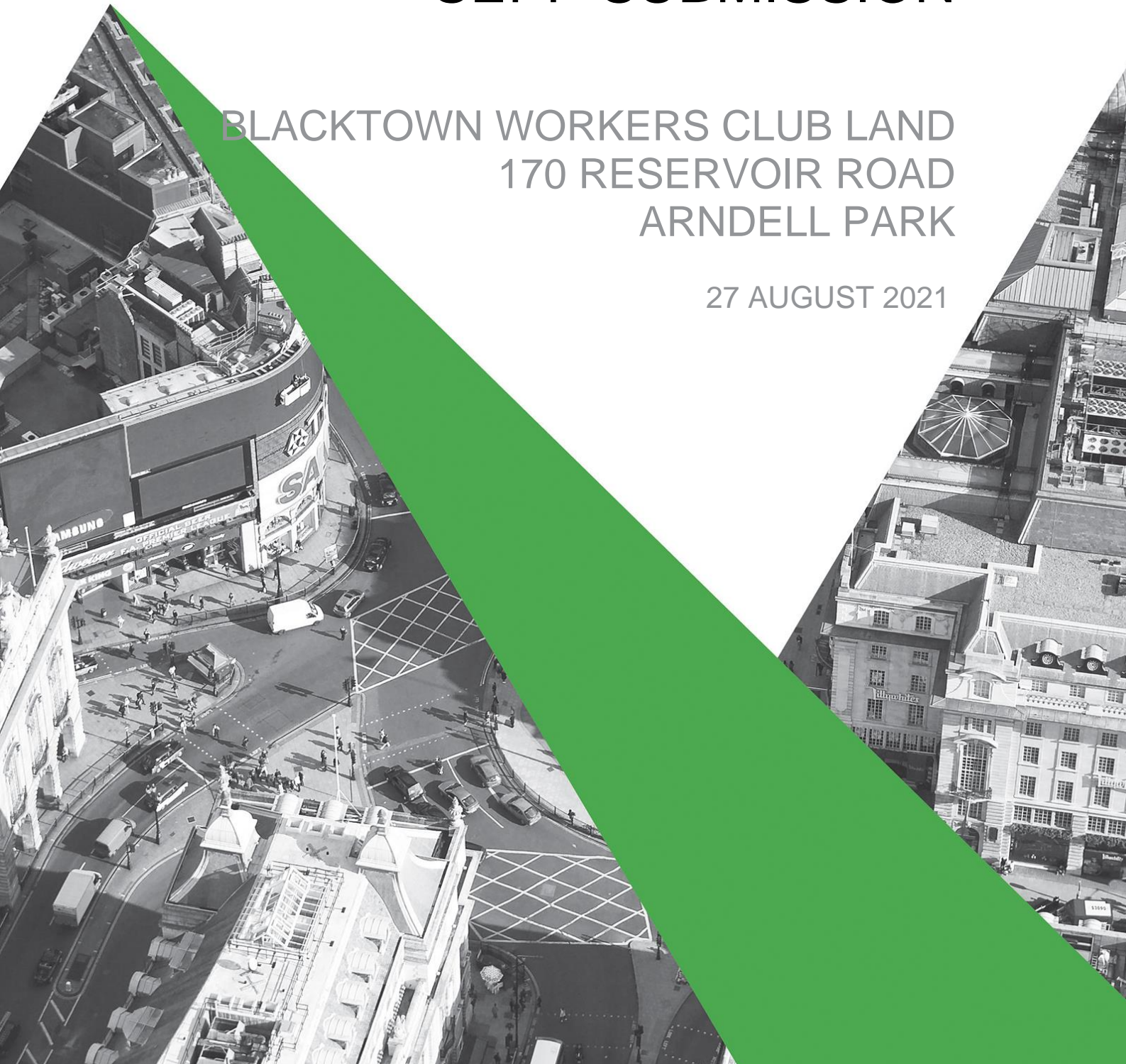
Clause 16	How does this clause apply where there is no FSR control in the applicable EPI?
Clause 17(b)	Is the intent of the landscape area to act as Private Open Space? Specific criteria with respect to minimum sizes are required to ensure that the landscaped area is not restricted to areas of little landscape value.
Clause 17(d)	<p>The phrase ‘if practicable’ should be removed otherwise the standard of 65% is redundant. If the intent is to ensure that 65% of the deep soil zone is located at the rear of the site then this should be stated as a minimum requirement.</p> <p>The current wording of the clause will result in a limited deep soil zone being provided to the rear of the site.</p>
Clause 23(2)(j)	Refers to (h) which relates to communal open space and not car parking. Should it refer to (i)?



# DRAFT HOUSING SEPP SUBMISSION

BLACKTOWN WORKERS CLUB LAND  
170 RESERVOIR ROAD  
ARNDALL PARK

27 AUGUST 2021



## PURPOSE AND SCOPE

This report is prepared by Think Planners Pty Ltd, relating to land located at 170 Reservoir Road Arndell Park which forms land owned by the Blacktown Workers Club. This submission relates the published provisions of the draft State Environmental Planning Policy (Housing) 2021 (Housing SEPP) and specifically to land described as:

Property Address	Legal Property Description
170 Reservoir Road Arndell Park	Lot 201 in DP 880404

This submission raises two key matters that require further resolution prior to the controls contained in the Housing SEPP being finalised. These two matters are:

1. The Housing SEPP permits seniors housing development on land zoned RE2 Private Recreation however only where at least 50% of the site adjoins a residential zone. There is no clear guidance to assist with a more detailed understanding of this control.
2. There are likewise, no details about how existing valid site compatibility certificates will be treated and relevant savings provisions that would apply.

This submission provides background information about the Blacktown Workers Club site at 170 Reservoir Road Arndell Park to assist by providing a case study to better understand the nuances of these key issues. This submission recommends the following:

1. The House SEPP is to be refined to clarify the provisions relating to 50% of the site adjoining a residential zone. A clear aim of this clause is needed and direction about whether this applies to the land described in this submission.
2. Savings and transitional provisions are to be included in the Housing SEPP to make it clear that existing site compatibility certificates will remain valid and specifically remain valid where concept approval has been secured.



## BRIEF HISTORY

The subject site is zoned RE2 under the Blacktown Local Environmental Plan 2015, noting '*Seniors Housing*' is not a permissible land use within the RE2 Zone. However, the development is to be undertaken pursuant to the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. In July 2020 the Sydney Central City Planning Panel, issued a Site Compatibility Certificate (SCC) facilitating the proposed seniors housing development. The seniors housing development plans to deliver a series of 9 buildings over the former sports fields to be undertaken over 7 distinct stages.

There is a current development application before Blacktown City Council for Stage 1 and Stage 2 which involves earthworks and tree removal in-order to facilitate the development of 4 x 3 – 5 storeys senior housing buildings over basement, new internal roads, pedestrian pathways, and landscape embellishment works at 170 Reservoir Road, Arndell Park. The application also includes a masterplan whereby concept approval is sought for the remaining components of the development. The overall Masterplan development will include:

Construction of 9 x 3-7 storey seniors housing development (as shown in Figure 1) including a Residential Aged Care Facility which will deliver:

- 480 self-contained dwellings
- 160 residential aged care facility beds.

**Figure 1: Proposed Masterplan (Extract from AJC Urban Design Report)**



## SITE DESCRIPTION

Residing adjacent to Arndell Park Industrial Precinct, the Blacktown Workers Sports Club site bounds Reservoir Road to its eastern boundary, Holbeche Road to its northern boundary, industrial land uses and Penny Place to the south and industrial land uses to its eastern and western boundaries. The site can be seen in Figure 2 below.

**Figure 2: Aerial Map Extract of Subject Site (Six Maps)**



 Development Site



## BACKGROUND

To facilitate the proposed seniors living development, the sports field situated towards the south-eastern portion of the site (Site B) has been relocated towards the north-western portion of the site (Site A). This is illustrated by Figure 3 below.

**Figure 3: Aerial Map Extract of Subject Site (Source: Six Maps)**



- The Blacktown Workers Sports Club Complex
- Site A
- Site B

The Blacktown Workers Sports Club lodged a Planning Proposal to Council with the objective to include recreational facility (outdoor) within Site A as a permitted use. The Planning Proposal was supported by Council and was published on the 26 of May 2017. A subsequent DA which was lodged to relocate the sporting fields to Site A was approved by Council in November 2017. The work to complete the relocation was completed in November 2019.



## THE SITE

The subject site is zoned RE2 Private Recreation and is framed by the following zones:

- SP2 to the east with residential low density further afield
- IN2 Light Industrial to the south and west as well as partially to the north
- Partially SP2 to the north with E2 Environmental Conservation further afield.

These land use zones are depicted in Figure 4 below.

**Figure 4: Site context and surrounding zones (Extract from AJC Urban Design Report)**



It can be concluded the subject site has more than 50% road frontage to residential land however on balance there is less than 50% of the site that shares a boundary or perimeter with residential zoned land.

## CURRENT AND PROPOSED NEW PLANNING CONTROLS

### CURRENT PLANNING CONTROLS

Under the Blacktown Local Environmental Plan 2015, senior housing is not permissible within the RE2 Private Recreation zone, however an application can be made for a Site Compatibility Certificate under Clause 25 of the SEPP (Housing for Seniors and People with a Disability).

Attached to this submission is a copy of the current and active Certificate.

Under the current planning regime, there is no maximum building height controls apply to the subject site. There is also no maximum floor space ratio applicable to this site. The Site Compatibility Certificate permits development of up to 480 self-contained dwellings and 160 residential aged care facility beds within a series of building that can be up to 7 storeys in height.

### DRAFT STATE ENVIRONMENTAL PLANNING POLICY (HOUSING) 2021

The Draft State Environmental Planning Policy (Housing) 2021 (Housing SEPP) has been developed by the NSW Government in-order to facilitate the delivery of more diverse and affordable housing types. Relevant to this submission are the provisions of Clause 76 as shown in the table below with relevant comments.

Draft Housing State Environmental Planning Policy (Housing) 2021 - Part 4 Seniors Housing	
Division 2 Preliminary	Comments
<b>Clause 76 Development standards for seniors housing—Zones RE2, SP1, RU5 and R2</b>  <b>1(a) for development on land in Zone RE2 Private Recreation—</b> <b>(i) the development is carried out on land used for the purposes of an existing registered club, and</b> <b>(ii) at least 50% of the site adjoins a residential zone.</b>	<p>The subject site at 170 Reservoir Road Arndell Park is located on land where there is an existing registered club as such 1(a) of this clause are satisfied. However, the second requirement is the land must adjoin at least 50% of a residential zone.</p> <p>There is no clarification if this relates to street frontage, primary address to a site, the perimeter of the site, whether roads separating the zones is considered based on their adjoining zone.</p> <p>This presents a significant concern that must be further refined. There are no relevant aims or objectives specific to this clause however it must be aiming to ensure seniors housing development occurs on land where there is reasonable access to community, medical and related infrastructure. The clause as it is drafted requires refinement as demonstrated in this example. The subject land at 170 Reservoir Road Arndell Park would not pass the provisions of Clause 76 for land that has clearly demonstrated merit to deliver a substantial seniors housing development.</p>

## SAVINGS PROVISIONS

The other key issue presented in the exhibited material relates to future savings and transitional provisions. The material presented during this exhibition period states the Government will make a final decision regarding any savings and transitional provisions prior to the making of the Housing SEPP. However, in the case of the development project at Reservoir Road, there is a valid Site Compatibility Certificate and a concept DA still being assessment by the Council. There is no clarification about:

1. The status of existing site compatibility certificates
2. How future development applications will be treated and assessed once the new Housing SEPP is published
3. Whether a concept DA ensures the development can be completed under the existing planning provisions rather than into the future under the new Housing SEPP.

A specific concern is the Housing SEPP seeks to implement a maximum building height of 9m whereas there is an existing site compatibility statement that permits development up to 7 storeys in height. This is clearly a significant impediment to the subject development site. Noting that Clause 97 of the draft Housing SEPP states that a maximum building height of 9m is applied as a non-discretionary development standard and a maximum floor space ratio of 0.5:1. However, there is a site compatibility certificate allows development up to 7 storeys with no prescribed maximum building height and an floor space ratio in the order of 1.3:1.

## CONCLUSION

The Department of Planning, Industry and Environmental is to be commended on their intent to simplify the planning controls and the process for seniors housing developments. However, there are some areas that require additional detailed planning analysis and clarification in order to transition developments that are currently within the planning system to the new Housing SEPP.

This submission provides background information about the Blacktown Workers Club site at 170 Reservoir Road Arndell Park to assist by providing a case study to better understand the nuances of these key issues. It is reiterated that this submission recommends the following:

1. The House SEPP is to be refined to clarify the provisions relating to 50% of the site adjoining a residential zone. A clear aim of this clause is needed and direction about whether this applies to the land described in this submission.
2. Savings and transitional provisions are to be included in the Housing SEPP to make it clear that existing site compatibility certificates will remain valid and specifically remain valid where concept approval has been secured.

We would be happy to discuss the contents of this submission at any time and provide additional specific details relevant to this project. Please do not hesitate to contact me.

Yours faithfully

Schandel Fortu

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**State Environmental Planning Policy (Housing for Seniors or People with a  
Disability) 2004  
Site Compatibility Certificate**

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The Sydney Central City Planning Panel has determined the application made by Think Planners on behalf of the Blacktown Workers Sports Club on 7 October 2019 by issuing this certificate under clause 25(4) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

The Panel certify that in their opinion:

- the site described in Schedule 1 is suitable for more intensive development;
- the development described in Schedule 1 is compatible with the surrounding environment having had regard to the criteria specified in clause 25(5)(b);
- that development for the purposes of seniors housing of the kind proposed in the development application is compatible with the surrounding land uses only if it satisfies certain requirements specified in Schedule 2 of this certificate.



**Chair  
Sydney Central City Planning Panel**

Date certificate issued: 10 July 2020

**Please note:** This certificate will remain current for 24 months from the date of this certificate (clause 25(9)) and cannot be varied during its currency to cover additional land.

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**SCHEDULE 1**

**Site description:** 170 Reservoir Road, Arndell Park (Lot 201/DP 880404).

**Development description:** Construction of a Seniors Living Development containing 480 serviced self-care housing apartments and a 160 bed Residential Aged Care Facility. The development would be completed over 12 buildings with basement car parking for 7 of the buildings.

**Planning Panels Secretariat**

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## SCHEDULE 2

### Requirements imposed on determination:

It is recommended the following requirements be applied to the SCC to ensure that outstanding issues are addressed by the Applicant at the DA stage:

- **Vehicular access:** engage with both TfNSW and Council prior to lodgement of the DA in relation to arrangements regarding vehicle access to the site. This should identify whether any signalised intersections are required.
- **Access to public transport:** identify how the development will address Clause 26 of the Seniors Housing SEPP.
- **Ecological corridor:** consider whether trees planted on site could provide an ecological corridor to allow for the movement of native fauna as the site is near land zoned E2 Environmental Conservation.
- **Contamination:** the site should be validated by an accredited site auditor with the associated Site Audit Statement to be submitted with the DA.
- **Interface between seniors housing and light industrial uses:** review the interface of development on the subject site with the pre-existing adjoining IN2 land. Seek to mitigate potential amenity impacts on future residents (such as noise, light spill, traffic, parking and the like), emanating from the reasonable expected use of the IN2 land, in order to minimise potential future land use conflicts that could impact on the ongoing use and development of the IN2 zone consistent with the objectives of that zone. Consider building design, location and orientation, setbacks, landscape and other screening, acoustic and light-spill treatments and the like, in this regard.
- **Site topography:** review the design response to the site topography to avoid subterranean units and above ground parking, as well as excessive building bulk and height.

The Panel notes that Council is also seeking an updated:

- Social Impact Assessment; and
- Waste Management Plan.

**Blue Mountains City Council**  
**Proposed Housing SEPP - Submission**

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Thank you for the opportunity to provide comment on the proposed Housing SEPP currently on exhibition.

Council reiterates general support for planning policy that facilitates housing affordability and housing diversity, as previously stated in our initial submission on the then named draft Housing Diversity SEPP Explanation of Intended Effects (EIE), however caution is raised as to the mechanism to achieve this.

This submission is primarily concerned with:

- Ensuring a robust consultation process
- Amendments to the Seniors Housing component of the SEPP
- Adequacy of Short Term Rental Accommodation provisions
- Undermining of strategic land use planning

These matters are detailed further, however it is noted that issues raised in Council's previous submission also remain. Below is a summary of the key recommendations in Council's endorsed submission from September 2020 to the EIE associated with the then draft Housing Diversity SEPP:.

- The aims and objectives for each housing type within the Housing Diversity SEPP should be made explicit within the policy itself.
- The interrelationship between this proposed SEPP and other State policies, such as NSW Housing Strategy and Low Rise Housing Diversity Code, must be articulated and consistent.
- The proposed land uses for build-to-rent, student housing, and co-living be included in the Standard Instrument LEP, and associated development standards and provisions be up to Councils to control through their LEPs.
- Greater consideration be given to the differing priorities for delivering housing between regional and metropolitan areas across NSW.
- The proposed definition of build-to-rent housing as requiring a minimum of 50 self-contained dwellings is amended to allow flexibility for Councils in outer metro areas to set their own provisions for the suitable scale for build-to-rent housing for their local areas.
- The car parking rates for build-to-rent, student housing and co-living developments and other relevant development standards be determined by local councils, in outer metro areas.
- The extent of STRA permissibility be resolved prior to the finalisation of the Housing SEPP, including any cross relationship that exists with the draft STRA Framework.
- Clarification is required regarding intended mechanisms to ensure lawful use of new housing types without introducing regulatory burden for Council.
- Further information be provided on the proposed amendments seeking to allow the conversion of an existing dwelling to a group home, including details of who can carry out these works, and any locational criteria, impacted land use zones, and proposed development standards.
- It is requested that assurance be provided that Metropolitan Rural Areas remain excluded from seniors housing permissibility under the proposed Housing Diversity SEPP.
- Arrangements are made when finalising the SEPP to remove the permissibility of boarding houses within the R2 Low Density zone of existing LEPs, without the need for separate planning proposals.

Of the previous recommendations and matters raised by Council in response to the Housing SEPP EIE, the following is noted:

- The aims of each housing type within the Housing SEPP have been made somewhat clearer within the policy itself, which provides clarity, however the policy lacks clear targeted objectives for each.

- The Department have articulated the interrelationship between this proposed SEPP and other State policy, such as NSW Housing Strategy, as requested
- The draft Standard Instrument Order confirms the proposed land uses to be contained within the Housing SEPP will be defined in the Standard Instrument LEP, however, Councils have not been afforded the opportunity for associated development standards to be controlled through their LEPs
- It remains a fundamental concern that development standards in the proposed Housing SEPP override established LEP standards, for example height of building controls for Seniors Living Residential Care Facilities in the R2 zone.
- Unfortunately, it does not appear that consideration has been given to the differing priorities for delivering housing between regional and metropolitan areas across NSW. A blanket approach broadly remains for the development types captured in the proposed Housing SEPP, for example, there is no option for outer metro scalability in the case of build-to-rent housing, nor the flexibility for parking rates to be determined by local councils. This confirms the continuance of a Sydney centric approach to planning rather than the application of a nuanced place based system.

We appreciate that the detail resolved in the draft Housing SEPP currently on exhibition has in part, addressed some of the previously raised concerns. In relation to the material currently on exhibition, Council provides the following feedback and recommendations:

1. Ensuring a robust consultation process

Council notes that the exhibition period for comment on the proposed Housing SEPP ends 29 August 2021. An extension of time was requested to allow for Councillor endorsement of this submission at the Ordinary Council Meeting 31 August 2021. Notably, this was emphatically denied twice, with the Department providing the following rationale on 10 August 2021:

*“The primary purpose of exhibiting the draft Housing SEPP is to receive feedback on the drafting of the proposed provisions and to identify any unforeseen consequences. We are not seeking to readdress policy positions. Given this, we would be pleased to hear from your Council’s planning and technical officers if we can’t otherwise get a formal submission from Council”*

It is noted that the Department held a Council information session on 25 August 2021, with notice of 1 (one) business day and within 3 (three) business days of exhibition ending. During this session it was advised that a broad extension of time for all Councils to make a submission was acceptable. Unfortunately, this late advice has not resulted in Blue Mountains City Council being able to report to elected Councillors, as the reporting cycle opportunity has passed. This is a disappointing outcome, particularly given Council made an early request for a modest extension to circumvent this.

Notwithstanding, in our previous submission, Council indicated support for the establishment of a planning framework that is responsive to the needs of the community, however, concern was raised regarding the potential for new planning provisions to be introduced without consultation with relevant stakeholders. The need for policy clarity and points of inaccuracy to be addressed, was articulated.

Substantial changes have been made between the initial EIE to the draft legislation, including broadening the Housing SEPP to consolidate not 3 (three), but 5 (five) existing policies and phasing the reform. This is, therefore, not just a review of the technical components of the legislation. Rather, it is indeed about ensuring policy efficacy. In addition, some elements such as short term rental accommodation and build-to-rent housing are also flagged to be transferred to the Housing SEPP “generally in their current form” later in 2021, which does not provide clarity and certainty that content will not be amended ahead of this transfer.

The Department's website indicates the consultation draft is to provide all stakeholders with the opportunity to provide feedback on the new and amended planning provisions. The consultation process should be willing to address the gaps identified in the explanation of intended effects and this draft legislation, as well as subject itself to full interrogation. The absence of this approach is concerning.

**Recommendation:** Adequate provision of time for consideration of draft legislation and the policy that underpins it by all stakeholders, including elected Councillors, accords with a strong consultative process. A thorough process includes the opportunity to respond to exhibited material fully, including both the policy intent, as well as the technical components.

## 2. Amendments to the Seniors Housing SEPP

Amendments to the Seniors Housing SEPP provides an example of the importance for the need to consult and allow the opportunity to provide meaningful feedback. The Department is reminded that planning reforms enacted by the State Government to *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (SEPP Seniors), effective 29 July 2020, excluded land within the Metropolitan Rural Area (MRA) of Greater Sydney from SEPP Seniors. The entire Blue Mountains LGA is mapped MRA, therefore, SEPP Seniors no longer applied from that date.

While unexpected, Council supported this change and welcomed the opportunity to develop local provisions and controls to best support housing for seniors and people with a disability in a way that is appropriate for the Blue Mountains, aligned with our Local Housing Strategy and Local Strategic Planning Statement.

Significantly however, the lack of any notification, public exhibition or transitional arrangements in relation to these changes resulted in substantial unplanned policy work for Council. As such, Council wrote to the Department on 4 December 2020 to seek assurance that MRAs will remain excluded from the Seniors SEPP or from the application of any seniors housing provisions under the proposed Housing SEPP. Such assurance was to provide Blue Mountains City Council with a reasonable level of confidence to resource and plan for local provision for seniors and people with a disability. Neither an acknowledgement of this correspondence, or assurance from the DPIE was received.

Following exhibition and endorsement, Blue Mountains Development Control Plan 2015 was amended on 21 April 2021, to include local provisions for seniors housing and people with a disability, as the first step in creating local controls.

The draft Housing SEPP currently on exhibition seeks to re-introduce provisions for Metropolitan Rural Area, referencing the R and B zones. This would effectively override these new local provisions, created in response to the previous exclusion. The implications for this change at the local level are inconsistent with a fair and transparent planning system. The on the ground impact means developers will have been subjected to 3 (three) lots of planning rules pertaining to seniors housing within an 18 month period.

Blue Mountains City Council is therefore seeking clarity on draft Part 4 Seniors housing, particularly in relation to the intention of clause 70 and metropolitan rural areas, noting that the drafting is unclear compared to the explanatory material.

Further to this, the Housing SEPP introduces fundamental changes to controls (for example decreased POS, increased building height and design guidelines not yet updated), and an exclusion of independent living units in the R2 Low Density Residential zone, which is in conflict with identified local need.

During additional consultation with the Department, Council has advocated for the need to "opt in" regarding MRA, such that local provisions can best meet local need. We again make a request for opt in provisions, as capturing the Blue Mountains LGA within this broad amendment will have a significant negative impact at the local level, not only diminishing

existing provisions but also requiring developers and assessing officers to straddle two sets of planning rules, dependent on the proposal.

At the Ordinary Council Meeting 29 September 2020, it was resolved that should the Department amend State Environmental Planning Policy (Housing for Seniors and People with a Disability) in the future to include Metropolitan Rural Areas, the Council will seek an exemption from the state policy, to rely on local planning provisions in the Local Environmental Plan [Minute no. 285].

In support of the above resolution, Council will be seeking an exemption from state policy in relation to housing for seniors and people with a disability, relying instead on the provisions created at the local level.

**Recommendation:** Blue Mountains City Council has consistently demonstrated that it has its strategic house in order. Council's ability to plan for local needs is evidenced in the swift creation of seniors housing provisions, in response to exclusion from State policy. As such, Council should remain exempt from the seniors component of the proposed Housing SEPP, instead relying on local provisions to plan for local needs.

### 3. Adequacy Short Term Rental Accommodation provisions

Throughout the consultative process in relation to NSW short-term rental accommodation (STRA) framework and reforms, Blue Mountains City Council has actively provided feedback when the opportunity has presented. It is understood that STRA will be included in the Housing SEPP later in 2021. It is necessary, given there will be no other opportunity to engage with this portion of the legislation, that the below concerns are noted.

On 9 April 2021 the State Government released the long awaited State policy on STRA. Proposed statewide changes to STRA have been the subject of several years of negotiation and consultation. Council has consistently raised that existing provisions within Clause 6.29 of Blue Mountains Local Environmental Plan 2015 are appropriate for the particular environmental considerations within the Blue Mountains LGA, particularly bushfire, but also including the management of other environmental and amenity considerations.

Notably, the draft policy placed on public exhibition to which the Council responded, had a graded approach to this land use on bushfire prone land. Specifically, STRA on non-bushfire prone land was to be considered exempt development, sites with a bushfire attack level of up to BAL 29 could be considered complying development, with BAL 40 and Flame Zone requiring a development application due to the increased risk on these sites.

It is therefore surprising that the policy released on Friday 9 April 2021 by the Department, excludes all reference to bushfire and permits all STRA as exempt development regardless of the bushfire prone nature of the land. This is a significant departure from the exhibited material and demonstrates both a lack of transparency and a lack of understanding of a critical planning consideration in not only the Blue Mountains, but across the state.

The Strategic Guide to Planning for Natural Hazards in NSW identifies that short-term changes to transient populations (such as tourists) should be considered when planning for emergency response and evacuation, with the displacement of same noted in the 2019/2020 "black summer" bush fires. This is at odds with the STRA policy, which removes local provisions that successfully managed risk, and replaces it with a statewide blanket approach that is deficient in its consideration of natural hazards, particularly bushfire.

Aside from the issue of adequate consideration of bushfire risk, in previous consultation on this planning reform, Council recommended STRA permissibility be resolved prior to the finalisation of the Housing SEPP, including any cross relationship that exists with the draft STRA Framework. Clarification has not been provided in the draft legislation regarding intended mechanisms to ensure lawful use and the supply of residential housing diversity as intended, prohibiting STRA use of co-living and the like.

The other critical omission from the STRA provisions is the opportunity for a development approval pathway, to address operations that may exceed a threshold of acceptable amenity impact or wish to exceed the 180 day per year limit on non-hosted accommodation. This suggests that the STRA provisions have only been considered as a home sharing use, not holiday letting type of use. This is clearly not the case in many areas such as the Blue Mountains, which are established holiday destinations and have a high number of short term rental properties. Importantly, this use has been managed successfully through local provisions, balancing the benefits, risks and impacts. The State provisions replace these established local controls with less effective provisions.

**Recommendation:** Blue Mountains City Council affirms the need for bushfire considerations with regard to short term rental accommodation. A copy of this submission will be provided to the NSW Rural Fire Service, to reinforce this position.

**Recommendation:** Mechanisms proposed to ensure that co-living, build-to-rent and boarding houses would not be available for STRA, ensuring stock remains available for its intended use. It is Council's preference that definition of these uses also explicitly exclude STRA.

**Recommendation:** The STRA provisions introduce a development approval pathway, to allow for a merit assessment of proposed operations that may exceed a threshold of acceptable amenity impact or wish to exceed the 180 day per year limit on non-hosted accommodation.

#### 4. Undermining strategic land use planning

A fundamental issue raised in this and our previous submission is that the Housing SEPP, in part, unnecessarily overrides local controls and undermines local strategic planning. This issue relates not only to this reform, but the cumulative impact of ongoing volume of reform at the State level. While it is understood that there is need to utilise policy to respond to impacts of the COVID pandemic and deliver public benefit, the ability to appropriately consider planning matters, especially at the local level, should not be removed.

Blue Mountains Council has undertaken significant strategic planning and extensive community engagement over the last two years to produce a Local Strategic Planning Statement, Blue Mountains 2040: Living Sustainably (LSPS), alongside a suite of supporting studies which includes the Blue Mountains Local Housing Strategy 2020 (LHS). Both documents were adopted by Council on 31 March 2020.

This work responded to requirements and timeframes set by the State Government, and actions contained in the Western City District Plan and Greater Sydney Region Plan. This represents a significant body of work, which carefully considers the future housing needs of our local community, and includes actions to address issues such as housing affordability and housing diversity. A nuanced, place based, and incremental approach is therefore needed to identify where and how additional housing options can be provided.

To that end, Council acknowledges that modernisation of existing State policies may be required and is supportive of the notion of housing diversity and housing affordability. However, caution is raised with regard to the mechanisms utilised. Although it is noted that some of Council's previous feedback has been taken on board (for example, the aims of the policy are now clearly articulated), the shift from the initial consultation material to the proposed Housing SEPP legislation is concerning. In addition, the scope of the proposed Housing SEPP remains Sydney centric, without consideration for the many LGAs that fall outside of that capture.

**Recommendation:** Council is best placed to meet local needs, through local provisions, as informed by the Local Housing Strategy prepared in support of the Local Strategic Planning Statement, both of which are informed by significant community engagement and works to address the locally specific housing needs of our community. Council reiterates opposition to

one-size-fits-all state wide controls, and advocates for a nuanced, place based local approach to planning.

### Conclusion

Council is supportive of the planning system facilitating greater housing diversity and housing affordability. As raised in this submission, in some instances, a localised place based approach that is attuned to local needs is the most appropriate means of achieving this. In the Blue Mountains context, the existing approach to local housing needs, as informed by the Local Housing Strategy and Local Strategic Planning Statement, is strongly researched, well considered and endorsed.

Areas of concern as raised in this submission and summary recommendations are provided:

**Recommendation:** Adequate provision of time for consideration of draft legislation and the policy that underpins it, by all stakeholders, including elected Councillors, accords with a strong consultative process. A thorough process includes the opportunity to respond to exhibited material fully, including both the policy intent, as well as the technical components.

**Recommendation:** Blue Mountains City Council has consistently demonstrated that it has its strategic house in order. Council's ability to plan for local needs is evidenced in the swift creation of seniors housing provisions, in response to exclusion from State policy. As such, Council should remain exempted from the seniors component of the proposed Housing SEPP, instead relying on local provisions to plan for local needs.

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**Recommendation:** The STRA provisions introduce a development approval pathway, to allow for a merit assessment of proposed operations that may exceed a threshold of acceptable amenity impact or wish to exceed the 180 day per year limit on non-hosted accommodation.

**Recommendation:** Council is best placed to meet local needs, through local provisions, as informed by the Local Housing Strategy prepared in support of the Local Strategic Planning Statement, both of which are informed by significant community engagement and works to address the locally specific housing needs of our community. Council reiterates opposition to one-size-fits-all state wide controls, and advocates for a nuanced, place based local approach to planning.



Submission on proposed new housing SEPP

From

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**SUBMISSION:**

**Background:**

This submission is a personal and lay analysis of the functioning of only specific parts of the Housing Sepp. These parts are a function of the experience my family and I have had in relation to the growth of tourist hostels and boarding houses in the Waverley LGA and specifically in the Bondi Beach area.

Being one of the premier tourists sites in Australia foreign visitors particularly young people are attracted to stays at or near the beach. This has led to an explosion of Airbnb, short term apartment rentals, licenced and many more unlicensed back backpacker hostels reducing housing stock for locals. With the generous bonuses associated with the ARHSEPP Waverley council has been inundated with DAs for construction of Boarding Houses. I understand the intention of the ARHSEPP is to provide additional stock to the critical undersupply of affordable housing in NSW.

Unfortunately this has turned out not to be the end result of the construction boom in boarding houses. The 2019 University of NSW report for a group of Southern Councils clearly shows that more than 80% of the boarding houses which have come online are not being used for affordable housing. Instead they are being used for tourist accommodation, let to students and for what is termed young person's lifestyle accommodation. Only a tiny proportion is being used for the intent of the legislation and to help those suffering rental stress.

There are two reasons for this I believe; the first is that allowing the market to determine the rent of the room offers the potential for rents to become so high as to be prohibitive for those suffering rental stress. With competition from young professionals and foreign students its easy to see how the market price can rise out of reach for those seeking affordable housing. Bondi Beach is so sought after that a single 25 square metre room can easily go for rentals that are well out of reach to lower income people. The proximity to the beach itself distorts the market; and the effectively defeats the intent of the ARHSEPP. I can't comment on the rest of Sydney but where markets, for various reasons are distorted, affordable rent goes out the window.

As an aside, there is a two bedroom unrenovated 1930s flat two doors down from me, 150 metres from the beach which was renting at \$2500 pw prior to the pandemic! Who can afford that. 10 tourists in the two rooms in bunks. It's a nightmare of partying and drunkenness.

So with the distorted market we have at the beach the next step that happens is that boarding house rooms are let out to whoever will pay the overheated prices. This excludes the lower income locals and inevitably goes to tourists and students etc. However there is no way to force or even check compliance that these places are being rented to the people the ARHSEPP was designed to help.

I believe that Minister Stokes has come to realise this over the last couple of years and I personally am grateful that the changes proposed are on exhibition. They have the potential to rein in some of the excesses and bring the policy back to its original intent.

#### SUBMISSION:

I would like to support the proposed system for setting rentals. Using average household income is a much fairer system. Bonuses on offer are already extremely generous with yields often reaching 18-20%. Requiring rent control as part of the deal in exchange for the bonuses is not onerous; especially as the land value continues to increase as well. Using the system set out in the exhibited changes will address this satisfactorily.

However It can address it satisfactorily only as long as there is some oversight of the running of the sites themselves. The second proposal I want to support is that all boarding houses availing themselves of the bonuses are managed by Not For Profit Housing Associations (NFPHA). As set out in the exhibition this is the logical way to make sure that the people renting these places are the people the ARHSEPP was designed for.

The problem then becomes how will the NFPHAs finance the extra duties they will undertake as part of this mooted change. I'm sure not many of them have lots of unused cash, staff or time to make sure these places are being let to the people the ARHSEPP at the correct price. Further, that the rentals and tenants continue to be the right ones is another question to be dealt with. Compliance is crucial. This may need to be a combination of NFPHAs and compliance departments in LGAs using Conditions of Consent and Plans of Management for the ongoing operation. Fees to cover this being paid by the owner would be the obvious solution. The user should pay.

Is the Minister planning to sequester these sort of payments from LGAs for use in other areas?

I fully support the proposed changes and in light of the increasingly desperate situation being faced by working people in NSW who just can't get ahead, are on the wrong end of the increasing divide between rich and poor and I believe through no fault of their own are discriminated against. If the pandemic has taught us anything it's that some compassion doesn't go astray and the proposed changes will go some way to making the ASRHSEPP achieve its original admirable intent.

I commend the changes to the Minister and ask that they be instituted as quickly as possible.



## **About this Submission**

Bungree Aboriginal Association Limited (Bungree) appreciates the opportunity that we have been offered to provide a submission to the Regional Housing Taskforce.

Bungree has been an active participant throughout the forums and with CHIA NSW on these discussions however there has been little to no consideration been given or provided from the NSW Government from an Aboriginal and Torres Strait Islander Housing perspective.

Bungree also supports the position and response lodged by CHIA NSW, however Bungree's submission response for consideration is as a Community Housing Provider providing social and affordable housing for Aboriginal people.

The current policies and proposed draft amendments do not take into consideration how the Aboriginal communities are currently delivering services and programs through integrated care in home services and the age definitions of Aboriginal people receiving services under this category.

Therefore, the current incentives under the current and proposed draft policies are not reflective or offer incentives for Community Housing Providers targeting construction and developments for social and affordable housing for Aboriginal people.

Bungree is a large Multi Service organisation delivering 28 funded programs and services on the Central Coast, Lower Lake Macquarie, Newcastle, upper Hunter and Karuah communities. Bungree's programs include Housing, Homelessness Services, Transport Services, Commonwealth Home Support Programs (CHSP/My Age Care), Home Care Packages (My Age Care), Disability Services, Child Protection, Education and Employment programs and Health programs.

The Commonwealth and NSW Government agencies funded services are primarily in home support services for all Aboriginal people to live independently and support our people to achieve and increase individual prosperity through health and wellbeing.

Bungree is a registered Tier 2 provider under the National Regulatory System - Community Housing and an identified Growth Provider with the NSW Aboriginal Housing Office.

## **Bungree's Response**

Bungree is committed to creating, developing and increasing social and affordable stock for Aboriginal people, which creates a housing continuum. However, we will be omitted from the incentives, bonuses or possible acknowledgement from Local Government Areas Council on application for development applications for current and future developments, if Aboriginal definitions are not clearly stated or identify in the Draft Housing SEPP Policy.

The State Environmental Planning Policy (Housing) 2021 current and proposed draft amendments do not align or contain any recognition of classifications or definitions of Aboriginal people that assist or provides any incentives as part of this process to Community Housing Providers and Local Aboriginal Land Councils who will be developing social and affordable housing for Aboriginal people.

We refer to the NSW Governments Aboriginal Land SEPP policy immediately without any clarification or definition for the Aboriginal people and recognised categories for purpose built dwellings such as seniors living from the age of 50 years then Local Aboriginal Land Councils will immediately have a barrier that excludes them from any incentives at this stage also.

The NSW Government is committed to provide economic growth and prosperity through the Aboriginal Land SEPP policy however, this has not been linked, identify in the current, or draft Housing SEPP policy.



It is identified Local Aboriginal Land Councils are the significant land holders across the NSW state, however the current policies and practices are not linked to follow through with the incentives and opportunities for economic growth and prosperity that enables Local Aboriginal Land Councils to fulfil their aspirations for their communities.

Therefore, the zoning of land should clearly be set out to enable Local Aboriginal Land Council to have viable developable land rezoned without taking a large amount of resources from them, which then affects their ability to develop and provide more housing in their community.

### **Part 3 Co-Living Housing**

The Co-Living definitions are not reflective of how Aboriginal integrated and community services are provided in the community.

Aboriginal services provide in home and integrated services in the home as we support our people to sustain tenancy, health and wellbeing. We do not have the funding to provide on-site full time house managers.

This again is not reflective of Aboriginal services or practices that are currently provided to our people.

This limits our opportunity to develop alternative accommodation/housing options under this policy that would afford us incentives or bonuses etc.

Bungree would like to offer housing / accommodation options for Aboriginal people leaving or exiting other services such as Hospital ie Mental Health, Drug and Alcohol Units, Rehabilitation Centres, Corrective Services and Juvenile Justice etc.

**Recommendation:** That the policy include references to Community Housing Providers applying for building applications that are targeted for Aboriginal people. That this also excludes the requirement for on site management.

### **Part 4 - Seniors Living**

Seniors means the following people-

- (a) People who are at least 60 years of age,
- (b) People who are resident at a facility at which residential care within the meaning of the *Age Care Act 1997* of the Commonwealth, is provided,
- (c) People who have been assessed as being eligible to occupy housing for aged person provided by a social housing provider.

Aboriginal and Torres Strait Islander people who are 50 years of age are categorised as seniors and ageing and are eligible for a range of programs and services and incentives from both the Commonwealth and NSW Government due to the mortality rate of Aboriginal people.

The current Housing SEPP Policy and the proposed changes has class seniors living from the age of 60 years of age, therefore Community Housing Providers such as Bungree who build for purpose dwellings for our Aboriginal seniors from the age of 50 years age will not be included or recognised for any incentives whilst increasing access to social housing.

Though the above definitions may at a higher level state *(c) People who have been assessed as being eligible to occupy housing for aged person provided by a social housing provide*, could include Aboriginal targeted building applications however at a Local Government Area Council may not recognise this.



Bungree currently delivers in home services to our ageing clients and housing tenants that support and assist our people to live longer and with semi-independent living. Aboriginal people do not move to Age Care Residential facilities nor do we have the funds individually or collectively to fund or support such a large facilitate.

Culturally our people are people living at home with in home support.

The current and draft proposed amendments do not reflect any cultural practices for providing seniors living of Aboriginal people.

As an example Bungree will develop and offer multi duplex/villas on one site that deliver in home and integrated services which is the current practice for supporting and assisting our ageing people, we do not offer or provide onsite living facilities.

Bungree is currently building two for purpose built duplexes for our ageing people however as our target group is from 50 years of age and social housing it was not consider or offered by Central Coast Local Council for any incentives or bonuses.

**Recommendation:**

1. Insert a clear definition to state Aboriginal people who are at least 50 years of age, as it is defined for the general public.
2. Insert a clear definition that is reflective of Aboriginal cultural practices that is reflective of current services and practices on the community to our ageing population.

We appreciate the opportunity to provide our perspective on this and welcome the opportunity to discuss this further at any time.

We would also like to make comment that the new targets under the Closing the Gap for NSW must be also considered in the final draft, we cannot at this stage comment on this as we have yet had the opportunity to meet and discuss the targets and possible impacts at a NSW Government level.

Yours sincerely

Suzanne Naden  
CEO  
Bungree Aboriginal Association Ltd

27 August 2021

## Byron Shire Council - Submission to Housing State Environmental Planning Policy

Council staff have recently been in contact with the Department of Planning, Industry and Environment (DPIE) regarding the inclusion of the new clause 5.5 in Byron Local Environmental Plan 2014.

On Monday 9 August 2021 Council received confirmation from Senior Policy Planning Officer Tanya Uppal from DPIE that Council could have clause 5.5 adopted through a submission to the Housing SEPP.

On this basis, Council received a report on this matter at the 26 August Council meeting and resolved (Resolution 21-337) as follows:

**Report No. 13.15      Size limitations on Secondary Dwellings in rural zones**  
**File No:**                I2021/555

### Resolved:

1. That Council supports the inclusion of clause 5.5 into Byron LEP 2014 as follows:

Clause 5.5 Controls relating to secondary dwellings on land in a rural zone  
[optional]

If development for the purposes of a secondary dwelling is permitted under this Plan on land in a rural zone—

- (a) the total floor area of the dwelling, excluding any area used for parking, must not exceed whichever of the following is the greater—
  - (i) [70] square metres,
  - (ii) [0%] of the total floor area of the principal dwelling, and
- (b) the distance between the secondary dwelling and the principal dwelling must not exceed [100] metres.

2. That Council requests staff to advise the Department of Planning Industry and Environment of point 1 prior to 29 August 2021.

Council now requests that Clause 5.5 is included in Byron LEP 2014 as drafted above.

Should you require any further information contact Sam Tarrant on (02) 6626 7216 or email [starrant@byron.nsw.gov.au](mailto:starrant@byron.nsw.gov.au)

Yours sincerely



Natalie Hancock  
Senior Planner

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TRADITIONAL HOME OF  
THE BUNDJALUNG PEOPLE

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