



STATE ENVIRONMENTAL PLANNING POLICY AMENDMENT (HOUSING) 2023

under the Environmental Planning and Assessment Act 1979



TRACES | MHN DESIGN UNION
Photographer | Martin Mischkulnig

NSW CHAPTER

Submission issued 17 October 2023

ABOUT THE INSTITUTE

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 15,000 members across Australia and overseas including 5,000 members in the NSW Chapter.

The Institute exists to advance the interests of members, their professional standards and contemporary practice, and expand and advocate the value of Architects and Architecture to the sustainable growth of our communities, economy and culture.

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

PURPOSE

- This submission is made by the Australian Institute of Architects (the Institute) to provide comment on amendments to the State Environmental Planning Policy (Housing) 2023 under the Environmental Planning and Assessment Act 1979.
- At the time of this submission the National President is Stuart Tanner, and the NSW Chapter President is Adam Haddow.

CONTACT DETAILS

Australian Institute of Architects
ABN 72 000 023 012

Contact Name: Lisa King | Advocacy and Policy Manager NSW
Email: lisa.king@architecture.com.au

TABLE OF CONTENTS

1	EXECUTIVE SUMMARY	4
2	INTRODUCTION	5
3	HOUSING SEPP AMENDMENTS	6
4	CONCLUSION	15



EXECUTIVE SUMMARY

We would like to thank you for the opportunity to provide comments on the proposed amendments to the State Environmental Planning Policy (Housing) 2023 (Housing SEPP).

The Institute shares the NSW Government's belief that *the planning system can have a positive impact in supporting the delivery of new homes, allowing all people in NSW to access affordable and well-designed housing, no matter their income or circumstances*. We also support the policy framework of the Housing SEPP and recognise the important and ongoing role it plays in addressing the social and affordable housing shortages in NSW.

We support the general intent of the proposed amendments however we hold concerns about their implementation. This submission provides specific comment on the amendments and our recommendations as to how the provisions could be further modified to successfully achieve the desired intent. These comments have been provided based on the practical experience of our expert members in preparing development applications submitted for approval to council and work within the community housing sector.

We welcome the opportunity to further discuss with you our recommendations and provide supporting case studies should they be required.

RECOMMENDATIONS:

- ensure images in supporting documents visually represent optimal built outcomes
- list Seniors Housing specifically in residential development description 15 (b)
- define affordable housing in clear, concise language which is part of a national definition
- ensure affordable housing is provided in perpetuity rather than for 15 years
- mandate inclusionary zoning rather than providing an opt in model
- where the maximum permissible floor space ratio is >1.5:1 the requirement for affordable housing must be increased to 30%
- ensure wording is concise and clear to avoid conflict particularly with respect to 'flexibility'
- provide detailed guidance for both proponents and relevant authorities including case studies
- where existing definitions already exist do not create new, duplicate definitions
- modify 146 (1) (b) to state that only Parts 3 & 4 of the Apartment Design Guide should be considered by the consent authority in the assessment process
- consider the ability for reintroduction of native planting and/or increase to canopy cover rather than requiring landscaping to match existing

1 INTRODUCTION

The Australian Institute of Architects' raising the quality of the built environment

The Australian Institute of Architects (the Institute) and its members are dedicated to raising the quality of the built environment for people and to the advancement of architecture. We seek to improve the enduring health and wellbeing of all Australians and our diverse communities. The design of the built environment shapes the places where we live, work and meet. The quality of the design affects how spaces and places function and has the potential to stimulate the economy and enhance the environment.

Good design adds value to all aspects of the built environment and the significant building sector of Australia's economy. Australian architects have a worldwide reputation for innovative design leadership and our profession is well placed to support governments by providing advice on ways to address key challenges in our built environment.

As identified by the NSW Government, there is a critical need to build more homes for our growing population, boost housing supply and improve housing affordability. There are known barriers to the delivery of this housing created by the policy settings and culture within the current NSW planning system. We support simplification of the planning pathways and reduction in planning risks and costs for development approvals to enable effective delivery of social and affordable housing.

3 HOUSING SEPP AMENDMENTS

PROPOSED AMENDMENT	COMMENTS
Draft In-fill affordable Housing Guide and State Environmental Planning Policy Amendment (Housing) 2023 – Infill Housing	
Cover image	<p>It is critical to encourage support for this amendment and the intended increase in affordable housing through providing successful visual examples of how this may be achieved. We strongly urge DPE to replace the cover image provided on the Practice Note with an image that conveys high quality design outcomes in this typology. The Institute is very happy to provide award-winning examples to assist in this task.</p>
Division 1 In-fill affordable housing provisions Section 16 Development to which Division applies	<p><i>15B Definition</i> <i>In this division—</i> residential development means development for the following purposes— <i>(a) attached dwellings,</i> <i>(b) dual occupancies,</i> <i>(c) dwelling houses,</i> <i>(d) manor houses,</i> <i>(e) multi dwelling housing,</i> <i>(f) multi dwelling housing (terraces),</i> <i>(g) residential flat buildings,</i> <i>(h) semi-detached dwellings,</i> <i>(i) shop top housing.'</i></p> <p>Seniors Housing is a category of residential accommodation where there will be growing demand for more affordable housing solutions. It should be specifically listed here.</p>
What is affordable housing?	<p>The Australia government’s Housing Accord 2022 defines affordable housing as:</p> <p><i>‘... “affordable housing” is generally taken to refer to rental housing that is provided at below market rent to qualifying tenants (usually between 70 and 80 per cent of market rent). Where states include home ownership in their affordable housing policies and/or programs, this will be included in the definition of affordable housing alongside rental housing, where those policies are consistent with the objectives of the Accord to provide more long-term supply of affordable housing for those who need it.’</i></p> <p>The NSW government Draft Practice Note defines affordable housing as:</p> <p>‘Affordable housing means housing for very low income households, low income households or moderate income households.</p>

PROPOSED AMENDMENT	COMMENTS
	<p><i>The Housing SEPP establishes the following income eligibility limits for very low, low and moderate income households:</i></p> <p><i>i) households that have a gross income within the following ranges of percentages of the median household income for Greater Sydney or the Rest of NSW:</i></p> <p><i>a. very low income household—less than 50%,</i></p> <p><i>b. low income household—50—less than 80%,</i></p> <p><i>c. moderate income household—80—120%, and pays no more than 30% of the gross income in rent, or,</i></p> <p><i>ii) households that are eligible to occupy rental accommodation under the National Rental Affordability Scheme are also eligible for affordable housing under the Housing SEPP.’</i></p> <p>The Community Housing Industry Association defines affordable housing as:</p> <p><i>‘This type of housing is usually defined as housing that is rented at a lower than market rate, often specifically for essential or key workers who have low to medium income levels.’</i></p> <p>AHURI notes that there is currently in Australia, affordable housing:</p> <p><i>‘doesn’t have a common meaning across jurisdictions and government programs.</i></p> <p><i>For some jurisdictions, ‘affordability’ may be defined based on a household’s ability to pay (determined by the household’s income), for others it may be defined as a housing rent or price that is lower than the prevailing local market rate. Some jurisdictions refer to rental housing only, for others it includes home ownership as well as rental.’</i></p> <p>The Institute strongly advocates that the NSW government, along with the federal government and the other states and territories prioritises a common industry definition for <i>affordable housing</i> in order to ensure targets can more accurately be delivered and measured.</p>
<p>What are the new in-fill affordable housing provisions?</p>	<p>The Institute strongly holds that an incentive or bonus must deliver positive outcomes for the community as a whole and as such, no height and FSR bonus should be available in this typology unless it is in the process of provision of affordable housing in perpetuity.</p> <p><i>‘The new in-fill affordable housing provisions increase the FSR bonus to 30% and introduce a new residential flat building and shop top housing building height bonus of 30% (in-fill affordable housing bonuses) for projects that include at least 15% of the residential development gross floor area (GFA) as affordable housing for a minimum of 15 years.’</i></p>

PROPOSED AMENDMENT	COMMENTS																															
Inclusion of affordable housing is optional not mandatory	<p>The Institute strongly advocates for an across-the-board inclusionary zoning policy where 15% affordable housing is mandated rather than opted into by particular proponents. This will ensure a larger, faster supply of dwellings and will ensure dwellings are built in areas of most need rather than only in areas where proponent margin is such that it is incentivised.</p> <p><i>'This provision operates by providing an FSR bonus in addition to the maximum permissible FSR for the residential accommodation component of the development (including any bonus available under a local environmental plan).'</i></p>																															
Section 17 Additional Floor Space Ratio	<p>The Institute believes that retaining the existing bonus provision of 0.5:1 and the inclusion of the new 30% provision creates confusion.</p> <p>The existing 0.5:1 bonus provision is widely understood in the industry as creating a bonus that is too large to be reasonably accommodated on land with an FSR below 1.5:1. We recommend that the 0.5:1 bonus be deleted. The bonus as a percentage of the permissible floor space ratio is appropriate as it ensures an incremental increase in density relative to the scale of the proposed development.</p> <p>Although there is an intent for the development of affordable housing to be more 'attractive' with greater 'incentive' (Practice Note p4), an unintended consequence may be that the provision of affordable housing on larger sites is in actual effect reduced.</p> <p>Refer to the example below for a site with area of 2000m².</p> <table border="1" data-bbox="536 1303 1398 1599"> <thead> <tr> <th colspan="2">Site Area</th> <th colspan="5">2000</th> </tr> <tr> <th></th> <th>FSR</th> <th>GFA</th> <th>No. units</th> <th>Affordable %</th> <th>Affordable units</th> </tr> </thead> <tbody> <tr> <td>Base</td> <td>2 :1</td> <td>4,000</td> <td>44</td> <td>0</td> <td>-</td> </tr> <tr> <td>Current</td> <td>2.5 :1</td> <td>5,000</td> <td>56</td> <td>50%</td> <td>28</td> </tr> <tr> <td>Proposed</td> <td>2.6 :1</td> <td>5,200</td> <td>58</td> <td>15%</td> <td>9</td> </tr> </tbody> </table> <p>Currently the development would gain an additional 12 units – but be required to provide 28 units as affordable housing. The proposed standards would permit 14 additional units – but only 9 are required to be dedicated for affordable housing. In this instance there is less affordable housing required but 5 additional apartments they can sell to the market.</p> <p>The Institute supports the requirement for more than the 15% affordable housing on larger sites. The Institute strongly advocates that above 1.5:1 there is a higher dedication of affordable housing required.</p> <p>Recommendation: Where the maximum permissible floor space ratio is >1.5:1 the requirement for affordable housing is increased to 30%. In the</p>	Site Area		2000						FSR	GFA	No. units	Affordable %	Affordable units	Base	2 :1	4,000	44	0	-	Current	2.5 :1	5,000	56	50%	28	Proposed	2.6 :1	5,200	58	15%	9
Site Area		2000																														
	FSR	GFA	No. units	Affordable %	Affordable units																											
Base	2 :1	4,000	44	0	-																											
Current	2.5 :1	5,000	56	50%	28																											
Proposed	2.6 :1	5,200	58	15%	9																											

PROPOSED AMENDMENT	COMMENTS
	<p>example above that would require 17 apartments be dedicated for affordable housing.</p>
<p>Section 18 Additional Height</p>	<p>This provision is strongly supported. Additional height is necessary to maintain amenity and accommodate the additional floor space.</p>
<p>Flexible application of in-fill affordable housing provisions</p>	<p>Responding to local standards</p> <p>The Institute is concerned that the language used in the section of the guide is ambiguous and too readily open to varying interpretation which may lead to adverse outcomes for the community.</p> <p>Based on the experience of our expert members, the most significant barrier to the delivery of affordable housing is created by the risks associated with the conflict between local planning controls and the planning controls provided in the Housing SEPP (and its predecessor (SEPP Affordable Rental Housing and Seniors Housing)).</p> <p>The draft SEPP does not provide any provisions (apart from the height bonus) that further support the flexible application of control, relieve the tension between other development standards and controls.</p> <p>The Housing SEPP provides for additional floor space that exceeds the maximum floor space otherwise allowed on the land, and also a form of housing different to what is typically expected by residents in an area.</p> <p>Typically, planning controls in an LEP and DCP are highly calibrated – such that a non-compliance in one control (e.g., floor space) often results in non-compliances across many areas.</p> <p>The Minister's directions in preparation of planning policy should require councils to develop planning controls and building envelopes that allow for the bonus floor space to be incorporated, resolving the tension at the strategic planning stage.</p> <p>While noting the importance that bonuses should not be treated as an 'entitlement', the note then asks that consent authorities be flexible, particularly in the areas of amenity, view corridors and overshadowing. These are issues of significant importance to communities and there is concern a demand for consent authorities to be flexible regarding these particular aspects could lead to conflict.</p> <p>The Institute encourages a tightening of language perhaps including case studies to demonstrate where flexibility is best applied and where it is not recommended. Additionally, guidance should be provided to councils so that future planning controls in DCP and LEP's (which lay out controls and building envelopes) allow space for any affordable housing floor space bonuses, reducing conflict between the local controls and SEPP provisions and consequently ensuring smoothing pathways through planning while securing community support.</p>

PROPOSED AMENDMENT	COMMENTS
	<p><i>Responding to local standards</i></p> <p><i>The full extent of the in-fill affordable housing bonuses may not be achieved on all sites, due to site constraints and local impacts. The in-fill affordable housing bonuses should not be treated as an entitlement. DAs that propose in-fill affordable housing will be subject to merit assessment by the consent authority. The application of the bonuses does not affect a consent authority's responsibility to consider the requirements of relevant EPIs, a development's likely impacts or the suitability of the site for the development.</i></p> <p><i>In applying the in-fill affordable housing bonuses, applicants and consent authorities should be flexible in the design response of the development having regard to:</i></p> <ul style="list-style-type: none"> <i>• the government's clear policy intent to deliver more affordable housing through the infill provisions of the Housing SEPP</i> <i>• the impact of the development on the amenity of the site and adjoining land, taking into account the building's height, scale and bulk,</i> <i>• the impact of the development on view corridors,</i> <i>• overshadowing of open spaces and adjoining land, and</i> <i>• any other relevant consideration.'</i> <p>The example provided below further demonstrates the ambiguity of the language used and consequent potential conflict which may arise as a result both between proponents and local authorities, and between local authorities and their communities.</p> <p><i>'The in-fill affordable housing bonuses do not override any provision in any local environmental plan or other EPI. However, local development standards should be applied flexibly and need to be balanced against the Government's policy intent to realise more affordable housing. • For example – Solar access controls.'</i></p> <p>While the solar access is an example of an aspect of design which can be clearly quantified, measured and compliance identified readily, a more challenging example would be an aspect of design such as setbacks which, dependent on site, context, etc, may be more easily able to accommodate a flexible approach which could prove to maintain or in some cases improve amenity for residents and the local community. Again, case studies would be of particular benefit in demonstrating this.</p> <p><i>'When addressing clause 4.6(3)(b) in a written request, applicants must identify environmental planning grounds sufficient to justify the contravention of the minimum 15% affordable housing standard, and demonstrate why compliance with the standard is unreasonable and unnecessary in the circumstances.</i></p>

PROPOSED AMENDMENT	COMMENTS
	<p><i>For example, an applicant provides evidence to the consent authority that 15% affordable housing is not economically viable due to the inability to accommodate the full FSR bonus, and seeks instead to deliver 12% affordable housing where a bonus of approximately 24% can be successfully achieved.'</i></p> <p>In-fill affordable housing development standard</p> <p>The Institute holds that <i>economic viability</i> is not grounds to justify contravention of planning requirements, and that local authorities are not equipped or trained to determine economic viability. Further, economic viability for one proponent may differ vastly from another due to many factors including when the site was acquired, how it was acquired and the cost of acquiring the site to that particular proponent. It is not in the remit of local authorities to study economic data (even if it could be accurately provided) and assess based on these grounds.</p>
<p>State Environmental Planning Policy Amendment (Housing) 2023 – Residential Apartment Development</p>	
<p>Chapter 4 Design of residential apartment development</p>	<p>142 Aims of chapter</p> <p>The Institute strongly supports the recognition of the importance of high quality design in ensuring optimal built outcomes.</p> <p><i>'(2) This chapter recognises that the design of residential apartment development is significant because of the economic, environmental, cultural and social benefits of high quality design.'</i></p> <p>144 Application of chapter</p> <p>The Institute maintains further clarification is required to avoid common disputes arising from this terminology and land uses: Specific examples include:</p> <p>Mixed use – The use of the term 'residential accommodation' captures a broad range of residential uses to which SEPP 65 would not normally apply. This needs to be reconsidered. For example: a multi-dwelling housing development that also contains a food and drink premises (café) is a mixed use development. Where it has a basement car park, it will be categorised as a class 2 development.</p> <p>A Seniors housing development with a neighbourhood shop and residential care facility becomes a mixed use development with a residential component.</p> <p>Seniors – Seniors housing often includes dwellings that are arranged so that the development can be characterised as a residential flat building, creating a double characterisation. The application of SEPP 65 is</p>

PROPOSED AMENDMENT	COMMENTS
	<p>inconsistent across NSW in this typology. Some councils consider it development to which SEPP 65 applies, and others do not. The SEPP needs to make it clear whether this division applies to seniors housing.</p> <p>It is unclear why “underground car parking storey’ needs to be created as a new term, with new definition. ‘Basement’ is defined in the Standard Instrument’. Use of the term <i>basement</i> car parking is well understood by the industry and planning community – introducing new unnecessary terms creates confusion.</p> <p>If ‘underground car parking’ remains a defined term, the way in which it is measured needs to be defined (in the same way that basement is defined by reference to the <i>floor level</i> of the storey immediately above and <i>ground level (existing)</i>).</p> <p>146 Determination of development applications and modification of applications for residential apartment development</p> <p>146 (1) (b) requires the consent authority to consider the Apartment Design Guide in its entirety. As architects cl 29 of the EP&A Regulation requires us to address how the development achieves the objectives of Parts 3 & 4 of the Apartment Design Guide.</p> <p>It is critical that the SEPP is modified to state that only Parts 3 & 4 of the Apartment Design Guide should be considered by the consent authority in the assessment process.</p> <p>This will support and reinforce the policy intent that the ADG is to be applied flexibly and not be used as a development standard. Clause 146(b) should be amended to refer to satisfaction of Council as to <i>‘how the development achieves the Objectives of Parts 3 & 4 of the Apartment Design Guide’</i>.</p> <p>The Institute notes that clause 29(1) in the current version of SEPP 65 contains a clause requiring a modification to a development application not ‘diminish or detract from the approved design quality’. This is a critically important clause which stops the watering down of proposals after DA approval. It is crucial this clause is reinstated.</p>
<p>State Environmental Planning Policy Amendment (Housing) 2023 – Seniors</p>	
<p>Schedule 8 Design principles for seniors housing</p>	<p>1 Neighbourhood amenity and streetscape</p> <p><i>‘1 Neighbourhood amenity and streetscape</i></p> <p><i>(f) to include plants reasonably similar to other plants in the street,’</i></p> <p>The Institute notes in some locations, given the worsening environmental impacts of climate change, it may be preferable to consider the reintroduction of native planting and/ or increase canopy cover rather</p>

PROPOSED AMENDMENT	COMMENTS
	<p>than a continuation of species which may be less sustainable and require more resources to maintain, or have smaller canopy cover.</p> <p><i>'1 Neighbourhood amenity and streetscape</i></p> <p><i>(f) to include plants reasonably similar to other plants in the street,'</i></p>

4 CONCLUSION

Thank you for the opportunity to review the proposed amendments to the State Environmental Planning Policy (Housing) 2023 and to provide our feedback and recommendations. We maintain that a streamlined, concise and well-conceived Housing SEPP can effectively deliver agility, amenity, innovation and much-needed affordability into the NSW housing sector.

While the Institute welcomes the NSW government's concerted efforts to stimulate the provision of affordable housing, we note this is still a voluntary mechanism which will rely on the will and inclination of proponents in the private sector. We hold concerns that without clear and concise language around the application of flexibility that we may see an increase of conflict within communities and between proponents and local authorities which may lead to increased litigation and consequent delays in housing provision. It will be imperative that detailed design guidance be provided to proponents and to the relevant authorities to ensure crucial amenity is maintained in this typology. The provision of detailed case studies will assist in providing clarity to all stakeholders.

We welcome the opportunity for continued consultation as these amendments move forward and we offer the Institute's support and expertise in assisting the DPE to achieve high quality, affordable housing outcomes for all in NSW.