



PROPOSED AMENDMENTS TO STATE ENVIRONMENTAL PLANNING POLICY (HOUSING) 2021

under the Environmental Planning and Assessment Act 1979



NSW CHAPTER

Submission issued 16 December 2022

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 13,800 members across Australia and overseas including 3,800 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) 2021 under the Environmental Planning and Assessment Act 1979.
- At the time of this submission the National President is Shannon Battison and the NSW Chapter President is Laura Cockburn FRAIA

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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.

We would like to thank you for the opportunity to provide comment on the proposed amendments to infill affordable housing, group homes, supportive accommodation and social housing provisions of State Environmental Planning Policy (Housing) 2021 (Housing SEPP).

The Institute shares the DPIE aims of 'affordable, well-designed' homes 'in places people want to live' along with 'a strong social housing sector'. 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 aims of the proposed amendments and agree with the barriers identified in both the EIE, findings of research undertaken by the Australian Housing and Urban Research Institute and also the report published by NSW Legislative Assembly's Committee on Social Services.

The table below provides specific comment on the proposed amendments and our recommendations as to how the provisions could be further modified to achieve these aims. 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 would be delighted to further discuss with you some of the issues experienced by our members and share case studies that illustrate the barriers to providing diverse and affordable housing in NSW.

2 GENERAL COMMENTS

The provision of diverse and affordable housing

As identified by the Inquiry, there is increased need for temporary and long-term housing needed to address the social and affordable housing shortage. There are 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.

The use of the exempt, complying development and where appropriate without consent pathways is supported. A disproportionate number of development applications for affordable housing are approved through the Land and Environment Court – often as a result of community objection, frustration with approval timeframes and development standards that are not fit for purpose. Development standards need to be appropriately calibrated to retain a robust planning system.

Resolve conflict between SEPP and local planning controls

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))

The Housing SEPP provides for additional floor space that exceeds the maximum floor space otherwise allowed on the land resulting in a scale of development different to what is typically expected by residents in an area. This only enhances public distrust of the planning system.

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. When an application is submitted for affordable housing on land that, for example, has a base FSR of 0.7:1, the 0.5:1 bonus results in a building that is 70% larger than what would otherwise be permitted.

Further use of non-discretionary standards is encouraged to reduce risk and provide a clearer message of the role of the Housing SEPP.

The Institute also encourages guidance 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.

Access to housing

The provision of diverse and accessible housing for the whole community includes consideration of the needs for a broad spectrum of the community. The institute strongly encourages NSW to adopt the NCC 2022 liveable housing provisions.

The current consideration of housing access within the planning system is 'ad hoc' with a wide variety of DCP provisions provided inconsistently in different councils across the state. The current NCC provisions provide a sensible balance that recognises existing site constraints (including topography) and the need to provide access to new dwellings for the majority of the community.

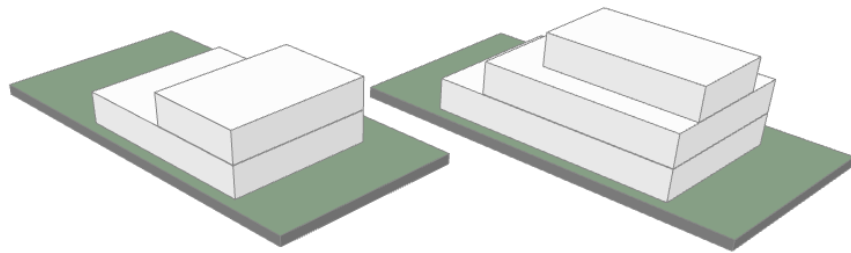
We understand that this is not within the scope of this draft SEPP – but we use this opportunity to reinforce our position given the relationship to the current subject matter.

The provision of adaptable housing required in many council DCP's is a particularly wasteful use of resources. Adaptable housing is constructed to comply with AS 4299 – 1995 at a rate of between 10 -50% (depending on local government area). Mostly they are provided as apartments. Unfortunately, there is no ability for a person looking for a dwelling built to this specification to find these dwellings – without searching through development consents. There is no register of these dwellings, and no notation on title.

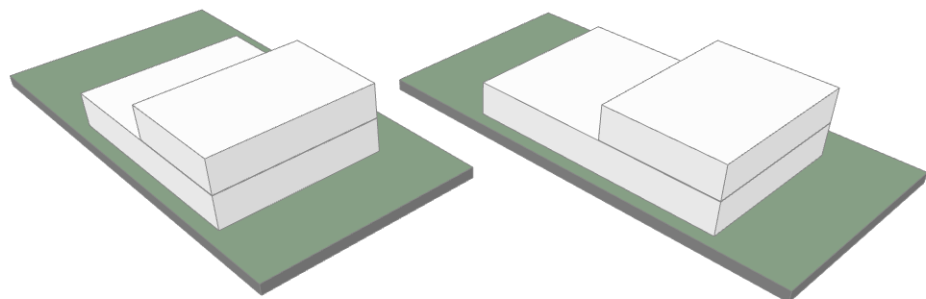
At a minimum a register of these dwellings should be established – so a potential purchaser could find the dwellings. Preferably all dwelling should be constructed to the NCC 2022 standard, and the provision of adaptable housing repealed.

3 HOUSING SEPP AMENDMENTS

PROPOSED AMENDMENT	COMMENTS
Affordable Infill Housing	
Affordable housing bonus floor space amendment	<p>We agree with the barriers that have been identified.</p> <p>We disagree with the proposed amendment and recommend that a flat 25% bonus be provided across all floor space ratio bands. The proposed amendment does not resolve the impacts from the increase in building bulk created by the bonus FSR in lower density areas. This is typically the cause of most conflict and adds significant risk to the development.</p> <p>Most of the ‘accessible areas’ to which this part of the SEPP applies in metropolitan NSW has an FSR less than 1:1 (or no FSR)</p> <p>The provision of a flat FSR bonus for FSR less than 2:1 creates built form outcomes that are substantially larger than what would otherwise be approved – this increases resident and council objection to the proposal because of the difference in scale compared to the surrounding development and also the inevitable non-compliance with other controls.</p> <p>Example: On land with an FSR of 0.55:1 (e.g. Sutherland Shire) when the full bonus (0.625:1) is applied proponents will be able to achieve an FSR of 1.175:1. (210% increase). Current LEP landscape, height and DCP setback controls are calibrated to the 0.55:1 FSR. The resulting application will most likely not comply with landscape, height and setback controls. Residents object to development that does not comply with the controls. This makes it difficult for consent authorities to grant consent and increases the cost to obtain the consent. Increasing the bonus floor space is of no benefit if the floor space cannot be realised.</p>

PROPOSED AMENDMENT
COMMENTS


Difference of building envelope of development at 0.55:1 and 1.175:1 under the proposed bonus.



Difference in building envelope of development at 0.55:1 with 25% bonus (0.69:1)

On lower density sites (below 1:1), reducing the amount of affordable housing dedicated would probably increase the attractiveness of the provision of affordable housing rather than increasing the bonus. Perhaps the affordable housing floor space required should equal the bonus floor space used.

We support the simplification of the formula:

Bonus % = % of affordable housing / 2. This is a more practical way to determine the bonus and affordable housing required to be dedicated.

We ask that you review how incentives can be provided for areas where no FSR is specified on the land, which is a substantial proportion of residential land in the state – e.g. North Sydney, The Hills, Cumberland, Penrith

We ask you to consider additional non-discretionary standards e.g. height increased plus 10% (to max 3m) to reduce conflict with existing local development standards.

Update to guideline for developing affordable

Support

PROPOSED AMENDMENT	COMMENTS
housing contributions schemes	
Social Housing	
Min lot size for dual occupancy – override council LEP standards for minimum lot size for dual occupancy and apply min 400m ²	Generally supportive – however this could result in significant changes to character, and draw attention to social housing. We recommend this change be supported by more detailed analysis. It is acknowledged that many councils have set minimum lot size areas for dual occupancies at a level that limits dual occupancy. Often this is to prevent land fragmentation. However, there are many areas where dual occupancies are not appropriate and would not be a suitable character fit.
Self assessment power – LAHC	Supported
SSD threshold	Supported
Group Homes / Supported living	
New development types	<p>Support the change in the name of the development type to reduce the social stigma.</p> <p>We encourage that the land use definition be expressed in the broadest possible language to ensure all community / social / supportive housing types can be accommodated.</p> <p>Agree with the issues raised with the current land use definitions.</p> <p>We do not understand why it is necessary to distinguish between high support or supported living in the land use term. This level of distinction is not created in Victoria or Queensland in their land use terms and will only create issues in the classification of a proposed development. The development type could be simply titled ‘Supported Living’.</p> <p>The limitations of 18 months applied may not be suited for certain residents – particularly those experiencing domestic violence or those</p>

PROPOSED AMENDMENT	COMMENTS
	<p>at risk of homelessness. Is this a necessary requirement in the land use definition?</p> <p>It also retains the current risk of unreasonable enforcement action. Specific requirements for high care or supported care can be provided in the development standards – rather than the definitions. Transitional accommodation provides a home for people from a wide range of backgrounds and needs – and many of these occupants require some level of support to enable them to move to more permanent accommodation.</p> <p>The LAHC publication <i>Domestic Violence Crisis Accommodation Functional Design Brief</i> provides best-practice guidelines for the design of crisis accommodation and could be a consideration in assessment of applications.</p> <p>Alternative land use definition could be: <i>Support Housing – means the use of a premises for temporary or permanent accommodation by persons with a disability, homeless, or vulnerable, and is managed by a government agency, NDIS provider or registered community housing provider.</i></p>
High Support Accom	<p>As noted above – there is limited need to define a specific land use term.</p> <p>Support delivery of development by government agencies through Without Development Consent pathway.</p> <p>Development by non-government agencies could utilise the same complying development provisions as proposed for supported living.</p>
Supported Living	<p>We consider the cap on the number of bedrooms to be appropriate for the complying development pathway as this is a significant indicator of development intensity and the likely impacts on the neighbourhood.</p> <p>There should be no limit on the number of bedrooms for development carried out without consent by a public authority, or a development application (which will be subject to merit considerations).</p>
Supported living – complying development provisions	<p>It is recommended that the following be included in the complying development standards:</p> <ul style="list-style-type: none"> - Maximum number of bedrooms – 10 - Minimum room size – 14m² (excluding kitchen and bathroom) – not applicable where more than one bedroom is provided in a dwelling unit - Required to have at least one staff member on site or on-call 24 hours a day

PROPOSED AMENDMENT	COMMENTS
	<ul style="list-style-type: none"> - Rooms may have private kitchen or bathroom facilities. Support other standards.
Temporary Support Accom	
Use of existing buildings - without consent pathway	Supported – although it is unclear why existing residential development would require a change of use to permit this form of residential use?
Use of existing buildings - exempt and complying	<p>It is unclear why complying development is not available for existing residential accommodation or tourist and visitor accommodation. Minor works may be necessary to enable the conversion. (For example, changing room configuration or bathroom upgrade for accessibility, creating a common area, etc.)</p> <p>Use of the complying development pathway for this purpose is facilitative of the development and will avoid the lengthy process and costs involved in a development application.</p> <p>One of the more significant challenges in the use of existing non-Class 2 or Class 3 buildings for residential purposes is the ability to meet the requirements of the NCC. This will often result in the need for ‘performance solutions’ and referrals to FRNSW.</p>
Temporary use of vacant land	<p>Supported.</p> <p>Support the change from “not adversely” to “not unreasonably”, although the language should still suggest that the impact must be negative or detrimental, or as with the recent Agritourism amendments that the impacts must be “significantly adverse”. Care needs to be taken that closing one subjective term does not just create another, that will be endlessly tested in the courts.</p>
Boarding House opportunities	
Increasing land on which boarding	Supported

PROPOSED AMENDMENT	COMMENTS
houses can be located	
Accessibility Standards	
Changes to Seniors Housing standards	<p>Not supported.</p> <p>Should not be a development standard (no flexibility). Operators to furnish processes to meet DDA compliance, similar to verification methods used to meet the performance requirements of the NCC Standards not fit for purpose.</p> <p>We note that the revisions provided are a substantial improvement on the existing standards and provide greater flexibility where appropriate.</p> <p>These standards are not fit for purpose and create additional costs for the delivery with often unnecessary features. Most dwellings constructed under this standard still require modification during the life cycle of the dwelling to meet the particular needs of the occupant.</p> <p>Underlying data indicates that AS1428.1 is unable to meet the needs of a wide range of the community requiring assistive devices and/or mobility needs inside a dwelling i.e. 1428.1/AS4299 misapplied within Class 1 and Class 2 dwellings.</p> <p>We recommend that more flexibility is allowed for greater adaptability to meet the specific needs of occupants.</p> <p>For example: Auto devices to operate doors can be retrofitted by the housing provider as part of a bespoke disability modification process – rather than 1428.1 400mm+ lock-side wall nibs.</p> <p>It is noted that references in the sections on Kitchens, Laundries and other areas incorrectly refers to 1428.1 as this standard does not provide design requirements for these spaces.</p> <p>Recommendations:</p> <p>The Gold level of LHDG is a sufficient benchmark minimum, and provides a sufficient framework for most future modifications required to meet occupants’ requirements.</p> <p>If particular standards are adopted – these should not be development standards that require a 4.6 variation where a different solution is provided that meets the needs of particular occupants. The standards could be contained in the revised design guide.</p> <p>Many of these standards (such as power points and data points) are more appropriate as ‘standard conditions of consent’ as they are</p>

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	<p>matters appropriately considered at the detailed design phase of a development where they are certified by an access consultant after reviewing construction documentation.</p>
<p>Draft Seniors Housing Guideline</p>	<p>The design guide is a good education resource. It is well suited for an applicant or planner that is unaware of the desirable features of seniors housing.</p> <p>We are concerned that in its current form it is not a useful tool in development assessment.</p> <p>The SEPP intends to require consideration of the contents of the guide. Parts of the guide however provide content that is not necessary for assessment of a development application and are not written in language that is suitable for use in the assessment of a development application.</p> <p><i>For example: 1.1.6 Brant reputation and sustainability initiatives; 1.2.5 Locally sourced materials, 1.3.6 Use of quality door hardware. 2.1.6 Engaging expert consultants.</i></p> <p>The language of the guidance needs to be in the form that enables an application to be either supported or refused.</p> <p>An option could be to divide the guide into two parts – general design guidance and matters of consideration in the assessment of development applications. The second part should be short and concise so as not to unnecessarily burden the application and reduce conflict with existing development controls that apply to the land.</p> <p>Arranging design considerations around the Design Principles in the SEPP assists in clear assessment reporting and reduces repetition.</p> <p>Parts of the guidance conflict with the BASIX SEPP and matters considered in a BASIX certificate.</p>

4 CONCLUSION

Thank you for the opportunity to review the proposed amendments to the State Environmental Planning Policy (Housing) 2021 and to provide our feedback and recommendations. We consider that a streamlined, concise and well-conceived Housing SEPP can effectively deliver agility, amenity, innovation and much-needed affordability into the NSW housing sector.

Should you require any further information or wish to discuss any of our comments, please feel free to contact us.

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