



New South Wales

# State Environmental Planning Policy No 10—Retention of Low-Cost Rental Accommodation (Amendment No 6)

under the

Environmental Planning and Assessment Act 1979

His Excellency the Governor, with the advice of the Executive Council, has made the following State environmental planning policy under the *Environmental Planning and Assessment Act 1979* in accordance with the recommendation made by the Minister for Urban Affairs and Planning.

ANDREW REFSHAUGE MP

Minister for Urban Affairs and Planning

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## 1 Name of Policy

This Policy is *State Environmental Planning Policy No 10—Retention of Low-Cost Rental Accommodation (Amendment No 6)*.

## 2 Commencement of Policy

This Policy commences on 28 January 2000.

## 3 Aims, objectives etc

This Policy aims to amend *State Environmental Planning Policy No 10—Low-Cost Rental Accommodation* in order:

- (a) to extend the application of the Principal Policy to the Greater Metropolitan Region of Sydney, and

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- (b) to redefine the rent levels at which rental accommodation is taken to be low-cost for the purposes of the Principal Policy, and
- (c) to replace the Director-General of Housing with the Director-General of the Department of Urban Affairs and Planning as the concurrence authority in the determination of development applications relating to low-cost rental accommodation, and
- (d) to clarify the operation of the Principal Policy in various respects.

### **4 Principal Policy**

In this Policy, *State Environmental Planning Policy No 10—Low-Cost Rental Accommodation* is referred to as the Principal Policy.

### **5 Land to which this Policy applies**

This Policy applies to the land to which the Principal Policy, as amended by this Policy, applies.

### **6 Amendment of Principal Policy**

The Principal Policy is amended as set out in Schedule 1.

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## Schedule 1 Amendment of Principal Policy

(Clause 6)

### [1] Clause 2 Aims, objectives etc

Omit “facilitate conservation”.

Insert instead “provide a mechanism for the retention”.

### [2] Clauses 3 and 3A

Omit clause 3. Insert instead:

#### 3 Definitions

(1) In this Policy:

***backpackers accommodation*** means a building used for the purposes of providing accommodation for tourists, travellers or persons engaged in recreational pursuits and that:

- (a) may have shared facilities, such as a communal bathroom, kitchen or laundry, and
- (b) will generally provide shared accommodation in which there are two or more persons in a room, and
- (c) will generally provide temporary accommodation, but may provide permanent accommodation.

***boarding-house*** means a building:

- (a) that is wholly or partly let in lodgings, and
- (b) that provides lodgers with a principal place of residence for 3 months or more, and
- (c) that generally has shared facilities, such as a communal bathroom, kitchen or laundry, and
- (d) that has rooms with one or more lodgers,

and includes a hotel (not being premises to which a hotelier’s licence under the *Liquor Act 1982* relates).

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***comparable accommodation*** means accommodation that is comparable with other accommodation provided within the premises the subject of a development application to which this Policy applies in that:

- (a) it is similar in location because it is in the same or a neighbouring suburb, and
- (b) it has equivalent access to similar services and facilities, and social and support networks, and
- (c) it is at the same rental level, or is not more than 5% higher than that level, and
- (d) it is available for occupation at the date of lodgment of the development application, and
- (e) in the case of residential flat buildings, comprises dwellings with the same number of bedrooms, and
- (f) it has a like standard of accommodation, including state of repair, size of accommodation and general amenity.

***Director-General*** means the Director-General of the Department of Urban Affairs and Planning.

***dwelling*** means a building or part of a building or a structure designed or used as a separate domicile.

***guidelines*** means guidelines issued from time to time by the Director-General.

***hostel*** means premises that are generally staffed by social workers or support providers and at which:

- (a) residential accommodation is provided in dormitories, or on a single or shared basis, or by a combination of them, and
- (b) cooking, dining, laundering, cleaning and other facilities are provided on a shared basis.

***low-rental residential building***—see clause 3A.

***motel*** means a building or buildings (other than a boarding-house or residential flat building) substantially used for overnight accommodation of travellers and the vehicles used by them whether or not the building or buildings are also used for the provision of meals to those travellers or to the general public.

***residential flat building*** means a building containing two or more dwellings, but not including a row of two or more dwellings attached to each other such as those commonly known as terrace houses, duplexes or townhouses.

***the Act*** means the *Environmental Planning and Assessment Act 1979*.

- (2) Notes included in this Policy are explanatory notes and do not form part of this Policy.

### **3A Low-rental residential building**

- (1) In this Policy, ***low-rental residential building*** means the following:
- (a) a boarding-house,
  - (b) a hostel,
  - (c) a residential flat building containing a low-rental dwelling.
- (2) For the purposes of subclause (1) (c), a reference to a ***low-rental dwelling*** is a reference to a dwelling that (at any time in the 24-month period prior to the lodgment of a development application to which this Policy applies) was let at a rental not exceeding the median rental level for that time:
- (a) specified in the *Rent Report* or *Rent & Sales Report NSW* published by the Department of Urban Affairs and Planning or the Department of Housing, or
  - (b) specified in a publication issued in place of those publications by or on behalf of the Government,
- in relation to a dwelling of the same type, having the same number of bedrooms and located in the same local government area.

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- (3) In this Policy, *low-rental residential building* includes a building:
- (a) that, at the time of lodgment of a development application to which this Policy applies, is lawfully used for a purpose specified in subclause (1), irrespective of the purpose for which the building may have been erected, or
  - (b) that was used for a purpose specified in subclause (1) but has been changed unlawfully to another use, or
  - (c) that is vacant but the last significant use of which was for a purpose specified in subclause (1).

**[3] Clause 5 Relationship with other environmental planning instruments**

Omit “a building referred to in clause 6 (1) (b) (ii)” from clause 5 (3).  
Insert instead “low-rental residential buildings”.

**[4] Clause 5 (4)**

Insert after clause 5 (3):

- (4) Development to which this Policy applies must not be specified as exempt development or complying development under another environmental planning instrument.

**[5] Clauses 6, 7 and 8**

Omit the clauses. Insert instead:

**6 Buildings to which this Policy applies**

- (1) This Policy applies only to those buildings that are low-rental residential buildings as at 28 January 2000, and does not apply to any building that becomes a low-rental residential building after that date.
- (2) This Policy does not apply to a building:
  - (a) that comprises a single dwelling, or

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- (b) that comprises backpackers accommodation, a motel or any premises to which a hotelier's licence under the *Liquor Act 1982* relates, or
  - (c) that has been approved for subdivision under the *Strata Schemes (Freehold Development) Act 1973*, or
  - (d) to which *State Environmental Planning Policy No 5—Housing for Older People or People with a Disability* applies, or
  - (e) that comprises a residential flat building owned by, or under the care, control and management of, the Land and Housing Corporation constituted by the *Housing Act 1985*.

**7 Demolition, alteration etc of low-rental residential buildings**

- (1) A person must not do any of the following in relation to a boarding house or hostel:
  - (a) demolish the boarding house or hostel,
  - (b) alter or add to the structure or fabric of the inside or outside of the boarding house or hostel,
  - (c) change the use of the boarding house or hostel to another use (including, in particular, a change of use to backpackers accommodation),
  - (d) strata subdivide the boarding house or hostel,except with the development consent of the council of the area in which the boarding house or hostel is situated.
- (2) A person must not do any of the following in relation to a residential flat building referred to in clause 3A (1) (c):
  - (a) alter or add to the structure or fabric of the inside or outside of the residential flat building,
  - (b) strata subdivide the residential flat building,except with the development consent of the council of the area in which the residential flat building is situated.

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- (3) A council may not give development consent referred to in subclause (1) or (2) except with the prior concurrence of the Director-General.
- (4) In determining a development application required by this clause, the council is, in accordance with the guidelines, to consider the following in each case:
  - (a) whether there is likely to be a major reduction in the number of households or units of low-rental accommodation on the land to which the application relates,
  - (b) whether there is available sufficient comparable accommodation in the locality to satisfy the demand for such accommodation in that locality,
  - (c) whether the development, if carried out, is likely to cause adverse social and economic effects on the general community,
  - (d) whether adequate arrangements have been made to assist the residents (if any) of the building likely to be displaced to find alternative comparable accommodation in the locality,
  - (e) whether the cumulative impact of the loss of low-rental residential accommodation in the council's area will result in a significant reduction in the stock of that accommodation,
  - (f) the structural soundness of the building, the extent to which the building complies with any relevant fire safety requirements and the estimated cost of carrying out work necessary to ensure the structural soundness of the building and the compliance of the building with the fire safety requirements.
- (5) For the purposes of subclause (4) (b), sufficient comparable accommodation is conclusively taken to be not available in the locality if the vacancy rate in private rental



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accommodation for Sydney as published monthly by the Real Estate Institute of New South Wales is, for the quarter immediately preceding the date of lodgment of the development application, less than 3%.

**Note.** If the vacancy rate in private rental accommodation for Sydney as published monthly by the Real Estate Institute of New South Wales is, for the quarter immediately preceding the date of lodgment of the development application, equal to or more than 3%, the council must make a determination under subclause (4) (b) having regard to the definition in this Policy of **comparable accommodation**.

- (6) A reference in subclause (4) to the locality in relation to a building and its residents includes a reference to the immediate locality and its surrounding suburbs, as well as residents having reasonable access to existing social and support networks, local services and facilities.
- (7) In deciding whether to grant concurrence under this clause, the Director-General must take into consideration:
  - (a) in each case, the matters specified in subclause (4), and
  - (b) in addition, in the case of a boarding-house, the financial viability of the continued use of the boarding-house, as determined by the Director-General in accordance with the guidelines.
- (8) The Director-General must refuse to grant concurrence under this clause if the Director-General is of the opinion that the cumulative impact of the continued loss of low-rental residential accommodation in the council's area will result in a significant reduction in the stock of that accommodation.
- (9) Despite subclause (8), the Director-General may grant concurrence under this clause if the Director-General is of the opinion that the building cannot continue to be used for low-cost rental accommodation because:
  - (a) the building, on advice furnished by the council, is structurally unsound, or
  - (b) in the case of a boarding-house, its continued use as a boarding-house is not financially viable.

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### 8 Transitional provision

This Policy, as amended by *State Environmental Planning Policy No 10—Retention of Low-Cost Rental Accommodation (Amendment No 6)*, does not apply to a development application that was lodged before 28 January 2000.

### [6] Schedules 1 and 2

Omit the Schedules. Insert instead:

### Schedule 1 Local government areas to which this Policy applies

(Clause 4)

|                     |                     |                   |
|---------------------|---------------------|-------------------|
| Auburn              | Hornsby             | Pittwater         |
| Ashfield            | Hunters Hill        | Port Stephens     |
| Bankstown City      | Hurstville City     | Randwick City     |
| Baulkham Hills      | Kiama               | Rockdale City     |
| Blacktown City      | Kogarah             | Ryde City         |
| Blue Mountains City | Ku-ring-gai         | Shellharbour City |
| Botany Bay City     | Lake Macquarie City | South Sydney City |
| Burwood             | Lane Cove           | Strathfield       |
| Camden              | Leichhardt          | Sutherland        |
| Campbelltown City   | Liverpool City      | Sydney City       |
| Canterbury City     | Maitland City       | Warringah         |
| Cessnock City       | Manly               | Waverley          |
| Concord             | Marrickville        | Willoughby City   |
| Drummoyne           | Mosman              | Wollondilly       |
| Fairfield City      | Newcastle           | Wollongong City   |
| Gosford City        | North Sydney        | Woollahra         |
| Hawkesbury          | Parramatta City     | Wyong             |
| Holroyd             | Penrith City        |                   |

BY AUTHORITY