



New South Wales

# **State Environmental Planning Policy (Housing) Amendment (Miscellaneous) 2022**

under the

Environmental Planning and Assessment Act 1979

Her 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*.

ANTHONY ROBERTS, MP  
Minister for Planning

## **State Environmental Planning Policy (Housing) Amendment (Miscellaneous) 2022**

under the

Environmental Planning and Assessment Act 1979

### **1 Name of Policy**

This Policy is *State Environmental Planning Policy (Housing) Amendment (Miscellaneous) 2022*.

### **2 Commencement**

This Policy commences on the day on which it is published on the NSW legislation website.

### **3 Repeal of Policy**

This Policy is repealed on the day following the day on which this Policy commences.

## **Schedule 1      Amendment of State Environmental Planning Policy (Housing) 2021**

**[1]      Section 6 Development permitted without consent**

Omit “, other than *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*”.

**[2]      Section 38 Development may be carried out with consent**

Insert “other than in relation to the tenanted component of a residential flat building used as build-to-rent housing” after “applies” in section 38(4).

**[3]      Section 38(4), note**

Insert after section 38(4)—

**Note—** Section 74(2)(d) and (e) contain non-discretionary development standards for car parking in relation to development for the purposes of build-to-rent housing.

**[4]      Section 39 Site compatibility certificates**

Insert after section 39(9)—

- (10) If a certificate is valid at the time a development application is made, the certificate remains valid for the purposes of the development application until the development application is finally determined.

**[5]      Section 49, heading**

Omit the heading. Insert instead—

**49      Definitions**

**[6]      Section 49, definition of “development for the purposes of a secondary dwelling”**

Omit “Schedule 2” from paragraph (a)(ii). Insert instead “Schedule 1”.

**[7]      Section 72 Development for the purposes of build-to-rent housing permitted with consent**

Omit section 72(2). Insert instead—

- (2) This Part applies to development for the purposes of multi dwelling housing, residential flat buildings or shop top housing on land—
- (a) in the following zones—
- (i) a zone in which development for the purposes of residential flat buildings is permissible under another environmental planning instrument,
- (ii) Zone B3 Commercial Core,
- (iii) Zone B4 Mixed Use,
- (iv) Zone B8 Metropolitan Centre, or
- (b) for which a site compatibility certificate has been issued under section 39.

**[8]      Section 80 Land to which Part does not apply—general**

Omit “Schedule 4” from section 80(2). Insert instead “Schedule 3”.

**[9]      Section 82 Definitions**

Insert in appropriate order—

*prescribed zone* means a zone specified in section 79.

**[10] Section 84 Development standards—general**

Omit section 84(2)(c). Insert instead—

- (c) for development on land in a residential zone where residential flat buildings are not permitted—
  - (i) the development will not result in a building with a height of more than 9.5m, excluding servicing equipment on the roof of the building, and
  - (ii) if the roof of the building contains servicing equipment resulting in the building having a height of more than 9.5m—the servicing equipment complies with subsection (3), and
  - (iii) if the development results in a building with more than 2 storeys—the additional storeys are set back within planes that project at an angle of 45 degrees inwards from all side and rear boundaries of the site.

**[11] Section 84(3)**

Omit the subsection. Insert instead—

- (3) The servicing equipment must—
  - (a) be fully integrated into the design of the roof or contained and suitably screened from view from public places, and
  - (b) be limited to an area of no more than 20% of the surface area of the roof, and
  - (c) not result in the building having a height of more than 11.5m.

**[12] Section 86 Development standards for seniors housing—Zones RE2, SP1, SP2, RU5 and R2**

Omit section 86(1)(d)(iii). Insert instead—

- (iii) if the land is proposed to be used for independent living units—the independent living units will be provided by an operator.

**[13] Section 90 Subdivision**

Omit “Zone R2 Low Density Residential or” from section 90(2).

**[14] Part 5 Housing for seniors and people with a disability**

Insert after Division 7—

**Division 8 Seniors housing—Land and Housing Corporation**

**108A Development to which Division applies**

This Division applies to development for the purposes of seniors housing involving the erection of a building on land—

- (a) on which development for the purposes of seniors housing is permitted with consent under another environmental planning instrument, or
- (b) in a prescribed zone or an equivalent land use zone.

**108B Seniors housing permitted without development consent**

- (1) Development to which this Division applies may be carried out by or on behalf of the Land and Housing Corporation without development consent if—

- (a) the Land and Housing Corporation has considered the applicable development standards specified in sections 84(2)(c)(iii), 85, 88, 89 and 108, and
  - (b) the development will not result in a building with a height of more than 9.5m, and
  - (c) the seniors housing will not contain more than 40 dwellings on the site.
- (2) *State Environmental Planning Policy (Infrastructure) 2007*, clauses 16 and 17 apply to the development and, in the application of the clauses—
- (a) a reference in clause 16 to “this Policy” is taken to be a reference to this section, and
  - (b) a reference in the clauses to a public authority is taken to be a reference to the Land and Housing Corporation.

**108C Requirements for carrying out seniors housing**

- (1) Before carrying out development to which this Division applies, the Land and Housing Corporation must—
- (a) request the council to nominate a person or persons who must, in the council’s opinion, be notified of the development, and
  - (b) give written notice of the intention to carry out the development to—
    - (i) the council, and
    - (ii) the person or persons nominated by the council, and
    - (iii) the occupiers of adjoining land, and
  - (c) take into account the responses to the notice that are received within 21 days after the notice is given, and
  - (d) take into account the *Seniors Living Policy: Urban Design Guidelines for Infill Development*, March 2004, published on the Department’s website, to the extent to which it is not inconsistent with this Division, and
  - (e) consider the *Good Design for Social Housing* and the *Land and Housing Corporation Dwelling Requirements*, September 2020, published on the website of the Land and Housing Corporation, to the extent to which it is not inconsistent with this Division, and
  - (f) consider the design principles set out in Division 6.
- (2) In this section, a reference to the council is a reference to the council for the land on which the development is proposed to be located.

**108D Exempt development**

Development for the purposes of landscaping and gardening is exempt development if it is carried out by or on behalf of the Land and Housing Corporation in relation to seniors housing.

**108E Subdivision of seniors housing not permitted**

Development consent must not be granted for the subdivision of seniors housing.

**[15] Schedule 7, heading**

Omit “Part 7”. Insert instead “Part 8”.

**[16] Schedule 7 Savings and transitional provisions**

Re-number as Schedule 7A.

**[17] Schedule 7A (as renumbered by Schedule 1[17]), section 1**

Omit “the day on which this Policy commenced” from the definition of *commencement date*.

Insert instead “26 November 2021”.

**[18] Schedule 7A (as renumbered by Schedule 1[17]), section 1**

Insert in alphabetical order—

*repealed ARH SEPP* means *State Environmental Planning Policy (Affordable Rental Housing) 2009*, as in force immediately before its repeal.

*repealed Seniors SEPP* means *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*, as in force immediately before its repeal.

**[19] Schedule 7A (as renumbered by Schedule 1[17]), section 2**

Omit “The former provisions of a repealed instrument continue to apply to the following”.

Insert instead “This Policy does not apply to the following matters”.

**[20] Schedule 7A (as renumbered by Schedule 1[17]), section 2(f)**

Insert after section 2(e)—

(f) the carrying out of an activity after the commencement date if—

- (i) notice of the activity has been given to the council under the repealed ARH SEPP, clause 40A(2), and
- (ii) an approval required under the Act, Part 5 for carrying out the activity is granted by the determining authority before 26 November 2022.

**[21] Schedule 7A (as renumbered by Schedule 1[17]), section 2(2)**

Insert at the end of section 2—

- (2) The provisions of a repealed instrument, as in force immediately before the repeal of the repealed instrument, continue to apply to a matter referred to in subsection (1).

**[22] Schedule 7A (as renumbered by Schedule 1[17]), section 3**

Omit the section. Insert instead—

**3 Continued application of site compatibility certificates**

- (1) The repealed Seniors SEPP, clause 25 continues to apply to an application for a site compatibility certificate made, but not determined, before the commencement date.
- (2) The repealed Seniors SEPP continues to apply to, and this Policy does not apply to, a development application made after the commencement date if—
  - (a) the development application relies on a site compatibility certificate, within the meaning of the repealed Seniors SEPP, and
  - (b) the application for the certificate was made on or before the commencement date.

- (3) If a development application made after the commencement date relies on a site compatibility certificate issued under the repealed ARH SEPP, clause 37, the site compatibility certificate is taken to be a site compatibility certificate issued under this Policy, Chapter 2, Part 2, Division 5.
- (4) This Policy, Part 4 applies to development for the purposes of multi dwelling housing, residential flat buildings or shop top housing on land for which a site compatibility certificate has been issued under *State Environmental Planning Policy (Affordable Rental Housing) 2009*, clause 37, as in force immediately before its repeal.

#### **4 Continued application of repealed Seniors SEPP, clause 4A**

- (1) The repealed Seniors SEPP, clause 4A, continues to apply to, and this Policy does not apply to, a development application made after the commencement date.
- (2) This section is repealed on 1 July 2022.

#### **[23] Dictionary**

Omit the definition of *flood planning level*. Insert instead—

*flood planning level* means—

- (a) the flood planning level adopted in a development control plan by the relevant council for the lot, or
- (b) the flood planning level specified in a flood study or floodplain risk management plan—
  - (i) prepared in accordance with the principles of the Floodplain Development Manual, and
  - (ii) adopted by the relevant council for the lot.

#### **[24] Dictionary**

Insert in alphabetical order—

*tenanted component* of a building—see section 71.

## **Schedule 2      Amendment of State Environmental Planning Policy (Planning Systems) 2021**

**[1]    Schedule 1 State significant development—general**

Omit “Part 2, Division 6A of *State Environmental Planning Policy (Affordable Rental Housing) 2009*” from section 27(1).

Insert instead “the Housing SEPP, Chapter 3, Part 4”.

**[2]    Schedule 1, section 27(2A)**

Insert after Schedule 1, section 27(2)—

(2A) Subsection (1)(d) does not apply to development on land for which a site compatibility certificate has been issued—

(i) under the Housing SEPP, section 39, or

(ii) *State Environmental Planning Policy (Affordable Rental Housing) 2009*, clause 37, as in force immediately before its repeal.

**[3]    Schedule 1, section 27(3), definition of “tenanted component”**

Omit the definition. Insert instead—

***Housing SEPP*** means *State Environmental Planning Policy (Housing) 2021*.  
***tenanted component*** has the same meaning as in the Housing SEPP.

**[4]    Schedule 1, section 28(a)(i)**

Insert “more than” before “\$30 million” in Schedule 1, section 28(a)(i).

**[5]    Schedule 1, section 28(a)(ii)**

Insert “more than” before “\$20 million”.