

# State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

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New South Wales

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### Notes—

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# State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004



New South Wales

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# State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004



New South Wales

## Chapter 1 Preliminary

### 1 Name of Policy

This Policy is *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.

### 2 Aims of Policy

- (1) This Policy aims to encourage the provision of housing (including residential care facilities) that will:
  - (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and
  - (b) make efficient use of existing infrastructure and services, and
  - (c) be of good design.
- (2) These aims will be achieved by:
  - (a) setting aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified in this Policy, and
  - (b) setting out design principles that should be followed to achieve built form that responds to the characteristics of its site and form, and
  - (c) ensuring that applicants provide support services for seniors or people with a disability for developments on land adjoining land zoned primarily for urban purposes.

### 3 Interpretation

- (1) In this Policy:

**Aboriginal object** means any deposit, object or other material evidence (not being a

handicraft made for sale) relating to the Aboriginal habitation of an area of New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.

**AS 1428.1** means the version of the Australian Standard entitled AS 1428.1, *Design for access and mobility, Part 1: General requirements for access—New building work*, published by Standards Australia, that is adopted in the *Building Code of Australia*.

**AS 2890** means the version of the Australian Standard entitled AS 2890, *Parking facilities, Part 1: Off street parking*, published by Standards Australia, that is adopted in the *Building Code of Australia*.

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

**Building Code of Australia** has the same meaning as in the Act.

**Note—**

The term is defined in section 4 (1) of the Act.

**bush fire evacuation risk map** means the map marked “*State Environmental Planning Policy No 5—Housing for Older People or People with a Disability (Amendment No 6) Bush Fire Evacuation Risk Map*” deposited within the Department of Planning.

**car park** means a building or place primarily used for the purpose of parking motor vehicles, including any manoeuvring space and access to the building or space, whether operated for gain or not.

**consent authority** for a development application means:

- (a) except as provided by paragraph (b)—the council of the local government area in which it is proposed to carry out the development, or
- (b) if another environmental planning instrument provides for another consent authority for the kind of development proposed—that other consent authority.

**critical habitat**—see section 4 (1) of the Act.

**disability** or **people with a disability**—see clause 9.

**dual occupancy** means 2 dwellings (whether attached or detached) on one lot of land.

**dwelling** means a room or suite of rooms occupied or used, or so constructed or adapted as to be capable of being occupied or used, as a separate domicile.

**environmental planning instrument** means a State environmental planning policy,

a regional environmental plan or a local environmental plan, and includes a deemed environmental planning instrument.

**existing registered club** means a registered club in existence on land immediately before the date on which *State Environmental Planning Policy (Seniors Living) 2004 (Amendment No 2)* commences.

**fire sprinkler system** means a system designed to automatically control the growth and spread of fire that may include components such as sprinklers, valves, pipework, pumps, boosters and water supplies.

**floor space ratio** in relation to a building, means the ratio of the gross floor area of the building (exclusive of the area of any car port or garage) to the area of the allotment on which the building is or is proposed to be erected.

**general power outlet** means a general power outlet that complies with AS 1428.1.

**Greater Sydney (Greater Capital City Statistical Area)** means the area that the Australian Bureau of Statistics determines from time to time to be the Greater Sydney (Greater Capital City Statistical Area).

**gross floor area** means the sum of the areas of each floor of a building, where the area of each floor is taken to be the area within the outer face of the external enclosing walls (as measured at a height of 1,400 millimetres above each floor level):

- (a) excluding columns, fin walls, sun control devices and any elements, projections or works outside the general lines of the outer face of the external wall, and
- (b) excluding cooling towers, machinery and plant rooms, ancillary storage space and vertical air conditioning ducts, and
- (c) excluding car parking needed to meet any requirements of this Policy or the council of the local government area concerned and any internal access to such parking, and
- (d) including in the case of in-fill self-care housing any car parking (other than for visitors) in excess of 1 per dwelling that is provided at ground level, and
- (e) excluding space for the loading and unloading of goods, and
- (f) in the case of a residential care facility—excluding any floor space below ground level that is used for service activities provided by the facility.

**ground level** means the level of the site before development is carried out pursuant to this Policy.

**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.

**heritage conservation area** means:

- (a) land identified in another environmental planning instrument as a heritage conservation area and includes buildings, works, trees, archaeological sites, Aboriginal objects or places situated on or within that land, or
- (b) a place of architectural significance identified in another environmental planning instrument, or
- (c) a place of Aboriginal heritage significance identified in another environmental planning instrument.

**heritage item** means a building, work, tree, archaeological site, Aboriginal object or place (which may or may not be situated on or within land that is a heritage conservation area) described as a heritage item in another environmental planning instrument.

**heritage significance** means historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance.

**hostel**—see clause 12.

**in-fill self-care housing**—see clause 13 (2).

**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.

**parking space** means a space dedicated for the parking of a motor vehicle, including any manoeuvring space and access to it, but does not include a car park.

**registered club** means a club in respect of which a certificate of registration under the [Registered Clubs Act 1976](#) is in force.

**residential care facility**—see clause 11.

**riparian zone** means the area along or surrounding a natural water body such as a river where the vegetation and associated ecology are influenced by the passage and storage of water, and conversely, the aquatic environment benefits from the proximity of the vegetation (for example, from bio-filtering of sediment or pollutants, inputs of detritus and shading).

**self-contained dwelling**—see clause 13 (1).

**seniors housing**—see clause 10.

**serviced self-care housing**—see clause 13 (3).

**site analysis** means the process of identification and analysis of key features of the site and immediate surroundings to assist in understanding how future dwellings will relate to each other and to their locality.

**site compatibility certificate** means a certificate issued by the Director-General under clause 25 for the purposes of clause 24 (2).

**Note—**

A certificate remains current only for the period of 24 months after it is issued—see clause 25 (9).

**social housing provider** means any of the following:

- (a) the New South Wales Land and Housing Corporation,
- (b) the Department of Housing,
- (c) a community housing organisation registered with the Office of Community Housing of the Department of Housing,
- (d) the Aboriginal Housing Office,
- (e) a registered Aboriginal housing organisation within the meaning of the *Aboriginal Housing Act 1998*,
- (f) the Department of Ageing, Disability and Home Care,
- (g) a local government authority that provides affordable housing,
- (h) a not-for-profit organisation that is a direct provider of rental housing to tenants.

**streetscape** means the character of a locality (whether it is a street or precinct) defined by the spatial arrangement and visual appearance of built and landscape features when viewed from the street.

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

**wheelchair access**, in relation to any 2 points, means a continuous path of travel between those points that can be negotiated by a person using a wheelchair.

**Note—**

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Policy.

- (2) In calculating the number of storeys in a development for the purposes of this Policy, a car park that does not extend above ground level by more than 1 metre is not to be counted as a storey.

- (2A) A reference in this Policy to *Sutherland Shire Local Environmental Plan 2000* is a

reference to that Plan as in force immediately before the commencement of [Sutherland Shire Local Environmental Plan 2006](#).

(3) Notes included in this Policy do not form part of this Policy.

#### 4 Land to which Policy applies

(1) **General** This Policy applies to land within New South Wales that is land zoned primarily for urban purposes or land that adjoins land zoned primarily for urban purposes, but only if:

(a) development for the purpose of any of the following is permitted on the land:

(i) dwelling-houses,

(ii) residential flat buildings,

(iii) hospitals,

(iv) development of a kind identified in respect of land zoned as special uses, including (but not limited to) churches, convents, educational establishments, schools and seminaries, or

(b) the land is being used for the purposes of an existing registered club.

(2) **Land that is not zoned primarily for urban purposes** For the avoidance of doubt, land that is not zoned primarily for urban purposes includes (but is not limited to) land that is within any of the following zones under another environmental planning instrument:

(a) a zone that is identified as principally for rural uses,

(b) a zone that is identified as principally for urban investigation,

(c) a zone that is identified as principally for residential uses on large residential allotments (for example, Zones R5 Large Lot Residential and RU6 Transition referred to in the standard instrument for principal local environmental planning instruments prescribed by the [Standard Instrument \(Local Environmental Plans\) Order 2006](#)).

(2A) For the avoidance of doubt, land that is not zoned primarily for urban purposes includes (but is not limited to) land to which [Warringah Local Environmental Plan 2000](#) applies that is located within locality B2 (Oxford Falls Valley) or C8 (Belrose North) under that plan.

(3) Nothing in subclause (2) or (2A) operates to make any land not referred to in those subclauses land that is zoned primarily for urban purposes.

(4) **Land that adjoins land zoned primarily for urban purposes** For the purposes of this Policy, land that adjoins land that is zoned primarily for urban purposes includes (but is not

limited to) land that would directly adjoin land that is zoned primarily for urban purposes but for the presence of a public road to which there is direct vehicular and pedestrian access from the adjoining land.

- (5) **Application of Policy to land zoned for special uses and existing registered clubs** For the purposes of this Policy (and for the avoidance of doubt), a consent authority must not treat:
- (a) land on which development for the purposes of special uses is permitted, or
  - (b) land that is being used for the purposes of an existing registered club,
- as being land zoned primarily for urban purposes unless it is satisfied that most of the land that it adjoins is land zoned for urban purposes.
- (6) **Land to which Policy does not apply** This Policy does not apply to:
- (a) land described in Schedule 1 (Environmentally sensitive land), or
  - (b) land (other than land to which [Warringah Local Environmental Plan 2000](#) applies) that is zoned for industrial purposes, or
  - (c) (Repealed)
  - (d) the land to which [Sydney Regional Environmental Plan No 17—Kurnell Peninsula \(1989\)](#) applies, or
  - (e) the land to which [State Environmental Planning Policy \(Western Sydney Parklands\) 2009](#) applies.
- (7) Nothing in subclause (6) (a) or Schedule 1 operates to preclude the application of this Policy to land only because:
- (a) the land is identified under [State Environmental Planning Policy No 71—Coastal Protection](#), or
  - (b) in the case of land that is used for the purposes of an existing registered club—the land is described in another environmental planning instrument as:
    - (i) private open space, or
    - (ii) open space where dwellings or dwelling-houses are permitted.
- (8) (Repealed)
- (9) **Application of Policy to certain land in Sutherland Shire** For the purposes of this Policy (and despite anything to the contrary in subclause (1), (2) or (5)), the land that is shown with heavy edging on the map marked “*Map 32 Cronulla Sutherland Leagues Club, Captain Cook Drive*” in Schedule 7 to [Sutherland Shire Local Environmental Plan](#)

2000 is taken to be land that is zoned primarily for urban purposes.

**Note—**

Clause 7 (2) (a) of *Sutherland Shire Local Environmental Plan 2006* continues the application of *Sutherland Shire Local Environmental Plan 2000* to the land referred to in this subclause.

(10) For the purposes of this Policy (and despite anything to the contrary in subclause (1) or (4)), any land that adjoins the land referred to in subclause (9) is not to be treated as being land that adjoins land zoned primarily for urban purposes.

(11) Subclause (6) does not apply in relation to:

- (a) the land referred to in subclause (9), or
- (b) land in Alexander Avenue, Taren Point, being Lot 2, DP 1026203, or
- (c) an application to carry out development for the purposes of a residential care facility on land in any of the following zones under *Sutherland Shire Local Environmental Plan 2006*:
  - (i) Zone 4—Local Housing,
  - (ii) Zone 5—Multiple Dwelling A,
  - (iii) Zone 6—Multiple Dwelling B,
  - (iv) Zone 7—Mixed Use—Kirrawee,
  - (v) Zone 8—Urban Centre,
  - (vi) Zone 9—Local Centre,
  - (vii) Zone 10—Neighbourhood Centre.

(12) **Application of Policy to certain land in Hornsby Shire** For the purposes of this Policy (and despite anything to the contrary in subclause (1), (2) or (6)), the land comprised by each of the following is taken to be land that adjoins land zoned primarily for urban purposes:

- (a) 599–607 Old Northern Road, Glenhaven (being Lot 2, DP 1123753),
- (b) 589–593 Old Northern Road, Glenhaven (being Lot 1, DP 135398 and Lots 2 and 3, DP 225754).

(13) (Repealed)

## **5 Relationship to other environmental planning instruments**

(1) This Policy repeals *State Environmental Planning Policy No 5—Housing for Older People or People with a Disability*.

(2) Despite anything to the contrary in this Policy:

- (a) a consent authority may not grant consent to a development application made pursuant to Chapter 3 in relation to the land referred to in clause 4 (9) if the proposed development does not comply with the requirements of clause 65 (5) of *Sutherland Shire Local Environmental Plan 2000* relating to development for the purposes of seniors housing, and
- (b) the provisions of clause 65 (5) of *Sutherland Shire Local Environmental Plan 2000* relating to development for the purposes of seniors housing prevail over the provisions of this Policy to the extent of any inconsistency.

**Note—**

Clause 7 (2) (a) of *Sutherland Shire Local Environmental Plan 2006* continues the application of *Sutherland Shire Local Environmental Plan 2000* to the land referred to in clause 4 (9).

Clause 65 (5) of *Sutherland Shire Local Environmental Plan 2000* (when read with clause 4 in Part 1 of Schedule 8 to that Plan):

- (a) applies the development standards in Parts 4 and 7 of Chapter 3 of this Policy to development for the purposes of seniors housing on the land referred to in clause 4 (9), and
- (b) provides for those development standards to prevail to the extent of any inconsistency with development standards set out in Part 1 of Schedule 8 to the Plan for such development on that land.

- (3) If this Policy is inconsistent with any other environmental planning instrument, made before or after this Policy, this Policy prevails to the extent of the inconsistency.
- (4) This Policy does not affect a provision in another environmental planning instrument that relates to the demolition of a heritage item.

**6 Transitional provisions relating to certain development applications and development**

- (1) Despite clause 5 (1), *State Environmental Planning Policy No 5—Housing for Older People or People with a Disability* as in force immediately before its repeal continues to apply to and in respect of the following as if it had not been repealed:
  - (a) any development application made under that Policy on or before 18 February 2004, but not finally determined before the commencement of this Policy, and
  - (b) any development application, whether made before or after the commencement of this Policy, that relates to development for which a development consent was granted under the Policy as referred to in section 80 (4) of the Act, and
  - (c) the carrying out of any development for which development consent was granted under the Policy before its repeal or that is granted under the Policy (as continued in force by this subclause).
- (2) For the purposes of subclause (1), *State Environmental Planning Policy No 5—Housing for Older People or People with a Disability* is taken to be continued in force as if any

requirement in that Policy for the installation or use of thermostatic mixing devices for hot water in kitchens, laundries or bathrooms could be satisfied by the installation or use of tempering valves for hot water in bathrooms only.

- (3) The provisions of *State Environmental Planning Policy No 5—Housing for Older People or People with a Disability*, as continued in force by subclause (1), do not apply so as to allow any enlargement, expansion or intensification of any development to which that subclause applies or any redevelopment.

## 7 Suspension of certain agreements and covenants

- (1) For the purpose of enabling development to be carried out in accordance with this Policy or in accordance with a consent granted under the Act, any agreement or covenant imposing restrictions on any such development, to the extent necessary to serve that purpose, does not apply to the development.
- (2) Subclause (1) does not apply to a covenant in favour of Sydney Water Corporation or a water supply authority listed in Schedule 3 to the *Water Management Act 2000*.
- (3) Before this Policy was made, the Governor approved this clause under section 28 of the Act.

## Chapter 2 Key concepts

### 8 Seniors

In this Policy, **seniors** are any of the following:

- (a) people aged 55 or more years,
- (b) people who are resident at a facility at which residential care (within the meaning of the *Aged Care Act 1997* of the Commonwealth) is provided,
- (c) people who have been assessed as being eligible to occupy housing for aged persons provided by a social housing provider.

### 9 People with a disability

In this Policy, **people with a disability** are people of any age who have, either permanently or for an extended period, one or more impairments, limitations or activity restrictions that substantially affect their capacity to participate in everyday life.

### 10 Seniors housing

In this Policy, **seniors housing** is residential accommodation that is, or is intended to be, used permanently for seniors or people with a disability consisting of:

- (a) a residential care facility, or

- (b) a hostel, or
- (c) a group of self-contained dwellings, or
- (d) a combination of these,

but does not include a hospital.

**Note—**

The concept of seniors housing is intended to be a shorthand phrase encompassing both housing for seniors and for people with a disability. This Policy deals with both kinds of housing.

Accommodation provided by seniors housing does not have to be limited to seniors or people with a disability. Clause 18 provides that seniors housing may be used for the accommodation of the following:

- (a) seniors or people who have a disability,
- (b) people who live within the same household with seniors or people who have a disability,
- (c) staff employed to assist in the administration of and provision of services to housing provided under this Policy.

Relevant classifications in the *Building Code of Australia* for the different types of residential accommodation are as follows:

- (a) Class 3, 9a or 9c in relation to residential care facilities,
- (b) Class 1b or 3 in relation to hostels,
- (c) Class 1a or 2 in relation to self contained dwellings.

## **11 Residential care facilities**

In this Policy, a **residential care facility** is residential accommodation for seniors or people with a disability that includes:

- (a) meals and cleaning services, and
- (b) personal care or nursing care, or both, and
- (c) appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care,

not being a dwelling, hostel, hospital or psychiatric facility.

**Note—**

The [Aged Care Act 1997](#) of the Commonwealth requires residential care facilities to which that Act applies to meet certain requirements.

## **12 Hostels**

In this Policy, a **hostel** is residential accommodation for seniors or people with a disability where:

- (a) meals, laundering, cleaning and other facilities are provided on a shared basis, and



- (b) at least one staff member is available on site 24 hours a day to provide management services.

**Note—**

A facility may be a hostel (as defined by this Policy) even if it does not provide personal care or nursing care to its residents. A facility that provides such care may be a residential care facility (as defined by this Policy), regardless of how the facility may describe itself.

### **13 Self-contained dwellings**

- (1) **General term: “self-contained dwelling”** In this Policy, a **self-contained dwelling** is a dwelling or part of a building (other than a hostel), whether attached to another dwelling or not, housing seniors or people with a disability, where private facilities for significant cooking, sleeping and washing are included in the dwelling or part of the building, but where clothes washing facilities or other facilities for use in connection with the dwelling or part of the building may be provided on a shared basis.
- (2) **Example: “in-fill self-care housing”** In this Policy, **in-fill self-care housing** is seniors housing on land zoned primarily for urban purposes that consists of 2 or more self-contained dwellings where none of the following services are provided on site as part of the development: meals, cleaning services, personal care, nursing care.
- (3) **Example: “serviced self-care housing”** In this Policy, **serviced self-care housing** is seniors housing that consists of self-contained dwellings where the following services are available on the site: meals, cleaning services, personal care, nursing care.

## **Chapter 3 Development for seniors housing**

### **Part 1 General**

#### **14 Objective of Chapter**

The objective of this Chapter is to create opportunities for the development of housing that is located and designed in a manner particularly suited to both those seniors who are independent, mobile and active as well as those who are frail, and other people with a disability regardless of their age.

#### **15 What Chapter does**

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:

- (a) development on land zoned primarily for urban purposes for the purpose of any form of seniors housing, and
- (b) development on land that adjoins land zoned primarily for urban purposes for the purpose of any form of seniors housing consisting of a hostel, a residential care facility

or serviced self-care housing.

#### **16 Development consent required**

Development allowed by this Chapter may be carried out only with the consent of the relevant consent authority unless another environmental planning instrument allows that development without consent.

#### **17 Development on land adjoining land zoned primarily for urban purposes**

- (1) Subject to subclause (2), a consent authority must not consent to a development application made pursuant to this Chapter to carry out development on land that adjoins land zoned primarily for urban purposes unless the proposed development is for the purpose of any of the following:
  - (a) a hostel,
  - (b) a residential care facility,
  - (c) serviced self-care housing.
- (2) A consent authority must not consent to a development application made pursuant to this Chapter to carry out development for the purposes of serviced self-care housing on land that adjoins land zoned primarily for urban purposes unless the consent authority is satisfied that the housing will be provided:
  - (a) for people with a disability, or
  - (b) in combination with a residential care facility, or
  - (c) as a retirement village (within the meaning of the [Retirement Villages Act 1999](#)).

#### **Note—**

Clause 13 (3) defines **serviced self-care housing** as seniors housing that consists of self-contained dwellings where meals, cleaning services, personal care and nursing care are available on site. Clause 42 requires the consent authority to be satisfied that residents of such housing have reasonable access to services. Clause 42 also provides that if services are limited to those provided under Government provided or funded community based care packages, this does not constitute reasonable access to services.

#### **18 Restrictions on occupation of seniors housing allowed under this Chapter**

- (1) Development allowed by this Chapter may be carried out for the accommodation of the following only:
  - (a) seniors or people who have a disability,
  - (b) people who live within the same household with seniors or people who have a disability,
  - (c) staff employed to assist in the administration of and provision of services to

housing provided under this Policy.

- (2) A consent authority must not consent to a development application made pursuant to this Chapter unless:
  - (a) a condition is imposed by the consent authority to the effect that only the kinds of people referred to in subclause (1) may occupy any accommodation to which the application relates, and
  - (b) the consent authority is satisfied that a restriction as to user will be registered against the title of the property on which development is to be carried out, in accordance with section 88E of the *Conveyancing Act 1919*, limiting the use of any accommodation to which the application relates to the kinds of people referred to in subclause (1).
- (3) Subclause (2) does not limit the kinds of conditions that may be imposed on a development consent, or allow conditions to be imposed on a development consent otherwise than in accordance with the Act.

## **19 Use of seniors housing in commercial zones**

Development allowed by this Chapter for the purposes of seniors housing does not include the use for residential purposes of any part of the ground floor of a building that fronts a street if the building is located on land that is zoned primarily for commercial purposes unless another environmental planning instrument permits the use of all of the building for residential purposes.

## **20 (Repealed)**

## **21 Subdivision**

Land on which development has been carried out under this Chapter may be subdivided with the consent of the consent authority.

### **Note—**

Clause 5 (3) of this Policy ensures that subdivision on the land referred to in clause 4 (9) (b) is permitted by this clause with the consent of the consent authority despite the provisions of clause 65A of the former *Sutherland Shire Local Environmental Plan 2000* (which continues to apply to the land by virtue of clause 7 (2) (a) of *Sutherland Shire Local Environmental Plan 2006*).

## **22 Fire sprinkler systems in residential care facilities for seniors**

Development for the purpose of the installation of a fire sprinkler system in a residential care facility for seniors may be carried out with development consent.

## **23 Development on land used for the purposes of an existing registered club**

- (1) A consent authority must not consent to a development application made pursuant to this Chapter to carry out development on land that is used for the purposes of an

existing registered club unless the consent authority is satisfied that:

- (a) the proposed development provides for appropriate measures to separate the club from the residential areas of the proposed development in order to avoid land use conflicts, and
- (b) an appropriate protocol will be in place for managing the relationship between the proposed development and the gambling facilities on the site of the club in order to minimise harm associated with the misuse and abuse of gambling activities by residents of the proposed development.

**Note—**

The *Gaming Machines Act 2001* and the regulations made under that Act provide for gambling harm minimisation measures.

- (2) For the purposes of subclause (1) (a), some of the measures to which a consent authority may have regard include (but are not limited to) the following:
  - (a) any separate pedestrian access points for the club and the residential areas of the proposed development,
  - (b) any design principles underlying the proposed development aimed at ensuring acceptable noise levels in bedrooms and living areas in the residential areas of the proposed development.

**Note—**

See also clause 34 in relation to noise minimisation design principles.

## **Part 1A Site compatibility certificates**

### **24 Site compatibility certificates required for certain development applications**

- (1) This clause applies to a development application made pursuant to this Chapter in respect of development for the purposes of seniors housing (other than dual occupancy) if:
  - (a) the development is proposed to be carried out on any of the following land to which this Policy applies:
    - (i) land that adjoins land zoned primarily for urban purposes,
    - (ii) land that is within a zone that is identified as “special uses” under another environmental planning instrument (other than land on which development for the purposes of hospitals is permitted),
    - (iii) land that is used for the purposes of an existing registered club, or
  - (b) the development application involves buildings having a floor space ratio that would require the consent authority to grant consent under clause 45.

- (1A) Despite subclause (1), this clause does not apply to a development application made pursuant to this Chapter in respect of development for the purposes of seniors housing if the proposed development is permissible with consent on the land concerned under the zoning of another environmental planning instrument.
- (2) A consent authority must not consent to a development application to which this clause applies unless the consent authority is satisfied that the Director-General has certified in a current site compatibility certificate that, in the Director-General's opinion:
- (a) the site of the proposed development is suitable for more intensive development, and
  - (b) development for the purposes of seniors housing of the kind proposed in the development application is compatible with the surrounding environment having regard to (at least) the criteria specified in clause 25 (5) (b).

**Note—**

Clause 50 (2A) of the *Environmental Planning and Assessment Regulation 2000* requires a development application to which this clause applies to be accompanied by a site compatibility certificate.

- (3) Nothing in this clause:
- (a) prevents a consent authority from:
    - (i) granting consent to a development application to which this clause applies to carry out development that is on a smaller (but not larger) scale than the kind of development in respect of which a site compatibility certificate was issued, or
    - (ii) refusing to grant consent to a development application to which this clause applies by reference to the consent authority's own assessment of the compatibility of the proposed development with the surrounding environment, or
  - (b) otherwise limits the matters to which a consent authority may or must have regard (or of which a consent authority must be satisfied under another provision of this Policy) in determining a development application to which this clause applies.

**Note—**

Nothing in this clause affects a consent authority's duty to give effect to non-discretionary standards set out in this Policy. See, for example, clauses 48, 49 and 50.

- (4) (Repealed)

## 25 Application for site compatibility certificate

- (1) An application for a site compatibility certificate for the purposes of clause 24 may be made to the Director-General:
  - (a) by the owner of the land on which the development is proposed to be carried out, or
  - (b) by any other person, with the consent of the owner of that land.
- (2) An application must be:
  - (a) in writing, and
  - (b) in the form (if any) approved by the Director-General from time to time, and
  - (c) accompanied by such documents and information as the Director-General may require.

### Note—

Clause 262A of the *Environmental Planning and Assessment Regulation 2000* provides for the maximum fee for an application for a site compatibility certificate.

- (3) Subject to subclause (4) (b), the Director-General must provide a copy of the application to the General Manager of the council for the area in which the development concerned is proposed to be carried out (the **relevant General Manager**) within the period of 7 days after the application is made.
- (4) Subject to subclause (5), the Director-General:
  - (a) may determine the application by issuing a certificate or refusing to do so, and
  - (b) if the Director-General refuses to issue a certificate at any time within the period of 7 days after the application is made—is not required to comply with subclause (3).
- (5) The Director-General must not issue a site compatibility certificate unless the Director-General:
  - (a) has taken into account the written comments (if any) concerning the consistency of the proposed development with the criteria referred to in paragraph (b) that are received from the relevant General Manager within 21 days after the application for the certificate was made, and
  - (b) is of the opinion that the proposed development is compatible with the surrounding land uses having regard to (at least) the following criteria:
    - (i) the natural environment (including known significant environmental values, resources or hazards) and the existing uses and approved uses of land in the

- vicinity of the proposed development,
- (ii) the impact that the proposed development is likely to have on the uses that, in the opinion of the Director-General, are likely to be the future uses of that land,
  - (iii) the services and infrastructure that are or will be available to meet the demands arising from the proposed development (particularly, retail, community, medical and transport services having regard to the location and access requirements set out in clause 26) and any proposed financial arrangements for infrastructure provision,
  - (iv) in the case of applications in relation to land that is zoned open space or special uses—the impact that the proposed development is likely to have on the provision of land for open space and special uses in the vicinity of the development,
  - (v) without limiting any other criteria, the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development,
  - (vi) if the development may involve the clearing of native vegetation that is subject to the requirements of section 12 of the *Native Vegetation Act 2003*—the impact that the proposed development is likely to have on the conservation and management of native vegetation.
- (6) Without limiting subclause (4) (a), the Director-General may refuse to issue a certificate if the Director-General considers that the development is likely to have an adverse effect on the environment.
- (7) A certificate may certify that the development to which it relates is compatible with the surrounding land uses only if it satisfies certain requirements specified in the certificate.
- (8) The Director-General must, if it is reasonably practicable to do so, determine an application within 35 days after it is lodged.
- (9) A certificate remains current for a period of 24 months after the date on which it is issued by the Director-General.
- (10) The provisions of subclauses (3) and (5) (a) do not apply in relation to the determination of an application for a site compatibility certificate if the Director-General has delegated the function of determining the application to the council for the area in which the development concerned is proposed to be carried out.

**Note—**

Section 23 of the Act enables the Director-General to delegate to a council any of the functions of the Director-General imposed or conferred by or under the Act or any other Act.

## Part 2 Site-related requirements

### Note—

Information and assessment guidelines may be issued by the Department of Planning from time to time to provide assistance to councils in assessing locations and the provision of services.

### 26 Location and access to facilities

- (1) A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied, by written evidence, that residents of the proposed development will have access that complies with subclause (2) to:
  - (a) shops, bank service providers 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.
- (2) Access complies with this clause if:
  - (a) the facilities and services referred to in subclause (1) are located at a distance of not more than 400 metres from the site of the proposed development that is a distance accessible by means of a suitable access pathway and the overall average gradient for the pathway is no more than 1:14, although the following gradients along the pathway are also acceptable:
    - (i) a gradient of no more than 1:12 for slopes for a maximum of 15 metres at a time,
    - (ii) a gradient of no more than 1:10 for a maximum length of 5 metres at a time,
    - (iii) a gradient of no more than 1:8 for distances of no more than 1.5 metres at a time, or
  - (b) in the case of a proposed development on land in a local government area within the Greater Sydney (Greater Capital City Statistical Area)—there is a public transport service available to the residents who will occupy the proposed development:
    - (i) that is located at a distance of not more than 400 metres from the site of the proposed development and the distance is accessible by means of a suitable access pathway, and
    - (ii) that will take those residents to a place that is located at a distance of not more than 400 metres from the facilities and services referred to in subclause (1), and



(iii) that is available both to and from the proposed development at least once between 8am and 12pm per day and at least once between 12pm and 6pm each day from Monday to Friday (both days inclusive),

and the gradient along the pathway from the site to the public transport services (and from the public transport services to the facilities and services referred to in subclause (1)) complies with subclause (3), or

(c) in the case of a proposed development on land in a local government area that is not within the Greater Sydney (Greater Capital City Statistical Area)—there is a transport service available to the residents who will occupy the proposed development:

(i) that is located at a distance of not more than 400 metres from the site of the proposed development and the distance is accessible by means of a suitable access pathway, and

(ii) that will take those residents to a place that is located at a distance of not more than 400 metres from the facilities and services referred to in subclause (1), and

(iii) that is available both to and from the proposed development during daylight hours at least once each day from Monday to Friday (both days inclusive),

and the gradient along the pathway from the site to the public transport services (and from the transport services to the facilities and services referred to in subclause (1)) complies with subclause (3).

**Note—**

Part 5 contains special provisions concerning the granting of consent to development applications made pursuant to this Chapter to carry out development for the purpose of certain seniors housing on land adjoining land zoned primarily for urban purposes. These provisions include provisions relating to transport services.

(3) For the purposes of subclause (2) (b) and (c), the overall average gradient along a pathway from the site of the proposed development to the public transport services (and from the transport services to the facilities and services referred to in subclause (1)) is to be no more than 1:14, although the following gradients along the pathway are also acceptable:

(i) a gradient of no more than 1:12 for slopes for a maximum of 15 metres at a time,

(ii) a gradient of no more than 1:10 for a maximum length of 5 metres at a time,

(iii) a gradient of no more than 1:8 for distances of no more than 1.5 metres at a time.

(4) For the purposes of subclause (2):

- (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) distances that are specified for the purposes of that subclause are to be measured by reference to the length of any such pathway.

(5) In this clause:

**bank service provider** means any bank, credit union or building society or any post office that provides banking services.

## 27 Bush fire prone land

- (1) A consent authority must not consent to a development application made pursuant to this Chapter to carry out development on land identified on a bush fire prone land map certified under section 146 of the Act as “Bush fire prone land—vegetation category 1”, “Bush fire prone land—vegetation category 2” or “Bush fire prone land—vegetation buffer” unless the consent authority is satisfied that the development complies with the requirements of the document titled *Planning for Bush Fire Protection*, ISBN 0 9751033 2 6, prepared by the NSW Rural Fire Service in co-operation with the Department of Planning, dated December 2006.
- (2) A consent authority, in determining a development application made pursuant to this Chapter to carry out development on land in the vicinity of land identified on a bush fire prone land map certified under section 146 of the Act as “Bush fire prone land—vegetation category 1”, “Bush fire prone land—vegetation category 2” or “Bush fire prone land—vegetation buffer”, must take into consideration the general location of the proposed development, the means of access to and egress from the general location and other relevant matters, including the following:
  - (a) the size of the existing population within the locality,
  - (b) age groups within that population and the number of persons within those age groups,
  - (c) the number of hospitals and other facilities providing care to the residents of the facilities within the locality, and the number of beds within those hospitals and facilities,
  - (d) the number of schools within the locality and the number of students at those schools,
  - (e) existing development within the locality that has been carried out under this Policy or *State Environmental Planning Policy No 5—Housing for Older People or People with a Disability*,
  - (f) the road network within the locality and the capacity of the road network to cater

for traffic to and from existing development if there were a need to evacuate persons from the locality in the event of a bush fire,

- (g) the adequacy of access to and from the site of the proposed development for emergency response vehicles,
- (h) the nature, extent and adequacy of bush fire emergency procedures that are able to be applied to the proposed development and its site,
- (i) the requirements of New South Wales Fire Brigades.

(3) In exercising its functions under subclause (1) or (2), a consent authority must consult with the NSW Rural Fire Service and have regard to its comments.

## **28 Water and sewer**

- (1) A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied, by written evidence, that the housing will be connected to a reticulated water system and have adequate facilities for the removal or disposal of sewage.
- (2) If the water and sewerage services referred to in subclause (1) will be provided by a person other than the consent authority, the consent authority must consider the suitability of the site with regard to the availability of reticulated water and sewerage infrastructure. In locations where reticulated services cannot be made available, the consent authority must satisfy all relevant regulators that the provision of water and sewerage infrastructure, including environmental and operational considerations, are satisfactory for the proposed development.

## **29 Consent authority to consider certain site compatibility criteria for development applications to which clause 24 does not apply**

- (1) This clause applies to a development application made pursuant to this Chapter in respect of development for the purposes of seniors housing (other than dual occupancy) to which clause 24 does not apply.

### **Note—**

Clause 24 (1) sets out the development applications to which that clause applies.

- (2) A consent authority, in determining a development application to which this clause applies, must take into consideration the criteria referred to in clause 25 (5) (b) (i), (iii) and (v).
- (3) Nothing in this clause limits the matters to which a consent authority may or must have regard (or of which a consent authority must be satisfied under another provision of this Policy) in determining a development application to which this clause applies.

## **Part 3 Design requirements**

### **Division 1 General**

#### **30 Site analysis**

- (1) A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the applicant has taken into account a site analysis prepared by the applicant in accordance with this clause.
- (2) A site analysis must:
  - (a) contain information about the site and its surrounds as described in subclauses (3) and (4), and
  - (b) be accompanied by a written statement (supported by plans including drawings of sections and elevations and, in the case of proposed development on land adjoining land zoned primarily for urban purposes, an aerial photograph of the site):
    - (i) explaining how the design of the proposed development has regard to the site analysis, and
    - (ii) explaining how the design of the proposed development has regard to the design principles set out in Division 2.
- (3) The following information about a site is to be identified in a site analysis:
  - (a) **Site dimensions:**
    - length
    - width
  - (b) **Topography:**
    - spot levels and/or contour
    - north point
    - natural drainage
    - any contaminated soils or filled areas
  - (c) **Services:**
    - easements
    - connections for drainage and utility services
  - (d) **Existing vegetation:**

location

height

spread of established trees

species

(e) **Micro climates:**

orientation

prevailing winds

(f) **Location of:**

buildings and other structures

heritage features and items including archaeology

fences

property boundaries

pedestrian and vehicle access

(g) **Views** to and from the site

(h) **Overshadowing** by neighbouring structures

(4) The following information about the surrounds of a site is to be identified in a site analysis:

(a) **Neighbouring buildings:**

location

height

use

balconies on adjacent properties

pedestrian and vehicle access to adjacent properties

(b) **Privacy:**

adjoining private open spaces

living room windows overlooking site

location of any facing doors and/or windows

(c) **Walls built to the site's boundary:**

location

height

materials

(d) **Difference in levels** between the site and adjacent properties at their boundaries

(e) **Views** and **solar** access enjoyed by neighbouring properties

(f) **Major trees** on adjacent properties

(g) **Street frontage features:**

poles

trees

kerb crossovers

bus stops

other services

(h) The **built form** and **character** of adjacent development (including buildings opposite on both sides of the street(s) fronted):

architectural character

front fencing

garden styles

(i) **Heritage features** of surrounding locality and landscape

(j) **Direction and distance to local facilities:**

local shops

schools

public transport

recreation and community facilities

(k) **Public open space:**

location

use

(l) Adjoining **bushland** or **environmentally sensitive land**

(m) **Sources of nuisance:**

flight paths

noisy roads or significant noise sources

polluting operations

(n) Adjoining **land uses and activities** (such as agricultural activities)

### **31 Design of in-fill self-care housing**

In determining a development application made pursuant to this Chapter to carry out development for the purpose of in-fill self-care housing, a consent authority must take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration) the provisions of the *Seniors Living Policy: Urban Design Guideline for Infill Development* published by the Department of Infrastructure, Planning and Natural Resources in March 2004.

### **32 Design of residential development**

A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2.

## **Division 2 Design principles**

### **33 Neighbourhood amenity and streetscape**

The proposed development should:

- (a) recognise the desirable elements of the location's current character (or, in the case of precincts undergoing a transition, where described in local planning controls, the desired future character) so that new buildings contribute to the quality and identity of the area, and
- (b) retain, complement and sensitively harmonise with any heritage conservation areas in the vicinity and any relevant heritage items that are identified in a local environmental plan, and
- (c) maintain reasonable neighbourhood amenity and appropriate residential character by:
  - (i) providing building setbacks to reduce bulk and overshadowing, and
  - (ii) using building form and siting that relates to the site's land form, and

- (iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, and
- (iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and
- (d) be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line, and
- (e) embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape, and
- (f) retain, wherever reasonable, major existing trees, and
- (g) be designed so that no building is constructed in a riparian zone.

### **34 Visual and acoustic privacy**

The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by:

- (a) appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and
- (b) ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.

**Note—**

The Australian and New Zealand Standard entitled AS/NZS 2107-2000, *Acoustics—Recommended design sound levels and reverberation times for building interiors* and the Australian Standard entitled AS 3671-1989, *Acoustics—Road traffic noise intrusion—Building siting and construction*, published by Standards Australia, should be referred to in establishing acceptable noise levels.

### **35 Solar access and design for climate**

The proposed development should:

- (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and
- (b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a northerly direction.

**Note—**

AMCORD: A National Resource Document for Residential Development, 1995, may be referred to in establishing adequate solar access and dwelling orientation appropriate to the climatic conditions.



### **36 Stormwater**

The proposed development should:

- (a) control and minimise the disturbance and impacts of stormwater runoff on adjoining properties and receiving waters by, for example, finishing driveway surfaces with semi-pervious material, minimising the width of paths and minimising paved areas, and
- (b) include, where practical, on-site stormwater detention or re-use for second quality water uses.

### **37 Crime prevention**

The proposed development should provide personal property security for residents and visitors and encourage crime prevention by:

- (a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and
- (b) where shared entries are required, providing shared entries that serve a small number of dwellings and that are able to be locked, and
- (c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.

### **38 Accessibility**

The proposed development 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.

### **39 Waste management**

The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.

## **Part 4 Development standards to be complied with**

### **Division 1 General**

#### **40 Development standards—minimum sizes and building height**

- (1) **General** A consent authority must not consent to a development application made pursuant to this Chapter unless the proposed development complies with the

standards specified in this clause.

- (2) **Site size** The size of the site must be at least 1,000 square metres.
- (3) **Site frontage** The site frontage must be at least 20 metres wide measured at the building line.
- (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.
- (5) **Development applications to which clause does not apply** Subclauses (2), (3) and (4) (c) do not apply to a development application made by any of the following:
- (a) the Department of Housing,
- (b) any other social housing provider.

## **Division 2 Residential care facilities—standards concerning accessibility and useability**

### **Note—**

Development standards concerning accessibility and useability 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*.

## **Division 3 Hostels and self-contained dwellings—standards concerning accessibility and useability**

### **41 Standards for hostels and self-contained dwellings**

- (1) A consent authority must not consent to a development application made pursuant to this Chapter to carry out development for the purpose of a hostel or self-contained

dwelling unless the proposed development complies with the standards specified in Schedule 3 for such development.

- (2) Despite the provisions of clauses 2, 7, 8, 9, 10, 11, 12, 13 and 15-20 of Schedule 3, a self-contained dwelling, or part of such a dwelling, that is located above the ground floor in a multi-storey building does not have to comply with the requirements of those provisions if the development application is made by, or by a person jointly with, a social housing provider.

## **Part 5 Development on land adjoining land zoned primarily for urban purposes**

### **42 Serviced self-care housing**

- (1) A consent authority must not consent to a development application made pursuant to this Chapter to carry out development for the purpose of serviced self-care housing on land that adjoins land zoned primarily for urban purposes unless the consent authority is satisfied, by written evidence, that residents of the proposed development will have reasonable access to:
  - (a) home delivered meals, and
  - (b) personal care and home nursing, and
  - (c) assistance with housework.
- (2) For the purposes of subclause (1), residents of a proposed development do not have reasonable access to the services referred to in subclause (1) if those services will be limited to services provided to residents under Government provided or funded community based care programs (such as the Home and Community Care Program administered by the Commonwealth and the State and the Community Aged Care and Extended Aged Care at Home programs administered by the Commonwealth).

### **43 Transport services to local centres**

- (1) A consent authority must not consent to a development application made pursuant to this Chapter to carry out development for the purpose of serviced self-care housing on land that adjoins land zoned primarily for urban purposes unless the consent authority is satisfied that a bus capable of carrying at least 10 passengers will be provided to the residents of the proposed development:
  - (a) that will drop off and pick up passengers at a local centre that provides residents with access to the following:
    - (i) shops, bank service providers and other retail and commercial services that residents may reasonably require,
    - (ii) community services and recreation facilities,

- (iii) the practice of a general medical practitioner, and
  - (b) that is available both to and from the proposed development to any such local centre at least once between 8am and 12pm each day and at least once between 12pm and 6pm each day.
- (2) Subclause (1) does not apply to a development application to carry out development for the purposes of the accommodation of people with dementia.
- (3) In this clause, **bank service provider** has the same meaning as in clause 26.

#### **44 Availability of facilities and services**

A consent authority must be satisfied that any facility or service provided as a part of a proposed development to be carried out on land that adjoins land zoned primarily for urban purposes will be available to residents when the housing is ready for occupation. In the case of a staged development, the facilities or services may be provided proportionately according to the number of residents in each stage.

### **Part 6 Development for vertical villages**

#### **45 Vertical villages**

- (1) **Application of clause** This clause applies to land to which this Policy applies (other than the land referred to in clause 4 (9)) on which development for the purposes of residential flat buildings is permitted.
- (2) **Granting of consent with bonus floor space** Subject to subclause (6), a consent authority may consent to a development application made pursuant to this Chapter to carry out development on land to which this clause applies for the purpose of seniors housing involving buildings having a density and scale (when expressed as a floor space ratio) that exceeds the floor space ratio (however expressed) permitted under another environmental planning instrument (other than *State Environmental Planning Policy No 1—Development Standards*) by a bonus of 0.5 added to the gross floor area component of that floor space ratio.

**Note—**

For example, if the floor space ratio permitted under another environmental planning instrument is 1:1, a consent authority may consent to a development application for the purposes of a building having a density and scale of 1.5:1.

- (3) Subsection (2) applies even if the floor space ratio permitted under another environmental planning instrument is expressed in a development control plan.
- (4) In calculating the gross floor area for the purposes of subclause (2), the floor space used to deliver on-site support services (other than any floor space used to deliver communal or residents' living areas) is to be excluded.

- (5) However, if the area of the floor space referred to in subclause (4) is greater than 50% of the gross floor area, then the area that may be excluded under subclause (4) is limited to an area that does not exceed 50% of the gross floor area.
- (6) **Requirements relating to affordable places and on-site support services** A consent authority may only grant consent to a development application as referred to in subclause (2) if:
- (a) the consent authority is satisfied, on written evidence, that:
    - (i) the proposed development will deliver on-site support services for its residents, and
    - (ii) at least 10% of the dwellings for the accommodation of residents in the proposed development will be affordable places, and
  - (b) the applicant identifies, to the satisfaction of the consent authority, which of the dwellings for the accommodation of residents in the proposed development will be set aside as affordable places.
- (7) **Grounds on which consent cannot be refused** A consent authority must not refuse consent as referred to in subclause (2) only because the proposed development does not comply with a standard referred to in clause 40 (4) (a), 48 (a), 49 (a) or 50 (a).
- (8) **Conditions on grants of development consent** A development consent may be granted as referred to in subclause (2) subject to a condition that requires the creation of a restrictive or positive covenant on land to which a development application relates concerning the continued provision of the affordable places identified in the application.
- (9) A development consent may be granted as referred to in subclause (2) subject to a condition that requires the affordable places identified in a development application to be owned and managed by an organisation providing community housing that is registered for the time being with the Office of Community Housing.
- (10) Subclauses (8) and (9) do not limit the kinds of conditions that may be imposed on a development consent, or allow conditions to be imposed on a development consent otherwise than in accordance with the Act.
- (11) **Clause does not apply to certain heritage affected land** Nothing in this clause applies in relation to the granting of consent to a development application made pursuant to this Chapter for the carrying out of development on land to which an interim heritage order or listing on the State Heritage Register under the [Heritage Act 1977](#) applies.
- (12) **Definitions** In this clause:
- affordable place**, in relation to seniors housing, means a dwelling for the accommodation of a resident:

- (a) whose gross household income falls within the following ranges of percentages of the median household income for the time being for the Greater Sydney (Greater Capital City Statistical Area) according to the Australian Bureau of Statistics:

Very low income household	less than 50%
Low income household	50% or more but less than 80%
Moderate income household	80-120%

- (b) who is to pay rent that does not exceed a benchmark of 30% of the resident's actual household income.

***on-site support services***, in relation to residents of seniors housing, means:

- (a) 3 meals a day provided on a communal basis or to a resident's dwelling, and
- (b) personal care, and
- (c) home nursing visits, and
- (d) assistance with housework.

## **Part 7 Development standards that cannot be used as grounds to refuse consent**

### **Division 1 General**

#### **46 Inter-relationship of Part with design principles in Part 3**

- (1) Nothing in this Part permits the granting of consent to a development application made pursuant to this Chapter if the consent authority is satisfied that the proposed development does not demonstrate that adequate regard has been given to the principles set out in Division 2 of Part 3.

**Note—**

It is considered possible to achieve good design and achieve density ratios set out in Division 2. Good design is critical to meriting these density ratios.

- (2) For the avoidance of doubt, nothing in this Part limits the matters to which the Director-General may have regard in refusing to issue a site compatibility certificate.

#### **47 Part does not apply to certain development applications relating to heritage affected land**

Nothing in this Part applies in relation to the granting of consent to a development application made pursuant to this Chapter for the carrying out of development on land to which an interim heritage order or listing on the State Heritage Register under the [Heritage Act 1977](#) applies.

## Division 2 Residential care facilities

### 48 Standards that cannot be used to refuse development consent for residential care facilities

A consent authority must not refuse consent to a development application made pursuant to this Chapter for the carrying out of development for the purpose of a residential care facility on any of the following grounds:

- (a) **building height:** if all proposed buildings are 8 metres or less in height (and regardless of any other standard specified by another environmental planning instrument limiting development to 2 storeys), or
- (b) **density and scale:** if the density and scale of the buildings when expressed as a floor space ratio is 1:1 or less,
- (c) **landscaped area:** if a minimum of 25 square metres of landscaped area per residential care facility bed is provided,
- (d) **parking for residents and visitors:** if at least the following is provided:
  - (i) 1 parking space for each 10 beds in the residential care facility (or 1 parking space for each 15 beds if the facility provides care only for persons with dementia), and
  - (ii) 1 parking space for each 2 persons to be employed in connection with the development and on duty at any one time, and
  - (iii) 1 parking space suitable for an ambulance.

**Note—**

The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant development consent.

## Division 3 Hostels

### 49 Standards that cannot be used to refuse development consent for hostels

A consent authority must not refuse consent to a development application made pursuant to this Chapter for the carrying out of development for the purpose of a hostel on any of the following grounds:

- (a) **building height:** if all proposed buildings are 8 metres or less in height (and regardless of any other standard specified by another environmental planning instrument limiting development to 2 storeys), or
- (b) **density and scale:** if the density and scale of the buildings when expressed as a floor space ratio is 1:1 or less,
- (c) **landscaped area:** if a minimum of 25 square metres of landscaped area per hostel

bed is provided,

- (d) **parking:** if at least the following is provided:
  - (i) 1 parking space for each 5 dwellings in the hostel, and
  - (ii) 1 parking space for each 2 persons to be employed in connection with the development and on duty at any one time, and
  - (iii) 1 parking space suitable for an ambulance.

**Note—**

The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant development consent.

## **Division 4 Self-contained dwellings**

### **50 Standards that cannot be used to refuse development consent for self-contained dwellings**

A consent authority must not refuse consent to a development application made pursuant to this Chapter for the carrying out of development for the purpose of a self-contained dwelling (including in-fill self-care housing and serviced self-care housing) on any of the following grounds:

- (a) **building height:** if all proposed buildings are 8 metres or less in height (and regardless of any other standard specified by another environmental planning instrument limiting development to 2 storeys),
- (b) **density and scale:** if the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less,
- (c) **landscaped area:** if:
  - (i) in the case of a development application made by a social housing provider—a minimum 35 square metres of landscaped area per dwelling is provided, or
  - (ii) in any other case—a minimum of 30% of the area of the site is to be landscaped,
- (d) **Deep soil zones:** if, in relation to that part of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) that is not built on, paved or otherwise sealed, there is soil of a sufficient depth to support the growth of trees and shrubs on an area of not less than 15% of the area of the site (the **deep soil zone**). Two-thirds of the deep soil zone should preferably be located at the rear of the site and each area forming part of the zone should have a minimum dimension of 3 metres,
- (e) **solar access:** if living rooms and private open spaces for a minimum of 70% of the



dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,

(f) **private open space for in-fill self-care housing:** if:

- (i) in the case of a single storey dwelling or a dwelling that is located, wholly or in part, on the ground floor of a multi-storey building, not less than 15 square metres of private open space per dwelling is provided and, of this open space, one area is not less than 3 metres wide and 3 metres long and is accessible from a living area located on the ground floor, and
- (ii) in the case of any other dwelling, there is a balcony with an area of not less than 10 square metres (or 6 square metres for a 1 bedroom dwelling), that is not less than 2 metres in either length or depth and that is accessible from a living area,

**Note—**

The open space needs to be accessible only by a continuous accessible path of travel (within the meaning of AS 1428.1) if the dwelling itself is an accessible one. See Division 4 of Part 4.

(g) (Repealed)

(h) **parking:** if at least the following is provided:

- (i) 0.5 car spaces for each bedroom where the development application is made by a person other than a social housing provider, or
- (ii) 1 car space for each 5 dwellings where the development application is made by, or is made by a person jointly with, a social housing provider.

**Note—**

The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant development consent.

## Chapter 4 Miscellaneous

### 51 Amendments to the bush fire evacuation risk map

- (1) The Director-General may prepare a map or maps for the purpose of amending or replacing the bush fire evacuation risk map.
- (2) In preparing such a map, the Director-General is to take the following matters into consideration:
  - (a) the size of the existing population within the locality,
  - (b) age groups within that population and the number of persons within those age groups,
  - (c) the number of hospitals and other facilities providing care to the residents of the

facilities within the locality, and the number of beds within those hospitals and facilities,

- (d) the number of schools within the locality and the number of students at those schools,
- (e) existing development within the locality that has been carried out under this Policy,
- (f) any recommendations made by the NSW Rural Fire Service.

(3) A map prepared under this clause has effect only if this Policy is amended to give effect to it.

## **52 Savings for development applications made before SEPP (Seniors Living) 2004 (Amendment No 1)**

A development application made pursuant to Chapter 3 that was lodged with the consent authority (but not finally determined) before the commencement of *State Environmental Planning Policy (Seniors Living) 2004 (Amendment No 1)* is to be determined as if that Policy had not been made.

## **53 Savings and transitional provisions for development applications made before SEPP (Seniors Living) 2004 (Amendment No 2)**

- (1) A development application made pursuant to Chapter 3 that was lodged with a consent authority (but not finally determined) before the commencement of *State Environmental Planning Policy (Seniors Living) 2004 (Amendment No 2)* is to be determined as if that Policy had not been made.
- (2) Despite any other provision of this Policy, a consent authority may consent to a development application relating to development for the purposes of serviced self-care housing on land adjoining land zoned primarily for urban purposes even though the consent authority is not satisfied of the matters referred to in clause 17 (2) if the consent authority is satisfied that:
  - (a) the development concerned forms part of a “deferred commencement” consent under section 80 (3) of the Act, or a staged development, in which the first or an earlier stage was granted development consent before the commencement of *State Environmental Planning Policy (Seniors Living) 2004 (Amendment No 1)*, or
  - (b) the development concerned is the subject of a site specific master plan or development control plan that was made or adopted before the commencement of *State Environmental Planning Policy (Seniors Living) 2004 (Amendment No 1)* and development consent was granted before that commencement for the carrying out of other development identified by the plan.

(3) Without limiting subclause (2), the provisions of that subclause extend to

development for the purposes of serviced self-care housing on any of the following land even if the development concerned is not of a kind referred to in subclause (2) (a) or (b):

- (a) Lot 2, DP 1123753, 599–607 Old Northern Road, Glenhaven and Lot 1, DP 135398, Lot 2 & Lot 3, DP 225754, 589–591 and 593 Old Northern Road, Glenhaven,
- (b) Lot 188, DP 755537 and Lot 155, DP 755537, 24 Coronation Road, Congarinni North,
- (c) Lot 4, DP 262132, 38 Progress Street, Tahmoor, Lot A DP, 365411, 30 Progress Street, Tahmoor, Lot 1, DP 623127, 36 Progress Street, Tahmoor and Lot 222, DP 10669, 42 Progress Street, Tahmoor.

(4) Clause 24 does not apply to a development application for the purposes of development of a kind to which subclause (2) applies or extends.

#### **54 Savings and transitional provisions—site compatibility amendments**

Clause 24, as amended by *State Environmental Planning Policy (Repeal of Site Compatibility Provisions) 2011*, applies to a development application for development to which that clause applies that was made, but not determined, before the commencement of the amendments.

#### **55 Residential care facilities for seniors required to have fire sprinkler systems**

A consent authority must not grant consent to carry out development for the purpose of a residential care facility for seniors unless the proposed development includes a fire sprinkler system.

### **Schedule 1 Environmentally sensitive land**

(Clause 4 (6) (a))

Land identified in another environmental planning instrument by any of the following descriptions or by like descriptions or by descriptions that incorporate any of the following words or expressions:

- (a) coastal protection,
- (b) conservation (but not land identified as a heritage conservation area in another environmental planning instrument),
- (c) critical habitat,
- (d) environment protection,
- (e) open space,
- (f) escarpment,
- (g) floodway,

- (h) high flooding hazard,
- (i) natural hazard,
- (j) (Repealed)
- (k) scenic (but not land that is so identified if:
  - (i) the land is within a residential zone in which development of two storeys or more in height is permitted, or
  - (ii) an adjacent residential zone, also identified as scenic, permits development of two storeys or more in height),
- (l) water catchment,
- (m) natural wetland.

Land shown cross-hatched on the bush fire evacuation risk map.

## **Schedule 2 (Repealed)**

## **Schedule 3 Standards concerning accessibility and useability for hostels and self-contained dwellings**

(Clause 41 (1))

### **Part 1 Standards applying to hostels and self-contained dwellings**

#### **1 Application of standards in this Part**

The standards set out in this Part apply to any seniors housing that consists of hostels or self-contained dwellings.

#### **2 Siting standards**

- (1) **Wheelchair access** If the whole of the site has a gradient of less than 1:10, 100% of the dwellings must have wheelchair access by a continuous accessible path of travel (within the meaning of AS 1428.1) 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 proportion of the site that has a gradient of less than 1:10, or 50%, whichever is the greater, and
  - (b) the wheelchair access provided must be by a continuous accessible path of travel (within the meaning of AS 1428.1) to an adjoining public road or an internal road or a driveway that is accessible to all residents.

**Note—**

For example, if 70% of the site has a gradient of less than 1:10, then 70% of the dwellings must have wheelchair access as required by this subclause. If more than 50% of the site has a gradient greater than 1:10, development for the purposes of seniors housing is likely to be unable to meet these requirements.

- (3) **Common areas** 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.

### **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.

### **4 Letterboxes**

Letterboxes:

- (a) must be situated on a hard standing area and have wheelchair access and circulation by a continuous accessible path of travel (within the meaning of AS 1428.1), and
- (b) must be lockable, and
- (c) must be located together in a central location adjacent to the street entry or, in the case of self-contained dwellings, must be located together in one or more central locations adjacent to the street entry.

### **5 Private car accommodation**

If car parking (not being car parking for employees) is provided:

- (a) car parking spaces must comply with the requirements for parking for persons with a disability set out in AS 2890, and
- (b) 5% of the total number of car parking spaces (or at least one space if there are fewer than 20 spaces) must be designed to enable the width of the spaces to be increased to 3.8 metres, and
- (c) any garage must have a power-operated door, or there must be a power point and an area for motor or control rods to enable a power-operated door to be installed at a later date.

### **6 Accessible entry**

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

## **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 1,000 millimetres.
- (3) Circulation space at approaches to internal doorways must comply with AS 1428.1.

## **8 Bedroom**

At least one bedroom within each dwelling must have:

- (a) an area sufficient to accommodate a wardrobe and a bed sized as follows:
  - (i) in the case of a dwelling in a hostel—a single-size bed,
  - (ii) in the case of a self-contained dwelling—a queen-size bed, and
- (b) a clear area for the bed of at least:
  - (i) 1,200 millimetres wide at the foot of the bed, and
  - (ii) 1,000 millimetres wide beside the bed between it and the wall, wardrobe or any other 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 one 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.

## **9 Bathroom**

- (1) At least one bathroom within a dwelling must be on the ground (or main) floor and have the following facilities arranged within an area that provides for circulation space for sanitary facilities in accordance with AS 1428.1:
  - (a) a slip-resistant floor surface,
  - (b) a washbasin with plumbing that would allow, either immediately or in the future, clearances that comply with AS 1428.1,
  - (c) a shower that complies with AS 1428.1, except that the following must be accommodated either immediately or in the future:
    - (i) a grab rail,

- (ii) portable shower head,
- (iii) folding seat,
- (d) a wall cabinet that is sufficiently illuminated to be able to read the labels of items stored in it,
- (e) a double general power outlet beside the mirror.

(2) Subclause (1) (c) does not prevent the installation of a shower screen that can easily be removed to facilitate future accessibility.

## **10 Toilet**

A dwelling must have at least one toilet on the ground (or main) floor and be a visitable toilet that complies with the requirements for sanitary facilities of AS 4299.

## **11 Surface finishes**

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

### **Note—**

Advice regarding finishes may be obtained from AS 1428.1.

## **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.

## **13 Ancillary items**

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

# **Part 2 Additional standards for self-contained dwellings**

## **14 Application of standards in this Part**

The standards set out in this Part apply in addition to the standards set out in Part 1 to any seniors housing consisting of self-contained dwellings.

## **15 Living room and dining room**

- (1) A living room in a self-contained dwelling 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.

## **16 Kitchen**

A kitchen in a self-contained dwelling 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 one work surface at least 800 millimetres in length that comply with clause 4.5.5 (a),
  - (ii) a tap set (see clause 4.5.6),
  - (iii) cooktops (see clause 4.5.7), except that an isolating switch must be included,
  - (iv) an oven (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 one of which is a double general power outlet within 300 millimetres of the front of a work surface, and
  - (ii) one of which is provided for a refrigerator in such a position as to be easily accessible after the refrigerator is installed.

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

In a multi-storey self-contained dwelling, the kitchen, main bedroom, bathroom and toilet must be located on the entry level.

## **18 Lifts in multi-storey buildings**

In a multi-storey building containing separate self-contained dwellings on different storeys, lift access must be provided to dwellings above the ground level of the building by way of a lift complying with clause E3.6 of the *Building Code of Australia*.

## **19 Laundry**

A self-contained dwelling must have a laundry that has:

- (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 1,300 millimetres, and
- (d) a slip-resistant floor surface, and
- (e) an accessible path of travel to any clothes line provided in relation to the dwelling.

## **20 Storage for linen**

A self-contained dwelling must be provided with a linen storage in accordance with clause 4.11.5 of AS 4299.

## **21 Garbage**

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