State Environmental Planning Policy (Affordable Rental Housing) 2009

[2009-364]

New South Wales

Status Information

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Does not include amendments by**
  Sch 3.4 to this Policy (not commenced — to commence on the commencement of Sch 3.1 [6] to the *Environmental Planning and Assessment Amendment Act 2008* No 36)

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the Interpretation Act 1987.

File last modified 1 March 2018

State Environmental Planning Policy (Affordable Rental Housing) 2009

New South Wales

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New South Wales

Part 1 Preliminary

1 Name of Policy

This Policy is *State Environmental Planning Policy (Affordable Rental Housing) 2009*.

2 Commencement

(1) Except as provided by subclause (2), this Policy commences on the day on which it is published on the NSW legislation website.

(2) Schedules 3.2 [2]–[4], 3.3 [2]–[4], 3.4, 3.11 [2]–[4] and 3.14 commence on the commencement of Schedule 3.1 [6] to the *Environmental Planning and Assessment Amendment Act 2008*.

3 Aims of Policy

The aims of this Policy are as follows:

(a) to provide a consistent planning regime for the provision of affordable rental housing,

(b) to facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards,

(c) to facilitate the retention and mitigate the loss of existing affordable rental housing,

(d) to employ a balanced approach between obligations for retaining and mitigating the loss of existing affordable rental housing, and incentives for the development of new affordable rental housing,

(e) to facilitate an expanded role for not-for-profit-providers of affordable rental housing,

(f) to support local business centres by providing affordable rental housing for workers close to places of work,

(g) to facilitate the development of housing for the homeless and other disadvantaged

people who may require support services, including group homes and supportive accommodation.

4 Interpretation—general

(1) In this Policy:

accessible area means land that is within:

(a) 800 metres walking distance of a public entrance to a railway station or a wharf from which a Sydney Ferries ferry service operates, or

(b) 400 metres walking distance of a public entrance to a light rail station or, in the case of a light rail station with no entrance, 400 metres walking distance of a platform of the light rail station, or

(c) 400 metres walking distance of a bus stop used by a regular bus service (within the meaning of the *Passenger Transport Act 1990*) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.

battle-axe lot means a lot that has access to a road by an access laneway.

boarding room means a room or suite of rooms within a boarding house occupied or so constructed or adapted as to be capable of being occupied by one or more lodgers.

consent:

(a) when used in relation to the carrying out of development without consent, means development consent and any other type of consent, licence, permission, approval or authorisation that is required by or under an environmental planning instrument, and

(b) when used in any other context, means development consent.

Note—

As a result of paragraph (a) of the definition of ***consent***, development that this Policy provides may be carried out without development consent may also be carried out without any other consent, licence, permission, approval or authorisation that would otherwise be required by another environmental planning instrument (such as an approval to remove a tree that is subject to a tree preservation order).

Development that does not require consent under Part 4 of the Act and is not a project to which Part 3A of the Act applies or exempt development will be subject to the environmental assessment and approval requirements of Part 5 of the Act.

development for the purposes of a secondary dwelling—see clause 19.

existing maximum floor space ratio means the maximum floor space ratio permitted on the land under an environmental planning instrument or development

control plan applying to the relevant land, other than this Policy or *State Environmental Planning Policy No 1—Development Standards*.

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

Note—

The term is defined as a room used for normal domestic activities, other than a bathroom, laundry, toilet, pantry, walk in wardrobe, hallway, lobby, clothes drying room or other space of a specialised nature that is not occupied frequently or for extended periods.

interim heritage order has the same meaning as in the *Heritage Act 1977*.

Land and Housing Corporation means the New South Wales Land and Housing Corporation constituted by the *Housing Act 2001*.

National Rental Affordability Scheme has the same meaning as in the *National Rental Affordability Scheme Act 2008* of the Commonwealth.

registered community housing provider has the same meaning as in the *Housing Act 2001*.

site area or ***site*** means the area of any land on which development is, or is to be, carried out. The land may include the whole or part of one lot, or more than one lot if they are contiguous to each other, but does not include the area of any land on which development is not permitted to be carried out under this Policy.

social housing provider means any of the following:

(a) the Department of Human Services,

(b) the Land and Housing Corporation,

(c) a registered community housing provider,

(d) the Aboriginal Housing Office,

(e) a registered Aboriginal housing organisation within the meaning of the *Aboriginal Housing Act 1998*,

(f) a local government authority that provides affordable housing,

(g) a not-for-profit organisation that is a direct provider of rental housing to tenants.

standard instrument means the standard instrument set out at the end of the *Standard Instrument (Local Environmental Plans) Order 2006*.

State Heritage Register means the State Heritage Register under the *Heritage Act 1977*.

supportive accommodation means the use of an existing building (being a

residential flat building or boarding house) for the purposes of:

(a) the long term accommodation, in a separate dwelling or boarding room, of a person (such as former homeless person) who needs support services to be provided in the building, and

(b) any services in support of such a person, including but not limited to, medical services, counselling services or education and training services,

and it may include the use of part of the building for the purposes of supervising, or providing administrative services in respect of, such a person.

Sydney region means the region having that name declared under section 4 (6) of the Act.

Note—

The Sydney region means land within the following Local Government Areas:

Ashfield, Auburn, Bankstown, Baulkham Hills, Blacktown, Blue Mountains, Botany, Burwood, Canada Bay, Camden, Campbelltown, Canterbury, Fairfield, Gosford, Hawkesbury, Holroyd, Hornsby, Hunters Hill, Hurstville, Kogarah, Ku-ring-gai, Lane Cove, Leichhardt, Liverpool, Manly, Marrickville, Mosman, North Sydney, Parramatta, Penrith, Pittwater, Randwick, Rockdale, Ryde, Strathfield, Sutherland, Sydney, Warringah, Waverley, Willoughby, Wollondilly, Woollahra and Wyong.

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

walking distance means the shortest distance between 2 points measured along a route that may be safely walked by a pedestrian using, as far as reasonably practicable, public footpaths and pedestrian crossings.

Note—

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

(2) A word or expression used in this Policy (other than Schedule 1 or 2) has the same meaning as it has in the standard instrument (as in force immediately before the commencement of the *Standard Instrument (Local Environmental Plans) Amendment Order 2011*) unless it is otherwise defined in this Policy.

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

5 Interpretation—references to equivalent land use zones

(1) A reference in this Policy to a land use zone that is equivalent to a named land use zone is a reference to a land use zone under an environmental planning instrument that is not made as provided by section 3.20 (2) of the Act:

(a) that the Director-General has determined under clause 1.6 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* is a land use zone in which equivalent land uses are permitted to those permitted in that named

land use zone, or

(b) if no such determination has been made in respect of the particular zone, is a land use zone in which (in the opinion of the relevant authority) equivalent land uses are permitted to those permitted in that named land use zone.

(2) An assessment made by a relevant authority under subclause (1) (b) applies only in respect of the particular development that is proposed to be carried out and more than one such assessment may be made in respect of the same land use zone.

(2A) Despite subclause (1), in relation to land:

(a) to which an environmental planning instrument that is not made as provided by section 3.20 (2) of the Act applies, and

(b) to which a draft environmental planning instrument that complies with that section and that has been the subject of community consultation also applies,

a reference in this Policy to a lot or land in a land use zone that is equivalent to a named land use zone is a reference to a lot or land specified in such a zone in the last such draft environmental planning instrument that was the subject of such community consultation.

(2B) In subclause (2A), ***community consultation*** means community consultation under section 57 of the Act or public exhibition under section 66 of the Act (as continued on by clause 12 of the *Environmental Planning and Assessment Regulation 2000*).

(3) In this clause, ***relevant authority*** means:

(a) the public authority proposing to carry out the development, or on whose behalf the development is proposed to be carried out, or

(b) if the development is to be carried out by or on behalf of a person other than a public authority, the consent authority.

Note—

Land use zones that are named in this Policy are those set out in the standard instrument.

6 Affordable housing

Note—

The Act defines affordable housing as follows:

affordable housing means housing for very low income households, low income households or moderate income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument.

(1) In this Policy, a household is taken to be a very low income household, low income household or moderate income household if the household:

(a) has a gross income that is less than 120 per cent 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) and pays no more than 30 per cent of that gross income in rent, or

(b) is eligible to occupy rental accommodation under the National Rental Affordability Scheme and pays no more rent than that which would be charged if the household were to occupy rental accommodation under that scheme.

(2) In this Policy, residential development is taken to be for the purposes of affordable housing if the development is on land owned by the Land and Housing Corporation.

7 Land to which Policy applies

This Policy applies to the State.

8 Relationship with other environmental planning instruments

If there is an inconsistency between this Policy and any other environmental planning instrument, whether made before or after the commencement of this Policy, this Policy prevails to the extent of the inconsistency.

9 Suspension of covenants, agreements and instruments

(1) For the purpose of enabling development on land in any zone to be carried out in accordance with this Policy or with a development consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.

(2) This clause does not apply:

(a) to a covenant imposed by the Council or that the Council requires to be imposed, or

(b) to any prescribed instrument within the meaning of section 183A of the *Crown Lands Act 1989*, or

(c) to any conservation agreement within the meaning of the *National Parks and Wildlife Act 1974*, or

(d) to any Trust agreement within the meaning of the *Nature Conservation Trust Act 2001*, or

(e) to any property vegetation plan within the meaning of the *Native Vegetation Act 2003*, or

(f) to any biobanking agreement within the meaning of Part 7A of the *Threatened Species Conservation Act 1995*, or

(g) to any planning agreement within the meaning of Division 7.1 of the Act.

(3) This clause does not affect the rights or interests of any public authority under any registered instrument.

(4) Under section 3.16 of the Act, the Governor, before the making of this clause, approved of subclauses (1)–(3).

Part 2 New affordable rental housing

Division 1 In-fill affordable housing

10 Development to which Division applies

(1) This Division applies to development for the purposes of dual occupancies, multi dwelling housing or residential flat buildings if:

(a) the development concerned is permitted with consent under another environmental planning instrument, and

(b) the development is on land that does not contain a heritage item that is identified in an environmental planning instrument, or an interim heritage order or on the State Heritage Register under the *Heritage Act 1977*.

(2) Despite subclause (1), this Division does not apply to development on land in the Sydney region unless all or part of the development is within an accessible area.

(3) Despite subclause (1), this Division does not apply to development on land that is not in the Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use, or within a land use zone that is equivalent to any of those zones.

11, 12 (Repealed)

13 Floor space ratios

(1) This clause applies to development to which this Division applies if the percentage of the gross floor area of the development that is to be used for the purposes of affordable housing is at least 20 per cent.

(2) The maximum floor space ratio for the development to which this clause applies is the existing maximum floor space ratio for any form of residential accommodation permitted on the land on which the development is to occur, plus:

(a) if the existing maximum floor space ratio is 2.5:1 or less:

(i) 0.5:1—if the percentage of the gross floor area of the development that is used for affordable housing is 50 per cent or higher, or

(ii) Y:1—if the percentage of the gross floor area of the development that is used for affordable housing is less than 50 per cent,
where:

AH is the percentage of the gross floor area of the development that is used for affordable housing.

$$Y = AH \div 100$$

or

(b) if the existing maximum floor space ratio is greater than 2.5:1:

(i) 20 per cent of the existing maximum floor space ratio—if the percentage of the gross floor area of the development that is used for affordable housing is 50 per cent or higher, or

(ii) Z per cent of the existing maximum floor space ratio—if the percentage of the gross floor area of the development that is used for affordable housing is less than 50 per cent,
where:

AH is the percentage of the gross floor area of the development that is used for affordable housing.

$$Z = AH \div 2.5$$

(3) In this clause, ***gross floor area*** does not include any car parking (including any area used for car parking).

Note—

Other areas are also excluded from the gross floor area, see the definition of ***gross floor area*** contained in the standard instrument under the *Standard Instrument (Local Environmental Plans) Order 2006*.

14 Standards that cannot be used to refuse consent

(1) **Site and solar access requirements** A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:

(a) (Repealed)

(b) **site area**

if the site area on which it is proposed to carry out the development is at least 450 square metres,

(c) **landscaped area**

if:

(i) in the case of a development application made by a social housing provider—at

least 35 square metres of landscaped area per dwelling is provided, or

(ii) in any other case—at least 30 per cent of the site area is to be landscaped,

(d) **deep soil zones**

if, in relation to that part of the site area (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:

(i) there is soil of a sufficient depth to support the growth of trees and shrubs on an area of not less than 15 per cent of the site area (the ***deep soil zone***), and

(ii) each area forming part of the deep soil zone has a minimum dimension of 3 metres, and

(iii) if practicable, at least two-thirds of the deep soil zone is located at the rear of the site area,

(e) **solar access**

if living rooms and private open spaces for a minimum of 70 per cent of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter.

(2) **General** A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:

(a) **parking**

if:

(i) in the case of a development application made by a social housing provider for development on land in an accessible area—at least 0.4 parking spaces are provided for each dwelling containing 1 bedroom, at least 0.5 parking spaces are provided for each dwelling containing 2 bedrooms and at least 1 parking space is provided for each dwelling containing 3 or more bedrooms, or

(ii) in any other case—at least 0.5 parking spaces are provided for each dwelling containing 1 bedroom, at least 1 parking space is provided for each dwelling containing 2 bedrooms and at least 1.5 parking spaces are provided for each dwelling containing 3 or more bedrooms,

(b) **dwelling size**

if each dwelling has a gross floor area of at least:

(i) 35 square metres in the case of a bedsitter or studio, or

(ii) 50 square metres in the case of a dwelling having 1 bedroom, or

(iii) 70 square metres in the case of a dwelling having 2 bedrooms, or

(iv) 95 square metres in the case of a dwelling having 3 or more bedrooms.

(3) A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2).

15 Design requirements

(1) A consent authority must not consent to development to which this Division applies unless it has taken into consideration the provisions of the *Seniors Living Policy: Urban Design Guidelines for Infill Development* published by the Department of Infrastructure, Planning and Natural Resources in March 2004, to the extent that those provisions are consistent with this Policy.

(2) This clause does not apply to development to which clause 4 of *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* applies.

16 Continued application of SEPP 65

Nothing in this Policy affects the application of *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development* to any development to which this Division applies.

16A Character of local area

A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.

17 Must be used for affordable housing for 10 years

(1) A consent authority must not consent to development to which this Division applies unless conditions are imposed by the consent authority to the effect that:

(a) for 10 years from the date of the issue of the occupation certificate:

(i) the dwellings proposed to be used for the purposes of affordable housing will be used for the purposes of affordable housing, and

(ii) all accommodation that is used for affordable housing will be managed by a registered community housing provider, and

(b) a restriction will be registered, before the date of the issue of the occupation certificate, against the title of the property on which development is to be carried out, in accordance with section 88E of the *Conveyancing Act 1919*, that will ensure that the requirements of paragraph (a) are met.

(2) Subclause (1) does not apply to development on land owned by the Land and Housing Corporation or to a development application made by, or on behalf of, a public authority.

18 Subdivision

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

Division 2 Secondary dwellings

19 Definition

In this Division:

development for the purposes of a secondary dwelling includes the following:

(a) the erection of, or alterations or additions to, a secondary dwelling,

(b) alterations or additions to a principal dwelling for the purposes of a secondary dwelling.

Note—

The standard instrument defines secondary dwelling as follows:

secondary dwelling means a self-contained dwelling that:

(a)

is established in conjunction with another dwelling (the ***principal dwelling***), and

(b) is on the same lot of land (not being an individual lot in a strata plan or community title scheme) as the principal dwelling, and

(c) is located within, or is attached to, or is separate from, the principal dwelling.

20 Land to which Division applies

This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones, but only if development for the purposes of a dwelling house is permissible on the land:

(a) Zone R1 General Residential,

(b) Zone R2 Low Density Residential,

(c) Zone R3 Medium Density Residential,

(d) Zone R4 High Density Residential,

(e) Zone R5 Large Lot Residential.

21 Development to which Division applies

This Division applies to development, on land to which this Division applies, for the purposes of a secondary dwelling and ancillary development (within the meaning of Schedule 1).

22 Development may be carried out with consent

(1) Development to which this Division applies may be carried out with consent.

(2) A consent authority must not consent to development to which this Division applies if there is on the land, or if the development would result in there being on the land, any dwelling other than the principal dwelling and the secondary dwelling.

(3) A consent authority must not consent to development to which this Division applies unless:

(a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument, and

(b) the total floor area of the secondary dwelling is no more than 60 square metres or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.

(4) A consent authority must not refuse consent to development to which this Division applies on either of the following grounds:

(a) **site area**

if:

(i) the secondary dwelling is located within, or is attached to, the principal dwelling, or

(ii) the site area is at least 450 square metres,

(b) **parking**

if no additional parking is to be provided on the site.

(5) A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (4).

23 Complying development

(1) Development for the purposes of a secondary dwelling (other than development referred to in subclause (2)) is complying development if the development:

(a) **General requirements**

meets the general requirements for complying development set out in clauses 1.17A and 1.18 (1) and (2) of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, and

(a1) meets the requirements set out in clauses 3.4, 3.5 and 3.6 of that Policy that would be applicable if the development were development specified for the Housing Code set out in Part 3 of that Policy, and

(b) **Land-based requirements**

is on a lot that does not include any land referred to in clause 1.19 (1) of that Policy, and

(c) **Specified development**

is on land in Zone R1, R2, R3 or R4 or a land use zone that is equivalent to any of those zones, and

(d) is on a lot that has an area of at least 450 square metres, and

(e) does not involve the erection of a basement or alterations or addition to an existing basement, and

(f) does not involve the erection of a roof terrace on the topmost roof of a building or alterations or addition to any such existing terrace, and

(g) **Development standards**

satisfies the development standards set out in Schedule 1.

(2) Development for the purposes of a secondary dwelling that is located entirely within an existing dwelling house is complying development if the development:

(a) **General requirements**

meets the relevant provisions of the *Building Code of Australia*, and

(a1) meets the requirements set out in clauses 3.4 and 3.5 of *State Environmental Planning Policy (Exempt and Complying Development) Codes 2008* that would be applicable if the development were development specified for the Housing Code set out in Part 3 of that Policy, and

(b) **Land-based requirements**

is on a lot that does not include any:

(i) land that is an environmentally sensitive area within the meaning of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, or

(ii) land that comprises, or on which there is, a heritage item or a draft heritage item within the meaning of that Policy, and

(c) **Specified development**

is on land in Zone R1, R2, R3 or R4 or a land use zone that is equivalent to any of those zones, and

(d) involves no external alterations to the principal dwelling other than the provision of an additional entrance, and

(e) does not involve the erection of a basement or alterations or addition to an existing basement, and

(f) does not involve the erection of a roof terrace on the topmost roof of a building or alterations or addition to any such existing terrace, and

(g) **Development standards**

will not result in there being on the land, any dwelling other than the principal dwelling and the secondary dwelling, and

(h) will not result in the floor area of the secondary dwelling being more than 60 square metres or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, being more than that greater floor area.

(2A) (Repealed)

(3) If a secondary dwelling is to be built at the same time as a principal dwelling, the building of both dwellings and any ancillary development on the lot may be carried out as a single complying development if:

(a) the building of the secondary dwelling can be carried out as complying development under this Division, and

(b) the building of the principal dwelling and any ancillary development can be carried out as complying development under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

(4) In determining whether a principal dwelling (when built at the same time as a secondary dwelling) can be carried out as complying development under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, the secondary dwelling is not to be taken into account.

Note—

This means that the principal dwelling would be considered to be a dwelling house (a building containing only one dwelling) for the purposes of that Policy even if the secondary dwelling were within it or attached to it.

(5) A complying development certificate for development that is complying development under this Division is subject to the conditions specified in Schedule 6 to *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, except that the reference in clause 11 of Schedule 6 to that Policy to a dwelling house is taken to be a reference to a principal dwelling or a secondary dwelling.

Note—

Principal and secondary dwellings will be classified as class 1a or class 2 under the *Building Code of Australia* depending on the configuration of those dwellings.

24 No subdivision

A consent authority must not consent to a development application that would result in any subdivision of a lot on which development for the purposes of a secondary dwelling has been carried out under this Division.

Division 3 Boarding houses

25 Definition

In this Division:

communal living room means a room within a boarding house or on site that is available to all lodgers for recreational purposes, such as a lounge room, dining room, recreation room or games room.

26 Land to which Division applies

This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones:

(a) Zone R1 General Residential,

(b) Zone R2 Low Density Residential,

(c) Zone R3 Medium Density Residential,

(d) Zone R4 High Density Residential,

(e) Zone B1 Neighbourhood Centre,

(f) Zone B2 Local Centre,

(g) Zone B4 Mixed Use.

27 Development to which Division applies

(1) This Division applies to development, on land to which this Division applies, for the purposes of boarding houses.

(2) Despite subclause (1), this Division does not apply to development on land within

Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone in the Sydney region unless the land is within an accessible area.

(3) Despite subclause (1), this Division does not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone that is not in the Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use or within a land use zone that is equivalent to any of those zones.

28 Development may be carried out with consent

Development to which this Division applies may be carried out with consent.

29 Standards that cannot be used to refuse consent

(1) A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than:

(a) the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or

(b) if the development is on land within a zone in which no residential accommodation is permitted—the existing maximum floor space ratio for any form of development permitted on the land, or

(c) if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register—the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus:

(i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or

(ii) 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.

(2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:

(a) **building height**

if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land,

(b) **landscaped area**

if the landscape treatment of the front setback area is compatible with the

streetscape in which the building is located,

(c) **solar access**

where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,

(d) **private open space**

if at least the following private open space areas are provided (other than the front setback area):

(i) one area of at least 20 square metres with a minimum dimension of 3 metres is provided for the use of the lodgers,

(ii) if accommodation is provided on site for a boarding house manager—one area of at least 8 square metres with a minimum dimension of 2.5 metres is provided adjacent to that accommodation,

(e) **parking**

if:

(i) in the case of development in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and

(ii) in the case of development not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and

(iii) in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,

(f) **accommodation size**

if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least:

(i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or

(ii) 16 square metres in any other case.

(3) A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.

(4) A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2).

30 Standards for boarding houses

(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:

(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,

(b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25 square metres,

(c) no boarding room will be occupied by more than 2 adult lodgers,

(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,

(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager,

(f) (Repealed)

(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use,

(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.

(2) Subclause (1) does not apply to development for the purposes of minor alterations or additions to an existing boarding house.

30A Character of local area

A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.

Division 4 Supportive accommodation

31 Land to which Division applies

This Division applies to land on which development for the purposes of a residential flat building or boarding house is permissible under this or any other environmental planning instrument.

32 Development to which Division applies

This Division applies to development, on land to which this Division applies, for the

purposes of supportive accommodation.

33 Development may be carried out without consent

Development to which this Division applies may be carried out without consent but only if the development does not involve the erection or alteration of, or addition to, a building.

Division 5 Residential flat buildings—social housing providers, public authorities and joint ventures

34 Land to which Division applies

This Division applies to the following land, but not if development for the purposes of a residential flat building is permissible on the land under another environmental planning instrument:

(a) land in the Sydney region that is within 800 metres of:

(i) a public entrance to a railway station or light rail station, or

(ii) in the case of a light rail station with no entrance—a platform of the light rail station,

(b) land in one of the following towns that is within 400 metres of land in Zone B3 Commercial Core, Zone B4 Mixed Use or a land use zone that is equivalent to either of those zones:

Albury, Ballina, Batemans Bay, Bathurst, Bega, Bowral, Cessnock, Charlestown, Coffs Harbour, Dapto, Dubbo, Glendale–Cardiff, Gosford, Goulburn, Grafton, Lismore, Maitland, Morisset, Newcastle, Nowra, Orange, Port Macquarie, Queanbeyan, Raymond Terrace, Shellharbour, Tamworth, Taree, Tuggerah–Wyong, Tweed Heads, Wagga Wagga, Warrawong, Wollongong.

35 Development to which Division applies

(1) This Division applies to development, on land to which this Division applies, for the purposes of a residential flat building:

(a) by or on behalf of a public authority or social housing provider, or

(b) by a person who is undertaking the development with the Land and Housing Corporation.

(2) Despite subclause (1), this Division does not apply to development to which Division 1 applies.

36 Development may be carried out with consent

(1) Development to which this Division applies may be carried out with consent.

(2) A consent authority must not consent to development to which this Division applies unless it is satisfied that:

(a) the Director-General has certified in a site compatibility certificate that, in the Director-General's opinion, the development is compatible with the surrounding land uses, and

(b) if the development is in respect of a building on land zoned primarily for commercial purposes, no part of the ground floor of the building that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use.

(3) Nothing in this clause prevents a consent authority from:

(a) consenting to development on a site by reference to site and design features that are more stringent than those identified in a site compatibility certificate for the same site, or

(b) refusing consent to development by reference to the consent authority's own assessment of the compatibility of the development with the surrounding land uses, or

(c) having regard to any other matter in determining a development application.

(3A) (Repealed)

(4) Car parking is not required to be provided in relation to development to which this Division applies.

37 Site compatibility certificates

(1) An application for a site compatibility certificate under this Division 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 under this clause:

(a) must be in writing in a form approved by the Director-General, and

(b) must be accompanied by such documents and information as the Director-General may require, and

(c) must be accompanied by such fee, if any, as is prescribed by the regulations.

(3) The Director-General may request further documents and information to be furnished

in connection with an application under this clause.

(4) Within 7 days after the application is made, the Director-General must provide a copy of the application to the council for the area in which the development concerned is proposed to be carried out, unless the Director-General refuses, before those 7 days have elapsed, to issue a certificate.

(5) The Director-General may determine the application by issuing a certificate or refusing to do so.

(6) The Director-General must not issue a certificate unless the Director-General:

(a) has taken into account any comments received from the council within 14 days after the application for the certificate was made, and

(b) is of the opinion that the development concerned is compatible with the surrounding land uses having regard to the following matters:

(i) the existing uses and approved uses of land in the vicinity of the development,

(ii) the impact that the development (including its bulk and scale) is likely to have on the existing uses, approved uses and uses that, in the opinion of the Director-General, are likely to be the preferred future uses of that land,

(iii) the services and infrastructure that are or will be available to meet the demands arising from the development, and

(c) is of the opinion that the development concerned is not likely to have an adverse effect on the environment and does not cause any unacceptable environmental risks to the land.

(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) A certificate continues to apply to the land in respect of which it was issued despite any change in the ownership of that land.

(9) A certificate is valid for 5 years or such other period specified in the certificate.

38 Must be used for affordable housing for 10 years

(1) A consent authority must not consent to development to which this Division applies unless conditions are imposed by the consent authority to the effect that:

(a) for 10 years from the date of the issue of the occupation certificate:

(i) at least 50 per cent of the accommodation to which the development application relates will be used for the purposes of affordable housing, and

(ii) all the accommodation that is used for affordable housing will be managed by a registered community housing provider, and

(b) a restriction will be registered, before the date of the issue of the occupation certificate, against the title of the property on which development is to be carried out, in accordance with section 88E of the *Conveyancing Act 1919*, that will ensure that for 10 years from the date of the issue of the occupation certificate:

(i) at least 50 per cent of the accommodation to which the development application relates will be used for the purposes of affordable housing, and

(ii) all the accommodation that is used for affordable housing will be managed by a registered community housing provider.

(2) Subclause (1) does not apply to development on land owned by the Land and Housing Corporation or to a development application made by, or on behalf of, a public authority.

39 Continued application of SEPP 65

Nothing in this Policy affects the application of *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development* to any development to which this Division applies.

Division 6 Residential development—Land and Housing Corporation

40 Development may be carried out without consent

(1) This clause applies to development for any of the following purposes where that development may be carried out with consent:

(a) residential development, if any building will have a height of 8.5 metres or less and the development will result in 20 dwellings or less on a single site and the provision of not less than the following parking spaces:

(i) for development on land in an accessible area—0.4 parking spaces for each dwelling containing 1 bedroom, 0.5 parking spaces for each dwelling containing 2 bedrooms and 1 parking space for each dwelling containing 3 or more bedrooms, or

(ii) for development that is not in an accessible area—0.5 parking spaces for each dwelling containing 1 bedroom, 1 parking space for each dwelling containing 2 bedrooms and 1.5 parking spaces for each dwelling containing 3 or more bedrooms,

(b) demolition of dwellings and associated structures, but not if the dwelling or structure is on land that:

(i) contains a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register, or

(ii) is identified in an environmental planning instrument as being within a heritage conservation area,

(c) subdivision of land and subdivision works.

(2) This clause does not apply to:

(a) development to which Division 5 applies, or

(b) development that is exempt or complying development under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, or

(c) development that is part of a project, or part of a stage of a project, that the Minister has determined under section 75P of the Act to be subject to Part 4 of the Act.

(3) Development to which this clause applies may be carried out by or on behalf of the Land and Housing Corporation without development consent.

(4) Before carrying out development to which this clause applies for a purpose referred to in subclause (1) (a), the Land and Housing Corporation must:

(aa) before or after giving written notice to the council for the area under this subclause, request the council to nominate any other persons who should, in the council's opinion, be notified of the development, and

(a) give written notice of the intention to carry out the development to the council for the area in which the land is located, to any other person nominated for that purpose by that council and to the occupiers of adjoining land, and

(b) take into account any response to the notice that is received within 21 days after the notice is given, and

(c) take into account the *Seniors Living Policy: Urban Design Guidelines for Infill Development (*ISBN 0 7347 5446 9) published by the Department of Infrastructure, Planning and Natural Resources in March 2004, to the extent that it is not inconsistent with this Policy.

(5) Clauses 16 and 17 of *State Environmental Planning Policy (Infrastructure) 2007* apply in respect of development for a purpose referred to in subclause (1) (a) and, in the application of those clauses, any reference in those clauses to:

(a) that Policy is taken to be a reference to this clause, and

(b) a public authority is taken to be a reference to the Land and Housing Corporation.

41 Exempt development

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

(a) repairs and maintenance work,

(b) non-structural renovations and building alterations,

(c) landscaping and gardening.

Division 7 Group homes

42 Definitions

(1) In this Division:

group home means a permanent group home or a transitional group home.

permanent group home means a dwelling:

(a) that is occupied by persons as a single household with or without paid supervision or care and whether or not those persons are related or payment for board and lodging is required, and

(b) that is used to provide permanent household accommodation for people with a disability or people who are socially disadvantaged,

but does not include development to which *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* applies.

prescribed zone means:

(a) any of the following land use zones or a land use zone that is equivalent to any of those zones:

(i) Zone R1 General Residential,

(ii) Zone R2 Low Density Residential,

(iii) Zone R3 Medium Density Residential,

(iv) Zone R4 High Density Residential,

(v) Zone B4 Mixed Use,

(vi) Zone SP1 Special Activities,

(vii) Zone SP2 Infrastructure, and

(b) any other zone in which development for the purpose of dwellings, dwelling

houses or multi dwelling housing may be carried out with or without consent under an environmental planning instrument.

transitional group home means a dwelling:

(a) that is occupied by persons as single household with or without paid supervision or care and whether or not those persons are related or payment for board and lodging is required, and

(b) that is used to provide temporary accommodation for the relief or rehabilitation of people with a disability or for drug or alcohol rehabilitation purposes, or that is used to provide half-way accommodation for persons formerly living in institutions or temporary accommodation comprising refuges for men, women or young people,

but does not include development to which *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* applies.

(2) In this clause:

(a) a reference to ***people with a disability*** is a reference to people of any age who, as a result of having an intellectual, psychiatric, sensory, physical or similar impairment, or a combination of such impairments, either permanently or for an extended period, have substantially limited opportunities to enjoy full and active lives, and

(b) a reference to ***people who are socially disadvantaged*** is a reference to:

(i) people who are disadvantaged because of their alcohol or drug dependence, extreme poverty, psychological disorder or other similar disadvantage, or

(ii) people who require protection because of domestic violence or upheaval.

43 Development in prescribed zones

(1) Development for the purpose of a permanent group home or a transitional group home on land in a prescribed zone may be carried out:

(a) without consent if the development does not result in more than 10 bedrooms being within one or more group homes on a site and the development is carried out by or on behalf of a public authority, or

(b) with consent in any other case.

(2) Division 1 of Part 2 of *State Environmental Planning Policy (Infrastructure) 2007* applies in respect of development carried out by or on behalf of a public authority under subclause (1) and, in the application of that Division, any reference in that Division to that Policy is taken to be a reference to this clause.

44 Exempt development existing group homes

(1) Development for a purpose specified in Schedule 1 to *State Environmental Planning Policy (Infrastructure) 2007* that is carried out within the boundaries of an existing group home, by or on behalf of a public authority, is exempt development if:

(a) it meets the development standards for the development specified in that Schedule (as modified by subclause (2)), and

(b) it complies with the requirements of clause 20 (2) of that Policy.

(2) For the purposes of this clause, the development standards set out in Schedule 1 to that Policy with respect to carports associated with an existing building are taken to be modified as follows:

(a) the maximum surface area for such a carport is taken to be 30 square metres,

(b) the maximum height for such a carport is taken to be 3 metres above ground level (existing),

(c) any such carport may be located up to 1 metre forward of a front building setback.

45 Complying development—group homes

(1) Development for the purposes of a group home is complying development if:

(a) the development does not result in more than 10 bedrooms being within one or more group homes on a site, and

(b) the development satisfies the requirements for complying development specified in clauses 1.18 and 1.19 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (other than clauses 1.18 (1) (h) and 1.19 (1) (b) and the requirement that the development not be in a draft heritage conservation area).

Note—

Development specified as complying development under this clause may not be undertaken as complying development if the development is on bush fire prone land—see section 100B of the *Rural Fires Act 1997*.

(1A) Development under subclause (1) must also satisfy the requirements for complying development specified in clause 3.5 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

(2) The development standards for complying development under this clause are set out in Schedule 2.

(3) A complying development certificate is taken to satisfy any requirement of an environmental planning instrument or tree preservation order for a consent, permit or approval to remove a tree, or other vegetation, under 4 metres in height if the

complying development cannot be carried out without the removal of the tree or other vegetation.

(4) A complying development certificate for development that is complying development under this clause is subject to the conditions specified in Schedule 6 to *State Environmental Planning Policy (Exempt and Complying Development) Codes 2008*, except that the reference in clause 11 of Schedule 6 to that Policy to a dwelling house is taken to be a reference to a group home.

46 Determination of development applications

(1) A consent authority must not:

(a) refuse consent to development for the purpose of a group home unless the consent authority has made an assessment of the community need for the group home, or

(b) impose a condition on any consent granted for a group home only for the reason that the development is for the purpose of a group home.

(2) This clause applies to development for the purpose of a group home that is permissible with consent under this or any other environmental planning instrument.

Part 3 Retention of existing affordable rental housing

Note—

Development that would otherwise be complying development cannot be carried out in relation to low-rental dwellings or low-rental residential buildings. (See clause 1.4A of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.)

47 Interpretation

(1) In this Part:

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

(a) it is similar in location because it is in the same or a neighbouring suburb, and

(b) it is at the same rental level, or is not more than 5 per cent higher than that level, and

(c) it is available for occupation at the date of lodgment of the development application, and

(d) in the case of residential flat buildings, comprises dwellings with the same number of bedrooms as the dwellings in the premises the subject of the development application.

guidelines means the *Guidelines for the Retention of Existing Affordable Rental Housing*, approved by the Director-General and published in the Gazette.

low-rental dwelling means a dwelling that (at any time in the 24 month period prior to the lodgment of a development application to which this Part applies) was let at a rental not exceeding the median rental level for that time (as specified in the *Rent and Sales Report*) in relation to a dwelling of the same type, having the same number of bedrooms and located in the same local government area.

low-rental residential building means a building used as a residential flat building containing a low-rental dwelling or as a boarding house and includes a building:

(a) that, at the time of lodgment of a development application to which this Part applies, is lawfully used as a residential flat building containing a low-rental dwelling or as a boarding house, irrespective of the purpose for which the building may have been erected, or

(b) that was used as a residential flat building containing a low-rental dwelling or as a boarding house but that use has been changed unlawfully to another use, or

(c) that is vacant, but the last significant use of which was as a residential flat building containing a low-rental dwelling or as a boarding house.

Rent and Sales Report means the *Rent and Sales Report* published by the Department of Human Services or a publication issued in place of that publication by or on behalf of the Government.

(2) In this Part, a very low income household, low income household or moderate income household is taken to include a household that occupies a low-rental dwelling or a boarding room in a boarding house.

48 Land to which Part applies

This Part applies to land within the Sydney region and land within the local government area of Newcastle or Wollongong City.

49 Buildings to which Part applies

(1) This Part applies only to those buildings that were low-rental residential buildings as at 28 January 2000, and does not apply to any building that becomes a low-rental residential building after that date.

(2) This Part does not apply to a building:

(a) that has been approved for subdivision under the *Strata Schemes (Freehold Development) Act 1973*, or

(b) to which *State Environmental Planning Policy (Housing for Seniors or People with a*

Disability) 2004 applies, or

(c) owned by, or under the care, control and management of, a social housing provider.

50 Reduction of availability of affordable housing

(1) A person must not do any of the following in relation to a building to which this Part applies except with development consent:

(a) demolish the building,

(b) alter or add to the structure or fabric of the inside or outside of the building,

(c) change the use of the building to another use (including, in particular, a change of use to backpackers accommodation),

(d) if the building is a residential flat building, strata subdivide the building.

(2) In determining a development application referred to in subclause (1), the consent authority is to take into account the guidelines and each of the following:

(a) whether there is likely to be a reduction in affordable housing on the land to which the application relates,

(b) whether there is available sufficient comparable accommodation to satisfy the demand for such accommodation,

(c) whether the development is likely to cause adverse social and economic effects on the general community,

(d) whether adequate arrangements have been made to assist the residents (if any) of the building likely to be displaced to find alternative comparable accommodation,

(e) the extent to which the development contributes to any cumulative loss of affordable housing in the local government area,

(f) the structural soundness of the building, the extent to which the building complies with any relevant fire safety requirements and the estimated cost of carrying out work necessary to ensure the structural soundness of the building and the compliance of the building with the fire safety requirements,

(g) whether the imposition of a condition requiring the payment of a monetary contribution for the purposes of affordable housing would adequately mitigate the reduction of affordable housing resulting from the development,

(h) in the case of a boarding house, the financial viability of the continued use of the boarding house.

(3) For the purposes of subclause (2) (b), sufficient comparable accommodation is conclusively taken to be not available if the average vacancy rate in private rental accommodation for Sydney as published monthly by the Real Estate Institute of New South Wales is, for the 3 months immediately preceding the date of lodgment of the development application, less than 3 per cent.

(4) For the purposes of subclause (2) (h), the continued use of a boarding house is financially viable if the rental yield of the boarding house determined under clause 51 (5) not less than 6 per cent.

51 Contributions for affordable housing

(1) For the purposes of section 7.32 (1) of the Act, this Policy identifies a need for affordable housing on land within the Sydney region and on land within the local government area of Newcastle or Wollongong City.

(2) For the purposes of section 7.32 (3) (b) of the Act, this Policy authorises a condition to be imposed under section 7.32 of the Act if:

(a) the consent authority, when determining a development application referred to in clause 50 (1), is satisfied that the proposed development will or is likely to reduce the availability of affordable housing within the area, and

(b) the condition is imposed in accordance with the scheme for dedications or contributions set out in subclauses (3) and (4).

(3) If a condition is to be imposed under this clause, the amount of the contribution is to be calculated in accordance with the following formula:

$$C = L \times R \times 0.05$$

where:

C is the contribution payable.

L is the total number of bedrooms in a low-rental dwelling and boarding rooms that will be lost by the proposed development.

R is the replacement cost calculated as the average value of the first quartile of sales of strata properties in the local government area in which the development is to take place, as specified in the 4 most recent editions of the *Rent and Sales Report*.

(4) Despite subclause (3), where the development application relates to a boarding house that the consent authority has assessed as not being financially viable:

(a) if the rental yield is 3 per cent or less, no contribution can be sought, and

(b) if the rental yield is more than 3 per cent and less than 6 per cent, the contribution payable is to be reduced by being calculated in accordance with the

following formula:

$$C = \frac{X \times (100RY - 3)}{3}$$

where:

C is the contribution payable.

X is the contribution that would be payable under subclause (3).

RY is the rental yield.

(5) In this clause:

rental yield means the rental yield for a period (expressed as a percentage) determined by the consent authority in accordance with the following formula and taking into account the guidelines:

$$RY = \frac{Y - (E + D)}{V + U}$$

where:

RY in the rental yield.

Y is the gross rental income from the boarding house for the period.

E is the total expenses for the boarding house (excluding expenses that have been charged to lodgers) for the period.

D is the capital depreciation of the boarding house for the period.

V is the total value of the boarding house were it to be purchased for the purposes of continuing its use as a boarding house.

U is the estimated cost or carrying out work as determined under clause 50 (2) (f).

Part 4 Miscellaneous

52 No subdivision of boarding houses

A consent authority must not grant consent to the strata subdivision or community title subdivision of a boarding house.

53 Review of Policy

The Minister must ensure that the provisions of this Policy are reviewed:

(a) as soon as practicable after the first anniversary of the commencement of this Policy, and

(b) at least every 5 years after that commencement.

54 Savings and transitional provisions

(1) If a development application has been made before the commencement of this clause in relation to development to which this Policy applies and the application has not been finally determined before that commencement, the application may be determined as if this Policy had not been made.

(2) Despite subclause (1), a development application that has been made under *State Environmental Planning Policy No 10—Retention of Low-Cost Rental Accommodation* before the repeal of that Policy and not finally determined must be determined:

(a) if the application is for development has been referred to the Director-General for concurrence under clause 7 of that Policy—in accordance with this Policy except that the prior concurrence of the Director-General is required before consent can be granted to the development application, and

(b) in any other case—in accordance with this Policy.

(3) Anything done by Housing NSW or the Department of Human Services under clause 16 or 63D (3) of *State Environmental Planning Policy (Infrastructure) 2007* in respect of development for a purpose referred to in clause 40 (1) (a) of this Policy is taken to have been done in respect of that development by the Land and Housing Corporation under clause 40 of this Policy.

54A Savings and transitional provisions—2011 amendment

(1) Division 1 of Part 2, as in force before its amendment by *State Environmental Planning Policy Amendment (Affordable Rental Housing) 2011* (the ***amending SEPP***), continues to apply to development, if:

(a) the land on which the development is situated is owned by the Land and Housing Corporation and was owned by that Corporation immediately before the amendment, and

(b) the development is commenced not later than 2 years after the amendment.

(2) If a development application (an ***existing application***) has been made before the commencement of the amending SEPP in relation to development to which this SEPP applied before that commencement, the application may be determined as if the amending SEPP had not been made.

(3) If an existing application relates to development to which Division 1 or 3 of Part 2 applied, the consent authority must not consent to the development unless it has taken into consideration whether the design of the development is compatible with the character of the local area.

(4) Despite subclause (2), clause 13 (2) (as in force before the amendments made by the amending SEPP) does not apply to development the subject of an existing application and any such application is to be determined by applying instead clause 13 (2) and (3) as inserted by the amending SEPP.

54B Savings and transitional provisions—2013 amendment

(1) This clause applies to a development application that was made before the commencement of the amending SEPP and was not determined by a consent authority or, if appealed, not finally determined by a court before that commencement.

(2) The application must be determined:

(a) by applying clause 5 as amended by the amending SEPP, and

(b) by applying all other provisions of this Policy as if the amending SEPP had not commenced.

(3) In this clause, the ***amending SEPP*** means *State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Commercial and Industrial Development) 2013*.

55 Repeal

State Environmental Planning Policy No 10—Retention of Low-Cost Rental Accommodation is repealed.

56 Savings and transitional provisions—site compatibility amendments

Clause 36, as amended by *State Environmental Planning Policy (Repeal of Site Compatibility Provisions) 2011*, applies to a development application for development to which Division 5 of Part 2 applies that was made, but not determined, before the commencement of the amendments.

Schedule 1 Development standards for secondary dwellings

(Clause 23 (1) (g))

Part 1 Preliminary

1 Definitions

(1) In this Schedule:

ancillary development means any of the following that are associated with a secondary dwelling and that are not exempt development under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*:

(a) an access ramp,

(b) an awning, blind or canopy,

(c) a balcony, deck, patio, pergola, terrace or verandah that is attached to a principal or secondary dwelling,

(d) a carport that is attached to a principal or secondary dwelling,

(e) a driveway, pathway or paving,

(f) a fence or screen,

(g) a garage that is attached to a principal or secondary dwelling,

(h) an outbuilding,

(i) a rainwater tank that is attached to a principal or secondary dwelling,

(j) a retaining wall,

(k) a swimming pool or spa pool and child-resistant barrier.

outbuilding means any of the following that are detached from a principal or secondary dwelling:

(a) a balcony, deck, patio, pergola, terrace or verandah,

(b) a cabana, cubby house, fernery, shed, gazebo or greenhouse,

(c) a carport or garage,

(d) a rainwater tank (above ground),

(e) a shade structure.

(2) A word or expression used in this Schedule has the same meaning as it has in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* unless it is otherwise defined in this Schedule.

(2A) A word or expression used in this Schedule and not defined in this clause or in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* has the same meaning as it has in the standard instrument (as in force immediately before the commencement of the *Standard Instrument (Local Environmental Plans) Amendment Order 2011*).

(3) In calculating the area of a lot for the purposes of this Schedule, the area of the access laneway is excluded if it is a battle-axe lot.

Part 2 Site requirements

2 Lot requirements

(1) Development for the purposes of a secondary dwelling or ancillary development may only be carried out on a lot that:

(a) at the completion of the development will have only one principal dwelling and one secondary dwelling, and

(b) if it is not a battle-axe lot, has a boundary with a primary road, measured at the building line, of at least the following:

(i) 12 metres, if the lot has an area of at least 450 square metres but not more than 900 square metres,

(ii) 15 metres, if the lot has an area of more than 900 square metres but not more than 1500 square metres,

(iii) 18 metres, if the lot has an area of more than 1500 square metres, and

(c) if it is a battle-axe lot, has an access laneway of at least 3 metres in width and measuring at least 12 metres by 12 metres, excluding the access laneway.

(2) A lot on which a new secondary dwelling is erected must have lawful access to a public road.

3 Maximum site coverage of all development

(1) The site coverage of the principal dwelling, secondary dwelling and all ancillary development on a lot must not be more than the following:

(a) 50 per cent of the area of the lot, if the lot has an area of at least 450 square metres but not more than 900 square metres,

(b) 40 per cent of the area of the lot, if the lot has an area of more than 900 square metres but not more than 1500 square metres,

(c) 30 per cent of the area of the lot, if the lot has an area of more than 1500 square metres.

(2) For the purpose of calculating the site coverage in subclause (1), the area of any of the following is not included:

(a) an access ramp,

(b) that part of an awning, blind or canopy that is outside the outer wall of a building,

(c) a balcony, deck, patio, pergola, terrace or verandah attached to the principal or secondary dwelling that is not enclosed by a wall higher than 1.4 metres above

the floor level,

(d) an eave,

(e) a driveway,

(f) a farm building,

(g) a fence or screen,

(h) a pathway or paving,

(i) a rainwater tank that is attached to the principal or secondary dwelling,

(j) a swimming pool or spa pool.

4 Maximum floor area for principal and secondary dwelling

(1) The floor area of a secondary dwelling (excluding any ancillary development) must not be more than 60 square metres or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.

(2) The floor area of a principal dwelling, secondary dwelling and any carport, garage, balcony, deck, patio, pergola, terrace or verandah attached to either dwelling and enclosed by a wall (other than the external wall of a dwelling) higher than 1.4 metres above the floor level on a lot must not be more than the following:

(a) 330 square metres, if the lot has an area of at least 450 square metres but not more than 600 square metres,

(b) 380 square metres, if the lot has an area of more than 600 square metres but not more than 900 square metres,

(c) 430 square metres, if the lot has an area of more than 900 square metres.

(3) For the purpose of calculating the floor area in subclause (2):

floor area means the sum of the areas of each storey of each principal dwelling or secondary dwelling and each carport, garage, balcony, deck, patio, pergola, terrace or verandah, measured at a height of 1.4 metres above each floor level, where the area is taken to be the area within the outer face of:

(a) the external walls of the principal dwelling or secondary dwelling, and

(b) the walls of the carport, garage, balcony, deck, patio, pergola, terrace or verandah,

but excluding any of the following:

(c) any part of an awning, blind or canopy that is outside the outer wall of a building,

(d) an eave,

(e) a lift shaft,

(f) a stairway,

(g) a void above a lower storey.

5 Setbacks and maximum floor area for balconies, decks, patios, terraces and verandahs

(1) The total floor area of all balconies, decks, patios, terraces and verandahs on a lot must not be more than 12 square metres if:

(a) any part of the structure is within 6 metres from a side, or the rear, boundary, and

(b) the structure has any point of its finished floor level more than 2 metres above ground level (existing).

(2) The balcony, deck, patio, terrace or verandah must not have any point of its finished floor level:

(a) if it is located within 3 metres of a side, or the rear, boundary—more than 2 metres above ground level (existing), or

(b) if it is located more than 3 metres but not more than 6 metres from a side, or the rear, boundary—more than 3 metres above ground level (existing), or

(c) if it is located more than 6 metres from a side, or the rear, boundary—more than 4 metres above ground level (existing).

(3) A detached deck, patio or terrace (including any alterations or additions to the deck, patio or terrace) must not have a floor level that is more than 600 millimetres above ground level (existing).

Note—

Development identified in this clause may require privacy screens under clause 15.

Part 3 Building heights and setbacks

6 Building height

(1) Development for the purposes of a secondary dwelling or ancillary development must not result in a new building or a new part of an existing building having a building height above ground level (existing) of more than 8.5 metres.

(2) Development for the purposes of ancillary development must not result in a new building or a new part of an existing building having a building height above ground level (existing) of more than:

(a) if an outbuilding—4.8 metres, or

(b) if a fence—1.8 metres.

7 Setbacks from roads, other than classified roads

(1) Development for the purpose of a secondary dwelling or ancillary development on a lot must result in a new building or a new part of an existing building having a setback from a primary road that is not a classified road of at least:

(a) the average distance of the setbacks of the nearest 2 dwelling houses having the same primary road boundary and located within 40 metres of the lot on which the principal dwelling is erected, or

(b) if 2 dwelling houses are not located within 40 metres of the lot:

(i) in the case of a lot that has an area of at least 450 square metres but not more than 900 square metres—4.5 metres, or

(ii) in the case of a lot that has an area of more than 900 square metres but not more than 1,500 square metres—6.5 metres, or

(iii) in the case of a lot that has an area of more than 1,500 square metres—10 metres.

(2) Development for the purpose of a secondary dwelling or ancillary development on a lot must result in a new building or a new part of an existing building having a setback from a boundary of the lot with a parallel road that is not a classified road of at least 3 metres.

(3) Development for the purpose of a secondary dwelling or ancillary development on a corner lot must result in a new building or a new part of an existing building on the lot having a setback from the boundary with a secondary road that is not a classified road of at least:

(a) if the lot has an area of at least 450 square metres but not more than 600 square metres—2 metres, or

(b) if the lot has an area of more than 600 square metres but not more than 1,500 square metres 3 metres, or

(c) if the lot has an area of more than 1500 square metres—5 metres.

(4) For the purposes of this clause, if a lot is a corner lot:

(a) one of the boundaries that is 6m or more in length is taken to be a boundary with a primary road, and

(b) the other boundaries are taken to be boundaries with a secondary road.

(5) For the purposes of this clause, if a lot has contiguous boundaries with a road or roads but is not a corner lot, the lot is taken to have a boundary only with a primary road.

8 Setbacks from classified roads

Development for the purposes of a secondary dwelling or ancillary development must not result in a new building or a new part of an existing building having a setback from a boundary with a classified road of less than:

(a) if another environmental planning instrument applying to the lot establishes a setback for a dwelling house having a boundary with a classified road, that distance, or

(b) 9 metres in any other case.

9 Setbacks from side boundaries

(1) Development for the purposes of a secondary dwelling or ancillary development must not result in a new building or a new part of an existing building or any new carport, garage, balcony, deck, patio, pergola, terrace or verandah having a setback from a side boundary of less than the following:

(a) 0.9 metres, if the lot has an area of at least 450 square metres but not more than 900 square metres,

(b) 1.5 metres, if the lot has an area of more than 900 square metres but not more than 1500 square metres,

(c) 2.5 metres, if the lot has an area of more than 1500 square metres.

(2) Development for the purposes of a secondary dwelling or ancillary development that involves the construction of a new building or additions to an existing building where the new or existing building will, at the end of the development, have a building height at any part of more than 3.8 metres must not result in the new building or any new part of the existing building or any new carport, garage, balcony, deck, patio, pergola, terrace or verandah, having a setback from a side boundary of less than the sum of:

(a) the amount of the setback specified for the relevant sized lot in subclause (1), and

(b) an amount that is equal to one-quarter of the additional building height above 3.8 metres.

10 Setbacks from rear boundaries

(1) Development for the purposes of a secondary dwelling or ancillary development must not result in a new building or a new part of an existing building or any new carport, garage, balcony, deck, patio, pergola, terrace or verandah having a setback from a rear boundary of less than the following:

(a) 3 metres, if the lot has an area of at least 450 square metres but not more than 900 square metres,

(b) 5 metres, if the lot has an area of more than 900 square metres but not more than 1500 square metres,

(c) 10 metres, if the lot has an area of more than 1500 square metres.

(2) Development for the purposes of a secondary dwelling or ancillary development that involves the construction of a new building or additions to an existing building where the new or existing building will, at the end of the development, have a building height at any part of more than 3.8 metres must not result in the new building or any new part of the existing building or any new carport, garage, balcony, deck, patio, pergola, terrace or verandah, having a setback from a rear boundary of less than the sum of:

(a) 3 metres, plus an amount that is equal to three times the additional building height above 3.8 metres, up to a maximum setback of 8 metres, if the lot has an area of at least 450 square metres but less than 900 square metres, or

(b) 5 metres, plus an amount that is equal to three times the additional building height above 3.8 metres, up to a maximum setback of 12 metres, if the lot has an area of at least 900 square metres but less than 1500 square metres, or

(c) 10 metres, plus an amount that is equal to three times the additional building height above 3.8 metres, up to a maximum of 15 metres, if the lot has an area of at least 1500 square metres.

(3) Despite subclauses (1) and (2), a dwelling on a lot that has a rear boundary with a laneway may have a building line that abuts that boundary for up to 50 per cent of the length of that boundary.

11 Exceptions to setbacks

Despite any other clause in this Part:

(a) development for the purposes of a secondary dwelling must not result in a new building or a new part of an existing building having a setback of less than 3 metres from a boundary with a public reserve, and

(b) side and rear setbacks do not apply to:

(i) any aerial, antenna, awning, eave, flue, chimney, pipe, cooling or heating appliance, any rainwater tank greater than 1.8 metres in height or any other structure associated with the provision of a utility service if it is located at least 450 millimetres from the relevant boundary, and

(ii) any fence, fascia, gutter, downpipe, light fitting, electricity or gas meter, driveway,

pathway or paving if it is located within any required setback area to the relevant boundary, and

(c) the setback from a road does not apply to:

(i) a driveway, fence, pathway, paving or retaining wall, or

(ii) the articulation zone and any building element that is permitted within that zone, and

(d) the setback from a rear boundary required by clause 10 of this Schedule does not apply to a lot that has only 3 boundaries, disregarding any boundary of an access lane if the lot is a battle-axe lot.

12 Calculating setbacks

(1) For the purpose of determining the nearest 2 dwelling houses in clause 7 of this Schedule, a dwelling house located on a battle-axe lot is to be disregarded.

(2) For the purpose of calculating the setback of the nearest 2 dwelling houses in clause 7 of this Schedule:

(a) any ancillary development is not to be included, and

(b) any building element within the articulation zone is not to be included.

(3) For the purpose of calculating the setbacks for a battle-axe lot, the setback on the opposite side of the lot to the rear setback is taken to be a side setback.

(4) For the purpose of calculating a side or rear setback, the maximum building height of a dwelling on a sloping lot is to be used.

(5) A setback is to be calculated at the closest point to the boundary from the building line.

13 Building articulation

(1) Development for the purpose of a secondary dwelling (other than development on a battle-axe lot) must result in either the principal dwelling or the secondary dwelling having a front door and a window to a habitable room in the building wall that faces a primary road.

(2) Development for the purpose of a secondary dwelling (other than development on a battle-axe lot) must result in either the principal dwelling or the secondary dwelling having a window to a habitable room in the building wall that faces a parallel road.

(3) A secondary dwelling, other than a secondary dwelling that has a setback from a primary road of less than 3 metres, may incorporate an articulation zone that extends from the building line to a distance of 1.5 metres into the required setback from the

primary road.

(4) Development for the purpose of a secondary dwelling on a corner lot must result in either the principal dwelling or the secondary dwelling having a window in a habitable room that is at least 1m^2 in area and that faces and is visible from a secondary road.

14 Building elements within the articulation zone to a primary road

(1) The following building elements are permitted in an articulation zone in the setback from a primary road:

(a) an entry feature or portico,

(b) a balcony, deck, patio, pergola, terrace or verandah,

(c) a window box treatment,

(d) a bay window or similar feature,

(e) an awning or other feature over a window,

(f) a sun shading feature.

(2) A building element must not extend above the eave gutter line, other than a pitched roof to an entry feature or portico that has the same pitch as the roof on the building.

(3) The maximum total area of all building elements within the articulation zone, other than a building element listed in subclause (1) (e) or (f), must not be more than 25% of the area of the articulation zone.

15 Privacy

(1) A window in a new secondary dwelling, or a new window in any alteration or addition to an existing principal dwelling for the purpose of a new secondary dwelling, must have a privacy screen for any part of the window that is less than 1.5 metres above the finished floor level if:

(a) the window:

(i) is in a habitable room that has a finished floor level that is more than 1 metre above ground level (existing), and

(ii) has a sill height that is less than 1.5 metres above that floor level, and

(iii) faces a side or rear boundary and is less than 3 metres from that boundary, or

(b) the window:

(i) is in a habitable room that has a finished floor level that is more than 3 metres above ground level (existing), and

(ii) has a sill height that is less than 1.5 metres above that floor level, and

(iii) faces a side or rear boundary and is at least 3 metres, but no more than 6 metres, from that boundary.

(2) Subclause (1) does not apply to a window located in a bedroom where the window has an area of not more than 2 square metres.

(3) A new balcony, deck, patio, terrace or verandah for the purpose of a new secondary dwelling and any alteration to an existing balcony, deck, patio, terrace or verandah of a secondary dwelling that has a floor area of more than 3 square metres must have a privacy screen if the balcony, deck, patio, terrace or verandah is:

(a) within 3 metres of a side or rear boundary and has a floor level that is more than 1 metre above ground level (existing), or

(b) between 3 metres and 6 metres of a side or rear boundary and has a floor level that is more than 2 metres above ground level (existing).

(4) Any privacy screen required under subclause (3) must be installed:

(a) to a height of at least 1.7m, but not more than 2.2m, above the finished floor level of the balcony, deck, patio, terrace or verandah, and

(b) at the edge of that part of the development that is within the areas specified in subclause (3) (a) or (b) and is parallel to or faces towards the relevant side or rear boundary.

Part 4 Landscaping

16 Landscaped area

(1) A lot on which development for the purposes of a secondary dwelling or ancillary development is carried out must have a landscaped area of at least the following:

(a) 20 per cent, if the lot has an area of at least 450 square metres but not more than 600 square metres,

(b) 25 per cent, if the lot has an area of more than 600 square metres but not more than 900 square metres,

(c) 35 per cent, if the lot has an area of more than 900 square metres but not more than 1500 square metres,

(d) 45 per cent, if the lot has an area of more than 1500 square metres.

(2) At least 50 per cent of the landscaped area must be located behind the building line to the primary road boundary.

(3) The landscaped area must be at least 2.5 metres wide.

17 Principal private open space

(1) A lot on which development for the purposes of a secondary dwelling is carried out must have more than 24 square metres of principal private open space.

(1A) The principal private open space may be shared by both the principal dwelling and secondary dwelling and may be in the form of a balcony or deck.

(2) In this clause, ***principal private open space*** means an area that:

(a) is directly accessible from, and adjacent to, a habitable room, other than a bedroom, and

(b) is more than 4 metres wide, and

(c) is not steeper than 1:50 gradient.

Note—

There is no requirement that additional parking spaces be provided in respect of development for the purposes of a secondary dwelling.

Part 5 Earthworks and drainage

18 Earthworks, retaining walls and structural support

(1) **Excavation** Excavation for the purposes of a secondary dwelling or ancillary development must not exceed a maximum depth, measured from ground level (existing), of:

(a) if located not more than 1m from any boundary—1m, and

(b) if located more than 1m but not more than 1.5m from any boundary—2m, and

(c) if located more than 1.5m from any boundary—3m.

(2) Despite subclause (1), the excavation must not exceed a maximum depth, measured from ground level (existing), of 1m if the land is identified as Class 3 or 4 on an Acid Sulfate Soils Map or is within 40m of a waterbody (natural).

(3) **Fill** Fill must not exceed a maximum height, measured from ground level (existing), of:

(a) if the fill is for the purposes of a secondary dwelling—1m, and

(b) if the fill is for the purposes of ancillary development—600mm.

(4) Despite subclause (3), the height of fill contained wholly within the footprint of a secondary dwelling or ancillary development is not limited.

(5) Fill that is higher than 150mm above ground level (existing) and is not contained wholly within the footprint of a secondary dwelling or ancillary development is limited to 50% of the landscaped area of the lot.

(6) The ground level (finished) of the fill must not be used to measure the height of any secondary dwelling or ancillary development under this code.

(7) **Retaining walls and structural supports** Support for earthworks more than 600mm above or below ground level (existing) must take the form of a retaining wall or other structural support that:

(a) a professional engineer has certified is structurally sound, including the ability to withstand the forces of lateral soil load, and

(b) has been designed so as not to redirect the flow of any surface water or ground water, or cause sediment to be transported, onto an adjoining property, and

(c) has adequate drainage lines connected to the stormwater drainage system for the site, and

(d) does not result in a retaining wall or structural support with a total height measured vertically from the base of the retaining wall or structural support to its uppermost portion that is more than the height of the associated excavation or fill, and

(e) is separated from any other retaining wall or structural support on the site by at least 2m, measured horizontally, and

(f) has been installed in accordance with any manufacturer's specifications, and

(g) if it is an embankment or batter—must have its toe or top more than 1m from any side or rear boundary.

Note—

Fill and excavation that is not associated with a building may be exempt development under clauses 2.29 and 2.30 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

19, 20 (Repealed)

21 Drainage

(1) All stormwater collecting as a result of development for the purposes of a secondary dwelling or ancillary development must be conveyed by a gravity fed or charged system to:

(a) a public drainage system, or

(b) an inter-allotment drainage system, or

(c) an on-site disposal system.

(2) All stormwater drainage systems within a lot and the connection to a public or an inter-allotment drainage system must:

(a) if an approval is required under section 68 of the *Local Government Act 1993*, be approved under that Act, or

(b) if an approval is not required under section 68 of the *Local Government Act 1993*, comply with any requirements for the disposal of stormwater drainage contained in a development control plan that is applicable to the land.

22 Setbacks of secondary dwellings and ancillary development from a protected tree

(1) Development for the purpose of a secondary dwelling, all ancillary development and any associated excavation on a lot, must have a setback from any protected tree on the lot of at least 3 metres.

(2) Despite subclause (1), the following ancillary development is permitted within that setback if the development does not require a cut or fill of more than 0.15 metres below or above ground level (existing):

(a) an access ramp,

(b) a driveway, pathway or paving,

(c) an awning, blind or canopy,

(d) a fence, screen or child-resistant barrier associated with a swimming pool or spa pool.

(3) In this clause:

protected tree means a tree that requires a separate permit or development consent for pruning or removal, but does not include a tree that may be removed without development consent under this Policy.

Note—

A separate permit or development consent may be required if the branches or roots of a protected tree on the lot or on adjoining land are required to be pruned or removed.

Schedule 2 Complying development—group homes

(Clause 45 (2))

1 Definitions

(1) In this Schedule:

ancillary development means any of the following that are not exempt

development under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*:

(a) an access ramp,

(b) an awning, blind or canopy,

(c) a balcony, deck, patio, pergola, terrace or verandah that is attached to a group home,

(d) a carport that is attached to a group home,

(e) a driveway, pathway or paving,

(f) a fence or screen,

(g) a garage that is attached to a group home,

(h) an outbuilding,

(i) a rainwater tank that is attached to a group home,

(j) a retaining wall,

(k) a swimming pool or spa pool and child-resistant barrier.

outbuilding means any of the following that are detached from a group home:

(a) a balcony, deck, patio, pergola, terrace or verandah,

(b) a cabana, cubby house, fernery, shed, gazebo or greenhouse,

(c) a carport or garage,

(d) a rainwater tank (above ground),

(e) a shade structure.

(2) A word or expression used in this Schedule has the same meaning as it has in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* unless it is otherwise defined in this Schedule.

(3) A word or expression used in this Schedule and not defined in this clause or in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* has the same meaning as it has in the standard instrument (as in force immediately before the commencement of the *Standard Instrument (Local Environmental Plans) Amendment Order 2011*).

2 Site requirements

Development may only be carried out on a site that:

(a) has an area of at least 450 square metres (excluding the area of the access laneway if it is a battle-axe lot), and

(b) has a boundary with, or lawful access to, a public road, and

(c) if it is not a battle-axe lot, has a boundary with a primary road of at least 12 metres, and

(d) if it is a battle-axe lot, has an access laneway of at least 3 metres in width, and

(e) has at least one area on the site that measures at least 12 metres by 12 metres (excluding the access laneway if it is a battle-axe lot).

2A Site requirements for group homes in certain zones

(1) Development that is the erection of a group home may only be carried out on a lot:

(a) in Zone R5 Large Lot Residential, or

(b) if the lot has an area of at least 4,000m^2—in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots or Zone RU6 Transition.

(2) Despite subclause (1), development that is the erection of one or more group homes must not be carried out on a lot if the size of the lot is less than the minimum lot size for the erection of a dwelling house under the environmental planning instrument applying to the lot.

3 Maximum site coverage of all development

(1) The group home and all ancillary development must not cover more than 70 per cent of the site area.

(2) For the purpose of calculating the site coverage in subclause (1), the area of any of the following is not included:

(a) an access ramp,

(b) any part of an awning, blind or canopy that is outside the outer wall of a building,

(c) a balcony, deck, patio, pergola, terrace or verandah attached to the group home that is not enclosed by a wall higher than 1.4 metres above the floor level,

(d) an eave,

(e) a driveway,

(f) a fence or screen,

(g) a pathway or paving,

(h) a rainwater tank that is attached to the group home,

(i) a swimming pool or spa pool.

4 Building height

Any building used for the purposes of a group home must not have a building height of more than 8.5 metres above ground level (existing).

5 Setbacks from roads other than classified roads

(1) A group home and all ancillary development on a site must have a setback from the boundary with a primary road that is not a classified road of at least:

(a) the average distance of the setbacks of the nearest 2 group homes or dwelling houses having the same primary road boundary and located within 40 metres of the site on which the group home is erected, or

(b) in any case where 2 group homes or dwelling houses are not located within 40 metres of the site—4.5 metres.

(2) A group home and all ancillary development on a site must have a setback from the boundary with a secondary road that is not a classified road of at least 2 metres.

(3) A group home and all ancillary development on a site must have a setback from a boundary with a parallel road that is not a classified road of at least:

(a) the average distance of the setbacks of the nearest 2 group homes or dwelling houses having the same parallel road boundary and located within 40 metres of the site on which the group home is erected, or

(b) in any case where 2 group homes or dwelling houses are not located within 40 metres of the site—4.5 metres.

6 Setbacks from classified roads

A group home and all ancillary development on a site must have a setback from a boundary with a classified road of at least:

(a) if another environmental planning instrument applying to the land establishes a setback for a group home or dwelling house having a boundary with a classified road—that distance, or

(b) 9 metres in any other case.

7 Building articulation

A group home, other than a group home on a battle-axe lot, must have:

(a) a front door and a window to a habitable room in a building wall that faces, and is

visible from, any primary road, and

(b) a window to a habitable room in a building wall that faces, and is visible from, any parallel road, and

(c) a window (with an area of at least $1m^2$) to a habitable room in a building wall that faces, and is visible from, any secondary road.

8 Articulation zones

(1) A group home that has a setback from a primary road of 3 metres or more is taken to incorporate an articulation zone that extends from the building line to a distance of 1.5 metres into the required setback from the primary road.

(2) The following building elements are permitted in an articulation zone:

(a) an entry feature or portico,

(b) a balcony, deck, patio, pergola, terrace or verandah,

(c) a window box,

(d) a bay window or similar feature,

(e) an awning or other feature over a window,

(f) a sun shading feature.

(3) A building element must not extend above the eave gutter line, other than a pitched roof to an entry feature or portico that has the same pitch as the roof on the group home.

(4) The maximum total area of all building elements within the articulation zone, other than a building element listed in subclause (2) (e) or (f), must not be more than 25% of the area of the articulation zone.

9 Side and rear boundary setbacks

(1) A group home and all ancillary development on a site must have a setback from the side boundary of at least the following:

(a) in relation to a group home with a building height of up to 3.8 metres—0.9 metres,

(b) in relation to a group home with a building height greater than 3.8 metres—0.9 metres plus 0.25 per cent of the additional building height above 3.8 metres.

(2) A group home and all ancillary development on a site must have a setback from the rear boundary of at least the following:

(a) in relation to a group home or ancillary development with a building height of up

to 3.8 metres—0.9 metres,

(b) in relation to a group home or ancillary development with a building height greater than 3.8 metres—3 metres plus an amount that is 3 times the additional building height above 3.8 metres, up to a maximum setback of 8 metres.

(3) Despite subclauses (1) and (2), a group home on a site that has a rear boundary with a laneway may have a building line that abuts that boundary for up to 50 per cent of the length of that boundary.

10 Calculating setbacks

(1) For the purpose of determining the nearest 2 dwelling houses in clause 5, a dwelling house or group home located on a battle-axe lot is to be disregarded.

(2) For the purpose of calculating the setback of the nearest 2 dwelling houses in clause 5:

(a) any ancillary development is not to be included, and

(b) any building element within the articulation zone is not to be included.

(3) For the purpose of calculating setbacks for a battle-axe lot, the setback on the opposite side of the lot to the rear setback is taken to be a side setback.

(4) For the purpose of calculating a side or rear setback, the maximum building height of a group home on a sloping site is to be used.

(5) A setback is to be calculated at the closest point to the boundary from the building line.

(6) For the purpose of calculating the setback from a road, a reference to ancillary development does not include the following:

(a) a driveway, pathway or paving,

(b) an eave,

(c) a fence or screen,

(d) a retaining wall,

(e) any ancillary development that is a building element that is permitted in the articulation zone.

11 Exceptions to setbacks

Despite any other clause in this Schedule:

(a) a group home or any attached ancillary development must have a setback of at least

3 metres from a boundary with a public reserve, and

(b) side and rear setbacks do not apply to:

(i) any aerial, antenna, awning, eave, flue, chimney, pipe, cooling or heating appliance, any rainwater tank greater than 1.8 metres in height or any other structure associated with the provision of a utility service if it is located at least 450 millimetres from the relevant boundary, and

(ii) any fence, fascia, gutter, downpipe, light fitting, electricity or gas meter, driveway, pathway or paving if it is located within any required setback area to the relevant boundary, and

(c) the setback from a road does not apply to:

(i) a driveway, fence, pathway, paving or retaining wall, or

(ii) the articulation zone and any building element that is permitted within that zone, and

(d) the setback from a rear boundary required by clause 9 of Schedule 2 of this Policy does not apply to a lot that has only 3 boundaries, disregarding any boundary of an access lane if the lot is a battle-axe lot.

12 Building separation

The distance between buildings that are used for the purposes of group homes on a site must be at least 1.8 metres.

13 Privacy

(1) A window in a new group home, or a new window in any alteration or addition to an existing group home, must have a privacy screen for any part of the window that is less than 1.5 metres above the finished floor level if:

(a) the window:

(i) is in a habitable room that has a finished floor level that is more than 1 metre above ground level (existing), and

(ii) has a sill height that is less than 1.5 metres above that floor level, and

(iii) faces a side or rear boundary and is less than 3 metres from that boundary, or

(b) the window:

(i) is in a habitable room that has a finished floor level that is more than 3 metres above ground level (existing), and

(ii) has a sill height that is less than 1.5 metres above that floor level, and

(iii) faces a side or rear boundary and is at least 3 metres, but no more than 6 metres, from that boundary.

(2) Subclause (1) does not apply to a window located in a bedroom if the window has an area of not more than $2m^2$.

(3) A new balcony, deck, patio, terrace or verandah for the purpose of a new group home and any alteration to an existing balcony, deck, patio, terrace or verandah of a group home that has a floor area of more than 3 square metres must have a privacy screen if the balcony, deck, patio, terrace or verandah is:

(a) within 3 metres of a side or rear boundary and has a floor level that is more than 1 metre above ground level (existing), or

(b) between 3 metres and 6 metres of a side or rear boundary and has a floor level that is more than 2 metres above ground level (existing).

(4) Any privacy screen required under subclause (3) must be installed:

(a) to a height of at least 1.7 metres, but not more than 2.2 metres, above the finished floor level of the balcony, deck, patio, terrace or verandah, and

(b) at the edge of that part of the development that is within the areas specified in subclause (3) (a) or (b) and is parallel to or faces towards the relevant side or rear boundary.

14 Landscaped area

(1) At least 20 per cent of the site area on which the erection of, or alterations or additions to, a group home or ancillary development is carried out must be a landscaped area.

(2) At least 50 per cent of the landscaped area must be located behind the building line to the primary road boundary.

(3) The landscaped area must be more than 2.5 metres wide.

15 Principal private open space

A site on which a group home is erected must have more than 24 square metres of principal private open space that:

(a) has an area at ground level (existing) that is directly accessible from, and adjacent to, a habitable room, other than a bedroom, and

(b) is at least 4 metres wide, and

(c) has a gradient that is no steeper than 1:50.

16 Requirement to provide car parking

(1) At least 2 off-street car parking spaces must be provided on the site on which a group home is erected.

(2) At least 2 off-street car parking spaces must be retained on a site on which alterations or additions to an existing off-street car parking space are carried out.

(3) A car parking space under this clause may be an open hard stand space or a carport or garage, whether attached or detached from the group home.

17 Garage, carport and parking spaces

(1) A garage, carport or car parking space must be no more than 1 metre forward of the front building setback.

(2) If the door or doors on a garage face a primary road, a secondary road or a parallel road, the total width of all those door openings must:

(a) be not more than 6 metres, and

(b) be not more than 50 per cent of the width of the building, measured at the building line to the relevant property boundary.

(3) An open hard stand car parking space must measure at least 2.6 metres wide by 5.4 metres long.

18 Vehicle access

The design and construction of the vehicular access to a site must comply with Australian Standard AS 2890.1—1993*, Parking facilities—Off-street car parking*.

19 Earthworks, retaining walls and structural support

(1) **Excavation** Excavation carried out as development for the purpose of a group home under this Policy must be structurally supported in accordance with the requirements specified in subclauses (5) and (6) and must not exceed a maximum depth measured from ground level (existing) of:

(a) if located within 1 metre from a boundary—1metre, or

(b) if located more than 1 metre but not more than 1.5 metres from a boundary—2 metres, or

(c) if located more than 1.5 metres from a boundary—3 metres.

(2) Despite subclause (1), the excavation must not be more than 1 metre below ground level (existing) if the land is identified as Class 3 or 4 on an Acid Sulfate Soils Map or is within 40 metres of a waterbody (natural).

(3) **Fill** Fill carried out as development for the purpose of a group home under this Policy must:

(a) not exceed 1 metre above ground level (existing), and

(b) be contained in accordance with subclauses (5) and (6) by either:

(i) a retaining wall or other form of structural support that does not extend more than 1.5 metres from any external wall of the dwelling, or

(ii) an unprotected sloping embankment or batter, that does not extend from the dwelling house by more than 3 metres, in which case the toe of the embankment or batter must be more than 1m away from a side or rear boundary.

(4) The final ground level (finished) of fill placed on a site under this clause must not be used for the purpose of measuring the height of any development erected under this Policy.

(5) **Retaining walls and structural support** Support for earthworks that are more than 600mm above or below ground level (existing) and within 1m of any boundary, or more than 1m above or below ground level (existing) in any other location, must take the form of a retaining wall or other form of structural support that:

(a) has been certified by a professional engineer, and

(b) has adequate drainage lines connected to the existing stormwater drainage system for the site, and

(c) does not result in any retaining wall or structural support with a total height measured vertically from the base of the retaining wall or structural support to its uppermost portion that is:

(i) more than 1m in height and within 1m from a side or rear boundary, or

(ii) more than 3m in height in any other location.

(6) Any excavation or fill that exceeds 600mm above or below ground level (existing) requires a retaining wall or structural support that must be:

(a) constructed in accordance with subclause (5), and

(b) designed so as not to redirect the flow of any surface water or ground water, or cause sediment to be transported, onto an adjoining property, and

(c) separated from any retaining wall or other structural support on the site by at least 2m, measured horizontally, and

(d) installed in accordance with any manufacturer’s specification.

Note—

Fill and excavation that is not associated with a building may be exempt development. See clauses 2.29 and 2.30 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

20 Fill of sloping sites

(1) Fill associated with the erection of, or alterations or additions to, a group home or ancillary development must:

(a) be not more than 1 metre above ground level (existing), and

(b) be contained wholly within the external walls of the group home or ancillary development.

(2) Despite subclause (1), exposed fill may be constructed using an unprotected embankment if the group home or ancillary development has a setback of more than 2 metres from a side or rear boundary, if:

(a) the fill is not more than 0.6 metres above ground level (existing), and

(b) the fill (but not the embankment) does not extend more than 1 metre beyond an external wall of the group home or detached ancillary development, and

(c) the toe of the unprotected embankment has a setback of at least 0.4 metres from a side or rear boundary.

21 Drainage

(1) All stormwater collecting as a result of the erection of, or alterations or additions to, a group home or ancillary development must be conveyed by a gravity fed or charged system to:

(a) a street drainage system under the control of the relevant public authority, or

(b) an inter-allotment drainage system, or

(c) an on-site disposal system approved under section 68 of the *Local Government Act 1993*, if the site is unsewered.

(2) All surface water run-off emanating from a sloping site as a result of the erection of, or alterations or additions to, a group home or ancillary development must be collected and conveyed to a drainage system listed in subclause (1).

22 Demolition or removal of buildings

(1) An existing group home, dwelling house or ancillary development that is to be demolished or relocated must:

(a) be disconnected from any essential service in accordance with the requirements of the relevant authority, and

(b) not be relocated, except in accordance with the approval of the relevant authority.

(2) Demolition or removal must not involve the removal or pruning of a tree or other vegetation that requires a permit or development consent for removal or pruning, unless that removal or pruning is undertaken in accordance with a permit or development consent.

23 Swimming pools

(1) Ancillary development comprising a swimming pool for private use must be located:

(a) behind the setback from any road boundary, or

(b) in the rear yard area.

(2) The swimming pool water line must have a setback of at least 1 metre from a side or rear boundary.

(3) Decking around a swimming pool must not be more than 0.6 metres above ground level (existing).

(4) Coping around a swimming pool must not be more than:

(a) 1.4 metres above ground level (existing), or

(b) 0.3 metres wide if the coping is more than 0.6 metres above ground level (existing).

(5) Water from a swimming pool must be discharged in accordance with an approval under the *Local Government Act 1993* if the site is not connected to a sewer main.

Note—

A child-resistant barrier must be constructed or installed in accordance with the requirements of the *Swimming Pools Act 1992*.

24 Fences

(1) Ancillary development comprising a fence must be constructed so as not to prevent natural flow of stormwater drainage or run-off.

(2) The height of a boundary fence in a residential zone must not exceed:

(a) in the case of development within the boundaries of an existing group home—2.1 metres above ground level (existing) if the fence is behind the front building line and 1.2 metres above ground level (existing) if the fence is on or forward of that line, and

(b) in any other case—1.8 metres above ground level (existing) if the fence is behind the front building line and 1.2 metres above ground level (existing) if the fence is

on or forward of that line.

(3) A fence must not include masonry construction to a height of more than 0.9 metres above ground level (existing).

25 Access ramps

(1) The gradient of any access ramp must not be steeper than 1:14.

(2) An access ramp must be constructed so as to comply with Australian Standard AS 1428.1—2001*, Design for access and mobility—General requirements for access—New building work*.

(3) An access ramp must not create a traffic or pedestrian hazard.

26 Setbacks of group homes and ancillary development from a protected tree

(1) Development for the purpose of a group home, all ancillary development and any associated excavation on a lot, must have a setback from any protected tree on the lot of at least 3 metres.

(2) Despite subclause (1), the following ancillary development is permitted within that setback if the development does not require a cut or fill of more than 0.15 metres below or above ground level (existing):

(a) an access ramp,

(b) a driveway, pathway or paving,

(c) an awning, blind or canopy,

(d) a fence, screen or child-resistant barrier associated with a swimming pool or spa pool.

Note—

A separate permit or development consent may be required if the branches or roots of a protected tree on the lot or on an adjoining lot are required to be pruned or removed.

Schedule 3 Amendment of planning instruments

3.1

(Repealed)

3.2 South Sydney Local Environmental Plan 1998

[1] (Repealed)

[2] Clause 27P Affordable housing conditions

Omit “section 94F (3) (c) and (4)” from clause 27P (4).

Insert instead “sections 116Y (3) and 116Z”.

[3] Clause 27P (5)

Omit “section 94F (1)”. Insert instead “section 116Y (2)”.

[4] Clause 27P (6)

Omit “section 94G”. Insert instead “section 116ZB”.

[5] (Repealed)

3.3 State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes)

[1] (Repealed)

[2] Clause 9 Identification of need for affordable housing

Omit “section 94F (1)”. Insert instead “section 116Y (1)”.

[3] Clause 10 Requirement for imposition of affordable housing contribution conditions

Omit “section 94F (3) (a)”. Insert instead “section 116Y (4) (a)”.

[4] Clause 10

Omit “section 94F of the Act”. Insert instead “section 116Y of the Act”.

[5] (Repealed)

3.4 State Environmental Planning Policy (Affordable Rental Housing) 2009

[1] Clause 51 Contributions for affordable housing

Omit “section 94F (1)” from clause 51 (1). Insert instead “section 116Y (1)”.

[2] Clause 51 (2)

Omit “section 94F (3) (b) of the Act, this Policy authorises a condition to be imposed under section 94F”.

Insert instead “section 116Y (4) (b) of the Act, this Policy authorises a condition to be imposed under section 116Y”.

3.5–3.14

(Repealed)