

# State Environmental Planning Policy (Housing) 2021

[2021-714]



New South Wales

## Status Information

### Currency of version

Current version for 1 July 2024 to date (accessed 5 August 2024 at 3:48)

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

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
[Byron Local Environmental Plan Amendment \(Housing\) 2023 \(541\)](#), Sch 1[1]–[3] (not commenced—to commence on 23.9.2024)
- **See also**  
[Environmental Planning and Assessment Amendment \(Affordable Housing\) Bill 2024](#) [Non-government Bill— Ms Jenny Leong, MP]
- **Editorial note**  
Schedule 8 of this Policy as originally notified instructed certain provisions of [State Environmental Planning Policy No 36—Manufactured Home Estates](#) to be transferred to this Policy as Chapter 3, Part 7. As indicated by the Part heading inserted in this Policy when it was originally notified, the provisions have been inserted into this Policy as Chapter 3, Part 8.  
  
Schedule 8 of this Policy as originally notified instructed certain provisions of [State Environmental Planning Policy No 21—Caravan Parks](#) to be transferred to this Policy as Chapter 3, Part 8. As indicated by the Part heading inserted in this Policy when it was originally notified, the provisions have been inserted into this Policy as Chapter 3, Part 9.

### 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 July 2024

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New South Wales

## Contents

<b>Chapter 1 Preliminary</b> .....	11
1 Name of Policy .....	11
2 Commencement .....	11
3 Principles of Policy .....	11
4 Interpretation—general .....	12
5 Interpretation—references to equivalent land use zones .....	12
6 Development permitted without consent .....	13
7 Land to which Policy applies .....	13
8 Relationship with other environmental planning instruments .....	13
9 Suspension of covenants, agreements and instruments .....	13
10 Repeals .....	14
11 Maps .....	15
12 Transferred provisions .....	15
12A Limitation on additional floor space ratio .....	15
<b>Chapter 2 Affordable housing</b> .....	16
<b>Part 1 Preliminary</b> .....	16
13A Application of Chapter 4 to affordable housing .....	16
13 Affordable housing—the Act, s 1.4(1) .....	16
14 Need for affordable housing and imposition of conditions—the Act, s 7.32(1) .....	17
15 Requirement for imposition of conditions—the Act, s 7.32(3)(a) .....	17

<b>Part 2 Development for affordable housing</b> .....	17
<b>Division 1 In-fill affordable housing</b> .....	17
15A Objective of division .....	17
15B Definitions .....	18
15C Development to which division applies .....	18
16 Affordable housing requirements for additional floor space ratio .....	19
17 Additional floor space ratio for relevant authorities and registered community housing providers .....	19
18 Affordable housing requirements for additional building height.....	20
19 Non-discretionary development standards—the Act, s 4.15 .....	20
20 Design requirements .....	22
21 Must be used for affordable housing for at least 15 years.....	22
22 Subdivision permitted with consent .....	22
<b>Division 2 Boarding houses</b> .....	23
23 Boarding houses permitted with consent .....	23
24 Non-discretionary development standards—the Act, s 4.15 .....	23
25 Standards for boarding houses.....	24
26 Must be used for affordable housing in perpetuity .....	26
27 Subdivision of boarding houses not permitted .....	26
<b>Division 3 Boarding houses—relevant authorities</b> .....	26
28 Development to which Division applies .....	26
29 Boarding houses permitted without development consent .....	26
30 Notification before carrying out development .....	27
30A Landcom must notify Secretary of Department of Communities and Justice .....	27
30B Considerations before carrying out development.....	28
31 Exempt development .....	28
32 Subdivision of boarding houses not permitted .....	28
<b>Division 4 Supportive accommodation</b> .....	28
33 Land to which Division applies .....	28
34 Development to which Division applies .....	28
35 Development may be carried out without consent.....	29

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

.....	29
36 Land to which Division applies .....	29
37 Development to which Division applies .....	30
38 Development may be carried out with consent .....	30
39 Site compatibility certificates .....	31
40 Must be used for affordable housing for at least 15 years.....	32
41 (Repealed) .....	32

## **Division 6 Residential development—relevant authorities** .....32

42 Development to which division applies .....	32
43 Residential development permitted without consent .....	34
43A Notification before carrying out development .....	34
43B Landcom must notify Secretary of Department of Communities and Justice .....	34
43C Consideration of design of residential apartment development.....	35
44 Considerations before carrying out development.....	35
44A Exempt development .....	35

## **Part 3 Retention of existing affordable rental housing**.....36

Note.....	36
45 Definitions .....	36
46 Buildings to which Part applies .....	37
47 Reduction of availability of affordable housing .....	37
48 Contributions for affordable housing—the Act, s 7.32 .....	38

## **Chapter 3 Diverse housing** ..... 40

### **Part 1 Secondary dwellings**..... 40

#### **Division 1 Preliminary** ..... 40

49 Definitions .....	40
50 Application of Part .....	40
51 No subdivision .....	41

<b>Division 2 Secondary dwellings permitted with consent</b> .....	41
52 Development may be carried out with consent.....	41
53 Non-discretionary development standards—the Act, s 4.15.....	41
<b>Division 3 Complying development</b> .....	42
54 Development for purposes of secondary dwellings that is complying development.....	42
55 Development carried out for secondary dwellings and principal dwellings at same time.....	43
56 Conditions.....	43
57 Development standards for bush fire prone land.....	43
58 Development standards for flood control lots.....	45
59 Development standards for land near Siding Spring Observatory.....	46
<b>Part 2 Group homes</b> .....	47
60 Definitions.....	47
61 Development in prescribed zones.....	48
62 Determination of development applications.....	48
63 Exempt development—existing group homes.....	48
64 Complying development.....	49
65 Development standards for flood control lots.....	49
66 Development standards for land near Siding Spring Observatory.....	50
<b>Part 3 Co-living housing</b> .....	51
67 Co-living housing may be carried out on certain land with consent.....	51
68 Non-discretionary development standards—the Act, s 4.15.....	51
69 Standards for co-living housing.....	52
70 No subdivision.....	54
<b>Part 4 Build-to-rent housing</b> .....	54
71 (Repealed).....	54
72 Development for the purposes of build-to-rent housing permitted with consent.....	54
73 Conditions of build-to-rent housing to apply for at least 15 years.....	55
74 Non-discretionary development standards—the Act, s 4.15.....	55
75 Design requirements.....	56
76 Active uses on ground floor of build-to-rent housing in business zones.....	56
77 Conditions requiring land or contributions for affordable housing.....	57

78 Consideration of Apartment Design Guide for further subdivision of dwellings.....	57
<b>Part 5 Housing for seniors and people with a disability .....</b>	<b>57</b>
<b>Division 1 Land to which Part applies .....</b>	<b>57</b>
79 Land to which Part applies.....	57
80 Land to which Part does not apply—general.....	58
81 Seniors housing permitted with consent .....	59
<b>Division 2 Preliminary .....</b>	<b>59</b>
82 Definitions .....	59
83 Amendments to the bush fire evacuation risk map .....	61
<b>Division 3 Development standards .....</b>	<b>61</b>
84 Development standards—general .....	61
85 Development standards for hostels and independent living units.....	62
86 Development standards for seniors housing—Zones RE2, SP1, SP2 and RU5 .....	62
87 Additional floor space ratios .....	63
88 Restrictions on occupation of seniors housing.....	64
89 Use of ground floor of seniors housing in business zones .....	64
90 Subdivision .....	64
91 Fire sprinkler systems in residential care facilities.....	65
92 Development on land used for the purposes of an existing registered club.....	65
<b>Division 4 Site-related requirements .....</b>	<b>65</b>
Note.....	65
93 Location and access to facilities and services—-independent living units .....	65
94 Location and access to facilities and services—residential care facilities.....	67
95 Water and sewer.....	67
96 Bush fire prone land .....	68
<b>Division 5 Design requirements .....</b>	<b>69</b>
97 Design of seniors housing.....	69
98 (Repealed).....	69
<b>Division 6 (Repealed).....</b>	<b>69</b>

<b>Division 7 Non-discretionary development standards</b> .....	69
106 Application of design principles for seniors housing .....	69
107 Non-discretionary development standards for hostels and residential care facilities—the Act, s 4.15 .....	69
108 Non-discretionary development standards for independent living units—the Act, s 4.15 .....	70
<b>Division 8 Seniors housing—relevant authorities</b> .....	72
108AA (Repealed).....	72
108A Development to which Division applies .....	72
108B Seniors housing permitted without development consent .....	72
108C Notification before carrying out development .....	73
108CA Landcom must notify Secretary of Department of Communities and Justice .....	73
108CB Considerations before carrying out development .....	73
108D Exempt development .....	74
108E Subdivision of seniors housing not permitted.....	74
<b>Part 6 Short-term rental accommodation</b> .....	74
<b>Division 1 Preliminary</b> .....	74
109 Aims of Part .....	74
110 Definitions .....	74
<b>Division 2 Exempt development</b> .....	75
111 Exempt development—hosted short-term rental accommodation .....	75
112 Exempt development—non-hosted short-term rental accommodation .....	75
113 General requirements.....	76
<b>Division 3 (Repealed)</b> .....	77
<b>Part 7 Conversion of certain serviced apartments</b> .....	77
115 Application of Part .....	77
116 Conversion of serviced apartments to residential flat buildings or shop top housing.....	77
117 Subdivision .....	78
<b>Part 8 Manufactured home estates</b> .....	78
118 Aims and strategies.....	78

119 Land to which this Part applies.....	79
120 Relationship to other environmental planning instruments.....	79
121 Definitions .....	79
122 Where development for the purposes of a manufactured home estate may be carried out .....	80
123 Development consent required for manufactured home estates .....	80
124 Subdivision of manufactured home estates .....	80
125 Matters to be considered by councils .....	81
<b>Part 9 Caravan parks.....</b>	<b>81</b>
126 Aims, objectives etc .....	81
127 Land to which this Part applies.....	82
128 Relationship to other environmental planning instruments.....	82
129 Definition.....	83
130 Application of certain planning controls to places licensed for movable dwellings .....	83
131 Development consent required for caravan parks.....	83
132 Subdivision of caravan parks for lease purposes.....	84
133 Matters to be considered by Councils.....	84
<b>Part 10 Temporary emergency accommodation.....</b>	<b>85</b>
134 Aims of Part.....	85
135 Development consent not required for temporary emergency accommodation .....	85
<b>Part 11 Residential accommodation for flood recovery .....</b>	<b>86</b>
136 Definitions .....	86
137 Land to which Part applies.....	86
138 Residential development permitted with development consent.....	87
139 Application for site compatibility certificate .....	87
140 Consultation by Planning Secretary.....	88
141 Issue of site compatibility certificate.....	88
<b>Part 12 Dual occupancies and semi-detached dwellings in Zone R2.....</b>	<b>89</b>
141A Aim of part .....	89
141B Land to which part applies .....	89
141C Development permitted with development consent .....	91
<b>Chapter 4 Design of residential apartment development.....</b>	<b>91</b>



142 Aims of chapter .....	91
143 Land to which chapter applies .....	92
144 Application of chapter .....	92
145 Referral to design review panel for development applications .....	93
146 Referral to design review panel for modification applications .....	94
147 Determination of development applications and modification applications for residential apartment development .....	94
148 Non-discretionary development standards for residential apartment development—the Act, s 4.15 .....	95
149 Apartment Design Guide prevails over development control plans .....	96
<b>Chapter 5 Transport oriented development .....</b>	<b>96</b>
150 Aims of chapter .....	96
151 Definitions .....	96
152 Land to which chapter applies .....	97
153 Relationship to other environmental planning instruments .....	98
154 Development permitted with development consent in Transport Oriented Development Areas ...	98
155 Maximum building height and maximum floor space ratio .....	98
156 Affordable housing .....	99
157 Affordable housing parking spaces .....	99
158 Exception to minimum lot size .....	100
159 Minimum lot width .....	100
160 Active street frontages .....	100
161 Consideration of Apartment Design Guide .....	101
<b>Schedule 1 Complying development—secondary dwellings .....</b>	<b>101</b>
<b>Schedule 2 Complying development—group homes .....</b>	<b>114</b>
<b>Schedule 3 Environmentally sensitive land .....</b>	<b>125</b>
<b>Schedule 4 Standards concerning accessibility and usability for hostels and independent living units .....</b>	<b>125</b>
<b>Schedule 5 Land to which Chapter 3, Part 8 does not apply .....</b>	<b>135</b>

<b>Schedule 6 Categories of excluded land</b> .....	135
<b>Schedule 7 Definitions for Chapter 3, Part 8</b> .....	137
<b>Schedule 7A Savings and transitional provisions</b> .....	138
<b>Schedule 8 Design principles for seniors housing</b> .....	141
<b>Schedule 9 Design principles for residential apartment development</b> ...	143
<b>Schedule 10 Dictionary</b> .....	147
<b>Schedule 11 (Repealed)</b> .....	151

# State Environmental Planning Policy (Housing) 2021



New South Wales

## Chapter 1 Preliminary

### 1 Name of Policy

This Policy is *State Environmental Planning Policy (Housing) 2021*.

### 2 Commencement

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

### 3 Principles of Policy

The principles of this Policy are as follows—

- (a) enabling the development of diverse housing types, including purpose-built rental housing,
- (b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,
- (c) ensuring new housing development provides residents with a reasonable level of amenity,
- (d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,
- (e) minimising adverse climate and environmental impacts of new housing development,
- (f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,
- (g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,
- (h) mitigating the loss of existing affordable rental housing.

#### 4 Interpretation—general

(1) The Dictionary in Schedule 10 defines words used in this Policy.

**Note—**

The Act and the [Interpretation Act 1987](#) contain definitions and other provisions that affect the interpretation and application of this Policy.

(2) Unless otherwise defined in this Policy, words used in this Policy, other than in Schedule 1 or 2, have the same meaning as in the standard instrument.

(3) A reference in this Policy to a business zone is taken, on and from 26 April 2023, to include a reference to Zones E1, E2, E3, MU1 and SP5.

#### 5 Interpretation—references to equivalent land use zones

(1) A reference in this Policy to an equivalent land use zone is a reference to a land use zone under a non-standard instrument that—

- (a) the Planning Secretary has determined under the Codes SEPP, section 1.6 is a land use zone in which equivalent land uses are permitted to the land uses permitted in a named land use zone, or
- (b) if no determination has been made for the zone—is a land use zone in which, in the opinion of the relevant public authority, equivalent land uses are permitted to the land uses permitted in a named land use zone.

(2) For the purposes of subsection (1)(b)—

- (a) the opinion of the relevant public authority applies only in relation to the development proposed to be carried out, and
- (b) more than 1 opinion may be formed in relation to the same land use zone.

(3) If a non-standard instrument and a draft standard instrument applies to land, a reference in this Policy to a lot or land in an equivalent land use zone is a reference to the lot or land in the named land use zone in the draft standard instrument.

(4) In this section—

**draft standard instrument** means a draft environmental planning instrument—

- (a) in the form referred to in the Act, section 3.20(2), and
- (b) in relation to which the community participation requirements referred to in the Act, Schedule 1, clause 4 have been met.

**equivalent land use zone** means a land use zone equivalent to a named land use zone.

**named land use zone** means a land use zone named in the standard instrument.

**non-standard instrument** means an environmental planning instrument that is not made as provided by the Act, section 3.20(2).

**relevant public 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.

## **6 Development permitted without consent**

In this Policy, development permitted without consent may be carried out without another consent or a licence, permission, approval or authorisation otherwise required under another environmental planning instrument.

### **Note—**

Development permitted without consent may be subject to environmental assessment and approval requirements in the Act, Part 5.

## **7 Land to which Policy applies**

This Policy applies to the State.

## **8 Relationship with other environmental planning instruments**

- (1) Unless otherwise specified in this Policy, if there is an inconsistency between this Policy and another environmental planning instrument, whether made before or after the commencement of this Policy, this Policy prevails to the extent of the inconsistency.
- (2) [State Environmental Planning Policy \(Sustainable Buildings\) 2022](#), Chapter 2 prevails over this policy, Chapter 4, to the extent of an inconsistency.

## **9 Suspension of covenants, agreements and instruments**

- (1) For the purposes of enabling development to be carried out in accordance with this Policy or with a development consent granted under the Act, an agreement, a covenant or another similar instrument that restricts the carrying out of the development does not apply to the extent necessary to serve that purpose.
- (2) Subsection (1) does not apply to—
  - (a) a covenant imposed by a council or that the council requires to be imposed, or
  - (b) a biodiversity certification conferred under the [Biodiversity Conservation Act 2016](#), Part 8, or

- (c) a private land conservation agreement within the meaning of the *Biodiversity Conservation Act 2016*, or
  - (d) a relevant instrument within the meaning of the *Crown Land Management Act 2016*, section 13.4, or
  - (e) the relevant provisions of a land management (native vegetation) code, and the necessary mandatory code compliant certificate, for a set aside area under the *Local Land Services Act 2013*, Part 5A, or
  - (f) a conservation agreement within the meaning of the *National Parks and Wildlife Act 1974*, or
  - (g) a property vegetation plan within the meaning of the *Native Vegetation Act 2003* that is continued in force by the *Biodiversity Conservation (Savings and Transitional) Regulation 2017*, or
  - (h) a Trust agreement within the meaning of the *Nature Conservation Trust Act 2001* that is continued in force by the *Biodiversity Conservation (Savings and Transitional) Regulation 2017*, or
  - (i) a planning agreement, or
  - (j) a covenant in favour of Sydney Water Corporation or a water supply authority listed in the *Water Management Act 2000*, Schedule 3.
- (3) This section does not affect the rights or interests of a public authority under a registered instrument.
- (4) Before this Policy was made, the Governor approved this section under the Act, section 3.16.

## 10 Repeals

- (1) The following environmental planning instruments are repealed—
- (a) *State Environmental Planning Policy (Affordable Rental Housing) 2009*,
  - (b) *State Environmental Planning Policy No 70—Affordable Housing (Revised Schemes)*.
- (2) The following environmental planning instruments, as amended by Schedule 8, are repealed—
- (a) *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*,
  - (b) *State Environmental Planning Policy No 21—Caravan Parks*,

(c) *State Environmental Planning Policy No 36—Manufactured Home Estates*.

## 11 Maps

- (1) A reference in this Policy to a named map adopted by this Policy is a reference to a map by that name—
  - (a) approved by the Minister when the map is adopted, and
  - (b) as amended or replaced from time to time by maps—
    - (i) declared by environmental planning instruments to amend or replace the map, and
    - (ii) approved by the persons making the instruments when the instruments are made.
- (2) Two or more named maps may be combined into a single map and a reference in this Policy to the named map is a reference to the relevant part or aspect of the single map.
- (3) The maps adopted by this Policy must be kept in electronic form and made available for public access in accordance with arrangements approved by the Minister.

## 12 Transferred provisions

The *Interpretation Act 1987*, section 30A is taken to apply to the following provisions transferred to this Policy on the commencement of this Policy in the same way as it applies to provisions transferred from a statutory rule to another statutory rule—

- (a) Chapter 3, Parts 8 and 9,
- (b) Schedules 4, 5, 6 and 7.

### Note—

The *Interpretation Act 1987*, section 30A provides—

- (a) the transfer of a provision does not affect the operation or meaning of the provision, and
- (b) a transferred provision is to be construed as if it had not been transferred.

## 12A Limitation on additional floor space ratio

- (1) This section applies to development involving more than one of the following—
  - (a) development for the purposes of in-fill affordable housing under Chapter 2, Part 2, Division 1,
  - (b) development for the purposes of boarding houses under Chapter 2, Part 2, Division 2,

- (c) development for the purposes of co-living housing under Chapter 3, Part 3,
  - (d) development for the purposes of seniors housing under Chapter 3, Part 5.
- (2) If the development proposes to use the additional floor space ratio permitted under more than one relevant provision, the maximum floor space ratio must not exceed 130% of the maximum permissible floor space ratio for the land.
- (3) In this section—
- relevant provision** means section 16, 17, 24(2)(a)(ii), 68(2)(a)(ii) or 87(2)(b).

## **Chapter 2 Affordable housing**

### **Part 1 Preliminary**

#### **13A Application of Chapter 4 to affordable housing**

Development to which this chapter, Part 2, Division 1, 5 or 6 applies may also be residential apartment development under Chapter 4.

**Note—**

See section 144(6).

#### **13 Affordable housing—the Act, s 1.4(1)**

- (1) In this Policy, a household is taken to be a very low income household, low income household or moderate income household if—
- (a) the household—
    - (i) has a gross income within the following ranges of percentages of the median household income for Greater Sydney or the Rest of NSW—
      - (A) very low income household—less than 50%,
      - (B) low income household—50–less than 80%,
      - (C) moderate income household—80–120%, and
    - (ii) pays no more than 30% of the gross income in rent, or
  - (b) the household—
    - (i) is eligible to occupy rental accommodation under the National Rental Affordability Scheme, and
    - (ii) pays no more rent than the rent that would be charged if the household were to occupy rental accommodation under the Scheme.
- (2) In this section—



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

**National Rental Affordability Scheme** has the same meaning as in the [National Rental Affordability Scheme Act 2008](#) of the Commonwealth.

**Rest of NSW** means the area that the Australian Bureau of Statistics determines from time to time to be the Rest of NSW—Greater Capital City Statistical Area.

#### **14 Need for affordable housing and imposition of conditions—the Act, s 7.32(1)**

This Policy identifies that there is a need for affordable housing within each area of the State.

#### **15 Requirement for imposition of conditions—the Act, s 7.32(3)(a)**

Before imposing a condition under the Act, section 7.32, the consent authority must consider the following—

- (a) affordable housing must aim to create mixed and balanced communities,
- (b) affordable housing must be created and managed so that a socially diverse residential population, representative of all income groups, is developed and maintained in a locality,
- (c) affordable housing must be made available to very low, low and moderate income households, or a combination of the households,
- (d) affordable housing must be rented to appropriately qualified tenants and at an appropriate rate of gross household income,
- (e) land provided for affordable housing must be used for the purposes of the provision of affordable housing,
- (f) buildings provided for affordable housing must be managed to maintain their continued use for affordable housing,
- (g) affordable housing must consist of dwellings constructed to a standard that, in the opinion of the consent authority, is consistent with other dwellings in the area.

## **Part 2 Development for affordable housing**

### **Division 1 In-fill affordable housing**

#### **15A Objective of division**

The objective of this division is to facilitate the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households.

## 15B Definitions

(1) In this division—

**affordable housing component**, of development, means the percentage of the gross floor area used for affordable housing.

**residential development** means development for the following purposes—

- (a) attached dwellings,
- (b) dual occupancies,
- (c) dwelling houses,
- (d) manor houses,
- (e) multi dwelling housing,
- (f) multi dwelling housing (terraces),
- (g) residential flat buildings,
- (h) semi-detached dwellings,
- (i) shop top housing.

(2) In this division, residential development carried out by or on behalf of the Aboriginal Housing Office or the Land and Housing Corporation is taken to be used for the purposes of affordable housing.

## 15C Development to which division applies

(1) This division applies to development that includes residential development if—

- (a) the development is permitted with consent under Chapter 3, Part 4, Chapter 5 or another environmental planning instrument, and
- (b) the affordable housing component is at least 10%, and
- (c) all or part of the development is carried out—
  - (i) for development on land in the Six Cities Region, other than in the City of Shoalhaven local government area—in an accessible area, or
  - (ii) for development on other land—within 800m walking distance of land in a relevant zone or an equivalent land use zone.

(2) Affordable housing provided as part of development because of a requirement under another chapter of this policy, another environmental planning instrument or a planning agreement is not counted towards the affordable housing component under

this division.

(3) In this section—

**relevant zone** means the following—

- (a) Zone E1 Local Centre,
- (b) Zone MU1 Mixed Use,
- (c) Zone B1 Neighbourhood Centre,
- (d) Zone B2 Local Centre,
- (e) Zone B4 Mixed Use.

#### **16 Affordable housing requirements for additional floor space ratio**

- (1) The maximum floor space ratio for development that includes residential development to which this division applies is the maximum permissible floor space ratio for the land plus an additional floor space ratio of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2).
- (2) The minimum affordable housing component, which must be at least 10%, is calculated as follows—

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

- (3) If the development includes residential flat buildings or shop top housing, the maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1).

##### **Example—**

Development that is eligible for 20% additional floor space ratio because the development includes a 10% affordable housing component, as calculated under subsection (2), is also eligible for 20% additional building height if the development involves residential flat buildings or shop top housing.

- (4) This section does not apply to development on land for which there is no maximum permissible floor space ratio.

#### **17 Additional floor space ratio for relevant authorities and registered community housing providers**

- (1) This section applies to residential development to which this division applies that is carried out—
  - (a) by or on behalf of a relevant authority or registered community housing provider, and

(b) on land with a maximum permissible floor space ratio of 2:1 or less.

(2) The maximum floor space ratio for the development is—

(a) the maximum floor space ratio calculated in accordance with section 16, or

(b) the maximum floor space ratio calculated in accordance with subsection (3).

(3) The maximum floor space ratio for subsection (2)(b) is the maximum permissible floor space ratio for the land plus an additional floor space ratio of—

(a) if the affordable housing component is at least 50%—0.5:1, or

(b) if the affordable housing component is between 20% and 50%—Y:1,

where—

**AH** is the affordable housing component.

**Y** is

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

.

(4) If development to which this section applies uses the maximum floor space ratio under subsection (2)(a), section 16(3) also applies to the development.

### **18 Affordable housing requirements for additional building height**

(1) This section applies to development that includes residential development to which this division applies if the development—

(a) includes residential flat buildings or shop top housing, and

(b) does not use the additional floor space ratio permitted under section 16.

(2) The maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the land plus an additional building height of up to 30%, based on a minimum affordable housing component calculated in accordance with subsection (3).

(3) The minimum affordable housing component, which must be at least 10%, is calculated as follows—

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

### **19 Non-discretionary development standards—the Act, s 4.15**

(1) The object of this section is to identify development standards for particular matters relating to residential development under this division that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

**Note—**

See the Act, section 4.15(3), which does not prevent development consent being granted if a non-discretionary development standard is not complied with.

- (2) The following are non-discretionary development standards in relation to the residential development to which this division applies—
- (a) a minimum site area of 450m<sup>2</sup>,
  - (b) a minimum landscaped area that is the lesser of—
    - (i) 35m<sup>2</sup> per dwelling, or
    - (ii) 30% of the site area,
  - (c) a deep soil zone on at least 15% of the site area, where—
    - (i) each deep soil zone has minimum dimensions of 3m, and
    - (ii) if practicable, at least 65% of the deep soil zone is located at the rear of the site,
  - (d) living rooms and private open spaces in at least 70% of the dwellings receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter,
  - (e) the following number of parking spaces for dwellings used for affordable housing—
    - (i) for each dwelling containing 1 bedroom—at least 0.4 parking spaces,
    - (ii) for each dwelling containing 2 bedrooms—at least 0.5 parking spaces,
    - (iii) for each dwelling containing at least 3 bedrooms— at least 1 parking space,
  - (f) the following number of parking spaces for dwellings not used for affordable housing—
    - (i) for each dwelling containing 1 bedroom—at least 0.5 parking spaces,
    - (ii) for each dwelling containing 2 bedrooms—at least 1 parking space,
    - (iii) for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces,
  - (g) the minimum internal area, if any, specified in the Apartment Design Guide for the type of residential development,
  - (h) for development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces)—the minimum floor area specified in the Low Rise Housing Diversity Design Guide,
  - (i) if paragraphs (g) and (h) do not apply, the following minimum floor areas—

- (i) for each dwelling containing 1 bedroom—65m<sup>2</sup>,
- (ii) for each dwelling containing 2 bedrooms—90m<sup>2</sup>,
- (iii) for each dwelling containing at least 3 bedrooms—115m<sup>2</sup> plus 12m<sup>2</sup> for each bedroom in addition to 3 bedrooms.

(3) Subsection (2)(c) and (d) do not apply to development to which Chapter 4 applies.

## **20 Design requirements**

- (1) Development consent must not be granted to development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces) under this division unless the consent authority has considered the Low Rise Housing Diversity Design Guide, to the extent to which the guide is not inconsistent with this policy.
- (2) Subsection (1) does not apply to development to which Chapter 4 applies.
- (3) Development consent must not be granted to development under this division unless the consent authority has considered whether the design of the residential development is compatible with—
  - (a) the desirable elements of the character of the local area, or
  - (b) for precincts undergoing transition—the desired future character of the precinct.

## **21 Must be used for affordable housing for at least 15 years**

- (1) Development consent must not be granted to development under this division unless the consent authority is satisfied that for a period of at least 15 years commencing on the day an occupation certificate is issued for the development—
  - (a) the development will include the affordable housing component required for the development under section 16, 17 or 18, and
  - (b) the affordable housing component will be managed by a registered community housing provider.
- (2) This section does not apply to development carried out by or on behalf of the Aboriginal Housing Office or the Land and Housing Corporation.

## **22 Subdivision permitted with consent**

Land on which development has been carried out under this division may be subdivided with development consent.

## **Division 2 Boarding houses**

### **23 Boarding houses permitted with consent**

- (1) Development for the purposes of boarding houses may be carried out with consent on land on which development for the purposes of boarding houses is permitted with consent under another environmental planning instrument.
- (2) Development for the purposes of a boarding house must not be carried out on land in Zone R2 Low Density Residential or an equivalent land use zone unless—
  - (a) for land in the Eastern Harbour City, Central River City, Western Parkland City or Central Coast City—the land is within an accessible area, or
  - (b) otherwise—all or part of the boarding house is within 800m walking distance of land in Zone E1 Local Centre, Zone MU1 Mixed Use, Zone B1 Neighbourhood Centre, Zone B2 Local Centre or Zone B4 Mixed Use, or an equivalent land use zone.

### **24 Non-discretionary development standards—the Act, s 4.15**

- (1) The object of this section is to identify development standards for particular matters relating to development for the purposes of boarding houses that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

**Note—**

See the Act, section 4.15(3), which does not prevent development consent being granted if a non-discretionary development standard is not complied with.

- (2) The following are non-discretionary development standards in relation to the carrying out of development to which this Division applies—
  - (a) for development in a zone in which residential flat buildings or shop top housing are permitted—a floor space ratio that is not more than—
    - (i) the maximum permissible floor space ratio for residential accommodation on the land, and
    - (ii) an additional 30% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of the boarding house,
  - (b) if paragraph (a) does not apply—a floor space ratio that is not more than the maximum permissible floor space ratio for residential accommodation on the land,
  - (c) for development on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential—the minimum landscaping requirements for multi dwelling housing under a relevant planning instrument,
  - (d) for development on land in Zone R4 High Density Residential—the minimum

- landscaping requirements for residential flat buildings under a relevant planning instrument,
- (e) at least 3 hours of direct solar access provided between 9am and 3pm at mid-winter in at least 1 communal living area,
  - (f) for a boarding house containing 6 boarding rooms—
    - (i) a total of at least 30m<sup>2</sup> of communal living area, and
    - (ii) minimum dimensions of 3m for each communal living area,
  - (g) for a boarding house containing more than 6 boarding rooms—
    - (i) a total of at least 30m<sup>2</sup> of communal living area plus at least a further 2m<sup>2</sup> for each boarding room in excess of 6 boarding rooms, and
    - (ii) minimum dimensions of 3m for each communal living area,
  - (h) communal open spaces—
    - (i) with a total area of at least 20% of the site area, and
    - (ii) each with minimum dimensions of 3m,
  - (i) if a relevant planning instrument does not specify a requirement for a lower number of parking spaces—at least the following number of parking spaces—
    - (i) for development on land within an accessible area—0.2 parking spaces for each boarding room,
    - (ii) otherwise—0.5 parking spaces for each boarding room,
  - (j) if a relevant planning instrument specifies a requirement for a lower number of parking spaces—the lower number specified in the relevant planning instrument.

## **25 Standards for boarding houses**

- (1) Development consent must not be granted under this Division unless the consent authority is satisfied that—
  - (a) no boarding room will have a gross floor area, excluding an area, if any, used for the purposes of private kitchen or bathroom facilities, of more than 25m<sup>2</sup>, and
  - (b) no boarding room will be occupied by more than 2 adult residents, and
  - (c) adequate bathroom, kitchen and laundry facilities will be available within the boarding house for the use of each resident, and
  - (d) for a boarding house on land in Zone R2 Low Density Residential or an equivalent land use zone—the boarding house will not have more than 12 boarding rooms,



and

- (e) for a boarding house on land in a business zone—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 the use, and
  - (f) for a boarding house containing at least 6 boarding rooms—the boarding house will have at least 1 communal living area, and
  - (g) the minimum lot size for the boarding house is not less than—
    - (i) for development on land in Zone R2 Low Density Residential—600m<sup>2</sup>, or
    - (ii) for development on other land—800m<sup>2</sup>.
    - (iii) (Repealed)
  - (h) each boarding room has a floor area, excluding an area, if any, used for the purposes of private kitchen or bathroom facilities, of at least the following—
    - (i) for a boarding room intended to be used by a single resident—12m<sup>2</sup>,
    - (ii) otherwise—16m<sup>2</sup>, and
  - (i) the boarding house will include adequate bicycle and motorcycle parking spaces.
- (2) Development consent must not be granted under this Division unless the consent authority considers whether—
- (a) the design of the boarding house will be compatible with—
    - (i) the desirable elements of the character of the local area, or
    - (ii) for precincts undergoing transition—the desired future character of the precinct, and
  - (b) the front, side and rear setbacks for the boarding house are not less than—
    - (i) for development on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential—the minimum setback requirements for multi dwelling housing under a relevant planning instrument,
    - (ii) for development on land in Zone R4 High Density Residential—the minimum setback requirements for residential flat buildings under a relevant planning instrument,
  - (c) if the boarding house has at least 3 storeys—the building will comply with the minimum building separation distances specified in the Apartment Design Guide.
  - (d), (e) (Repealed)

- (3) This section does not apply to development for the purposes of minor alterations or additions to an existing boarding house.

## **26 Must be used for affordable housing in perpetuity**

- (1) Development consent must not be granted under this Division unless the consent authority is satisfied that from the date of the issue of the occupation certificate and continuing in perpetuity—
- (a) the boarding house will be used for affordable housing, and
  - (b) the boarding house will be managed by a registered community housing provider.
- (2) Subsection (1) does not apply to development carried out by or on behalf of the Aboriginal Housing Office or the Land and Housing Corporation.

## **27 Subdivision of boarding houses not permitted**

Development consent must not be granted for the subdivision of a boarding house.

## **Division 3 Boarding houses—relevant authorities**

### **28 Development to which Division applies**

- (1) This Division applies to development for the purposes of boarding houses on land—
- (a) on which development for the purposes of boarding houses is permitted with consent under another environmental planning instrument, or
  - (b) in Zone R2 Low Density Residential or an equivalent land use zone.
- (2) This Division does not apply to development for the purposes of boarding houses on land in Zone R2 Low Density Residential or an equivalent land use zone unless—
- (a) for land in the Eastern Harbour City, Central River City, Western Parkland City or Central Coast City—the land is within an accessible area, or
  - (b) otherwise—all or part of the boarding house is within 800m walking distance of land in Zone E1 Local Centre, Zone MU1 Mixed Use, Zone B1 Neighbourhood Centre, Zone B2 Local Centre or Zone B4 Mixed Use, or an equivalent land use zone.

### **29 Boarding houses permitted without development consent**

- (1) Development to which this Division applies may be carried out by or on behalf of a relevant authority without development consent if—
- (a) the development complies with the development standards specified in sections 24(2) and 25(1), and

- (b) the relevant authority considers the matters set out in section 25 (2), and
  - (c) the development will not result in a building with a height of more than 9m, and
  - (d) for development on land in Zone R2 Low Density Residential or an equivalent land use zone—the boarding house will not have more than 12 boarding rooms.
- (2) *State Environmental Planning Policy (Transport and Infrastructure) 2021*, sections 2.15 and 2.17 apply to the development and, in the application of the sections—
- (a) a reference in section 2.15 to “this Chapter” is taken to be a reference to this section, and
  - (b) a reference in the sections to a public authority is taken to be a reference to the relevant authority.

### **30 Notification before carrying out development**

- (1) Before carrying out development to which this division applies, the relevant authority must do the following—
- (a) request that the council nominate persons who must, in the council’s opinion, be notified of the development,
  - (b) give written notice of the intention to carry out the development to—
    - (i) the council, and
    - (ii) any persons nominated by the council under paragraph (a), and
    - (iii) the occupiers of adjoining land,
  - (c) take into account the responses to the notice that are received within 21 days after the notice is given.
- (2) In this section, a reference to the council is a reference to the council for the land on which the development is proposed to be carried out.

### **30A Landcom must notify Secretary of Department of Communities and Justice**

Before carrying out development to which this division applies, Landcom must—

- (a) give written notice of the intention to carry out the development to the Secretary of the Department of Communities and Justice, including the measures proposed to ensure the boarding house will be—
  - (i) used for affordable housing, and
  - (ii) managed by a registered community housing provider, and
- (b) take into account the responses to the notice that are received within 21 days after

the notice is given.

### **30B Considerations before carrying out development**

- (1) Before carrying out development under this division, the Aboriginal Housing Office must consider the *AHO Design Guidelines NSW*, published by the Aboriginal Housing Office in January 2020.
- (2) Before carrying out development under this division, the Land and Housing Corporation must consider—
  - (a) *Good Design for Social Housing*, published by the Land and Housing Corporation, in partnership with the Government Architect NSW, in September 2020, and
  - (b) the *NSW Land and Housing Corporation Design Requirements*, published by the Land and Housing Corporation in February 2023.
- (3) Before carrying out development under this division, Landcom must consider the *Landcom Affordable Housing Design Guideline*, published by Landcom, in partnership with the Government Architect NSW, in November 2023.

### **31 Exempt development**

Development for the purposes of landscaping and gardening is exempt development if it is carried out by or on behalf of a relevant authority in relation to a boarding house.

### **32 Subdivision of boarding houses not permitted**

Development consent must not be granted for the subdivision of a boarding house.

## **Division 4 Supportive accommodation**

### **33 Land to which Division applies**

This Division applies to land on which—

- (a) development for the purposes of boarding houses is permissible under another environmental planning instrument, or
- (b) development for the purposes of residential flat buildings is permissible under Chapter 5 or another environmental planning instrument.

### **34 Development to which Division applies**

- (1) This Division applies to development for the purposes of supportive accommodation on land to which this Division applies.
- (2) In this section—

***supportive accommodation*** means the use of an existing residential flat building or

boarding house—

- (a) to provide long-term accommodation, in a separate dwelling or boarding room, for a person who needs supervision and support services on-site, and

**Example—**

A former homeless person.

- (b) to provide the supervision and support services, including the following—

- (i) medical services,
- (ii) counselling services,
- (iii) education and training services,
- (iv) administrative services.

**35 Development may be carried out without consent**

Development to which this Division applies is permitted without consent if the development does not involve the erection or alteration of, or an addition to, a building.

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

**36 Land to which Division applies**

- (1) This Division applies to the following land—

- (a) land in the Eastern Harbour City, Central River City, Western Parkland City or Central Coast City within 800m of—
  - (i) a public entrance to a railway station or light rail station, or
  - (ii) for a light rail station with no entrance—a platform of the light rail station,
- (b) land in the following towns within 400m of land in Zone E2 Commercial Centre, Zone MU1 Mixed Use, Zone B3 Commercial Core or Zone B4 Mixed Use, or an equivalent land use zone—

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.

- (2) This Division does not apply to land on which development for the purposes of residential flat buildings is permitted under another environmental planning instrument.

### **37 Development to which Division applies**

- (1) This Division applies to development for the purposes of residential flat buildings carried out on land to which this Division applies—
  - (a) by or on behalf of a public authority or social housing provider, or
  - (b) by a person who is carrying out the development with a relevant authority.
- (2) This Division does not apply to—
  - (a) development to which this Part, Division 1 applies, or
  - (b) development to which Chapter 3, Part 4 applies.

### **38 Development may be carried out with consent**

- (1) Development to which this Division applies may be carried out with consent.
- (2) Development consent must not be granted under this Division unless the consent authority is satisfied that—
  - (a) the Planning Secretary has certified in a site compatibility certificate that, in the Planning Secretary's opinion, the residential flat building is compatible with the surrounding land uses, and
  - (b) if the development relates to a building on land in a business zone—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 the use.
- (3) Nothing in this section prevents a consent authority from—
  - (a) consenting to development on a site by reference to site and design features that are more stringent than the ones 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 residential flat building with the surrounding land uses, or
  - (c) considering another matter in determining a development application.
- (4) Car parking is not required to be provided in relation to development to which this Division applies other than in relation to the tenanted component of a residential flat building used as build-to-rent housing.

**Note—**

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

### **39 Site compatibility certificates**

- (1) An application for a site compatibility certificate under this Division may be made to the Planning Secretary—
  - (a) by the owner of the land on which the development is proposed to be carried out, or
  - (b) by another person with the consent of the owner of the land.
- (2) An application—
  - (a) must be in a written form approved by the Planning Secretary, and
  - (b) must be accompanied by the documents and information required by the Planning Secretary, and
  - (c) must be accompanied by the fee, if any, prescribed by the regulations.
- (3) The Planning Secretary may request further documents and information to be furnished in connection with an application.
- (4) Within 7 days after the application is made, the Planning Secretary must provide a copy of the application to the council for the area in which the development is proposed to be carried out, unless the Planning Secretary refuses, before the 7 days have elapsed, to issue a certificate.
- (5) The Planning Secretary may determine the application by issuing a certificate or refusing to do so.
- (6) The Planning Secretary must not issue a certificate unless the Planning Secretary—
  - (a) has taken into account comments, if any, received from the council within 14 days after the application for the certificate was made, and
  - (b) is of the opinion that the residential flat building is compatible with the surrounding land uses considering the following matters—
    - (i) the existing uses and approved uses of land in the area,
    - (ii) the impact that the residential flat building, including its bulk and scale, is likely to have on the existing uses, approved uses and uses that, in the opinion of the Planning Secretary, are likely to be the preferred future uses of the 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 is not likely to have an adverse effect on the environment and will not cause unacceptable environmental risks to the land.

- (7) A certificate may certify that development 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 relation to which it was issued despite a change in the ownership of the land.
- (9) A certificate is valid for—
  - (a) 5 years, or
  - (b) otherwise—the period specified in the certificate.
- (10) If a certificate is valid at the time a development application is made, the certificate remains valid for the purposes of the development application until the development application is finally determined.

#### **40 Must be used for affordable housing for at least 15 years**

- (1) Development consent must not be granted under this Division unless the consent authority is satisfied that, for at least 15 years from the date of the issue of an occupation certificate—
  - (a) at least 50% of the dwellings to which the development relates will be used for affordable housing, and
  - (b) the dwellings used for affordable housing will be managed by a registered community housing provider.
- (2) Subsection (1) does not apply to development carried out by or on behalf of the Aboriginal Housing Office or the Land and Housing Corporation.

#### **41 (Repealed)**

### **Division 6 Residential development—relevant authorities**

#### **42 Development to which division applies**

- (1) This division applies to residential development if—
  - (a) the development is permitted with development consent on the land under Chapter 5 or another environmental planning instrument, and
  - (b) all buildings will have a height not exceeding the greater of—
    - (i) 11m, or
    - (ii) the maximum permissible building height for the land, and
  - (c) all buildings will have a floor space ratio not exceeding the greater of—
    - (i) 0.65:1, or



- (ii) the maximum permissible floor space ratio for the land, and
- (d) the development will not result in more than 75 dwellings on a single site, and
- (e) for development on land in an accessible area—the development will result in the following number of parking spaces—
  - (i) for each dwelling containing 1 bedroom—at least 0.4 parking spaces,
  - (ii) for each dwelling containing 2 bedrooms—at least 0.5 parking spaces,
  - (iii) for each dwelling containing at least 3 bedrooms—at least 1 parking space, and
- (f) for development on land that is not in an accessible area—the development will result in the following number of parking spaces—
  - (i) for each dwelling containing 1 bedroom—at least 0.5 parking spaces,
  - (ii) for each dwelling containing 2 bedrooms—at least 1 parking space,
  - (iii) for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces.
- (2) This division also applies to the following development if the development is permitted on the land under another environmental planning instrument—
  - (a) the demolition of buildings and associated structures if the building or structure is on land that—
    - (i) is non-heritage land, and
    - (ii) is not identified in an environmental planning instrument as being in a heritage conservation area,
  - (b) the subdivision of land and subdivision works.
- (3) This division does not apply to—
  - (a) development to which Chapter 2, Part 2, Division 5 applies, or
  - (b) development that is part of a project, or part of a stage of a project, that the Minister determined under the Act, former section 75P to be subject to the Act, Part 4.
- (4) *State Environmental Planning Policy (Transport and Infrastructure) 2021*, sections 2.15 and 2.17 apply to the development and, in the application of the sections—
  - (a) a reference in section 2.15 to “this Chapter” is taken to be a reference to this section, and
  - (b) a reference in the sections to a public authority is taken to be a reference to the

relevant authority.

(5) In this section—

**former section 75P** means the Act, section 75P, as in force immediately before its repeal by the *Environmental Planning and Assessment Amendment (Part 3A Repeal) Act 2011*.

**non-heritage land** means land that—

- (a) does not contain a heritage item, and
- (b) is not the subject of an interim heritage order under the *Heritage Act 1977*, and
- (c) is not listed on the State Heritage Register under the *Heritage Act 1977*.

### **43 Residential development permitted without consent**

Development for the purposes of residential development to which this division applies may be carried out without consent if the development is carried out by or on behalf of—

- (a) Landcom, if all dwellings resulting from the residential development are used for affordable housing, or
- (b) another relevant authority.

#### **43A Notification before carrying out development**

- (1) Before carrying out development to which this division applies, the relevant authority must do the following—
  - (a) request that the council nominate persons who must, in the council's opinion, be notified of the development,
  - (b) give written notice of the intention to carry out the development to—
    - (i) the council, and
    - (ii) any persons nominated by the council under paragraph (a), and
    - (iii) the occupiers of adjoining land,
  - (c) take into account the responses to the notice that are received within 21 days after the notice is given.
- (2) In this section, a reference to the council is a reference to the council for the land on which the development is proposed to be carried out.

#### **43B Landcom must notify Secretary of Department of Communities and Justice**

Before carrying out development to which this division applies, Landcom must—

- (a) give written notice of the intention to carry out the development to the Secretary of the Department of Communities and Justice, including the measures proposed to ensure the dwellings resulting from the residential development will be—
  - (i) used for affordable housing, and
  - (ii) managed by a registered community housing provider, and
- (b) take into account the responses to the notice that are received within 21 days after the notice is given.

#### **43C Consideration of design of residential apartment development**

Before carrying out residential apartment development to which this division applies, the relevant authority must consider the following—

- (a) the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9,
- (b) the Apartment Design Guide.

#### **44 Considerations before carrying out development**

- (1) Before carrying out development to which this division applies, the Aboriginal Housing Office must consider the *AHO Design Guidelines NSW*, published by the Aboriginal Housing Office in January 2020.
- (2) Before carrying out development to which this division applies, the Land and Housing Corporation must consider—
  - (a) *Good Design for Social Housing*, published by the Land and Housing Corporation, in partnership with the Government Architect NSW, in September 2020, and
  - (b) the *NSW Land and Housing Corporation Design Requirements*, published by the Land and Housing Corporation in February 2023.
- (3) Before carrying out development to which this division applies, Landcom must consider the *Landcom Affordable Housing Design Guideline*, published by Landcom, in partnership with the Government Architect NSW, in November 2023.

#### **44A Exempt development**

- (1) Development for the purposes of landscaping and gardening carried out by or on behalf of the Aboriginal Housing Office or the Land and Housing Corporation in relation to residential development to which this division applies is exempt development.
- (2) Development for the purposes of repairs and maintenance work and non-structural renovations and building alterations carried out by or on behalf of the Aboriginal Housing Office or the Land and Housing Corporation in relation to housing is exempt

development.

- (3) Subsection (2) does not apply to development involving the use of external combustible cladding within the meaning of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

## 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.

### 45 Definitions

In this Part—

**comparable accommodation** means accommodation comparable with accommodation provided within an existing low-rental residential building the subject of a development application to which this Part applies (**Part 3 accommodation**) because—

- (a) it is in the same or a neighbouring suburb, and
- (b) it is let at the same rental level as, or not more than 5% higher than the rental level of, the Part 3 accommodation, and
- (c) it is available for occupation on the day the development application is lodged, and
- (d) for residential flat buildings—it comprises dwellings with the same number of bedrooms as the dwellings in the Part 3 accommodation.

**low-rental dwelling** means a dwelling that was let at a rental level no greater than the median rental level during the relevant period in relation to a dwelling—

- (a) of the same type, and
- (b) with the same number of bedrooms, and
- (c) in the same local government area.

**low-rental residential building** means a building used, during the relevant period, as a residential flat building containing a low-rental dwelling or as a boarding house, and includes a building that—

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

- (c) 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.

**median rental level**, for a relevant period, means the average of all the median rental levels specified for the relevant period in the Rent and Sales Report.

**relevant period** means the period commencing 5 years before the day on which the development application involving the building is lodged and ending on that day.

**Rent and Sales Report** means the report comprised of rent tables and sales tables published by the Department of Communities and Justice in March, June, September and December each year.

#### **46 Buildings to which Part applies**

- (1) This Part applies to a low-rental residential building on land within the following areas—

- (a) the Eastern Harbour City,
- (b) the Central River City,
- (c) the Western Parkland City,
- (d) the Central Coast City,
- (e) the City of Newcastle local government area,
- (f) the City of Wollongong local government area.

- (2) This Part does not apply to a building—

- (a) approved for subdivision under the [Strata Schemes Development Act 2015](#), or
- (b) for which development consent has been granted under Chapter 3, Part 5, or
- (c) owned by, or under the care, control and management of, a social housing provider.

#### **47 Reduction of availability of affordable housing**

- (1) Development for the following purposes, in relation to a building to which this Part applies, is permitted with development consent—

- (a) demolishing the building,
- (b) altering or adding to the structure or fabric of the inside or outside of the building,
- (c) changing the use of the building to another use,
- (d) if the building is a residential flat building—strata subdivision of the building.

- (2) In determining whether to grant development consent, the consent authority must take into account the *Guidelines for the Retention of Existing Affordable Rental Housing*, published by the Department in October 2009 and the following—
  - (a) whether the development will reduce the amount of affordable housing in the area,
  - (b) whether there is available sufficient comparable accommodation to satisfy the demand for the accommodation,
  - (c) whether the development is likely to result in adverse social and economic effects on the general community,
  - (d) whether adequate arrangements have been made to assist the residents who are likely to be displaced to find comparable accommodation,
  - (e) the extent to which the development will contribute to a cumulative loss of affordable housing in the local government area,
  - (f) whether the building is structurally sound, including—
    - (i) the extent to which the building complies with relevant fire safety requirements, and
    - (ii) the estimated cost of carrying out work necessary to ensure the building is structurally sound and complies with relevant fire safety requirements,
  - (g) whether the imposition of an affordable housing condition requiring the payment of a monetary contribution would adequately mitigate the reduction of affordable housing resulting from the development,
  - (h) for a boarding house—the financial viability of the continued use of the boarding house.
- (3) Sufficient comparable accommodation is conclusively taken not to be available if, for the 3 months occurring immediately before the development application is lodged, the average vacancy rate in private rental accommodation for Sydney, as published monthly by the Real Estate Institute of New South Wales, is less than 3%.
- (4) The continued use of a boarding house is financially viable if the rental yield of the boarding house, as determined under section 48(4), is at least 6%.

#### **48 Contributions for affordable housing—the Act, s 7.32**

- (1) The following requirements are prescribed for the imposition of conditions on a development consent granted under this Part—
  - (a) the consent authority must be satisfied the development will, or is likely to, reduce the availability of affordable housing in the area,

(b) if the condition requires the payment of a contribution—the contribution must be determined in accordance with this section.

(2) The amount of the contribution must 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*.

(3) For development involving a boarding house that the consent authority has assessed as not being financially viable—

(a) if the rental yield is 3% or less—no contribution may be sought, and

(b) if the rental yield is more than 3% and less than 6%—the contribution payable must be reduced by being calculated in accordance with the following formula—

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

where—

**C** is the contribution payable.

**X** is the contribution that would be payable under subsection (2).

**RY** is the rental yield.

(4) In this section—

**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 for the Retention of Existing Affordable Rental Housing*, published by the Department in October 2009—

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

where—

**RY** is 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 residents, 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 of carrying out work referred to in section 47(2)(f)(ii).

## Chapter 3 Diverse housing

### Part 1 Secondary dwellings

#### Division 1 Preliminary

##### 49 Definitions

In this Part—

**development for the purposes of a secondary dwelling** includes the following—

- (a) the erection of, or alterations or additions to—
  - (i) a secondary dwelling, or
  - (ii) an ancillary structure within the meaning of Schedule 1,
- (b) alterations or additions to a principal dwelling for the purposes of a secondary dwelling.

**residential zone** means the following land use zones or an equivalent land use zone—

- (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.

##### 50 Application of Part

This Part applies to development for the purposes of a secondary dwelling on land in a residential zone if development for the purposes of a dwelling house is permissible on the land under another environmental planning instrument.



### **51 No subdivision**

Development consent must not be granted for the subdivision of a lot on which development has been carried out under this Part.

## **Division 2 Secondary dwellings permitted with consent**

### **52 Development may be carried out with consent**

- (1) Development to which this Part applies may be carried out with consent.
- (2) Development consent must not be granted for development to which this Part applies unless—
  - (a) no dwellings, other than the principal dwelling and the secondary dwelling, will be located on the land, and
  - (b) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another environmental planning instrument, and
  - (c) the total floor area of the secondary dwelling is—
    - (i) no more than 60m<sup>2</sup>, or
    - (ii) if a greater floor area is permitted for a secondary dwelling on the land under another environmental planning instrument—the greater floor area.

### **53 Non-discretionary development standards—the Act, s 4.15**

- (1) The object of this section is to identify development standards for particular matters relating to development for the purposes of a secondary dwelling that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

**Note—**

See the Act, section 4.15(3), which does not prevent development consent being granted if a non-discretionary development standard is not complied with.

- (2) The following are non-discretionary development standards in relation to the carrying out of development to which this Part applies—
  - (a) for a detached secondary dwelling—a minimum site area of 450m<sup>2</sup>,
  - (b) the number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.

## Division 3 Complying development

### 54 Development for purposes of secondary dwellings that is complying development

- (1) This Division applies to development for the purposes of a secondary dwelling that—
  - (a) is on land in a residential zone other than Zone R5 Large Lot Residential, and
  - (b) does not involve the erection of, or alterations or additions to, a basement, and
  - (c) does not involve the erection of, or alterations or additions to, a roof terrace on the topmost roof of a building.
- (2) If development to which this Division applies relates to a secondary dwelling attached to or separate from the principal dwelling, the development is complying development if the development—
  - (a) meets the general requirements for complying development set out in the Codes SEPP, clauses 1.17A and 1.18(1) and (2), and
  - (b) is not on land referred to in the Codes SEPP, clause 1.19(1), and
  - (c) is on a lot with an area of at least 450m<sup>2</sup>, and
  - (d) meets the development standards set out in Schedule 1.
- (3) If development to which this Division applies relates to a secondary dwelling located within the principal dwelling, the development is complying development if the development—
  - (a) meets the relevant provisions of the *Building Code of Australia*, and
  - (b) is not on land that is an environmentally sensitive area within the meaning of the Codes SEPP, and
  - (c) is not on land that comprises, or on which there is, a heritage item or a draft heritage item within the meaning of the Codes SEPP, and
  - (d) involves no external alterations to the principal dwelling other than the provision of an additional entrance, and
  - (e) will not result in a dwelling on the land, other than the principal dwelling and the secondary dwelling, and
  - (f) will not result in the floor area of the secondary dwelling being—
    - (i) more than 60m<sup>2</sup>, or
    - (ii) if a greater floor area is permitted for a secondary dwelling on the land under another environmental planning instrument—more than the greater floor area.

## **55 Development carried out for secondary dwellings and principal dwellings at same time**

- (1) Development for the purposes of a secondary dwelling and the erection of, or alterations or additions to, a principal dwelling may be carried out as a single complying development if—
  - (a) the development for the secondary dwelling will be carried out at the same time as the development for the principal dwelling, and
  - (b) the erection of the secondary dwelling is complying development under this Division, and
  - (c) the development for the purposes of the principal dwelling is complying development under the Codes SEPP.
- (2) In determining whether development for the purposes of a principal dwelling is complying development, the principal dwelling is taken to be a building containing only 1 dwelling, whether or not the secondary dwelling is located within or attached to it.

## **56 Conditions**

- (1) A complying development certificate for complying development under this Division is subject to the conditions specified in the Codes SEPP, Schedule 6.
- (2) A reference in the Codes SEPP, Schedule 6, clauses 6 and 11(1) to a dwelling house is taken to be a reference to a principal dwelling or a secondary dwelling.

## **57 Development standards for bush fire prone land**

- (1) This section does not apply to the following development—
  - (a) development for the purposes of—
    - (i) landscaping, or
    - (ii) a non-combustible fence, or
    - (iii) a swimming pool, or
    - (iv) another ancillary structure if it is non-habitable and more than 6m from a dwelling,
  - (b) development carried out on land in—
    - (i) bush fire attack level-40 (BAL-40), or
    - (ii) the flame zone (BAL-FZ).

### **Note—**

More information about the categories of bush fire attack, including the flame zone, is contained in *Planning for Bush Fire Protection*, Table A1.7.

- (2) Complying development under this Division must not be carried out on a lot that contains bush fire prone land unless—
- (a) the development conforms to the relevant specifications and requirements of *Planning for Bush Fire Protection*, and
  - (b) any associated access way is on land that is not—
    - (i) grasslands, or
    - (ii) in bush fire attack level-40 (BAL-40), or
    - (iii) the flame zone (BAL-FZ), and
  - (c) the lot has direct access to—
    - (i) a public road, or
    - (ii) a road vested in or maintained by the council, and
  - (d) the building or structure to which the development relates is within 200m of the road, and
  - (e) there is sufficient access designed in accordance with the acceptable solutions identified in *Planning for Bush Fire Protection*, Table 7.4a, and
  - (f) the lot has a water supply that is—
    - (i) reticulated, or
    - (ii) not reticulated but suitable for fire fighting, and
  - (g) reticulated or bottled gas on the lot is installed and maintained in accordance with AS/NZS 1596:2014, *The storage and handling of LP Gas*, including the use of metal piping, and
  - (h) fixed gas cylinders on the lot are located at least 10m from flammable materials and are enclosed on the hazard side of the installation, and
  - (i) gas cylinders on the lot that are within 10m of a dwelling—
    - (i) have the release valves directed away from the dwelling, and
    - (ii) have metal connections to and from the cylinders, and
  - (j) there are no polymer sheathed flexible gas supply lines to gas meters adjacent to a dwelling on the lot.

**Note—**

The requirements relating to the construction of buildings in bush fire prone areas set out in the *Building Code of Australia* also apply.

- (3) A non-reticulated water supply to a lot is suitable for fire fighting if—
- (a) the water supply has a 65mm metal Storz outlet with a gate or ball valve, and
  - (b) the gate or ball valve, pipes and tank penetrations are metal and designed to allow for a full 50mm inner diameter water flow through the Storz fitting, and
  - (c) the size of the non-reticulated water supply is—
    - (i) for a lot with an area up to 10,000m<sup>2</sup>—10,000L, and
    - (ii) for a lot with an area of more than 10,000m<sup>2</sup>—20,000L, and
- (4) Land is not in bush fire attack level-40 (BAL-40) or the flame zone (BAL-FZ) if—
- (a) the council or a person recognised by the NSW Rural Fire Service as a suitably qualified consultant in bush fire risk assessment determines, in accordance with the methodology specified in *Planning for Bush Fire Protection*, the land is not in bush fire attack level-40 (BAL-40) or the flame zone (BAL-FZ), or
  - (b) for development carried out on grasslands—the development conforms to the relevant specifications and requirements of *Planning for Bush Fire Protection*, Table 7.9a.
- (5) In this section—

**bush fire attack level-40 (BAL-40)** has the same meaning as in AS 3959:2018, *Construction of buildings in bushfire-prone areas*.

**flame zone (BAL-FZ)** has the same meaning as in AS 3959:2018, *Construction of buildings in bushfire-prone areas*.

**grasslands** has the same meaning as in *Planning for Bush Fire Protection*.

## **58 Development standards for flood control lots**

- (1) Complying development under this Division must not be carried out on the following parts of a flood control lot, as certified by the council or a professional engineer who specialises in hydraulic engineering—
- (a) a flood storage area,
  - (b) a floodway,
  - (c) a flow path,

- (d) a high hazard area,
  - (e) a high risk area.
- (2) Complying development carried out under this Division on a flood control lot must comply with the following development standards—
- (a) if there is a minimum floor level adopted in a development control plan by the relevant council for the lot, the development must not cause a habitable room in the dwelling to have a floor level lower than the minimum floor level,
  - (b) if a part of the principal dwelling or secondary dwelling or an ancillary structure is erected at or below the flood planning level, it must be constructed of flood compatible material,
  - (c) the principal dwelling or secondary dwelling and ancillary structures, if any, must be able to withstand the forces exerted during a flood by water, debris and buoyancy up to—
    - (i) the flood planning level, or
    - (ii) if an on-site refuge is provided on the lot, the probable maximum flood level,
  - (d) the development must not result in increased flooding elsewhere in the floodplain,
  - (e) the lot must have pedestrian and vehicular access to a readily accessible refuge above the probable maximum flood level,
  - (f) vehicular access to the dwelling must not be inundated by water to a level of more than 0.3m during a 1:100 ARI flood event,
  - (g) the lot must not have any open car parking spaces or carports lower than the level of a 1:20 ARI flood event.
- (3) The requirements in subsection (2)(c) and (d) are satisfied if a flood and risk impact assessment prepared by a professional engineer specialising in hydraulic engineering or civil engineering states the requirements are satisfied.
- (4) Words used in this section have the same meanings as in the *Flood Risk Management Manual*.

### **59 Development standards for land near Siding Spring Observatory**

- (1) This section applies to complying development carried out under this Division on land in the following local government areas—
- (a) Coonamble,
  - (b) Gilgandra,

- (c) Warrumbungle Shire,
  - (d) Dubbo Regional.
- (2) Development to which this section applies must not be carried out unless the development will not result in—
- (a) a secondary dwelling with an outside light fitting, other than a shielded light fitting, or
  - (b) for land in the local government areas of Coonamble, Gilgandra or Warrumbungle Shire—a secondary dwelling with more than—
    - (i) 7 shielded outside light fittings, or
    - (ii) 5 shielded outside light fittings that are not automatic light fittings.
- (3) Words used in this section have the same meanings as in the Standard Instrument, clause 5.14.

## Part 2 Group homes

### 60 Definitions

In this Part—

**prescribed zone** means the following—

- (a) the following land use zones or an equivalent land use zone—
  - (i) Zone R1 General Residential,
  - (ii) Zone R2 Low Density Residential,
  - (iii) Zone R3 Medium Density Residential,
  - (iv) Zone R4 High Density Residential,
  - (iva) Zone MU1 Mixed Use,
  - (v) Zone B4 Mixed Use,
  - (vi) Zone SP1 Special Activities,
  - (vii) Zone SP2 Infrastructure,
- (b) another zone in which development for the purposes of dwelling houses or multi dwelling housing may be carried out with or without consent under an environmental planning instrument.

## **61 Development in prescribed zones**

- (1) Development for the purposes 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—
    - (i) does not result in more than 10 bedrooms being within 1 or more group homes on a site, and
    - (ii) is carried out by or on behalf of a public authority, or
  - (b) otherwise—with consent.
- (2) *State Environmental Planning Policy (Transport and Infrastructure) 2021*, Part 2.2, Division 1 applies to development carried out by or on behalf of a public authority under subsection (1)(a) and, in the application of the Division, a reference in the Division to “this Chapter” is taken to be a reference to this section.

## **62 Determination of development applications**

- (1) A consent authority must not—
  - (a) refuse consent to development for the purposes 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 a consent granted for a group home only because the development is for the purposes of a group home.
- (2) This section applies to development for the purposes of a group home that is permissible with consent under this or another environmental planning instrument.

## **63 Exempt development—existing group homes**

- (1) Development for a purpose specified in *State Environmental Planning Policy (Transport and Infrastructure) 2021*, Schedule 1 that is carried out within the boundaries of an existing group home by or on behalf of a public authority is exempt development if the development—
  - (a) meets the development standards specified in the Schedule, as modified by subsection (2), and
  - (b) complies with the requirements of *State Environmental Planning Policy (Transport and Infrastructure) 2021*, section 2.20(2).
- (2) The development standards for a carport associated with an existing building are modified as follows—
  - (a) the maximum surface area for a carport is 30m<sup>2</sup>,



- (b) the maximum height for a carport is 3m above ground level (existing),
- (c) a carport may be located up to 1m forward of a front building setback.

#### **64 Complying development**

- (1) Development for the purposes of a group home is complying development if the development—
  - (a) does not result in more than 10 bedrooms being within 1 or more group homes on a site, and
  - (b) satisfies the requirements for complying development specified in the Codes SEPP, clauses 1.18 and 1.19, other than clauses 1.18(1)(h) and 1.19(1)(b), and
  - (c) is not in a draft heritage conservation area, and
  - (d) meets the development standards set out in Schedule 2.

#### **Note—**

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

- (2) A complying development certificate is taken to satisfy a requirement of an environmental planning instrument or tree preservation order for a consent, permit or approval to remove a tree or other vegetation under 4m in height if the complying development cannot be carried out without the removal of the tree or other vegetation.
- (3) A complying development certificate for complying development under this section is subject to the conditions specified in the Codes SEPP, Schedule 6, and, in the application of the Schedule, a reference in the Schedule, clauses 6 and 11 to a dwelling house is taken to be a reference to a group home.

#### **65 Development standards for flood control lots**

- (1) Complying development must not be carried out under this Part on the following parts of a flood control lot, as certified by the council or a professional engineer who specialises in hydraulic engineering—
  - (a) a flood storage area,
  - (b) a floodway,
  - (c) a flow path,
  - (d) a high hazard area,
  - (e) a high risk area.

- (2) Complying development carried out under this Part on a flood control lot must comply with the following development standards—
- (a) if there is a minimum floor level adopted in a development control plan by the relevant council for the lot—the development must not cause a habitable room in the group home to have a floor level lower than the minimum floor level,
  - (b) if a part of the group home or an ancillary structure is erected at or below the flood planning level—the part must be constructed of flood compatible material,
  - (c) the group home and ancillary structures, if any, must be able to withstand the forces exerted during a flood by water, debris and buoyancy up to—
    - (i) the flood planning level, or
    - (ii) if an on-site refuge is provided on the lot—the probable maximum flood level,
  - (d) the development must not result in increased flooding elsewhere in the floodplain,
  - (e) the lot must have pedestrian and vehicular access to a readily accessible refuge above the probable maximum flood level,
  - (f) vehicular access to the group home must not be inundated by water to a level of more than 0.3m during a 1:100 ARI flood event,
  - (g) the lot must not have any open car parking spaces or carports lower than the level of a 1:20 ARI flood event.
- (3) The requirements in subsection (2)(c) and (d) are satisfied if a flood and risk impact assessment prepared by a professional engineer specialising in hydraulic engineering or civil engineering states the requirements are satisfied.
- (4) Words used in this section have the same meanings as in the *Flood Risk Management Manual*.

#### **66 Development standards for land near Siding Spring Observatory**

- (1) This section applies to complying development carried out under this Part on land in the following local government areas—
- (a) Coonamble,
  - (b) Gilgandra,
  - (c) Warrumbungle Shire,
  - (d) Dubbo Regional.
- (2) Development to which this section applies must not be carried out unless the development will not result in—

- (a) a group home with an outside light fitting, other than a shielded light fitting, or
  - (b) for land in the local government areas of Coonamble, Gilgandra or Warrumbungle Shire—a group home with more than—
    - (i) 7 shielded outside light fittings, or
    - (ii) 5 shielded outside light fittings that are not automatic light fittings.
- (3) Words used in this section have the same meanings as in the Standard Instrument, clause 5.14.

### **Part 3 Co-living housing**

#### **67 Co-living housing may be carried out on certain land with consent**

Development for the purposes of co-living housing may be carried out with consent on land in a zone in which—

- (a) development for the purposes of co-living housing is permitted under another environmental planning instrument, or
- (b) development for the purposes of residential flat buildings or shop top housing is permitted under Chapter 5 or another environmental planning instrument.

**Example—**

Co-living housing may be used as off-campus student accommodation.

#### **68 Non-discretionary development standards—the Act, s 4.15**

- (1) The object of this section is to identify development standards for particular matters relating to development for the purposes of co-living housing that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

**Note—**

See the Act, section 4.15(3), which does not prevent development consent being granted if a non-discretionary development standard is not complied with.

- (2) The following are non-discretionary development standards in relation to development for the purposes of co-living housing—
- (a) for development in a zone in which residential flat buildings are permitted—a floor space ratio that is not more than—
    - (i) the maximum permissible floor space ratio for residential accommodation on the land, and
    - (ii) an additional 10% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of co-living housing,

- (b) for co-living housing containing 6 private rooms—
  - (i) a total of at least 30m<sup>2</sup> of communal living area, and
  - (ii) minimum dimensions of 3m for each communal living area,
- (c) for co-living housing containing more than 6 private rooms—
  - (i) a total of at least 30m<sup>2</sup> of communal living area plus at least a further 2m<sup>2</sup> for each private room in excess of 6 private rooms, and
  - (ii) minimum dimensions of 3m for each communal living area,
- (d) communal open spaces—
  - (i) with a total area of at least 20% of the site area, and
  - (ii) each with minimum dimensions of 3m,
- (e) unless a relevant planning instrument specifies a lower number—
  - (i) for development on land in an accessible area—0.2 parking spaces for each private room, or
  - (ii) otherwise—0.5 parking spaces for each private room,
- (f) for development on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential—the minimum landscaping requirements for multi dwelling housing under a relevant planning instrument,
- (g) for development on land in Zone R4 High Density Residential—the minimum landscaping requirements for residential flat buildings under a relevant planning instrument.

## **69 Standards for co-living housing**

- (1) Development consent must not be granted for development for the purposes of co-living housing unless the consent authority is satisfied that—
  - (a) each private room has a floor area, excluding an area, if any, used for the purposes of private kitchen or bathroom facilities, that is not more than 25m<sup>2</sup> and not less than—
    - (i) for a private room intended to be used by a single occupant—12m<sup>2</sup>, or
    - (ii) otherwise—16m<sup>2</sup>, and
  - (b) the minimum lot size for the co-living housing is not less than—
    - (i) for development on land in Zone R2 Low Density Residential—600m<sup>2</sup>, or

- (ii) for development on other land—800m<sup>2</sup>, and
    - (iii) (Repealed)
  - (c) for development on land in Zone R2 Low Density Residential or an equivalent land use zone, the co-living housing—
    - (i) will not contain more than 12 private rooms, and
    - (ii) will be in an accessible area, and
  - (d) the co-living housing will contain an appropriate workspace for the manager, either within the communal living area or in a separate space, and
  - (e) for co-living housing on land in a business zone—no part of the ground floor of the co-living housing that fronts a street will be used for residential purposes unless another environmental planning instrument permits the use, and
  - (f) adequate bathroom, laundry and kitchen facilities will be available within the co-living housing for the use of each occupant, and
  - (g) each private room will be used by no more than 2 occupants, and
  - (h) the co-living housing will include adequate bicycle and motorcycle parking spaces.
- (2) Development consent must not be granted for development for the purposes of co-living housing unless the consent authority considers whether—
- (a) the front, side and rear setbacks for the co-living housing are not less than—
    - (i) for development on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential—the minimum setback requirements for multi dwelling housing under a relevant planning instrument, or
    - (ii) for development on land in Zone R4 High Density Residential—the minimum setback requirements for residential flat buildings under a relevant planning instrument, and
  - (b) if the co-living housing has at least 3 storeys—the building will comply with the minimum building separation distances specified in the Apartment Design Guide, and
  - (c) at least 3 hours of direct solar access will be provided between 9am and 3pm at mid-winter in at least 1 communal living area, and
  - (d), (e) (Repealed)
  - (f) the design of the building will be compatible with—
    - (i) the desirable elements of the character of the local area, or

(ii) for precincts undergoing transition—the desired future character of the precinct.

(3) Subsection (1) does not apply to development for the purposes of minor alterations or additions to existing co-living housing.

#### **70 No subdivision**

Development consent must not be granted for the subdivision of co-living housing into separate lots.

### **Part 4 Build-to-rent housing**

#### **71 (Repealed)**

#### **72 Development for the purposes of build-to-rent housing permitted with consent**

(1) The objective of this section is to enable certain residential accommodation to be used as build-to-rent housing.

(2) This Part applies to development for the purposes of multi dwelling housing, residential flat buildings or shop top housing on land—

(a) in the following zones—

(i) a zone in which development for the purposes of residential flat buildings is permissible under another environmental planning instrument,

(ia) Zone E2 Commercial Centre,

(ib) Zone MU1 Mixed Use,

(ii) Zone B3 Commercial Core,

(iii) Zone B4 Mixed Use,

(iv) Zone B8 Metropolitan Centre,

(v) Zone SP5 Metropolitan Centre, or

(a1) in a Transport Oriented Development Area under Chapter 5 in which development for the purposes of residential flat buildings is permissible, or

(b) for which a site compatibility certificate has been issued under section 39.

(3) Development consent may be granted for development to which this Part applies if—

(a) the development will result in at least 50 dwellings occupied, or intended to be occupied, by individuals under residential tenancy agreements, and

(b) all buildings containing the dwellings are located on the same lot.

- (4) Part 7 does not apply to development permitted under this Part.

### **73 Conditions of build-to-rent housing to apply for at least 15 years**

- (1) Development consent must not be granted to the erection or use of a building for development to which this part applies unless the consent authority is satisfied that, during the relevant period, the tenanted component of the building—
- (a) will not be subdivided into separate lots, and
  - (b) will be owned and controlled by 1 person, and
  - (c) will be operated by 1 managing agent, who provides on-site management.
- (2) (Repealed)
- (3) In this section—

***relevant period*** means—

- (a) for development on land in Zone E2 Commercial Centre, Zone B3 Commercial Core or Zone SP5 Metropolitan Centre—a period commencing on the day an occupation certificate is issued for all parts of the building or buildings to which the development relates and continuing in perpetuity, or
- (b) otherwise—a period of 15 years commencing on the day an occupation certificate is issued for all parts of a building to which the development relates.

### **74 Non-discretionary development standards—the Act, s 4.15**

- (1) The object of this section is to identify development standards for particular matters relating to development for the purposes of build-to-rent housing that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

**Note—**

See the Act, section 4.15(3), which does not prevent development consent being granted if a non-discretionary development standard is not complied with.

- (2) The following are non-discretionary development standards in relation to the carrying out of the development to which this Part applies—
- (a) the building height of all proposed buildings is not more than the maximum building height permitted under Chapter 5 or another environmental planning instrument for a building on the land,
  - (b) for development on land in a zone in which no residential accommodation is permitted under another environmental planning instrument—a floor space ratio that is not more than the maximum permissible floor space ratio for other development on the land under another environmental planning instrument,

- (c) if paragraph (b) does not apply—a floor space ratio that is not more than the maximum permissible floor space ratio for residential accommodation on the land under Chapter 5 or another environmental planning instrument,
- (d) for development carried out wholly or partly on land in the Eastern Harbour City, Central River City or Western Parkland City—
  - (i) for land within an accessible area—0.2 parking spaces for each dwelling, or
  - (ii) otherwise—0.5 parking spaces for each dwelling, or
  - (iii) if a relevant planning instrument specifies a requirement for a lower number of parking spaces—the lower number specified in the relevant planning instrument,
- (e) if paragraph (d) does not apply—at least the number of parking spaces required under the relevant development control plan or local environmental plan for a residential flat building.

## **75 Design requirements**

- (1) This section applies to development to which this Part applies only if Chapter 4 applies to the building resulting from the development.
- (2) In determining an application for the modification of a development consent or a development application for the carrying out of development to which this section applies, the consent authority must—
  - (a) be flexible in applying the design criteria set out in the Apartment Design Guide, including, in particular, the design criteria set out in Part 4, items 4E, 4G and 4K, and
  - (b) in its consideration of the objectives set out in the Apartment Design Guide, Part 4, consider the following—
    - (i) the amenities proposed to be provided to tenants residing in the building through common spaces and shared facilities and services,
    - (ii) whether the configuration and variety of dwellings in the building will provide adequate options to prospective tenants in relation to the size and layout of the dwellings,
    - (iii) whether tenants residing in the building will be able to relocate to other dwellings in the building that will better accommodate their housing requirements if their requirements change.

## **76 Active uses on ground floor of build-to-rent housing in business zones**

- (1) The objective of this section is to ensure that, in relation to development for the



purposes of build-to-rent housing, active uses are provided at the street level in business zones to encourage the presence and movement of people.

- (2) This section applies to development to which this Part applies if the development is on land in a business zone, including as part of a mixed use development.
- (3) Development consent must not be granted for development to which this section applies unless the consent authority is satisfied that a building resulting from the development will have an active street frontage.
- (4) An active street frontage is not required for a part of a building used for 1 or more of the following—
  - (a) entrances and lobbies,
  - (b) access for fire services,
  - (c) vehicular access.

#### **77 Conditions requiring land or contributions for affordable housing**

Nothing in this Part overrides a requirement to dedicate land or pay a monetary contribution under the Act, section 7.32.

#### **78 Consideration of Apartment Design Guide for further subdivision of dwellings**

Development consent must not be granted for development involving the subdivision of a residential flat building for which consent has been granted under this Part unless the consent authority has considered the relevant provisions of the Apartment Design Guide in relation to the part of the building affected by the subdivision.

### **Part 5 Housing for seniors and people with a disability**

#### **Division 1 Land to which Part applies**

##### **79 Land to which Part applies**

This Part applies to land in the following zones—

- (a) Zone RU5 Village,
- (b) Zone R1 General Residential,
- (c) Zone R2 Low Density Residential,
- (d) Zone R3 Medium Density Residential,
- (e) Zone R4 High Density Residential,
- (e1) Zone E1 Local Centre,

- (e2) Zone E2 Commercial Centre,
- (e3) Zone E3 Productivity Support,
- (e4) Zone MU1 Mixed Use,
- (f) Zone B1 Neighbourhood Centre,
- (g) Zone B2 Local Centre,
- (h) Zone B3 Commercial Core,
- (i) Zone B4 Mixed Use,
- (j) Zone B5 Business Development,
- (k) Zone B6 Enterprise Corridor,
- (l) Zone B7 Business Park,
- (m) Zone B8 Metropolitan Centre,
- (n) Zone SP1 Special Purposes,
- (o) Zone SP2 Infrastructure,
- (o1) Zone SP4 Enterprise under the following local environmental plans—
  - (i) [Canada Bay Local Environmental Plan 2013](#),
  - (ii) [Central Coast Local Environmental Plan 2022](#),
  - (iii) [Penrith Local Environmental Plan 2010](#),
  - (iv) [Pittwater Local Environmental Plan 2014](#),
  - (v) [Port Macquarie-Hastings Local Environmental Plan 2011](#),
  - (vi) [Sutherland Shire Local Environmental Plan 2015](#),
  - (vii) [The Hills Local Environmental Plan 2019](#),
  - (viii) [Warringah Local Environmental Plan 2011](#),
- (o2) Zone SP5 Metropolitan Centre,
- (p) Zone RE2 Private Recreation.

**80 Land to which Part does not apply—general**

- (1) This Part does not apply to the following land—

- (a) land to which *Warringah Local Environmental Plan 2000* applies that is located within locality B2 (Oxford Falls Valley) or C8 (Belrose North) under the Plan,
  - (b) land described in Schedule 3.
- (2) Nothing in Schedule 3 operates to preclude the application of this Part to land only because—
- (a) the land is identified under *State Environmental Planning Policy (Resilience and Hazards) 2021*, Chapter 2, or
  - (b) in relation to land used for the purposes of an existing registered club—the land is described in another environmental planning instrument as—
    - (i) private open space, or
    - (ii) open space where dwellings or dwelling houses are permitted.

### **81 Seniors housing permitted with consent**

Development for the purposes of seniors housing may be carried out with development consent—

- (a) on land to which this Part applies, or
- (b) on land on which development for the purposes of seniors housing is permitted under another environmental planning instrument.

## **Division 2 Preliminary**

### **82 Definitions**

- (1) In this Part—

**gross floor area** means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from another building, measured at a height of 1.4m above the floor—

- (a) excluding the following—
  - (i) columns, fin walls, sun control devices and elements, projections or works outside the general lines of the internal face of an external wall,
  - (ii) cooling towers, machinery and plant rooms, ancillary storage space and vertical air conditioning ducts,
  - (iii) car parking and internal access to the car parking,
  - (iv) space for the loading and unloading of goods, including access to the space,

- (v) areas for common vertical circulation, including lifts and stairs,
  - (vi) storage, vehicular access, garbage and services within the basement,
  - (vii) for a residential care facility—floor space used for service activities provided by the facility within the basement,
  - (viii) terraces and balconies with outer walls less than 1.4m high,
  - (ix) voids above a floor at the level of a storey or storey above, and
- (b) for in-fill self-care housing—including car parking provided at ground level, other than for visitors, in excess of 1 per dwelling.

**hostel** means residential accommodation for seniors or people with a disability where—

- (a) meals, laundering, cleaning and other facilities are provided on a shared basis, and
- (b) at least 1 staff member is available on site 24 hours a day to provide management services.

**in-fill self-care housing** means seniors housing consisting of at least 2 independent living units and at which none of the following services are provided on the site—

- (a) meals,
- (b) cleaning services,
- (c) personal care,
- (d) nursing care.

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

**seniors** means the following people—

- (a) people who are at least 60 years of age,
- (b) people who are resident at a facility at which residential care, within the meaning of the [Aged Care Act 1997](#) of the Commonwealth, is provided,
- (c) people who have been assessed as being eligible to occupy housing for aged persons provided by a social housing provider.

- (2) The floor space ratio, and maximum permissible floor space ratio, of a building for this part must be calculated using gross floor area as defined for this part.

### **83 Amendments to the bush fire evacuation risk map**

- (1) The Planning Secretary may prepare maps for the purposes of amending or replacing the [Bush Fire Evacuation Risk Map](#).
- (2) In preparing a map, the Planning Secretary must consider the following matters—
  - (a) the size of the existing population within the locality,
  - (b) age groups within the population and the number of persons within the age groups,
  - (c) the number of hospitals and other facilities, including the number of beds, providing care to the residents of the facilities within the locality,
  - (d) the number of schools within the locality and the number of students at the schools,
  - (e) existing development within the locality that has been carried out under this Part,
  - (f) recommendations, if any, made by the NSW Rural Fire Service.

## **Division 3 Development standards**

### **84 Development standards—general**

- (1) This section applies to development for the purposes of seniors housing involving the erection of a building.
- (2) Development consent must not be granted for development to which this section applies unless—
  - (a) the site area of the development is at least 1,000m<sup>2</sup>, and
  - (b) the frontage of the site area of the development is at least 20m measured at the building line, and
  - (c) for development on land in a residential zone where residential flat buildings are not permitted—
    - (i) the development will not result in a building with a height of more than 9.5m, excluding servicing equipment on the roof of the building, and
    - (ii) if the roof of the building contains servicing equipment resulting in the building having a height of more than 9.5m—the servicing equipment complies with subsection (3), and
    - (iii) if the development results in a building with more than 2 storeys—the additional storeys are set back within planes that project at an angle of 45 degrees inwards from all side and rear boundaries of the site.

(3) The servicing equipment must—

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

(4) Subsection (2)(a) and (b) do not apply to development if the development application is made by a social housing provider or Landcom.

#### **85 Development standards for hostels and independent living units**

- (1) Development consent must not be granted for development for the purposes of a hostel or an independent living unit unless the hostel or independent living unit complies with the relevant standards specified in Schedule 4.
- (2) An independent living unit, or part of an independent living unit, located above the ground floor in a multi-storey building need not comply with the requirements in Schedule 4, sections 2, 5-13 and 15-21 if the development application is made by, or by a person jointly with, a social housing provider or Landcom.

#### **Note—**

Development standards concerning accessibility and usability for residential care facilities are not specified in this Policy. For relevant standards, see the *Building Code of Australia*.

#### **86 Development standards for seniors housing—Zones RE2, SP1, SP2 and RU5**

- (1) Development consent must not be granted for development for the purposes of seniors housing unless the consent authority is satisfied as follows—
  - (a) for development on land in Zone RE2 Private Recreation—
    - (i) the development is carried out on land used for the purposes of an existing registered club, and
    - (ii) the land adjoins land in a prescribed zone,
  - (b) for development on land in Zone SP1 Special Purpose or Zone SP2 Infrastructure—
    - (i) development for the purposes of a place of public worship, an educational establishment, a hospital or seniors housing is permitted on the land, and
    - (ii) the land adjoins land in a prescribed zone,
  - (c) for development on land in Zone RU5 Village—
    - (i) the development is carried out on land within 50km of a 24-hour health services facility, and

(ii) the land is serviced by reticulated water and sewerage.

(d) (Repealed)

(2) Nothing in this section prevents a consent authority from granting development consent for development for the purposes of seniors housing on land on which development for the purposes of seniors housing is permitted under another environmental planning instrument.

(3) (Repealed)

### **87 Additional floor space ratios**

(1) This section applies to development for the purposes of seniors housing on land to which this Part applies if—

(a) development for the purposes of a residential flat building or shop top housing is permitted on the land under Chapter 5 or another environmental planning instrument, or

(b) the development is carried out on land in Zone E2 Commercial Centre or Zone B3 Commercial Core.

(2) Development consent may be granted for development to which this section applies if—

(a) the site area of the development is at least 1,500m<sup>2</sup>, and

(b) the development will result in a building with the maximum permissible floor space ratio plus—

(i) for development involving independent living units—an additional 15% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of independent living units, or

(ii) for development involving a residential care facility—an additional 20% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of the residential care facility, or

(iii) for development involving independent living units and residential care facilities—an additional 25% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of independent living units or a residential care facility, or both, and

(c) the development will result in a building with a height of not more than 3.8m above the maximum permissible building height.

### **88 Restrictions on occupation of seniors housing**

- (1) Development permitted under this Part may be carried out for the accommodation of only the following—
  - (a) seniors or people who have a disability,
  - (b) people who live in the same household with seniors or people who have a disability,
  - (c) staff employed to assist in the administration and provision of services to housing provided under this Part.
- (2) Development consent must not be granted under this Part unless the consent authority is satisfied that only the kinds of people referred to in subsection (1) will occupy accommodation to which the development relates.

### **89 Use of ground floor of seniors housing in business zones**

- (1) This section applies to a building used for the purposes of seniors housing on land in a business zone.
- (2) Development consent must not be granted for development under this Part unless the part of the ground floor of the building that fronts a street will not be used for residential purposes.
- (3) Subsection (2) does not apply to a part of a building that—
  - (a) faces a service lane that does not require active street frontages, or
  - (b) is used for 1 or more of the following purposes—
    - (i) a lobby for a residential, serviced apartment, hotel or tenanted component of the building,
    - (ii) access for fire services,
    - (iii) vehicular access.
- (4) Subsection (2) does not apply if another environmental planning instrument permits the use of the ground floor of the building for residential purposes.

### **90 Subdivision**

- (1) Development consent may be granted for the subdivision of land on which development has been carried out under this Part.
- (2) Development consent must not be granted for the subdivision of a building resulting from development carried out under this Part on land in Zone E2 Commercial Centre or Zone B3 Commercial Core.



### **91 Fire sprinkler systems in residential care facilities**

- (1) A consent authority must not grant consent for development for the purposes of a residential care facility unless the facility will include a fire sprinkler system.
- (2) Development for the purposes of the installation of a fire sprinkler system in a residential care facility may be carried out with development consent.
- (3) In this section—

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

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

- (1) Development consent must not be granted for development under this Part on land used for the purposes of an existing registered club unless the consent authority is satisfied that—
  - (a) the development includes appropriate measures to separate the club from residential areas to avoid land use conflicts, and
  - (b) an appropriate protocol will manage the relationship between the seniors housing and the gambling facilities on the site of the club to minimise harm associated with the misuse and abuse of gambling activities by residents of the seniors housing.

**Note—**

The [Gaming Machines Act 2001](#) provides for gambling harm minimisation measures.

- (2) For the purposes of subsection (1)(a), appropriate measures include the following—
  - (a) separate pedestrian access points for the club and the residential areas of the seniors housing,
  - (b) design principles underlying the building aimed at ensuring acceptable noise levels in bedrooms and living areas in the residential areas of the seniors housing.

## **Division 4 Site-related requirements**

**Note—**

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

### **93 Location and access to facilities and services—*independent living units***

- (1) Development consent must not be granted for development for the purposes of an independent living unit unless the consent authority has considered whether residents

will have adequate access to facilities and services—

- (a) by a transport service that complies with subsection (2), or
- (b) on-site.

(2) The transport service must—

- (a) take the residents to a place that has adequate access to facilities and services, and
- (b) for development on land in the Eastern Harbour City, Central River City, Western Parkland City or Central Coast City—
  - (i) not be an on-demand booking service for the transport of passengers for a fare, and
  - (ii) be available both to and from the site at least once between 8am and 12pm each day and at least once between 12pm and 6pm each day, and
- (c) for development on other land—be available both to and from the site during daylight hours at least once each weekday.

(3) For the purposes of subsections (1) and (2), access is adequate if—

- (a) the facilities and services are, or the transport service is, located at a distance of not more than 400m from the site, and
- (b) the distance is accessible by means of a suitable access pathway, and
- (c) the gradient along the pathway complies with subsection (4)(c).

(4) In subsection (3)—

- (a) a **suitable access pathway** is a path of travel by means of a sealed footpath or other similar and safe means that is suitable for access by means of an electric wheelchair, motorised cart or the like, and
- (b) the distance is to be measured by reference to the length of the pathway, and
- (c) the overall average gradient must be not more than 1:14 and the gradients along the pathway must be not more than—
  - (i) 1:12 for a maximum length of 15m at a time, or
  - (ii) 1:10 for a maximum length of 5m at a time, or
  - (iii) 1:8 for a maximum length of 1.5m at a time.

(5) In this section—

**facilities and services** means—

- (a) shops and other retail and commercial services that residents may reasonably require, and
- (b) community services and recreation facilities, and
- (c) the practice of a general medical practitioner.

**provide a booking service** has the same meaning as in the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016*, section 7.

**Note—**

Provide a booking service is defined as carrying on a business taking bookings for taxis or hire vehicles to provide passenger services, whether immediately or at a later time, and communicating the bookings to drivers for passenger services or providers of passenger services.

#### **94 Location and access to facilities and services—residential care facilities**

- (1) Development consent must not be granted for development for the purposes of a residential care facility unless the consent authority is satisfied that residents of the facility will have access to facilities and services—
  - (a) on-site, or
  - (b) by a transport service other than a passenger service.

- (2) In this section—

**facilities and services**—see section 93.

**passenger service** has the same meaning as in the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016*.

**Note—**

A passenger service is defined as the transport, by a motor vehicle other than a bus, of passengers within, or partly within, this State for a fare.

#### **95 Water and sewer**

- (1) A consent authority must not consent to development under this Part unless the consent authority is satisfied the seniors housing will—
  - (a) be connected to a reticulated water system, and
  - (b) have adequate facilities for the removal or disposal of sewage.
- (2) If the water and sewerage services will be provided by a person other than the consent authority, the consent authority—
  - (a) must consider the suitability of the site in relation to the availability of reticulated water and sewerage infrastructure, or

(b) if reticulated services are not available—must satisfy the responsible authority that the provision of water and sewerage infrastructure, including environmental and operational considerations, is satisfactory for the development.

(3) In this section—

**responsible authority** means the public authority responsible for water and sewerage services in the area in which the seniors housing is located.

## 96 Bush fire prone land

(1) A consent authority must not consent to development under this Part on relevant bush fire prone land unless the consent authority is satisfied the development complies with the requirements of Planning for Bushfire Protection.

(2) In determining a development application for development under this Part on land near relevant bush fire prone land, the consent authority must—

(a) consult with the NSW Rural Fire Service and consider its comments, and

(b) consider the following including—

(i) the location of the development,

(ii) the means of access to and egress from the location,

(iii) the size of the existing population within the area,

(iv) age groups within the population and the number of persons within the age groups,

(v) the number of hospitals and other facilities providing care to the residents of the facilities within the area, and the number of beds within the hospitals and facilities,

(vi) the number of schools within the area and the number of students at the schools,

(vii) existing seniors housing within the area,

(viii) the road network within the area and the capacity of the road network to cater for traffic to and from existing development if there were a need to evacuate persons from the area in the event of a bush fire,

(ix) the adequacy of access to and from the site of the development for emergency response vehicles,

(x) the nature, extent and adequacy of bush fire emergency procedures that can be applied to the development and its site,

(xi) the requirements of Fire and Rescue NSW.

(3) In this section—

**relevant bush fire prone land** means bush fire prone land identified on a bush fire prone land map, certified under the Act, section 10.3, as the following—

- (a) “Bush fire prone land—vegetation category 1”,
- (b) “Bush fire prone land—vegetation category 2”,
- (c) “Bush fire prone land—vegetation category 3”,
- (d) “Bush fire prone land—vegetation buffer”.

## **Division 5 Design requirements**

### **97 Design of seniors housing**

- (1) In determining a development application for development for the purposes of seniors housing, a consent authority must consider the *Seniors Housing Design Guide*, published by the Department in December 2023.
- (2) Development consent must not be granted to development for the purposes of seniors housing unless the consent authority is satisfied the design of the seniors housing demonstrates that adequate consideration has been given to the design principles for seniors housing set out in Schedule 8.

### **98 (Repealed)**

## **Division 6**

### **99-105 (Repealed)**

## **Division 7 Non-discretionary development standards**

### **106 Application of design principles for seniors housing**

Nothing in this division affects the operation of section 97(2).

### **107 Non-discretionary development standards for hostels and residential care facilities—the Act, s 4.15**

- (1) The object of this section is to identify development standards for particular matters relating to development for the purposes of hostels and residential care facilities that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

#### **Note—**

See the Act, section 4.15(3), which does not prevent development consent being granted if a non-

discretionary development standard is not complied with.

- (2) The following are non-discretionary development standards in relation to development for the purposes of hostels or residential care facilities—
- (a) no building has a height of more than 9.5m, excluding servicing equipment on the roof of a building,
  - (b) servicing equipment on the roof of a building, which results in the building having a height of more than 9.5m—
    - (i) is fully integrated into the design of the roof or contained and suitably screened from view from public places, and
    - (ii) is limited to an area of no more than 20% of the surface area of the roof, and
    - (iii) does not result in the building having a height of more than 11.5m,
  - (c) the density and scale of the buildings when expressed as a floor space ratio is 1:1 or less,
  - (d) internal and external communal open spaces with a total area of at least—
    - (i) for a hostel—8m<sup>2</sup> for every bed, or
    - (ii) for a residential care facility—10m<sup>2</sup> for every bed,
  - (e) at least 15m<sup>2</sup> of landscaped area for every bed,
  - (f) a deep soil zone on at least 15% of the site area, where each deep soil zone has minimum dimensions of 6m and, if practicable, at least 65% of the deep soil zone is located at the rear of the site,
  - (g) for a hostel—at least 1 parking space for every 10 beds in the hostel,
  - (h) for a residential care facility—at least 1 parking space for every 15 beds in the facility,
  - (i) at least 1 parking space for every 2 employees who are on duty at the same time,
  - (j) at least 1 parking space for the purpose of ambulance parking.

**108 Non-discretionary development standards for independent living units—the Act, s 4.15**

- (1) The object of this section is to identify development standards for particular matters relating to development for the purposes of independent living units that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

**Note—**

See the Act, section 4.15(3), which does not prevent development consent being granted if a non-discretionary development standard is not complied with.

- (2) The following are non-discretionary development standards in relation to development for the purposes of independent living units—
- (a) no building has a height of more than 9.5m, excluding servicing equipment on the roof of a building,
  - (b) servicing equipment on the roof of a building, which results in the building having a height of more than 9.5m—
    - (i) is fully integrated into the design of the roof or contained and suitably screened from view from public places, and
    - (ii) is limited to an area of no more than 20% of the surface area of the roof, and
    - (iii) does not result in the building having a height of more than 11.5m,
  - (c) the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less,
  - (d) a minimum landscaped area that is the lesser of—
    - (i) 35m<sup>2</sup> per dwelling, or
    - (ii) 30% of the site area,
  - (e) (Repealed)
  - (f) a deep soil zone on at least 15% of the site area, where each deep soil zone has minimum dimensions of 3m and, if practicable, at least 65% of the deep soil zone is located at the rear of the site,
  - (g) at least 70% of the dwellings receive at least 2 hours of direct solar access between 9am and 3pm at mid-winter in living rooms and private open spaces,
  - (h) for a dwelling in a single storey building or a dwelling located, wholly or in part, on the ground floor of a multi-storey building—
    - (i) at least 15m<sup>2</sup> of private open space per dwelling, and
    - (ii) at least 1 private open space with minimum dimensions of 3m accessible from a living area located on the ground floor,

**Note—**

The open space needs to be accessible only by a continuous accessible path of travel, within the meaning of AS 1428.1, if the dwelling itself is an accessible one—see Schedule 4, section 2.

- (i) for a dwelling in a multi-storey building not located on the ground floor—a balcony

accessible from a living area with minimum dimensions of 2m and—

- (i) an area of at least 10m<sup>2</sup>, or
- (ii) for each dwelling containing 1 bedroom—an area of at least 6m<sup>2</sup>,
- (j) for a development application made by, or made by a person jointly with, a social housing provider or Landcom—at least 1 parking space for every 5 dwellings,
- (k) if paragraph (j) does not apply—at least 0.5 parking spaces for each bedroom.

## **Division 8 Seniors housing—relevant authorities**

### **108AA (Repealed)**

#### **108A Development to which Division applies**

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

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

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

- (1) Development to which this Division applies may be carried out by or on behalf of a relevant authority without development consent if—
  - (a) the relevant authority has considered the applicable development standards specified in sections 84(2)(c)(iii), 85, 88, 89 and 108, and
  - (b) the development will not result in a building with a height of more than—
    - (i) 9.5m, or
    - (ii) if the roof of the building contains servicing equipment resulting in the building having a height of more than 9.5m and the servicing equipment complies with section 84(3)—11.5m, and
  - (c) the seniors housing will not contain more than 40 dwellings on the site.
- (2) *State Environmental Planning Policy (Transport and Infrastructure) 2021*, sections 2.15 and 2.17 apply to the development and, in the application of the clauses—
  - (a) a reference in section 2.15 to “this Chapter” is taken to be a reference to this section, and
  - (b) a reference in the sections to a public authority is taken to be a reference to the relevant authority.



**108C Notification before carrying out development**

- (1) Before carrying out development to which this division applies, the relevant authority must do the following—
  - (a) request that the council nominate persons who must, in the council's opinion, be notified of the development,
  - (b) give written notice of the intention to carry out the development to—
    - (i) the council, and
    - (ii) any persons nominated by the council under paragraph (a), and
    - (iii) the occupiers of adjoining land,
  - (c) take into account the responses to the notice that are received within 21 days after the notice is given.
- (2) In this section, a reference to the council is a reference to the council for the land on which the development is proposed to be carried out.

**108CA Landcom must notify Secretary of Department of Communities and Justice**

Before carrying out development to which this division applies, Landcom must—

- (a) give written notice of the intention to carry out the development to the Secretary of the Department of Communities and Justice, including the measures proposed to ensure the seniors housing will be—
  - (i) used for affordable housing, and
  - (ii) managed by a registered community housing provider, and
- (b) take into account the responses to the notice that are received within 21 days after the notice is given.

**108CB Considerations before carrying out development**

- (1) Before carrying out development to which this division applies, the relevant authority must consider—
  - (a) the *Seniors Housing Design Guide*, published by the Department in December 2023, and
  - (b) the design principles for seniors housing set out in Schedule 8.
- (2) Before carrying out development to which this division applies, the Aboriginal Housing Office must consider the *AHO Design Guidelines NSW*, published by the Aboriginal Housing Office in January 2020.

- (3) Before carrying out development to which this division applies, the Land and Housing Corporation must consider—
  - (a) *Good Design for Social Housing*, published by the Land and Housing Corporation, in partnership with the Government Architect NSW, in September 2020, and
  - (b) the *NSW Land and Housing Corporation Design Requirements*, published by the Land and Housing Corporation in February 2023.
- (4) Before carrying out development to which this division applies, Landcom must consider the *Landcom Affordable Housing Design Guideline*, published by Landcom, in partnership with the Government Architect NSW, in November 2023.

#### **108D Exempt development**

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

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

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

### **Part 6 Short-term rental accommodation**

#### **Division 1 Preliminary**

##### **109 Aims of Part**

The aims of this Part are as follows—

- (a) to support short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,
- (b) to provide for the safety of users of short-term rental accommodation who may be less familiar with the dwelling,
- (c) to clarify the types of housing that may be used for the purposes of short-term rental accommodation.

##### **110 Definitions**

In this Part—

***general requirements***—see section 113.

***host*** means the owner, tenant or permanent resident of a dwelling who uses the dwelling to provide short-term rental accommodation.

***hosted short-term rental accommodation*** means short-term rental accommodation

provided where the host resides on the premises during the provision of the accommodation.

**non-hosted short-term rental accommodation** means short-term rental accommodation provided where the host does not reside on the premises during the provision of the accommodation.

**permanent resident** of a dwelling means a person who permanently resides at the dwelling.

**short-term rental accommodation** means a dwelling used by the host to provide accommodation in the dwelling on a commercial basis for a temporary or short-term period.

**tenant** has the same meaning as in the [Residential Tenancies Act 2010](#).

## Division 2 Exempt development

### 111 Exempt development—hosted short-term rental accommodation

Development for the purposes of hosted short-term rental accommodation is exempt development if the dwelling meets the general requirements.

### 112 Exempt development—non-hosted short-term rental accommodation

- (1) Development for the purpose of non-hosted short-term rental accommodation is exempt development for the purposes of this Policy if—
  - (a) the dwelling meets the general requirements, and
  - (b) for a dwelling located in a prescribed area—the dwelling is not used for non-hosted short-term rental accommodation for more than 180 days in a 365-day period.
- (2) In calculating the number of days a dwelling is used for non-hosted short-term rental accommodation, a period of 21 consecutive days or more during which non-hosted short-term rental accommodation is provided to the same person or persons must not be counted.
- (3) In this section—

**Clarence Valley Short-term Rental Accommodation Area Map** means the [State Environmental Planning Policy \(Housing\) 2021 Clarence Valley Short-term Rental Accommodation Area Map](#).

**Muswellbrook Short-term Rental Accommodation Area Map** means the [State Environmental Planning Policy \(Housing\) 2021 Muswellbrook Short-term Rental Accommodation Area Map](#).

**prescribed area** means the following—

- (a) the Eastern Harbour City, Central River City and Western Parkland City,
- (b) Ballina local government area,
- (c) Byron Shire local government area,
- (d) land in the Clarence Valley local government area shown edged heavy black on the [Clarence Valley Short-term Rental Accommodation Area Map](#),
- (e) land in the Muswellbrook local government area shown edged heavy black on the [Muswellbrook Short-term Rental Accommodation Area Map](#).

### 113 General requirements

The **general requirements** for short-term rental accommodation are as follows—

- (a) the dwelling must have been lawfully constructed to be used for the purposes of residential accommodation,
- (b) the dwelling must not be part of the tenanted component of a building,
- (c) the dwelling must comprise, or be part of, residential accommodation other than the following—
  - (i) a boarding house,
  - (ii) co-living housing,
  - (iii) a group home,
  - (iv) a hostel,
  - (v) a rural workers' dwelling,
  - (vi) seniors housing,
- (d) the type of residential accommodation that the dwelling comprises, or is part of, must be permitted with or without development consent on the land on which the dwelling is located,
- (e) the dwelling must be registered on the register established under the [Environmental Planning and Assessment \(Development Certification and Fire Safety\) Regulation 2021](#), section 102C,
- (f) the dwelling must not be, or be part of, refuge or crisis accommodation provided by—
  - (i) a public or local authority, including the Department of Communities and Justice, the Land and Housing Corporation or the Aboriginal Housing Office, or

- (ii) another body funded wholly or partly by the Commonwealth or the State,
- (g) if the dwelling is classified under the *Building Code of Australia* as class 1b or class 2-9—
  - (i) the dwelling must have a current fire safety certificate or fire safety statement, or
  - (ii) no fire safety measures are currently implemented, required or proposed for the dwelling,

**Note—**

The *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* includes fire safety requirements for certain existing buildings or parts of buildings.

- (h) the dwelling must not be a moveable dwelling within the meaning of the *Local Government Act 1993*,
- (i) the use of the dwelling for the purposes of short-term rental accommodation must otherwise be lawful.

**Note—**

In addition to the requirements set out in this Part, adjoining owners' property rights, the applicable common law and other legislative requirements for approvals, licences, permits and authorities still apply. For example—

- (a) the *Strata Schemes Management Act 2015*, section 137A provides that a by-law may prohibit a lot being used for the purposes of a short-term rental accommodation arrangement, and
- (b) conditions of development consent, or a lease, may impose additional restrictions.

## **Division 3**

### **114 (Repealed)**

## **Part 7 Conversion of certain serviced apartments**

### **115 Application of Part**

- (1) This Part applies to a building—
  - (a) used for the purposes of serviced apartments, and
  - (b) that has been the subject of a development consent for the use of the building as a residential flat building or shop top housing (the **original use**).
- (2) The consent authority must not consider the Apartment Design Guide before granting development consent under this Part.

### **116 Conversion of serviced apartments to residential flat buildings or shop top housing**

- (1) Development consent may be granted for the change of use of a building to which

this section applies from serviced apartments to a residential flat building or shop top housing if—

- (a) for a change of use to a residential flat building—residential flat buildings are permitted on the land under Chapter 5 or a relevant planning instrument, and
- (b) for a change of use to shop top housing—shop top housing is permitted on the land under Chapter 5 or a relevant planning instrument, and
- (c) the change of use does not involve the carrying out of works, other than to the extent necessary to convert the building to its original use.

(2) In this section—

**original use**—see section 115(1)(b).

### **117 Subdivision**

A residential flat building or shop top housing resulting from a development consent granted under this Part may be subdivided with development consent.

## **Part 8 Manufactured home estates**

### **118 Aims and strategies**

(1) The aims of this Part are—

- (a) to facilitate the establishment of manufactured home estates as a contemporary form of medium density residential development that provides an alternative to traditional housing arrangements, and
- (b) to provide immediate development opportunities for manufactured home estates on the commencement of this Part, and
- (c) to encourage the provision of affordable housing in well designed estates, and
- (d) to ensure that manufactured home estates are situated only in suitable locations and not on land having important resources or having landscape, scenic or ecological qualities that should be preserved, and
- (e) to ensure that manufactured home estates are adequately serviced and have access to essential community facilities and services, and
- (f) to protect the environment surrounding manufactured home estates, and
- (g) to provide measures which will facilitate security of tenure for residents of manufactured home estates.

(2) The strategies by which those aims are to be achieved are—

- (a) by allowing, with development consent, manufactured home estates on certain land on which caravan parks are permitted if the land meets the suitable locational criteria stipulated in this Part (which it would not do if, for example, it contains important resources, is subject to natural or man-made risks or has sensitive environmental or ecological features), and
- (b) by applying this Part to areas where there is likely to be a demand and suitable opportunities for the development of manufactured home estates, and
- (c) by allowing manufactured home estates to be subdivided with development consent either by way of leases for terms of up to 20 years or under the [Community Land Development Act 1989](#), and
- (d) by enabling the Minister for Planning to exclude from this Part any land that is subject to a local environmental plan prepared in accordance with the principles of a direction issued in conjunction with this Part under section 117 of the Act.

#### **119 Land to which this Part applies**

- (1) This Part applies to land that is within the City of Gosford or the Shire of Wyong and to all other areas in the State that are outside the Sydney region.
- (2) This Part does not apply to—
  - (a) land described in Schedule 5, being land subject to a local environmental plan prepared in accordance with the principles of a direction issued in conjunction with this Part and made under section 117 of the Act, or
  - (b) land less than 18 kilometres from the Siding Spring Observatory within the meaning of clause 5.14 of the standard local environmental planning instrument prescribed by the [Standard Instrument \(Local Environmental Plans\) Order 2006](#).

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

- (1) In the event of an inconsistency between this Part and any other environmental planning instrument whether made before or after this Part, this Part prevails to the extent of the inconsistency.
- (2) Nothing in Chapter 3, Part 9 prevents development consent from being granted pursuant to this Part for the use of land for the purposes of a manufactured home estate.

#### **121 Definitions**

- (1) Words and expressions used in this Part that are defined in Schedule 7 have the meanings set out in that Schedule.
- (2) Notes appearing in this Part are intended to assist understanding of this Part only and

are not part of this Part.

### **122 Where development for the purposes of a manufactured home estate may be carried out**

Development for the purposes of a manufactured home estate may be carried out pursuant to this Part on any land on which development for the purposes of a caravan park may be carried out, except—

- (a) land within one or more of the categories described in Schedule 6, or
- (b) land dedicated or reserved under the *National Parks and Wildlife Act 1974*, or
- (c) land within a Crown reserve.

### **123 Development consent required for manufactured home estates**

- (1) Development for the purposes of a manufactured home estate permitted to be carried out by this Part may be carried out only with the development consent of the council.
- (2) A council must not consent to any such development unless it imposes, as a condition of the consent, a requirement that an approval to operate a manufactured home estate on the land on which the development is to be carried out must be obtained under Part 1 of Chapter 7 of the *Local Government Act 1993*.
- (3) Nothing in this Part requires a separate development consent to authorise the placing of each manufactured home within a manufactured home estate.

### **124 Subdivision of manufactured home estates**

- (1) Land on which development for the purposes of a manufactured home estate may be lawfully carried out (whether or not because of a development consent granted pursuant to this Part) may be subdivided—
  - (a) under section 289K of the *Local Government Act 1919* for lease purposes, or
  - (b) under the *Community Land Development Act 1989*,only with the development consent of the council.
- (2) A council must not grant a development consent for such a subdivision if any of the lots intended to be created by the proposed subdivision would contravene a requirement of the *Local Government (Manufactured Home Estates) Transitional Regulation 1993*.
- (3) Any prohibition or restriction on the subdivision of land imposed by any other environmental planning instrument (whether made before or after this Part) does not apply to such a subdivision.



- (4) This Part does not allow the subdivision of land within a Crown reserve.

### **125 Matters to be considered by councils**

- (1) A council may grant a development consent pursuant to this Part allowing development for the purposes of a manufactured home estate only if it is satisfied—
- (a) that each of the sites on which a manufactured home is or will be installed within the manufactured home estate is or will be adequately provided with reticulated water, a reticulated sewerage system, drainage and electricity, and
  - (b) that the manufactured home estate is or will be provided with adequate transport services, and
  - (c) that sufficient community facilities and services, whether situated within or outside the estate, are or will be available and reasonably accessible to the residents of the manufactured home estate, and
  - (d) that the development will not have an adverse effect on any—
    - conservation area
    - heritage item
    - waterway or land having special landscape, scenic or ecological qualities,which is identified in an environmental planning instrument applicable to the land concerned.
- (2) A council may grant a development consent pursuant to this Part allowing development for the purposes of a manufactured home estate only after it has considered the following—
- (a) the cumulative impact of the proposed development and other manufactured home estates in the locality,
  - (b) any relevant guidelines issued by the Director,
  - (c) the provisions of the *Local Government (Manufactured Home Estates) Transitional Regulation 1993*.

## **Part 9 Caravan parks**

### **126 Aims, objectives etc**

- (1) The aim of this Part is to encourage—
- (a) the orderly and economic use and development of land used or intended to be used as a caravan park catering exclusively or predominantly for short-term residents (such as tourists) or for long-term residents, or catering for both, and

- (b) the proper management and development of land so used, for the purpose of promoting the social and economic welfare of the community, and
  - (c) the provision of community facilities for land so used, and
  - (d) the protection of the environment of, and in the vicinity of, land so used.
- (2) The strategies by which that aim is to be achieved are—
- (a) by requiring that development consent be obtained from the local Council for development for the purposes of caravan parks, and
  - (b) by providing that development consent may be granted that will authorise the use of sites for short-term stays (whether or not by tourists) or for long-term residential purposes, or for both, and
  - (c) by requiring that development consent be obtained from the local Council for the subdivision of land for lease purposes under section 289K of the *Local Government Act 1919*.

#### **127 Land to which this Part applies**

- (1) This Part applies to all land in the State that is within a local government area.
- (2) This Part does not apply to—
  - (a) land to which *State Environmental Planning Policy (Western Sydney Parklands) 2009* applies, or
  - (b) land less than 18 kilometres from the Siding Spring Observatory within the meaning of clause 5.14 of the standard local environmental planning instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006*.

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

- (1) In the event of an inconsistency between this Part and another environmental planning instrument (whether made before or after this Part) this Part prevails to the extent of the inconsistency. This subsection is subject to section 36 of the *Environmental Planning and Assessment Act 1979*.
- (2) This Part repeals *State Environmental Planning Policy No 21—Movable Dwellings*.
- (3) This Part amends *State Environmental Planning Policy No 26—Littoral Rainforests* by omitting clause 10(5).
- (4) Nothing in Chapter 3, Part 8 prevents development consent from being granted pursuant to this Part for the use of land as a caravan park in which manufactured homes are or are to be installed or placed.

## 129 Definition

In this Part—

**caravan park** means land (including a camping ground) on which caravans (or caravans and other moveable dwellings) are, or are to be, installed or placed, but does not include farm stay accommodation.

**moveable dwelling** has the same meaning as it has in the [Local Government Act 1993](#).

## 130 Application of certain planning controls to places licensed for movable dwellings

In any environmental planning instrument (whether made before or after this Part), references (however expressed) to caravan parks or to camping grounds, or to caravan parks and camping grounds, include references to caravan parks, within the meaning of this Part.

## 131 Development consent required for caravan parks

- (1) Development for the purposes of a caravan park may be carried out only with the development consent of the Council.
- (2) Before granting development consent to the use of land for the purposes of a caravan park, a Council must determine—
  - (a) the number of sites (if any) within that land that the Council considers are suitable for long-term residence, within the meaning of the *Local Government (Caravan Parks and Camping Grounds) Transitional Regulation 1993*, and
  - (b) the number of sites (if any) within that land that the Council considers are not suitable for long-term residence, but are suitable for short-term residence, within the meaning of that Regulation.
- (3) A Council must not grant development consent to the use of land for the purposes of a caravan park unless it imposes as a condition of that consent a condition specifying the maximum number of sites (if any) within that land that may be used for long-term residence.
- (4) The holder of an approval under Part 1 of Chapter 7 of the [Local Government Act 1993](#) to operate a caravan park or camping ground on land must not, without the development consent of the Council, allow a person to occupy a site within that land—
  - (a) for a continuous period of more than 3 months, except as provided by paragraph (b), or
  - (b) for a continuous period longer than the period (if any) for which the person is allowed to be accommodated within the land by an extension that has been granted under clause 19(6) of the *Local Government (Caravan Parks and Camping Grounds) Transitional Regulation 1993*,

if such a use of that site was not lawful under the *Environmental Planning and Assessment Act 1979* when this Part commenced.

- (4A) Except as provided by subsection (4), nothing in this Part or any other environmental planning instrument requires separate development consent to be obtained for the installation or placement of a moveable dwelling on land on which development for the purposes of a caravan park is being lawfully carried out.
- (5) This section does not apply to any land that is authorised to be used for the purposes of a manufactured home estate by a development consent granted pursuant to Chapter 3, Part 8 or dedicated or reserved under the *National Parks and Wildlife Act 1974*.

### **132 Subdivision of caravan parks for lease purposes**

- (1) Land may be subdivided for lease purposes under section 289K of the *Local Government Act 1919*, but only with the development consent of the Council.
- (2) A Council must not grant such a development consent unless the Council is satisfied that each of the lots intended to be created for lease purposes by the proposed subdivision meets the requirements of the *Local Government (Caravan Parks and Camping Grounds) Transitional Regulation 1993* for a site to be used for long-term residence.
- (3) Any prohibition or restriction on the subdivision of land imposed by any other environmental planning instrument (whether made before or after this Part) does not apply to a subdivision for lease purposes under section 289K of the *Local Government Act 1919*.
- (4) This section does not apply to land that is authorised to be used for the purposes of a manufactured home estate by a development consent granted pursuant to Chapter 3, Part 8 or that has been reserved or dedicated for any public purpose under the *Crown Land Management Act 2016*.

### **133 Matters to be considered by Councils**

A Council may grant a development consent required by this Part only after it has considered the following—

- (a) whether, because of its location or character, the land concerned is particularly suitable for use as a caravan park for tourists or for long-term residence,
- (b) whether there is adequate provision for tourist accommodation in the locality of that land, and whether existing or potential tourist accommodation will be displaced by the use of sites for long-term residence,
- (c) whether there is adequate low-cost housing, or land available for low-cost housing, in that locality,

- (d) whether necessary community facilities and services are available within the caravan park to which the development application relates or in the locality (or both), and whether those facilities and services are reasonably accessible to the occupants of the caravan park,
- (e) any relevant guidelines issued by the Director, and
- (f) the provisions of the *Local Government (Caravan Parks and Camping Grounds) Transitional Regulation 1993*.

## **Part 10 Temporary emergency accommodation**

### **134 Aims of Part**

The aims of this Part are to—

- (a) facilitate temporary emergency accommodation in suitable locations for persons who have been displaced as a result of a natural disaster, and
- (b) ensure that temporary emergency accommodation has access to essential facilities and services.

### **135 Development consent not required for temporary emergency accommodation**

- (1) Development for the purposes of caravan parks or camping grounds may be carried out without development consent if all of the following apply—
  - (a) the caravan park or camping ground will only be used to provide temporary emergency accommodation to persons—
    - (i) who have been displaced as a result of a natural disaster, or
    - (ii) carrying out construction work on behalf of the public authority, or
    - (iii) providing services to persons specified in subparagraph (i) with the consent of the public authority referred to in paragraph (b),
  - (b) the development is carried out by or on behalf of a public authority,
  - (c) the development is carried out within 5 years of the natural disaster occurring,
  - (d) the development is carried out on land that—
    - (i) is supplied with water and electricity, and
    - (ii) is provided with sewerage and drainage services, and
    - (iii) has access to communal amenities,
  - (e) each moveable dwelling or tent, annexe or other similar portable and lightweight

temporary shelter is—

- (i) installed or placed on the land in a way that does not adversely impact the amenity of the land or the health and safety of persons occupying the caravan park or camping ground, including by mitigating the risk of fire, and
- (ii) removed from the land within 5 years of being installed or placed on the land.

(2) Part 9 does not apply to development specified in this section.

## **Part 11 Residential accommodation for flood recovery**

### **136 Definitions**

In this Part—

**coastal vulnerability area** has the same meaning as in *State Environmental Planning Policy (Resilience and Hazards) 2021*, Chapter 2.

**coastal wetlands and littoral rainforests area** has the same meaning as in *State Environmental Planning Policy (Resilience and Hazards) 2021*, Chapter 2.

**declared area of outstanding biodiversity value** has the same meaning as in the *Biodiversity Conservation Act 2016*.

**flood planning area** has the same meaning as in the *Flood Risk Management Manual*.

**forestry area** has the same meaning as in the *Forestry Act 2012*.

**Northern Rivers Reconstruction Corporation** means the Northern Rivers Reconstruction Corporation constituted under the *Growth Centres (Development Corporations) Act 1974*, section 4.

**NSW Reconstruction Authority** means the NSW Reconstruction Authority established under the *NSW Reconstruction Authority Act 2022*, section 7.

**standard development application** means a development application not made in reliance on a site compatibility certificate issued under this Part.

### **137 Land to which Part applies**

- (1) This Part applies to land in the Lismore City local government area.
- (2) This Part does not apply to land—
  - (a) in a flood planning area, or
  - (b) in a conservation zone, or
  - (c) in a forestry area, or

- (d) reserved under the *National Parks and Wildlife Act 1974*, or
- (e) in the coastal wetlands and littoral rainforests area, or
- (f) in the coastal vulnerability area, or
- (g) in a declared area of outstanding biodiversity value, or
- (h) included on the *Biodiversity Values Map* published under the *Biodiversity Conservation Regulation 2017*, clause 7.3, or
- (i) that is a natural wetland.

### **138 Residential development permitted with development consent**

- (1) The following development may be carried out with development consent on land to which this Part applies—
  - (a) development for the purposes of residential accommodation,
  - (b) the subdivision of land proposed to be used for the purposes of residential accommodation.
- (2) Development consent must not be granted to the development unless the consent authority is satisfied—
  - (a) a site compatibility certificate has been issued for the development under this Part, and
  - (b) the development will comply with the requirements, if any, specified in the certificate.
- (3) This Part does not apply to development that would be permissible without this Part.

### **139 Application for site compatibility certificate**

- (1) Either of the following may apply to the Planning Secretary for a site compatibility certificate for development to which this Part applies—
  - (a) the Northern Rivers Reconstruction Corporation,
  - (b) the NSW Reconstruction Authority.
- (2) The application must be—
  - (a) in the form approved by the Planning Secretary, and
  - (b) accompanied by the documents required by the Planning Secretary, and
  - (c) submitted within 3 years of the commencement of this Part.

- (3) The Planning Secretary must publish the application on the NSW planning portal as soon as practicable after receiving the application.
- (4) The Planning Secretary may request further information or documents from the applicant for the purposes of assessing the application.

#### **140 Consultation by Planning Secretary**

- (1) The Planning Secretary must consult the following before determining an application for a site compatibility certificate—
  - (a) if the application relates to bush fire prone land—the NSW Rural Fire Service,
  - (b) if a single local planning panel has been constituted for the Lismore City local government area—the panel,
  - (c) if a single local planning panel has not been constituted for the Lismore City local government area—Lismore City Council.
- (2) The Planning Secretary must—
  - (a) send a copy of the application to each body the Planning Secretary is required to consult under subsection (1) within 7 days of receiving the application, and
  - (b) request that comments on the application be provided by the body within 14 days of receiving the request.

#### **141 Issue of site compatibility certificate**

- (1) The Planning Secretary may—
  - (a) issue a site compatibility certificate if the Planning Secretary considers the proposed development is suitable for the site, or
  - (b) refuse to issue a site compatibility certificate.
- (2) The Planning Secretary may refuse to issue a site compatibility certificate if the Planning Secretary considers development consent for development on the land should be sought using a standard development application.
- (3) In determining whether the proposed development is suitable for the site, the Planning Secretary must consider the following—
  - (a) comments received, within 14 days of the request being made, from a body the Planning Secretary was required to consult under section 140,
  - (b) regional strategic plans for the region the land is in,
  - (c) the suitability of the development having regard to, and the impact on, the use of the land the application relates to and surrounding land uses, including—



- (i) existing and approved land uses, and
  - (ii) land uses that, in the opinion of the Planning Secretary, are likely to be the preferred future uses of the land,
- (d) the services and infrastructure that are or will be available to meet the demands arising from the development,
- (e) whether the development is likely to have an adverse impact on the environmental values of the land the application relates to or surrounding land,
- (f) whether there are unacceptable environmental hazards or risks on the land the application relates to or surrounding land,
- (g) the ability to evacuate the land the application relates to during a flood,
- (h) if the application relates to bush fire prone land—the requirements of *Planning for Bush Fire Protection*.
- (4) If the site compatibility certificate is issued, the applicant must notify persons who own or occupy adjoining land.
- (5) A site compatibility certificate may specify development standards and other requirements that apply to the development.
- (6) A site compatibility certificate is valid for—
- (a) the period specified in the certificate, or
  - (b) if no period is specified—5 years.
- (7) A development application submitted, but not finally determined, during the period the site compatibility certificate is valid must be determined as if the certificate is still valid.
- (8) A site compatibility certificate continues to apply to the land to which it relates for the period the certificate is valid despite a change in ownership of the land.

## **Part 12 Dual occupancies and semi-detached dwellings in Zone R2**

### **141A Aim of part**

The aim of this part is to encourage development for the purposes of dual occupancies and semi-detached dwellings in Zone R2 Low Density Residential.

### **141B Land to which part applies**

- (1) This part applies to the whole of the State, other than the following land—
- (a) bush fire prone land,

- (b) land identified as a coastal vulnerability area or a coastal wetlands and littoral rainforests area within the meaning of *State Environmental Planning Policy (Resilience and Hazards) 2021*, Chapter 2,
- (c) land in a Transport Oriented Development Area under Chapter 5,
- (d) land that comprises a heritage item or on which a heritage item is located,
- (e) the following local government areas—
  - (i) Bathurst Regional,
  - (ii) City of Blue Mountains,
  - (iii) City of Hawkesbury,
  - (iv) Wollondilly,
- (f) flood prone land in the Georges River Catchment and Hawkesbury-Nepean Catchment under *State Environmental Planning Policy (Biodiversity and Conservation) 2021*, Chapter 6,
- (g) land in a flood planning area in the following local government areas—
  - (i) Armidale Regional,
  - (ii) Ballina,
  - (iii) Bellingen,
  - (iv) Byron,
  - (v) City of Cessnock,
  - (vi) Clarence Valley,
  - (vii) City of Coffs Harbour,
  - (viii) Dungog,
  - (ix) Goulburn Mulwaree,
  - (x) Kempsey,
  - (xi) Kyogle,
  - (xii) City of Lismore,
  - (xiii) City of Maitland,
  - (xiv) Nambucca Valley,

- (xv) City of Newcastle,
- (xvi) Port Stephens,
- (xvii) Queanbeyan-Palerang Regional,
- (xviii) Richmond Valley,
- (xix) City of Shoalhaven,
- (xx) Singleton,
- (xxi) Tweed,
- (xxii) Upper Hunter Shire,
- (xxiii) Walcha,
- (h) land in an ANEF contour or ANEC contour of 20 or greater,
- (i) land within 200m of a relevant pipeline within the meaning of *State Environmental Planning Policy (Transport and Infrastructure) 2021*, section 2.77.

(2) In this section—

**ANEC contour** has the same meaning as in *State Environmental Planning Policy (Precincts—Western Parkland City) 2021*, section 4.17.

**ANEF contour** has the same meaning as in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

**flood planning area** and **flood prone land** have the same meaning as in the *Flood Risk Management Manual*.

#### **141C Development permitted with development consent**

Development for the purposes of dual occupancies and semi-detached dwellings is permitted with development consent in Zone R2 Low Density Residential on land to which this part applies.

## **Chapter 4 Design of residential apartment development**

### **142 Aims of chapter**

- (1) The aim of this chapter is to improve the design of residential apartment development in New South Wales for the following purposes—
  - (a) to ensure residential apartment development contributes to the sustainable development of New South Wales by—
    - (i) providing socially and environmentally sustainable housing, and

- (ii) being a long-term asset to the neighbourhood, and
  - (iii) achieving the urban planning policies for local and regional areas,
- (b) to achieve better built form and aesthetics of buildings, streetscapes and public spaces,
- (c) to maximise the amenity, safety and security of the residents of residential apartment development and the community,
- (d) to better satisfy the increasing demand for residential apartment development, considering—
- (i) the changing social and demographic profile of the community, and
  - (ii) the needs of a wide range of people, including persons with disability, children and seniors,
- (e) to contribute to the provision of a variety of dwelling types to meet population growth,
- (f) to support housing affordability,
- (g) to minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions,
- (h) to facilitate the timely and efficient assessment of development applications to which this chapter applies.
- (2) This chapter recognises that the design of residential apartment development is significant because of the economic, environmental, cultural and social benefits of high quality design.

### **143 Land to which chapter applies**

This chapter applies to the whole of the State, other than land to which [State Environmental Planning Policy \(Precincts—Regional\) 2021](#), Chapter 4 applies.

### **144 Application of chapter**

- (1) In this policy, development to which this chapter applies is referred to as **residential apartment development**.
- (2) This chapter applies to the following—
- (a) development for the purposes of residential flat buildings,
  - (b) development for the purposes of shop top housing,
  - (c) mixed use development with a residential accommodation component that does

not include boarding houses or co-living housing, unless a local environmental plan provides that mixed use development including boarding houses or co-living housing is residential apartment development for this chapter.

- (3) This chapter applies to development only if—
  - (a) the development consists of—
    - (i) the erection of a new building, or
    - (ii) the substantial redevelopment or substantial refurbishment of an existing building, or
    - (iii) the conversion of an existing building, and
  - (b) the building is at least 3 storeys, not including underground car parking storeys, and
  - (c) the building contains at least 4 dwellings.
- (4) If particular development comprises development for the purposes specified in subsection (2) and development for other purposes, this chapter applies only to the part of the development for the purposes specified in subsection (2).
- (5) This chapter does not apply to development that involves only a class 1a or 1b building within the meaning of the *Building Code of Australia*.
- (6) To avoid doubt, development to which Chapter 2, Part 2, Division 1, 5 or 6 or Chapter 5 applies may also be residential apartment development under this chapter.
- (7) In this section—

***underground car parking storey*** means a storey used for car parking that is—

  - (a) below ground level (existing), or
  - (b) less than 1.2m above ground level (existing).

#### **145 Referral to design review panel for development applications**

- (1) This section applies to a development application for residential apartment development, other than State significant development.
- (2) Before determining the development application, the consent authority must refer the application to the design review panel for the local government area in which the development will be carried out for advice on the quality of the design of the development.
- (3) This section does not apply if—

(a) a design review panel has not been constituted for the local government area in which the development will be carried out, or

(b) a competitive design process has been held.

(4) In this section—

**competitive design process** means a design competition held in accordance with the *Design Competition Guidelines* published by the Department in September 2023.

#### **146 Referral to design review panel for modification applications**

(1) This section applies to a modification application for residential apartment development, other than State significant development.

(2) If the statement by the qualified designer required to accompany the modification application under the *Environmental Planning and Assessment Regulation 2021*, section 102(1) does not verify that the qualified designer designed, or directed the design of, the original development, the consent authority must refer the modification application to the relevant design review panel for advice before determining the modification application.

(3) The consent authority may also refer a modification application for residential apartment development to the relevant design review panel for advice before determining the modification application.

(4) The design review panel must advise whether the modification—

(a) diminishes or detracts from the design quality of the original development, or

(b) compromises the design intent of the original development.

(5) Subsection (2) does not apply if—

(a) a design review panel has not been constituted for the local government area in which the development will be carried out, or

(b) a competitive design process has been held.

(6) In this section—

**competitive design process** means a design competition held in accordance with the *Design Competition Guidelines* published by the Department in September 2023.

**relevant design review panel** means the design review panel for the local government area in which the development will be carried out.

#### **147 Determination of development applications and modification applications for**

**residential apartment development**

- (1) Development consent must not be granted to residential apartment development, and a development consent for residential apartment development must not be modified, unless the consent authority has considered the following—
  - (a) the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9,
  - (b) the Apartment Design Guide,
  - (c) any advice received from a design review panel within 14 days after the consent authority referred the development application or modification application to the panel.
- (2) The 14-day period referred to in subsection (1)(c) does not increase or otherwise affect the period in which a development application or modification application must be determined by the consent authority.
- (3) To avoid doubt, subsection (1)(b) does not require a consent authority to require compliance with design criteria specified in the Apartment Design Guide.
- (4) Subsection (1)(c) does not apply to State significant development.

**148 Non-discretionary development standards for residential apartment development—the Act, s 4.15**

- (1) The object of this section is to identify development standards for particular matters relating to residential apartment development that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

**Note—**

See the Act, section 4.15(3), which does not prevent development consent being granted if a non-discretionary development standard is not complied with.

- (2) The following are non-discretionary development standards—
  - (a) the car parking for the building must be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
  - (b) the internal area for each apartment must be equal to, or greater than, the recommended minimum internal area for the apartment type specified in Part 4D of the Apartment Design Guide,
  - (c) the ceiling heights for the building must be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

#### **149 Apartment Design Guide prevails over development control plans**

- (1) A requirement, standard or control for residential apartment development that is specified in a development control plan and relates to the following matters has no effect if the Apartment Design Guide also specifies a requirement, standard or control in relation to the same matter—
  - (a) visual privacy,
  - (b) solar and daylight access,
  - (c) common circulation and spaces,
  - (d) apartment size and layout,
  - (e) ceiling heights,
  - (f) private open space and balconies,
  - (g) natural ventilation,
  - (h) storage.
- (2) This section applies regardless of when the development control plan was made.

### **Chapter 5 Transport oriented development**

#### **150 Aims of chapter**

The aims of this chapter are as follows—

- (a) to increase housing density within 400m of existing and planned public transport,
- (b) to deliver mid-rise residential flat buildings and shop top housing around rail and metro stations that—
  - (i) are well designed, and
  - (ii) are of appropriate bulk and scale, and
  - (iii) provide amenity and liveability,
- (c) to encourage the development of affordable housing to meet the needs of essential workers and vulnerable members of the community.

#### **151 Definitions**

In this chapter—

***relevant employment zone***—

- (a) means the following—



- (i) Zone E1 Local Centre,
- (ii) Zone E2 Commercial Centre,
- (iii) for land in the Canterbury-Bankstown local government area—Zone B2 Local Centre,
- (iv) for land in the Gosford city centre under [State Environmental Planning Policy \(Precincts—Regional\) 2021](#), Chapter 5—Zone B3 Commercial Core, and

(b) includes an equivalent land use zone.

**relevant residential zone—**

(a) means the following—

- (i) Zone R1 General Residential,
- (ii) Zone R2 Low Density Residential,
- (iii) Zone R3 Medium Density Residential,
- (iv) Zone R4 High Density Residential, and

(b) includes an equivalent land use zone.

**Transport Oriented Development Area** means land identified as a “Transport Oriented Development Area” on the [Transport Oriented Development Sites Map](#).

**Transport Oriented Development Sites Map** means the [State Environmental Planning Policy \(Housing\) 2021 Transport Oriented Development Sites Map](#).

**152 Land to which chapter applies**

This chapter applies to land in the following local government areas that is in a Transport Oriented Development Area—

- (a) Bayside,
- (b) Burwood,
- (c) Canada Bay,
- (d) Canterbury-Bankstown,
- (e) Central Coast,
- (f) Cumberland,
- (g) Georges River,

- (h) Inner West,
- (i) Ku-ring-gai,
- (j) City of Lake Macquarie,
- (k) City of Newcastle,
- (l) City of Penrith,
- (m) City of Wollongong.

**Note—**

A Transport Oriented Development Area is generally land within 400m of a railway or metro station in a local government area to which this chapter applies. When this chapter commenced, a Transport Oriented Development Area was not identified on the [Transport Oriented Development Sites Map](#) for each local government area.

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

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

### **154 Development permitted with development consent in Transport Oriented Development Areas**

- (1) Development for the purposes of residential flat buildings is permitted with development consent on land in the following zones in a Transport Oriented Development Area—
  - (a) a relevant residential zone,
  - (b) Zone E1 Local Centre or an equivalent land use zone,
  - (c) for land in the Canterbury-Bankstown local government area—Zone B2 Local Centre.
- (2) Development for the purposes of shop top housing is permitted with development consent on land in a relevant employment zone in a Transport Oriented Development Area.

### **155 Maximum building height and maximum floor space ratio**

- (1) This section identifies development standards for development under this chapter that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

**Note—**

See the Act, section 4.15(3), which does not prevent development consent being granted if a non-

discretionary development standard is not complied with.

- (2) The maximum building height for a residential flat building in a Transport Oriented Development Area is 22m.
- (3) The maximum building height for a building containing shop top housing in a Transport Oriented Development Area is 24m.
- (4) The maximum floor space ratio for a residential flat building or a building containing shop top housing in a relevant residential zone or relevant employment zone in a Transport Oriented Development Area is 2.5:1.
- (5) This section does not apply to the extent a provision of another chapter of this policy or another environmental planning instrument permits a greater maximum building height or floor space ratio for a residential flat building or building containing shop top housing on the land.

### **156 Affordable housing**

- (1) This section applies to development for the purposes of residential flat buildings or shop top housing in a Transport Oriented Development Area if the building has a gross floor area of at least 2000m<sup>2</sup>.
- (2) Development consent must not be granted unless the consent authority is satisfied that—
  - (a) at least 2% of the gross floor area of the building will be used for affordable housing, and
  - (b) the affordable housing will be managed by a registered community housing provider in perpetuity.
- (3) A requirement under a provision of another chapter of this policy, another environmental planning instrument or a planning agreement that requires the development to provide more affordable housing prevails over this section.
- (4) Affordable housing provided as part of the development because of a requirement under another chapter of this policy, another environmental planning instrument or a planning agreement is not counted towards the affordable housing required under this section.

### **157 Affordable housing parking spaces**

- (1) This section identifies a development standard for development under this chapter that, if complied with, prevents the consent authority from requiring more onerous standards for the matters.

**Note—**

See the Act, section 4.15(3), which does not prevent development consent being granted if a non-

discretionary development standard is not complied with.

- (2) Development to which section 156 applies must provide the following number of parking spaces for each affordable housing dwelling required under that section—
  - (a) for each dwelling containing 1 bedroom—0.4 parking space,
  - (b) for each dwelling containing 2 bedrooms—0.5 parking space,
  - (c) for each dwelling containing 3 or more bedrooms—1 parking space.
- (3) This section prevails over a provision in another chapter of this policy or another environmental planning instrument to the extent that other provision permits a lower number of parking spaces for dwellings used for affordable housing on the land.

### **158 Exception to minimum lot size**

- (1) This section applies if another environmental planning instrument applying to the land specifies a minimum lot size for development for the purposes of residential flat buildings or shop top housing (a ***minimum lot size restriction***).
- (2) Development consent may be granted to development for the purposes of residential flat buildings or shop top housing on land in a Transport Oriented Development Area, despite a minimum lot size restriction.

### **159 Minimum lot width**

Development consent must not be granted to development for the purposes of residential flat buildings or shop top housing on a lot in a Transport Oriented Development Area, unless the lot is at least 21m wide at the front building line.

### **160 Active street frontages**

- (1) The objective of this section is to ensure active street frontages for residential flat buildings in Zone E1 Local Centre in Transport Oriented Development Areas to encourage the presence and movement of people.
- (2) This section applies to development for the purposes of residential flat buildings on land in the following zones in a Transport Oriented Development Area—
  - (a) Zone E1 Local Centre or an equivalent land use zone,
  - (b) for land in the Canterbury-Bankstown local government area—Zone B2 Local Centre.
- (3) Development consent must not be granted unless the consent authority is satisfied the building will have an active street frontage.
- (4) A residential flat building has an active street frontage if the ground floor has building design elements that encourage interaction between the inside of the building and the

external public areas adjoining the building.

- (5) This section prevails over a provision of another environmental planning instrument that requires an active street frontage for development on land to which this section applies.

### **161 Consideration of Apartment Design Guide**

Development consent must not be granted for development for the purposes of residential flat buildings or shop top housing on land in a Transport Oriented Development Area unless the consent authority has considered the Apartment Design Guide.

## **Schedule 1 Complying development—secondary dwellings**

section 54(2)(d)

### **Part 1 Preliminary**

#### **1 Definitions**

- (1) In this Schedule—

**ancillary structure** means the following, if associated with a secondary dwelling and not exempt development under the Codes SEPP—

- (a) an access ramp,
- (b) an awning, blind or canopy,
- (c) a balcony, deck, patio, pergola, terrace or verandah attached to a principal or secondary dwelling,
- (d) a carport attached to a principal or secondary dwelling,
- (e) a driveway, pathway or paving,
- (f) a fence or screen,
- (g) a garage attached to a principal or secondary dwelling,
- (h) an outbuilding,
- (i) a rainwater tank attached to a principal or secondary dwelling,
- (j) a retaining wall,
- (k) a swimming pool or spa pool and child-resistant barrier.

**outbuilding** means the following, if 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) Unless defined in this Schedule, words used in this Schedule have the same meaning as in—
- (a) the Codes SEPP, and
  - (b) for words not defined in the Codes SEPP—the standard instrument.
- (3) In this Schedule, the area of the access laneway for a battle-axe lot is excluded in calculating the area of the lot.

## **Part 2 Site requirements**

### **2 Lot requirements**

- (1) Development for the purposes of a secondary dwelling or an ancillary structure may only be carried out on a lot that—
- (a) at the completion of the development will have only 1 principal dwelling and 1 secondary dwelling, and
  - (b) for a lot other than a battle-axe lot—has a boundary with a primary road, measured at the building line, of at least the following—
    - (i) if the lot has an area of at least 450m<sup>2</sup> but not more than 900m<sup>2</sup>—12m,
    - (ii) if the lot has an area of more than 900m<sup>2</sup> but not more than 1500m<sup>2</sup>—15m,
    - (iii) if the lot has an area of more than 1500m<sup>2</sup>—18m, and
  - (c) for a battle-axe lot—has an access laneway of at least 3m in width and measuring at least 12m by 12m, excluding the access laneway.
- (2) A lot on which a new secondary dwelling is erected must have lawful access to a public road.
- (3) Nothing in this Schedule requires the provision of additional parking spaces for development for the purposes of a secondary dwelling.

### **3 Maximum site coverage of all development**

- (1) The site coverage of the principal dwelling, secondary dwelling and all ancillary

structures on a lot must be no more than the following—

- (a) if the lot has an area of at least 450m<sup>2</sup> but not more than 900m<sup>2</sup>—50% of the area of the lot,
  - (b) if the lot has an area of more than 900m<sup>2</sup> but not more than 1500m<sup>2</sup>—40% of the area of the lot,
  - (c) if the lot has an area of more than 1500m<sup>2</sup>—30% of the area of the lot.
- (2) For the purposes of calculating the site coverage, the area of the following is not included—
- (a) an access ramp,
  - (b) the part of an awning, blind or canopy outside the outer wall of a building,
  - (c) a balcony, deck, patio, pergola, terrace or verandah attached to the principal or secondary dwelling and not enclosed by a wall higher than 1.4m 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 attached to the principal or secondary dwelling,
  - (j) a swimming pool or spa pool.

#### **4 Maximum floor area for principal and secondary dwellings**

- (1) The floor area of a secondary dwelling, excluding an attached ancillary structure, must not be more than—
- (a) 60m<sup>2</sup>, or
  - (b) if a larger floor area is permitted for a secondary dwelling on the land under another environmental planning instrument—the larger floor area.
- (2) The total floor area of a principal dwelling, secondary dwelling and all attached ancillary structures must not be more than the following—
- (a) if the lot has an area of at least 450m<sup>2</sup> but not more than 600m<sup>2</sup>—330m<sup>2</sup>,
  - (b) if the lot has an area of more than 600m<sup>2</sup> but not more than 900m<sup>2</sup>—380m<sup>2</sup>,

(c) if the lot has an area of more than 900m<sup>2</sup>—430m<sup>2</sup>.

(3) In subsection (2)—

**attached ancillary structure** means a carport, garage, balcony, deck, patio, pergola, terrace or verandah—

- (a) attached to the principal dwelling or secondary dwelling, and
- (b) enclosed by a wall higher than 1.4m above the floor level, other than the external wall of the dwelling.

**floor area** means the sum of the areas within the outer face of the external walls of each storey of a dwelling, including an attached ancillary structure, measured at a height of 1.4m above each floor level, excluding—

- (a) part of an awning, blind or canopy outside the outer wall of the dwelling,
- (b) an eave,
- (c) a lift shaft,
- (d) a stairway,
- (e) 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 be no more than 12m<sup>2</sup> if—
  - (a) a part of the structure is within 6m from a side or rear boundary, and
  - (b) the structure has a point of its finished floor level at more than 2m above ground level (existing).
- (2) The balcony, deck, patio, terrace or verandah must not have a point of its finished floor level—
  - (a) if it is located within 3m of a side or rear boundary—more than 2m above ground level (existing), or
  - (b) if it is located more than 3m but not more than 6m from a side or rear boundary—more than 3m above ground level (existing), or
  - (c) if it is located more than 6m from a side or rear boundary—more than 4m above ground level (existing).
- (3) A detached deck, patio or terrace, including alterations or additions to the deck, patio or terrace, must not have a floor level of more than 600mm above ground level



(existing).

**Note—**

Development identified in this section may require privacy screens under this Schedule, section 15.

## **Part 3 Building heights and setbacks**

### **6 Building height**

- (1) Development for the purposes of a secondary dwelling or an ancillary structure 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 8.5m.
- (2) Development for the purposes of an ancillary structure 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—4.8m, or
  - (b) if a fence—1.8m.

### **7 Setbacks from roads, other than classified roads**

- (1) Development for the purposes of a secondary dwelling or an ancillary structure on a lot must result in a new building or a new part of an existing building having a setback from a primary road, other than a classified road, of at least—
  - (a) the average distance of the setbacks of the 2 nearest dwelling houses on the same side of the primary road and located within 40m of the lot on which the principal dwelling is erected, or
  - (b) if 2 dwelling houses are not located within 40m of the lot on the same side of the primary road—
    - (i) for a lot with an area of at least 450m<sup>2</sup> but not more than 900m<sup>2</sup>—4.5m, or
    - (ii) for a lot with an area of more than 900m<sup>2</sup> but not more than 1,500m<sup>2</sup>—6.5m, or
    - (iii) for a lot with an area of more than 1,500m<sup>2</sup>—10m.
- (2) Development for the purposes of a secondary dwelling or an ancillary structure 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 3m.
- (3) Development for the purposes of a secondary dwelling or an ancillary structure 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) for a lot with an area of at least 450m<sup>2</sup> but not more than 600m<sup>2</sup>—2m, or

(b) for a lot with an area of more than 600m<sup>2</sup> but not more than 1,500m<sup>2</sup>—3m, or

(c) for a lot with an area of more than 1,500m<sup>2</sup>—5m.

(4) For the purposes of this section, if a lot is a corner lot—

(a) a boundary that is at least 6m 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 section, 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 an ancillary structure 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—the setback specified in the environmental planning instrument, or

(b) otherwise—9m.

#### **9 Setbacks from side boundaries**

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

(a) for a lot with an area of at least 450m<sup>2</sup> but not more than 900m<sup>2</sup>—0.9m,

(b) for a lot with an area of more than 900m<sup>2</sup> but not more than 1,500m<sup>2</sup>—1.5m,

(c) for a lot with an area of more than 1,500m<sup>2</sup>—2.5m.

(2) Development for the purposes of a secondary dwelling or an ancillary structure must not result in a new building or ancillary structure 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 subsection (1), and

(b) an amount equal to 25% of the additional building height above 3.8m.

(3) In this section—

***new building or ancillary structure*** means—

(a) a new building or a new part of an existing building with a height of more than 3.8m, and

(b) a new carport, garage, balcony, deck, patio, pergola, terrace or verandah.

## **10 Setbacks from rear boundaries**

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

(a) for a lot with an area of at least 450m<sup>2</sup> but not more than 900m<sup>2</sup>—

(i) 3m, and

(ii) if the development results in a new or existing building with a height of more than 3.8m—an additional amount equal to 3 times the height above 3.8m, up to a maximum setback of 8m,

(b) for a lot with an area of more than 900m<sup>2</sup> but not more than 1,500m<sup>2</sup>—

(i) 5m, and

(ii) if the development results in a new or existing building with a height of more than 3.8m—an additional amount equal to 3 times the height above 3.8m, up to a maximum setback of 12m,

(c) for a lot with an area of more than 1,500m<sup>2</sup>—

(i) 10m, and

(ii) if the development results in a new or existing building with a height of more than 3.8m—an additional amount equal to 3 times the height above 3.8m, up to a maximum setback of 15m.

(2) A dwelling on a lot with a rear boundary with a laneway may have a building line that abuts the boundary for up to 50% of the length of the boundary.

## **11 Exceptions to setbacks**

(1) 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 3m from a boundary with a public reserve.

- (2) Side and rear setbacks do not apply to the following—
  - (a) an aerial, antenna, awning or eave,
  - (b) a flue, chimney, pipe or cooling or heating appliance,
  - (c) a rainwater tank with a height of more than 1.8m,
  - (d) another structure associated with the provision of a utility service if it is located at least 450mm from the relevant boundary,
  - (e) a fence, fascia, gutter, downpipe, light fitting, an electricity or gas meter, a driveway, pathway or paving if it is located within a required setback area to the relevant boundary.
- (3) The setback from a road does not apply to—
  - (a) a driveway, fence, pathway, paving or retaining wall, or
  - (b) the articulation zone and a building element permitted within the zone.
- (4) The setback from a rear boundary required by this Schedule, section 10 does not apply to a lot that has only 3 boundaries, disregarding a boundary of an access lane if the lot is a battle-axe lot.

## **12 Calculating setbacks**

- (1) For the purposes of determining the 2 nearest dwelling houses in this Schedule, section 7, a dwelling house located on a battle-axe lot must be disregarded.
- (2) For the purposes of calculating the setback of the 2 nearest dwelling houses in this Schedule, section 7—
  - (a) an ancillary structure must not be included, and
  - (b) a building element within the articulation zone must not be included.
- (3) For the purposes 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 purposes of calculating the setbacks for an attached secondary dwelling, the height of the secondary dwelling is the vertical distance from ground level (existing) to the highest point of the secondary dwelling.
- (5) For the purposes of calculating a side or rear setback, the maximum building height of a dwelling on a sloping lot must be used.
- (6) A setback must be calculated at the closest point to the boundary from the building line.

### **13 Building articulation**

- (1) Development for the purposes 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 purposes 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 3m, may incorporate an articulation zone that extends from the building line to a distance of 1.5m into the required setback from the primary road.
- (4) Development for the purposes 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—
  - (a) with an area of at least 1m<sup>2</sup>, and
  - (b) 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 specified in subsection (1)(e) or (f), must be no 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 an alteration or addition to an existing principal dwelling for the purposes of a new secondary dwelling, must have a privacy screen for a part of the window less than 1.5m above the finished floor level if—
  - (a) the window—
    - (i) is in a habitable room that has a finished floor level of more than 1m above ground level (existing), and
    - (ii) has a sill height less than 1.5m above that floor level, and
    - (iii) faces a side or rear boundary and is less than 3m from that boundary, or
  - (b) the window—
    - (i) is in a habitable room that has a finished floor level of more than 3m above ground level (existing), and
    - (ii) has a sill height less than 1.5m above that floor level, and
    - (iii) faces a side or rear boundary and is at least 3m, but no more than 6m, from that boundary.
- (2) Subsection (1) does not apply to a window located in a bedroom where the window has an area of no more than 2m<sup>2</sup>.
- (3) A new balcony, deck, patio, terrace or verandah for the purposes 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 3m<sup>2</sup> must have a privacy screen if the balcony, deck, patio, terrace or verandah is—
  - (a) within 3m of a side or rear boundary and has a floor level of more than 1m above ground level (existing), or
  - (b) between 3m and 6m of a side or rear boundary and has a floor level of more than 2m above ground level (existing).
- (4) A privacy screen required under subsection (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 the part of the development within the areas specified in subsection (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 an ancillary structure is carried out must have a landscaped area of at least the following—
  - (a) for a lot with an area of at least 450m<sup>2</sup> but not more than 600m<sup>2</sup>—20%,
  - (b) for a lot with an area of more than 600m<sup>2</sup> but not more than 900m<sup>2</sup>—25%,
  - (c) for a lot with an area of more than 900m<sup>2</sup> but not more than 1500m<sup>2</sup>—35%,
  - (d) for a lot with an area of more than 1500m<sup>2</sup>—45%.
- (2) At least 50% of the landscaped area must be located behind the building line to the primary road boundary.
- (3) The minimum dimensions of the landscaped area must be more than 2.5m.

### 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 24m<sup>2</sup> of principal private open space.
- (2) 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.
- (3) In this section—

***principal private open space*** means an area—

  - (a) directly accessible from, and adjacent to, a habitable room, other than a bedroom, and
  - (b) more than 4m wide, and
  - (c) not steeper than a 1:50 gradient.

## Part 5 Earthworks and drainage

### 18 Earthworks, retaining walls and structural support

- (1) Excavation for the purposes of a secondary dwelling or an ancillary structure must not be deeper than a maximum depth, measured from ground level (existing), of—
  - (a) if located no more than 1m from any boundary—1m, or
  - (b) if located more than 1m but not more than 1.5m from any boundary—2m, or
  - (c) if located more than 1.5m from any boundary—3m, or

- (d) if the land is identified as Class 3 or 4 on an Acid Sulfate Soils Map or is within 40m of a waterbody (natural)—1m.
- (2) Fill must not have more than a maximum height, measured from ground level (existing), of—
  - (a) if the fill is for the purposes of a secondary dwelling—1m, or
  - (b) if the fill is for the purposes of an ancillary structure—600mm.
- (3) The height of fill contained wholly within the footprint of a secondary dwelling or an ancillary structure is not limited.
- (4) Fill that is higher than 150mm above ground level (existing) and is not contained wholly within the footprint of a secondary dwelling or an ancillary structure is limited to 50% of the landscaped area of the lot.
- (5) The ground level (finished) of the fill must not be used to measure the height of any secondary dwelling or an ancillary structure under this code.
- (6) 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 not associated with a building may be exempt development under the Codes SEPP, clauses 2.29 and 2.30.



## 19 Drainage

- (1) All stormwater collecting as a result of development for the purposes of a secondary dwelling or an ancillary structure 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 the *Local Government Act 1993*, section 68—be approved under the Act, or
  - (b) otherwise—comply with requirements for the disposal of stormwater drainage contained in a development control plan applicable to the land.

## 20 Setbacks of secondary dwellings and ancillary structures from protected trees

- (1) Development for the purposes of a secondary dwelling, all ancillary structures and associated excavation on a lot, must have a setback from a protected tree on the lot of at least 3m.
- (2) The following ancillary structures are permitted within the setback if the development does not require a cut or fill of more than 0.15m 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 section—

**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 Chapter 3.

**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

section 63(1)(d)

### 1 Definitions

(1) In this Schedule—

**ancillary structure** means the following that are not exempt development under the Codes SEPP—

- (a) an access ramp,
- (b) an awning, blind or canopy,
- (c) a balcony, deck, patio, pergola, terrace or verandah attached to a group home,
- (d) a carport attached to a group home,
- (e) a driveway, pathway or paving,
- (f) a fence or screen,
- (g) a garage attached to a group home,
- (h) an outbuilding,
- (i) a rainwater tank attached to a group home,
- (j) a retaining wall,
- (k) a swimming pool or spa pool and child-resistant barrier.

**outbuilding** means the following structures 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) Unless defined in this Schedule, words used in this Schedule have the same meaning as in—

- (a) the Codes SEPP, and
- (b) for words not defined in the Codes SEPP—the standard instrument.

## **2 Site requirements**

Development may only be carried out on a site that—

- (a) has an area of at least 450m<sup>2</sup>, 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 12m, and
- (d) if it is a battle-axe lot, has an access laneway of at least 3m in width, and
- (e) has at least one area on the site that measures at least 12m by 12m, excluding the access laneway if it is a battle-axe lot.

## **3 Site requirements for group homes in certain zones**

- (1) Development that is the erection of a group home may 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<sup>2</sup>—in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots or Zone RU6 Transition.
- (2) A group home must not be erected on a lot if the size of the lot is less than the minimum lot size for the erection of a dwelling house under an environmental planning instrument applying to the lot.

## **4 Maximum site coverage of all development**

- (1) The group home and all ancillary structures must not cover more than 70% of the site area.
- (2) For the purposes of calculating the site coverage in subsection (1), the area of the following is not included—
  - (a) an access ramp,
  - (b) part of an awning, blind or canopy outside the outer wall of a building,
  - (c) a balcony, deck, patio, pergola, terrace or verandah attached to the group home and not enclosed by a wall higher than 1.4m above the floor level,
  - (d) an eave,
  - (e) a driveway,
  - (f) a fence or screen,

- (g) a pathway or paving,
- (h) a rainwater tank attached to the group home,
- (i) a swimming pool or spa pool.

## **5 Building height**

Development for the purposes of a group home or an ancillary structure must not result in a new building or a new part of an existing building having a building height of more than 8.5m above ground level (existing).

## **6 Setbacks from roads other than classified roads**

- (1) A group home and all ancillary structures 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 2 nearest group homes or dwelling houses on the same side of the primary road and located within 40m of the site on which the group home is erected, or
  - (b) if 2 group homes or dwelling houses are not located within 40m of the site—4.5m.
- (2) A group home and all ancillary structures on a site must have a setback from the boundary with a secondary road that is not a classified road of at least 2m.
- (3) A group home and all ancillary structures 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 2 nearest group homes or dwelling houses on the same side of the parallel road and located within 40m of the site on which the group home is erected, or
  - (b) if 2 group homes or dwelling houses are not located within 40m of the site—4.5m.

## **7 Setbacks from classified roads**

A group home and all ancillary structures 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) otherwise—9m.

## **8 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<sup>2</sup>, to a habitable room in a building wall that faces, and is visible from, any secondary road.

## **9 Articulation zones**

- (1) If a group home has a setback from a primary road of at least 3m, an articulation zone may extend up to a distance of 1.5m from the building line into the setback.
- (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 subsection (2)(e) or (f), must be no more than 25% of the area of the articulation zone.

## **10 Side and rear boundary setbacks**

- (1) A group home and all ancillary structures 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 3.8m—0.9m,
  - (b) in relation to a group home with a building height greater than 3.8m—0.9m plus 25% of the additional building height above 3.8m.
- (2) A group home and all ancillary structures on a site must have a setback from the rear boundary of at least the following—
  - (a) in relation to a group home or an ancillary structure with a building height of up to

3.8m—0.9m,

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

(3) 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% of the length of that boundary.

## **11 Calculating setbacks**

(1) For the purposes of determining the nearest 2 dwelling houses in this Schedule, section 6, a dwelling house or group home located on a battle-axe lot must be disregarded.

(2) For the purposes of calculating the setback of the 2 nearest dwelling houses in this Schedule, section 6—

(a) an ancillary structure must not be included, and

(b) a building element within the articulation zone must not be included.

(3) For the purposes 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 purposes of calculating a side or rear setback, the maximum building height of a group home on a sloping site must be used.

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

(6) For the purposes of calculating the setback from a road, a reference to an ancillary structure does not include the following—

(a) a driveway, pathway or paving,

(b) an eave,

(c) a fence or screen,

(d) a retaining wall,

(e) an ancillary structure that is a building element permitted in the articulation zone.

## **12 Exceptions to setbacks**

(1) A group home or an attached ancillary structure must have a setback of at least 3m from a boundary with a public reserve.

(2) Side and rear setbacks do not apply to the following—

- (a) an aerial, antenna, awning, eave,
  - (b) a flue, chimney, pipe or cooling or heating appliance,
  - (c) a rainwater tank with a height of more than 1.8m,
  - (d) another structure associated with the provision of a utility service if it is located at least 450mm from the relevant boundary,
  - (e) a fence, fascia, gutter, downpipe, light fitting, an electricity or gas meter, a driveway, pathway or paving if it is located within a required setback area to the relevant boundary.
- (3) The setback from a road does not apply to—
- (a) a driveway, fence, pathway, paving or retaining wall, or
  - (b) the articulation zone and a building element permitted within the zone.
- (4) The setback from a rear boundary required by Schedule 2, section 10 of this Part does not apply to a lot that has only 3 boundaries, disregarding the boundary of an access lane if the lot is a battle-axe lot.

### **13 Building separation**

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

### **14 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 a part of the window less than 1.5m above the finished floor level if—
- (a) the window—
    - (i) is in a habitable room that has a finished floor level of more than 1m above ground level (existing), and
    - (ii) has a sill height less than 1.5m above that floor level, and
    - (iii) faces a side or rear boundary and is less than 3m from that boundary, or
  - (b) the window—
    - (i) is in a habitable room that has a finished floor level of more than 3m above ground level (existing), and
    - (ii) has a sill height less than 1.5m above that floor level, and
    - (iii) faces a side or rear boundary and is at least 3m, but no more than 6m, from

that boundary.

- (2) Subsection (1) does not apply to a window located in a bedroom if the window has an area of no more than 2m<sup>2</sup>.
- (3) A new balcony, deck, patio, terrace or verandah for the purposes 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 3m<sup>2</sup> must have a privacy screen if the balcony, deck, patio, terrace or verandah is—
  - (a) within 3m of a side or rear boundary and has a floor level of more than 1m above ground level (existing), or
  - (b) between 3m and 6m of a side or rear boundary and has a floor level of more than 2m above ground level (existing).
- (4) Any privacy screen required under subsection (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 the part of the development within the areas specified in subsection (3)(a) or (b) and is parallel to or faces towards the relevant side or rear boundary.

### **15 Landscaped area**

- (1) At least 20% of the site area on which the erection of, or alterations or additions to, a group home or an ancillary structure is carried out must be a landscaped area.
- (2) At least 50% of the landscaped area must be located behind the building line to the primary road boundary.
- (3) The minimum dimensions of the landscaped area must be more than 2.5m.

### **16 Principal private open space**

A site on which a group home is erected must have more than 24m<sup>2</sup> of principal private open space that—

- (a) has an area at ground level (existing) directly accessible from, and adjacent to, a habitable room, other than a bedroom, and
- (b) is at least 4m wide, and
- (c) has a gradient no steeper than 1:50.

### **17 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 section may be an open hard stand space or a carport or garage, whether attached or detached from the group home.

### **18 Garage, carport and parking spaces**

- (1) A garage, carport or car parking space must be no more than 1m forward of the front building setback.
- (2) The total width of all door openings facing a primary road, a secondary road or a parallel road on a garage must—
  - (a) be no more than 6m, and
  - (b) be no more than 50% 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 2.6m wide by 5.4m long.

### **19 Vehicle access**

The design and construction of the vehicular access to a site must comply with Australian Standard AS/NZS 2890.6.

### **20 Earthworks, retaining walls and structural support**

- (1) Excavation must—
  - (a) not be deeper than a maximum depth measured from ground level (existing) of—
    - (i) if located within 1m of a boundary—1m, or
    - (ii) if located more than 1m, but not more than 1.5m, from a boundary—2m, or
    - (iii) if located more than 1.5m from a boundary—3m, and
  - (b) if the land is identified as Class 3 or 4 on an Acid Sulfate Soils Map or is within 40m of a waterbody (natural)—be no more than 1m below ground level (existing).
- (2) Fill must—
  - (a) not have a height of more than 1m above ground level (existing), and
  - (b) be contained in accordance with subsections (4) and (5) by—
    - (i) a retaining wall or other form of structural support that does not extend more than 1.5m from an external wall of the dwelling, or

- (ii) an unprotected sloping embankment or batter—
  - (A) that does not extend from the group home by more than 3m, and
  - (B) with a toe more than 1m from a side or rear boundary.
- (3) The final ground level (finished) of fill placed on a site must not be used for the purposes of measuring the height of development carried out under Chapter 3, Part 2.
- (4) 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.
- (5) Excavation or fill that is more than 600mm above or below ground level (existing) requires a retaining wall or structural support that must be—
  - (a) constructed in accordance with subsection (4), 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 the manufacturer's specification.

**Note—**

Fill and excavation not associated with a building may be exempt development—see the Codes SEPP, clauses 2.29 and 2.30.

**21 Fill of sloping sites**

- (1) Fill associated with the erection of, or alterations or additions to, a group home or an ancillary structure must—
  - (a) be no more than 1m above ground level (existing), and

- (b) be contained wholly within the external walls of the group home or an ancillary structure.
- (2) Exposed fill may be constructed using an unprotected embankment if—
- (a) the group home or an ancillary structure has a setback of more than 2m from a side or rear boundary, and
  - (b) the fill is no more than 0.6m above ground level (existing), and
  - (c) the fill, but not the embankment, does not extend more than 1 metre beyond an external wall of the group home or detached ancillary structure, and
  - (d) the toe of the unprotected embankment has a setback of at least 0.4m from a side or rear boundary.

## 22 Drainage

- (1) All stormwater collecting as a result of the erection of, or alterations or additions to, a group home or an ancillary structure 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) if the site is unsewered—an on-site disposal system approved under the [Local Government Act 1993](#), section 68.
- (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 an ancillary structure must be collected and conveyed to a drainage system listed in subsection (1).

## 23 Swimming pools

- (1) An ancillary structure comprising a swimming pool for a group home 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 be no more than 0.6m above ground level (existing).
- (4) Coping around a swimming pool must be no more than—

- (a) 1.4m above ground level (existing), or
  - (b) 0.3m wide if the coping is more than 0.6m 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) 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 be more than—
  - (a) for development within the boundaries of an existing group home—2.1m above ground level (existing) if the fence is behind the front building line and 1.2m above ground level (existing) if the fence is on or forward of the line, and
  - (b) otherwise—1.8m above ground level (existing) if the fence is behind the front building line and 1.2m above ground level (existing) if the fence is on or forward of the line.
- (3) A fence must not include masonry construction to a height of more than 0.9m above ground level (existing).

## **25 Access ramps**

- (1) The gradient of an access ramp must not be steeper than 1:14.
- (2) An access ramp must be constructed so as to comply with AS 1428.1.
- (3) An access ramp must not create a traffic or pedestrian hazard.

## **26 Setbacks of group homes and ancillary structures from protected trees**

- (1) Development for the purposes of a group home, all ancillary structures and associated excavation on a lot, must have a setback from a protected tree on the lot of at least 3m.
- (2) The following ancillary structures are permitted within the setback if the development does not require a cut or fill of more than 0.15m 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 Environmentally sensitive land**

section 80(1)(b)

Land shown cross-hatched on the Bush Fire Evacuation Risk Map.

Land identified as coastal wetlands and littoral rainforests area within the meaning of *State Environmental Planning Policy (Resilience and Hazards) 2021*, Chapter 2.

Land identified as coastal vulnerability area within the meaning of *State Environmental Planning Policy (Resilience and Hazards) 2021*, Chapter 2.

Land declared as an area of outstanding biodiversity value under the *Biodiversity Conservation Act 2016*, section 3.1.

Land identified on the Map within the meaning of the *Biodiversity Conservation Regulation 2017*, section 7.3.

Land identified in another environmental planning instrument as follows—

- (a) (Repealed)
- (b) open space,
- (c) natural wetland.

### **Schedule 4 Standards concerning accessibility and usability for hostels and independent living units**

section 85

#### **Part 1 Standards applying to hostels and independent living units**

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

The standards set out in this Part apply to any seniors housing that consists of hostels or independent living units.

##### **1A Definitions**

In this schedule—

**circulation space** has the same meaning as in AS 1428.1.

**continuous accessible path of travel** has the same meaning as in AS 1428.1.

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

**AS 4586—2013** means the Australian Standard entitled AS 4586—2013, *Slip resistance classification of new pedestrian surface materials*, published on 28 June 2013.

## 2 Siting standards

- (1) **Wheelchair access** If the whole of the site has a gradient of less than 1:10, 100% of the dwellings must have wheelchair access by a continuous accessible path of travel to an adjoining public road.
- (2) If the whole of the site does not have a gradient of less than 1:10—
  - (a) the percentage of dwellings that must have wheelchair access must equal the proportion of the site that has a gradient of less than 1:10, or 50%, whichever is the greater, and
  - (b) the wheelchair access provided must be by a continuous accessible path of travel to an adjoining public road or an internal road or a driveway that is accessible to all residents.

### Note—

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

- (3) **Common areas** Access must be provided in accordance with AS 1428.1 so that a person using a wheelchair can use common areas and common facilities associated with the development.

## 3 Letterboxes

- (1) Letterboxes—
  - (a) must be located on a hard standing area, and
  - (b) must have wheelchair access by a continuous accessible path of travel from the letterbox to the relevant dwelling, and
  - (c) must be lockable by a lock that faces a wheelchair accessible path.
- (2) If a structure contains multiple letterboxes, the structure must be in a prominent location.
- (3) At least 20% of the letterboxes on the site must be more than 600mm and less than 1,200mm above ground level (finished).

#### 4 Car parking

- (1) If parking spaces attached to or integrated with a class 1 building under the *Building Code of Australia* are provided for use by occupants who are seniors or people with a disability, at least 1 parking space must—
  - (a) be at least 3.2m wide, and
  - (b) be at least 2.5m high, and
  - (c) have a level surface with a maximum gradient of 1:40 in any direction, and
  - (d) be capable of being widened to 3.8m without requiring structural modifications to a building.
- (2) If parking spaces associated with a class 1, 2 or 3 building under the *Building Code of Australia* are provided in a common area for use by occupants who are seniors or people with a disability, the following applies—
  - (a) for a parking space not in a group—the parking space must comply with AS/NZS 2890.6,
  - (b) for a group of 2–7 parking spaces—
    - (i) at least 1 of the parking spaces must comply with AS/NZS 2890.6, and
    - (ii) 50% of the parking spaces must—
      - (A) comply with AS/NZS 2890.6, or
      - (B) be at least 3.2m wide and have a level surface with a maximum gradient of 1:40 in any direction,
  - (c) for a group of 8 or more parking spaces—
    - (i) at least 15% of the parking spaces must comply with AS/NZS 2890.6, and
    - (ii) at least 50% of the parking spaces must—
      - (A) comply with AS/NZS 2890.6, or
      - (B) be at least 3.2m wide and have a level surface with a maximum gradient of 1:40 in any direction.
- (3) To avoid doubt, a parking space that complies with AS/NZS 2890.6 is only counted toward 1 of the requirements in subsection (2)(b)(i) or (ii) or (c)(i) or (ii).
- (4) At least 5% of any visitor parking spaces must comply with AS/NZS 2890.6.
- (5) A parking space required by this section to comply with AS/NZS 2890.6, other than a visitor parking space, is not required to include the international symbol of access.

- (6) If multiple parking spaces are accessible by a common access point, the access point must be secured by a power-operated garage door, vehicle gate, vehicle barrier or similar device.
- (7) A parking space, other than a parking space under subsection (6), must be—
  - (a) secured by a power-operated door, or
  - (b) capable of accommodating the installation of a power-operated door, including by having—
    - (i) access to a power point, and
    - (ii) an area for motor or control rods for a power-operated door.
- (8) A requirement in this section for a parking space to comply with AS/NZS 2890.6 extends to the associated shared area within the meaning of AS/NZS 2890.6.
- (9) In this section, a parking space is in a **common area** if it is not attached to or integrated with a hostel or independent living unit.

## 5 Accessible entry

- (1) The main entrance to a dwelling must have—
  - (a) a clear opening that complies with AS 1428.1, and
  - (b) a circulation space in front of the door and behind the door that complies with AS 1428.1.
- (2) This section does not apply to an entry for employees.

## 6 Interiors

- (1) An internal doorway must have an unobstructed opening that complies with AS 1428.1.
- (2) An internal corridor must have an unobstructed width of at least 1,000mm.
- (3) The circulation spaces in front of and behind an internal doorway in the following areas must comply with AS 1428.1—
  - (a) a kitchen,
  - (b) a laundry,
  - (c) a bathroom,
  - (d) a toilet,
  - (e) a bedroom,



- (f) a living area,
- (g) the main area of private open space.

(4) To avoid doubt, subsection (3)(b) does not apply to laundry facilities in a cupboard.

## **7 Bedroom**

At least one bedroom in a dwelling must have the following—

- (a) a clear area, not including a circulation space, sufficient to accommodate—
  - (i) for a hostel—a wardrobe and a single-size bed, or
  - (ii) for an independent living unit—a wardrobe and a queen-size bed,
- (b) a clear area around the area for the bed of at least—
  - (i) 1,200mm at the foot of the bed, and
  - (ii) 1,000mm on each side of the bed,
- (c) at least 2 double general power outlets on the wall where the head of the bed is likely to be,
- (d) at least one general power outlet on the wall opposite the wall where the head of the bed is likely to be.

## **8 Bathroom**

- (1) At least one bathroom in a dwelling must be located on—
  - (a) the same floor as the entry to the dwelling, or
  - (b) a floor serviced by a private passenger lift accessible only from inside the dwelling.
- (2) The bathroom must have the following—
  - (a) a slip resistant floor surface that achieves a minimum rating of P3 in accordance with AS 4586—2013,
  - (b) a washbasin with tap ware capable of complying with AS 1428.1, including by future adaptation if the washbasin and tap ware continue to use existing hydraulic lines,
  - (c) a shower that—
    - (i) is accessible without a shower-hob or step, and
    - (ii) complies with the requirements of AS 1428.1 for the entry, circulation space, floor gradient to the wastewater outlet and location of the mixer tap, and

- (iii) is in the corner of a room, and
  - (iv) has a wall capable of accommodating the installation of a grab rail, portable shower head with supporting grab rail and shower seat, in accordance with AS 1428.1,
  - (d) a wall cabinet with shelving illuminated by an illumination level of at least 300 lux,
  - (e) a double general power outlet in an accessible location, in accordance with AS 1428.1.
- (3) Subsection (2)(c) does not prevent the installation of a shower screen that can easily be removed to enable compliance with that paragraph.

## **9 Toilet**

- (1) At least one toilet in a dwelling must be located on—
- (a) the same floor as the entry to the dwelling, or
  - (b) a floor serviced by a private passenger lift accessible only from inside the dwelling.
- (2) The toilet must have the following—
- (a) a water closet pan—
    - (i) in the corner of the room, and
    - (ii) with a centreline set-out in accordance with AS 1428.1,
  - (b) a circulation space in front of the water closet pan that is—
    - (i) at least 1,200mm long and at least 900mm wide, and
    - (ii) clear of door swings and fixtures, other than a toilet paper dispenser or grab rails,
  - (c) a circulation space around the water closet pan that complies with AS 1428.1,
  - (d) a slip resistant floor surface that achieves a minimum rating of P3 in accordance with AS 4586—2013,
  - (e) a wall capable of accommodating the installation of a back rest and grab rail that will comply with AS 1428.1.
- (3) A removable shower screen may be located in the circulation space specified in subsection (2)(c).

## **10 Surfaces of balconies and external paved areas**

Balconies and external paved areas must have surfaces that are slip resistant and comply with—

- (a) the *Building Code of Australia*, or
- (b) the Standards Australia Handbook SA HB 198:2014, *Guide to the specification and testing of slip resistance of pedestrian surfaces*, published on 16 June 2014.

## **11 Door hardware**

- (1) Door handles and hardware for all doors, including entry doors and external doors, must comply with AS 1428.1.
- (2) To avoid doubt, subsection (1) does not apply to cabinetry.

## **12 Switches and power points**

- (1) Switches and power points must—
  - (a) comply with AS 1428.1, or
  - (b) be capable of complying with AS 1428.1 through future adaptation.
- (2) Subsection (1) does not apply to—
  - (a) remote controls, or
  - (b) power points likely to serve appliances that are not regularly moved or turned off.

## **13 Private passenger lifts**

- (1) This section applies to a private passenger lift that is required by this schedule to be accessible only from inside a particular dwelling.
- (2) The private passenger lift must—
  - (a) be at least 1,100mm wide and at least 1,400mm long, measured from the lift car floor, and
  - (b) have a clear indoor landing on all floors serviced by the lift, other than the floor on which the main area of private open space is located, at least 1,540mm long and at least 2,070mm wide, and
  - (c) have controls that comply with—
    - (i) AS 1735.12:2020, *Lifts, escalators and moving walks, Part 12: Facilities for persons with disabilities*, published on 26 June 2020, or
    - (ii) AS 1735.15:2021, *Lifts, escalators and moving walks, Part 15: Safety rules for*

*the construction and installation of lifts — Special lifts for the transport of persons and goods — Vertical lifting platforms intended for use by persons with impaired mobility, published on 23 July 2021.*

- (3) The width of the door opening of the private passenger lift must be at least 900mm.
- (4) The private passenger lift must not be a stairway platform lift.

## **Part 2 Additional standards for independent living units**

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

The standards set out in this Part apply in addition to the standards set out in Part 1 to any seniors housing consisting of independent living units.

### **15 Bedroom**

At least one bedroom in an independent living unit that complies with this schedule, section 7 must be located on—

- (a) the same floor as the entry to the unit, or
- (b) a floor serviced by a private passenger lift accessible only from inside the unit.

### **16 Living room**

(1) A living room in an independent living unit must be located on—

- (a) the same floor as the entry to the dwelling, or
- (b) a floor serviced by a private passenger lift accessible only from inside the dwelling.

(2) The living room must have—

- (a) a circulation space that—
  - (i) is clear of all fixtures, and
  - (ii) has a diameter of at least 2,250mm, and
- (b) a telecommunications or data outlet adjacent to a general power outlet.

### **17 Main area of private open space**

The main area of private open space for an independent living unit must be located on—

- (a) the same floor as the entry to the dwelling, or
- (b) a floor serviced by a private passenger lift accessible only from inside the dwelling.

## **18 Kitchen**

- (1) A kitchen in an independent living unit must be located on—
  - (a) the same floor as the entry to the dwelling, or
  - (b) a floor serviced by a private passenger lift accessible only from inside the dwelling.
- (2) The kitchen must have a circulation space with a diameter of at least 1,200mm between each bench top, cupboard or large appliance and each other bench top, cupboard or large appliance.
- (3) Each circulation space specified in subsection (2) must be capable of being increased to a diameter of 1,550mm without—
  - (a) relocating the sink, or
  - (b) moving a load-bearing wall, or
  - (c) breaching another circulation requirement.
- (4) The kitchen must have the following fittings—
  - (a) a bench that includes at least one work surface that is—
    - (i) at least 800mm long, and
    - (ii) clear of obstructions, and
    - (iii) not in the corner of the room,
  - (b) a lever tap set with the lever and water source that is within 300mm of the front of the bench,
  - (c) a cooktop next to the work surface,
  - (d) an isolating switch for the cooktop,
  - (e) an oven that—
    - (i) has operative elements between 450mm and 1,250mm above the finished floor level, and
    - (ii) is next to the work surface,
  - (f) at least one double general power outlet located within 300mm of the front of a work surface.
- (5) The cupboards must—

- (a) not be entirely located in the corner of the bench or the corner of the room, and
  - (b) face where the user of the fixture is likely to be.
- (6) An overhead cupboard in the kitchen must be capable of being fitted with “D” pull cupboard handles towards the bottom of the cupboard.
- (7) A below-bench cupboard in the kitchen must be capable of being fitted with “D” pull cupboard handles towards the top of the cupboard.
- (8) The lever tap set, cooktop, isolating switch, oven and double general power outlet must—
- (a) not be in the corner of the bench or the corner of the room, and
  - (b) face where the user of the fixture is likely to be.
- (9) Cabinetry below a work surface must be able to be easily removed to allow wheelchair access to the work surface.

## **19 Laundry**

- (1) A laundry in an independent living unit must be located on—
- (a) the same floor as the entry to the dwelling, or
  - (b) a floor serviced by a private passenger lift accessible only from inside the dwelling.
- (2) The laundry must have the following—
- (a) a circulation space that complies with AS 1428.1 at the approach to any external doors,
  - (b) an appropriate space for an automatic washing machine and a clothes dryer,
  - (c) a clear space in front of each appliance of at least 1,550mm,
  - (d) a slip resistant floor surface that achieves a minimum rating of P3 in accordance with AS 4586—2013,
  - (e) a continuous accessible path of travel to the main area of private open space or any clothes line provided for the dwelling.
- (3) The space specified in subsection (2)(c) may overlap with a door swing or the circulation space for a door.
- (4) For laundry facilities in a cupboard, the cupboard must be capable of being fitted with “D” pull cupboard handles in the following locations—

- (a) for below-bench cupboards—towards the top,
- (b) for overhead cupboards—towards the bottom,
- (c) for floor-to-ceiling doors—between 900mm and 1,100mm above the finished floor level.

(5) In this section—

**laundry** includes laundry facilities in a cupboard.

## 20 Linen storage

An independent living unit must have a floor-to-ceiling linen storage cupboard that—

- (a) is at least 600mm wide, and
- (b) has adjustable shelving.

## 21 Lift access in multi-storey buildings

An independent living unit on a storey above the ground storey must be accessible by a lift that complies with the *Building Code of Australia*, Volume 1, Part E3.

## 22 Garbage and recycling

A garbage storage area and a recycling storage area provided for an independent living unit must be accessible by a continuous accessible path of travel from the dwelling entrance.

## Schedule 5 Land to which Chapter 3, Part 8 does not apply

section 119

### Note—

It is intended that descriptions of land will be entered in this Schedule if special provision is made for that land by a local environmental plan made in accordance with principles set out in a Direction under section 117 of the Act given in conjunction with Chapter 3, Part 8.

## Schedule 6 Categories of excluded land

section 122

- 1 Land which the council, after taking into account the principles set out in the Coastline Management Manual published by the New South Wales Government in September 1990, considers is unsuitable for residential development because of coastal erosion, tidal inundation, slip, dunal movement or any other risk of a similar nature.
- 2 Land which the council, after taking into account the principles set out in the *Flood Risk*

*Management Manual*, considers is unsuitable for residential development because of flooding.

- 3** Land which is within a water catchment area identified by a water supply authority.
- 4** Land which, in the opinion of the council, is affected to an unacceptable level by an offensive or hazardous industry or any form of pollution.
- 5** Land which is identified in an environmental planning instrument, or in any planning strategy of the Department or the council approved for the time being by the Director, by words which are cognate with or a description consistent with any one or more of the following—
  - extractive resources,
  - services corridors,
  - airport/industry buffer area,
  - habitat corridor,
  - containing significant remnant vegetation,
  - littoral rainforest,
  - water catchment,
  - wetlands.
- 6** Land which under any environmental planning instrument is within an area or zone identified in that instrument by the description—
  - open space, other than open space (private recreation)
  - environmental protection
  - scenic protection
  - rural (where the land is not adjacent to or adjoining land zoned for urban use).
- 7** Land that is within the following coastal local government areas, being land that is not zoned or reserved under an environmental planning instrument for urban use and is not identified as suitable for urban development under the Coastal Urban Planning Strategies or Residential Strategies approved for the time being by the Director—

Ballina	Lake Macquarie
Bega Valley	Maclean
Bellingen	Nambucca
Byron	Newcastle
Coffs Harbour	Port Stephens
Eurobodalla	Richmond River



Great Lakes	Shellharbour
Greater Taree	Shoalhaven
Hastings	Tweed
Kempsey	Ulmarra
Kiama	Wollongong

- 8** Land that is within any of the following local government areas, being land that is not zoned or reserved under an environmental planning instrument for urban use and is not identified as suitable for urban development under any urban development strategy for the ACT and sub-region approved for the time being by the Director—

Cooma-Monaro	Yarrowlumla
Gunning	Yass
Queanbeyan	

- 9** Flood liable land as defined in [Murray Regional Environmental Plan No 2—Riverine Land](#).

- 10** Land comprising the Williams River catchment upstream of the Seaham Weir.

In this item, **Williams River catchment** means the land shown on the map marked “Williams River Catchment Regional Environmental Plan 1997” (kept in the Newcastle office of the Department of Urban Affairs and Planning, and copies of which are kept in the offices of Dungog Shire Council and Port Stephens Council) being the land from which surface water run-off resulting from rainfall flows directly or indirectly into the Williams River.

## Schedule 7 Definitions for Chapter 3, Part 8

section 121

**caravan park** means land (including a camping ground) on which caravans (or caravans and other moveable dwellings) are, or are to be, placed or erected.

**Note—**

This is the same meaning as applies in other environmental planning instruments because of Chapter 3, Part 9.

**Crown reserve** has the same meaning as it has in Division 12.5 of the [Crown Land Management Act 2016](#).

**installation** means—

- (a) in relation to a manufactured home, the process of connecting the major sections of the manufactured home, and any associated structures forming part of the manufactured home, and attaching them to footings, or
- (b) in relation to an associated structure, the process of constructing or assembling the components of the associated structure, and (where appropriate) attaching them to footings,

and includes the connection to the home or associated structure of gas, electricity, telephone, water,

sewerage and drainage services.

**manufactured home** means a self-contained dwelling (that is, a dwelling that includes at least 1 kitchen, bathroom, bedroom and living area and that also includes toilet and laundry facilities), being a dwelling—

(a) that comprises 1 or more major sections that are each constructed, and assembled, away from the manufactured home estate and transported to the estate for installation on the estate, and

(b) that is not capable of being registered under the *Traffic Act 1909*,

and includes any associated structures that form part of the dwelling.

**manufactured home estate** means land on which manufactured homes are, or are to be, erected.

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

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

## Schedule 7A Savings and transitional provisions

### 1 Definitions

In this Schedule—

**commencement date** means 26 November 2021.

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

**repealed instrument** means an instrument repealed under Chapter 1, section 10.

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

### 2 General savings provision

(1) This Policy does not apply to the following matters—

(a) a development application made, but not yet determined, on or before the commencement date,

(b) a concept development application made, but not yet determined, on or before the commencement date,

(c) a staged development application made subsequent to a concept development application approval granted on or before the commencement date,

(d) a development consent granted on or before the commencement date,

(da) an application to modify a development consent granted after the commencement date, if it relates to a development application made, but not

determined, on or before the commencement date,

- (e) an environmental impact statement prepared in compliance with an environmental assessment requirement that is—
    - (i) issued by the Planning Secretary on or before the commencement date, and
    - (ii) in force when the statement is prepared,
  - (f) the carrying out of an activity after the commencement date if—
    - (i) notice of the activity has been given to the council under the repealed ARH SEPP, clause 40A(2), and
    - (ii) an approval required under the Act, Part 5 for carrying out the activity is granted by the determining authority before 26 November 2022.
- (2) The provisions of a repealed instrument, as in force immediately before the repeal of the repealed instrument, continue to apply to a matter referred to in subsection (1).

### **3 Continued application of site compatibility certificates**

- (1) The repealed Seniors SEPP, clause 25 continues to apply to an application for a site compatibility certificate made, but not determined, before the commencement date.
- (2) The repealed Seniors SEPP continues to apply to, and this Policy does not apply to, a development application made after the commencement date if—
  - (a) the development application relies on a site compatibility certificate, within the meaning of the repealed Seniors SEPP, and
  - (b) the application for the certificate was made on or before the commencement date.
- (3) If a development application made after the commencement date relies on a site compatibility certificate issued under the repealed ARH SEPP, clause 37, the site compatibility certificate is taken to be a site compatibility certificate issued under this Policy, Chapter 2, Part 2, Division 5.
- (4) This Policy, Part 4 applies to development for the purposes of multi dwelling housing, residential flat buildings or shop top housing on land for which a site compatibility certificate has been issued under *State Environmental Planning Policy (Affordable Rental Housing) 2009*, clause 37, as in force immediately before its repeal.

### **4 (Repealed)**

### **5 State Environmental Planning Policy Amendment (National Construction Code) 2023**

An application for a complying development certificate lodged before 1 May 2023 must be determined as if *State Environmental Planning Policy Amendment (National Construction*

*Code) 2023* had not commenced.

#### **5A Development standards for land near Siding Spring Observatory**

A development application or an application for a complying development certificate that has been made but not finally determined before the commencement of the *State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Miscellaneous) 2023* must be determined as if that Policy had not commenced.

#### **6 State Environmental Planning Policy Amendment (Agritourism) 2023**

The amendments made to this policy, section 82 by *State Environmental Planning Policy Amendment (Agritourism) 2023* apply to a development application made but not finally determined before the commencement of that policy.

#### **7 State Environmental Planning Policy Amendment (Flood Planning) 2023**

A development application or an application for a complying development certificate made, but not finally determined, before the commencement of *State Environmental Planning Policy Amendment (Flood Planning) 2023* must be determined as if that policy had not commenced.

#### **8 State Environmental Planning Policy Amendment (Housing) 2023**

- (1) An amendment made to this policy by the amending policy does not apply to the following—
  - (a) a development application made, but not determined, on or before 14 December 2023,
  - (b) a modification application made, but not determined, on or before 14 December 2023,
  - (c) an environmental impact statement prepared in compliance with environmental assessment requirements that were notified by the Planning Secretary on or before 14 December 2023.
- (2) An amendment made to this policy by the amending policy does not apply to the carrying out of an activity by the Land and Housing Corporation after 14 December 2023 if—
  - (a) notice of the activity was given to the council under section 30(1)(b)(i), 43(1)(b)(i) or 108C(1)(b)(i), as in force before 14 December 2023, before 14 December 2023, and
  - (b) an approval required under the Act, Part 5 for carrying out the activity is granted by the determining authority before 20 December 2024.
- (2A) Despite subsections (1) and (2), Chapter 4, as inserted by the amending policy,

applies to a matter referred to in those subsections.

(3) In this section—

**amending policy** means *State Environmental Planning Policy Amendment (Housing) 2023*.

## **9 State Environmental Planning Policy (Housing) Amendment (Transport Oriented Development) 2024**

An amendment made to this policy by *State Environmental Planning Policy (Housing) Amendment (Transport Oriented Development) 2024* does not apply to—

- (a) a development application made, but not determined, on or before 13 May 2024, or
- (b) a modification application made after 13 May 2024, if it relates to a development consent granted on or before 13 May 2024.

## **Schedule 8 Design principles for seniors housing**

section 97

### **1 Neighbourhood amenity and streetscape**

Seniors housing should be designed as follows—

- (a) to recognise the operational, functional and economic requirements of residential care facilities, which typically require a different building shape from other residential accommodation,
- (b) to recognise the desirable elements of—
  - (i) the location's current character, or
  - (ii) for precincts undergoing a transition—the future character of the location so new buildings contribute to the quality and identity of the area,
- (c) to complement heritage conservation areas and heritage items in the area,
- (d) to maintain reasonable neighbourhood amenity and appropriate residential character by—
  - (i) providing building setbacks to reduce bulk and overshadowing, and
  - (ii) using building form and siting that relates to the site's land form, and
  - (iii) adopting building heights at the street frontage that are compatible in scale with adjacent buildings, and
  - (iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours,

- (e) to set back the front building on the site generally in line with the existing building line,
- (f) to include plants reasonably similar to other plants in the street,
- (g) to retain, wherever reasonable, significant trees,
- (h) to prevent the construction of a building in a riparian zone.

## **2 Visual and acoustic privacy**

Seniors housing should be designed to consider the visual and acoustic privacy of adjacent neighbours and all residents of the seniors housing by—

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

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

The design of seniors housing should—

- (a) for development involving the erection of a new building—provide residents of the building with adequate daylight in a way that does not adversely impact the amount of daylight in neighbouring buildings, and
- (b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation, solar heating and lighting by locating the windows of living and dining areas in a northerly direction.

## **4 Stormwater**

The design of seniors housing should aim to—

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

## **5 Crime prevention**

Seniors housing should—

- (a) be designed in accordance with environmental design principles relating to crime prevention, and

- (b) provide personal property security for residents and visitors, and
- (c) encourage crime prevention by—
  - (i) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins the area, driveway or street, and
  - (ii) providing shared entries, if required, that serve a small number of dwellings and that are able to be locked, and
  - (iii) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.

## **6 Accessibility**

Seniors housing should—

- (a) have obvious and safe pedestrian links from the site that provide access to transport services or local facilities, and
- (b) provide safe environments for pedestrians and motorists with convenient access and parking for residents and visitors.

## **7 Waste management**

Seniors housing should include waste facilities that maximise recycling by the provision of appropriate facilities.

# **Schedule 9 Design principles for residential apartment development**

section 147

## **1 Context and neighbourhood character**

- (1) Good design responds and contributes to its context, which is the key natural and built features of an area, their relationship and the character they create when combined and also includes social, economic, health and environmental conditions.
- (2) Responding to context involves identifying the desirable elements of an area's existing or future character.
- (3) Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.
- (4) Consideration of local context is important for all sites, including sites in the following areas—
  - (a) established areas,

- (b) areas undergoing change,
- (c) areas identified for change.

## **2 Built form and scale**

- (1) Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.
- (2) Good design also achieves an appropriate built form for a site and the building's purpose in terms of the following—
  - (a) building alignments and proportions,
  - (b) building type,
  - (c) building articulation,
  - (d) the manipulation of building elements.
- (3) Appropriate built form—
  - (a) defines the public domain, and
  - (b) contributes to the character of streetscapes and parks, including their views and vistas, and
  - (c) provides internal amenity and outlook.

## **3 Density**

- (1) Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.
- (2) Appropriate densities are consistent with the area's existing or projected population.
- (3) Appropriate densities are sustained by the following—
  - (a) existing or proposed infrastructure,
  - (b) public transport,
  - (c) access to jobs,
  - (d) community facilities,
  - (e) the environment.

## **4 Sustainability**

- (1) Good design combines positive environmental, social and economic outcomes.



- (2) Good sustainable design includes—
  - (a) use of natural cross ventilation and sunlight for the amenity and liveability of residents, and
  - (b) passive thermal design for ventilation, heating and cooling, which reduces reliance on technology and operation costs.
- (3) Good sustainable design also includes the following—
  - (a) recycling and reuse of materials and waste,
  - (b) use of sustainable materials,
  - (c) deep soil zones for groundwater recharge and vegetation.

## **5 Landscape**

- (1) Good design recognises that landscape and buildings operate together as an integrated and sustainable system, resulting in development with good amenity.
- (2) A positive image and contextual fit of well designed development is achieved by contributing to the landscape character of the streetscape and neighbourhood.
- (3) Good landscape design enhances the development's environmental performance by retaining positive natural features that contribute to the following—
  - (a) the local context,
  - (b) co-ordinating water and soil management,
  - (c) solar access,
  - (d) micro-climate,
  - (e) tree canopy,
  - (f) habitat values,
  - (g) preserving green networks.
- (4) Good landscape design optimises the following—
  - (a) usability,
  - (b) privacy and opportunities for social interaction,
  - (c) equitable access,
  - (d) respect for neighbours' amenity.

- (5) Good landscape design provides for practical establishment and long term management.

## **6 Amenity**

- (1) Good design positively influences internal and external amenity for residents and neighbours.
- (2) Good amenity contributes to positive living environments and resident well-being.
- (3) Good amenity combines the following—
  - (a) appropriate room dimensions and shapes,
  - (b) access to sunlight,
  - (c) natural ventilation,
  - (d) outlook,
  - (e) visual and acoustic privacy,
  - (f) storage,
  - (g) indoor and outdoor space,
  - (h) efficient layouts and service areas,
  - (i) ease of access for all age groups and degrees of mobility.

## **7 Safety**

- (1) Good design optimises safety and security within the development and the public domain.
- (2) Good design provides for quality public and private spaces that are clearly defined and fit for the intended purpose.
- (3) Opportunities to maximise passive surveillance of public and communal areas promote safety.
- (4) A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

## **8 Housing diversity and social interaction**

- (1) Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.
- (2) Well designed residential apartment development responds to social context by

providing housing and facilities to suit the existing and future social mix.

- (3) Good design involves practical and flexible features, including—
- (a) different types of communal spaces for a broad range of people, and
  - (b) opportunities for social interaction among residents.

## 9 Aesthetics

- (1) Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure.
- (2) Good design uses a variety of materials, colours and textures.
- (3) The visual appearance of well designed residential apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

## Schedule 10 Dictionary

section 4

**Aboriginal Housing Office** means the Aboriginal Housing Office constituted by the [Aboriginal Housing Act 1998](#), section 6.

**accessible area** means land within—

- (a) 800m walking distance of—
  - (i) a public entrance to a railway, metro or light rail station, or
  - (ii) for a light rail station with no entrance—a platform of the light rail station, or
  - (iii) a public entrance to a wharf from which a Sydney Ferries ferry service operates, or
- (b) (Repealed)
- (c) 400m 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 1 bus per hour servicing the bus stop between—
  - (i) 6am and 9pm each day from Monday to Friday, both days inclusive, and
  - (ii) 8am and 6pm on each Saturday and Sunday.

**Apartment Design Guide** means the *Apartment Design Guide* published by the Department in July 2015.

**ARI** means average recurrence interval.

**AS 1428.1** means the version of the Australian Standard entitled AS 1428.1:2021, *Design for access and mobility, Part 1: General requirements for access—New building work*, published by Standards Australia, adopted in the *Building Code of Australia*.

**AS 4586—2013**, for Schedule 4—see Schedule 4, section 1A.

**AS/NZS 2890.6** means the version of the Australian Standard entitled AS/NZS 2890.6—2009, *Parking facilities, Part 6: Off street parking for people with disabilities*, published by Standards Australia, adopted in the *Building Code of Australia*.

**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 1 or more residents.

**Bush Fire Evacuation Risk Map** means the map marked “*State Environmental Planning Policy No 5—Housing for Older People or People with a Disability (Amendment No 6) Bush Fire Evacuation Risk Map*” published on the Department’s website.

**bush fire prone land** means land identified on a bush fire prone land map certified under the Act, section 10.3.

**Central Coast City** means the land described as the Central Coast City in the Six Cities Region.

**Note—**

The Act, Schedule 9 sets out the local government areas in each city in the Six Cities Region.

**Central River City** means the land described as the Central River City in the Six Cities Region.

**Note—**

The Act, Schedule 9 sets out the local government areas in each city in the Six Cities Region.

**circulation space**, for Schedule 4—see Schedule 4, section 1A.

**Codes SEPP** means [State Environmental Planning Policy \(Exempt and Complying Development Codes\) 2008](#).

**continuous accessible path of travel**, for Schedule 4—see Schedule 4, section 1A.

**deep soil zone** means a landscaped area with no buildings or structures above or below the ground.

**design principles for residential apartment development** means the principles set out in Schedule 9.

**design principles for seniors housing** means the principles set out in Schedule 8.

**design review panel** means a panel constituted by the Minister under the [Environmental Planning and Assessment Regulation 2021](#), section 288A.

**development for the purposes of a secondary dwelling**—see section 49.

**Eastern Harbour City** means the land described as the Eastern Harbour City in the Six Cities Region.

**Note—**

The Act, Schedule 9 sets out the local government areas in each city in the Six Cities Region.

**equivalent land use zone**—see section 5.

**flood and risk impact assessment** means a study to assess, in relation to land on which development is carried out—

- (a) flood behaviour, constraints and risk, and
- (b) off-site flood impacts on property and the community, and
- (c) flood risks to buildings resulting from the development and users of the buildings.

**flood compatible material** means building materials and surface finishes capable of withstanding prolonged immersion in water.

**flood control lot** means a lot to which flood related development controls apply in relation to development for the purposes of secondary dwellings or group homes.

**flood planning level** means—

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

**Flood Risk Management Manual** means the *Flood Risk Management Manual*, ISBN 978-1-923076-17-4, published by the NSW Government in June 2023.

**flow path** means a flow path identified in the council's flood study or floodplain risk management study carried out in accordance with the *Flood Risk Management Manual*.

**general power outlet**, for Schedule 4—see Schedule 4, section 1A.

**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 not occupied frequently or for extended periods.

**heritage conservation area** means the following identified in another environmental planning instrument—

- (a) a heritage conservation area,
- (b) an archaeological site,
- (c) an Aboriginal place of heritage significance.

**heritage item** means a heritage item identified in another environmental planning instrument.

**high hazard area** means a high hazard area identified in the council's flood study or floodplain risk management study carried out in accordance with the *Flood Risk Management Manual*.

**high risk area** means a high risk area identified in the council's flood study or floodplain risk management study carried out in accordance with the *Flood Risk Management Manual*.

**hostel**—see section 82.

**in-fill self-care housing**—see section 82.

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

**landscaped area** means the part of the site area not occupied by a building and includes a part used or intended to be used for a rainwater tank, swimming pool or open-air recreation facility, but does not include a part used or intended to be used for a driveway or parking area.

**Low Rise Housing Diversity Design Guide** has the same meaning as in the Codes SEPP.

**manor house** has the same meaning as in the Codes SEPP.

**maximum permissible building height** means the maximum building height permitted on the land under Chapter 5, where relevant, an environmental planning instrument, other than this Policy, or a development control plan.

**maximum permissible floor space ratio** means the maximum floor space ratio permitted on the land under Chapter 5, where relevant, an environmental planning instrument, other than this Policy, or a development control plan.

**modification application** has the same meaning as in the *Environmental Planning and Assessment Regulation 2021*.

**multi dwelling housing (terraces)** has the same meaning as in the Codes SEPP.

**planning agreement** has the same meaning as in the Act, Division 7.1.

**Planning for Bush Fire Protection** means the document prescribed by the *Environmental Planning and Assessment Regulation 2021*, section 271.

**professional engineer** means a registered professional engineer, within the meaning of the *Design and Building Practitioners Act 2020*, who is authorised by the registration to carry out the work required.

**registered community housing provider** has the same meaning as in the *Community Housing Providers (Adoption of National Law) Act 2012*, section 13.

**relevant authority** means the following—

- (a) the Aboriginal Housing Office,
- (b) the Land and Housing Corporation,
- (c) Landcom.

**relevant planning instrument** means an environmental planning instrument, other than this Policy, or a development control plan, if any, that applies to the land on which the development will be carried

out.

**residential apartment development**—see section 144.

**servicing equipment** includes plant, lift motor rooms and fire stairs.

**site area** or **site** means the area of land on which development is or will be carried out and may include the whole or part of 1 lot, or more than 1 lot if the lots are contiguous to each other, but does not include land on which development is not permitted to be carried out under this Policy.

**social housing provider** means the following—

- (a) the Secretary of the Department of Communities and Justice,
- (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](#).

**tenanted component**, of a building, means the dwellings referred to in section 72(3)(a), including the common spaces and shared facilities provided for the use of the residents of the dwellings.

**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.

**Western Parkland City** means the land described as the Western Parkland City in the Six Cities Region.

**Note—**

The Act, Schedule 9 sets out the local government areas in each city in the Six Cities Region.

## **Schedule 11 (Repealed)**