

# Urban Taskforce

18<sup>th</sup> July 2007

Mr. Sam Haddad,  
Director-General  
NSW Department of Planning  
GPO Box 39  
SYDNEY NSW 2001

**Attention: Ms. Faye Stewart**

Dear Mr Haddad

**RE: STATE ENVIRONMENTAL PLANNING POLICY (SENIORS LIVING) 2004 – DRAFT AMENDMENT NO.2**

The NSW Urban Taskforce commends the Department of Planning (the Department) for undertaking a comprehensive review of *State Environmental Planning Policy (Seniors Living) 2004* (SEPP Seniors Living). The review was conducted in an open and transparent manner with relevant stakeholders canvassed throughout the process.

We support the planning reform process currently being undertaken by the Department in the areas of legislative reform, policy reform and the setting of a new strategic direction. The NSW Urban Taskforce acknowledges the opportunities provided to our organisation to work with the Department in the planning and policy reform process.

We have had the opportunity to review and consider Draft Amendment No. 2 to SEPP Seniors Living (the draft Amendment). While it has addressed many of the issues raised with the Department through the consultation process there are still a number of matters that we consider require clarification or amendment prior to finalisation of the draft amendment. These matters are set out and discussed below.

## **Interpretation and Definition of Terms**

An aim of the draft Amendment is to “...make certain other amendments to the Principal Policy to improve the operation of the Principal Policy (including amendments to definitions and amendments in the nature of law revision).”

This aim is supported however the proposed amendments to the definitions in the Principal Policy have not incorporated amendments which would provide consistency with the definition of terms found in the *Standard Instrument (Local Environmental Plans) Order 2006* (the Standard Instrument Order). We acknowledge that the Standard Instrument Order by its nature does not specifically apply to environmental planning instruments other than local environmental plans however from a consistency perspective it seems that the process is flawed if the policy reforms are for example promoting a common definition of gross floor area in all standard local environmental plans and at the same time retaining a different definition in SEPP Seniors Living. If the Standard Instrument Order is to be implemented successfully then consistency of terms should be achieved in all environmental planning instruments.

We ask that the draft Amendment be reviewed and where definitions are inconsistent between the draft Amendment and the Standard Instrument Order then consideration should be given to the incorporation of the most appropriate definition in both SEPP Seniors Living and the Standard Instrument Order.

This review for example would look at the definition for terms such as gross floor area, ground level, height or building height, and residential care facility.

#### **Clause 4 Land to which Policy applies**

The draft Amendment proposes to omit clause 4 and replace it with a new clause in order to clarify the land to which the Principal Policy applies. Subclauses (2) and (3) however introduces an element of uncertainty as to what land would be considered to be "land that is **not** zoned primarily for urban purposes". The potential exists for councils to take a conservative approach to the determination of whether land within a particular zone would be considered land that is not zoned primarily for urban purposes.

Where a dispute arises this may be resolved by a declaration being sought in the Land and Environment Court to determine whether or not an identified piece of land would be considered land zoned for urban purposes. Greater certainty should be provided in clause 4 to avoid disputes between applicants and councils and to negate the need to refer to the court system for an interpretation of SEPP Seniors Living.

Subclause (5) seeks to define the circumstances in which land zoned for special uses and existing registered clubs can be considered to be land zoned for urban purposes. In the circumstances described in the subclause it is possible for land on which an existing registered club is located to adjoin on three sides land zoned primarily for urban purposes and adjoin on a fourth side land that is zoned for recreation purposes being land which is separate to the existing registered club. This would mean that the land on which the existing club is located would not be considered land zoned primarily for urban purposes. Is this the intended outcome? If so, why? We would appreciate clarification on this point before the instrument is finalised.

For completeness subclause (7)(b) could be amended to include reference to the RE2 Private Recreation zone under the Standard Instrument Order.

#### **Clause 8 Seniors**

Is there criteria against which people are assessed by social housing providers as being eligible to occupy housing for aged persons?

#### **Clause 12 Hostels**

The Note to clause 12 appears to be inconsistent with the definition of a hostel provided in the Principal Policy.

#### **Clause 24A Site compatibility certificates**

Subclause (2) precludes a consent authority from granting consent to a development application for seniors housing on land to which the clause applies, such as land that adjoins land primarily for urban purposes, unless the Director-General has certified that the development is compatible with the surrounding environment having regard to the criteria in Schedule 4. However, this provision is compromised by subclause (3), which enables a consent authority to refuse to grant consent if it undertakes its own compatibility assessment and disagrees with the opinion of the Director-General. In addition the consent authority is not constrained in any way the matters that it will have regard to in determining an application to which the clause applies.

The clause could be used by Councils who do not support seniors living to develop overly conservative and more stringent compatibility requirements than provided under SEPP Seniors Living with the express purposes of refusing development applications. In order to avoid this outcome the clause should be reviewed.

#### **Clause 77 Vertical Villages**

Subclause (3) requires clarity and this could be achieved through the following wording change:

*"(3) Subsection (2) applies even if the floor space ratio relied upon is expressed in a development control plan."*

**Clauses 77 and 78A Heritage affected land.**

The wording of clauses 77(11) and 78A is confusing and for clarity should be reviewed.

**Conclusion**

In conclusion, we confirm our overall support of the Department's resolve to comprehensively review and amend SEPP Seniors Living. There appear a number of matters that require further consideration and clarification in the drafting of the amendment as discussed above prior to gazettal of the draft amendment.

The NSW Urban Taskforce would welcome the opportunity to discuss the contents of this submission with you.

Yours sincerely

**NSW Urban Taskforce**

A handwritten signature in black ink that reads "Aaron Gadiel". The signature is written in a cursive style with a long horizontal stroke at the bottom.

**Aaron Gadiel**  
**Chief Executive Officer**