



Planning circular

PLANNING SYSTEMS

Planning Systems; In-fill affordable housing

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In-fill affordable housing under *State Environmental Planning Policy (Housing) 2021*

This circular provides information to councils, practitioners and applicants about the application of the in-fill affordable housing provisions under *State Environmental Planning Policy (Housing) 2021* (Housing SEPP).

Introduction

The NSW Government recognises the need to build more homes for our growing population, boost housing supply and improve housing affordability.

The in-fill affordable housing provisions under the Housing SEPP provide opportunities for the delivery of new affordable housing in well-located areas. These provisions were revised in late 2023 to further incentivise the delivery of affordable housing in response to the NSW Government's commitments under the National Housing Accord (the Accord).

Chapter 2, Part 2, Division 1 of the Housing SEPP includes floor space ratio (FSR) and height of building incentives for developments that include at least 10-15% of gross floor area (GFA) as affordable housing. These provisions apply to land that meets the accessibility requirements under the Housing SEPP.

This Planning Circular explains that, in cases where the uplift afforded under the Housing SEPP may compromise the ability to achieve strict compliance with local controls, consent authorities are encouraged to consider the flexible application of the controls in light of the public benefit relating to the delivery of affordable housing.

National Housing Accord

Under the Accord, New South Wales is tasked with delivering approximately 377,000 new well-located dwellings by 30 June 2029.

Recent changes to the in-fill affordable housing policy align with the Accord to help unlock affordable housing supply over the medium term.

Incentivising the delivery of additional dwellings and affordable dwellings through the Housing SEPP will support the actions of the Accord.

The in-fill affordable housing policy is just one mechanism under the planning system that supports the delivery of affordable housing.

Affordable housing requirements for additional floor space ratio

Clause 16 of the Housing SEPP provides that the maximum FSR for a development is the maximum permissible FSR permitted on the land under an Environmental Planning Instrument (EPI) plus an additional FSR of up to 30%, which is proportionate to the minimum affordable housing component.

The minimum affordable component of a development means the percentage of the GFA used for affordable housing. Under clause 16 of the Housing SEPP, the affordable housing component is calculated as half of the additional floor space ratio (expressed as a percentage). For example, where a development achieves 30% additional FSR, the minimum affordable housing component is 15%. See the In-fill Affordable Housing Practice Note for further explanation and examples.

If a residential flat building or shop top housing is permissible in the zone, additional building height that is the same percentage as the additional FSR is also available.

This clause does not apply if there is no maximum FSR applying to the land. In this instance, the minimum affordable housing component is calculated under clause 18, but only if residential flat building or shop top housing are permissible in the zone.

Affordable housing requirements for additional building height

Where clause 16 of the Housing SEPP does not apply, clause 18 provides the maximum additional height of building bonus and the proportionate requirement for the affordable housing component. Under these provisions, the maximum building height for a development is the maximum permissible building height in an EPI plus an additional building height of up to 30%, which is proportionate to the minimum affordable housing component.

The minimum affordable housing component is calculated using the additional building height. See the In-fill Affordable Housing Practice Note for further explanations and examples.

Responding to local provisions

In some cases, the uplift afforded under the Housing SEPP may compromise the ability for a development to achieve strict compliance with local controls contained within a Local Environmental Plan (LEP) or Development Control Plan (DCP). Flexibility should be applied in these instances in order to balance local outcomes with the delivery of more affordable housing.

In light of the Government's commitments under the Accord, consent authorities are reminded to consider the delivery of market housing and affordable housing when considering the social impacts and the public interest of a development, as required under section 4.15 of the *Environmental Planning and Assessment Act 1979* (the Act).

While in many cases the provisions in another EPI will continue to apply when assessing in-fill affordable housing development, development outcomes should be balanced against the Government's policy intent to realise more affordable housing in accordance with the Accord. For example, when considering solar access controls contained within the applicable Local Environmental Plan (LEP), the objective of preserving solar access should be considered whilst facilitating the delivery of affordable housing, which is an objective under clause 15A of the Housing SEPP.

Levers such as clause 4.6 Exceptions to development standards of the *Standard Instrument Local Environmental Plan 2006* (Standards Instruments LEP) allow the flexible application of development standards.

Applicants and consent authorities should refer to the [Guide to Varying Development Standards](#) published by the Department of Planning and Environment regarding the application of clause 4.6 and non-discretionary development standards.

Non-discretionary development standards

Clause 19 of the Housing SEPP includes several non-discretionary development standards for in-fill affordable housing. The objective of clause 19 is to identify development standards for particular matters that if complied with, prevent the consent authority from requiring more onerous standards for that matter. Clause 4.15(3) of the *Environmental Planning and Assessment Act 1979* does not prevent development consent being granted if a non-discretionary development standard is not complied with.

Non-discretionary development standards are standards that if complied with, prevent consent authorities from:

- taking the non-discretionary development standard into further consideration in determining the DA;
- refusing the DA on the grounds that the development does not comply with those standards;
- imposing a condition of consent that has the same, or substantially the same, effect as the standard but is more onerous than the standard.

Further information

A copy of the in-fill affordable housing practice note and further information regarding in-fill affordable housing is available at:

<https://www.planning.nsw.gov.au/policy-and-legislation/housing/housing-sepp/in-fill-affordable-housing>

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Important note: This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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