

ITEM NO: 16

SUBJECT: REPORT ON THE IMPLEMENTATION OF ADAPTABLE HOUSING UNDER THE EQUITY OF ACCESS AND HOUSING CHOICES

FILE NO:

Recommendation:

That the Council receives the report.

Report by Group Manager, Environmental and Customer Services:

The Council, at its Meeting on 22 May 2007, considered a Notice of Motion regarding a report on the implementation of adaptable housing under the Equity of Access and Housing Choices and resolved:

- “1. That the Council receive a report on the implementation of adaptable housing under the Equity of Access and Housing Choices when considering development applications.
2. That a report comes to Council assessing the effectiveness of the LEP 2005 provisions for Adaptable Housing.
3. That this report addresses:
 - Whether all dual occupancy, granny flats and multi dwelling housing are complying strictly with the standards outlined in the DCP.
 - Whether all dwellings in the Accessible Housing Areas are complying strictly with the standards outlined in the DCP.
 - What procedures does Council have in place to ensure DAs are assessed by an officer who has a thorough understanding of the requirements of AS 4299-1995?
 - What procedures does Council have in place to ensure that building inspections are undertaken by an officer who has a thorough understanding of the requirements of AS 4299-1995, to ensure on the ground results?”

(Minute 122, 22 May 2007)

This report is prepared in response to this Notice of Motion.

1. Overview of the ‘Adaptable Housing’ provisions

Blue Mountains Local Environmental Plan 2005 (LEP 2005), as gazetted on 7 October 2005, introduced a new planning approach for increasing the accessibility and adaptability of housing stock. At the broader level, LEP 2005 has as one of its principal objectives:

To promote the provision of accessible, diverse and affordable housing options to cater for the changing housing needs of the community (clause 12(f)).

In seeking to meet this objective, LEP 2005 sets specific requirements for achieving “accessibility” and “adaptability” in relation to specific development types. By way of an overview, the concept of ‘accessibility’ refers to housing or other buildings that have features

already in place to enable safe and convenient use by people with a disability. The requirements for achieving accessibility are prescribed by the Australian Standard AS 1428.1 – 2001 (Design for access and mobility – general requirements for access – new building work).

In contrast, “adaptability” refers to housing that is designed and constructed in such a way that it can be readily modified in the future for use by people with a disability, limited mobility or increased frailty. At one level, this makes housing more flexible and capable of adaptation to meet future needs. At another practical level, designing houses to be adaptable from the beginning provides significant cost savings compared to a situation where it becomes necessary to modify buildings should the needs of residents change at a later time. In terms of the policy platform underlying this work (including the *Accessible Housing Strategy*), the Council is aware of the broader imperatives arising from the aging of the population and the need to accommodate the changing housing needs of residents.

A core component in meeting these needs is Division 6 (Equity of access and housing choice) of Part 4 of LEP 2005, which has the following components”

- Clause 107 Access to public buildings
- Clause 108 Accessibility of dwellings
- Clause 109 Adaptability of dwellings
- Clause 110 Housing choice

The requirements set by clause 109 (Adaptability of Dwellings) are the focus of this report. This clause applies to development for the purpose of:

- a) Accessible housing developments (which are equivalent to SEPP Seniors Living),
- b) Boarding houses
- c) Multi-dwelling housing, or
- d) Tourist accommodation

Each dwelling unit or accommodation suite within the above development types are to be designed to be adaptable in accordance with the Australian Standard AS 4299-1995 (Adaptable Housing) as set out in the Council’s *Better Living Development Control Plan* (DCP).

Clause 109 (Adaptability of Dwellings) also applies to dual occupancies. The provision requires that each unit in a dual occupancy is to be adaptable, but only where the development is located within a mapped “Accessible Housing Area”. This requirement does not apply in the case of converting an existing dwelling house into a dual occupancy, in which case only one of the dwellings needs to be adaptable.

Clause 120 (Granny flats) also sets requirements for adaptability to the extent that it requires any alterations or additions to a building for the purpose of permitting a granny flat to be adaptable in accordance with the Australian Standard.

The Australian Standard prescribes the following three classes of adaptable housing:

- Adaptable House Class A: all essential features and desirable features set out in the Australian Standard are incorporated (approx. 119 features).
- Adaptable House Class B: all essential features (55) and at least 50% of desirable features are incorporated (including 41 first priority features).

- Adaptable House Class C: all essential features are included (55 features).

In turn, the *Better Living DCP* stipulates the class of adaptable housing to be achieved. For example, in relation to dual occupancies and granny flats, the class of adaptable housing to be achieved is based on the slope of the land. For relatively flat sites, Adaptable House Class A is required. For steeper land, Adaptable House Class C, which provides only the essential features, would be acceptable.

2. Assessing the Effectiveness of the LEP 2005 Provisions for Adaptable Housing

Applications lodged for development that are required to be adaptable

Prior to LEP 2005 being made, assessment staff had considered adaptability requirements on the basis of Draft LEP 2002. Increased weight has been given to implementing these requirements as the making of the draft plan became more certain and imminent. This applied particularly in relation to multi-dwelling housing (townhouses and the like). As development for the purpose of dual occupancies and granny flats only became permissible when LEP 2005 was gazetted on 7 October 2005, the need to access adaptability for this type of dwelling has only been undertaken over the past two years.

Given the short period LEP 2005 has been in place, there are a relatively limited number of developments that have been lodged and determined on the basis of LEP 2005 and that have been required to comply with either Clause 109 or Clause 120. Of these developments, fewer still have been constructed at this stage.

For the purpose of this report, a review of the Council’s records has been undertaken to identify the relevant applications lodged since LEP 2005 came into effect. The table below shows:

- a) the applications lodged for each of the development types,
- b) the status of the application (approved, withdrawn, refused or in evaluation),
- c) notes on the approach adopted for compliance with adaptability requirements.

MULTI RESIDENTIAL – TOTAL APPROVALS: 4		
X/1383/2006	IN EVALUATION	-
X/1188/2006	IN EVALUATION	-
X/316/2007	APPROVED	Proposal designed to meet adaptability and accessibility requirements. Conditions imposed requiring “Access and Mobility Statement” by a specialist prior to release of construction certification and certification of building compliance by an access specialist prior to building occupation.
X/490/2006	APPROVED	Condition requiring access and mobility statement
X/803/2006 (multi-	WITHDRAWN	-

dwelling to approved development)		
X/927/2007	IN EVALUATION	-
X/1315/2005	APPROVED	Condition requiring adaptability
X/1064/2006	IN EVALUATION	
X/978/2006 (adds to existing multi-unit development)	APPROVED	Development designed to meet adaptability requirements, based on submitted plans
X/1396/2005	WITHDRAWN	-

TOURIST ACCOMODATION – TOTAL APPROVALS: 0		
X/764/2007 (residential and tourist development)	IN EVALUATION	-
X/949/2007	IN EVALUATION	-
X/239/2007	IN EVALUATION	-
X/783/2006	WITHDRAWN	-

SEPP SENIORS LIVING/ACCESSIBLE HOUSING APPROVALS: 0		
X/1184/2006 (Accessible housing)	IN EVALUATION	-
X/1240/2005	REFUSED	A primary reason for refusal was non-compliance with adaptability requirements. Refusal was appealed to the Land and Environment Court. The Appeal was dismissed and the application was refused by the Court.

DUAL OCCUPANCIES – TOTAL APPROVALS: 4		
X/807/2007	IN EVALUATION	
X/168/2007	WITHDRAWN	One of the issues to be addressed by the applicant was the need for one of the dwellings to be adaptable.
X/834/2006	APPROVED	Letter sent to the applicant seeking

		information that demonstrates compliance with adaptability requirements prior to consent being issued
X/1206/2006	WITHDRAWN	One of the concerns raised was that the proposal did not demonstrate adaptability requirements had been met .
X/130/2006	APPROVED	Development outside the accessible housing area – no adaptability requirements apply
X/512/2006	APPROVED	Plans demonstrate compliance Australian Standard for adaptability.
X/958/2006	APPROVED	Letter to Applicant seeking statement that verifies adaptability requirements are met prior to consent being issued

GRANNY FLATS – TOTAL APPROVALS: 2		
X/525/2006	APPROVED	Condition requiring continuous accessible path of travel and modification to the width of a door to meeting adaptability standards.
X/189/2006	WITHDRAWN	Development in proposed form was prohibited.
X/1326/2006	APPROVED	Condition requiring adaptability, with information to be submitted with construction certificate
X/55/2007	IN EVALUATION	-
X/1298/2005	REFUSED	The reason for refusal was non-compliance with adaptability requirements.

The assessment shows that adaptability has been assessed for each of the ten (10) relevant applications approved. In some cases, applications have been refused for non-compliance with adaptability requirements or staff have recommended that applications be withdrawn because of lack of compliance with these requirements.

Preliminary Discussion on Assessing the Effectiveness of LEP 2005

In terms of determining the effectiveness of the adaptable housing provisions in LEP 2005, it is important to note that both Clause 109 (Adaptability of Housing) and Clause 120 (Granny flats) rely on the Australian Standard for AS 4299-1995 for the requirements for adaptability.

That standard sets the industry-wide benchmark for achieving adaptability requirements in house design. Determining the ongoing effectiveness of the requirements for adaptability is the role of those preparing and reviewing the Australian Standard.

The focus of the Council, in determining development applications, is to ensure that development complies with the adaptable housing provisions in accordance with Clauses 109 and 120, which in turn references the Australian Standard as set out in the *Better Living DCP*.

Primarily, the onus is on an applicant to demonstrate compliance with a development standard, including those related to adaptability. As demonstrated in 2 above, consideration has been given to adaptability requirements by Council staff in relation to each relevant application. For those applications that are approved, there are two approaches taken to considering adaptability and ensuring compliance at the development assessment stage:

- Option 1: reviewing plans and/or seeking design amendments to meet adaptability requirements prior to a development consent being issued, or
- Option 2: imposing a condition requiring plans to comply with adaptability requirements, with a statement or certification to be provided prior to a construction certification being issued (an applicant can choose to have this done by the Council or a Private Certifier).

Both of these approaches are valid and both have been applied in cases before the Land and Environment Court. The particular approach adopted may depend on the circumstances of the particular development. Should there be clear non-compliance with adaptability requirements (which would require building re-design for instance) this would typically be addressed prior to a consent being issued as in Option 1. Such an approach is preferred as it ensures that any design alterations required to meet the Australian Standard can be made without the need for subsequent modifications.

In the case of Option B, should an applicant choose to have a Private Certifier issue a construction certificate, Council assessment staff would not be in a position to check compliance with adaptability requirements.

3. Response to Specific Dot Points

Against the above background, the response to the specific questions is provided as follows:

- *Whether all dual occupancy, granny flats and multi dwelling housing are complying strictly with the standards outlined in the DCP.*

Comment: As per Clause 109(3) and Clause 120(1)(d), not all dual occupancies and granny flats are required to be adaptable. Exceptions occur for dual occupancies outside Accessible Housing Areas, for the existing dwelling-houses converted to a dual occupancy and only the alterations and additions required to create a granny flat are required to be adaptable.

As shown in 2 above, assessment staff considered and determined compliance with adaptability requirements (in terms of design) for each application in accordance with clause 109 or 120 prior to consent being issued or as a condition of consent. Where adaptability is required prior to consent being issued, technical staff have reviewed an assessment undertaken as part of the application, with the design checked against the Australian Standard.

Generally this assessment is undertaken by building surveyors, with the assessment subject the accuracy and detail of the plans. Where a condition of consent is imposed, the building designer or an access specialist would undertake such an assessment, with that assessment reviewed by the Council in some cases or a Private Certifier in other cases.

It is beyond the scope of this assessment to review each of the applications to verify whether each of the 119 features for Class A, approximately 90-95 features of Class B or 55 features for Class C (as the case may be) have been strictly complied with for each development proposal. This would not be possible for those developments that are privately certified.

- *Whether all dwellings in the Accessible Housing Areas are complying strictly with the standards outlined in the DCP.*

Comment: Not all dwellings in the Accessible Housing Area are required to be adaptable. For instance, detached houses, and certain dual occupancies and granny flats as noted above. For those dwellings required to be compliant, the same principles apply as outlined in the response to Question 1 above.

- *What procedures does Council have in place to ensure DAs are assessed by an officer who has a thorough understanding of the requirements of AS 4299-1995?*

Comment: The Australian Standard is specific in its requirements. Assessment staff are required to be familiar with the Australian Standard, as well as standards and requirements across a broad range of specialities relevant to development assessment. Generally the level of understanding of staff will be dependent on the number of relevant applications assessed. With the increased emphasis given by LEP 2005 to meeting adaptability requirements, it is expected that the level of understanding of assessment staff (as well as building designers and builders) is expected to increase as more applications are assessed.

However, the level of understanding or practical experience of assessment staff will not in some instances be equivalent to an access specialist, who would regularly review designs to ensure accessibility or adaptability outcomes are achieved. In the assessment of more complex applications, staff therefore would require certification by access specialists prior to consent being issued or as a condition of consent. This approach is recommended for more complex proposals and has been used in some Appeals before the Land and Environment Court. It is important to note that an applicant bears responsibility with compliance for development standards and relevant conditions. Applicants are required to obtain and pay for suitably qualified specialists to ensure standards are met.

- *What procedures does Council have in place to ensure that building inspections are undertaken by an officer who has a thorough understanding of the requirements of AS 4299-1995, to ensure on the ground results?*

Comment: As noted previously, Council only inspects buildings where it is the Principal Certifying Authority. Where a Private Certifier is used, the Council has no control over whether the building surveyor has a thorough understanding of the Australian Standard. Both the Council and the Private Certifiers may rely on statements or documentation provided by specialists in certifying development. Having said that, the Australian Standard relating to adaptability is no more complicated or onerous than other technical requirements administered by the Council's professional staff.

It is not possible to confirm that adaptability requirements have been met in all constructed buildings. Firstly, a significant proportion of developments are yet to be constructed and, secondly, inspections may be carried out by Private Certifiers since the legislation was introduced to allow this system of certification of development.

However, it is acknowledged that the construction stage is critical to achieving adaptability outcomes. With this in mind, it is considered that conditions can be implemented that work toward better ensuring that constructed buildings are adaptable and accord precisely with approved plans in terms of adaptability.

As part of this review it is the case that sound progress has been made in considering the relevant adaptable housing requirements of LEP 2005. It can be expected that a number of changes will be made to systems and approaches to ensure ongoing improvement.

Conclusion

This review of the implementation of the adaptability requirements indicates that the provisions have been considered and implemented in each of the ten (10) application approved. Notably, applications have been refused or assessment discontinued in some cases where adaptability requirements have not been met.

The need to provide adaptable housing is being actively pursued during the development assessment process, with resulting housing being designed to meet adaptability requirements. This is an emerging focus area for development assessment in the Blue Mountains (and other areas) and skills are developing with increased experience in this area. Work procedures will continue to develop. Focus will be given to providing a consistent approach that ensures that designers are responding to adaptability principles in preparing proposals and that on-the-ground outcomes increase the stock of adaptable housing to meet changing community needs.

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