Supporting secondary dwellings (granny flats)

STATE ENVIRONMENTAL PLANNING POLICY (AFFORDABLE RENTAL HOUSING) 2009

The State Environmental Planning Policy (Affordable Rental Housing) 2009 encourages the development of secondary dwellings, commonly known as granny flats, by:

- **Allowing granny flats to be approved as complying development in 10 days;**
- **Allowing granny flats to be built in all residential zones;**
- **Setting clear standards for the development of granny flats.**

What is the Affordable Rental Housing SEPP?

The State Environmental Planning Policy (Affordable Rental Housing) (AHSEPP) was introduced on 31 July 2009 to increase the supply and diversity of affordable rental and social housing in NSW.

The AHSEPP provides for the development of secondary dwellings (commonly known as granny flats) which can be a positive way to add value and flexibility to your home.

The AHSEPP aims to help mums and dads create a place for those who need a space of their own, like elderly relatives or younger people who have not left home. You may choose to make the secondary dwelling available to a relative or a friend or simply rent it out. There are no rent provisions for secondary dwellings outlined within the AHSEPP.

The NSW Government made amendments to the AHSEPP on 20 May 2011 after in a review of the AHSEPP that was carried out after it had been in effect for a year.

Feedback during the review revealed general community support for a State planning policy to encourage more affordable rental housing, but also highlighted the need for the NSW Government to work more closely with councils and the community on identifying the most appropriate locations for new affordable housing.

No changes were made to the secondary dwellings/ granny flats provisions.

Why do we need affordable housing?

Throughout NSW there is a strong need for affordable housing amongst the community. This is reflected in figures which show there were over 47,000 people in NSW on waiting lists for suitable accommodation in February 2010.

It is essential that government at all levels, private industry and the non-government sector work in partnership towards finding innovative ways to provide more affordable housing.

GENERAL INFORMATION ABOUT SECONDARY DWELLINGS

What is a secondary dwelling?

A secondary dwelling, commonly known as a 'granny flat' is a self-contained dwelling:

(a) Established in conjunction with another dwelling (the principal dwelling), and

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

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

Granny flat
Newbury, Stanhope Gardens
Image Source: Landcom

Where are secondary dwellings permitted?

- Zone R1 General Residential
- Zone R2 Low Density Residential
- Zone R3 Medium Density Residential
- Zone R4 High Density Residential
- Zone R5 Large Lot Residential (via DA only)
- Or equivalent zones for the local council area. A guide to the equivalent zones can be found at: http://housingcode.planning.nsw.gov.au/LegislativeandPolicyDocuments/NSWCouncilEquivalentZonesUndertheCode.aspx

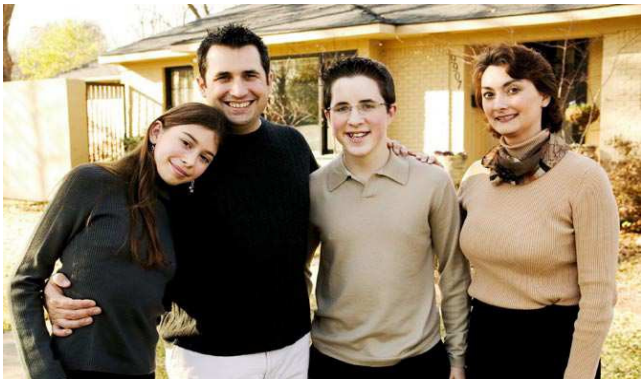
What is the assessment process?

Complying development: A secondary dwelling may be approved in 10 days by a council or accredited certifier, if it meets the complying development provisions in the AHSEPP.

A list of accredited certifiers can be found at www.bpb.nsw.gov.au.

See the flow chart at page 6.

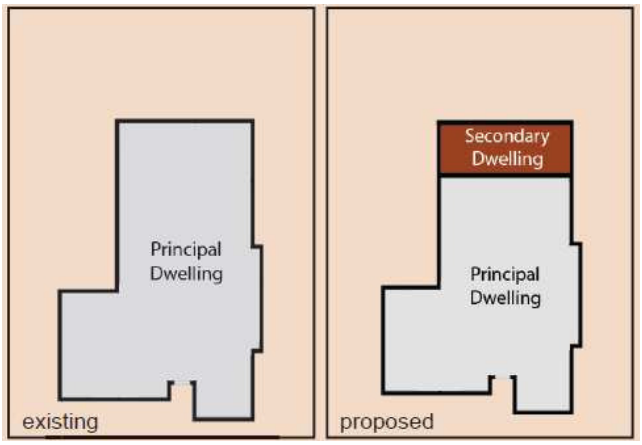
Development application: You may lodge a development application with your local council where your proposal is not able to meet complying development provisions in the AHSEPP. In this case, council assesses and determines the proposal in accordance with the AHSEPP and any relevant council policies.



Design options
Any of these options may require the lodgement of a development application with the local council.

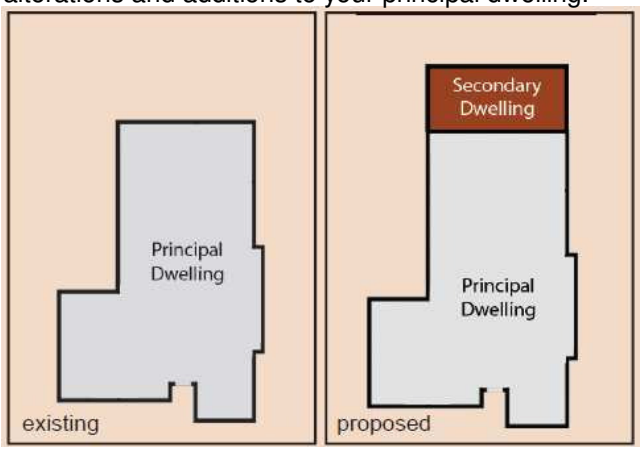
Option: Conversion

The AHSEPP allows you to convert part of the principal dwelling, structure or garage into a secondary dwelling.



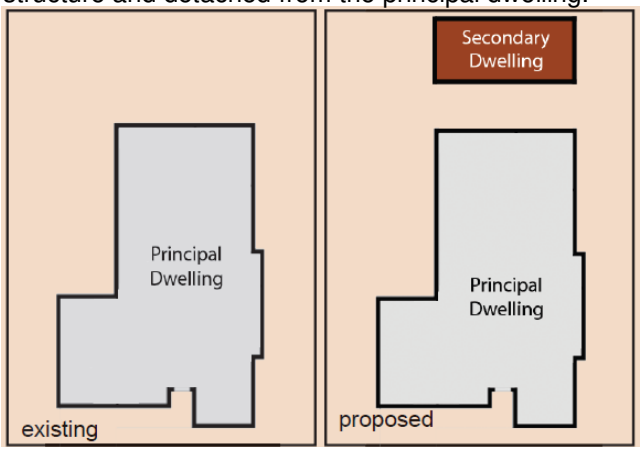
Option: Attached

A secondary dwelling can be built as an extension, alterations and additions to your principal dwelling.



Option: Detached

A secondary dwelling can be built as a separate structure and detached from the principal dwelling.



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SECONDARY DWELLING PROVISIONS

The following provides an overview of the minimum controls outlined in the AHSEPP. This is a general guide only. It is advised that if you are considering building a secondary dwelling that you review the provisions contained in the AHSEPP, available at www.legislation.nsw.gov.au.

General Provisions

One primary dwelling, one secondary dwelling: Development of a secondary dwelling can only result in there being one principal dwelling and one secondary dwelling on the site.

Subdivision: Not permitted.

Total floor area: Secondary dwelling is to have a maximum floor area of 60m². The maximum floor area of the principal dwelling and secondary dwelling is to be no greater than that permitted by the local council in that zone when the development is approved through a development application. The controls for complying development are contained in Schedule 1 of the AHSEPP, as outlined below.

Site area: Minimum of 450m².

Building Code of Australia (BCA): All relevant requirements within the BCA apply. Some secondary dwellings may result in a change in building classification under the BCA.

For example, if **any part** of the secondary dwelling is built above or below the primary dwelling, the building containing **both** dwellings will be classified as Class 2 under the BCA.

Complying Development Provisions

Partial / Internal Conversions: (See Division 2, clause 23(2) in the AHSEPP).

Lot requirements: Excludes environmentally sensitive land and heritage restrictions.

Specific requirements: Must not involve external alterations to the principal dwelling other than an additional entrance.

Erection of a basement or alterations to an existing basement, or the erection of a roof terrace is not permitted under the complying development provisions of the AHSEPP.

Site area: Minimum 450m².

Main Schedule 1 requirements include:
Height: Maximum 8.5 metres and does not include the erection of a basement or additions to a basement or the erection of a roof terrace.

Lot requirements: Outlined in the AHSEPP (see Schedule 1, Part 2, Clause 2).

Site coverage and floor area: See Schedule 1, Part 2, Clause 3, 4 and 5.

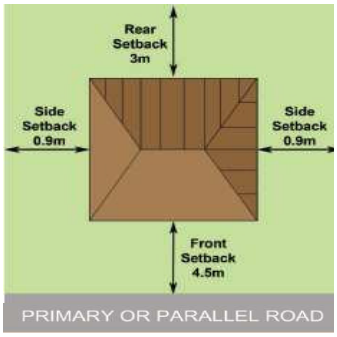
Landscaped area: As outlined in Schedule 1, Part 4, Clause 16 and varies depending on the size of the site.

Privacy: As outlined in Schedule 1, Part 3, Clause 15 a new window in either the secondary or primary dwelling must have a privacy screen if it is in a habitable room and is 1 metre or more above floor level, the wall is set back less than 3 metres from a side or rear boundary and the window has a sill height of less than 1.5 metres.

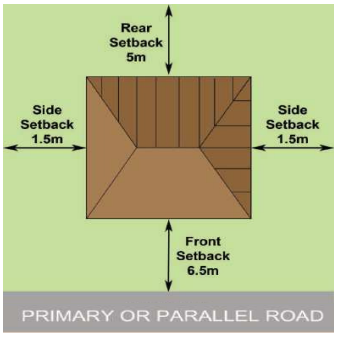
Setbacks and floor heights also need to be considered when including a balcony, deck, patio, pergola, terrace or verandah.

Setbacks: As outlined in Schedule 1, Part 3, Clauses 7-12, the setback of a site with a front boundary on a primary road or parallel road is equal to the average of the front setbacks of the nearest two dwelling houses on the same road. These dwelling houses must be located within 40 metres of your lot (see Schedule 1, Clause 7). Otherwise setbacks are shown below:

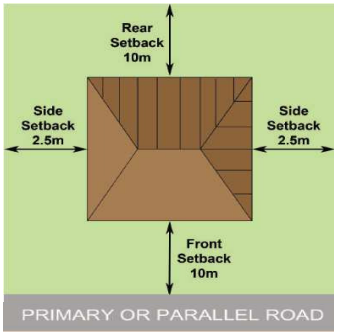
Lot size:
At least **450m²**, but less than **900m²**



Lot size:
At least **900m²**, but less than **1,500m²**



Lot size:
At least **1,500m²**



Private open space: As outlined in Schedule 1, Part 4, Clause 17, at least 24m² and accessible from a habitable room, at least 4 metres wide and with a gradient not steeper than 1:50.

Earthworks and drainage: As outlined in Schedule 1, Part 4, Clauses 18-21.

Articulation zones: As outlined in Schedule 1, Part 3, Clause 13-14, the principal and secondary dwelling must have a front door and a window to a habitable room facing the primary or parallel road.

Development application requirements

Site area: The consent authority cannot refuse consent on the grounds of site area if the site area is at least 450 square metres. However, a consent authority can grant consent to development of a secondary dwelling on a site of less than 450 square metres.

Parking: The consent authority cannot refuse the application if no additional parking is provided on the site.

Council controls: Any relevant council policy that applies to secondary dwellings will continue to apply.

New granny flat in Greystanes
Images courtesy of Granny Flats Australia

FREQUENTLY ASKED QUESTIONS

Q. ***How does a person apply for approval of a secondary dwelling?***

A. Applications can be made in one of the following ways:

- Complying development, by applying to an accredited certifier to construct a secondary dwelling if the secondary dwelling meets the complying development provisions in the AHSEPP, or
- A development application to the local council.

A list of accredited certifiers can be found at: www.bpb.nsw.gov.au.

Q. ***Are secondary dwellings permissible in rural zones?***

A. The AHSEPP provisions for secondary dwellings do not apply to rural zones. Secondary dwellings may be permitted under the council's LEP in these zones, but this will need to be checked with the relevant council.

Q. ***Can a secondary dwelling be established in conjunction with a 'principal dwelling' where the 'principal dwelling' is a dwelling in a dual occupancy or residential flat building (rather than a dwelling house)?***

A. No. Under clause 22 of the AHSEPP, development for the purposes of a secondary dwelling cannot result in there being on the land any dwelling other than the principal dwelling and the secondary dwelling. This means that there can only be one other dwelling on the land with the secondary dwelling.

Q. ***What is the height limit for a secondary dwelling that is complying development under the AHSEPP, if the council's LEP or development control plan imposes a lower limit?***

A. The height limit is 8.5 metres under the AHSEPP. . The complying development provisions for height are outlined in Schedule 1 of the AHSEPP. Normally 8.5 metres will allow two storeys. The height of a secondary dwelling will also be governed by the setback requirements in Schedule 1 Height limits in the council's LEP or development control plan will not apply.

Q. ***Will this cause overshadowing or loss of privacy?***

A. The height limit is the same as for dwelling houses under the Housing Code. The AHSEPP also has setback provisions which are the same as the Housing Code, to minimise impacts like overshadowing and loss of privacy.

Q. ***Do other local council planning controls continue to apply?***

A. If the AHSEPP does not explicitly override a local council planning control, then the local council planning control continues to apply.

Q. ***What happens if there is a conflict between the controls in a local environmental plan (LEP) and the AHSEPP?***

A. If there is an inconsistency between the AHSEPP and the relevant council's LEP, the provisions of the AHSEPP will override those in an LEP to the extent of the inconsistency.

Q. ***Do section 94 development contributions apply?***

A. The AHSEPP does not affect the levying of development contributions under section 94 of the *Environmental Planning and Assessment Act 1979*.

Q. ***Are dwellings approved under the SEPP exempt from bushfire and flood planning requirements?***

A. No, the AHSEPP does not override bushfire or flood planning requirements.

Q. ***Does BASIX apply?***

A. The AHSEPP does not change the application of the Building Sustainability Index (BASIX) requirements.

FURTHER INFORMATION

An updated version of the AHSEPP, incorporating the changes set out in the amending SEPP, is available on the NSW legislation website: www.legislation.nsw.gov.au

The State Environmental Planning Policy (Affordable Rental Housing) Amendment 2011 and fact sheets on the recent changes can be found on the Department's website: www.planning.nsw.gov.au/affordablehousing

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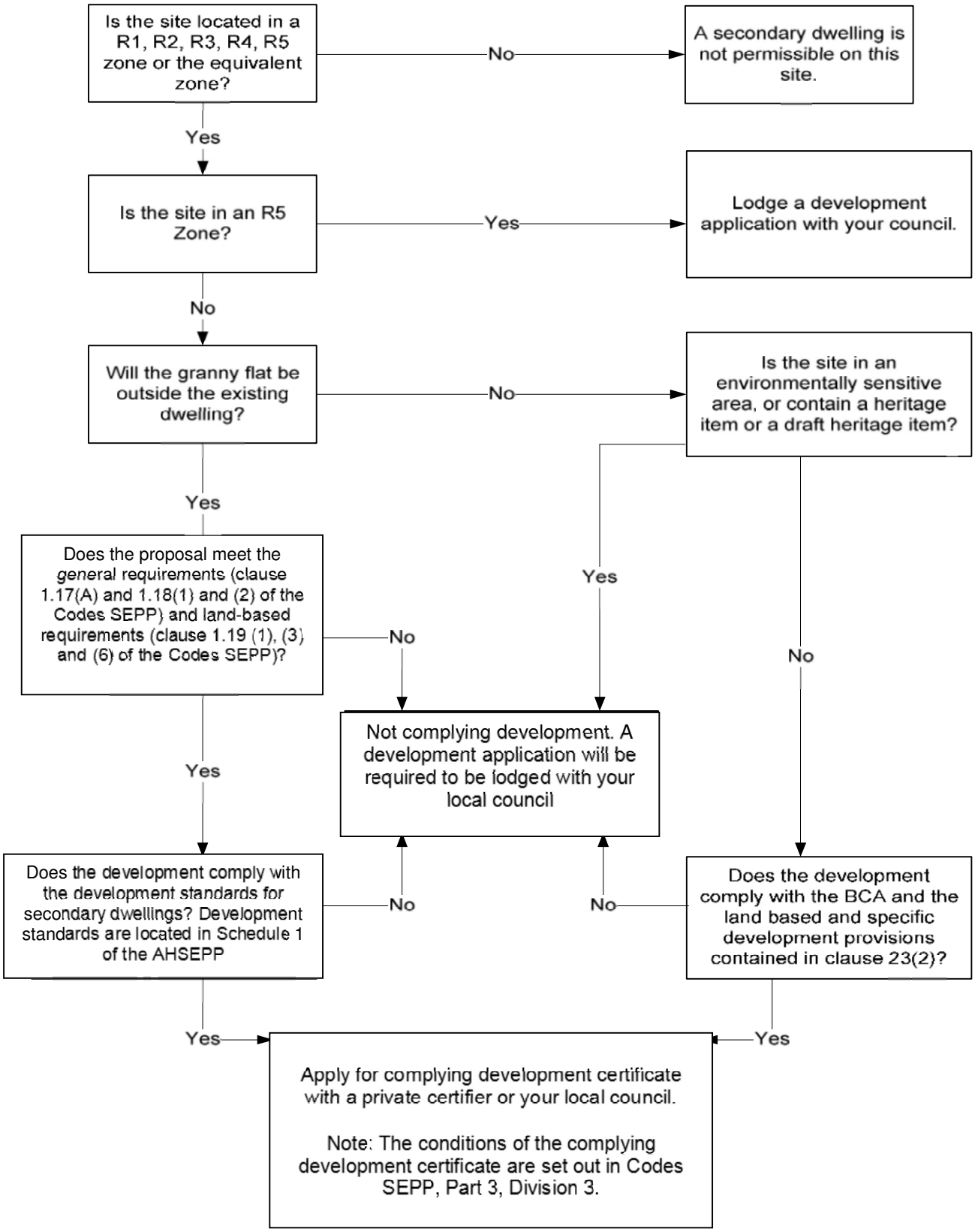
SECONDARY DWELLINGS CHECKLIST