20 June 2006

Ms Gail Connolly  
A/Executive Director Metropolitan Planning  
Department of Planning  
23-33 Bridge Street  
SYDNEY NSW 2000

Dear Ms Connolly

Review of State Environmental Planning Policy (SEPP) (Seniors Living) 2004

Thank you for the opportunity to provide comment in relation to the current review of the Seniors Living SEPP (SL SEPP) which is being undertaken by an Inter Departmental Working Party.

Over the coming decade, the pressure to provide housing for older people will become critical as land for housing diminishes, the proportion of older people increases substantially, the population in the Sydney basin rises substantially, and the movement of older persons to coastal and rural communities increases. Competition for sites will increase land values and unless careful planning is undertaken now, there is a significant risk that inadequate provision will be made to meet the needs of housing for older people.

The Property Council welcomes the current review. We support the objectives of the SL SEPP as a State-based planning tool which facilitates and encourages the provision of housing for older people.

Notwithstanding this support, the Property Council considers the planning controls in relation to the provision of seniors living housing are currently too restrictive, as they restrict the supply of housing for older people and limit the range of dwelling types constructed.

The working party has identified a number of key issues on which it seeks comment from industry stakeholders. The Property Council’s comments in relation to the key issues are set out below.

The Property Council recommends planning controls for the provision of housing for seniors and seniors for non-aged disabled persons clearly differentiate between the different housing types. This could occur through the clear demarcation of the controls which are relevant for housing for seniors, and housing for non-aged disabled persons within the SL SEPP or replacement planning instrument.

It should be noted that although this submission does not address the planning provisions for the provision of housing for non-aged disabled persons, the Property Council acknowledges this sector of the community has unique accommodation needs.
1. The advantages and disadvantages of locating housing for older people or people with a disability in rural zones adjoining land zoned for other purposes

The Property Council considers the current restrictions which arise under the SL SEPP in relation to the construction and operation of seniors housing in rural zones adjoining land zoned for other purposes are unnecessary and unreasonably restrict the availability of land available for seniors housing. This in turn restricts the variety of housing types which can be provided under the SL SEPP, and thus limits access to this form of housing.

The SL SEPP, or replacement provisions in a standard instrument, should clearly provide for the development of seniors housing in appropriately located rural zones which adjoin land zoned for residential purposes. Notwithstanding this, the Property Council recognises that land within such zones may be located a greater distance from urban centres and facilities than is usually the case with seniors housing developments in urban areas. In many instances, this will be entirely acceptable from a planning point of view. For instance, many aged persons may wish to live in seniors housing located in rural or semi rural areas.

In order to ensure that seniors housing within such zones is appropriately located, the Property Council accepts that it may be appropriate to:

(a) apply additional or different locational criteria to proposed seniors housing within these areas; and

(b) require the provision of additional or different community services and recreation facilities in respect of seniors housing which is located within these areas.

This would require the amendment of cl. 25 of the SL SEPP. The objectives of the SL SEPP in relation to location and access to facilities are capable of being met in many ways. Clause 25 or its replacement should be restructured so that the objectives can be met either by meeting prescribed requirements (similar to existing), or by demonstrating compliance with performance based objectives.

Performance based objectives should include or have greater regard to the likely resident population of the proposed seniors’ housing and the reasonable expectations of those residents. Other considerations should include factors such as the range of facilities and services which will be provided within the seniors’ housing development and the likely extent of integration of the seniors’ housing development with nearby residential communities. In addition, regard should be had to whether the relevant seniors housing development will be occupied by active persons, rather than the frail aged.

2. Methods and/or incentives to provide affordable housing for older people or people with a disability

There are a number of methods and/or incentives which should be introduced to encourage the delivery of a wide range of affordable seniors’ housing. Although the Property Council supports the development of a suite of incentives to encourage the provision of low income and affordable housing, we would not support the imposition of developer levies or similar charges to fund affordable seniors housing.

Low income seniors housing is generally provided by charity organisations such as Anglicare and other church groups. Because of the special tax treatment of these organisations, it is appropriate that the community should continue to look to those organisations for the provision of low income seniors housing (rather than commercial developers).
The reality is that the low income and affordable seniors housing markets are unlikely to attract significant private sector investment. The introduction of incentives would help to address this. The Property Council strongly supports the use of incentives as a means of ensuring the continued provision of a wide range of seniors housing, including affordable seniors housing and accommodation in a range of dwelling types.

It is important that any methods and/or incentives which are adopted should also ensure the provision of a wider and more flexible range of seniors’ housing types. This objective should be given equal weight to the provision of affordable seniors housing.

In this context, methods and/or incentives which should be considered include:

- **Density/FSR Bonuses**: Density and FSR bonuses should be available to seniors housing developments which provide affordable housing. The provision of such bonuses will encourage seniors housing developments which house a range of residents with varying income levels, thus more realistically reflecting society as a whole.

  It should also be possible for any such bonuses to be transferred to other seniors housing developments within the same local government area, provided it can be demonstrated that this would not cause any unreasonable adverse impact on other parts of the locality.

  In these instances, developers could choose to incorporate the required amount of affordable housing in a particular development, or transfer it to another development within the same local government area. This could result in some developments having a higher level of affordable housing than others within a council area.

- **Land Supply**: An adequate supply of appropriate developable land is essential in order to achieve a wider and more flexible range of seniors’ housing types, including affordable seniors housing. Thus, planning controls for seniors housing should permit these developments across a range of land use zones (including in rural and other zones adjoining urban areas, as discussed above).

  It is also essential that seniors housing controls apply throughout the state, including in all local government areas in the Sydney region. The Property Council considers the granting of exemptions to certain local government areas (via Schedule 3 of the SEPP), has substantially undermined the utility and effectiveness of the SL SEPP. The Property Council recommends all current exemptions to the SL SEPP be immediately reviewed; if any exemptions remain, they should be subject to regular and periodic review, to ensure any changes in circumstances are addressed in the SEPP.

- **Greater Flexibility in Density Controls**: The Property Council recommends the SL SEPP (or any replacement planning provisions) should provide for significantly elevated levels of flexibility in relation to permitted density of development.

  The SL SEPP (or any replacement planning provisions) should operate at two levels. Existing density and similar controls should continue to apply to seniors housing developments proposed to be undertaken in accordance with the *prescriptive* development standards established by the SL SEPP.

  However, it should be possible to achieve materially higher densities and heights in appropriate locations and on appropriate sites. Provision should be made for the making of site specific masterplan DCPs where densities are *performance based*. Provided the masterplan can demonstrate the proposed densities and/or building height will not have any unreasonably adverse impact on surrounding lands, densities for seniors living developments could be
increased. The masterplan DCPs should not be restricted to existing 0.5:1 FSRs, 2 storeys, or 8 metre building heights.

Although local councils would normally be expected to approve and adopt the masterplan DCP, in the event that the relevant council fails to adopt the relevant DCP, the Land and Environment Court should be able to approve any DA which is consistent with the relevant DCP, even though the DCP has not been formally adopted by the local council.

In order to achieve effectively this, an amendment to the SL SEPP would be necessary to ensure a draft DCP would be given the same level of weight by the Court as a variation to development standards via SEPP 1 or other instrument.

- **Greater recognition of trend towards “ageing in place”**: It is clear that there is a strong trend in the community to “age in place”. That is, to continue to reside in existing accommodation while ageing, rather than move into distant seniors housing with higher levels of care.

This trend suggests that in many instances it will not be appropriate to require seniors housing developments to make the same level of provision for higher levels of care which have been made in the past, and the SL SEPP (or any replacement planning provisions) should ensure that there is sufficient flexibility, recognising the planning implications of this trend.

3. **Measures to ensure that housing developed for seniors and people with a disability remains available to these groups**

The Property Council strongly recommends that housing which has been developed for seniors and people with a disability remains available to these groups through the imposition of appropriate conditions on development consents. However, the occupation of seniors housing by seniors and/or people with a disability should not be controlled by the registration of instruments, such as restrictive covenants on title to the relevant parcels of land.

The *Environmental Planning and Assessment Act 1979* establishes mechanisms which allows the identification of development consents issued in respect of any particular parcel of land and also permits members of the public to obtain copies of those consents, including conditions. The conditions of development consent are enforceable by anyone in NSW in the Land and Environment Court.

Having regard to these mechanisms, there is no reason why additional or different controls should be utilised to ensure that housing developed for seniors and people with a disability remains available to those groups. In particular, there is no reasonable basis to impose controls on the title to land, such as by the imposition of restrictive covenants.

Jurisdiction to enforce any such covenants would lie with the Supreme Court, rather than the Land and Environment Court. As the Land and Environment Court is a court of superior record and has been established as a specialist planning tribunal and to ensure consistency with the *Environmental Planning and Assessment Act 1979*, it would be inappropriate to now pass the enforcement of planning controls to the Supreme Court.

4. **Developments which have been undertaken under the SEPP Seniors Living and the positives and negatives of working under the Policy**

Positives of working under the SL SEPP include:

- the provision of specific planning controls to address an acknowledged housing need;
the objectives and policy direction behind the SL SEPP; and

- the creation of a base level of development standards for the provision of seniors housing.

Negatives of working under the SL SEPP include:

- The limited take up of developments under the SL SEPP, and the consequent limitation on the number of seniors within the community who reside in seniors housing constructed under the current SEPP or its predecessor;

- Continued uncertainty in relation to the land to which the SL SEPP applies. Although some caselaw has assisted in allowing an understanding of the application of the SL SEPP to different locations, the continued uncertainty in relation to these provisions is on occasions exploited by local government. Greater clarity in relation to the land to which the SL SEPP applies would substantially assist in minimising disputes between developers and local government, including costly appeals to the Land and Environment Court;

- The SL SEPP allows local councils to exclude the operation of that SEPP by rezoning land in a manner which results in the land falling in Schedule 1 of the SL SEPP. This restricts the land on which seniors housing can be undertaken, and ultimately limits the supply of seniors housing throughout the State;

- The SL SEPP lacks flexibility. As discussed above, the SL SEPP (or any replacement planning provisions) should provide for greater flexibility in relation to the type and density of seniors housing. Beyond the base development standards currently established by the SL SEPP, provision should be made to allow materially higher densities by allowing existing controls in relation to FSRs, heights, and number of storeys, to be exceeded if an appropriate site specific masterplan or DCP has been prepared; and

- The requirements of the SL SEPP in relation to vertical villages impose unreasonable requirements in relation to the provision of on-site support services. The requirement to provide three meals a day, personal care, home nursing visits and assistance with housework contemplates that vertical villages will only be occupied by the frail aged. It is in the community’s interests that vertical villages also be provided for the active aged; Part 6 of the SL SEPP does little to encourage the provision of that style of housing.

5. Reasons why developments have not been constructed under SEPP Seniors Living

The principal reasons why seniors housing developments have not been constructed are discussed in the response to Point 3 above.

Conclusion

The Property Council welcomes the review of the seniors living state environmental planning policy by an Inter Departmental Working Party. We note this review was foreshadowed in City of Cities: the Metropolitan Strategy for Sydney, and follows last year’s amendment to the SL SEPP that restricts the development of seniors housing in or near rural lands.

The Property Council supports the use of the SL SEPP as a mechanism to provide a range of housing for older people and those with a disability. We support seniors housing being located close to existing communities with a range of services; alternatively, those facilities can be located within seniors living developments.
It may be appropriate for development standards to be varied in some circumstances to ensure the construction of seniors housing remains economically viable. Site specific development control plans would be prepared by applicants in those instances. Incentives could also be used to encourage developers to provide seniors living projects that are specifically targeted at low income persons. However such incentives should not be made available to charitable organisations, as they already receive other benefits such as favourable tax concessions.

This submission has not commented directly on mechanisms to deliver housing for disabled persons aged less than 55 years. We recommend planning controls for this type of housing be clearly differentiated from those for seniors housing, and incorporated into the SL SEPP or a replacement planning instrument.

Finally, the Property Council strongly recommends planning controls related to the provision of housing specifically for older Australians be incorporated into the standard local environmental plan. This will ensure consistency in the delivery of this type of residential development across the State. It will also confirm the intent of the standard instrument to consolidate all SEPPs and REP s in force in NSW into a single instrument.

Do not hesitate to contact me if you would like to discuss the issues raised in this submission.

Yours sincerely

Ken Morrison
NSW Executive Director