## Title Page

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Title: To promote or to limit Livable Housing Design Guidelines within Development Control Plans is the question for governments and built environmental professionals.

Note: Omitted in-text reference(s) refers to repeating an existing reference in the same paragraph/section.

This thesis should be read in association with the appendix spreadsheet.

## Editing Note

A version of this document has previously been submitted in May 2022 for the award of Master of City Planning at University of New South Wales School of Built Environment. This document has been edited and updated for the purpose of publication on the Centre for Universal Design Australia website.

## Abstract

There is a patchwork of accessibility standards and guidelines for private housing. The Livable Housing Design Guidelines (LHDG) has emerged to be a guide for designing liveable housing in the mainstream private market for persons with disabilities. Without direct implementation of LHDG within the New South Wales (NSW) planning system, planners and designers are reliant on Development Control Plans (DCPs) that contain clauses that require or encourage LHDG. After searching for these documents, the thesis uses qualitative content analysis to assess the degree to which DCPs contain Livable Housing Design Guidelines. Further use of case studies assists in understanding how built environment professionals respond to the conflicts between LHDG and Australian standards (AS) for buildings, especially AS 1428, AS 2890.6-2009, and AS 4299-1995. Even when considering Livable Housing Design Guidelines, DCPs, Australian standards, and the Disability Access to Premises Standards 2010, built environmental professionals provide a variety of decisions in terms of requiring compliance with these documents. This research provides recommendations to Livable Housing Australia, Standards Australia, local, NSW and Commonwealth governments, and accessibility advocates. It is hoped that the future direct implementation of LHDG into the NSW planning system would increase the number of LHDG accredited dwellings.

Breakout sentence:

It is hoped that this research assists on the journey towards meeting the unfulfilled target of “100% of all dwellings meeting the silver level by 2020.” (Sharam et al, 2018, p.33-34).

A picture containing text, outdoor, sign

Description automatically generated

family member’s selection of picture of Queensland property from REA

## Title

To promote or to limit Livable Housing Design Guidelines within Development Control Plans is the question for governments and built environmental professionals.

## Acknowledgements

The author thanks the various providers of information. The author thanks the university, its staff, supervisors, assistants, and parents for assistance, advice, and influence.

## Disclaimer

Whilst the author may have different experiences to those being researched, the reader should keep an open mind in reading the thesis. The author who uses a screenreader to access a computer is not responsible for errors as it is written in good faith. This document is written with the available information at the time. The author declares previously participating in exhibition of amendments to Environmental Planning Instruments. Any submissions in the area similar to research subject during the research period, the author has made declaration of studying Livable Housing Design Guidelines. The author in making submissions understands that the NSW government asserts its right to provide an outcome different to the submissions provided by stakeholders. Whilst being an inadvertent member of the Australia Network on Universal Housing Design through obtaining emails, the author has not attended any meetings, and that the views of this report are of the author as student researcher. Subsequent to completing the document, changing life circumstances including employment status and obtaining real property may warrant the author to change views, opinions, and positions. Please seek your own advice before implementing any recommendations proposed in this document.

## Acronyms, abbreviations, and definitions

For more information on acronyms, abbreviations, and definitions, see bibliography of non-academic sources.

|  |  |
| --- | --- |
| Acronyms, abbreviations, and terms | Stands for or defined as |
| 7 elements within the silver level | involves a step-free path between levelled dwelling entrance, street entrance and/or parking area; at least one level or step-free entrance into the dwelling; internal doors and corridors that provide comfortable and unimpeded movement between spaces; easy access to a toilet on ground or entry level; a bathroom that contains a hob-less shower recess; reinforced walls around the toilet, shower, and bath to support the safe installation of grabrails in future and; stairways with railing on one side are designed to reduce the likelihood of injury. |
| Accessible Housing Design | housing built to comply with AS1428 meeting the same standards as public spaces, to provide access for persons with sensory and physical disabilities (Grant et al, 2017). Since 1977, AS1428 has been developed into 4 parts. (See definition for NCC). |
| Adaptable Housing Design | is housing built to AS4299-1995, even though some features like door widths have been taken from AS1428, enables future adaptation at low cost to meet individual changing or higher needs (Grant et al, 2017). |
| ADG | Apartment Design Guide. |
| ADP | Aging and Disability Policy (or variant) |
| AHS | Affordable Housing Strategy |
| AS1428 | Australian Standards 1428 |
| AS1428.1-2021 | Australian Standard 1428.1-2021 (general requirements) which supersedes Australian standard 1428.1-2009; |
| AS1428.1-2009 | Australian Standard 1428.1-2009 |
| AS1428.2-1992 | Australian Standard 1428.2-1992 (Additional requirements); |
| AS1428.3-1992 | Australian standards 1428.3-1992 (for children and adolescents with physical disabilities); |
| AS1428.4.1-2009 | Australian standards 1428.4.1-2009 (requirements for tactile ground surface indicators); |
| AS1428.4.2-2018 | Australian standard 1428.4.2-2018 (requirements for the orientation of visually impaired persons -Wayfinding signs); |
| AS1735 | Australian Standard 1735 for lifts, escalators and moving walks which includes Australian Standards 1735.12; |
| AS2890.1 | Australian Standard 2890.1 |
| AS2890.6-2009 | Australian Standard 2890.6-2009 Off-street parking for persons with disabilities |
| AS4299-1995 | Australian Standards 4299-1995 where some features refer to Australian Standard 1428.1-2009 and Australian Standard 1428.2-1992. One difference between AS4299-1995 and LHDG is that AS4299-1995 specifies particular appliances such as telephone, tv antenna, fridge, clothesline, washing machine and dryer, whereas LHDG does not. Another difference is that adaptable housing design is for developments on the ground level without stairway, whereas LHDGE developments involve stairways with railing and/or lifts. |
| class 1A | A building class under NCC including a detached house, a row house, terrace house, town house or villa unit; |
| class 2 | A building class under NCC involving a residential building with two or more separate dwellings; |
| class 4 | A building class under NCC involving the residential part(s) in a mixed-use building; |
| class A | A building class where a building containing all essential and desirable accessibility features as stated in AS4299-1995; |
| class B | A building class where a building containing all essential accessibility features and 50% of desirable accessibility features under AS4299-1995; |
| Class C | A building class where a building containing essential accessibility features only under AS4299-1995; |
| CRPD | Convention on the Rights of Persons with Disabilities |
| CSP | Community Strategy Plan; |
| DAPS | Disability (Access to Premises - Buildings) Standards 2010 |
| DCP or DCPs | Development Control Plan or Development Control Plans that provides additional and detail requirements to implement an EPI such as the size, material and colour of external walls, roofs, doors, and windows. DCPs, policies and other council documents are document that has no legal force and where there is flexibility of application (Thorpe, 2015; Williams, 2015). The confusion for built environmental professionals in enacting/implementing DCPs is that while DCPs are part of EPAA, DCPs on their own does not have legal force. |
| DDA | Disability Discrimination Act |
| Detached house | A development involving a building containing one dwelling. |
| Development or developments | the use of land, subdivision of land, construction of a building, enlargement/alterations to a building, carrying out of works, demolition of building, and any other activities as specified in EPAA (Williams, 2015). |
| DIAP | Disability Inclusion Action Plan, which is a 4-year plan providing goals and strategies to make a local government area accessible and inclusive for persons with disabilities as required under the Disability Inclusion Act 2014 |
| DPIE | NSW Department of Planning, Industry and Environment |
| EPAA | Environmental Planning and Assessment Act 1979. EPAA includes the legislation itself, regulations and EPIs made under EPAA, NCC, and DCPs, as well as any other legislation, regulation, and standard that are called up. |
| EPI or EPIs | Environmental Planning Instrument or Environmental Planning Instruments which are statutory planning schemes or planning documents at state and local government level that has legal force. These documents are enacted by the NSW Government and provides information stating whether a development is permitted with consent, permitted without consent, complying development, exempt development, or prohibited (Williams, 2015). See Williams, 2015 for more information about the above terms not mentioned in this document. |
| Exempt and Complying Developments SEPP | For housing developments, the Exempt and Complying Developments SEPP determine the activities and the standards that enable for particular developments to be defined as complying development and exempt development (Williams, 2015). |
| Gold level | Gold level of the LHDG where kitchen, laundry area, at least one bathroom and at least one bedroom are on the ground floor; |
| GSC | Greater Sydney Commission |
| Housing SEPP | State Environmental Planning Policy (Housing) as of 26 November 2021 which absorbs Affordable Housing SEPP and Seniors Housing SEPP; |
| LEC | Land and Environment Court of New South Wales |
| LEP or LEPs | Local Environmental Plan or Local Environmental Plans which are EPIs that apply to a particular local government area. A draft of a Local Environmental Plan in reference to state, regional and local policies is first supported by a local council before being reviewed by DPIE and finalised by Legal Council, an arm of the NSW government. LEPs refer to broad elements such as land use zones, list of developments that are permitted in a particular zone, lot size, floor space ratios, and height (Williams, 2015). |
| LGA or LGAs | Local Government Area or Local Government Areas |
| LHA | Livable Housing Australia |
| LHDG | Livable/Liveable Housing Design Guidelines, Livable Housing Guidelines, UHDG. For Western Australia, the definition refers to an open planned dwelling that is accessible for a person with disabilities which may or may not comply with the guidelines provided by LHA. The Livable Housing Design Guidelines 2017 version as provided by Livable Housing Australia requires implementation of AS1428.1-2009 in part for silver level, gold level and platinum level. |
| LHS | Local Housing Strategy/strategies (or variant) which are a document identifying the housing needs of a local government area for the next 20 years and strategies of reaching that goal as required by the Greater Sydney Commission Act 2015; |
| Livable Housing Design | housing that meets the changing needs of a person throughout their lifetime (Grant et al, 2017); |
| LRHDDG | Low Rise Housing Diversity Design Guide |
| LSPS | Local Strategic Planning Statement(s) (or variant) which are 20-year future vision of a local government area as required under the Greater Sydney Commission Act 2015; |
| NCC | National Construction Code that provides minimum design, construction, and performance standards in Australia. The minimum accessibility requirements involve AS1428, AS2890.6-2009, and AS1735 either in whole or in part. However, it is necessary to refer to EPIs, DCPs and LHDG to require the use of both AS1428.1-2009 and AS1428.1-2021 as the standard itself is a guide and not a requirement for class 1, 2 and, 4 buildings in using terms from the DAPS. Industry suggests that all parts of AS1428 is exempt for class 1 buildings, and the non-common property of class 2 and perhaps class 4 buildings. Perhaps, AS1428 is applied in private housing when a homeowner engages home modification service providers (Tanner, Tilse & de Jonge, 2008). |
| Newbury test | A test in establishing the validity of conditions placed on consent as established by Newbury District Council v Secretary for the Environment [1981]. Such conditions of consent are imposed for a planning purpose likely to be located in, referred by or called up by the EPAA; fairly and reasonably relate to the development for which consent is given; and not be so unreasonable that no reasonable planning authority would have imposed it (Williams, 2015). The third part prohibits uncertain, open-ended, and unenforceable conditions. |
| NDIS | National Disability Insurance Scheme |
| Platinum level | Platinum level of the LHDG where the guidelines make requirements for windowsills; |
| POPIS | Privately Owned Public Internal Spaces where the building and internal spaces of a building is privately owned but for the purpose of DAPS or other legal requirement those spaces and areas internal to a building are defined as public spaces where that is no or limited restriction on entry and movement to the public. Conversely, Privately Owned Public Open Space (POPOS) refers to privately owned spaces and areas that are external to a building including an area of land, terraces, balconies, and decks that have no or limited restriction on entry and movement to the public (Legislation NSW, 2021a; Marshall, 2016). |
| probably yes | “Probably yes” refers to where the information states that public exhibition of the draft DCP or DCPs has likely occurred but unable to obtain post-public exhibition report stating any amendments. |
| RDP | Regional or district plan |
| Silver level | Silver level of the LHDG (see definitions for “7 elements within the silver level”); |
| Silver level mandate | Mandating all dwellings to meet the silver level of the LHDG; |
| Seniors’ housing | Housing for seniors as well as persons with disabilities of any age, living in residential care facilities, aged care facilities, retirement homes, hostels, and independent living units. The concern for researchers and accessibility advocates alike refers to continuing to place persons with disabilities under the age of 65 in residential care facilities and aged care facilities despite being defined as unsuitable for those persons (Wright, Muenchberger& Whitty, 2015). |
| Seniors Housing SEPP | State Environmental Planning Policy - Housing for Seniors or Person with a Disability 2004 |
| SEPP | State Environmental Planning Policy or policies which are EPIs enacted by the NSW government; |
| SEPP 65 | State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development |
| SPS | Social Plan or Social Planning strategy |
| Strata community or strata communities | A sub-division of a low-rise or high-rise residential apartment building into separate privately owned apartment or unitholders, and common property owned by all unitholders in the building or strata community (Sherry, 2020). The management of these strata communities are managed through a strata manager and a body corporate. The body corporate is made up of unitholders elected by unitholders. |
| Tenure blind or tenure blindness | Dwellings that look the same, share entrances onto the same street, and enjoy the same elevated level of maintenance (Stubbs et al, 2018). |
| TGIS | Tactile Geographical Indicator Strip(s); |
| UHDG | Universal Housing Design Guidelines or Universal Housing Guidelines are guidelines as previously provided by Landcom, an agency of the NSW Government. These guidelines have been superseded by LHDG 2017 version. The information from Narrandera Shire Council suggests that UHDG in comparison to LHDG, UHDG in combining silver level, gold level and platinum level, provides levelled building entrance from car parking space but not from the street, places bedroom and bathroom on ground floor, provides minimum size of kitchen and laundry areas, and does not refer to safe stairways. LHDG in separating UHDG into silver level, gold level, and platinum level, to provide flexibility in the provision of accessibility features. The only minimum room size within LHDG is a minimum of 10m2 for gold level bedrooms. Whilst not specifying minimum room sizes in general, LHDG accredited dwellings provides for a potential to increase the size of rooms beyond those specified in the UHDG through circulation space requirements. Base on the information from Narrandera Shire Council, as it contains windowsill requirements, the closest equivalence is the platinum level. |
| visitable home | where the ground rooms including bathroom and bedroom are accessible to a person using a wheelchair (Grant et al 2017); |
| VPAG | Voluntary Planning Agreement policy/Guidelines that provide guidelines for councils to negotiate with developers for alternative to developer levies; |

## Contents

[Title Page 0](#_Toc110157609)

[Editing Note 1](#_Toc110157610)

[Abstract 1](#_Toc110157611)

[Title 2](#_Toc110157612)

[Acknowledgements 2](#_Toc110157613)

[Disclaimer 2](#_Toc110157614)

[Acronyms, abbreviations, and definitions 3](#_Toc110157615)

[Contents 12](#_Toc110157616)

[1.0 Chapter 1: Introduction 14](#_Toc110157617)

[2.0 Chapter 2: Methodology 19](#_Toc110157618)

[3.0 Chapter 3: Conceptual Frameworks 23](#_Toc110157619)

[4.0 Chapter 4 Topic Issues 28](#_Toc110157620)

[5.0 Chapter 5: Council document analysis Results 36](#_Toc110157621)

[6.0 Chapter 6 Case Study analysis results 43](#_Toc110157622)

[7.0 Chapter 7 Discussion 51](#_Toc110157623)

[8.0 Chapter 8 Concluding statements 56](#_Toc110157624)

[Academic references 65](#_Toc110157625)

[Bibliography of non-academic sources 68](#_Toc110157626)

[Appendix 1: Ethics approval letter 122](#_Toc110157627)

[Appendix 2: Spreadsheet 124](#_Toc110157628)

## 1.0 Chapter 1: Introduction

### 1.1Shortage of appropriate housing Context

There is a shortage of housing that meet the needs of persons with disabilities in promoting their social and economic participation in society (Bridge et al, 2002; Grant et al, 2017). Persons with disabilities who leave home require significant care services due to the lack of housing standards that mandate/encourages accessible, adaptable, and livable/visitable housing (Carnemolla and Bridge, 2019). As a result, persons with disabilities continue to occupy a growing section of nursing homes and hospitals due to the lack of funding, appropriate training of staff and streamlined NDIS assessments (ABC News 2, 2021; Wiesel and Habibis, 2015). Further, it is inappropriate to send persons with disabilities who are simply waiting for appropriate housing, to hospital and nursing homes when both are in stress due to the corona virus pandemic (Wright, Muenchberger & Whitty, 2015).

### 1.2 Introduction of LHDG

Since 2010, Livable Housing Australia (LHA), as a government funded not-for profit organisation, has been administrating, updating, and accrediting buildings as silver, gold, or platinum level under the Livable Housing Design Guidelines (LHDG) in utilising livable housing design (LHA, 2017; Sharam et al, 2018; Ward and Jacobs, 2017). There are seven elements within the silver level that covers entry into building, doors, corridors, and toilet/bathrooms. In addition, gold level and platinum level provide more generous dimensions than the silver level and cover other parts of the premises beyond the coverage of the silver level. In 2021 the LHDG have attracted significant media attention. Accessibility advocates have been successful in their lobbying efforts for an increase in LHDG housing. An amendment in the 2022 version of the National Construction Code (NCC) requires that all new class 1A and class 2 dwellings be built to the silver level (ABC News 1, 2021; DAPS, 2011).

### 1.3 NSW Government’s refusing to the silver level mandate

However, the NSW Government refuses to mandate all dwellings to the silver level citing cost and benefit (Downsizing, 2021; National Seniors Australia, 2021). The NSW Government claims that:

(a) a silver level mandate increases costs for minimal benefit;

(b) existing accessibility standards are already high;

(c) the silver level mandate would be inflexible;

(d) existing dwellings have no obligation to modify; and

(e) the existing legal minimum amount of LHDG accredited dwellings is sufficient. Even if the NSW Government chooses to reverse its decision, it is necessary to scrutinise the above claims, analyse local councils’ DCPs and research LHDG implementation issues (Ward, Franz, & Adkins, 2011). While optimistic, accessibility advocates are concerned that built environment professionals are forced to deal with one system in NSW and another for Queensland, for example (Queensland fifth, 2021).

### 1.4 concerns of coverage of standards

In addition to housing shortages, the Disability (Access to Premises - Buildings) Standards 2010 (DAPS) provides exemptions for class 1A, 2 and 4 buildings (Jackson, 2018; Sharam et al, 2018). The silver level does not cover all parts of a premises (Newman, 2010). There is a challenge to satisfy the needs of all types of disabilities (Maryam et al, 2021). There is no register to tally the number of LHDG accredited housing (Ward and Jacobs, 2017).

### 1.5 LHDG implementation concerns

Regardless of the above information, there is still a lack of housing choice for persons with disabilities (Wright, Muenchberger & Whitty, 2015). Critiques have cited a number of avoidable problems in this regard. The existing mandates for LHDG fails to cover 100% of a high-rise or low-rise building (DPIE, 2021a, 2021d, 2020a, 2020b, 2015). There is a lack of local councils with DCPs that enact LHDG. It is concerning that LHDG is used to require the use of AS1428 in private housing. There is a concern that material finishes would segregate LHDG accredited dwellings from other dwellings (Stubbs et al, 2018). There are issues in communicating information about LHDG as stated in DCPs that may confuse built environment professionals. Finally, local councils’ DCPs create conflicts between LHDG and Australian Standards even if they are minor conflicts which may reduce confidence of built environmental professionals in meeting their accessibility requirements (ABC News 3, 2021). The above problems and concerns are expanded in chapters 3 and 4 where each problem is researched by council document analysis or case study.

### 1.6 Research Questions

This thesis examines the built environment planning and design issues that motivate the promotion and limitation to provide sufficient appropriate housing for persons with disabilities. Specifically, it seeks to ascertain how access to such housing is currently being achieved, and how this might be enhanced, for example through the incorporation and implementation of LHDG in local council DCPs. Such provisions would remind built environmental professionals to consider the minimum or enhanced implementation of LHDG within the development approval process. Thus, the research in using council document and case study analysis, ask what are the motivations to promote and limit the provision of LHDG accredited dwellings through the NSW statutory planning system and in local council DCPs?

### 1.7 Objectives

This thesis involves a search for LHDG in planning documents including DCPs. After identifying DCPs that enact LHDG, the weight accorded to these documents is then assessed. Here, Council document analysis and consideration of case studies aids in researching issues that can be examined by a desktop study.

The objectives of this study are to:

* Explore the use of LHDG in the NSW Planning system;
* Conduct analysis of DCPs that enacts LHDG;
* Through council documents and case study, understand the concerns and issues of built environment professionals in obtaining LHDG accredited dwellings and housing for persons with disabilities; and
* provide recommendations for the increase of LHDG in the NSW Planning system.

### 1.8 Scope of the Thesis

This research on LHDG relates to disability studies, disability housing, disability housing design, and related built environment infrastructure that support persons with disabilities inside and outside home. The research focus on private housing briefly touches on affordable housing, strata communities, and home modifications. In studying disability housing design, this research may touch on environmental issues relating to the development process that eventually provide LHDG accredited dwellings. Whilst studying the NSW planning system, this study may touch on open-plan dwellings as a LHDG feature in other states and territories. The employment of convergent mixed-method research in this thesis uses a number of concepts. These includes regulation/regulatory theory, disability geography, universal design and meanings of home as improved by home design.

### 1.9 Structure

This thesis is divided into eight chapters.

Chapter 1 introduces the thesis by outlining its context, problem statement, central research question, objectives, scope, and structure.

Chapter 2 describes the research methodology adopted by the thesis.

Chapter 3 examines the relevant conceptual framework as found in the literature.

Chapter 4 begins the scrutiny of the concerns, problem statements and research question by the thesis.

Chapter 5 presents and discusses the results from council document analysis on LHDG.

Chapter 6 presents and discusses the results from case study analysis on LHDG.

Chapter 7 summarises the thesis’ findings and provides a discussion in reference to the literature review.

Chapter 8 concludes the thesis by providing resulting recommendations, reasons for a contentious recommendation, identifies limitations, opportunities for future research, and final statements/remarks.

## 2.0 Chapter 2: Methodology

2.1 Introduction

### 2.1 Chapter Introduction

The following is the methodology of the thesis. The methodology includes information on mixed-method research, council document and case study analysis. Data sources, data analysis and ethical considerations are also included in the below chapter.

### 2.2 Data sources

The primary data sources focus on the resulting analysis/assessment of secondary data. The secondary data sources include e-books, Journal articles, government and non-government documents including policies, statements, reports and meeting minutes, news articles and websites (Bryman, 2012; Hall, 2008).

### 2.3 Mixed Method research

The convergent mixed method research involves a literature review, quantitative content analysis of documents, a qualitative content analysis of local councils’ DCPs containing LHDG and other documents, and case studies involving development application documents implementing LHDG by built environment professionals (Bryman, 2012; Hall, 2008). For quantitative and qualitative research, DCPs that implement LHDG are purposively selected. The LGAs selected for the research include Ballina, Bayside, Bellingen, Canterbury Bankstown, Georges River, Hornsby, Inner-west, Kempsey, Kiama, Ku-ring-gai, Kyogle, Narrandera, Newcastle, North Sydney, Penrith, Parramatta, Queanbeyan Palerang, Randwick, Shoalhaven, Sutherland, Sydney City, Waverley, Wollondilly, and Wollongong. Canterbury Bankstown Council is included in the analysis/assessment to pre-empt the future commencement of its DCP enacting LHDG when the Canterbury Bankstown LEP is published on the NSW legislation website.

### 2.4 Quantitative data analysis

The research involves identifying the number of councils with DCPs enacting LHDG. This has involved a primary search of keywords and phrases such as “Livable Housing Design Guidelines”, “livable housing”, “Liveable Housing Design Guidelines”, and “Liveable housing” in their enforced or endorsed document (Bryman, 2012; Williams 2015). The research also involves a secondary search for the use of “Universal Housing Guidelines” and “universal housing design guidelines” since their absorption into the 2017 version of LHDG (Landcom, 2019). Unless they propose to enact LHDG, draft DCPs are not counted as they are not included in the assessment of development applications. To assist in this activity, the NSW Local Government Association directory of websites provides a survey frame (NSW Council link, 2021). The searches involve using either an individual local council’s website’s search field, or through a search engine using the website address minus “http://www.” and using keywords such as “cbcity.nsw.gov.au” and “livable housing”. After finding which local councils’ DCPs include LHDG, the research methodology then counts the number of LGAs with DCPs incorporating LHDG in relation to:

* whether LHDG is a “desirable outcome”, “encouraged”, “encouraged to consider”, or “required”;
* whether the provisions exceed, are consistent, or inconsistent with, ADG/LRHDDG;
* whether the DCP directs applicants to the LHA website, another EPI that provides for the LHA website, or forces the applicant to search for the LHA website on their own due to lack of information;
* whether they present all seven elements of LHDG or less;
* whether they refer applicants to current or outdated versions of LHDG including UHDG;
* whether alterations are included;
* whether AS1428 is specifically required as independent of NCC and LHDG;
* whether they require implementation in combination with AS4299-1995;
* whether livable or adaptable dwellings are required to be integrated into design and finishes;
* whether they have unjustifiable hardship provisions on top of DDA/DAPS;
* whether they require verification of LHDG; and
* more specifically, whether the platinum level of LHDG would breach the DCP controls relating to windowsill.

### 2.5 Qualitative Council document analysis

The selected DCPs are assessed against public consultation, consistent application, consistency with state, regional, and local policies, or some combination of the three (GSC, 2021; Pinnegar, Randolph & Troy, 2020; Williams, 2015). Within the council documents, various key terms or variants as provided by LHDG 2017 version are coded to ascertain whether they are included in the selected DCPs (Bryman, 2012; see appendix spreadsheet). Thematic coding assists in generating a summary of emerging themes, concerns and solutions as provided by the various local council DCPs that implement LHDG.

### 2.6 Case studies

In conveniently and purposively searching for case studies, most local council development application tracking systems require a development application number that forces one to instead search for a disability access report or a determination report that enacts LHDG. However, a number of local councils including Sutherland Shire allow persons to use a search engine <https://webservice.ssc.nsw.gov.au> and search by keywords (such as “livable housing”) for relevant development applications. In enquiring into sections of development application referring to LHDG, the criteria for case studies includes: a class 1A, class 2, or class 4 building or building part, with balcony, outdoor features, or both, and applying DCPs enacting LHDG. The development sites identified from such searches include a mixed-use development at 54-56 Riley Street and 1 Crown Lane Darlinghurst, a block of self-contained apartments with/without a boarding house located at 34-38 Pinnacle St Miranda, shop-top housing at 16 Kita Road, Berowra Heights, and mixed-use building at 62-66 Pacific Highway Roseville (see bibliography of non-academic sources).

### 2.7 Analysing the case studies

Depending on available information, the case studies are assessed based on assumptions on whether adaptable housing design covers the LHDG features, presentation of LHDG and documents, what standards are used for parts of the premises not covered by LHDG including balconies and outdoor features, what facilities for sensory impairments are provided, and what factors make it easier or difficult to implement LHDG accredited dwellings (Palmer and Ward, 2013). These case studies are also assessed against the Newbury test by which any deviation from the requirements of LHDG, disability or housing are related back to the access of persons with disabilities – specifically their current/future and direct/indirect use of development and relating to issues in the process of developing the site to provide LHDG accredited dwellings.

### 2.8 Ethics protocols

A low-risk group approval has been recently obtained from the HREC Executive on 3 February 2022 under Human Ethics reference number HC210678 (see Appendix 1). This research placates any ethical concerns of vulnerable group interaction by limiting policy focus to studying built environment professionals. This research is limited to a desktop study as the author does not have access to research built environmental professionals undertaking sensitive work. The author is exempt from seeking inform consent for the use of government documents and development application documents as the relevant local councils and relevant NSW Government department/agency provide such open access documents through their websites under the Government Information Public Access Act 2009 (NSW). The author has provided the declarations of studying LHDG when making submissions to exhibitions of EPIs and council documents where the submission is in the similar area to that of the subject of the research thesis.

### 2.9 Chapter conclusion

This research is a convergent mixed method research with quantitative and qualitative data analysis using council documents and case study. The thesis in using the above methodology is approached through the below conceptual frameworks.

## 3.0 Chapter 3: Conceptual Frameworks

### 3.1 Chapter Introduction

This chapter seeks to begin to expand the research questions and concepts as described in Chapter 1. Specifically, it briefly considers the relevant academic and conceptual literature of design in the built environment for persons with disabilities.

### 3.2 Regulation/regulatory theory relating to principle-based regulation

Regulation/regulatory theory is the study of different practices of enforcement of various norms (Rush et al, 2012). The typical forms of regulation fall into principle and compliance-based regulation. At the basic level of regulation, principle-based regulation is used where principles are provided to imply the outcome but there is flexibility in reaching the outcome through the lack of detail. Such principles are found in the CRPD and the DDA in promoting opportunities for persons with disabilities and in removing discrimination in areas such as in the built environment (Jackson, 2018; Ward and Jacobs, 2017). Whilst principle-based regulation assists to meet different circumstances, the lack of certainty means creative or no compliance and constant readjustments. The lack of detail and the provision of exemptions for private housing make it difficult to implement the above principles.

### 3.3 Regulation/regulatory theory relating to compliance-based regulation

In response to principle-based regulation, compliance-based regulation is where rule making, monitoring and enforcement are designed to achieve a particular outcome where various compliance based regulatory mechanisms are ranked in hierarchy. First is self-regulation where rules are created and expected to be followed and enforced by a trade association where government regulators can only educate, negotiate, persuade, and incentivise compliance. The incentive for built environment professionals would be a complying development, construction, or occupation certificate (Williams, 2015). In this hierarchy, the second is warning and third is prosecution. The implementation of prosecution in this case would be an individual making a complaint under the DDA (Beecher, 2005).

### 3.4 integrated Regulation/regulatory theory from self-regulation perspective

The various regulatory regimes using the above simple statements in regulating the complex policy of accessibility of private housing with individual application are suboptimal in relations to effectiveness, equity, and political acceptance. It is useful to apply Gunningham and Sinclair’s conceptual approach in resolving their problem of pollution control regulation towards the research problem relating to regulation of appropriate housing for persons with disabilities (Gunningham and Sinclair, 1999; Rush et al, 2012). Their nuanced remedy suggests that a number of regulatory regimes are creatively combined to achieve the outcome. Though such combinations need to be complementary and not conflicting, appropriate housing may not be achieved by predictable government intervention alone. The number of actors in this policy space may include banks, property developers, consumers, non-government organisations, private planners, architects, and engineers to enable government to focus on city and regional planning, public housing, and public transport. Broadening the number of participants, requires the provision of a solution where everyone benefits to justify to participants the need to participate in the policy making process. This means providing cost effective mainstream private housing that also meets the needs of persons with disabilities in regulating LHDG accredited housing through self-regulation, third party audit, community dialogue and government incentives.

### 3.5 integrated Regulation/regulatory theory from government intervention perspective

If the above approaches fail to increase the amount of LHDG accredited housing, based on information barriers, lack of demand, profit risks, validity of need, and inertia in design and construction practice, then increased government intervention would be required (Centre for International Economics, 2020; Beecher, 2005; Ward and Jacobs, 2017). In increasing government intervention, the concern is that government would be exhausting the limited resources it has. With this resource concern, government could set a mandate, function as a facilitator, and legitimise quasi-regulators in the space of LHDG accredited housing such as disability access planners, private planners, and LHA accredited assessors. In creating a mandatory standard to be met, the element that is prompting the compliance of developers with LHDG refers to issuing or withholding of planning consent, compliance, construction, and occupation certificates (LHA, 2017; Williams, 2015).

### 3.6 Architectural-based regulation

Regardless of whether the above regulatory regimes are applied individually or in an integrated fashion, people with disabilities continue to be challenged in public and private spaces (Beecher, 2005; Newman, 2010). A lesser-known form of regulation is architectural-based regulation (Schindler, 2015). This refers to objects, facilities and built environments that are architecturally designed to encourage or discourage particular behaviours. Architectural-based regulation has been criticised as discouraging persons based on gender, race, income, disability, and homelessness from using built environment spaces. One example of architectural-based regulation involves public benches with separating hand rests to discourage homeless persons sleeping on those benches. Also, persons with disabilities are discouraged from public and private buildings that does not allow them to enter or lacks an accessible toilet. Further, persons with disabilities are regulated by architecture that forces persons with disabilities depending on ability to travel a different path than other persons in order to access public and private spaces such as by ramps and lifts especially at the side or rear of the building. Potentially, such understandings of architectural-based regulation feeds into housing choices, the material finishes that segregate persons with disabilities from other residents, and the concept of disability geography (see 4.11 Lack of housing choice, and 4.15 Material finishes that segregate persons with disabilities, in Chapter 4).

### 3.7 Disability Geography

The above physical issues of persons with disabilities in public spaces are also coupled with prejudice (Newman, 2010). Such prejudice features in the use of the medical model of disability that views persons with disabilities as persons with broken body parts requiring correction. This features heavily in Disability Geography which is the study of persons with disabilities interacting with people and facilities in public spaces (Hansen, Philo, 2007). Nevertheless, the social model of disabilities when it focuses on removing societal barriers to social and economic participation of persons with disabilities is relevant (Grant et al, 2017; Jackson, 2018). In removing those barriers, it is assumed that built environments designed with universal design principles enable everyone to use objects, resources and built environment without stigma or psychological harm throughout their lifetime. Unfortunately, negative attitudes continue to feed into value decisions in the availability of goods and services on cost grounds (Larkin et al, 2015). Further, adhering to the minimum requirements of universal design standards makes the environment inaccessible to a cohort of persons with disabilities seeking higher access requirements. In trying to gain the same access to public facilities, persons with disabilities are forced to deviate from social protocol. If society remove these physical and psychological barriers towards difference, then persons with disabilities would not need to leave public spaces and retreat home.

### 3.8 Universal Design revisited

Before retreating to home, it is good to know that universal design is applied in public and private spaces as a basic safety net. In understanding this, there are eight goals of universal design which are body fit, comfort, awareness, understanding, wellness, social integration, personalisation, and appropriateness (Imrie, 2012; Lenker et al, 2016). These goals as flexible guidelines on their own or as a basis for technical rules seeking to include as many persons or exclude as few persons. This occurs through the ongoing design process participated by both built environment professionals and persons with disabilities. This process involves consultation, applying standards, and high and low technology design remedies. It is a challenge to design upfront for persons with all types of disabilities while allowing for future adaption by individuals to provide additional access. It is hoped that the provision of built environments that are universally designed, accessible, adaptable, livable, and visitable would reduce prejudice of persons with disabilities (Newman, 2010). Despite this research focus on private built environments, city/regional planning professionals and the public continue to have concerns, interests, and recognise a need to regulate to promote positive meanings of home and good home design in private buildings.

### 3.9 Meanings of Home as influenced by home design

The meanings of home especially for a private dwelling are shaped by design, layout, function, culture, and history (Imrie, 2004; Jackson, 2018; Tanner, Tilse, and de Jonge, 2008). Such meanings of home including self-expression, identity, control, privacy, sanctuary, and security are benefits in which persons with disabilities living in poorly designed homes that ignore their human rights have difficulties in obtaining from home. Without adequate choice of housing and access to spaces outside home, persons may redefine home as sanctuary to home as confinement (Bigby, Bould & Beadle-Brown, 2017; Lashewicz et al, 2020). Also, the lack of privacy refers to transforming of home to workplace through the provision of care services by persons outside the family. However, the provision of appropriate housing design standards enables persons with disabilities to stay at home, benefit from home, reduce the need for care services, and avoid compromising on life through lacking access to facilities at home (Carnemolla and Bridge, 2019). A well-designed home in promoting positive meanings of home would reduce the need for costly modifications/adaptions. Such focus on design and technical standards that consider impairments are necessary to ensure that ample circulation space is provided, that accessible facilities are provided and at an appropriate height and dimension to enable persons with disabilities to benefit from home and to promote their social and economic abilities. This refers to working, studying, accessing services, and shopping from home or using the home as a base with accessible paths to access work, study, services, and shopping outside the home. Such economic and social participation stemming from good home design and positive meanings of home that promote independence, autonomy, and choice, enables persons with disabilities to choose to live physically and psychologically independently and autonomously lives equivalent to the general public (Wright, Muenchberger & Whitty, 2015).

### 3.10 Chapter conclusion

The above analysis of relevant literature has expanded on the concepts as briefly discussed in chapter 1. Such information provides conceptual frameworks to expand problem statements and examine the NSW Government’s claims regarding the provision of housing for persons with disabilities.

## 4.0 Chapter 4 Topic Issues

### 4.1 Chapter Introduction

The following expand on the problems and concerns in chapter 1. This chapter also provides a response to the NSW Government’s claims in rejecting the silver level mandate for housing for persons with disabilities.

### 4.2 Exemption under the DAPS

As a signatory to the CRPD, Australia is not meeting its CRPD obligations in removing barriers to the built environment and housing for persons with disabilities (Ward and Jacobs, 2017). In Australia, private housing is largely exempt from the DDA as operationalised by the DAPS, due to their building class number as in class 1A, Class 2, and class 4, or their date of construction occurring prior to the commencement of the DAPS (DAPS, 2011; Jackson, 2018; Sharam et al, 2018). This makes it difficult to complain and advocate for improvements in those premises (Beecher, 2005; Sherry, 2020). Also, there is an unjustifiable hardship provisions in the DDA and DAPS that allows persons and organisations to make a reasonable claim to exempt particular inaccessible built environment and facilities. Fortunately, as a schedule to the DAPS, the access code has also been inserted into the NCC that provides some accessibility guidance/requirements that assists those planning, designing, and building a class 1A, class 2, or class 4 building. Unfortunately, private bedrooms, kitchens, laundry areas and living rooms are not captured by the DAPS or the Access Code even though consideration of AS1428.2-1992 is required. In addition, AS1428.1-2009 and AS1428.1-2021 exempts class 1, 2 and 4 buildings in using terms in DAPS (AS1428.1-2021 and 2009). Further, neither the DAPS nor Access code refers to LHDG or AS4299-1995. Regardless of whether a building is captured by DAPS or not, built environment professionals are required to consider implementing accessible, adaptable, and livable housing (Larkin et al, 2015; Newman, 2010). In providing private housing, the Council document analysis undertaken in this thesis assists in finding out what other exemption clauses exist to permit exemption from LHDG.

### 4.3 Silver level don’t cover all parts of a premises

The silver level is the agreed cost-effective standard that provides reasonable access to mainstream private housing that both property developers and accessibility advocates can agree upon (Newman, 2010; Ward and Jacobs, 2017). Researchers are concerned that the silver level creates another quick measure to say some parts of the premises are accessible while leaving other parts inaccessible (Larkin et al, 2015). It is therefore necessary to discover what standards are used in a silver level premises that are not covered by LHDG such as balconies and outdoor features (LHA, 2017). The information for balcony accessibility as stated in AS1428 and AS4299-1995 refer to slip-resistant surface and flush threshold, however the information on flush threshold for doors are assumed to be hidden in pictures. Without information on complementary standards, dwellings accredited at the silver level could potentially provide less access than a visitable home. The reduction in access for some could potentially occur in a silver level accredited home where the bedroom and hob-less shower recess could potentially be on the upper floor. These complementary standards are found through conducting a case study analysis as part of the research for this thesis.

### 4.4 Difficulty in satisfying all types of disabilities

The above compromises again describe the challenges confronting those planning and designing a LHDG accredited dwelling for all types of disabilities (Larkin et al, 2015; Maryam et al, 2021). Persons using a wheelchair can benefit from wide open spaces through easily manoeuvring their wheelchair. Conversely, visually impaired persons or persons requiring support for walking require closed walls for navigation or support. Perhaps this challenge in providing access to as many persons as possible adds to the concern of a low take-up of LHDG accredited dwellings. With the above information, these concerns are researched using a case study within this thesis.

### 4.5 There is no register of LHDG accredited dwellings

In being successful in obtaining the publication of the silver level in the 2022 version of the NCC, accessibility advocates say mandating the silver level is the first step in meeting the missed 2020 target for silver level housing (Newman, 2010; Ward and Jacobs, 2017). The second step would be to ask for a registry at both local and state levels to accurately count the number of LHDG compliant homes in order for policy makers and accessibility advocates to avoid relying on outdated estimates of 9,300 dwellings. The NSW government already has a register of boarding houses, and other demographical information as collected by national census that unfortunately does not count LHDG accredited housing (Housing Diversity, 2021). Council document analysis in this thesis locates other potential places where such information could be located.

### 4.6 NSW Government claiming increased costs

The NSW Government has been cognizant of resistance from sections of the property/development industry in reference to their property rights (Williams, 2015). As a result, the NSW Government raises several challengeable reasons in declining to mandate the silver level for all dwellings (National Seniors Australia, 2021). First, they raise the issue of increased cost (Downsizing, 2021). Such reasonable upfront costs are offset by accumulating future savings through reduced falls, time in hospital, costs associated with loneliness, home modification costs, care costs, incidents of moving home, and premature/inappropriate entrance into aged care, (Centre for International Economics, 2020; Newman,2010). In understanding the above information, A council document analysis in this thesis assists in discovering measures to reduce costs and increase benefits.

### 4.7 NSW Government claim already increased standards

Second the NSW Government claims the mandate would increase already lofty standards as a reason (Downsizing, 2021). The higher standards refer to seniors housing and not mainstream private housing (Newman, 2010). It is possible that the platinum level would be an even higher standard above the standards for seniors housing in the Housing SEPP (DPIE, 2021a; LHA, 2017). Nevertheless, a case study of development application documents is conducted in this thesis to understand the patchwork of private housing accessibility standards.

### 4.8 NSW Government claim LHDG mandate would be inflexible

Third, the NSW Government claim that the requirements are inflexible (Downsizing, 2021). The NSW Government can apply to the Australian Building Code Commission for an NSW variation (Legislation NSW, 2022a, 2021c). Such NSW variation could provide exemptions similar to that provided by the DDA and DAPS as in unjustifiable hardship (DAPS, 2011). In seeking, granting or challenging unjustifiable hardship, it is likely that a number of persons with disabilities continue to live in environmentally challenging locations given that disability is acquired through a variety of ways (ABC News 7, 2022). Nevertheless, the NSW Government’s claim raises the question of what factors would assist implementing LHDG accredited dwellings and what factors would make it difficult to implement LHDG accredited dwellings which are discovered in the case study.

### 4.9 NSW Government claims that existing dwellings have no obligation to modify

Fourth, the NSW Government claims that existing dwellings have no obligation to meet LHDG (Downsizing, 2021). The claim ignores the growth in home modifications (Centre of International Economics, 2020). On one hand, the NSW Government assertions are valid where LHDG and adaptable housing design applies to alterations to apartments originally built under those requirements in reference to ADG and LRHDDG. On the other hand, it is up to local council DCPs to require alterations and new parts of dwellings to meet LHDG (Williams, 2015; see bibliography of non-academic sources). Thus, a council document analysis is conducted to find local council DCPs that enact LHDG for alterations.

### 4.10 NSW Government underestimating need

Finally, the NSW Government believes that the amount of LHDG as in 20% for high-rise and 30% for low-rise apartments is sufficient (Downsizing, 2021; DPIE, 2020a, 2020b, 2015). In specifying an amount less than 100% of a building to meet LHDG implies that it potentially underestimates the number of persons who may require such dwellings. These persons include persons with disabilities, seniors, persons with injuries, and families with children (LHA, 2017). Without increasing the amount of LHDG accredited dwellings, the above persons would not have access to live in compact urban centres as a result of urban policies promoting higher density living (Sherry, 2020). In conducting council document analysis, the concerns of local councils are summarised to assist the claim that the statutory minimum underestimates need.

### 4.11 Lack of housing choice

Such requirement to provide accessibility features in all types of mainstream private housing reduces the pressure on limited housing resources within the management of public, community, and social housing providers (ABC News 4, 2022; Bridge et al, 2002). Otherwise, seniors housing, group homes, and boarding houses continue to feature as housing options for persons with disabilities of any age. The above POPIS makes it difficult to obtain privacy and ability to choose who to live with (Marshall, 2016; Wright, Muenchberger & Whitty, 2015). The property/construction industry and city/regional planners promote the lack of housing choice. The above housing options are embedded/promoted in both strategic and statutory planning such as the Housing SEPP with various floorspace, landscaping and car parking concessions (Newman, 2010; Williams, 2015). In conducting council document analysis in this thesis, other housing options may be provided to improve housing choices.

### 4.12 The existing mandates for LHDG fails to cover 100% of a high-rise or low-rise building

Whilst state and local EPIs as updated do not refer to LHDG, there are two guidance documents that uses LHDG. The current Housing SEPP, SEPP 65 and Exempt and Complying Developments SEPP all refer to the ADG and the LRHDDG for complying development certificates that requires LHDG (DPIE, 2021a, 2021d, 2020a, 2020b, 2015; Williams, 2015). The default for LHDG compliant homes under the ADG and the LRHDDG for complying development certificates are limited to a proportion of dwellings in a building other than a detached or dwelling house. In the LRHDDG for complying development certificates this proportion is 1 dwelling for a one over the other dual occupancy and manor houses, and 30% of a terrace building. The LRHDDG for development applications is only a guide for local councils to consider adopting in their DCPs. As there is no obligation to adopt the LRHDDG for development applications in whole or in part within local councils’ DCPs, this limits the opportunity to increase LHDG accredited dwellings where the LRHDDG for development applications advises that all town houses and villa dwellings meet the silver level. There is also no requirement for silver level in a side-by-side dual occupancy in LRHDDG for a complying development certificate. whereas for the ADG the proportion is 20% of the building. In most of the above cases, this still does not amount to 100% of a building meeting the silver level. In understanding the above, the council document analysis identifies DCPs that exceed the minimum, simply complies with the minimum requirement, or are overridden by the minimum requirements.

### 4.13 Lack of local councils with DCPs that enacts LHDG (s)

Local councils create DCPs to provide detailed/additional requirements in implementing the above EPIs (Thorpe, 2015). Here, some local councils may seek higher accessibility standards and/or more LHDG accredit dwellings beyond the statutory minimum. Before creating a DCP, local councils are first required to update a range of other documents including LSPS, LHS, VPAG, DIAP, CSP, and even a guide for tradespersons on top of regional, metropolitan, and sub-metropolitan plans, that feeds into the creation of their DCPs (Pinnegar, Randolph & Troy, 2020; Williams, 2015; see bibliography of non-academic sources). In creating a narrative or an argument for inserting LHDG into their DCPs, the issue for some councils is that they fail to adopt LHDG in their DCPs despite making the argument for such in other council documents (see appendix spreadsheet). It is assumed that adaptable housing design fits the requirement (Palmer and Ward, 2013). Regardless, the ADG and LRHDDG provides the default minimum for those local councils that do not enact LHDG in their DCPs. This problem is examined in the council document analysis for those local councils that either encourage or require consideration of LHDG, view LHDG as a desirable outcome, or require LHDG both similar and beyond the state’s minimum.

### 4.14 LHDG is used to require AS1428 in private housing

The information in the definition for NCC suggests that AS1428 is exempt for Class 1 buildings and has limited application for Class 2 and class 4 buildings (AS1428.1-2021; Home modification standards, 2022). in the absence of a NSW Government directive, local councils are responsible to insert basic accessibility requirements in their DCPs such as AS1428, AS1735, AS4299-1995 and AS2890.6-2009. Some local councils’ DCPs replace AS1428 by referring to NCC and/or LHDG, or limit the application of AS1428 to particular land uses (see bibliography of non-academic sources). To quantify how many councils specifically refer to AS1428, and how many referring to NCC and/or LHDG, a council document analysis is conducted.

### 4.15 Material finishes that segregate LHDG accredited dwellings

For those local councils with DCPs that require compliance of LHDG regardless of silver, gold, or platinum level for less than 100% of a building, the concern is whether the design and finishes are segregated from or integrated with the entire building. This relates to whether to publicly identify or de-identify LHDG accredited dwellings through the material finishes and thus decreasing or increasing privacy of residents (Tanner, Tilse & de Jonge, 2008). To assist in this decision, tenure blindness that integrates material finishes, in relations to social housing and perhaps LHDG accredited dwellings, is said to be attractive, reduces difference, and improves neighbourly relations (Stubbs et al, 2018). Conversely, segregated material finishes would result in stigmatising residents, lower satisfaction, and lower social interaction. In implementing tenure blindness, the increased maintenance cost through maintaining all dwellings regardless of occupant’s status to the same level is offset by reduction in defects through having a high-quality design and construction that considers whole of life costs. Given the above, the council document analysis discovers local council DCPs that require integrated material finishes.

### 4.16 Issues in communicating information about LHDG in DCPs

Fortunately, within DCPs, the confusion may not be in the terminology of “accessible housing”, “adaptable housing” and “livable housing” (Ward and Jacobs, 2017; Wiesel and Habibis, 2015). In addition, when the LEC continues to use terms and spelling of terms as provided by LHA, the use of “livable” with one E and “liveable” with two Es in DCPs becomes a non-issue (Blake v Ku-ring-gai Council, 2021). Instead, the confusion in local council DCPs may refer to the provision of information about LHDG in the DCPs (Landcom, 2019; Newman, 2010). Some local councils continue to use outdated versions of LHDG as in prior to 2017 including UHDG. Also, some councils present the silver level in summary as having less than the seven elements within the silver level. Further, some local councils fail to direct applicants on where to find further information about LHDG after requiring/encouraging its implementation. It would be necessary in conducting council document analysis to highlight the information hurdles facing built environmental professionals in understanding their requirements in the matter.

### 4.17 Local councils DCPs create conflicts between LHDG and Australian standards even if they are minor conflicts

A number of local councils’ DCPs such as Bellingen Council and Ku-ring-gai Council refer to a mixture of levels in LHDG as in silver, gold, and platinum level (see bibliography of non-academic sources). It would be good to discover how built environment professionals deal with conflicts between LHDG, AS1428, and AS4299-1995 even though the conflicts may be minor (Palmer and Ward, 2013). There is however a discrepancy amongst LHDG, AS4299-1995 and AS2890.6-2009. Both the platinum level and AS4299-1995 refer to a parking dimension of 3.8m by 6m, whereas AS2890.6-2009 refers to a parking dimension of 3.2m by 7.8m ((AS2890.6-2009; LHA, 2017). The difference of the car parking space dimensions between the silver level and AS2890.6-2009 is a shortening of length by 1.8m. Further, those designing a platinum level building are required to deal with an inconsistency amongst LHDG, DCPs, ADG and LRHDDG in relations to windowsill height. Reducing these conflicts assist to improve confidence in built environment professionals in meeting their actual/potential obligations under the DDA (ABC News 3, 2021). Subsequently, council document and case study analysis assist in researching this problem.

### 4.18 Chapter Conclusion

The above expands the problems identified in chapter 1. This chapter also unpacks and responds to NSW government claims regarding the greater provision of housing for persons with disabilities. Also, several issues have been identified in implementing LHDG that require investigation using council document and case study analysis. The next chapter presents the results of those analyses.

## 5.0 Chapter 5: Council document analysis Results

### 5.1 Chapter introduction

The following are results of the council document analysis. Within this chapter, for further information see Bibliography of non-academic sources. See also appendix spreadsheet for raw data.

### 5.2 stance on LHDG in reference to state minimum

Out of 24 LGAs that has DCPs that enacts LHDG, 4 LGAs encourage LHDG, 3 LGAs require consideration of LHDG, 3 LGAs place LHDG accredit dwellings as a desirable outcome, 2 LGAs requires consideration of LHDG in a group of residential types of buildings while requiring LHDG in another group of residential types of buildings. The remaining 12 LGAs simply requires LHDG for a group of residential building types. Out of 14 LGAs that has DCPs requiring LHDG for a group of residential building types, 9 LGAs significantly exceed the standard, amount and/or residential types of buildings covered by the ADG and the LRHDDG. All other LGAs in this analysis) would either be same as ADG/LRHDDG or would be overridden by ADG/LRHDDG.

### 5.3 Presentation of information to direct applicants on next step

Out of those local councils that state the version’s year, 1 local council refers to the current version of 2017, 7 local councils refer to out of date versions, and 4 local councils referred applicants to the superseded version of the UHDG. Within the cohort of 24 local councils, 5 local councils directly refer to the LHA website address. All other DCPs refer to another EPI that refers to the LHA website address. Any reference to SEPP 65 refers to ADG which forces applicants to search for themselves the LHA website. Out of 24 LGAs with DCPs enacting LHDG, 2 present the silver level as 6 elements without a hob-less shower recess, 2 present as 6 elements without stairways with railing on one side, and 1 presents as 5 elements minus stairways and where levelled building entrance is from car parking space and not from street boundary. All other LGAs present the silver level as 7 elements within the silver level or refer persons directly/indirectly to LHA website.

### 5.4 Alterations in relations to statutory definition

4 local councils DCPs have been interpreted to explicitly/implicitly require for all alterations to meet the relevant level of LHDG. 1 local council encourages alterations to meet the silver level. 4 councils require alterations to comply with DAPS and/or NCC. 4 councils’ DCPs have been interpreted to imply that explicitly/implicitly require all alterations to meet AS4299-1995. Only those dwellings originally constructed to comply with LHDG or AS4299-1995 implicitly include alterations in relations to ADG/LRHDDG and local councils’ DCPs for those as labelled “no” or “maybe” on the appendix spreadsheet.

### 5.5 Local Councils referring to AS1428

As a safety net, all councils refer to NCC, LHDG or both in order to refer to AS1428. 4 local councils require AS1428 as independent of LHDG. 8 local councils have various permutations in limiting the application of AS1428. These variations include limiting to particular building classes, limiting to particular groups of residential types of buildings, limitation that construes AS1428 as either voluntary or for those engaging home modification service providers, limiting to public areas including roads, communal areas, and driveways, limiting to path of travel to waste/recycling storage area, and limiting particular volumes of AS1428 (Tanner, Tilse & de Jonge, 2008).

### 5.6 Adaptable Housing Design overlay and integrated material finishes

Out of 24 local councils, 4 local councils do not refer to AS4299-1995 or adaptable housing design. The remaining 20 LGAs simultaneously enacts LHDG and AS4299-1995 to various degrees. Only 4 LGAs has DCPs that require integrated design and material finishes for entire building in relations to AS4299-1995 accredited dwellings but only one of the 24 LGAs potentially require the same for LHDG accredited dwellings.

### 5.7 Unjustifiable Hardship

The safety net for all local councils analysed are the unjustifiable hardship provisions provided in both the DDA and the DAPS. 10 local councils provide provisions similar to or in addition to DDA/DAPS. The additional exceptions relate to alterations, change of building use, difficult site conditions, and heritage buildings. Applicants are required/permitted to provide acceptable alternatives or a management plan.

### 5.8 Verification of LHDG/AS4299-1995

Within the 24 LGAs with DCPs that enacts LHDG, 5 LGAs require location of LHDG on architectural plans, 1 requires verification by LHA assessor, 2 requires verification by disability access planner or building surveyor. The safety-net for all local councils is that ADG and LRHDDG requires design verification.

### 5.9 Platinum windowsill

The platinum level requires dwellings to have windowsills with a height up to a maximum of 1m. This requirement for windowsills height fit within the minimum/maximum height for 3 local councils’ DCPs. For all other local councils’ DCPs in relations to inconsistency between requirement to reduce windows overlooking neighbours’ window and platinum level windowsill requirement are labelled as “may breach”, “will breach”, or both. The label “May breach” means that there are alternatives to the height requirement such as increased building setback, window offsetting and screening. The label “Will breach” means that there are no alternatives to the height requirement.

### 5.10 Initial summary of council documents

All of the 24 councils are seeking well designed, affordable housing connected or in close proximity to employment, services both inside and outside the home, infrastructure, accessible public spaces/domain, transport, recreation, and networks to enable community engagement and involvement. Some councils also want accessible commercial spaces. some want improved attitudes and behaviours towards persons with disabilities. Some want accessible information. On one hand, in general, all councils analysed want more universal, accessible, and adaptable housing, either newly constructed or modified, to enable persons with disabilities to live independently or in intergenerational households in the mainstream market. On the other hand, they also want more disability accommodation, group homes, boarding houses, seniors housing, and housing with co-living arrangements. Some councils also want secondary dwellings to cater for seniors and persons with disabilities. Local councils are balancing the need to maintain some low-density housing to maintain large families while seeking smaller dwellings in higher density regions to cater for downsizing requirements. Each council is in transitional towards the NDIS with the benefit of growing the health and disability sector. A number of councils want faster approvals of affordable housing and more affordable housing to relieve housing stress. Councils in urban areas seek to increase density of housing while having a mixture of housing types. On one extreme, a number of councils have council documents reflecting their stance of encouraging and not require LHDG. While on the other extreme, some councils have documents that reflect the requirement for housing to meet gold level and platinum level. Further, A number of councils’ documents also reflect the requirement of adaptable housing design. 4 councils have DIAP that focuses on their council assets/public domain. The remaining 20 councils refer to both public and private domains in their DIAP.

### 5.11 Summary of council concerns from documents

The following is a list of council concerns obtained from council documents:

* There is limited appropriate housing and limited access in built environment for persons with disabilities constrained by difficulties of converting aging/heritage buildings.
* The current existing built infrastructure and transport system is unlikely to cope with the future growth of persons with disabilities.
* The need to preserve the environment, agricultural and industrial land.
* The availability of services for a population either with housing stress and/or near to the poverty line despite being a homeowner.
* The lack of respite housing and services to assist family members aiding persons with disabilities.
* The lack of support services to allow persons to stay at home.
* The lack of disability expertise in city/regional planning.
* The amount and location of seniors housing especially on rural land.
* The lack of disability accessible public transport, parking, and toilets.
* increasing standards for medium density housing and disability accommodation would make it difficult to place housing on the floodplains.
* The lack of regulation/standards for accessibility of private dwellings beyond common and public areas.
* The reduction of landscaping under Seniors Housing SEPP;
* The significant amount of inaccessible 3 storey walk-ups with no lifts.
* The lack of opportunities to place higher density buildings to provide accessible housing due to the substantial number of small lots and small strata communities.
* There are vacant dwellings somehow not catering the growth in the need for housing.
* There are not enough households with a natural disaster plan.
* Persons with disabilities living in last resort accommodation such as boarding houses.
* The lack of a register for adaptable housing.

### 5.12 Summary of strategies used by councils to increase appropriate housing for persons with disabilities

The cohort of councils use the following strategies to increase appropriate housing for persons with disabilities.

* Requiring compliance with Australian standards;
* Insisting on design excellence;
* Reviewing and updating planning controls from universal housing view;
* Collaborating and conducting market testing of suitable housing options including self-contained and co-living arrangements with partners such as government, community housing providers, disability service providers, disability advocates, persons with disabilities, and development industry;
* Conducting place-base planning to research where are the right places for housing growth to potentially locate housing for persons with disabilities;
* Planning incentives including density bonuses;
* Providing affordable housing that meet the gold level;
* Conducting home modification in private dwellings;
* Providing community transport and upgrading public infrastructure to be accessible to persons with disabilities hoping that the increase numbers of persons with disabilities in the community justify the need for better housing;
* Providing discounts on council fees and charges;
* Increasing affordable housing contributions;
* Lobbying for more funding;
* Education, awareness raising, and creating an award;
* display real life examples of universal housing;
* Report findings in annual report.

### 5.13 Summary of DCPs weight analysis

All of the 24 councils’ DCPs relating to LHDG have some weight from having consistency with state, regional and local policies. Some councils have additional weight either through public consultation or consistent application. Only two councils have strong legal weight through meeting all 3 requirements of public consultation, consistent application and consistent with state, regional and local policies.

### 5.14 Chapter Conclusion

There is a variety of DCPs from the 24 local councils that enact LHDG. A small number requiring LHDG that includes alterations to building. A number provides exemptions that are similar or different to DAPS unjustifiable hardship provisions. A small number requires integrated material finishes for adaptable housing design dwellings. They all have concerns of housing shortage while providing ways of increasing housing choices. They also provide ways to reduce cost and increase benefits of providing LHDG accredited dwellings. The annual reporting mechanisms are additional areas to report numbers of LHDG accredited dwellings. The above information provides context for the below case study analysis results.

## 6.0 Chapter 6 Case Study analysis results

### 6.1 Chapter introduction

The following are results of case studies of four development sites involving LHDG, where the previous chapter provides context for the analysis. Assessment of conditions imposed on development consents for these sites in terms of the Newbury Test is also undertaken. Within this chapter, for further information see Bibliography of non-academic sources. See also appendix spreadsheet for raw data.

### 6.2 Introduction of Berowra Heights Development sites

The development application for 16 Kita Road, Berowra Heights with lodgement in 2017 and determination in 2018 involves demolition of former structures and construction of a shop-top housing development. The shop-top housing development comprises 15 residential apartments with 5 apartments both meeting LHDG and AS4299-1995, commercial and retail premises on ground floor, outdoor private recreation space, and basement parking. LHDG is located in the Disability Access Report and in the SEPP 65 Design Verification Report. The Statement of Environmental Effects is used for additional context.

### 6.3 Introduction of Darlinghurst Development site

The development application for 54-56 Riley Street and 1 Crown Lane, Darlinghurst has a lodgement year of 2018 and an approval with deferred commencement year of 2019. The application involves partial demolition of warehouse, complete demolition of other structures, and construction of a mixed-use development. The mixed-use development comprises 16 residential apartments where 2 apartments are said to be adaptable housing design, commercial and retail premises, roof-top garden, 2 lifts, and a loading zone. The amendment to application involves restricting second lift to between fifth floor and rooftop along with other changes. LHDG is located in the Statement of Environmental Effects and a certificate verifying LHDG. The determination report requires changes to the development plans in order to be compliant with NCC especially in relations to disability access before obtaining a construction certificate. The certificate states the development is compliance with the silver level but falling short of the platinum level.

### 6.4 Introduction of Miranda development site

The Miranda development site for the case study is at 34-38 PINNACLE STREET, Miranda. A development application for a residential flat with 45 apartments and basement parking has a lodgement year of 2015 and a determined year of 2016. LHDG is located in the disability access report. The 2018 development application involved an 8-storey mixed-use building. The development involves 4-storeys of boarding house with 70 rooms including for site manager, 4 storeys of residential flat with 24 apartments, and 3-storeys of car parking basement with 90 spaces. The 2018 application also proposes for outdoor landscaping. LHDG is located in the Disability Access Report, the Statement of Environmental Effects, SEPP 65 Design Verification Report and labelled on an architectural plan. The landscaping plan is used for additional context. Unfortunately, the 2018 application despite having a potentially higher accessibility requirements has since been withdrawn. Since the withdrawal, the local council website reports of a successful application with modifications to the 2015 application and 2016 conditions of consent. This successful application has a lodgement year 2019 and determination year of 2020.

### 6.5 Introduction of Roseville development site

The development application for 62, 64- 66 Pacific Highway, Roseville has a lodgement year of 2018 and determination year of 2020. In seeking additional height and floorspace, the applicant went to the LEC. In 2021, the LEC after conciliation of parties grants the request of the applicant. The application is for demolition of existing RSL club and construction of a 5-storey shop-top housing building. The development comprises new RSL commercial premises on ground floor, 33 apartments, 3 storeys of basement car parking, and communal roof terrace. Multiple documents refer to LHDG especially the platinum level which are labelled on various architectural and engineering diagrams.

### 6.6 Presentation of documents

The various development application documents have two ways of presentation. One type is a checklist for each checkpoint element where there are comments provided on being compliant, detail verification at construction certificate, remedies to comply, and reasons for non-compliance. The other type are documents that mixes compliance statements with marketing the development.

### 6.7 standards that complements LHDG

Through the development application documents, the following standards complement the silver level:

* AS1428.1-2009;
* AS1428.2-1992;
* AS1428.4.1-2009;
* AS1735;
* AS2890.1;
* AS2890.6-2009;
* AS4299-1995;
* ADG for residential flats and residential parts of a shop-top housing development;
* DAPS for non-resident sections;
* NCC; and
* Manufacturers’ manuals of fittings and fixtures.

note: All of the development sites in this case study analysis involve dwellings in a class 2 part of the building where AS1428 is limited to the common property. application of AS1428 is required to be applied for the building because of LHDG, DCPs, NCC, and DAPS capturing ground floor commercial/retail uses, boarding house, and access to/from car parking area.

### 6.8 Facilities for sensory impairments

The facilities for sensory impairments from the case study include:

* TGIS on stairs and ramps
* Braille and tactile signs for toilets;
* A variety of floor surfaces including carpet; and
* Hearing augmentation systems.

### 6.9 Factors that assist the provision of LHDG accredited dwellings

The following are the factors for all developments that assist the provision of LHDG accredited dwellings:

* Provision of ramps;
* Provision of lifts;
* Provision of accessible toilets;
* Provision of accessible parking spaces;
* close proximity to accessible public transport;
* knowledge/belief that the character of the surrounding precinct is being renewed
* proximity to shopping centre;
* proximity to services;
* proximity to accessible cinema; and
* proximity to recreation areas.

### 6.10 Factors that make it difficult to include LHDG accredited dwellings

The following are actual/perceived factors identified in the development application documents that make it difficult to include LHDG dwellings. See appendix spreadsheet for remedies where information comes from the development application documents and council documents:

* Fire;
* Flood;
* Higher/lower elevation;
* Heritage item;
* Soil/material contamination;
* Unsafe/insecure environments;
* Lack of accessible public transport; and
* Inaccessible facilities such as an Inaccessible cinema.

### 6.11 Definition of Newbury test

For readers who did not find the definition in the table of acronyms, abbreviations, and definitions, the following is a definition of the Newbury test. The Newbury test is a three-part test in establishing the validity of conditions placed on consent as established by Newbury District Council v Secretary for the Environment [1981]. Such conditions of consent are

1. imposed for a planning purpose likely to be located in, referred by or called up by the EPAA;
2. fairly and reasonably relate to the development for which consent is given; and
3. not be so unreasonable that no reasonable planning authority would have imposed it (Williams, 2015). The third part relating to reasonableness prohibits uncertain, open-ended, and unenforceable conditions.

### 6.12 Newbury test -general for the 4 development sites

Most of the conditions of consent of the four development sites passes the Newbury test. This includes concurrences from state and national agencies provided that there are safeguard mechanisms such as the planning secretary acting as the concurring agency in the event the agencies fail to notify the local council or DPIE of their decision after 40 days. For the various development sites, it is questionable whether the Smoke Free Environment Act and, associated regulations fit the definition of a “planning purpose” as it is not found in the EPAA. Not all Australian Standards are called by EPAA. However, such pieces of legislation and Australian Standards are listed as a footnote to the NCC where the NCC is covered by the EPAA. Fortunately, the DDA and the DAPS are covered by EPAA via EPIs, ADG, LRHDDG, and DCPs.

### 6.13 Newbury test - Berowra Heights

For the Berowra Heights development, there are a number of conditions that may not pass the Newbury test. On one hand, Condition 41 would assist in implement the DDA. On the other hand, condition 41 relating to footpath maintenance/safety without specifying location such as adjacent to site could potentially be defined as unfairly relating to development site (Williams, 2015). Again, the prohibition on carting of bins on road or footpath relates to providing access to persons with disabilities. However, the condition preventing carting of bins using public footpath could potentially be defined as unenforceable especially if permission is provided under the Roads Act. Hopefully, the carter of bins would move the bin to a safe area of footpath or road to enable persons with disabilities to pass through.

### 6.14 Newbury test – Darlinghurst development

For the Darlinghurst development, there is one condition that may not pass the Newbury test. The perpetual use of developer’s photographs by Sydney City council and third parties for the purpose of documenting public domain defects as result of developer’s public infrastructure works could potentially be defined as an open-ended condition (Williams, 2015). Though it would be necessary for the public including persons with disabilities to know where such hazards are until remediation of the infrastructure.

### 6.15 Newbury test – Miranda development

For the Miranda development application, there is one condition that may not meet the Newbury test. Traffic control would be necessary to pedestrians/passengers with disabilities and the movement of vehicles in/out of the development site. Whilst the matters requiring refinement by a Traffic Control Management Plan are clear, such subsequent conditions as a result of submitting the plan to council may be potentially defined as uncertain (Williams, 2015).

### 6.16 Newbury test - Roseville development

There is one condition in the Roseville development that may not pass the Newbury test. The public including persons with disabilities may need to travel through the development site to access a laneway in order to reach their destination. Despite the above, on one hand, condition 133 for the Roseville development that require open access to a laneway is potentially unenforceable without seeking an access easement (Williams, 2015). On the other hand, it would be reasonable that access would probably be provided during the operating hours of the ground floor commercial premises, or in a life/death emergency.

### 6.17 Newbury test - LHDG

In returning to the matter of LHDG, LHDG passes the Newbury test. LHDG is located in DCPs, ADG and LRHDDG which are all covered by EPAA. Also, the LHDG requirements are likely to be specific to the development application. Further, the LHDG requirements are certain, and enforced by construction/occupation certificate and LHA accredited assessor with certificate/report. As long as the condition relating to LHDG are expressed for the time limited purpose of obtaining the construction/occupation certificate, then the condition for LHDG would be reasonable.

### 6.18 Chapter conclusion

There is a variety of ways built environmental professionals navigate the patchwork of accessibility standards as in finding a single set of dimensions that fit all standards, complying with one standard over another, or having multiple sets of facilities to comply with different standards. When there is complete information especially when the document say that the same dwelling complies with both, is when there is an understanding that adaptable housing design complies with the silver level. When there is insufficient information then it is difficult to verify. The accessibility of balconies relates to doors or best practice for flush threshold. There is a variety of approaches to car parking space dimensions. The various development applications have provision for sensory impairments. There is a variety in document presentation. The provision of accessible features and services on and near to site are elements that make it easier to provide LHDG accredited dwellings. Such mitigation measures as stated in appendix spreadsheet are required to limited environmental factors on and surround the site that potentially make it difficult to provide LHDG accredited dwellings. In addition, after assessing the conditions of the case study under the Newbury test, the LHDG managed to pass the Newbury test. The above information assists with the below discussion.

## 7.0 Chapter 7 Discussion

### 7.1 Chapter introduction

This chapter summarises the findings and provides a discussion in reference to the literature review.

### 7.2 Answering the research question

The motivations to promote the provision of LHDG accredited dwellings include complying with ADG, LRHDDG, DCPs and Australian Standards relating to accessibility, the provision of accessible services and infrastructure for persons with disabilities on and off-site, and the growth in the number of persons with disabilities in the precinct (see bibliography of non-academic sources). The motivations limiting the provision of LHDG accredited dwellings include property rights, environmental matters on and off-site, the lack of safety and security on and off-site, the provision of services and infrastructure that are inaccessible to persons with disabilities, the lack of information, and the lack of appropriate regulation requiring LHDG. However, a number of these limiting factors are remedied through planning, design, and engineering means (see appendix spreadsheet).

### 7.3 NSW Government reasons in rejecting a silver level mandate are questionable

In addition to information in chapter 4, the following provides further information to question the NSW Government reasons in rejecting a silver level mandate. Firstly, local councils provide floorspace bonuses and charge discounts to increase the benefit and lower the cost in providing LHDG accredited dwellings (see bibliography of non-academic sources). Secondly, private mainstream housing providers to various degrees are forced to rely on AS1428, AS1735, AS2890.6-2009, AS4299-1995, NCC, and DCPs that refer to LHDG to provide an appropriate level of accessibility for residents with disabilities outside seniors housing. Thirdly, various local councils provide for exemptions similar to the undue hardship provisions in the DDA and DAPS. Fourthly, there are 4 local councils that require LHDG to apply to alterations of all dwellings. Finally, the state minimum of LHDG accredited dwellings ignores the concerns of local councils who say that persons with disabilities are forced into last resort accommodation such as boarding houses.

### 7.4 Continuation of identified problems without silver level mandate

Without mandating the silver level of LHDG for all dwellings the various chapter 2 problems continue to exist and grow into larger problems. Firstly, the Australian government are likely to face complaints at the United Nations CRPD committee (Jackson, 2018; Ward and Jacobs, 2017). These complaints are made as class 1A, class 2, and class 4 dwellings are exempt making it difficult to complain and advocate for improvements through the normal local, state, and national processes (Beecher, 2005; Sherry, 2020). These complaints are lodged even though they are referring to NSW, South Australia, and Western Australia. These states are responding to lobbying from sections of property/development industry opposed to LHDG mandate (Downsizing, 2021; Williams, 2015). Secondly, Australia is dealing with a global pandemic where it is inappropriate to have persons with disabilities waiting for appropriate housing in hospitals when hospitals require beds and staff to treat patients for coronavirus (ABC News 2, 2021; Wiesel and Habibis, 2015). Thirdly, without addressing the issue of housing design, such care, hospitalisation, home modification and moving home costs as identified by Centre of International Economics, continues to increase, and are shared by the individual, family, and taxpayers (Carnemolla and Bridge, 2019; Centre of International Economics, 2020). Fourthly, the pressure on public, social and community housing providers forcing persons with disabilities to search for unsatisfactory accommodation while waiting (ABC News 4, 2022; Bridge et al, 2002). Fifthly, persons with disabilities continue to be segregated from the mainstream through housing choices, having some dwellings with different material finishes to others in a building, and having different entrances to building in order to access ramps and lifts (Schindler, 2015; Stubbs et al, 2018). Finally, the social and economic participation of persons with disabilities, seniors, persons with injuries and families with children are limited by the shortage of appropriate housing that meet their needs (Bridge et al, 2002; Grant et al, 2017; LHA, 2017).

### 7.5 Local government on their own

Without an NSW mandate for the silver level for all dwellings, local councils are on their own in reducing the shortage of housing for persons with disabilities and providing housing choices. In understanding that the state minimum within the ADG and LRHDDG are insufficient, this research indicates that a number of local councils through their DCPs require a higher amount of silver level accredited dwellings or require dwellings to comply with gold level and/or platinum level (DPIE, 2020a, 2015; Thorpe, 2015). These DCPs that fulfill the above are required to be supported by public consultation, consistent application, consistency with state, regional, and local policies, or a combination of the three in order to survive legal challenges (Williams, 2015). Alternatively, education, incentive, persuasion, and negotiation are the tools available for all other local councils beyond complying with LRHDDG and ADG (DPIE, 2020a, 2015; Rush et al, 2012). These tools are also the ways local councils to influence property developers to provide LHDG accredited dwellings and to persuade that those site/environmental issues are manageable (Ward M., Franz J., & Adkins B. 2011; see bibliography of non-academic sources).

### 7.6 self-regulation within a silver level mandate

The current system is LHA a not-for-profit organisation creates and updates the LHDG and accredits/administers assessors of whom are independent private planners, designers, architects, and engineers (see bibliography of non-academic sources). These assessors issue certificates and/or prepare a report verifying that a development is compliant with silver level, gold level or platinum level. These certificates/reports are used to assist the local council or DPIE to assess and give consent to a development application. It is envisaged that a silver level mandate apart from standardising the requirements for silver level and increase reporting, it is unlikely that the system for those operating at silver level would promote change to gold level and platinum level compliance (Gunningham and Sinclair, 1999; Rush et al, 2012). The role of the NSW government within a silver level mandate would be to provide the rules of the mandate while allowing existing players to administer that mandate including providing training/education, provide incentives in the form of additional floorspace and charge discounts, persuasion, and a mechanism to report numbers of LHDG accredited dwellings. At present, despite there being potential avenues for reporting by LHA, DPIE and local councils, no one has counted, tallied, and published accurate figures on total planned and built dwellings that meet LHDG (Ward and Jacobs 2017). Unless there is significant malpractice in the issuing of certificates/reports, it is unlikely that the NSW Government or local councils would provide a more comprehensive compliance regime as in a police force/inspectors force. The reasons for not providing a heavier government compliance includes the already privatised building compliance, education, and training systems and that there is a variety of disabilities/impairments and a variety of design approaches/solutions to provide accessibility to private dwellings (Imrie, 2012, 2004; Lenker et al, 2016; Tanner, Tilse & de Jonge, 2008).

### 7.7 Minister of Planning discontinuing the introduction of Design and Place SEPP

The minister of planning’s announcement on 5 April 2022 abandons the introduction of design and place SEPP. The Design and Place SEPP proposal with an update to the ADG, on one hand maintains a 20% minimum for high-rise apartments (DPIE, 2021e). On the other hand, the proposal would provide a flexibility clause that would increase the amount of silver level accredited apartments or facilitated an increase in the amount of gold level, platinum level, and/or AS4299-1995 accredited dwellings. Unfortunately, the abandonment of the Design and Place SEPP means the above would not proceed.

### 7.8 City/regional planners and Development industry reliant on pre-existing land uses

This still means that without mandating the silver level for all dwellings, city/regional planners and development industry are reliant on pre-existing land uses under Housing SEPP (DPIE, 2021a). Seniors’ housing, group home and boarding houses with landscaping and car parking concessions continue to be the limited options of housing for persons with disabilities (Newman, 2010). Placing persons in these POPIS continue to come with concerns of privacy, choice of persons to live with and access to the outdoors (Marshall, 2016; Wright, Muenchberger & Whitty, 2015).

### 7.9 Improve built environments surrounding home

Currently, some train stations, bus stops, active transport, walking paths, and traffic intersections are inaccessible to persons with disabilities (Jackson 2018; Newman, 2010; see bibliography of non-academic sources). As a result, the concerns and suggestions within the council documents suggest the need to improve the built environment surrounding and away from residential areas as indirect means for providing appropriate housing for persons with disabilities. The placement and positioning of accessible pedestrian paths of travel, public transport, employment, commercial shopping areas, recreational areas, government, and disability services justify the need for appropriate housing for persons with disabilities. Reciprocally, the growth of appropriate housing for persons with disabilities justify the need for accessible services and infrastructure outside the home. The provision of accessible built environments outside the home assist in reducing the notion that home is confinement while providing an additional/alternative place of sanctuary (Bigby, Bould & Beadle-Brown, 2017; Lashewicz et al, 2020).

### 7.10 Chapter conclusion

This chapter has found the motivations to promote and limit the provision of LHDG accredited dwellings as well as further responding to the NSW Government claims. In addition, this chapter has identified problems to continue or to be enlarged without the implementation of a silver level mandate. As a result, Local Councils are forced to dealt with the problem/policy space on their own including the provision of accessible infrastructure surrounding the home. With the above information the following chapter provides recommendations, future research, and final statements/remarks.

## 8.0 Chapter 8 Concluding statements

### 8.1 Chapter introduction

This chapter provides concluding statements for the thesis. This chapter contains recommendations, reason for a contentious recommendation, limitations, future research, conclusion, and final remarks.

### 8.2 Recommendations to LHA

This research recommends that

* The LHDG be updated in reference to 1428, 4299-1995 and 2890-6-2009;
* The LHDG be updated to provide a statement advising built environmental professionals to seek further advice to verify silver level has been met after obtaining AS4299-1995 compliance;
* In failing to update LHDG in reference to AS2890.6-2009, LHA should provide a statement in the LHDG advising built environmental professionals that they need to provide larger dimensions of car parking spaces or separate car parking spaces in order to comply with AS2890.6-2009;
* LHDG be updated to insert the term “cooking area”, “lounge area” and a statement outlining the design advantages and disadvantages to enable an open plan dwelling to be compliant with LHDG as provided by LHA (Grant et al, 2017);

### 8.3 Recommendations to Standards Australia

This research recommends that:

* Standards Australia considers harmonising AS1428, AS4299-1995, and AS2890.6-2009 with LHDG to enable consistency and improve built environment professionals’ confidence in complying with the DDA (ABC News 3, 2021; Palmer and Ward, 2013);
* Standards Australia should update AS1428.1-2021 to provide coverage for strata communities that are class 1A, class 2 and class 4 dwellings and buildings for both private apartment units and common property;
* Standards Australia should alternatively provide an exemption for AS2890.6-2009 for compliance with LHDG car parking space dimensions;
* Standards Australia amend AS4299-1995 to add balcony with flush threshold matching internal floor level as a Class C requirement (“Best Practice Discussion Paper: A comprehensive evidence-base for innovative design methods that can improve accommodation outcomes for TBI and SCI residents, 1997);

### 8.4 Recommendations to Australian Building Code Commission

This research recommends that the Australian Building Code Commission amend the building class numbers to relocate row house, terrace house, town house and villas from class 1A to class 2. The purpose is to separate detached house from strata community buildings which should have different treatment in relations to AS1428. The present circumstance of combining detached house with strata community buildings imply that all types of buildings within that building class number should either be completely exempt from or completely requires coverage under AS1428, which are both inappropriate. Tanner, Tilse & de Jonge records the contention between the built environmental professionals in seeking compliance with AS1428 with wholesale changes and dwelling house owners seeking deviation from AS1428 in order to make small but beneficial accessibility modifications to their property (Tanner, Tilse & de Jonge, 2008). It is questionable whether any of their research participants obtain advice from an occupational therapist to seek variation/exemption from AS1428 (Hazel and Nouwelant, 2013). Whereas strata community buildings should completely fall under the requirements of AS1428. At present, strata communities’ common property already falls under AS1428 (Home Modification Standards, 2022; Sherry, 2020). In arguing that individual apartments as an airspace in the middle of ceiling, floor, and external walls, which cannot exist without the common property, the author urges that individual apartments within a strata community should also fall under AS1428.

### 8.5 Recommendations to local councils

This research recommends that:

* all local councils to include LHDG in their DCP especially by those councils that have argued for the need for LHDG in supporting local council documents;
* Local councils that have DCPs that encourages, require consideration of, or regard LHDG as a desirable outcome, to update to require silver level;
* Local councils who have DCPs that enacts LHDG to update their DCPs in order to directly refer applicants to the most up-to-date version of the LHDG and to LHA website address, to describe the minimum requirements of LHDG using all 7 elements within the silver level, and require verification by an LHA accredited assessor;
* Local councils with silver level requirements to consider updating their DCPs to encourage or require a proportion of dwellings particularly on the ground level to meet gold level or platinum level;
* local councils require alterations of all residential dwellings beyond DAPS covered building class numbers, to comply with the silver level, gold level or platinum level;
* local councils in performing the above, replace “new developments” or “new homes” with “all developments” or “all homes” in order to implicitly capture alterations;
* local councils amend their DCPs that require LHDG less than 100% to require that material finishes be integrated into the entire building;
* all local councils should establish a register to collect data on the number of silver level, gold level, and platinum level accredited dwellings and AS4299-1995 accredited dwellings (Ward and Jacobs, 2017);
* local councils require applicants to provide a statement declaring that a particular dwelling complies with both the silver level and AS4299-1995 when double counting for the two separate requirements as prescribed by DCPs;
* All local councils should update their DCPs to specifically include AS1428 for all strata community developments (Sherry, 2020; Tanner, Tilse & de Jonge, 2008);
* all local councils should make accessibility improvements to the built environment surrounding homes including public transport, public infrastructure, and recreation;
* all local councils employ and engage with persons with disabilities to assist in city/regional planning;
* Kempsey Council, Narrandera Shire Council, and Sydney City Council provide a statement in their DCPs stating that the UHDG has been superseded, that applicants comply with the platinum level, and refer to most up to date version of LHDG as provided by the LHA website;
* Similar to the above, Penrith City Council should advise development applicants to comply with the gold level and the most up to date version of the LHDG;
* Sydney City Council amalgamate Sydney City DCP 2000 and Sydney City DCP 2012 to enable LHDG to apply to all areas of that LGA without exemption and for AS1428 to be required on developments in that LGA (Sydney City Council, 2020a, 2020b, 2020c);
* Canterbury Bankstown Council consider commencing their new DCP that requires LHDG while waiting for publication of Canterbury Bankstown LEP (Canterbury Bankstown Council, 2021);
* Ki-ring-gai Council should assist in advocating/lobbying for the remaining cinema room or rooms to be accessible to persons with disabilities;
* North Sydney Council remove their exemption to alterations to building class 1 and 4 dwellings in meeting accessibility requirements;
* Waverley Council amend their DCP to clarify if AS1428 is required or optional, and when does AS1428 apply in relations to all developments, to accessible path of travel, to accessible dwellings, to accessible housing, and/or accessible parking;

### 8.6 Recommendations to NSW government

This research recommends that:

* The NSW Government provide density bonuses and discounts on developer charges to increase the benefit and lower the cost of providing LHDG accredited dwellings;
* The NSW government updates the ADG and the LRHDDG if requiring LHDG for less than 100% to require that the material finishes be integrated throughout the building;
* The NSW Government create a register to collect and tally silver level, gold level, and platinum level accredited dwellings and AS4299-1995 accredited dwellings (Ward and Jacobs, 2017)
* The NSW Government provides an avenue for town houses and villas with a requirement for 100% LHDG accredited dwellings under LRHDDG to be quickly approve under Exempt and Complying Developments SEPP or Housing SEPP with conditions acceptable to local councils (DPIE, 2020b);
* The NSW Government amend Schedule 4 of the Housing SEPP to harmonise the requirements for independent living units with the platinum level;
* The NSW government regardless of any statutory mandate for silver level accredited dwellings, should continue to provide an avenue for local councils to create DCPs that exceed the minimum in amount and standard;
* The NSW Government should mandate the silver level for all dwellings in Standard LEP Order with discretionary exemptions similar to unjustifiable hardship provisions under DAPS (DAPS, 2011; Thorpe, 2015; Ward and Jacobs, 2017);
* The NSW Government in failing to do the above, should consider permitting an increase in the amount of silver level, gold level, and platinum level accredited dwellings above the existing minimum within the ADG and LRHDDG;
* The NSW Government should update the ADG to include the LHA website address to assist applicants to find more information about the silver level, gold level and platinum level;
* The NSW Government should revisit the ability to provide a flexibility clause that allow for exchanging a proportion of silver level accredited dwellings for gold level, platinum level under LHDG and AS4299-1995 accredited dwellings;
* The NSW Government should include LHDG referring to the most up to date version of LHDG and to LHA website address, in the standard conditions document;
* The NSW Government should make accessibility improvements to the built environment surrounding homes including public transport, public infrastructure, and recreation;
* The NSW Government should employ and engage with persons with disabilities to assist in city/regional planning;
* The NSW government should legislate to provide a specific exemption to the Newbury test to enable the local council or DPIE to place condition(s) to the effect of upholding the higher accessibility standard(s) of a previously withdrawn development application for the same lot of land;
* The NSW government should insert a schedule to the EPAA to reassure local councils in making conditions in reference to a range of pieces of legislation and Australian Standards that are part of or footnote to the NCC, that they can meet the Newbury test;

### 8.7 Recommendations to Commonwealth Government

This research recommends that:

* The Commonwealth Government amend the DAPS to include the silver level for building classes including class 1A, class 2, and class 4 in the NCC Access Code attachment;
* In adding Class 1A detached house to the Access Code attachment, that a specific clause for Class 1A detached house be inserted in the DAPS that limits obligation to only the silver level (LHA, 2017; Tanner, Tilse & de Jonge, 2008);
* The Commonwealth Government considers removing exemptions to the DAPS for strata community buildings within the existing class 1A, class 2 with long-term rental/residence, and class 4 (Hazel and Nouwelant, 2013; Sherry, 2020).

### 8.8 Recommendations to Accessibility Advocates

This research recommends that:

* Accessibility advocates continue their lobbying effects at international, national, and state levels;
* Accessibility advocates continue their lobbying efforts with LHA and Standards Australia;
* Accessibility advocates continue to lobby the NSW Government to increase the mandated amount of silver level accredited dwellings to 100%; and
* accessibility advocates to diversify their lobbying efforts towards lobbying and encouraging local councils to update their DCPs to require LHDG.

### 8.9 Limitations

This thesis has a number of limitations which includes:

* Obtaining the views of built environmental professionals beyond the information of publicly available documents as the author did not have access to research built environmental professionals conducting sensitive work;
* Understanding the current/future relations between DAPS and LHDG beyond the unjustifiable hardship provisions;
* Quantifying the need of LHDG accredited dwellings;
* determining what accessibility design standards and circulation spaces are required to ensure future home technology provide accessibility for persons with disabilities (Imrie, 2004; Maryam et al, 2021);
* understanding how the views of persons with disabilities are incorporated into the development;
* determining whether built environment professionals implement DCPs prescriptively or otherwise to avoid exposing wrongdoing (Williams, 2015);
* researching rental and student accommodation (see bibliography of non-academic sources);
* researching the environmental sustainability of components/features that make up LHDG and adaptable housing design, beyond hinting to such in relations to cost and benefit;

### 8.10 Future Research

Future research would attempt to research the above limitations. Perhaps further research would also include researching the feasibility of assisting and training persons with disabilities from supported workplaces to provide services to other persons with disabilities requiring higher access requirements (ABC News 5 and ABC News 6, 2022).

### 8.11 Conclusion

This research has located LHDG in DPIE regional plans, GSC district plans, local council documents and DCPs. This research also locates LHDG in LEC decisions where the property developer challenges the local council finding that the dwelling does not meet LHDG requirements (see State of NSW documents). The NSW government’s argument in rejecting a silver level mandate in reference to property rights has been assessed as having some problems in making sense. This research in conducting council document analysis and case study found that local government, some property developers, and other built environmental professionals are trying to provide LHDG accredited dwellings. This means dealing with challenges arising from site, surrounding the site and in navigating a patchwork of accessibility standards. This patchwork of accessibility standards includes AS1428, AS1735, AS2890.6-2009 and AS4299-1995, DAPS, LHDG, manufacturer’s manuals, and NCC. Further, the ongoing challenge for built environmental professionals and government, includes determining which comes first: housing or the surrounding infrastructure; and regulating public/ private matters and spaces. Nevertheless, this research has also provided recommendations to attempt to remedy the various problems and concerns.

### 8.12 Final remarks

The conduct and completion of research coincides with a global pandemic, the publication of LHDG requirements in the 2022 version of NCC, and when the NSW government continues to publicly voice its opposition. It is hoped that in some point in the near future that the NSW Government would reverse its decision. In the meanwhile, the recommendations are likely to assist the various players on their journey towards a silver level mandate. Nurturing the shift towards providing flexible dwellings that meet a broad spectrum of residents with their needs is key to such a transition (Newman, 2010). On one hand, such equitable philosophy may lead to the provision of equitable built environments. On the other hand, the ongoing application concerns continues, given that the home is private with some degree of flexibility while the surrounding built environment is public with prescribed compliance (Gunningham and Sinclair, 1999; Rush et al, 2012; Tanner, Tilse & de Jonge, 2008).

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## Appendix 1: Ethics approval letter

04-Feb-2022

Dear Professor Robert Freestone,

Project Title PLAN7149 Planning Thesis [Master of City Planning by Coursework

HC No HC210678

Re Modification submitted 01.02.2022 seeking approval to bring the completion

date on the application form in line with the approval given and to revise the

details within the Student Risk Assessment Application template.

The modification to this project was approved by the HREC Executive on 03-Feb-2022.The

following condition(s) must be met before data collection commences:

Modification conditions of approval:

N/A

The conditions of approval listed within the projects original approval letter still apply.

The HREC Executive Terms of Reference, Standard Operating Procedures, membership and

standard forms are available from https://research.unsw.edu.au/research-ethics-and-compliancesupport-

recs.

For questions or concerns, please contact the Ethics Administrator using the contact details

below

Telephone: Human Ethics team telephone contacts

Email: humanethics@unsw.edu.au

Website: https://research.unsw.edu.au/human-research-ethics-home

Kind Regards,

Human Research Ethics Presiding Member

This HREC is constituted and operates in accordance with the National Health and Medical

Research Council’s (NHMRC) National Statement on Ethical Conduct in Human Research

(2007). The processes used by this HREC to review multi-centre research proposals have been

certified by the National Health and Medical Research Council.

## Appendix 2: Spreadsheet

See attached spreadsheet.