

Friday AAN: 15 November 2024

In today's "Ask Amanda Now" session, Amanda answered Jan's question: can an over 55's strata allow under 55's to reside within the community?



Please note that this transcript is produced by automated software and some words and phrases may not be transcribed correctly from the original audio. To check for accuracy or obtain clarification, please refer to the original audio which can be found [here](#)

Hello and welcome to Ask Amanda Now. I'm your host, Strata lawyer, Amanda Farmer. I'm swinging on by this Friday afternoon to answer one Strata question for you. I'm not in an airport, I'm not on the road. I am here in my home office slash home studio, which is a nice place to be for a change. I'm just coming off the back of a half day online CPD training.

Training 20 plus agents who hold both Strata managing agent licences and real Estate agent licences. So our dual licence holders need to complete some Strata CPD learning for their licences and I was the one helping them do that today. So it's been a big day of feeling a little bit worse for wear after all of that prep and being online. But they were fantastic group of agents. We had a really great time online.

If any of you are catching me here live or swinging around and catching the replay, let me know. I can see a few eyes coming in live already. If you want to give me a hello, as I always like to see you there, let me know that you're here. This is our shorter Friday session. One Strata question to be answered today. I have chosen one from those asked.

We have questions in my inbox. We have questions here on the page. We always have more questions than I can answer in one of these sessions but I've chosen one that caught my eye because not the first time that I have been asked that question and the answer might help you as well. Hey Sean, good to see you. Hi Suzanne. A cool one today. Yes, well, depending on where you are.

Not so cool where I am. I'm interested to know where are you, Suzanne, if you want to share. Hey Alan, how you doing? Oh, you're all here, ready to go. You don't even know what question I am going to answer. Well, let's jump in and I will tell you, Rochelle, who is here helping me out on the team. Let's bring up today's question. It is from Jan. This one was posted on the page.

Jan has asked, can an over 55 strata title self care units allow under 55s to reside within the village community? Our current Strata manager says it's up to the committee to decide. A little bit more info in Jan's post. That's just a summary there. Jan has said that it's listed by the lands Department as SEP 5. So SEP, State Environmental Planning Policy, SEPP SEP 5 over 55 self care strata title.

That's how the Lands Department has it recorded, says Jan in her post. Strata Manager is saying it's up to the committee to decide whether it is going to allow under 55s in this village community. Great question from Jan and I've set up the top that it's one that I have come across been asked before so I'm really curious. There seem to be maybe a few over 55 strata title developments out there.

We know that. But developments where people who are not over 55. Older Australians, I'm going to say older people who are living in these over 55 developments. It was worth a look and I have had a little poke around these relevant environmental planning policies and I do have my answer here for Jan. Always have the brains trust here with me. If you come across this before, if you're working with communities that are over 55s developments, you might have some tenants who are under 55.

How are you dealing with that? More of you coming in to say hi. Hey Shana, how you going? Sean M is joining us. We got the Sean's. Excellent. So I'll just remove that one from the screen for now and let you know my thoughts on Jan's questions. So Jan has said in her longer post, which is here on the page, that registered or registered with the Lands Department, Ajan's words is a reference to Sep5, State Environmental Planning Policy Number 5.

I went and looked that up. I'm going to share it here with you on the screen and we have a link for you to pop into the comments as well. I might just share that tab. State environmental planning policy number five. I'm looking at it through the legislation NSW Gov AU website. Housing for older people or people with a disability. The important thing to notice about this is that this is repealed.

My quick research is telling me that it's all been overtaken by the housing sep 2021. I am going to talk a little bit about that. But this is the SEP5 that seems to be mentioned in relation to Jan's building housing for older people or people with a disability. Now when I'm looking up legislation, trying to find an answer to a question that I've been asked. I'm going to the left hand side here and I'm scrolling through the section headings and as I did that today I saw this section 15 or clause 15 in the Instrument who can live in

Friday AAN: 15 November 2024

In today's "Ask Amanda Now" session, Amanda answered Jan's question: can an over 55's strata allow under 55's to reside within the community?



housing for older people or people with disabilities.

Because remember Jan's told us we've got people who are under 55 living here and Strata manager said that's okay, it's up to the committee to decide who lives here. So as a Lawyer. I'm thinking, well, what does the planning instrument say? Let's go over and have a look at clause 15 in the planning instrument. Who can live in housing for older people? Development allowed by this policy may be carried out for the accommodation of the older people or people who have a disability.

And I'm going to get to what's the definition of older people? People who live with older people or people who have a disability and staff employed to assist in the administration of and provision of services to housing provided under this policy. So older people, we're kind of operating on the assumption here that we're talking about over 55 as older people because that's how we commonly know the name of these developments.

We call them over 55 developments. Is that a thing? Are we right about that? What we do to cheque, that is go to the definitions in the policy and see if the term older people is defined. If I Look at clause 6 definition, it tells me to go to the dictionary at the end of the policy. I scroll down to dictionary and then I've got some words here in alphabetical order and I show you all of this so that you are well armed to do this exercise yourselves in relation to whatever legislation you might be looking up.

We find the definition of older people and that means people aged 55 years or older. Cool. So we're on the right track when we're referring to these developments as over 55's developments. Let's go back to clause 15 in the policy so we can. We should only be accommodating people who are over 55, older people or people who have a disability, people who live with those people and staff who are employed to assist in the provision of services for those people.

That's in the policy. Important to note. And Jan, if you're tuning in, we've got a link here for you. What I have told you when I flicked over to this policy is this has actually been repealed so we need to work out what has taken its place. And my research has led me to the housing SEP 2021 having taken the place of this SEP number five. I'll take you over to the housing set 2021 in a sec and we'll see if anything has changed.

Is there anything different about these over 55 developments in the housing SEP? That would mean under 55s are actually allowed to live there. Heading over to say some hellos, I'm seeing a hello there from Shane who's saying, hi Auntie Amanda and that is because Shane is my nephew. Lovely to see you, Shane. Thanks for tuning in. Time to get some Strata knowledge. Let's get you onto the Strata property purchasing track.

Let's do it. Shane is a young man who has a bright future ahead of him. Hey Elizabeth, how are you doing? Henry is saying step five was used by developers in the late 90s and early 2000s to bypass council approval for apartments. This occurred in Sydney's North Shore along the rail line. It was extremely controversial at the time. Oh, interesting. Early 2000s. Oh, little bit. Just only maybe only just before my time in Strata, Henry.

So thank you for that update. Hey, Denise, Angela saying very relevant topic to me too as I live in an over 55 scheme where this is pertinent. Awesome. Okay, so we've had a look at Step five. I've said that's now old. Yes, that did restrict accommodation occupancy to older people over 55s or their carers or people with a disability. We now look at the housing SEP 2021 and my understanding is that's the relevant SEP to be referring to.

Let's head over to that tab if I'm clever enough to have it available for you. Let's have a little look. Aha. Sep, that's S E, P P, that's where this word sepp comes from. Housing 2021. This is really long. You can see up the top here, 152 pages. Part of my research as I was looking this up, led me to understand that we've replaced the use of the words older person with seniors.

We now refer to seniors. Fair enough. So when I'm looking in this set which covers all sorts of housing policies, not just seniors housing. I've decided to go and search for the word seniors so that I can try and narrow down the correct section of the policy to help Jan. And immediately I've come up with part five, housing for seniors and people with a disability. That's at page 58.

If I look for another reference to seniors, seniors housing is permitted with consent. That highlight tells me development standards

Friday AAN: 15 November 2024

In today's "Ask Amanda Now" session, Amanda answered Jan's question: can an over 55's strata allow under 55's to reside within the community?



for seniors housing. And I get to finally, restrictions on occupation of seniors housing. Ding, ding, ding. That's what Jan is looking for. And I can even click through on this version of the legislation link here for you. In the chat I can click through and have a read of this part of the SEP development period under this part may be carried out for the accommodation of only the following seniors or people who have a disability, people who live in the same household with seniors or people who have a disability and staff employed to assist that Sounds to me almost identical to what we saw in the SEP5.

So nothing much has changed there. We are accommodating people who fall into this category unless they're living in the same household with seniors, then people who are under 55 who are not seniors should not be living in these over 55 developments. That would be a breach of the development consent would be a breach of this environmental planning instrument and how all of this interacts to Strata and why it is that I'm coming to Jan, your strata manager, I think is giving you the wrong information in saying it's okay.

As long as the committee is all right with it and the committee doesn't restrict it, anyone can live in an over 55s. I say that is wrong because the planning instrument very clearly says it is only for the accommodation of seniors. And if we go to the Strata legislation, which is what I'm going to point you to next, we will see why that matters. Oh, I've taken you here to section 136 in the strata Schemes Management Act.

I'm making a bit of an assumption here with Jan's situation that maybe if the committee was to decide, yes, we want people who are not seniors, people who are under 55 to be living in this development, maybe we might make a bylaw that says we can allow this. If the committee made a bylaw that said anyone can live here even though it's an over 55 development, then it is section 136, which I'll just make a bit bigger here on the screen for you, that makes that bylaw invalid or of no force and effect because it is inconsistent with any other act or law.

Environmental planning instrument prevails over the bylaw that the owners corporation might make. Jan's situation. We don't have a lot of background in. Unless Jan has popped in and given me some more info here, I don't think so. Jan's situation we're not sure if there's a bylaw that is permitting people who are under 55 to live in this development. If it was, I think that bylaw would be inconsistent with the planning instrument and therefore of no force and effect.

And certainly it is not the case, as Jan's strata manager has advised, that we can just be allowing people, tenants, owners, owner, occupiers to be living in this development when they are not seniors or people living with seniors or staff who are assisting seniors or people with a disability and people who are assisting people with a disability. That would be a breach of council's development Consent. I pointed you to the bylaw because if we've got a bylaw in place it kind of becomes that strata management concern and strata issue, if the owners corporation has no rules about this, is not otherwise restricting or what's the word, attempting to regulate this issue, then the correct place to go to sort this out is going to be the council.

This is a breach of the development consent and the council needs to be notified of that. Breaching the development consent, not complying with conditions of development consent is an offence under the Environmental Planning and Assessment act and council needs to know about that. Another missing piece here that I'm not aware of is whether there's any instrument that's registered on the title to the common property or to the lot property that makes clear that there is a restriction on the use of the land here.

So you'll see in that housing sep that when local councils approve these over 55 developments they also have a requirement that there be a restriction on use of land registered on the titles. I have a feeling that restriction might be there because Jan has said According to lands department this is over 55s. That's got to be coming from somewhere. There's probably a restrictive covenant or similar registered on the titles that says this.

That's another thing to point out to your strata manager, Jen, who is saying, no, it's okay, committee can just decide whoever if they want under 55s to reside here, the restrictive covenant is going to is going to prevent that and the development consent is going to prevent that. You're going to be in breach of the Environmental Planning and Assessment act preventing permitting rather the under 55s to stay in that development.

Friday AAN: 15 November 2024

In today's "Ask Amanda Now" session, Amanda answered Jan's question: can an over 55's strata allow under 55's to reside within the community?



Suzanne is saying, do all over 55 years developments be in a strata scheme or could they be private? Yes. So they don't have to be strata, they could be neighbourhoods. So they could be community schemes and precinct associations. They might otherwise be retirement villages which are not always strata. So yeah, they don't have to be strata. Titled hello to those who have come in since I did my last round of hellos, Kristen and George and Desert who is on the gc.

I think that's probably about all I wanted to say in response to Jan's question. Great question and I can see from the post that it is relevant to some others as well. Jan, if you're tuning in, I don't see you here live but if you're tuning in catching the replay, please let me know your thoughts on that one and if there's any more information that you'd like to add, Carolyn saying, had this situation a few years ago, five dwellings, dad was 57, mom in early 30s, and they had three young boisterous boys.

Other owners not happy, but nothing they could do about it. Yes, Carolyn, because as we went through and had a look at the policy, if you're living with a person who is over 55, then that's within the boundaries of the policy. Person in the same household. Was that the wording that was used? Let's have a quick look. Yes, persons who live in the same household with seniors or people who have a disability, those people don't have to be over 55.

So that's a really good one to remember. Hey, Maureen. Henry saying, could the owners apply for a rezoning or a change of use? Yeah, I guess they could. Not sure that they'd get it these days because there's been a big push for more seniors housing and there's been already, I think, some rezoning and some changes to planning controls to allow more seniors housing. So it's probably not the right moment in history, let's say.

Thank you very much, Shane, for tuning in. Lovely to see you. All right, thank you for your comments, thank you for your hellos, thank you for your questions and sharing your experience, Jan. Hope that helps. Thanks for submitting your question and all of you who submitted your questions for our Ask Amanda now session. Not able to answer all of them for you. If you are a member inside our online membership community, you know where to go.

Jump into that forum. I have been swamped with training and client work the last couple of days. I haven't popped into the forum in about two nights or so. Tonight's the night. Tonight's the night, babes, that I'll be in there and catching up on those questions. So if you've asked a question, the answer is on the way. If you're not yet a member inside our online community and you want the opportunity to get my eyes on your Strata question, even better, get my answer to your Strata question.

Then you can head over to Strata membership dot com. Love to have you with us on the inside. Have a fab weekend, everybody. Get some rest. I will be. I've got some sleep to catch up on and I'll catch you all here next time. Bye for now.