

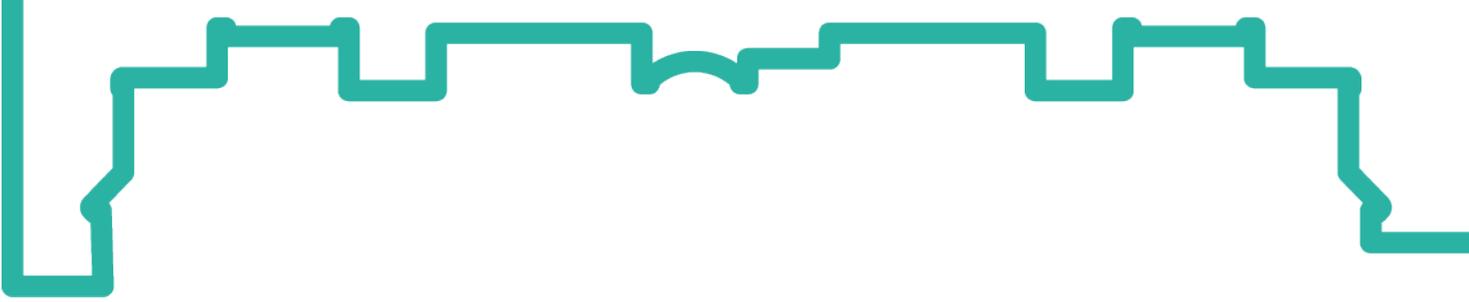


**NSW Department of Planning
and Environment**

**State Environmental
Planning Policy
(Design and Place)**

Shelter NSW submission

28 February 2022



About Shelter NSW

Shelter NSW is a non-profit organisation that conducts housing research and advocacy on behalf of households on ordinary incomes — those in low- and moderately-paid work, in casual or part-time employment, or getting by on government support payments. We were founded in 1975 as a member-based organisation that today represents a diverse network of other organisations and individuals who share our vision of a sustainable housing system that provides a secure home for all.

We pursue our vision through critical engagement with policy, practice and thought leadership. We provide systemic advocacy and advice on policy and legislation for the whole NSW housing system to resolve housing inequality. We are especially concerned for low-income households which struggle to afford good quality and well-located housing in the private market.

About our submission

Shelter NSW (Shelter) welcomes the opportunity to comment on the [draft Design and Place State Environmental Planning Policy](#) (DP SEPP), and associated exhibited documents including the [Environmental Planning and Assessment Amendment \(Design and Place\) Regulation](#) (EPA Amendment), [Draft Apartment Design Guideline](#) (ADG), [Draft Urban Design Guide](#) (UDG), [Draft Local Government Design Review Panel Manual](#), and [Sustainability in Residential Buildings](#) (BASIX changes). These documents have been prepared by the Department of Planning, Infrastructure and Environment (DPIE) and the Government Architect of New South Wales (GANSW).

Shelter's ongoing review of the planning system has presented evidence that the private housing market and a majority of existing planning mechanisms are failing to deliver housing solutions that address the unmet housing needs of affordability, quality, suitability and choice. Shelter NSW is primarily concerned about the impacts of poor-quality housing, particularly on low-income households. Lower-cost properties are being steadily replaced with new ones at higher rents, and the poorest quality housing is filtering down to the lowest income earners, creating new concentrations of disadvantage.

NSW is changing rapidly to accommodate a growing population. In the context of the COVID-19 pandemic, more frequent climate change weather events, and increasing traffic congestion, it is apparent that new development must meet a number of critical challenges facing NSW.

From Shelter's perspective, we see the DP SEPP as an opportunity to address these major challenges and ensure that our homes and neighbourhoods are fit-for-purpose and future-proofed by continuing to deliver and improve best practice design. Overall, we strongly support the intent and direction of the DPSEPP, however we raise some concerns about principles-based assessment, the importance of minimum standards, and issues specific to regional development. As such, we have made a series of comments and recommendations

regarding the provisions in the SEPP which aim to provide potential solutions for consideration.

We commend DPIE and GANSW's commitment and leadership to facing these critical challenges through the DP SEPP. We implore the government to remain committed to continuing to address these issues and recognise the widespread industry support for the DP SEPP.

If you wish to discuss our submission in more detail, please contact Stefanie Matosevic on 0431 037 724 or by email at stefanie@shelternsw.org.au or our CEO, John Engeler, on 02 9267 5733 or by email at john@shelternsw.org.au.

Sincerely Yours,

John Engeler

Chief Executive Officer, Shelter NSW

Stefanie Matosevic

Policy Officer, Shelter NSW

Key takeaways

- 1. Shelter NSW strongly supports the DP SEPP.** We see the DP SEPP and supporting documents as a way to improve housing outcomes for low income households in NSW.
- 2. Minimum standards for core amenities should be retained.** There are risks associated with a principles-based system. Minimum standards and design criteria act as a safeguard for DA planners to refuse developments with poor amenity and are important to protect households on ordinary incomes.
- 3. Generally, the language is vague and imprecise.** Examples of vague and ambiguous language leaves too much room for interpretation. All language, including in the principles and objectives should be clear, concise and consistent.
- 4. There should be more clarity around potential 'trade offs'.** We are concerned that trade-offs may be sought for not meeting certain standards of baseline amenity.
- 5. Non-market housing should be delivered at the same standard.** We are concerned flexibility for affordable housing could lead to poorer outcomes.
- 6. There are some issues around the applicability of the DP SEPP in regional areas.** We seek more specificity in the DP SEPP on its application in regional areas, which are significantly different to cities.

The importance of the DP SEPP

NSW is rapidly evolving to accommodate the growing number of people that wish to enjoy its unmatched lifestyle and employment opportunities. In the context of climate change, population growth and the pandemic, it is critical that new development is designed to meet the critical challenges of the future; development that will last, be comfortable, accessible and energy efficient.

Despite this, we are too frequently faced with the reality that some development is not fit for purpose, adaptable or future proofed. The effects of climate change are being felt with more frequent and severe heatwaves and weather events that require good environmental design to combat¹. The pandemic highlighted the importance of internal amenity in apartments, and neighbourhood amenity such as quality green spaces, safe walking paths and basic services within walking distance². New greenfield communities have suffered from poor accessibility and walkability, leading to an overreliance on private vehicles and worsening traffic congestion. And while the ADG and BASIX currently set a strong baseline, both are in need of updating to respond to the challenges of 2022 and beyond.

What has become obvious is that good design has important economic, social and environmental benefits that cannot be ignored. Good design can no longer be considered a 'nice to have'. The option to walk or cycle instead of drive, the ability to enjoy green spaces, the knowledge that you can cool or heat your house as necessary, accessibility, privacy, sunlight and fresh air are the right of everyone in NSW. The design requirements set out in the DP SEPP and related documents provide an important standard baseline that ensures new building and communities enhance lifestyles, wellbeing, and productivity, and can meet the unique challenges we face in 2022 and beyond.

¹ University of Technology Sydney (2019), [‘The danger of heat and cold across Australia: Cold temperatures are not nearly as deadly as heat, with around 2% of all deaths in Australia related to heat’](#), ScienceDaily, 11 September, accessed 11 February 2022

² Bolleter, J., Edwards, N., Cameron, R., Duckworth, A., Freestone, R., Foster, S. and Hooper, P., (2022), [‘Implications of the Covid-19 Pandemic: Canvassing Opinion from Planning Professionals’](#), *Planning Practice & Research*, Volume 37, Issue 1, pp 13-34, doi: 10.1080/02697459.2021.1905991

Shelter NSW's interest in the SEPP

One of Shelter NSW's key policy objectives is to advocate for appropriate and high-quality housing for NSW, especially for people on ordinary incomes. As a member of the Good Growth Alliance, we strongly support considered and sustainable growth and development. We seek better quality apartments and communities, especially in the context of large-scale greenfield developments and significant infill revitalisation projects being delivered across the state.

Well over a million households in NSW are in the bottom half of income earners (1.2 million in 2016, an increase of 63,000 since 2011)³. Lower income households are increasingly experiencing household stress, paying more than 30% of their household income in rent; unable to accumulate deposits to enter the housing market. In a housing system where over 95 per cent of dwellings are provided by the private market, our primary concern is that new development of poor quality will ultimately filter down to these households.

All housing – whether it be luxury, standard, or subsidised – deserves a minimum standard of design and a consistent baseline of amenity. Without this, ordinary income households will be left to bear the brunt of poor design outcomes, which can include unsafe temperatures, high heating and cooling costs, a reliance on expensive private vehicles, and a lack of access to important basic services. In addition to rising housing costs, we are also faced with increased cost of living - disproportionately felt by lower income households (households with the least ability to adapt and respond)⁴. That is why we see the Design and Place SEPP as so important: it protects these households when they cannot afford an alternative.

³ .id (2016), '[New South Wales Household income quartiles](#)', accessed 27 January 2022

⁴ Deloitte (2021), '[The economic impacts of the National Low-Income Energy Productivity Program](#)', report prepared for the Australian Council of Social Services, accessed 27 January 2022

Comments and feedback

1. Shelter NSW strongly supports the DP SEPP

Overall, Shelter strongly supports the introduction of the DP SEPP. Not only does it have the commendable goal of simplifying the planning system by consolidating several design controls, it also addresses very real issues facing NSW and will result in better housing outcomes for low income households across NSW.

We see the DP SEPP as also having important benefits for low-income households. The cost of electricity has soared, increasing by 117% between 2008 and 2018⁵. This is leading to real and dangerous consequences for low-income households. In winter 2018, 130 people were admitted to emergency in NSW due to cold-related illnesses (e.g., hypothermia) – a 34% increase from 10 years ago. At the other end of the spectrum, heat waves kill more people in Australia than any natural disaster – and there is a risk that this will increase as urbanised areas are expected to get hotter⁶. Qualitative research conducted in 2017 found that energy efficiency improvements to homes of people living in fuel poverty had a positive impact on wellbeing and quality of life, financial stress, thermal comfort, social interactions, and indoor space use⁷. We therefore support improved environmental design and energy efficiency in new buildings and communities that helps to address the consequences of energy poverty.

In addition, vehicle dependence for low-income households has been linked to poorer health outcomes due to associated financial, health and wellbeing costs⁸. The requirements for walkability, accessibility and parking included in the UDG and ADG are therefore supported as they aim to reduce reliance on private vehicles and encourage use of more affordable and active modes of transport, and have health and economic benefits for low income households.

With regards to specifics of the DP SEPP, Shelter supports the provision that development “must meet objectives”. Implementing a successful principles-based approach requires development to meet all principles and objectives – otherwise it is meaningless. We also strongly support any improved amenity requirements included in the updated ADG, for example, the introduction of a minimum of 8sqm of communal open space up to 25% of the site area, which increases communal open space for smaller sites (ADG, p44); and the inclusion of ceiling fans for air circulation (ADG, p65).

⁵ Byrd, J (2018), ‘[Chart of the day: Something has gone terribly wrong with electricity prices](#)’, ABC News, 18 July, accessed 11 February 2022

⁶ Melville-Rea, H. (2022), ‘[Western Sydney will swelter over 35°C 46 days per year 2090 unless emissions drop](#)’, *Architecture and Design*, 18 February, accessed 18 February 2022

⁷ Grey, C. N. B. et al. (2017), ‘Cold homes, fuel poverty and energy efficiency improvements: A longitudinal focus group approach’, *Indoor and Built Environment*, Volume 26, Issue 7, pp. 902–913. doi: [10.1177/1420326X17703450](https://doi.org/10.1177/1420326X17703450).

⁸ Rachelea, J.N., Sugiyamaab, T., Turrella, G., Healya, A.M., and Sallisac, J.F. (2018). ‘Automobile dependence: A contributing factor to poorer health among lower-income households’, *Journal of Transport & Health*, Volume 8, March 2018, pp 123-128. doi: <https://doi.org/10.1016/j.jth.2017.11.149>

Notwithstanding the above, Shelter wishes to highlight some concerns and feedback we have on the DPSEPP. We appreciate the value of flexible design standards when it allows better and more innovative design but there are risks associated when proponents are motivated by cost cutting and increased yield rather than better design outcomes.

2. The importance of minimum standards

While we support the introduction of greater flexibility to promote innovative design solutions, it is difficult to know what a principles-based system means in practical terms. Shelter has identified three key risks in introducing the principles-based system as is presented in the draft:

1. Difficulty for local planners in assessing abstract principles versus numeric criteria and the associated unpredictability of approval or refusal reduces certainty
2. Potential for corruption in approving development based on interpretation and discretion
3. Poorer design quality filters down to lower income households

Minimum standards and design criteria act as a safeguard for DA planners to refuse developments with poor amenity and are important to protect households on ordinary incomes. The use of simple numerical values and linear measurements in the ADG and UDG serves two purposes: firstly, to ensure a standard baseline of amenity is achieved; and secondly, to ensure that development applications are 'desktop assessable'. Shelter do not support the scaling back of minimum standards in the place of design principles.

The current ADG is widely regarded as a best practice document that is balanced, practical and achievable. It sets a strong low bar/minimum standard for apartment design and protects the core amenities of solar access, natural cross-ventilation, visual privacy, acoustic privacy, ceiling heights, unit sizes, private open space, and outlook. There is no reason this line cannot be maintained (note that this is not introducing new minimum standards but maintaining well-established existing standards), while still allowing for flexibility.

We recommend:

- All core amenity requirements are in the form of quantitative controls.
- All quantitative controls are listed as design criteria, not design guidance. It should be clear that the baseline should not be a suggestion. For example, design guidance in ADG, p53 'Ensure a window is visible from any point in a habitable room' should be a design criteria of 'All habitable rooms (100%) should have a window that is visible'.
- Acoustic privacy measures be reinstated in Section 1.2 Built form and sitting.
- All of apartments should incorporate the Living Housing Australia (LHA) Liveable Housing Design Guidelines Silver Level universal design features; these simple design

measures have very little cost and design implications that will ensure apartments are flexible and adaptable.

- The requirement for an area of 1sqm to achieve a minimum of 15 minutes sunlight is reinstated (current ADG 4A-1 8). There is a risk that without this, the sunlight could simply 'touch' the window to be considered (ADG, pg61).

3. Clearer and better aligned principles

While the five principles of the DP SEPP resonate, they are too vague and general. It is also unclear how the five design principles link to the objectives in the ADG and UDG. The principles are particularly disconnected from the ADG objectives as they relate much more to a neighbourhood scale.

Further to this, the reduction of objectives in the ADG from 82 to 36, while a good idea in theory, has resulted in long and convoluted objectives that combine multiple ideas. For example, "(1) *Provide a range of apartment types, sizes and configurations* to (2) *promote flexible housing* that (3) *caters for current and projected housing needs of the community*" (ADG, objective 2.3, p48); and "(1) *Walkable neighbourhoods* are (2) *vibrant* and (3) *productive*" (UDG, objective 5, p34). Wording such as this makes objectives difficult to understand and meet, and waters down their intent. It is imperative that should the DP SEPP be guided by principles and objectives, that the time is taken to craft them in a way that is clear, concise and specific.

We recommend:

- Reviewing DP SEPP principles, ADG objectives and UDG objectives so they align more clearly (perhaps graphically represented).
- Reviewing language of the ADG and UDG objectives in detail to ensure clarity and accuracy; do not combine too many concepts.

4. Address vague and imprecise language

There are several examples in the ADG and UDG of ambiguous and imprecise language. This leaves design up to interpretation and makes testing and assessment difficult. Use of words such as 'minimise' and 'avoid' does not quantify how much something should be reduced by. Phrases such as 'can't be avoided', 'cannot be met' and 'when it is not possible' give no indication of what the limit is. Wording such as this will have practical implications at the assessment stage.

We recommend:

- Imprecise language is clarified to better communicate what is intended (e.g. 'avoid', 'high level', 'sufficiently sized', 'responds appropriately', etc).

- Introduction of numerical qualifiers where possible (e.g. when stating 'larger than minimum width', define what the minimum width is).

5. Clarity around potential 'trade-offs'

We are concerned that trade-offs may be sought for not meeting certain standards of baseline amenity. For example, the ADG states 'Balance this with the amenity of habitable rooms in apartments' (ADG, p74); this wording suggests a lack of visual amenity can be traded off with solar access, natural ventilation and outlooks – which is not an alternative solution, but a trade off.

We are concerned this loophole may be used to avoid delivering certain core amenities. Very strictly, these core amenities (solar access, natural cross-ventilation, visual privacy, acoustic privacy, ceiling heights and unit sizes) should be achieved independently of each other and there should be no provision for them to be 'traded off'. They should be linked to strict numerical standards with clear objectives that provide a baseline standard of amenity.

We recommend that:

- DP SEPP includes 'relevant' or 'applicable' when discussing whether alternative solutions achieve a better or neutral outcome.
- Dual key apartments should also be regarded as two sole occupancy units for the purposes of all ADG design criteria and design guidance, not just BCA (ADG, pA31). Dual key units are frequently rented out separately, so each should function as an independent dwelling.

6. Guidance around 'alternative solutions'

The DP SEPP does not include enough guidance on how an 'alternative solution' is pursued. Any variations to the design criteria should have an assessment framework. The minimum standards for core amenities should not be easily varied without ample justification for non-compliance.

We suggest that there is a high onus on the applicant to pursue alternative design solutions which demonstrates why the design criteria cannot be met and why the alternative is an adequate way forward that still achieves the design objectives.

We recommend that:

- A clear pathway for alternative solutions is set out in the SEPP that provides guidance to both the applicant and the assessor on what is required.
- The onus is on the applicant to provide sufficient documentation that is easy to understand

7. Affordable housing must be delivered at the same standard

The new ADG appears to make some flexibility allowances for affordable rental housing and build to rent apartments, specifically in relation to private open space (ADG, pg59) and storage (ADG, p78). It is unclear what 'flexibility' is referring to and we are concerned this could lead to poorer private open space outcomes for affordable rental housing. Shelter strongly is opposed to any suggestion that affordable rental housing or social housing should be at an inferior design standard to private market housing, and refer to SEPP Housing Part 2 Division 1 In-fill affordable housing and Division 5 social housing residential flat buildings require continued application of SEPP 65 with no modifier.

We recommend that:

- Remove any suggestion that affordable and social housing should not meet the same standards as private market housing (for example ADG, pg59 and ADG, pg 78)
- There is a requirement for all public dwellings (such as in Communities Plus projects) be located within the minimum percentage of dwellings that meets criteria

The Regional Perspective

8. Applicability of Urban Design processes in the SEPP

Regional councils may not always have precinct plans, masterplans, and DCP land-use overlay plans in place for greenfield areas. This is particularly the case for underutilised residential zoned land not captured by Urban Release Area controls in LEPs. Greenfield development also continues to play a large role in delivering housing supply in many regional councils.

Working through the processes entailed in the applicability of the DP SEPP, we have identified concerns about applicability gaps for subdivision planning. For instance:

- The SEPP applies to "development on land that is not in an industrial zone that has a site area greater than 1ha" (DP SEPP, cl 6)
- The SEPP does not apply to "minor subdivision... or the subdivision [of land] involving less than 1ha of land" (DP SEPP, cl 8)
 - "Site area" is used instead of "lot area". "Site area" is defined not in the DP SEPP but rather in the SILEP.
 - The greater than/less than wording for site area disregards site areas which would equal exactly 1 hectare.

Our understanding of the SEPP process is that if the SEPP applies to a DA, for say, greenfield residential subdivision due to the "site area" threshold, then design considerations for assessment are triggered under Part 2, Part 3 Division 1 Urban Design Development. Thus, the development will need to be cleared by the Design Review Panel under Part 4. However, it is not beyond the realm of possibility that landowners/developers wishing to circumvent the DP SEPP process would utilise the definition of "site area" and 1ha threshold to simply lodge a

residential subdivision DA for part of an allotment (i.e. the “site area”) at less than 1ha. Similarly, developers could lodge a 1-to-2 lot DA subdivision of the superlot to create a development lot at less than 1ha with the other lot known as ‘residual’ to minimise scrutiny under the DP SEPP at the outset.

We recommend that:

- Introduce an alternative pathway for applicability of the SEPP, i.e. if the “site area” is below the threshold outlined in the SEPP but the “site area” is not otherwise captured by an existing in-force Urban Release Area DCP or masterplan for subdivision or similar statutory land-use overlay, then the DP SEPP applies.

9. Urban Design Guide for Regional NSW (2020)

A design guide known as Urban Design Guide for Regional NSW was released by the Government Architect in 2020, however, no mention of this document is included in the DP SEPP. Regional councils and developers may be confused as to which design guides must be consulted when fulfilling the requirements of the DP SEPP.

We recommend that:

- It is made clear in the DP SEPP what design guides apply when and for what locations
- Review the *Urban Design Guide for Regional NSW 2020* to ensure it is fit for purpose considering the DP SEPP objectives.

10. Design Review Panels for regional LGAs

The draft Local Government Design Review Panel Manual does not adequately outline how Design Panels will function in regional settings. Many regional councils may struggle to recommend experts to be appointed to a panel, and as such joint regional design panels across LGAs may be required.

We recommend that:

- The Local Government Design Review Panel Manual be updated to provide specific guidance to regional councils on the constitution and functioning of joint panels, should joint regional design panels be required to meet the obligations of the DP SEPP.

Summary of Shelter NSW recommendations

Document	Recommendation	Example
DP SEPP, ADG, UDG	Clearer alignment between the DP SEPP principles, ADG objectives and UDG objectives	NA
ADG, UDG	All core amenity requirements are in the form of quantitative controls	xx
ADG, UDG	All quantitative controls are listed as design criteria (not design guidance)	Daylight and natural ventilation requirements (ADG, p41)
ADG, UDG	Review objectives in detail to ensure they are clear and concise	ADG, objective 2.3, p48
ADG, UDG	Imprecise language is clarified to better communicate what is intended.	Wording such as 'minimise', 'avoid', 'high level', 'sufficiently sized', 'responds appropriately' etc
ADG, UDG	Introduction of numerical quantifiers	'Larger than minimum width' (ADG, p40) should define what minimum width is
ADG, UDG	Include 'relevant' or 'applicable' when discussing whether alternative solutions achieve a better or neutral outcome	ADG, pA2 and pA3
ADG, UDG	A clear pathway for alternative solutions is set out in the SEPP that provides guidance to both the applicant and the assessor on what is required	NA
ADG, UDG	The onus is on the applicant to provide sufficient documentation that is easy to understand	NA
ADG	Reinstate acoustic privacy measures from current ADG	Section 1.2 Built form and sitting
ADG	100% of apartments to incorporate LHA Liveable Housing Design Guidelines Silver Level universal design features	ADG, p49
ADG	Retain current ADG requirement for an area of 1sqm to achieve minimum of 15 minutes direct sun (current ADG 4A-1 8)	ADG, p61
ADG	Specify that dual key apartments are regarded as two sole occupancy units for the purposes of all ADG design criteria and design guidance.	ADG, pA31
ADG	Remove any suggestion that affordable and social housing should not meet the same standards as private market housing	ADG, p59 and p78
ADG	Introduce a requirement for all public dwellings (such as in Communities Plus projects) be located within the minimum percentage of dwellings that meets criteria	NA
DP SEPP	Introduce an alternative pathway for applicability the SEPP	NA

DP SEPP	Clarify which design guides apply when and for what locations	NA
Urban Design Guide for Regional NSW 2020	Review to ensure it is fit for purpose considering the DP SEPP objectives	NA
Local Government Design Review Panel Manual	Update to provide specific guidance to regional councils on the constitution and functioning of joint panels, should joint regional design panels be required to meet the obligations of the DP SEPP	NA

A final note: DP SEPP and housing affordability

We note that some industry lobby groups have criticised the SEPP as containing unworkable thresholds that will be rigidly applied by councils. Contrary to some this commentary, the introduction of the DP SEPP will not have a negative effect on housing affordability. Housing regulations are a large and complex system, and is not significantly affected by additional design requirements.

Planning controls do not cause housing unaffordability; on the contrary, Shelter maintain that planning controls are necessary to ensure a high level of development standards. Although additional design requirements may add some costs to projects, this is an extremely small proportion of construction costs compared to developer profit gained. Typically, design costs account for only 0.3-0.5% of the total lifetime cost of a building, and construction costs only 3%⁹. Additionally, there are minimal actual changes to the ADG that will not result in significant implications for dwelling yield. There are several examples within the exhibited documents that indicate the SEPP does not intent to stifle development or affect yield, for example, in Part 2 Division 14(d) states “the development represents an effective and economical use of space”.

Notwithstanding this, the value of good design should consider more than just economic costs, but also social and environmental costs. Any upfront additional costs to design and construction will be offset by long term savings, such as reduced retrofitting to address climate change and reduced energy bills.

The primary reason for the existence of Shelter NSW is to advocate for affordable and appropriate housing for all. It is not in our interest to support a policy that actively goes against this goal.

⁹ Government Architect of NSW (2017), ‘[Better Placed](#)’, pg 50, accessed 11 February 2022