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Planning Proposals
Department of Planning and Environment
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State Environmental Planning Policy 65

We provide these comments with a focus on a number of matters that we think are important for housing wellbeing, and residents' peace and quiet enjoyment in particular, and trust they will help to improve the Policy and its ancillary documents.

Visual privacy. We note that the draft amendments to the SEPP propose that the standards on visual privacy contained in the *Apartment design guide* will override any inconsistent provisions on this matter in a development control plan. The relevant section, 3F, proposes 2 broad performance outcomes — the equitable sharing of visual separation distances between neighboring sites, and increased privacy from site- and building-design elements. The performance indicators seek the avoidance of major obstacles to privacy between neighbors, namely facing windows and facing balconies, including avoiding direct lines of sight across corners. These will be important for achieving the desired result.

Car-parking. We note that the draft amendments to the SEPP propose that the standards on car-parking contained in the *Apartment design guide* override any inconsistent provisions on this matter in a development control plan. The novel features of the section, 3J, are: (a) a provision that there will be no specific minimum requirement for car-parking spaces (whether for residents or visitors) in buildings covered by the SEPP that are located within 400 meters of railway stations/light-rail stops in nominated suburbs in Sydney; and (b) a provision that a local government's car-parking requirements for flats would be overridden by a Road and Maritime Services's guide in the case of other Sydney suburbs and in nominated regional centres (related to specified distances from railway stations/light-rail stops and to certain land uses). The intention and effect would be to remove or reduce car-parking requirements, in the varying circumstances. This is an important environmental and social initiative. We note that the new standards would not prevent flats being built with car-parking spaces greater than the new standards, should the developers of flats choose to provide them. What they do is send a signal to the market that government wishes to promote walkability and use of public transport and more environmental-friendly transport modes.

In our submission on the discussion paper (*SEPP 65 and Residential Flat Design Guide review*, November 2011) in February 2012, we pointed to a possible implication of a change as now proposed. This implication was that such a proposal might undermine the value of the incentive for infill affordable housing which is indicated the *State Environmental Planning Policy (Affordable Rental Housing) 2009*. Clause 14(2)(a) of the Affordable Rental Housing SEPP, among other things, prevents a consent authority from refusing consent to flats in accessible areas, if the flat is to be used for affordable housing, and if at least 0.5 parking spaces are provided for each dwelling containing 1 bedroom, at least 1 parking space is provided for each dwelling containing 2 bedrooms and at least 1.5 parking spaces are provided for each dwelling containing 3 or more bedrooms (i.e. with car-parking standards that are lower than what might be in a typical DCP). If there is a mismatch between the Affordable Rental Housing SEPP and a revised SEPP 65, then the provisions in the Affordable Rental Housing SEPP would need to be reviewed.

Apartment mix. The provisions on apartment mix in the *Apartment design guide* will be matters for consideration in development assessment (new clause 28(2)(c)), but any provisions on this matter in a DCP will not be automatically overridden by the *Apartment design guide*. The *Apartment design guide* sets performance criteria of a range of apartment types and sizes, and of distribution of the apartments to suitable locations within the building. In practice, we expect that DCPs will — if they have not already done so — set the specific performance indicators to deliver on these 2 criteria. Flexibility on this matter, through specification in DCPs, is *appropriate*, since local councils can develop mix configurations that reflect the local housing market and social needs.

The discussion paper (*SEPP 65 and Residential Flat Design Guide review*) had suggested that units of affordable housing be distributed within a market development (p.34). We supported this suggestion. If affordable units were to be concentrated on a particular floor or floors rather throughout the development it is possible that they could be stigmatized. There is, however, no clear reference to this matter in the *Apartment design guide*. Performance criterion 4A-1 indicates that apartment mix should be ‘appropriate’, taking into consideration, among other things, ‘the demand for social and affordable housing’. What this means is not obvious. *We suggest* this consideration be reworded to indicate that any ‘affordable housing’ apartments (including social housing) within a mixed-tenure development be *distributed throughout the development*, not segregated to or congregated in particular floors.

Universal design. This is a new matter for the *Apartment design guide*, compared with the *Residential flat design code*. The new section, 4G, is useful in distinguishing between universal housing design, which is a broad approach, from adaptable housing, which is typically focused to the current or likely needs of residents with disability or frailty, and the new section is also useful in promoting both models for new flat buildings.

In terms of universal housing design, the *Apartment design guide* (on page 88) conflates universal housing design principles with the *Livable housing design guidelines* produced by Livable Housing Australia. This section is a bit confusing because the *Livable housing design guidelines* do not explicitly describe themselves as ‘universal housing’. So, *we suggest* it would be clearer if the ‘universal design solutions’ in Table 5 (p.88) stated

‘Silver level livable housing design features’ (instead of ‘Silver level universal design features’), because the notion of platinum, gold and silver performance levels is specific to the *Livable housing design guidelines*.

On a substantive matter, the proposed benchmark of 20% of units to incorporate silver level ‘universal design’ (livable housing design) features is somewhat conservative. The industry-dominated Livable Housing Australia organization has an aspirational target of *all* new dwellings to be silver-certified by 2020, which is only 5 years away. *We suggest* it would be reasonable for the *minimum benchmark to be set at 50%, or more*, and of course reviewed in 5 years when the SEPP is reviewed.

The proposed acceptable solution for achievement of a proportion of adaptable units (for performance criterion 4G-2) sets no minimum benchmark. Again, this is unduly conservative. Research we commissioned in 2006 (Chris Elenor, *Provisions for adaptable housing by local government in New South Wales*, Shelter Brief 30) found that a third of local councils had provisions for accessible or adaptable housing in their DCPs, and in most cases the adaptable requirement was set at around 10 percent of the number of units. In the period since then, we would expect that there has been a greater commitment to the needs of people with a disability across the local government sector. Accordingly, *we suggest* it would be reasonable for the proposed acceptable solution to set a *minimum benchmark of 10 percent of adaptable units*, with councils of course being able to set higher benchmarks in their DCPs if they wished.

Acoustic privacy. We have previously indicated — in our submission in response to the Department’s discussion paper in 2012 — our concern that suboptimal design and construction of apartment buildings could undermine the peace and quiet enjoyment of residents. While the *Apartment design guide* repeats many of the elements of the *Residential flat design code*, that are meant to maximize housing wellbeing for residents, there are 2 matters where it falls short. Doors and floors.

The *Apartment design guide* does not indicate an ‘acceptable solution’ to performance criterion 4S-2 in relation to noise transmitted into apartments through doors from common areas such as the corridor. The *Residential flat design code* (at page 83) does have a provision, ‘Reduce noise transmission from common corridors or outside the building by providing seals at entry doors’. *We suggest* this be retained in the *Apartment design guide*.

The *Apartment design guide* (as with the current *Residential flat design code*) does not have a specific provision on treatment of floors, despite noise transmission from neighbors’ floors being a major concern for the residents below (Hazel Easthope and Sarah Judd, *Living well in greater density*, Shelter Brief 42, 2010, p.31; Jack Barton, *Dwelling with visual and acoustic privacy*, Shelter Brief 50, 2012, p.10). We understand that the *Guide* might be relying on the construction standard set in the *Building Code of Australia* to regulate this matter. However we wonder whether that is adequate for the challenges ahead (to which the SEPP 65 is responding). We note that some DCPs in local government areas where there is a high volume of construction of apartment buildings do set a standard that is higher than the BCA requirement. For example, the relevant provision in *Sydney Development Control Plan 2012* indicates (among other things): ‘To

limit the transmission of noise to and between dwellings, all floors are to have a weighted standardised impact sound level ($L'_{nT,w}$) less than or equal to 55 where the floor separates a habitable room and another habitable room, bathroom, toilet, laundry, kitchen, plant room, stairway, public corridor, hallway and the like.' (clause 4.2.3.11(10)) *Rockdale Development Control Plan 2011* requires all residential development except dwelling houses 'to have an Impact Isolation between floors to achieve an Acoustical Star Rating of 5 in accordance with the standards prescribed by the Association of Australian Acoustical Consultants'. (clause 4.4.5; this 5-star rating requires floors to have a weighted standardized impact sound pressure level ($L'_{nT,w}$) of 45 or less) But rather than leaving this matter to DCPs, since we cannot see that variation in standards on acoustic privacy is a matter linked to needs in different local housing submarkets, *we suggest* a solution along the lines of these provisions (probably the Rockdale provision) be included in performance criterion 4S-2.

Glossary. We query the definition of 'affordable housing' (p.172), which defines it as *rental* housing for low to moderate income households. This definition of affordable housing is narrower than that contained in the *Environmental Planning and Assessment Act* and in common usage, where it is used for homeownership and hybrid (e.g. shared homeownership/rental) tenures and products, not just rental products. As an aside we note that the *SEPP (Affordable Rental Housing) 2009* focuses on affordable rental housing only, and we support that tight focus for that SEPP because of the particular need for affordable rental housing in both market and nonmarket sectors — but it would be unfortunate if the focus of that particular SEPP narrowed and precluded consideration and facilitation of affordable housing products in other tenures. *We suggest* the qualifier 'rental' be deleted.

The SEPP and its ancillary documents are an important contribution to the quality of life of people living in New South Wales, and we hope these comments on proposed changes are helpful.

Sincerely



Mary Perkins
Executive Officer