

## 15 DESIGN QUALITY OF RESIDENTIAL FLAT DEVELOPMENT

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### EXECUTIVE SUMMARY

- The Department of Planning and Environment (DP&E) has released draft amendments to State Environmental Planning Policy (SEPP) 65 – Design Quality of Residential Flat Development and the Residential Flat Design Code (RFDC).
- The majority of the proposed amendments are consistent with the Discussion Paper released in 2012 and Council's submission at the time.
- The amendments primarily relate to the types of development addressed by the policy, rationalisation of design quality principles and the introduction of new minimum standards aimed at addressing affordability.
- It is recommended that Council forward a submission to the DP&E supporting the review of SEPP 65 and outlining its concerns in relation to key areas of the draft amendments.

### RECOMMENDATION

THAT a submission be forwarded to the Department of Planning and Environment indicating Council's general support for the draft amendments to State Environmental Planning Policy 65 – Design Quality of Residential Flat Development and the Residential Flat Design Code subject to the Department addressing the major issues for Hornsby Shire identified in Group Manager's Report No. PL78/14, including:

1. Clause 6A in the draft SEPP should be deleted. The SEPP should not override Council's controls and preclude Council from applying higher than minimum standards.
2. Car parking should not be added as a standard that cannot be used as grounds for refusal.
3. The internal unit areas in the current RFDC should be retained to promote good design rather than placing the sole emphasis on affordability.
4. A numerical control requiring a mix of unit types should be inserted to increase housing choice, including minimum requirements for dual key units.
5. The RMS Guide to Traffic Generating Development should be updated if this document is to be relied upon for setting parking standards within 800 metres of a train station.
6. The sliding scale for deep soil planting zones should be replaced with width and location requirements to optimise their location.

## PURPOSE

The purpose of this report is to seek endorsement of a submission to the DP&E concerning draft amendments to SEPP 65 and the accompanying design guidelines.

## BACKGROUND

SEPP 65 aims to improve the design quality of Residential Flat Buildings in NSW. It is accompanied by a Residential Flat Design Code which provides design guidelines. There has not been a substantial review of the SEPP since its gazettal in 2002.

In 2012, the Department of Planning and Environment released a Discussion Paper concerning a review of SEPP 65 and the RFDC. At its meeting on 1 February 2012, Council considered Executive Manager's Report No. PLN16/12 concerning the Discussion Paper. Council resolved to forward a submission which generally supported the review and suggested improvements to the SEPP and RFDC code. The main issues raised related to:

- definition of land use terms to be consistent with the Standard Instrument;
- streamlining of design quality principles to avoid duplication;
- reducing parking rates in close proximity to high frequency public transport;
- support for a private open space sliding scale consistent with Council's DCP; and
- provision of standards for apartment mix and adaptable design.

Submissions to the Discussion Paper are summarised in the Department's document entitled "*Overview – Proposed amendments to SEPP 65 and the Residential Flat Design Code*" along with the results of a technical analysis. Whilst the paper does not individually address Council's submission, the issues raised are addressed with the exception of minimum standards for apartment mix and adaptable design.

The Department is inviting submissions on the amendments to the SEPP and RFDC until 31 October 2014. Council has forwarded a submission to the Department requesting an extension of time for the making of a submission to enable the matter to be reported to the November 2014 Council meeting.

## DISCUSSION

This report outlines the proposed amendments to SEPP 65 and the RFDC and identifies the implications for Hornsby Shire.

### 1. SEPP 65

The majority of the proposed changes to the SEPP are generally consistent with the 2012 Discussion Paper and Council's submission at that time. The draft amendment clarifies the application of the SEPP to residential flat buildings, mixed use development with a residential component and shop top housing. A new clause is proposed which confirms that SEPP BASIX applies. The ten Design Quality Principles identified in the SEPP are proposed to be renamed and reduced to nine by combining Built Form and Scale into one principle. The draft amendment also incorporates additional aims and objectives, including contribution to the provision of affordable housing options.

Of concern are changes which seek to allow developments to be approved based on minimum standards, which may be lower than Council's standards. Inserting minimum standards places emphasis on affordability rather than good design and amenity for future residents. The newly inserted aim to contribute to the provision of affordable housing should not outweigh the overall aim of the SEPP to improve the design quality of residential flat development. These concerns are outlined below.

## 1.1 Standards that Cannot be Used as Grounds for Refusal

The SEPP contains standards (ceiling heights and apartment area) which cannot be used as grounds to refuse an application. In the draft SEPP, it is proposed that car parking be added as an additional standard for which an application cannot be refused if it complies with the recommended minimum amount of car parking set out in the RFDC.

Concern is raised with the removal of car parking as grounds for refusal by Council. Council's car parking requirements are greater than those proposed under the RFDC (see discussion below under the heading Car Parking) and Council should be permitted to refuse an application if it does not comply with local minimum requirements and is not supported by a local parking study.

Clarification is required concerning the existing apartment area standard which cannot be used as grounds to refuse an application. The draft SEPP states that apartment area cannot be used as grounds to refuse an application if the proposed area for each apartment is equal to, or greater than, the recommended internal area for the relevant apartment type in the RFDC. However, the recommended internal areas for well organised, functional and high quality apartments have been removed from the RFDC. The minimum apartment sizes in the draft Apartment Design Guide (ADG) are based on the minimum apartment sizes for affordable housing from the RFDC (see discussion below under the heading Apartment layout).

### **Recommendation**

- 1a Car parking should not be added as a standard that cannot be used as grounds for refusal. Council should be permitted to refuse an application if it does not comply with local minimum requirements and is not supported by a local parking study.
- 1b The wording of Clause 30(b) in the draft SEPP requires review and clarification. The apartment area standard which cannot be used as grounds to refuse an application refers to internal areas which are contained in the current RFDC and does not correspond with the new table in the ADG.

## 1.2 Statutory Weight of the Apartment Design Guide

A new clause (Clause 6A) is proposed which would allow particular sections of the ADG to prevail over the provisions within the Hornsby Development Control Plan (HDCP). Council's controls relating to certain matters would be overridden by the following controls contained within the ADG:

- Visual privacy;
- Solar and daylight access;
- Common circulation and spaces;
- Apartment layout (size);
- Ceiling heights;
- Balconies and private open space;
- Natural ventilation; and
- Storage

The HDCP was prepared having regard to SEPP 65, Council's Housing Strategy, and urban design advice. The controls in the HDCP in relation to the above matters are generally consistent with SEPP 65, with the exception of private open space. Council's requirement for the provision of private open space is greater than that set out in the ADG (see below discussion under the heading Private Open

Space). While the intention of the SEPP is to improve design quality and set a minimum benchmark for liveable apartments, it should not preclude Council from applying higher than minimum standards. Council should retain the ability to set local development standards based on the needs and expectation of the community and future residents of new development.

Where a council has an adopted policy concerning the design and development of residential flat buildings which has been prepared having regard to SEPP 65, those controls should be the primary development standards to be considered during the assessment of applications. However, if a council does not have an adopted policy concerning the development of residential flat buildings, then the ADG standards should be applied with similar weight as DCP controls. Alternatively, the development standards which are to be applied to residential flat development should be either those contained in a DCP, or the ADG, whichever is the greater.

This would reflect the main aims of the SEPP to better satisfy the increasing demand, changing social and demographic profile of the community and the needs of the widest range of people from childhood to old age and to maximise amenity, safety and security for the benefit of occupants and the wider community. Affordability should not take precedence over design quality. Council promotes affordability through increasing the supply of housing and mandating a mix of housing to provide housing choice. Affordability should not be promoted to the detriment of good design.

### **Recommendation**

- 1b Clause 6A in the draft SEPP should be deleted. The SEPP should not override Council's controls and preclude Council from applying higher than minimum standards. Council should retain the ability to set local development standards based on the needs and expectations of the community and future residents of new development.
- 1c Where a council has an adopted policy concerning the design and development of residential flat buildings which has been prepared having regard to SEPP 65, those controls should be the primary development standards to be considered during the assessment of applications.
- 1d If Clause 6A is retained, it needs to be reviewed to clearly identify when provisions in the Guideline under each heading have precedence.
- 1e If a council does not have an adopted policy concerning the development of residential flat buildings, then the RFDC standards should be applied with similar weight as DCP controls.
- 1f Alternatively, the development standards which are to be applied to residential flat development should be either those contained in a DCP, or the RFDC, whichever is the greater.

### **1.3 Design Review Panel**

SEPP 65 contains provisions for the establishment of Design Review Panels. These Panels can provide independent advice to councils about the quality of developments against the SEPP 65 design quality principles. The Panels can also provide pre-lodgement design advice to applicants regarding compliance with SEPP 65. The review has found that the take up of panels by councils has been relatively low and the need for panels to operate consistently.

Accordingly, the Department proposes to amend the SEPP to require that members of a design review panel are qualified and experienced in the fields of architecture, landscape architecture or urban design. The amendments also specify a minimum term of 2 years for panel members and reference procedures in the ADG for the establishment and running of panels.

Council does not operate a SEPP 65 panel. However, Council recently considered Group Manager's Report PL53/14 in relation to the design quality of high density development. Council resolved in part to prepare an internal policy for the referral of development applications over 10 storeys in height to a suitably qualified urban design / architecture consultant for review against the design excellence clause of Council's LEP (once implemented).

The draft SEPP amendment does not impact on this initiative as the formation of a SEPP 65 panel is optional and considered impractical for Council on the grounds that the cost of remunerating and administering the panel would be prohibitive.

## **2. APARTMENT DESIGN GUIDE**

It is proposed that the RFDC be renamed the Apartment Design Guide (ADG). The ADG has been updated to reflect a performance based approach, with performance criteria and acceptable solutions (formerly rules of thumb) for each section. Alternative solutions are also provided for some sections, allowing greater flexibility. New elements concerning the public domain interface, adaptive re-use and noise and pollution are proposed to be inserted. A matrix showing the relationship between the Design Quality Principles and the elements of ADG has been incorporated. The above changes are supported. However, concern is raised regarding the following elements.

### **2.1 Apartment Layout (Size)**

The ADG specifies minimum sizes of 50m<sup>2</sup>, 70m<sup>2</sup> and 95m<sup>2</sup> for 1, 2 and 3 bedroom units respectively, and a minimum size of 35m<sup>2</sup> for studio units, consistent with the Affordable Housing State Environmental Planning Policy. Concern is raised with the basis of these minimums. Currently under the RFDC, higher internal unit areas ranging from 38.5m<sup>2</sup> for a studio to 124m<sup>2</sup> for a 3 bedroom unit are specified as functional, high quality apartment layouts. The lower sizes of 50m<sup>2</sup>, 70m<sup>2</sup> and 95m<sup>2</sup> are noted in the RFDC as a guide which can contribute to affordable housing.

Changing the minimum unit areas in the ADG to require only the "affordable" size means that, generally, only these size units would be provided by developers who wish to maximise development yield. These sorts of minimum standards do not promote dwelling stock which offers a desirable housing alternative for families and does not reflect the range of services and amenities in the area. Inserting minimum standards places sole emphasis on affordability rather than good design and amenity for future residents. The newly inserted aim to contribute to the provision of affordable housing should not outweigh the overall aim of the SEPP to improve the design quality of residential flat development.

As discussed above, Council promotes affordability through increasing the supply of housing and mandating a mix of housing to provide housing choice. Affordability does not have to be achieved to the detriment of good design. The higher internal unit areas which represent functional, high quality apartment layouts should be reinstated as the minimum requirement in the ADG, with a maximum allowance (say 30%) of smaller units which can be provided at the "affordable" size.

### ***Recommendation***

- 2a The internal areas in the current RFDC should be retained in the ADG. The draft minimum standards place sole emphasis on affordability rather than good design and amenity for future residents. The newly inserted aim to contribute to the provision of affordable housing should not outweigh the overall aim of the SEPP to improve the design quality of residential flat development.

- 2b A maximum allowance (no more than 30%) of smaller units should be provided at the “affordable” size. However, Council prefers to promote affordability through increasing the supply of housing and mandating a mix of housing to provide housing choice.

## **2.2 Dwelling Mix**

The ADG requires a range of apartment types and sizes to cater for different household types. However, there remains no numerical control for dwelling mix. The HDCP requires that developments should include at least 10% of 1, 2 and 3 bedroom units. This type of requirement in the ADG would be supported, particularly because apartment area is identified as a standard which cannot be used by Council as grounds for refusal. There is concern that, without a numerical standard, the aim of the ADG to ensure housing choice and support the needs of the community now and into the future will not be achieved. Inserting a numerical control requiring a mix of unit types would assist meet the new aim of the SEPP to contribute to the provision of affordable housing.

In addition to specifying the mix of unit types, the ADG should also extend to addressing dual key apartments. The trend towards the provision of dual key apartments as a means of accommodating families or providing improved rental yields is increasing with implications concerning parking, open space and demand for services similar to granny flats. Accordingly, a policy position that establishes an appropriate mix, design and parking requirement would be beneficial in guiding appropriate outcomes.

### **Recommendation**

- 2c A numerical control requiring a mix of unit types (for example at least 10% of each 1, 2 and 3 bedroom units) should be inserted to increase housing choice and assist meet the new aim of the SEPP to contribute to the provision of affordable housing.
- 2d A numerical control that establishes a maximum mix of dual key units and appropriate development standards is required to manage the impacts of this emerging unit type.

## **2.3 Private Open Space**

The HDCP requires the provision of open space on a sliding scale depending on the number of bedrooms and ranges from 10m<sup>2</sup>, 12m<sup>2</sup> and 16m<sup>2</sup> for 1, 2 and 3 bedroom units respectively, with a minimum dimension of 2.5m. Council's sliding scale is generally consistent with the State Government's Housing Code for small lots, which identifies that a 3 bedroom house/townhouse/unit on a small lot should include a minimum 16m<sup>2</sup> of private open space.

The ADG has been amended to also require the provision of open space on a sliding scale. However, the sliding scale ranges from 8m<sup>2</sup>, 10m<sup>2</sup> and 12m<sup>2</sup> for 1, 2 and 3 bedroom units respectively, with a minimum dimension of 2m for 1 and 2 bedroom units and 2.5m for 3 bedrooms. It is unclear on what basis the sliding scale in the ADG been set. A balcony with a minimum dimension of 2m would only accommodate a round table and two chairs and therefore, would not provide adequate usable open space for a range of household types.

The changes to the SEPP mean that the controls for open space in the ADG will override the controls in the HDCP. Concern is raised regarding the amenity of households moving into higher density living if the lower ADG standard prevails. The sliding scale in the ADG should be increased to an adequate level, and/or Council should not be precluded from setting local development standards higher than the minimum based on the needs and expectations of the community and future residents of new development.

### **Recommendation**

- 2e The sliding scale for the provision of open space in the ADG should be increased to require the minimum area to start from 10m<sup>2</sup> and minimum dimension to be 2.5m to provide for the amenity of future residents.
- 2f Alternatively, Council should not be precluded from setting local development standards higher than the minimum based on the needs and expectations of the community and future residents of new development.

## 2.4 Car Parking

Car parking standards are proposed to be introduced which reduce minimum car parking requirements for development located near public transport. For inner and middle ring councils (which is defined in the ADG), car parking is not required for development within 400m of a railway station or light rail stop (this does not apply to Hornsby).

For Hornsby, the new standard would mean that development located within 800m of a railway station would be required to provide the minimum requirement set out in the RMS Guide to Traffic Generating Development or the car parking rate prescribed by Council, whichever is less. A comparison is provided below.

Development Type	Council Requirement (parking spaces)	RMS Guidelines (parking spaces)
Residential Flat Building within 800m of a railway station	0.75 per 1 bed unit 1 per 2 bed unit 1.5 per 3 / 3+ bed unit	0.4 per 1 bed unit 0.7 per 2 bed unit 1.2 per 3 bed unit
<b>Example:</b> 30 units (7 x 1 bed, 18 x 2 bed, 5 x 3 bed)	31 spaces	22 spaces

The RMS Guidelines require significantly less car parking than would be required under Council's DCP. The objective of a reduction in car parking rates for sites with good proximity to public transport is supported and embodied in the HDCP with the inclusion of separate rates of car parking dependent on proximity to railway stations. However, concern is raised with the extent of the reduction in car parking rates in the ADG in the absence of any local parking studies. The RMS Guide to Traffic Generating Development is a regional document which does not have regard to local issues or community demands. Further, the RMS Guide to Traffic Generating Development is a dated document which should be revised and reissued.

As discussed above, the SEPP amendments proposed to include car parking as a standard that cannot be used as a ground for refusal if the proposed car parking is equal to, or greater than, the recommended minimum in the ADG. Council would not be able to refuse a development on the grounds of car parking if it complies with the ADG, despite the fact that the HDCP requires more car parking.

### Recommendation

- 2g The RMS Guide to Traffic Generating Development is a dated document which should be revised and reissued if it is to be relied upon for car parking standards. For example, parking standards for dual key apartments are not addressed.
- 2h Application of the RMS parking rates in the absence of local parking studies will further increase pressure on off-street parking.

- 2i Clarification is required concerning which areas in the RMS Guide are identified as Metropolitan Regional (CBD) Centres and which are Metropolitan Sub-Regional Centres as different parking rates apply, which may cause confusion when applying the ADG within 800m of a railway station.
- 2j The objective of a reduction in car parking rates for sites with good proximity to public transport is supported and embodied in the Hornsby Development Control Plan with the inclusion of separate rates of car parking dependent on proximity to railway stations. However, the RMS rates are significantly lower than those required by Council.

## 2.5 Deep Soil Zones

The ADG introduces a sliding scale for the provision of deep soil zones, based on site area as follows:

Site area	Deep soil zone (% of site area)	Minimum dimensions
Less than 650m <sup>2</sup>	7%	-
650m <sup>2</sup> – 1,500m <sup>2</sup>	10%	3m
Greater than 1,500m <sup>2</sup>	15%	6m
Greater than 1,500m <sup>2</sup> and significant tree cover	20%	6m

These percentages are a decrease from the RFDC, which currently suggests a minimum 25% deep soil zone. In contrast to a minimum percentage, the HDCP prescribes the width and location of deep soil areas adjoining property boundaries. The requirement for 7m deep soil area at the front and rear boundaries and 4m at the side boundaries in the HDCP assists achieve the desired future character in Hornsby Shire of residential flat buildings in landscaped settings, and may be a more appropriate way of optimising deep soil areas. Alternatively, the existing minimum 25% deep soil requirement should be retained in the ADG, as the Alternative Solutions provide flexibility depending on circumstances.

### **Recommendation**

- 2k The sliding scale for the provision of deep soil areas in the ADG is inadequate.
- 2l Width and location requirements for deep soil planting provide a better way of optimising deep soil areas.
- 2m Alternatively, the existing minimum 25% deep soil requirement from the RFDC should be retained in the ADG.

In summary, it is recommended that Council make a submission to the DP&E based on the discussion above, supporting the review but outlining the concerns relevant to Hornsby Council. The draft amendments seek to allow developments to be approved based on minimum standards, which may be lower than Council's standards. Inserting minimum standards places sole emphasis on affordability rather than good design and amenity for future residents.

Submissions closed on 31 October 2014. A copy of this report, a draft submission and a request for an extension of time have been submitted to the Local Plans, Codes and Development Guides section of the DP&E. A final submission will be forwarded after Council's consideration of this report and in accordance with its resolution.



**BUDGET**

There are no budgetary implications associated with this Report.

**POLICY**

The amendments to SEPP 65 and the Apartment Design Guide, if progressed, would have implications for Councils Development Control Plan, which are discussed in this report.

**CONCLUSION**

The majority of the proposed changes to the SEPP are generally consistent with the 2012 Discussion Paper and Council's submission at that time. However, concerns are raised regarding changes which seek to allow developments to be approved based on minimum standards, some of which are lower than Council's standards. It is recommended that Council make a submission to the DP&E supporting the review but raising concern with the changes that impede Council's ability to set higher development standards based on the needs and expectations of the local community and future residents of new development.

**RESPONSIBLE OFFICER**

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**Attachments:**

There are no attachments for this report.

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