

28 October 2014

Carolyn McNally
Secretary
Department of Planning and Environment
23-33 Bridge Street
SYDNEY NSW 2000

Dear Ms McNally

Draft State Environmental Planning Policy No65 and Apartment Design Guide

We have reviewed the draft State Policy and Guidelines and provide our detailed response below. In summary, the changes made are concerning for the following reasons.

1. The cost of construction will rise due to onerous design changes and reduction in unit numbers as a direct result of increased floor to ceiling heights, deep soil zones, universal unit requirements, apartment layouts not meeting market demand and ESD requirements beyond BASIX. This list is not an exhaustive list.
2. Time to prepare a Development Application will increase significantly to satisfy the Performance Criteria and Alternative Solutions. Additional time results in interest costs and land holding charges.
3. The last 12 years of the Code has resulted in becoming strict rules rather than guidelines, and we do not see this changing. We recommend that the Code be reviewed and updated on annual basis to reflect the notion that the Code is a guide.

Building Height

Building heights do not recognise rooftop space required for services needed to operate the building ventilation systems and BASIX requirements. A clause in SEPP65 should include a variation to the Standard Template that excludes plant and lift overruns from the height definition.

Building Depth (Clause 2e)

There are inconsistencies with the building height clauses. The description under Clause 2E refers to 10-14m depths. The table on page 37 of the Code states a maximum depth of 12-18m. We do not support a reduction in building depth from the current controls. We also note that the proposed building depth as shown in Figure

2E.2 includes the balcony depth within the building depth. The current Code allow for balconies to be excluded from building depth (page 26, Figure 01.57).

An 18m building depth is the minimum to allow single aspect units on each side of a corridor, plant and services ducts, lift cores, larger lobby space requirements by Council and the proposed Code, Fire Hose reels and cupboards, community waste rooms per floor and air conditioning plant. In addition to this there is the ever-increasing unit sizes to account for Adaptable units and market demand. This has increased the depth of buildings over time. The maximum building depth should be 20m.

Building depths of 10-14m will result in rectangular shaped units that will significantly reduce the maximum permitted gross floor area allowed in LEPs. To regain the loss in gross floor area, other buildings will be required on site which adds cost to the development. The new building depth controls will reduce dwelling numbers on site, which we strongly do not support and effectively reduces the State Government's housing targets and further continues to place pressure on housing affordability.

Deep Soil Zones

There is now an increase in deep soil zones compared with the current Guidelines and does not recognise landscaping on podiums where car parking is provided below ground. We strongly do not support an increase in deep soil zones. We recommend that planting on podiums be included as deep soil zones. We have constructed many developments with planting above a podium with trees some 15m high, that provides suitable landscaped areas without being in deep soil.

Residential flat buildings with basement car parking cannot have a deep soil zone within the middle of a site. Basements must be constructed in rectangular shapes to comply with the required Australian Standards for suitable vehicle manoeuvring, aisle widths, car space sizes, lift cores, plant, waste rooms, storage requirements and ramps. Deep soil zones must only be provided on the perimeter of a site.

Deep soil in the middle of a site also adds significant costs to a development. The design of the basement will result in a "donut" effect with deep soil in the middle. This requires additional walls to be built in the centre area that adds to the cost of construction. The deep soil zone in the centre of the site also takes the place of car spaces and ramps that now have to be provided in additional basement levels. This adds unsupportable costs and environmental impacts that are only now being experienced. The location of deep soil in the requires more excavation that impacts upon ground water levels being pushed up into basement walls, which effects the structural integrity of the building or is pushed towards other developments or open space areas.

Deep soil zones cannot be provided in CBD site locations, mixed use zones or where the higher density zones exist.

We therefore cannot support an increase in deep soil areas. Deep soil should be only required within the setback areas along the perimeter of a site.

Performance Criteria 3E-2 is unrealistic and not workable in many ways. Deep soil located in communal open space areas will require access for people with disabilities, and paving for tree roots will not address the solid foundation necessary for a suitable pathway for wheel chairs or people with disabilities etc. This Criteria should be deleted.

Orientation – Overshadowing of Neighbouring Properties (3B-2)

We do not support a further setback to neighbours where solar access is reduced. The required building separation requirements should prevail where there is an adjoining residential flat building, which is current practise.

Public Domain Interface (3C)

In reality, front Fences with a height limit to 1m does not work for visual privacy and results in separate owners or tenants placing their own privacy screens against existing low fences to height of 1.8m. The Acceptable solution should be changed to a maximum of 1.8m with landscaping fronting the public domain too provide visual relief.

Similarly, not all substations, pump rooms, garbage storage areas are placed in basement car parks. In particular, substations will be required to be placed outdoors in accordance with energy provider requirements for safety reasons. Fire pump rooms may not in all instances be capable to be provided within basements as the location must be accessible to the fire brigade.

Communal Open Space

We recognise there is a small reduction in communal open space, but are concerned with the amount of solar access required to the communal open space area between 9am and 3pm. This will not be achieved in CBD locations, mixed use zones or high density areas. The location of the communal open space at ground level will require a northerly aspect to get 50% of solar access and this will be at the expense of achieving the maximum permissible gross floor area.

The alternative solution to increase private open space is not supported. The location of communal open space on rooftops is however accepted with no planter boxes as soil directly on slabs introduces significant future maintenance problems with water seepage and root damage to units below, which adds terrible costs in court proceedings from building warranty requirements.

Performance Criteria 3D-4(3) that requires solar access year round to public open space is open to interpretation and will lead to unrealistic reduced building heights that ordinarily will be permitted in an LEP. This clause must be deleted.

Visual Privacy 3F

There are no alternative solutions available for privacy, which can include: louvres, wintergardens, Juliet balconies and sliding panels. Many of these alternatives to providing privacy are currently used. Alternative Solutions must be introduced.

Car Parking

We support parking not being required within 400m to a railway station. Notwithstanding, parking will always be provided to address some market demand, as people will always want some form of private transport.

We support the requirement to satisfy the RMS guidelines for car parking. The Government will need to make sure the car parking rates required for new development are up to date.

Above Ground Parking

Above ground parking screened from view by using various materials is welcomed, rather than solely relying on apartments to hide above ground parking. However, the Code must state clearly that the gross floor area does not apply to above ground parking. Variations to individual Council planning controls or the Standard Template must be permitted to increase building heights to retain the permissible floor space ratios or gross floor areas by having above ground parking.

Apartment Mix

Apartment mix must be left to market demand. We therefore do not support Performance Criteria 4A-1(3) that seeks dual key apartments. We decided 10 years ago to provide dual key units in many developments and have since converted all of them into separate dwellings as the market does accept the product. As such, dual key units should not be made as an example of a dwelling type to be used.

We strongly do not support Performance Criteria 4A-2(2) that stipulates the location of larger units. Market demand will determine the location of larger units in a building.

Facades

The introduction of more design requirements and particularly façade materials to be used is unacceptable. Council's already vet façade designs through design competitions, design panels and Council architects. The decision of façade materials should be left to the applicant due to the added costs of providing unnecessary materials to an elevation that serves no function to the building or residents.

Façade guidelines in the current Code promotes the architect to provide high quality designs, whereas the proposed Performance Criteria is being too specific on how a building should be designed. This will leave buildings looking very much the same, which in years to come, will make the Sydney Metropolitan area very homogenous. Keep the current guidelines so architects can be more imaginative with designing for future generations.

Landscaping

Table 3 of Section 4E specifies tree planting in deep soil to a number that will end up being a specific standard. Landscaping design should be left to the merits of the

landscape architect whom would ordinarily take into account the amount of landscaping and plant suitability to ensure units do not become overshadowed or impact on the structural long-term integrity of the buildings. The table should therefore be deleted.

Planting on structures

We do not support the proposal for green roofs. There is the additional costs for reinforced roofs for soil and water. There is the added cost of maintenance for body corporates. Concern is also raised to future warranty matters where water leaks into units below and the concrete structure. The membrane between the soil and concrete roof will not last forever and inevitably will create building warranty issues.

Universal Units

The need to provide 20% of units as Universal is unacceptable as it includes both Adaptable and dual key units.

20% for Adaptable units is much higher than most councils require and therefore not supported. According to our records, we have sold only 2 Adaptable units to a person with a disability out of a total 30,000 units in the last 10 years. Pretty much near 0%.

We strongly object to providing dual key apartments as they are not well received to the market as already outlined in this submission. In reality, people do not stay in one unit or house through a life cycle. A young couple in the Sydney metropolitan area will buy what they can afford such as a 1 bedroom apartment. Overtime as families are created or households become larger, new premises are found such as a town house, semi-detached house or separate house. It is rare for people to stay in one dwelling type for an entire life cycle and to require 20% of units as Universal is unrealistic and not supported.

In this regard we object to **Performance Criteria 4G-3**. A variety of unit mixes and layouts are provided to the market at any one time, and if people do not like what is available, they will not purchase the units. It is in the developers' interest to ensure the right product is made available to the market. The Code cannot simply force what the market may want in terms of flexible universal accommodation.

Solar Access

Solar access is one of the core criteria that Council's apply so it is important to get a balance in recognition of Sydney's temperate climate, a site's location, positioning, amenity and outlook. We acknowledge an improvement to having 15% of apartments not having to achieve solar access.

The current Code primarily requires at least 3 hours of sunlight in mid-winter and 2 hours in denser areas, which in practice has been accepted to be major urban areas or CBD locations. No recognition under the current Code is given to south facing sites or views.

The proposed Code under Performance Criteria 4L-2(4) now requires a minimum of 3 hours with only 2 hours as an alternative solution. We do not support this approach at all. Our ideas that should be incorporated into the solar/daylight criteria are as follows.

1. Solar access hours should be broken up into climatic regions. For example, it will be much easier for a unit in Coffs Harbour to Tweeds Head to achieve 3 hours compared to Sydney or other southern centres in NSW due to the longer winter hours.
2. Given the temperate climate of Sydney, the hours of winter sunlight should be recognised between 8am and 4pm.
3. Remove debate about whether 2 or 3 hours should apply. Just have the minimum of 2 hours of solar access must be received, because as an urban area develops overtime into a major centre or CBD, access to sunlight becomes difficult to achieve from neighbouring high rise buildings blocking out light.
4. Solar access to living rooms and associated balconies is too limited. People also want solar access to bedrooms and any adjoining balcony. In this regard, the amount of sunlight should be made more flexible and allow bedrooms and associated balconies in addition to living rooms/balconies to be included in the calculation of receiving sunlight. Alternatively to keep it simple, sunlight should be calculated as being the 2 hours of light received into any balcony or room on 1 façade.
5. A list of exceptions to provide no solar access should be provided in the Code where it is impossible even to provide 2 hours of sunlight. Such sites would be those with a constrained south orientation, towered by neighbouring taller buildings and where a magnificent outlook/view exists. In such circumstances, solar access should be permitted with no minimum requirement, as these sites will be very scarce.

The requirement in **Performance Criteria 4L-2** to have someone sit within the sun's light will be open to all types of arguments and debate. For example, shorter people will receive more light than taller people. The only requirement to prove is that a minimum 2 hours of solar access is required as described above.

The ideas provided above should be taken seriously, as it will make the controls easier to work with and remove many of the issues around sunlight that has been of concern since SEPP65 was introduced. Most important is that once the Code is adopted by the State Government, the requirements will never become a guide, but will become rules as currently prevails, and we will be stuck again with provisions that will not work.

Common Circulation and Spaces

The requirement for 8 units per floor has been a contentious issue for over 12 years. The limiting of 8 units per floor and introduced Performance Criteria will require more buildings, lift cores, stairs, fire services and other service ducts, which adds

unreasonable high costs. Eight units per floor also make social interaction much less, which is inconsistent with the aim of Performance Criteria 4M.

Rather than have an arbitrary number of 8. Permit a range of say 8-12, and an increase above this must require a second access point to natural light, which how the current Code is interpreted by Councils. This way, flexibility is given to designs and removes the necessity of having to construct a second building, or having to reduce the permissible gross floor area.

There is also the continual debate about how many units per floor are permitted when maisonette or cross over units are provided in a development. To resolve this debate the proposed Code should permit double the number units per core/corridor. For example, where 16 cross over units are off one corridor on the upper floor and there is no corridor/core in the floor below, then the average for both floors is 8 units per corridor/core.

Apartment Layout/Sizes/Room Sizes

We extremely oppose the proposed requirements to increase floor to ceiling heights where the length of a room increase by more than 6.75m.

Figure 4N.3 implies the maximum room depth is 6.75m and the required floor to ceiling height is 2.7m. There are many instances where a larger living room is greater than 6.75m in depth and is perfectly acceptable with a 2.7m height limit in terms of solar access and ventilation.

Similarly, the Alternative Solutions is not supported as it also requires a ratio of height to depth not part of existing controls.

We strongly oppose the sliding scale of Figure 4N.3 and associated Performance Criteria. A 7.5m deep living room increases the floor to ceiling height to 3m. Therefore every 10 storeys in a high density area or CBD, one complete level will be lost. If the Department of Planning and Environment wants this provision, the SEPP65 legislation must allow 100% compensation in height from the relevant Council LEPs.

To keep floor to ceiling heights at 2.7m, unit layouts are forced to be rectangular in shape, which will reduce the permissible gross floor area and subsequently unit numbers, which we do not support in any way. **Performance Criteria 4N-2(1)** must be deleted.

Performance Criteria 4N-1(2) does not work. Not all habitable rooms as listed in the glossary are going to be visible to a window. A study will be located away from the façade. There will be times when a second bedroom has to be located without a window, but has shared light and ventilation. Can you have you have a bedroom or study with no window but see a window from the bedroom door? This clause should be deleted.

Performance Criteria 4N-2(2) must be made more flexible. Our units have a maximum depth of 8.5m-9.0m for a combined kitchen and living room. This has

evolved over many years as people want larger unit space, and there is also the requirement for Adaptable Units to consider where wider space between benches is required. If there is to be a limit, then 9m should apply to the wall excluding cupboards and benches etc. Light will still be received within 8m as people are not standing against the back kitchen wall for any length of time.

Performance Criteria 4N-2(3) requires rethinking. A primary view is more than often over a main road or other noise source. The requirement should be deleted.

Performance Criteria 4N-2(5) is not achievable in all circumstances. There will be situations where an inboard bedroom is required for a second bedroom. A 3 bedroom unit will have at least 1 inboard bedroom and a 4 bedroom unit will definitely have 1 inboard bedroom and maybe a second. How will this requirement work when you also include the requirement of **Performance Criteria 4N-2(6)** that requires a kitchen window for corner apartments. Something has to "give" for these situations.

Performance Criteria 4N-2(7) is not supported. Single aspect apartments are designed with the living room and bedrooms having windows to comply with solar access. The kitchen therefore has to be placed to the rear of the unit in an open plan with the living room. This requirement cannot be satisfied in any way or form for a single aspect unit. **Performance Criteria 4N-2(7)** is not supported.

Similarly, **Performance Criteria 4N-2(8)** does not work with most unit types. Many units have the bathrooms and laundries towards the rear of units for living rooms and bedrooms to maximise solar access and natural ventilation. It is impossible to have the bathroom, laundry, all bedrooms and a living room with a window, which is the cumulative outcome of **Performance Criteria 4N-2**. There are too many Performance Criteria that work against each other in the Apartment layout section.

The Minimum Room sizes and Apartment layout requirements included under **Performance Criteria 4N-3** are totally unacceptable to us. This part of the Code has now become very prescriptive and cannot apply in every situation. These minimum requirements will not address changing market demand for room sizes, changing demographic needs, site constraints, site shape and size. Current market conditions for the smaller affordable units accept a 2.7m wide bedroom and 3.5m wide living rooms. There should be no minimum room sizes and is not required under the current Code.

How does **Performance Criteria 4N-4(2)** work in reality? This cannot be policed. A resident will change a room layout to what they please. This clause should be deleted. Very "police-state" clause.

Concern is raised to the Indicative layouts. There should be no layouts shown as they are continually changing to satisfy market demand. Many councils use these diagrams as compliant requirements.

In conclusions we do not support Performance Criteria 4N, as it will have a drastic negative change to apartment design, construction, layout, costs and does not address market demand.

Ceiling Heights

Concern is raised to Figure 4O.1 as to how it will be applied. In most instances, a second floor mixed use does not survive due to limited visual exposure. There must be a clause inserted that states this figure only applies where a second storey non-residential use is sought by an Applicant.

Performance Criteria 4O-2 is unacceptable. Ceiling heights cannot be a function of room type. This will result in slab folds or thick slabs to account for different heights, which is not supported as it adds significant costs to construction, not to mention addition height to a building that will not be accepted by Councils to gain back permissible floor space.

Excluding bulkheads from the floor to ceiling heights is also not supported and not required under the current Controls. Cross-over units often require bulkheads as does a situation where unit layouts can change from floor to floor. Bulk heads take up a very small area and therefore should not be counted within the floor to ceiling heights. Reference to bulkheads must be deleted.

Private Open Space and Balconies

Introducing a more simplified minimum requirement for balcony sizes is supported in comparison to the current requirements that requires up to 33sqm of balcony area. We also support the increased recognition of enclosed balconies. However an alternative solution must state that the enclosed balcony is not counted as floor space. Councils do not exclude floor space from enclosed balconies. A new clause therefore must be inserted into SEPP 65 to override the Standard Template that excludes floor space to an enclosed balcony.

Performance Criteria 4P-1 does not recognise bedrooms with a secondary balcony or extension of the main balcony, which occurs frequently in designs.

Figure 4P.2 shows a 3 bedroom unit with an apartment depth of 2.4m, whilst the table in **Performance Criteria 4P-2** requires 2.5m.

Natural Ventilation

We do not support greater floor to ceiling heights for natural ventilation as this increases the cost of construction enormously. People are not going to open windows during the hotter months for ventilation and will rely on air conditioners. Similarly, during the winter months people do not want to open windows due to the cold, and will rely on heating from conditioners.

From our experience, purchasers want air conditioning regardless of any cross ventilation. Where a unit does not have air-conditioning built into the original design, owners will install their own condenser systems with air intake devices placed on balconies that are unsightly from the public domain and not covered. If the Department of Planning and Environment wants taller floor to ceiling heights then SEPP65 must include a clause that states the heights in LEPs must be overridden to allow for

improved solar access and natural ventilation, otherwise too much unit yield is lost. The current guidelines offer appropriate flexibility for natural ventilation.

Acoustic Privacy

Performance Criteria 4S-1(2) states that windows and door openings are to be orientated away from noise sources. This is unrealistic as most inner suburb sites are mostly next to some sort of noise source from road, rail or aircrafts. This clause needs to be deleted.

Performance Criteria 4S-1(6) is extremely onerous, unrealistic and is not a requirement for dwelling houses, townhouses, dual occupancy villas etc., so why are apartments being singled out. This clause means no bedrooms in any direction must be within a 3m arc of the driveway access. Are these spaces then to become voids? The clause does not work and should be deleted.

Noise and Pollution

Enclosed balconies are considered to be a good solution for noisy environments. However, the gross floor area must be excluded from the enclosed balcony area where provided with tiling and a water waste system as required for open balconies.

The standard template or a clause in SEPP65 must be inserted to exclude the gross floor area from enclosed balconies.

Performance Criteria 4T-1, will not work where a site is south facing, is located in a dense area, or has an awkward shape constraint.

Energy Efficiency

Performance Criteria 4U-1, 2 & 3 must include an Alternative solution to state that BASIX is the overriding requirement.

Heating and cooling infrastructure cannot be solely placed in the basement as suggested in **Performance Criteria 4U-2(2)**. Air-conditioning units require roof and ledge locations for access to ventilation. Basements with natural ventilation do not work unless there is more than 1.2m height above ground level, which then gets counted as a storey and a loss of units occurs, which is not acceptable.

Performance Criteria 4U-3(1) states that natural ventilation is provided to all habitable rooms. This can be construed as 100% of habitable rooms are cross ventilated, which is not the case under proposed Performance Criteria 4Q which states 60%.

The expansion of Energy Performance Criteria is going above and beyond BASIX requirements. Location of air conditioning and other plant normally positioned on roof tops or separate ledges hidden from view cannot be placed in basements due to lack of ventilation. We do not support the changes made to this performance criteria compared to the current Code and that BASIX is the main driver of energy efficiency.

The location of BASIX components has never been a major issue, and the changes sought will become too restrictive.

Water Management and Conservation

As with Energy Efficiency, the overriding requirement of BASIX must be stated, rather than a specific Performance Criteria. **Performance Criteria 4V-2(2)** requires runoff to be plumbed into toilets and laundries, which we do not accept.

We do not support this requirement as it goes above and beyond the requirements of BASIX, leaving no other alternative water conservation initiative available. In reality water tanks in basements will require electronic pumping of water back up very tall buildings, which is extremely costly and is inconsistent with conservation measures. During low rainfall events, laundries and toilets will also be left with no water, and still require back-up of normal water supply. The secondary water supply infrastructure will take up more space and erode available gross floor area.

Building Maintenance

This section describes the type of materials to be used which can become inconsistent with any design competition and the ever changing technology of building materials. For example concrete panels are used for high density apartment developments and not face brick work as mentioned in **Performance Criteria 4X-3(1)**.

Similarly, **Performance Criteria 4X-1(1)** is requiring design solutions that will be inconsistent with BASIX, solar access and cross ventilation.

We do not support the changes being made.

Design Review Panels

We strongly support pre development application discussions with the Design Review Panel and this needs to be extended to Joint Regional Planning Panels.

We support the proposal for design competitions not being reviewed by design panels and must also exclude referral to SEPP 65 panels.

Checklists

Appendices of the Guide containing checklists are overburdening with too much documentation required when preparing and lodging DAs compared to the current system. I thought the new planning system was to move towards a more streamlined process. This is doing the opposite.

Draft SEPP 65 Policy

The increased layers of Performance Criteria and numerous checklist will not be consistent with the proposed aims and objectives of SEPP65.

We support Clause 6A of the draft SEPP. How will this be policed?

We strongly oppose Clauses 27 and 29 that requires modifications to go to a Design Panel. Many Section 96 applications do not change the compliance with the Guidelines and Council officer are more than proficient at making decisions. Many changes are made for larger developments during the construction phase due to compliance with fire services, BCA and the Discrimination Act to name a few.

Requiring modifications to go to panels will completely "clog up" the planning and determination system. This will hold up approval timing and stop construction works on site placing many jobs at risk.

Larger projects can take many years to complete and market demand will inevitably change the unit mix as an example. It takes many months to get appointments with Design Panels and with modifications being added to pre DA discussions, approval times will be exacerbated to an extent that work on site will halt whilst we wait for approvals, creating havoc with finance, employment, costs and loans. I don't think that this was ever to be the intention, but the outcome will be damaging to all in the industry.

We support the requirement to have a response from the Design Review Panels within 14 days and that Council can continue to determine without these comments. However, this is no good if it takes 3 months to see a panel when they will have to consider modifications, pre DA meetings and DA determinations.

Lastly, proposed Clause 30(2) of the draft SEPP will add to the documentation already required to address the Guidelines. Compliance with describing the development serves no purposes in addition to showing how a development complies with all the Performance requirements. There is no guide to what is considered to have "adequate regard" to the design quality principles. The associated matrix in the Guidelines provides no assistance on this matter. This proposed clause and even the Design Principles should be removed considering the larger volume of work that will be produced from addressing the Performance Criteria, Alternative Solutions and Checklists.

Conclusion

We feel that the underlying theme for the Code is based on urban design and architecture without any consideration of building techniques, project management, construction, and cost analysis. This is why we have raised so many issues.

Deep concern is raised to the Guidelines being considered as rules, which has been the case for the last 10 years regardless of the Department of Planning saying the Code is a Guide. In practice this is NOT the case. You only have to look at past Planning and Assessment Commission approvals, Council and JRPP consents to see that Guides are rules. It is therefore very important to review the Guidelines annually and make changes where people have made suggestions over the year to keep them as guidelines and not wait another 12 years to have amendments.

The original Rule of Thumbs served as Core controls that must be complied with. We recommend that Core controls be kept to provide certainty.

We hope the Department of Planning and Environment revisit the proposed Guidelines taking into account the comments made in this submission rather than just accept the exhibited documents as is. We have built tens of thousands of units and success is based on what the market wants. The proposed guidelines are considered to demand a product upon the market, which only leads to proposed planning controls not being satisfied. More flexibility must be provided or clauses deleted to get the correct balance as outline in this letter.

Yours faithfully

MERITON GROUP

A handwritten signature in black ink, appearing to read 'W Gordon', with a stylized, cursive flourish at the end.

Walter Gordon

Director of Planning and Development