

via email

28 October 2014

The Secretary
NSW Department of Planning & Environment
GPO Box 39
SYDNEY NSW 2001

Dear Ms McNally,

Re: Draft Amendment to SEPP No 65 + Apartment Design Guide

This submission outlines serious concerns regarding elements of the draft amendments to SEPP No 65 and the associated Apartment Design Guide (ADG).

Background to this submission

This submission is based upon professional expertise in relation to drafting and implementation of development control policy over the past 20 years which has involved:

- i A focus upon policy advice for local government.
- ii Preparation of controls for various types of residential development, with a focus upon character, urban design quality and provision of solutions for commonly-occurring issues.
- iii Evaluation of design quality for major multi-unit proposals, including current chairmanship of a design review panel for a significant western Sydney LGA.
- iv Provision of expert evidence during numerous appeal proceedings, including negotiated resolution of development proposals.

Overall, this skill-set provides a unique foundation for a constructive critique of the exhibited draft documents which are noted above.

Summary comments

- i The 'performance- based' approach which has been adopted for the draft ADG is likely to present a serious obstacle to increased residential densities that are a strategic imperative for metropolitan Sydney.
- ii Complexity and rigidity of the performance-based approach which has been adopted by the draft ADG will not result in more-efficient planning or assessment of multi-unit developments, and will seriously-complicate assessment procedures which already are unduly complex.

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- iii Content of the draft ADG includes numeric 'solutions' which depart from accepted development practice that has delivered positive design quality outcomes, or which have been detached from objectives in the current Residential Flat Design Code (RFDC) that accommodate viable alternative solutions without compromising design quality.
- iv Interpretation of the draft ADG will be complicated by poor grammar and by imprecise language, together with sequences of criteria and solutions that are confused or convoluted.
- v Efficient application of the draft ADG will be compromised by the document's structure which does not mirror the sequence or hierarchy of considerations that typically are followed by designers and assessment reports.
- vi Comprehensive editing of structure and / or content of the draft documents is necessary to clarify meaning, and to ensure the most-efficient implementation of metropolitan development strategies which are essential to accommodate projected population growth.

The draft ADG

Primary concerns which are raised by this submission relate to structure and content of the Draft ADG.

The 'performance based' approach, which is a fundamental feature of the document's structure and content, will not eliminate recent criticisms of the RFDC which have been raised by the development industry and design practitioners.

In fact, implementation of the performance-based approach is most-likely to impose an extended set of considerations which lack the degree of flexibility that actually is provided by the current RFDC.

The following points are presented to support this conclusion:

- In conjunction with draft clause 6A in the SEPP 65 amendment, the ADG will carry significant weight in relation to development assessment;
- Current assessment procedures typically operate via the tabulation of compliance with applicable controls, and draft documents will not alter this practice;
- The highly-specific nature of criteria and solutions which are nominated by the draft ADG would result in the significant expansion of compliance considerations - notwithstanding that local controls which address specific issues would no longer apply;
- In relation to compliance considerations, authorship of the draft ADG by a state government agency will provide significant authority for criteria and solutions - which would be fine if criteria and solutions were both relevant and appropriate;

- However, due to imprecise wording of criteria and solutions together with 'modernisation' of the current RFDC, many elements of the draft ADG would be neither relevant nor appropriate;
- Importantly, the draft ADG would not accommodate a significant number of current design solutions which are delivering high quality outcomes: designers and assessment reports would have no clear foundation to argue for solutions such as reduced setbacks / separations or sunlight that have significant implications for development yield, and that frequently demand relaxation (supported by positive design gestures) in order to accommodate strategic development yields which are provided by state-endorsed local instruments;
- In addition, criteria and solutions in the draft ADG fail to address the unique design circumstances of mixed developments in main street or town centre locations, together with increasingly-common situations such as 'last-cab' developments in upzoned precincts and narrower sites where amalgamation cannot be achieved;
- Finally, the draft ADG introduces a number of 'new' solutions which have distinct potential to seriously undermine development yields - for example, increased ceiling heights for rooms which are deeper than 6.5m - and minimum apartment areas which are based upon hypothetical layouts will assume greater significance due to the companion amendment of SEPP No 65.

In summary:

- The draft ADG most-likely will result in rigid and highly-prescriptive development assessment due to criteria and solutions which are not consistent with current development practices that are delivering high standards of design quality, which are complicated and, finally, which lack the flexibility that is provided by the current RFDC.
- Likely effect of the draft ADG may be gauged by reference to the recently completed Central Park Tower in Broadway. Many elements of that building would struggle to satisfy criteria or solutions in the draft ADG - notwithstanding a host of architectural awards and the high standard of design quality which is evident.
- Comprehensive editing of the draft ADG's structure and content are necessary to ensure that rigid assessment procedures do not compromise metropolitan development strategies.
- At the very least, editing of the document's structure should respond to the typical sequence and hierarchy of design decisions and assessment considerations. A recommended structure is appended to this submission.

Draft amendment to SEPP No 65

By comparison with the draft ADG, draft amendments to the SEPP are sound in-principle:

- Greater focus upon principles and ease of reference is achieved by relocation to an appendix;
- Condensation of the current ten principles is logical, but might have been reduced further to the following six topics:
 - Context and neighbourhood character;
 - Density and housing diversity;
 - Built form, scale and exterior architecture;
 - Landscape;
 - Amenity and safety;
 - Sustainability.
- Expansion of current principles to include character and social interaction are important improvements.

However, wording of principles requires further editing to eliminate repetition and to provide greater clarity (within limits that are likely to be tolerated by Parliamentary Counsel).

With regard to functions and the operation of design review panels, extensive experience of panels confirms that a degree of flexibility is a practical necessity. The following points are relevant:

- Hiring and firing should be the prerogative of local government which most commonly operates as the consent authority - rather than the Minister.
- Size of panels should be determined according to local resources and circumstances, and three-member panels should not be specified as the standard: for example, at least one western Sydney LGA operates a successful panel which is chaired by a senior council officer, which receives design quality advice from alternating independent urban design practitioners, and which is attended by the assessment officer.

Finally, experience of design competitions confirms the need for provisions which are clearer and stronger:

- Features of development applications which follow a design competition must remain substantially the same as the winning competition scheme - subject however to adjustments or amendments which might have been recommended by the design jury.
- Development applications which follow a design competition must be prepared by the same design team as the winning competition scheme.

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I trust that this submission is clear, and assists the Department in finalising two documents with great significance to the planning reform initiative.

In the event that further discussion might assist, I would welcome direct contact from the Department via phone or email (contact details appear on page on of this letter).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Brett Newbold', with a stylized, cursive script.

Brett Newbold

B.Arch MURP
MPIA

encls: Recommended structure for the ADG

cc: PIA NSW

I Purpose

This briefing note proposes an alternative structure for the Draft ADG which:

- reflects the sequence of decisions which are made by building designers, and
- emphasises the hierarchy of assessment considerations, and
- promotes efficient planning and assessment of multi-unit development proposals

The recommended sequence includes all sections in the current Draft ADG.

Recommendations respond to the content of each section in the current Draft ADG.

Commentary in relation to content of sections will be the subject of separate advice.

2 The recommended sequence

Part One Introduction

Part Two Design guidelines

1: Context

1A Character and context

1B Precincts and individual sites

1C Site analysis

2 Siting and the building envelope

2A Orientation

2B Street setbacks (*edited to reflect performance-based approach*)

2C Side and rear setbacks (*edited to reflect performance-based approach*)

2D Building separation (*edited to reflect performance-based approach*)

2E Deep soil

2F Building depth (*edited to reflect performance-based approach*)

2G Ceiling heights

3 Privacy and amenity

3A Visual privacy

3B Acoustic privacy

3C Solar and daylight access

3D Natural ventilation

3E Communal and public open spaces

3F Private open spaces

3G Noise and pollution

- 4 Residential design
 - 4A Apartment mix
 - 4B Mixed use
 - 4C Universal design
 - 4D Pedestrian access and entries
 - 4E Common circulation and spaces
 - 4F Ground floor apartments
 - 4G Apartment layout
- 5 Detailed building and landscape design
 - 5A Public domain interface
 - 5B Vehicle access
 - 5C Facades
 - 5D Roof design
 - 5E Landscaping
 - 5F Planting on structures
 - 5G Awnings and signs
 - 5H Adaptive reuse
- 6 Building operation and services
 - 6A Energy efficiency
 - 6B Water
 - 6C Bicycle and car parking
 - 6D Storage
 - 6E Waste management
 - 6F Building maintenance
- Part Three Guidelines for local controls
 - A Introduction (*new explanatory section, including reference to preceding design guidelines*)
 - B Apartment building types
 - C Primary controls
 - D Building envelopes
 - E Building height
 - F Floor space ratio
 - G Building separation (*edited for consistency with 2D*)

Part Four Design review panels

- A Function of the panels
- B Membership and establishment
- C Roles and responsibilities
- D Meeting procedures
- E Templates

Appendices

- 1 Sample development schemes
- 2 Site analysis checklist
- 3 Pre-DA checklist
- 4 DA checklist