

14/5605

31 October 2014

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

Dear Ms McNally

**DRAFT REVISED STATE ENVIRONMENTAL PLANNING POLICY (SEPP) 65:
DESIGN QUALITY OF RESIDENTIAL FLAT DEVELOPMENT**

Thank you for the opportunity to comment on the above draft revised SEPP and associated guide.

Attached are two separate Council officers' submissions. The first was prepared by Council's Planning Services (strategic planning) staff, whilst the second was prepared by Council's Development Assessment staff. The first submission will be reported to Council's 4 November 2014 meeting with a recommendation that any additional comments from Councillors be forwarded to the Department as an addendum. The second submission was not reported to Council due to the timing of its completion.

These submissions have also been lodged online. Council trusts these submissions assist the Department in finalising the review of this important planning policy. Should you have any enquiries please contact Kendall Banfield, Council's Team Leader, Planning Services, on 9335 2179.

Yours sincerely



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Encl.



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ENGLISH

IMPORTANT

This letter contains important information. If you do not understand it, please ask a relative or friend to translate it or come to Council and discuss the letter with Council's staff using the Telephone Interpreter Service.

GREEK

ΣΗΜΑΝΤΙΚΟ

Αυτή η επιστολή περιέχει σημαντικές πληροφορίες. Αν δεν τις καταλαβαίνετε, παρακαλείστε να ζητήσετε από ένα συγγενή ή φίλο να σας τις μεταφράσει ή να έλθετε στα γραφεία της Δημαρχίας και να συζητήσετε την επιστολή με προσωπικό της Δημαρχίας χρησιμοποιώντας την Τηλεφωνική Υπηρεσία Διερμηνέων.

PORTUGUESE

IMPORTANTE

Este carta contém informação importante. Se não o compreender peça a uma pessoa de família ou a um/a amigo/a para o traduzir ou venha até à Câmara Municipal (Council) para discutir o assunto através do Serviço de Intérpretes pelo Telefone (Telephone Interpreter Service).

ARABIC

هَامَ
تحتوي هذه الرسالة معلومات هامة. فإذا لم تستوعبوها يرجى أن تطلبوا من أحد أقربائكم أو أصدقائكم شرحها لكم، أو تفضلوا إلى البلدية واجلبوا الرسالة معكم لكي تناقشوها مع أحد موظفي البلدية من خلال الإستعانة بخدمة الترجمة الهاتفية.

VIETNAMESE

THÔNG TIN QUAN TRỌNG

Nội dung thư này gồm có các thông tin quan trọng. Nếu đọc không hiểu, xin quý vị nhờ thân nhân hay bạn bè dịch giúp hoặc đem đến Hội đồng Thành phố để thảo luận với nhân viên qua trung gian Dịch vụ Thông dịch qua Điện thoại.

MANDARIN

重要资料

本信写有重要资料。如果不明白，请亲友为您翻译，或到市政府来，通过电话传译服务，与市政府工作人员讨论此信。

**SUBMISSION BY MARRICKVILLE COUNCIL
TO THE DEPARTMENT OF PLANNING & ENVIRONMENT**

**ON DRAFT STATE ENVIRONMENTAL PLANNING POLICY NO. 65:
DESIGN QUALITY OF RESIDENTIAL FLAT DEVELOPMENT (AMENDMENT NO. 3)
& APARTMENT DESIGN GUIDE**

OCTOBER 2014

INTRODUCTION

Marrickville Council appreciates the opportunity to comment on draft *State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Flat Development (Amendment No. 3)* and associated *Apartment Design Guide*.

In 2012 Council made an officer's submission on a SEPP 65 discussion paper and is pleased that many of the issues raised then have been addressed in this current draft. Where appropriate, Council's 2012 comments have been repeated here, but new comments are also included.

This Council officer's submission will be reported to Council's 4 November 2014 meeting, with a recommendation that Council endorse the submission, record any additional comments and forward those to the Department of Planning & Environment (DP&E).

SUMMARY OF SUBMISSION

Council strongly supports the current and draft revised versions of SEPP 65 and the associated guide. It is sensible to apply state-wide controls to common apartment design elements whilst allowing Councils some scope for application of local controls through Development Control Plans (DCPs), as is the case for SEPP 65.

Council's experience with assessing apartment Development Applications (DAs) is that SEPP 65 is an important tool that allows Council to assess DAs efficiently whilst achieving quality design. Marrickville Local Environmental Plan (MLEP) 2011 zones and associated controls encourage apartment developments in appropriate commercial centres and selected former industrial sites. Those controls are supported by more detailed controls within Marrickville Development Control Plan (MDCP) 2011, some based on SEPP 65. With strong residential demand there is currently a high number of apartments being processed by Council.

Beyond SEPP 65, Council has been proactive in striving for apartment design quality through creation of an Architectural excellence panel. In doing so, Council believes quality can be achieved whilst simultaneously addressing other important elements such as affordability, density, sustainability and universal design.

Council supports proposed SEPP amendments that allow the option of reduced or waived parking in accessible areas, minimum apartment sizes and minimum ceiling heights. These measures are generally consistent with Council's DCP parking controls.

To ensure comprehensive application of all controls within the apartment design guide, Council would like to see the certification process extended to the specific controls within the

apartment design guide. Whilst Council appreciates the need to avoid creating an onerous certification process, signoff at the level of guide controls would provide greater certainty that proponents have adequately considered all elements of the guide in their DA submissions.

Although the SEPP and guide are considered to be comprehensive overall, it is suggested additional information be included, as follows:

- explicitly mention heritage protection, adaptive re-use and transport-land use integration in the SEPP 65 design quality principles;
- need for explicit consideration of 'new-generation' boarding houses and student housing;
- need to acknowledge that additional resources may be required for design review panels;
- further detail on creation of publicly-accessible through site links (internal/rear laneways and paths) for vehicles, pedestrians and cyclists;
- need for State-level policy support for constrained parking through a metropolitan parking strategy or similar policy;
- more emphasis on the need to implement resident parking schemes and other public domain parking management measures to complement constrained onsite parking;
- further detail on car sharing and bicycle parking with links to appropriate guidelines; and
- further detail and design guidelines on waste management facilities within large apartment buildings, particularly around bin size/type and the movement of waste trucks onto and around sites.

GENERAL COMMENTS

Council agrees that the original (2002) SEPP 65 and associated code have made a significant contribution to improving the design of residential flat buildings in NSW. In general terms, Council strongly supports the draft revised SEPP/guide, and is pleased that the changes proposed will further improve this useful and important planning policy. When finalised, the apartment design guide will become a valuable resource. It is a clear, concise and well-presented document with a wealth of useful diagrams, photos and case studies.

Council has always supported urban consolidation and has been willing to plan for its 'fair share' of new dwellings and jobs. A key feature of MLEP 2011 is the 'upzoning' of Council's major commercial centres and selected former industrial areas to allow for apartment developments. This is supported by relevant controls within MDCP 2011, some based on SEPP 65.

Currently Sydney's housing market is strong and in the Marrickville LGA there is an historically large number of DAs for apartment developments of various sizes. In general terms, Council is supportive of this level of development activity, provided a good design quality is achieved. To further this aim, Council created the position of Urban Design Planner in 2012 and in 2014 created its own design excellence panel. It follows that Council is supportive of current efforts by the Department of Planning & Environment (DP&E) to further improve design quality through the draft revised SEPP 65.

In striving for design quality, Council has been particularly mindful of the important issues of housing affordability, density, sustainability and universal design. Council is of the view that all these elements are not mutually exclusive – they can and should be achieved simultaneously.

Council believes that policies for achieving affordability should extend beyond simply increasing housing supply and/or reducing development costs. There is a need for a comprehensive set of policies/subsidies beyond SEPP 65 that target the housing needs of the lowest income sections of the community. In 2013, Council created the position of Affordable Housing Officer, established an Affordable Housing Advisory Committee and drafted an Affordable Housing Policy. Council is also currently working with the DP&E on improved locally-relevant boarding house policies.

With regard to density, Council has always supported urban consolidation and integration of land use and transport to limit urban sprawl, revitalise inner-urban areas and promote sustainable transport. Council's planning instruments promote apartment developments and constrain car parking in areas with ready access to public transport and services. Council is in a good position to achieve this as the LGA is (by Sydney standards) compact, walkable and well served by urban services and public transport.

With regard to sustainability, Council supports BASIX, its application to apartments and the raising of BASIX targets where appropriate. Therefore, Council is supportive of the proposal to clarify the application of BASIX to apartments in draft revised SEPP 65.

Council supports the state-wide application of universal/liveable housing standards and has sought through its DCP to increase the provision of such dwellings. Council is particularly pleased that the draft revised SEPP suggests 20% of apartments to include the silver level of livable housing features.

To ensure comprehensive application of all controls within the apartment design guide, Council would like to see the implementation of some form of state-wide certification process. This would help to address the issue whereby a DA submission has indicated compliance with SEPP 65 and the design guide, but on closer inspection, the submission has neglected or not achieved compliance with some important guide controls.

A certification process would provide Councils with greater certainty that proponents have adequately considered all elements of the guide in their DA submissions. It may also provide greater assurance that the design quality of materials and finishes are not reduced with discretionary powers that apply when Construction Certificates are issued. Whilst such a process should not place an unreasonable burden on proponents, it would potentially benefit proponents by streamlining Council's assessment.

SPECIFIC COMMENTS

Council's comments on specific aspects of the proposed SEPP are as follows.

- Council supports the policy applying to shoptop housing and developments with three or more storeys or four or more dwellings.
- Council supports clarification that BASIX is a requirement for all apartment developments.
- Council supports the proposed modest changes to the design quality principles in the interests of simpler, clearer communication.
- Design quality principles should explicitly mention heritage protection and adaptive reuse, as this is a common issue for inner-urban areas like Marrickville in the design and construction of apartments. It does not appear that these terms would readily fit within the principles as currently written.
- *Principle 3: Density* could make transport-landuse integration (including parking) a more explicit consideration, as this is a critical factor in the location and design of apartments.

- *Principle 8: Housing Diversity and Social Interaction* highlights the need for the SEPP to consider new-generation boarding houses, which are more like apartments than traditional boarding houses. Council is dealing with many DAs for this type of development and the design is generally poor. Council is currently working with the DP&E to improve its boarding house controls.
- Council agrees that design review panels are a useful tool to improve design quality, and in 2014 established a similar Panel. Experience has shown the panel is functioning well, has been generally well received by all parties and has added value in terms of improved design. It does however need to be acknowledged that adequate resources are needed and where these are lacking there are potential impacts on DA processing times.
- Council is supportive of the SEPP providing the option of waived or reduced car parking in accessible areas. This is consistent with Council's current DCP controls, which constrain parking in accessible areas and allow for further reduced or waived parking in specific circumstances, e.g. adaptable re-use and affordable housing. Council agrees that apartment residents should not be eligible for resident parking permits (also consistent with Council's DCP). The guide should include a note that councils should undertake public domain parking studies and implement resident parking schemes in accessible areas, recognizing that this is often essential to complement constrained private parking policies. This can and should be funded by development contributions, as is the case for public domain parking studies currently underway for Marrickville's main 'upzoned' commercial centres.
- The abovementioned carparking standard highlights the need for a metropolitan parking strategy to provide a much-needed metropolitan-scale strategic context and evidence-base for the SEPP 65 parking standard and council DCP parking controls. Such a strategy was flagged as an action in the 2005 *Metropolitan Strategy* but was never delivered. Absence of such a strategy has resulted in inconsistencies between councils in their approach to parking policy, which has compromised the effective integration of land use and transport.
- Whilst the RMS *Guide to Traffic Generating Developments* is useful, its value as the sole reference is debatable given that modeled parking rates within the RMS Guide may be excessive for inner-urban locations such as Marrickville. This is particularly the case where parking constraint is explicitly used as a demand management measure. The parking section of Council's DCP states that Council aims to strike a balance between applying parking constraint as a demand management measure on one hand, and providing sufficient parking to avoid excessive spillover onto streets on the other. Similar wording could be included in the draft revised SEPP.
- Mobility parking for adaptable/accessible dwellings should also be explicitly regulated by the draft revised SEPP, particularly as around 20% of dwellings fit this category and the size of mobility parking spaces exceeds that of conventional spaces. Council currently sets a rate of one mobility space per adaptable/accessible dwelling regardless of location, which can lead to excessive provision of parking, particularly within accessible areas. Council is currently investigating a DCP amendment to set mobility parking at the same rate as conventional parking.

Council's comments on specific aspects of the draft apartment design guide are as follows:

- In the guide's *Introduction*, Council considers the matrix which illustrates linkages between the design quality principles of SEPP 65 and the key sections of the guide to be useful.

- In *Part 1: Identifying the context*, Council supports inclusion of new information on site context and constraints. As an inner-urban council area, where most apartment developments are infill development, context and constraints play a major role in determining the quality of the design outcome.
- In *Part 2: Developing the controls*, Council supports the placing of development controls into this new section to provide a clearer understanding of the difference between site context and performance criteria used to assess specific types of development. Inclusion of these primary controls should remain largely non-numerical to ensure that councils continue to have discretion to apply their own site controls which relate to the local context.
- The new performance-based approach for *Part 3 Siting the development* and *Part 4 Designing the building* is supported by Council. The concept of specific/numerical performance-based criteria/solutions will be helpful in improving apartment design quality.
- The information within *Section 3G Pedestrian access & entries* is supported, but a requirement to provide through site links should be included. These links should be required to be publically accessible 24/7 in perpetuity. Usually the most effective way to ensure this is to require full dedication of the link corridor to Council, but there may be instances where legal right-of-way is appropriate. Additional information could be provided on key elements of path design, such as minimum path widths/clearances and universal access standards. Links to relevant external standards/guides would be useful.
- The information within *Section 3H Vehicle access* is supported, but further information on new vehicular lanes/roads should be included. The provision and design of internal lanes/roads on large sites is critical to the effective functioning of a development. Such lanes/roads provide a range of functions including building separation, kerbside parking, waste collection, maintenance vehicle access, walk/cycle access, loading, pickup/dropoff and landscaping. In most instances, a grid-pattern of fairly narrow roadways is appropriate, and it may be appropriate to create 'shared zones' along laneways. For shoptop apartment developments in commercial centres, creation of rear lanes (where none exist) is critical. In commercial centres, it is not desirable for vehicles to service or access development from main streets. Appropriate dedication mechanisms need to be in place to ensure laneway land is dedicated to Council when developments occur.
- The information within *Section 3J Bicycle & car parking* is supported, but further information should be provided on good practice bicycle and carshare parking. These are increasingly important elements of contemporary apartment design, particularly in inner-urban and other accessible areas. This information could be in the form of links to other guidelines beyond the RMS Guide.
- The information within *Section 4W Waste management* is supported, but additional information and design guidelines should be provided on the movement of waste trucks onto/around sites and appropriate bin size and type and the design of bin holding areas. For larger developments, it may be necessary for waste trucks to enter the site to avoid large numbers of bins blocking footways. In these situations, Council finds the horizontal/vertical swept path of a waste truck to be a major consideration in the design of the development. Other important considerations are pedestrian safety wherever trucks cross footways and other pedestrian areas, and the path of travel from dwellings to bin storage areas. Bin size/type affects the size/design of waste storage areas, and has health/safety implications for waste service providers. Council is also finding that presence of new shoptop apartment developments in mainstreet commercial centres is necessitating the need for a higher standard of waste collection in rear lanes. These

issues were recently discussed at a council planners' forum convened by the Southern Sydney Organisation of Councils (SSROC).

**ADDITIONAL SUBMISSION BY MARRICKVILLE COUNCIL
TO THE DEPARTMENT OF PLANNING & ENVIRONMENT**

**ON DRAFT STATE ENVIRONMENTAL PLANNING POLICY NO. 65:
DESIGN QUALITY OF RESIDENTIAL FLAT DEVELOPMENT (AMENDMENT NO. 3)
& APARTMENT DESIGN GUIDE**

OCTOBER 2014

INTRODUCTION

This submission by Council's Development Assessment staff adds to a submission by Council's Planning Services (strategic planning) staff that was lodged with the Department of Planning & Environment before the close of exhibition, and subsequently reported to Council's 4 November 2014 meeting. This further submission raises new points, but in some instances has reiterated points already made in the Planning Services submission.

GENERAL COMMENTS

To ensure comprehensive application of all controls within the Apartment Design Guide, Council would like to see the implementation of some form of state-wide certification process.

At present the DA lodgement requirements for such developments require (in part) the qualified designer to verify "*that the design quality principles set out inState Environmental Planning Policy No 65—Design Quality of Residential Flat Development are achieved for the residential flat development.*" (Clause 50 (1A) of the Environmental Planning and Assessment Regulation).

There is no requirement that the qualified designer has to verify that such developments achieve compliance with the relevant controls in the associated Code or Guide.

One way that the above issue could be addressed would be to amend the design quality principles in the SEPP to specifically reference the Apartment Design Guide which would then (by virtue of Clauses 50 (1A) and 115 (3) of the Regs.) automatically make it a submission requirement for DAs and applications for modification of a consent. Alternatively an additional submission requirement to address the matter could be added to the above regulations.

A certification process would provide Councils with greater certainty that proponents have adequately considered all elements of the Apartment Design Guide in their DA and Section 96 submissions. It may also provide greater assurance that the design quality of materials and finishes are not reduced with discretionary powers that apply when Construction Certificates are issued. Whilst such a process should not place an unreasonable burden on proponents, it would potentially benefit proponents by streamlining Council's assessment.

SPECIFIC COMMENTS

The following comments are provided on specific aspects of the proposed amendments to the SEPP and on specific aspects of the proposed Apartment Design Guide:

1. *DRAFT STATE ENVIRONMENTAL PLANNING POLICY NO. 65: DESIGN QUALITY OF RESIDENTIAL FLAT DEVELOPMENT (AMENDMENT NO. 3)*

Council's comments on specific aspects of the proposed amendments to the SEPP are as follows:

Clause 2

- One of the stated new objectives of the SEPP is *"to contribute to the provision of affordable housing options"*. Whilst one of the intents of the policy is to improve housing affordability it is considered that the term *"affordable housing"* should not be used in the objective as the term is specifically defined in the Act and the SEPP and associated Apartment Design Code do not contain specific provisions relating to *"affordable housing"*. It is suggested that the objective be reworded to read: *"To provide options to assist in housing affordability."*

Clause 3

- Council is somewhat surprised that the SEPP introduces a new term *"Apartment"* which is not a term defined or listed in the Standard Instrument. It is suggested that the term be replaced with the words *"Residential Flat Development"* to be in accordance with the wording of the SEPP and the definition in Clause 3 of the SEPP. It would also tie in with the wording of new objective (f) which refers to *"the provision of a variety of dwelling types"* rather than the provision of a variety of apartment types.
- Following on from the above point it is suggested that the term *"Apartment Design Code"* be replaced with the words *"Residential Flat Development Design Code."*
- The words in the definition reading *"published by the Department of Planning and Infrastructure"* should be replaced by the words *"published by the Department of Planning and Environment"*.

Clause 4

- As *"residential flat buildings"* and *"shop top housing"* are separately defined in the Standard Instrument the existing SEPP does not apply to *"shop top housing"* developments of three or more storeys containing four or more dwellings. The proposed amendment addresses that issue, but in doing so has created some unintended and unfortunate consequences when examined in conjunction with certain provisions of the Apartment Design Guide.

One of those consequences is probably best illustrated by giving an example. Under Part 4 the SEPP applies (in part) to *"shop top housing"* and *"mixed use development with a residential accommodation"*. Both those development types contain use(s) in addition to *"residential accommodation"*.

Some of the controls in the Apartment Design Guide do not distinguish between the residential and non residential components of those developments. One of those controls is the car parking requirements in Table 2 of Part 3J – Bicycle and Car Parking for developments close to public transport where there is no specific parking requirement for sites within 400 metres of railway stations in nominated LGAs. Under the current drafting there is no specific car parking requirement for either the residential or non residential components of such developments. Consequently, by virtue of proposed Clause (30) (1) (c) of the SEPP, such a development could not be refused on the grounds of parking, including when no parking was provided for the non residential component of the development.

It is suggested that provisions of the Apartment Design Code be amended to clearly distinguish where the provisions apply to the whole development and where the

provisions only apply to the residential components of “shop top housing” and “mixed use development with a residential accommodation”.

Other provisions of the Apartment Design Code also need to be qualified to address permissibility issues. For example a statement needs to be included in Part 4B –Ground Floor Apartments to the effect that Part 4B does not apply to “shop top housing” developments.

It is also noted that the words “mixed use development with a residential accommodation component” could potentially capture some developments containing “new generation” boarding houses in mixed use developments as some “new generation” boarding rooms are comprised of “a room or suite of rooms occupied or so constructed or capable of being occupied or used as a separate domicile”. Such boarding rooms would constitute a “dwelling” under the definitions in the Standard Instrument.

- The words “mixed development” in Clause 4 (a) (iii) should be replaced with the words “mixed use development” to be in accordance with the terminology in the Standard Instrument and the wording in the preamble to Clause 4.
- The words “at least” in Clause 4 (b) and 4 (b) are superfluous and should be deleted.

Clause 6

- The inclusion of sub clause (2) in relation to BASIX is welcomed.

Clause 6A

Council is generally supportive of the Apartment Design Guide giving prevalence to certain design criteria to promote certainty and consistency. However:

- Concerns are raised with one of the matters included in proposed Clause 6A, namely “(b) solar and daylight access”.

The “Apartment Design Code” has raised the solar and daylight access standard from the “Rules of Thumb” control for “Daylight Access” under the *Residential Flat Design Code* (p85). Whilst the Rules of Thumb control in the RFDC specified that “at least 70% of apartments in a development should receive a minimum of three hours direct sunlight between 9 am and 3 pm in mid winter” it also stated that “In dense urban areas a minimum of two hours may be acceptable.”

The Marrickville LGA is a dense urban area and Council’s controls factor that into account. Marrickville Development Control Plan 2011 requires at least 65% of dwellings in residential flat developments be provided with a minimum of two hours of direct sunlight over a minimum of 50% of the glazed surface between 9.00am and 3.00pm on 21 June.(Control C9 of Part 2.7.5.2). The Apartment Design Code has a one size fits all approach and, unlike the RFDC, does not make any dispensation for “dense urban areas” such as Marrickville.

The deletion of the concession for “dense urban areas” has some fairly major consequences for Council’s existing development controls.

In recent years Council undertook a comprehensive review of its planning controls. Those controls came into effect in December 2011 following the gazettal of Marrickville Local Environmental Plan 2011.

Marrickville Development Control Plan 2011 contains development controls for a number of masterplan sites and precincts and other specific controls for residential flat buildings and shop top housing developments. Those controls include establishing building envelopes for masterplanned sites and precincts and residential flat developments against which future development applications are assessed.

Many of those controls are based on the Rules of Thumb minimum 2 hour direct sun light control for "dense urban areas" in the RFDC.

To change the masterplan controls etc to be in accordance with the proposed new controls would have significant resource implications (including changes to graphics and illustrations). It should also be noted that the advice provided in relation to Pre DAs has been based on those controls and that consultation would also be required given that the change alters previously expressed Council policy contained within a Development Control Plan.

A number of developments have been already been carried out, or have been approved or are currently under assessment based on those controls. Pre DA advice also been provided based on those controls.

Council strongly requests that a similar direct sunlight concession of 2 hours be incorporated into the Apartment Design Guide for "dense urban areas" such as Marrickville to address the issues raised above.

- Point (f) reading "(f) *Balconies and private open space*" should be amended to read "(f) *Private open space and balconies*" to be consistent with the heading in Part 4P of the Apartment Design Guide, or alternatively the heading in the Apartment Design Guide should be changed to be consistent with the SEPP wording.

Part 3

- Council agrees that design review panels are a useful tool to improve design quality, and in 2014 established a Design Excellence Panel. Experience has shown the panel is functioning well, has been generally well received by all parties and has added value in terms of improved design quality. It does however need to be acknowledged that adequate resources are needed. Lack of resources could add to DA processing times.

Part 4

- The heading to Part 4 of the SEPP reading "*Part 4 Application of design principles*" should be amended to read "*Part 4 Application of design quality principles*" to be in accordance with the wording of Schedule 1.

Clause 30

- Clause 30 (1) (c) – refer to comments (Clause 4) in relation to the car parking requirements of the Apartment Design Guide not distinguishing between residential and non residential components of developments.

Savings

- The amendment does not contain savings provisions for applications lodged before, but not determined, before the commencement of the proposed amendments. Appropriate savings provisions are necessary to ensure a smooth transition for the amendments (for both development proponents and Councils) and to avoid confusion.

It is recommended that different savings provisions apply to development applications from those applying to applications for modification of consent. In this regard it is recommended that the current wording of Clause 32 of the SEPP be amended to read as follows:

32 Effect of Amendment No. 3

The amendments made to this Policy by State Environmental Planning Policy No 65—Design Quality of Residential Flat Development (Amendment No. 3) do not apply to:

- (1) a development application made, but not finally determined, before the commencement of those amendments; or

- (2) an application for modification of a consent, where the original consent was issued before the commencement of those amendments, or to a consent issued to a development application referred to in Part (1) of this clause.

Schedule 1

- Council supports the proposed modest changes to the design quality principles in the interests of simpler, clearer communication.
- The terminology used in the principles should be in accordance with terms in the Standard Instrument (refer to earlier comments in relation to the term “apartment”). But if the term “apartment” is to be used the word “units” in Principle 3 should be changed to read “apartments”.
- The design quality principles should explicitly mention heritage protection and adaptive reuse, as this is a common issue for dense inner-urban areas like Marrickville in the design and construction of residential flat developments. It does not appear that those terms readily fit within the principles as currently drafted.
- *Principle 3: Density* could make transport-landuse integration (including parking) a more explicit consideration, as this is a critical factor in the location and design of residential flat developments.
- *Principle 8: Housing Diversity and Social Interaction* highlights the need for the SEPP to consider new-generation boarding houses, which are more akin to residential flat buildings than traditional boarding houses. Council is dealing with many DAs for this type of development and the design is generally poor. Council is currently working with the DP&E to improve its boarding house controls.

Consequential Changes

Various clauses in the Regulations referring to the *design quality principles* need to be amended to refer to Schedule 1 of the SEPP rather than Part 2 of the SEPP.

2. APARTMENT DESIGN CODE

Council's comments on specific aspects of the Apartment Design Code are as follows:

General comments

The cross referencing of provisions needs to be closely checked. For example the cross referencing in the performance criteria for 3B-2.1 for Communal and Public Open Space refers to a Section (3.5) that does not exist.

Diagrams also need to be closely checked to ensure that they are in accordance with relevant controls:

For example: Figure 2F.4 shows a separation distance of 12 metres to 18 metres for 9 storey and above buildings when the control requires a separation distance of 12 metres to 24 metres;

Figure 4N.5 - The dimensions shown for the 2 bedroom mid floor plate dual aspect apartment result in the size of the dwelling being below the minimum area required for such apartment under Table 6; and

Figure 4P2 - Shows a balcony with a depth of 2.4 metres for a 3 bedroom apartment. Control 4P-2.2 requires a minimum depth of 2.5 metres for a 3 bedroom apartment.

Introduction

Council considers the matrix which illustrates linkages between the design quality principles of SEPP 65 and the key sections of the guide to be useful.

Part 1 - Identifying the context

Council supports inclusion of new information on site context and constraints. As an inner-urban council area, where most apartment developments are infill development, context and constraints play a major role in determining the quality of the design outcome.

Part 2 - Developing the controls

Council supports the placing of development controls into this new section to provide a clearer understanding of the difference between site context and performance criteria used to assess specific types of development. The inclusion of those primary controls should remain largely non-numerical to ensure that councils continue to have discretion to apply their own site controls which relate to the local context.

Part 3 - Siting the development and Part 4 - Designing the building

The principle of a new performance-based approach for the siting of developments and the design of buildings is supported by Council. The concept of specific/numerical performance-based criteria/solutions will be helpful in improving the design quality of residential flat developments.

The following comments are provided in relation to specific elements within Parts 3 and 4 of the Apartment Design Guide:

3B – Orientation

(Also refer to comments in relation to “4L – Solar and daylight access” provisions)

Performance criteria 3B-2.1

The words “*communal areas*” should be reworded to read “communal open space” to be in accordance with the wording used in Part 3D and avoid interpretation issues.

Performance criteria 3B-2.4

The overshadowing of neighbouring properties criteria primarily focuses on scenarios for like for like development and do not specifically cover situations such as where the neighbouring property to a proposed residential flat development is a single dwelling house. For example one of the criteria referred to in 3b-2.4, namely 4L-1.4 only relates to solar access to apartments and not to dwelling houses.

As the Apartment Design Guide does not contain overshadowing criteria for neighbouring properties containing dwelling houses presumably if a Council’s Development Control Plan contained provisions presumably it could be contended that those provisions are not “*inconsistent with the standards set out in the Apartment Design Guide*” and consequently that those provisions prevail, notwithstanding the provisions of Clause 6A of the SEPP.

It is also considered that performance criteria 3B-2.4 is loosely worded and not very specific. Most proposals are likely to reduce the solar access to adjoining properties. A decision as to whether the building separation needs to be increased should be based on whether or not the living areas, private open space and communal areas on the adjoining property would receive their necessary solar access as a consequence of carrying out a proposed development. If the required solar access is provided it should not be necessary for the building separation to be increased. It should also be noted that a 3 hour solar access criteria applies to living areas and private open space whereas the requirement for communal open space is “*Solar access is provided to 50% of the principal useable portion of the communal open space for a minimum of 2 hours between 9am and 3pm in midwinter*” (Control 3D-1.4).

The second component of the performance criteria requires that where the proposal reduces solar access of neighbours that "*building separation is increased beyond minimums contained in section 3F Visual privacy*". The performance criteria lacks certainty. How far beyond the "*minimums*" is the building separation required to be increased by? Is the building separation required to be increased to ensure that the living areas and private open space on the adjoining property receive 3 hours of solar access and communal open space receives a minimum of 2 hours of solar access in mid winter?

3G – Pedestrian access & entries

The information within section is supported, but a requirement to provide through site links should be included. These links should be required to be publically accessible 24/7 in perpetuity. Usually the most effective way to ensure this is to require full dedication of the link corridor to Council, but there may be instances where legal right-of-way is appropriate. Additional information could be provided on key elements of path design, such as minimum path widths/clearances and universal access standards. Links to relevant external standards/guides would be useful.

3H – Vehicle access

The information within section is supported, but further information on new vehicular lanes/roads should be included. The provision and design of internal lanes/roads on large sites is critical to the effective functioning of a development. Such lanes/roads provide a range of functions including building separation, kerbside parking, waste collection, maintenance vehicle access, walk/cycle access, loading, pickup/dropoff and landscaping. In most instances, a grid-pattern of fairly narrow roadways is appropriate, and it may be appropriate to create 'shared zones' along laneways. For shoptop housing developments in commercial centres, creation of rear lanes (where none exist) is critical. In commercial centres, it is not desirable for vehicles to service or access development from main streets. Appropriate dedication mechanisms need to be in place to ensure laneway land is dedicated to Council when developments occur.

3J – Bicycle and car parking

Council is supportive of the SEPP providing the option of waived or reduced car parking in accessible areas. This is consistent with Council's current DCP parking controls, which constrain parking in accessible areas and allow for further reduced or waived parking in specific circumstances, e.g. adaptable re-use and affordable housing. Council agrees that apartment residents should not be eligible for resident parking permits (also consistent with Council's DCP). The guide should include a note that councils should undertake public domain parking studies and implement resident parking schemes in accessible areas, recognizing that this is often essential to complement constrained private parking policies. This can and should be funded by development contributions, as is the case for public domain parking studies currently underway for Marrickville's main 'up zoned' commercial centres.

The abovementioned car parking standard highlights the need for a metropolitan parking strategy to provide a much-needed metropolitan-scale strategic context and evidence-base for the SEPP 65 parking standard and council DCP parking controls. Such a strategy was flagged as an action in the 2005 *Metropolitan Strategy* but was never delivered. The absence of such a strategy has resulted in inconsistencies between councils in their approach to parking policy, which has compromised the effective integration of land use and transport.

Whilst the RMS *Guide to Traffic Generating Developments* is useful, its value as the sole reference is debatable given that modelled parking rates within the RMS Guide may be excessive for inner-urban locations such as Marrickville. This is particularly the case where parking constraint is explicitly used as a demand management measure. The parking section of Council's DCP states that Council aims to strike a balance between applying parking

constraint as a demand management measure on one hand, and providing sufficient parking to avoid excessive spill over onto streets on the other. Similar wording could be included in the draft revised SEPP.

Mobility parking for adaptable/accessible dwellings should also be explicitly regulated by the draft revised SEPP, particularly as around 20% of dwellings fit this category and the size of mobility parking spaces exceeds that of conventional spaces. Council currently sets a rate of one mobility space per adaptable/accessible dwelling regardless of location, which can lead to excessive provision of parking, particularly within accessible areas. Council is currently investigating a DCP amendment to set mobility parking at the same rate as conventional parking.

The car parking requirements in Table 2 of Part 3J – Bicycle and Car Parking apply to all forms of residential flat development including shop top housing and mixed use developments.

Under the current drafting there is no specific car parking requirement for either the residential or non residential components of such developments.

Under Table 2 there is no specific parking requirement for sites within 400 metres of railway stations or light rail stations in nominated LGAs. Consequently, by virtue of proposed Clause (30) (1) (c) of the SEPP, shop top housing or mixed use development could not be refused on the grounds of parking, including when no parking was provided for the non residential component of the development.

It is recommended that provisions be included into the control specifying that the car parking requirement only relates to the residential components of such developments.

Interpretation issues are also likely to arise in the determination as to whether a site is within 400 metres of a railway station or light rail station. For example is it determined on the basis that the site is within a 400 metre (as the crow flies) distance from any part of the station? or does the site need to be within a “walking distance” of 400 metres to the entrance to the station (similar to provisions in the Affordable Rental Housing SEPP)?

Further information should be provided on good practice bicycle and car share parking. These are increasingly important elements of contemporary apartment design, particularly in inner-urban and other accessible areas. This information could be in the form of links to other guidelines beyond the RMS Guide.

4B – Ground floor apartments

To address permissibility issues, it is recommended that a statement be included in Part 4B –Ground Floor Apartments to the effect that Part 4B does not apply to “shop top housing” developments.

4L – Solar and daylight access

Unlike the RFDC the Apartment Design Guide has a one size fits all approach to solar and daylight access, and does not make any dispensation for “dense urban areas” like the Rules of Thumb controls in the RFDC.

The solar access controls in Marrickville Development Control Plan 2011 (MDCP 2011) and many of the Masterplan site controls (including site specific envelope controls) have been based on the minimum 2 hour solar access control for dense urban areas under the RFDC.

By virtue of Clause 6A of the SEPP, as those provisions in MDCP 2011 would be inconsistent with the standards set out in the Apartment Design Guide, they would become of no effect in the assessment of applications for residential flat development when the amendment to the SEPP comes into effect.

Council is generally supportive of the Apartment Design Guide giving prevalence to certain design criteria to promote certainty and consistency it is considered that solar and daylight

access controls should include a provision that in dense urban areas a minimum of 2 hours of direct sunlight in mid winter may be acceptable.

4P – Private open space and balconies

(Also refer to comments in relation to Clause 6A (f) of SEPP)

The performance criteria for 4P-2.2 does not include any requirement for private open space and balconies for studio apartments. The indicative studio layout in Part 4N shows a private open space area. (Under the RFDC an external area of 6 square metres was required for a studio).

4W – Waste management

The information within this section is supported, but additional information and design guidelines should be provided on the movement of waste trucks onto/around sites and appropriate bin size and type and the design of bin holding areas. For larger developments, it may be necessary for waste trucks to enter the site to avoid large numbers of bins blocking footways. In these situations, Council finds the horizontal/vertical swept path of a waste truck to be a major consideration in the design of the development. Other important considerations are pedestrian safety wherever trucks cross footways and other pedestrian areas, and the path of travel from dwellings to bin storage areas. Bin size/type affects the size/design of waste storage areas, and has health/safety implications for waste service providers. Council is also finding that presence of new shop top housing developments in mainstreet commercial centres is necessitating the need for a higher standard of waste collection in rear lanes. These issues were recently discussed at a council planners' forum convened by the Southern Sydney Organisation of Councils (SSROC).

